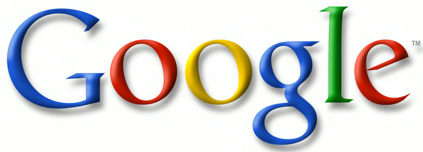

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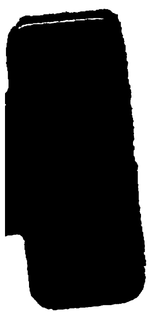

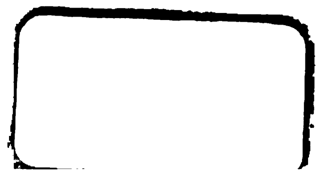

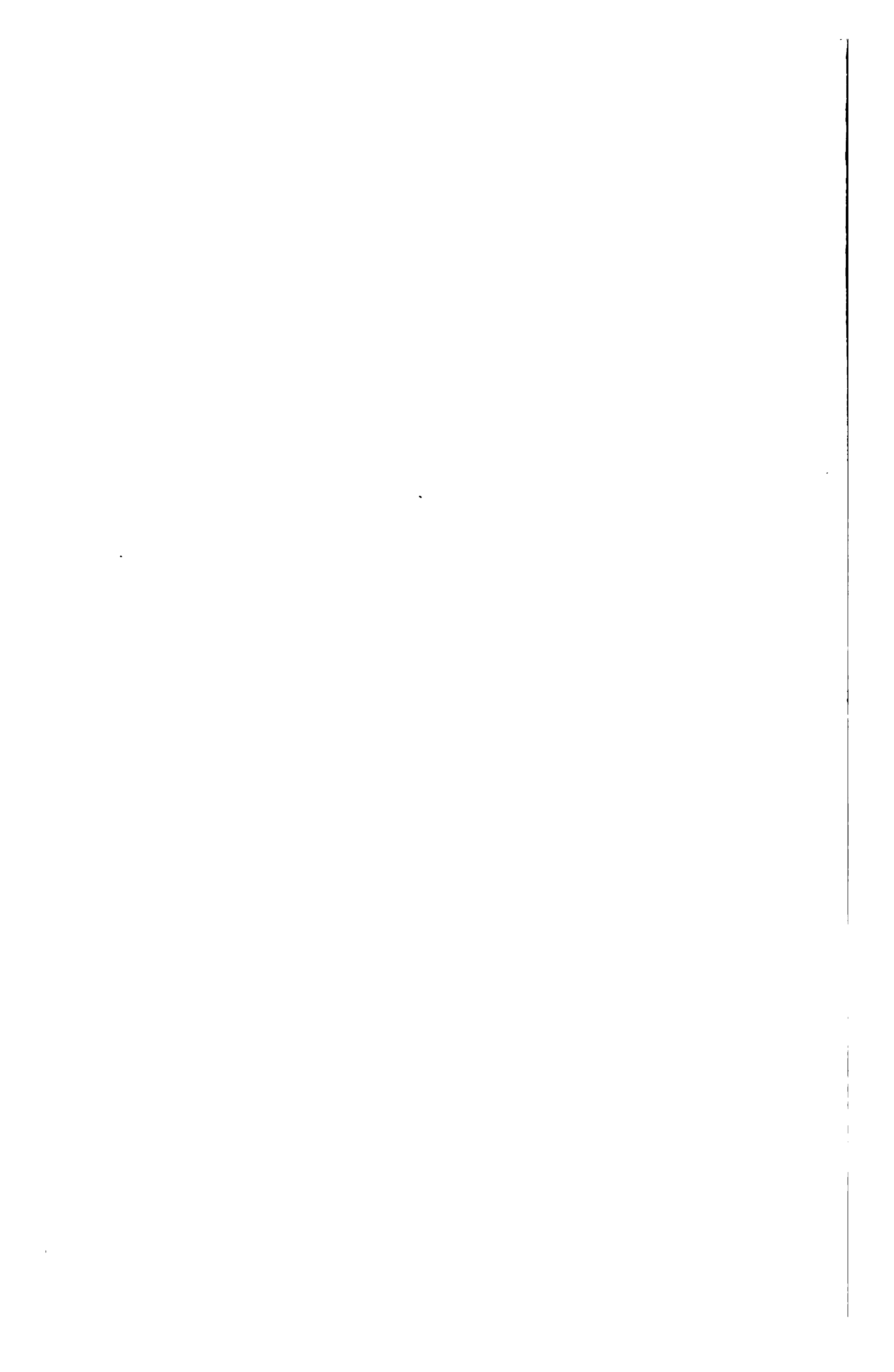

# THE JOHN P. BRANCH HISTORICAL PAPERS OF RANDOLPH-MACON COLLEGE.

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# THE JOHN P. BRANCH HISTORICAL PAPERS OF RANDOLPH-MACON COLLEGE.

JUNE, 1905.

## INTRODUCTION.

No apology is offered for devoting so much space in the Branch Papers this year to the life and work of Judge Spencer Roane. Henry Adams and the other historians of the period have but little to say of Roane or of the protest which he constantly made again Chief Justice Marshall, and the files of the Richmond *Enquirer*, which give so much of the history of Virginia at the time, are not easily accessible.

The series of newspaper letters and formal articles will explain themselves. Most of these articles have not hitherto been identified as Roane's. This has been done now by reference to the correspondence of Jefferson and Madison and by a study of the *Enquirer* files for the period of 1815 to 1821.

Roane, Ritchie, and John Taylor, were active leaders of opinion in Virginia for many years. Jefferson gave them his full countenance, and Madison agreed with them in part and at times. John Marshall and the Supreme Court of the United States, as will be seen, were subjects of lively attack.

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# SPENCER ROANE.

BY EDWIN J. SMITH,* A. M., RANDOLPH-MACON COLLEGE;
STUDENT OF LAW, UNIVERSITY OF VIRGINIA.

THE FORMATIVE PERIOD of our national existence is the one which, more than any other, produced great men. Great issues arose which had to be settled. Great battles were fought and won in the arena of public life—battles on which depended the nation's very existence. Although many were on the losing side, it does not follow that, those who fought hardest for what, it seems to us now, would have meant death to our Union, were not moved by the highest motives of patriotism and devotion to duty. Each had ideas which he thought were right, and each did his best to have them adopted. Spencer Roane fought long and strenuously against a construction of the United States Constitution which he and his co-workers thought would lead to monarchy, but which we now see properly hastened and developed it for the centuries of life and activity that were to follow. Jefferson, Roane's friend and political teacher, entertained the same opinions, and who can say, that following the tendency of Hamilton, the Union would not have drifted, ere this, to monarchy in some form, but for the influence of their constant opposition which culminated in the Civil War.

The work of a great judge, no matter how perfect its argument or profound its learning, is necessarily hidden from the general public. The work of the active politician always submerges and renders obscure that of the more conservative and dignified court. Its wisdom is shut up in the musty volumes of the law libraries accessible only to lawyers or those interested in antiquities. But its influence is none the less powerful because it is unobtrusive and

*Awarded the Bennett History Prize in 1904.

there has been no more important factor in our national development than the Judiciary. Spencer Roane was influential not merely on account of his fine judicial work, but also because of the active interest he took in politics. He frequently wrote for the papers in regard to matters of public interest.

The Roanes are of pure Scotch origin. Gilbert Roane, among the first of the name, was born in Scotland, on February 12, 1680, After serving with distinction under William III., in the civil wars of his time, he removed to Ireland to a grant of land given by the King to him and his heirs "as long as grass grows and water runs," in reward for his services. He had four sons, all of whom came to America. John, the fourth son, born in 1717, came over in 1739, and was ordained a Presbyterian minister in 1745. William, the third son, came over with his other brothers in 1741. He was born in 1713, and having married Sarah Upshaw, settled in Essex county, Virginia. They lived a quiet, country life, and many of the descendants of their six children were destined to hold high places in their country's service. The oldest, Thomas, married Mary Ann Hopkins, and one of their fourteen children marrying Sterling Ruffin, became the mother of that distinguished jurist. Chief Justice Thomas Ruffin, of North Carolina. Another son became the father of John Roane, for a number of years a member of the United States Congress. A daughter married Archibald Ritchie, and became the mother of Thomas Ritchie, the founder of the *Enquirer,* and "father of journalism" in Virginia—a lifelong friend of Spencer Roane.

The third son of William Roane, William Roane, Jr., was the father of Spencer Roane. He was born about 1740, and seems to have received a classical education. He was thoroughly in sympathy with the action of the Colonies, and after serving the State as member of the House of Burgesses from 1768 until the Revolution, he joined a volunteer military company to serve her as defender. He married Judith Ball, and lived in the county of his birth. It was here that Spencer Roane was born April 2, 1762.

From his boyhood Roane was carefully educated by his father, with the assistance of tutors, both in the classics and in that spirit of liberty and freedom which characterized his whole career. He was born during the period when his country was preparing for the great struggle which all felt must come, and accordingly, his whole being was permeated with those fundamental republican principles characteristic of the time. These principles were departed from by some of his friends after the adoption of the Constitution, but he never forsook them. He was an ardent supporter of the Revolution, and though only fourteen when it broke out, he organized his playmates into a company of militia, who wore native hunting shirts with the famous words of Patrick Henry, "Liberty or Death" on their breasts.

Thus carefully prepared by his father, he entered William and Mary College. He did work here in the academic department, and later attended the law lectures of that greatest of all Virginian teachers, Chancellor Wythe. He was a good student and devoted himself to his work. He mastered Littleton, Coke, Hale, and Holt, besides reading a great deal of history. Of his law reading he preferred the work of Coke.[1] He then attended a Law Society in Philadelphia, pursuing still further his law studies. He neglected to some extent common law and equity, and devoted his time to *constitutional* questions which he studied with the greatest delight. Up to the end of his life this was the field of his greatest activity.

He finished his education and begun to practice law in 1782, in his native county. He turned at once, however, to politics, and was elected by his county a member of the House of Delegates in 1783—only a year after he began to practice—and re-elected in 1784. Here he was a member of a number of important committees. With Patrick Henry, he served on the Committee on "Propositions and Grievances;" and with Marshall, "to prepare and bring

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[1]See *Enquirer*, Sept. 17, 1822.

in a bill to amend the Act for Establishing County Courts." He was also a member of the Committee that drew up the address of thanks and gratitude to General Washington.[2] Thus, while only a young man of tweny-two, he was closely associated with men who were the greatest in their country's service; one of whom was to be his bitterest opponent in the judicial clash that was to take place later. Yet in spite of this, he never in any way sacrificed his principles; and when it came to voting, he did it regardless of the opinions of his contemporaries. An incident will indicate his characteristic stubbornness when principle was involved. Some of the citizens of Essex—constituents of his—tarred and feathered a merchant of Tappahannock who had tried to betray the town to the British. They were prosecuted in the General Court, and pending the prosecution they sent a petition to Spencer Roane in 1784, praying the Assembly to arrest the prosecution. He presented the petition, stating that the act occurred previous to the signing of the treaty and that, though the transaction was somewhat irregular, the act was done *flagrante bello*. Henry opposed, but Roane persisted and, Henry giving in, the Act of Indemnity passed.[3]

He was elected a Member of the Privy Council, taking his seat in June, 1784. After two years service he resigned only to be returned as Senator for the counties of Essex, King and Queen, and King William. He had now come to be recognized as a man of fine intellect as well as a devoted Whig, and a stickler for his principles. So well recognized was his merit that in 1789 when a vacancy occurred in the General Court he was elected to fill the place.

The General Court was established in October, 1777. It was the outgrowth of the old Colonial General Court, consisting of the Governor and the Council for the time being. With the adoption of the new Constitution, however, this was changed, and by an act

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[2]See Journal of House, 1783-'4, 1784-'5.

[3]See letter of Patrick Henry to William Wirt, II Henry's Henry, 244; also, T. R. B. Wright, on Roane, II Va. Law. Reg., 473.

of the Assembly, the Court was to consist of five judges, appointed by joint ballot of the two Houses of the Assembly, to hold their offices during good behavior. Its jurisdiction remained as in the old Court and extended over all persons, and in all causes and matters or things at common law, both original and by appeal. Thus it remained the principal Court in Virginia until, by an Act of Assembly, December 22, 1788, District Courts were established which were given most of the original jurisdiction of the General Courts. It still retained, however, its appellate jurisdiction and that of fiscal matters, probate of wills, and proof of deeds; also criminal jurisdiction in regard to impeachments, etc. It was finally abolished by the Constitution of 1851.[4] In December, 1788, the Supreme Court of Appeals of Virginia was established. Prior to this it had consisted of the three chancellors, the five judges of the General Court, and the three judges of the Admirality Court. From this time it was made a separate court, and has remained so ever since. It consists of five judges, and its jurisdiction is almost entirely appellate. Its history has been one of steady progress, and of the triumph of Justice.

While Roane was a member of the General Court a case involving the question of the right of the Judiciary to declare legislation unconstitutional, came before it in *Kamper* v. *Hawkins.*[5] The question was whether or not a Judiciary Act of the Legislature passed December 12, 1792, granting to District Courts "the same power of granting injunctions to stay proceedings on any judgment obtained in any of the said District Courts as is now had and exercised by the High Court of Chancery," was constitutional, and if it was not, whether the courts had the right to declare it unconstitutional and to refuse to execute it. Roane, with his brothers on the bench, maintained that the act *was* unconstitutional, and that the Court had a right to declare it so. He said that as the Court of

[4]See 2 Va. Cases, p. 103 (introduction); also, Court of Appeals of Va., by S. S. P. Patteson, 5 Green Bag, 310.

[5]See 1 Va. Cases, 20.

Chancery was the only Court given certain powers by the Constitution, and as the judges of this Court must be elected by joint ballot of both Houses, judges who by this act are really made Chancery judges cannot be appointed by Act of the Assembly. "If these can be judges who are not appointed by joint ballot, but by an Act of Assembly, the Senate have in that instance more power than the Constitution intended, for they control the other branch by their negative vote; whereas, if they mixed with that branch in joint ballot a plurality of votes of Senators and Delegates would decide."[6] "I think the Judiciary *may and ought* not only refuse to execute a law expressly repugnant to the Constitution, but also one which is by plain and natural construction in opposition to the fundamental principles thereof." In these words Judge Roane affirms the great doctrine of the right of the Judiciary to declare legislative acts null and void as being unconstitutional, which Virginia was the first State to assert through her grand old Judge Wythe, in the case of *Caton* v. *Commonwealth,*[7] and which was afterwards laid down by another of her sons, Chief Justice Marshall in ***Marbury* v. *Madison.***[8] It is a tribute to his foresight as well as to his intimate knowledge of constitutional principles that he was one of the first to uphold a principle so fundamental to the success of our Government.

As a member of the General Court it was Roane's duty to sit in each Court of the districts into which the State was divided. In this way he became acquainted with every lawyer in the State. His judgments were highly approved, and so dignified and impartial was his conduct on the bench that he soon became the favorite judge. In December, 1794, when Henry Tazewell was transferred from the Court of Appeals to the United States Senate, Roane was selected to take his place, being elected on the very

[6] 1 Va. Cases, 40-41.

[7] 4 Call, 5.

[8] 1 Cranch., 37.

first ballot, though every judge on the bench of the General Court was nominated. He took his seat April 13, 1795, when only thirty-three years old—one of the youngest men who ever held such a responsible judicial office in Virginia. At this time the Court was increasing in power and influence. Under the guidance of the best lawyers of the State, with Edmund Pendleton at their head, it was rapidly gaining the respect of the whole country, and to this day its opinions stand high as authority in all the courts of the United States. Roane, next to Pendleton, was the ablest member. These two men were devoted friends, and though there was a great difference in their ages, each loved and respected the other. They often differed, however, and some of Roane's ablest opinions were written in dissenting from the opinion of his friend. He never allowed anything to interfere with his convictions. He wrote an opinion on nearly every case in which he sat, taking the same care in the small as in the great cases. In two volumes of Washington's Reports, six volumes of Call's, four vlumes of Hening and Munford, six volumes of Hening, and one of Peyton Randolph will be found his contribution to the legal literature of his State. They everywhere show wide reading of literature and the classics, as well as of law and history. Liberty was their keynote. He hated the usurpation of power by courts or individuals, and all his life fought against it. Daniel Call says of him, "This (his reading), together with the natural vigor of his understanding and his other literary attainments soon rendered him one of the most distinguished members of the bench; second only in public estimation to Edmund Pendleton; and upon the death of that gentleman, he was, beyond dispute, the ablest judge of the Court. * * * His opinions were generally sound, and their authority almost incontestable." *

Though a great deal of his time was required for his judicial work, which he did thoroughly and conscientiously, he still found time to take part in the political discussions of his day; often con-

*4 Call, XXV.

tributing articles to the newspapers. His views were clear and decided, and he did not hesitate to assert them. His style was clear and lucid, though after the fashion of his time, somewhat verbose. He belonged to the great Anti-Federalist or Democratic party of Jefferson, and was a great admirer of the Sage of Monticello. When the Federal Constitution came before the people to be ratified he opposed it. Edmund Randolph, a member of the Convention that framed the Constitution, and one who had refused to sign it after its adoption by the Convention, in a letter to Madison, 29th February, 1788, wrote: "A writer calling himself 'Plaindealer,' who is bitter in Principle *vs.* the Constitution, has attacked me in the paper."[9] This probably refers to an article by Roane signed "Plaindealer," and published about this time in the *Virginia Independent Chronicle.*[10] Governor Randolph, delegate to the Federal Convention from Virginia, had refused to give his assent to the Constitution, since he had several amendments which he had desired should be incorporated. For various reasons, some of which were political, he had failed to give his real opinion in regard to the matter. In October, 1787, however, he wrote a letter to the State Legislature, which, while it did not commit him for the Constitution, was, on the whole, an argument for its adoption, even without his proposed amendments, rather than against it. Roane takes this up, refutes his arguments, and shows up the inconsistency of his position. Speaking of his delay, he says: "But I am of opinion that during the pendency of a question concerning the Constitution every information on that subject is most properly to be adduced; and I do not know that being or not being Governor of Virginia (an office, in a great degree, nominal), was sufficient to deter a real patriot from speaking the warning voice of opposition in behalf of the liberty of his country.' * * * Good God! how can the first magistrate and father of a free Re-

[9]Conway's Randolph, p. 101.

[10]Essay signed "Plain Dealer," P. L. Ford's "Essays on Cons.," p. 387; also reprinted in this number of Branch Papers.

publican Government, after a feeble parade of opposition, and before his desired plan of amendments has been determined upon, declare that he will accept a Constitution which is to beget a monarchy or an aristocracy." He says that a Constitution "ought to be, like Cæsar's wife, not only good, but unsuspected, since it is the highest compact which men are capable of forming, and involves the dearest rights of life, liberty and property." He recognized, however, the magnitude of the task of making a Constitution for the States. "But when it is considered that the present is not the golden age, the epoch of virtue, candor and integrity, that the views of ambitious and designing men are continually working to their own aggrandizement, and to the overthrow of liberty, and that the discordant interests of thirteen different Commonwealths are to be reconciled and promoted by one general government; common reason will teach us that the utmost caution, secrecy and political sagacity is requisite to secure to each the important blessings of a good government."[11] He, however, did not propose an attack on the Constitution, for he says: "It is not my purpose to oppose *now* or to investigate the merits of the Constitution. This I leave to abler pens and to the common sense of my countrymen." He did oppose it, however, not because the Articles of the Confederation were sufficient for our Union, nor from any unwillingness to increase the powers of the Federal Government; on the contrary, he was of the opinion that the Union was "too loosely banded together," and wished to see it vested with power of raising an adequate revenue for all purposes of defense without depending on the requisitions from the States. He did think, however, that some powers were given by the Constitution which should have been withheld, and he did fear that the important powers reserved to the States and to the people were not reserved with sufficient explicitness."[12] After its adoption, with its amendments (which removed most of his objections), he became one of its strongest

[11]Essay "Plain Dealer," *supra.*

[12]*Richmond Enquirer*, Sept. 17, 1822.

supporters, though true to his principles as a member of the Republican party; he maintained "that the Federal Government was *limited* in its powers, that it possessed only those which were *expressly granted* by the very terms of the compact or were *fairly incidental* to them."[13] This was the keynote of his life work. He consistently upheld it all through his life, both by his legal opinions and his written appeals in the papers.

Subsequent to the adoption of the Constitution, the parties which had been divided previously over the question of its adoption now differed in regard to the construction of that instrument. The anti-Federalists, uniting with the opponents of Hamilton's policies, became the Republican or Democratic party, with Jefferson at its head. They demanded a strict construction, believing that too liberal a construction was destructive to the liberty of the States, as well as to that of the people. This marked the beginning of the State's Rights party. The Federalist party, under Washington, Hamilton and Adams, went into power at the adoption of the Constitution, and remained so until after the Adams administration. During this administration, however, the party became very unpopular, both on account of the disaffections in its own ranks and on account of the famous Alien and Sedition Acts. These the Democrats denounced as a high-handed usurpation of power by the administration. So determined did the opposition to the Acts become that in 1798-'9 resolutions were introduced in the Legislatures of Virginia and Kentucky practically declaring that each State was a sovereign power, and that the Union, being voluntary, might be dissolved whenever they saw fit. The repeal of the obnoxious laws, however, having removed the stress, the resolutions were dropped, and were afterwards admitted to be simply the statement of a policy on which the Republicans (or Democrats) wished to base their campaign. Roane was a strong supporter of these resolutions. He said: This document (the

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[13]Article in *Enquirer*, Sept. 17, 1822.

Virginia resolutions) contains the *renewed* sense of the people of Virginia in the important subjects to which it relates; a sanction deemed important enough in some States to operate an amendment to their Constitutions (Maryland), and that it had a principal influence in producing a new era in the American Republic."[14] Again, "It has often been called by an eloquent statesman his 'political Bible' (John Randolph). For truth, perspicuity and moderation, it has never been surpassed. It is entirely Federal. It was the *Magna Charter* on which the Republicans settled down after the great struggle in the year 1799."[15]

Accordingly in 1800, the Federalists were disastrously beaten, and Jefferson was elevated to the Presidency, taking his seat in 1801, March 4th. Before the inauguration, however, it became known that he would appoint a strong Republican, probably Roane, to take the place of Chief Justice Oliver Ellsworth, who proposed to resign. Accordingly the Federalists, on the last of January, induced Ellsworth to resign, and Adams appointed John Marshall to succeed him.[16]

When the Democrats came into power, the need of a Democratic paper was felt in Virginia. The newspaper had now become one of the most important methods of political warfare. Each party maintained one at Washington, in which articles advocating the one and maligning the other were published. These were read throughout the country, and in those days of slow transit had to do, even more than to-day, with moulding public sentiment, *i. e.*, of the qualified voters. In 1804 Roane established the *Richmond Enquirer,* and installed as its editor his cousin, Thomas Ritchie, later to be called "the father of journalism in Virginia."[17] Ritchie was a young man who, having tried law and then teaching without

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[14] See opinion in Hunter v. Martin.

[15] Article (signed Hampden), No. 1.

[16] See Judge T. R. B. Wright's article, II Va. Law. Reg., 480.

[17] See Judge Wright's article, II Va. Law. Reg., 481.

success, at last found his calling. From this time on he and his paper, known as the "Democratic Bible," became the most powerful and influential factor in the South. With John Taylor, Roane, and probably Brockenbrough, he formed a coterie of politicians in Virginia which, with the help of the *Enquirer*, was the most influential single group in the country, except in possibly the Albany Regency, their influence being felt decidedly in the national affairs. J. Q. Adams says in his diary: "The *Enquirer* is a paper edited with considerable ability, and the organ of the new Virginia faction under the auspices of Spencer Roane—Wirt almost worships Roane."[18] Roane and Ritchie remained friends and colleagues during their whole lives, and they did a great deal to shape the policies of our nation. Jefferson and Madison recognized their power, and though they later differed on some questions, they were entirely friendly.

Though so much interested in politics, Roane did not allow this to interfere in any way with his judicial work. His range of reading was very wide, and his opinions were written with the same care and thoroughness throughout his career. In 1804 an important case came before the Court of Appeals. This was the case of *Turpin* v. *Lockett*,[19] when Roane, with Judge Tucker, sustained the constitutionality of the great act of 1802, by which the Glebe lands of the Episcopal Church—those not occupied—were to be applied to relieving the poor in the parish. In the days before the Revolution the King had ordered each parish to set aside so much land, the proceeds of which was to furnish subsistence to the pastor. This was the custom of the Church of England. In Virginia the Legislature passed an act which dispossessed the vestrymen of this land. The vestrymen of a church in Manchester brought action against the overseers of the poor who had taken their land, maintaining that the act was void, as unconstitutional. Roane, with the majority of the court, held that the

[18] J. Q. Adams' Diary, Vol. IV, 313-4.

[19] 6 Call, 113.

act was constitutional. He said the land was granted to the vestrymen for the use of the pastors, and that when it became vacant, reverted to the government. The act of 1748, saying that the lands were "appropriated for the use of the minister of such parish and his successors in all time hereafter," showed that they were given as to a body corporate, *i. e.*, minister and his successors, and that "when this was dissolved, the lands revert to the donor, for the grant faileth." And as the corporation was dissolved by the fact that the Revolution changed the character of the ministers and prevented them from being really the successors of those to whom the land was granted, "it merely restores to the people that which was levied for a purpose that has ceased to exist." In fine he said: "We are urged by the appellant's counsel to put Deism to flight, and restore the altars of our fathers. If there be a league of Deists, or others in the Legislature or elsewhere, to overturn religion or impair morality, it is to me a subject of the deepest regret. I can never cease to believe that these are the firmest pillars of society, the surest basis of human happiness. For myself, I am now called upon to perform a painful duty. That duty must not be obstructed by any sympathies or partialities of mine."[20] It is interesting to note that Edmund Pendleton prepared an opinion contrary to that of Roane, but died before he could deliver it. Thus of the six who sat in the case, three were on each side. The same case came up in 1840, and Roane's opinion was affirmed in *Selden* v. *Overseers of the Poor.*[21]

As soon as the Federalists were ousted from control and the States Rights Republicans, under Jefferson, came into power, there was a change of front. Roane and his colleagues, who had so bitterly denounced every supposed usurpation of power, looked on approvingly, while Jefferson, in the purchase of Louisiana, committed an "assumption of implied power greater in itself and more comprehen-

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[20]See his opinion in Turpin v. Lockett, *supra.*

[21]11 Leigh, 132.

sive in its consequences than all the assumptions of implied power in the twelve years of the Washington and Adams administrations put together."[22] The Republicans, being in power, could not use their States Rights doctrines, and they were taken up by the Federalists. In New England, which was the stronghold of the Federalists, resistance to the national government was threatened. They denounced Jefferson and his policy in regard to the Judiciary, as well as the purchase of Louisiana. A conspiracy was formed with Pickering at its head, which was demolished only by the defeat of Burr in his contest with Jefferson for the Presidency.[23] The dissatisfacton remained, however, and when in 1807 Jefferson laid the hated embargo because of the insults which England heaped upon American merchant ships, the furor again broke out. The New Englanders being a commercial and seafaring people, were especially injured by the embargo. The other States were clamoring for war with England on account of her treatment of the Merchant Marine. In Virginia enthusiastic meetings were held advocating war. Roane was chairman of such a meeting in Richmond, and Ritchie was secretary. Resolutions were passed demanding a war of retribution with England.[24] The war was especially unpopular in New England, and though the embargo was removed, the dissatisfaction continued. England continued her depredations on the United States merchant ships. The war spirit increased, but the New England Federalists resisted—their leader, Pickering, clamoring for a convention of the New England States. In 1812 he proposed one only to be defeated by a speech of Dexter in Boston. War was declared. They refused to send troops or take part, and when the United States armies had met with defeat on every side, when the treasury was

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[22]Adams', J. Q., Memoirs, Vol. V, p. 364.

[23]8 Adams, U. S., p. 306.

[24]"Editors of the Past," pamphlet by R .W. Hughes; also papers of time.

empty, the famous Hartford Convention was called December 14, 1814. The universal belief was that the New England States contemplated disunion, and in Virginia the depression amounted almost to despair.[25]

The Convention met, and under the leadership of the conservative George Cabot, recommended measures similar to those sentiments of the Kentucky and Virginia resolutions of 1798, which had been so much censured. Delegates were appointed to report at Washington. Everything was dark for the Union. The English were pressing on New Orleans, the country was bankrupt, and the army gone. Every one awaited new disaster. Instead, however, came news of the defeat of the English at New Orleans, followed by the treaty of peace. The tension was broken. Quiet was restored, and the Hartford Convention delegates never reported.

Roane and his colleagues, though strong States Rights men, assumed a severe attitude toward New England, and advocated harsh measures. Though this was their own theory put in practice, they opposed it. They seem never to have contemplated secession as the final result of their policy. Their idea was merely a peaceful opposition to the usurpation of power by the central government. Roane spoke of the "anarchical principles prevalent at the time of the argument in a particular section of the Union."[26] The *Richmond Enquirer* heartily endorsed a report that Madison would order troops to march against New England.

Jefferson was very hostile to the Judiciary which the Federalists had forced on the country in 1801, and he tried in various ways to decrease its power. He recognized the vast influence for centralization of power that such a tribunal might exert. He, believing in the rights of the States, did everything to prevent the overriding of the weak governments by the stronger. Finding that impeachment proceedings were without avail, his only hope was to fill the

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[25]8 Adams, 307.

[26]Opinion, 4 Minn., 27.

vacancies with sound Republicans. Accordingly, he appointed Story and Johnson, and, much to his chagrin, found that though not so aggressive as Marshall, they accepted his views, and became just as independent.[27] So under the guidance of Marshall, the Supreme Court continued to increase in power and influence until in 1815 it came into direct conflict with the State Court of Virginia, under the leadership of Roane. Thus was begun the second period of the struggle of the Southern States to maintain their sovereignty. The same fight that Hamilton and Jefferson fought soon after the adoption of the Constitution, and that Virginia and Kentucky fought in 1798, was again taken up by Marshall and Roane, which struggle, though lulled for a time by the Missouri compromise, finally broke out in the war of 1861, and was settled for all time. Roane, with the full approbation of Jefferson, did all he could by writings and speeches to reduce the power of the Supreme Court, which he believed was gradually leading to consolidation of the National Government. The basis of the discussion was, of course, the interpretation of the Constitution, Roane contending for a strict construction, while Marshall contended for a broad construction of its grants.

The case over which the contest arose was that of *Hunter* v. *Fairfax*,[28] involving rights claimed under the treaty of 1783 with England. It first arose in the District Court of Winchester. It was an act of ejectment brought by Hunter against Fairfax for 788 acres of land in Northern Neck. All rights to the whole territory of Northern Neck had been vested in Thomas Lord Fairfax in 1736 by a grant of the King, and said grant confirmed by act of Legislature in 1748. He died in 1781, devising all his "undivided sixth part or share of his lands and plantations in the colony of Virginia" to the Rev. Denny Fairfax, his nephew, of the county

[27]Hart's Formation of the Union, p. 182; see also Judge Johnson's reply to the Virginia decision in Martin vs. Hunter, as given in *Enquirer*, April 13, 1816.

[28]1 Mumford, 218-38.

of Kent, Great Britain. So the land stood vested in an alien by devise. On April 30, 1789, David Hunter was granted a patent for 788 acres of the land situated in the county of Shenandoah, and in 1793 brought this action to get his land. The District Court decided for the defendant, Fairfax, and an appeal was taken. In the meantime, Fairfax died, and the appeal was renewed against Philip Martin, his heir at law and devisee. It was argued before the Court of Appeals of Virginia in May, 1796, and again October 25, 1809, and in April, 1810, the court handed down an opinion reversing the District Court. In an able opinion Roane maintained that the land in question belonged to the plaintiff because it had been granted to him by the State. It belonged to the State because, as the State had a right to confiscate property belonging to an alien enemy, and as it virtually did this by the acts of 1782 (prior to treaty), ordering the quit rents to be paid to the State treasury instead of defendant, and ordering that all entries made with the "surveyors of the counties within the Northern Neck shall be held and deemed as valid and good," the title was really vested in the State by implication. He said: "I am of opinion that the title of the Commonwealth to the land in question, having been perfected by seisin under the act of 1782, or, in other words, the confiscation being complete, that treaty (1783) had nothing left whereon to operate," and therefore the title given by the Governor in 1789 was good.

An appeal was taken by the defendant to the United States Supreme Court, on the ground that a question of a right claimed under a treaty had been decided adversely to that right, and that under the twenty-fifth section of the Judiciary Act the appeal could be taken. The Supreme Court heard the case, and reversed the decision of the State Court on the ground that the Acts of the Assembly did not amount to a taking possession of the lands in question, and inasmuch as the State did not do what it might have done before the treaty of 1783, it was prevented from doing it after

that treaty was signed.[29] Therefore, as it could not pass any better title than it had, the property remained in Philip Martin, the defendant below. This opinion was rendered by Judge Story at the request of Judge Marshall, who was far too patriotic to humiliate his native State by a reversal of her highest court. Justice Johnson in this case dissented from the opinion of the court, agreeing with Judge Roane that the title to the land was in the State. He did not, however, question the right of the court to reverse the State Court under the Judiciary Act, saying, "I am of opinion that whenever the case made out in the pleadings does not in law sanction the judgment which has been given on it, the error sufficiently appears upon the record to bring the case within the twenty-fifth section of the Judiciary Act."[30]

On receiving the mandate from the Supreme Court commanding the Virginia Court of Appeals to reverse its decision the judges unanimously refused. Roane's opinion[31] was especially strong, and was printed in the *Richmond Enquirer* February 16, 1816, under the heading, "An Interesting Case." He first takes up the question of the constitutionality of the twenty-fifth section of the Judiciary Act, by which the right of appeal from the State to the United States Courts is given. He maintained that since the United States Government was one of granted power, any of its laws must be proved to be constitutional by showing that power to pass it has been granted. In no place in the Constitution can mention be found giving the United States Courts appellate jurisdiction over the State Courts, *which are absolutely independent.* This the act in question does. The part of the Constitution, second section, third article, from which this power is deduced, reads, "In all other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exception and under such regulations as Congress shall make." This clause,

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[29] Fairfax v. Hunter, 7 Cranch., 603.
[30] 7 Cranch., 628 and 632.
[31] 4 Mumford, 1.

however, he contended, referred only to the inferior United States Courts, and not to the State Courts, as will be seen by referring to that part of the Constitution which precedes this. The Constitution says "courts," and everywhere courts are mentioned those of the United States are meant, for in all cases the general rule prevails that a Constitution settles the powers and arranges the jurisdiction of its own courts, and not those of another government. The Constitution gives the United States power "over all cases in law and equity arising, * * * treaties made or which shall be made under their authority." This means that the "judicial power of the United States is to be determined by the suit or action being proper for the cognizance of their courts, and being actually instituted or brought therein. If brought or instituted in the courts of another government, though they may involve the construction of the Constitution, laws, or treaties of the United States, they form a part of the judicial power of that government, and not of the United States. On any other hypothesis the judicial power of the United States would be co-extensive with the limits of the world on the principle that the *lex laei* prevails everywhere in the case of contracts."

He then said that this case did not even come under the section in question, because the treaty right was not the only ground on which the case was decided, and the act does not mean to take appellate jurisdiction where a treaty may be colorably relied on as one of the grounds of defense. In conclusion, he said: "Upon the whole, I am of opinion that the Constitution confers no power upon the Supreme Court of the United States to meddle with the judgment of this court in the case before us; that this case does not come within the actual provisions of the twenty-fifth section of the Judicial Act, and that this court is both at liberty and is bound to follow its own convictions on the subject—anything in the decision or supposed decisions of any other court to the contrary, notwithstanding.

"My conclusion, consequently, is that everything done in this

cause subsequently to the judgment of reversal by this court was *coram non judice* unconstitutional and void, and should be entirely disregarded by this court; that the writ of error in this case was unprovidently allowed, and that the judgment of reversal by the court should be now certified to the Superior Court, which has succeeded to the District Court of Winchester in its powers for the purpose of being carried into complete execution."[32]

The Supreme Court answered, maintaining their former position and the constitutionality of the Judiciary Act. Both Story and Johnson gave opinions—Story the opinion of the court, Johnson because he did not entirely agree with the reasoning of his brother and "wished to disavow all intention to decide on the right to issue compulsory process to the State Courts." His opinion was published in the *National Intelligencer* April 16, 1816, in answer to Roane's, which seems to have met the approbation of the public. It is likely that Marshall requested this, and he chose Johnson's probably because he wished to humiliate Jefferson, who had appointed Johnson, but more probably because Johnson's opinion was more moderate than Story's, and was better calculated to allay the storm of public sentiment which the case had excited. In his opinion he says, "So firmly am I persuaded that the American people can no longer enjoy the blessings of a free government whenever the State sovereignties shall be prostrated at the feet of the general government, nor the proud consciousness of equality and security, any longer than the independence of judicial power shall be maintained consecrated and untangible that I could borrow the language of a celebrated orator and exclaim, "I rejoice that Virginia has resisted."[33] He thinks, however, that the Virginia Court should have been more moderate, and that it went too far when it declared that the Supreme Court decision was void. He maintained that the twenty-fifth section of the Judiciary Act was

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[32]His opinion in 4 Mumf., 1.

[33]Wheaton, 363.

constitutional, but said, "God forbid that the judicial power of these States should ever for a moment, even in its humblest departments, feel a doubt of its own independence."[34]

As the Virginia Court of Appeals refused to obey, the Supreme Court declined to attempt to compel obedience by a further procedure, but by its own officer executed its mandate.[35] The influence of this case on public opinion it is difficult to estimate. Followed by a series of strong articles that appeared later from the pen of Roane, concerning several decisions of the Supreme Court, it is certain that it did a great deal to crystalize the doctrine of States Rights, which ever after became the favorite dogma of the South. At the time of the decision, however, the country was in such a pleasant state of mind over the happy termination of the war and the new era of prosperity that followed it, that its influence was not so much felt as it otherwise might have been.

Roane had Jefferson's fullest approbation in this decision as evidenced by the following words from a letter from him October 12, 1819:[36] "I knew well that in certain Federal cases the laws of the United States had given to a foreign party, whether plaintiff or defendant, a right to carry his cause into the Federal Court; but I did not know that where he had himself elected the State judicature, he could, after an unfavorable decision there, remove his case to the Federal Courts and thus take benefit of two chances where others have but one; nor that the right of entertaining the question in this case had been exercised or claimed by the Federal judiciary after it had postponed on the party's first election. * * * I confess myself unable to foresee what those grounds would be (of the Federal opinion). The paper enclosed must call them forth and silence them, too, unless they are beyond my ken."

Roane continued his opposition to the extension of the powers

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[34] 1 Wheat., 381.

[35] II Tucker on Constitution of U. S., 766.

[36] IX Ford's Jefferson, 530.

of the Judiciary. In March, 1819, a case came before the Supreme Court in regard to the constitutionality of the United States bank. In the case of *McCulloch* v. *Maryland*,[37] it was decided that there is nothing in the Constitution of the United States which exclude incidental or implied powers, and that Congress had power to incorporate a bank. This aroused all the opposition in the Roane-Ritchie faction, and, beginning March 30, 1819, Roane published a series of two articles under the pen name of "Amphictyon," which were introduced by Ritchie in these words: "We cannot too earnestly press upon our readers the following exposition of the alarming errors of the Supreme Court of the United States in their late interpretation of the Constitution. We conceive the errors most alarming, and this exposition most satisfactory. Whenever States rights are threatened or invaded, Virginia will not be the last to sound the tocsin."[38] In his articles Roane maintained that instead of handing down the opinion as "all concurring," each judge ought to give his own opinion on so momentous a subject. Madison[39] agreed with him on this point, as did Judge Johnson.[40] He then takes up the two points in the opinion of Marshall and refutes them. The first is the denial that the powers of the Federal Court were delegated by the States. Taking Madison's report of 1798-'9 as his text, he shows that this view of the United States Government is erroneous. He shows that all the powers in the Constitution were granted by each State in its individual capacity, and that the taking of more rights than granted is an usurpation of power not warranted by the Constitution, and would be taking from the States "of some of the most important attributes of their sovereignty."

The second principle advocated is that "the grant of powers to

[37] 4 Wheat., 381.

[38] *Enquirer*, March 30, 1819.

[39] III, Works of Madison, 143.

[40] See opinion in 1 Wheat., 260.

that government and particularly the grant of powers 'necessary and proper' to carry other powers into effect, ought to be construed into a liberal rather than a restrictive sense." This he shows will lead to a government of unlimited powers. That the words "necessary and proper" add nothing to the Constitution, and are merely tautology. Necessary does not mean implied powers. "Necessary means one of those without which the end could not be attained. It conveys no grant of powers, and was asserted from abundant caution." The government is one of vast powers and needs no liberal construction to make them sufficient.

He closes his discussion with an attack on the National Bank. He holds such an institution to be unconstitutional because the power to establish not being a "necessary" power, is not given by the Constitution. If you violate the Constitution to this extent to establish a bank, where will the power of Congress stop? By such a construction, absolute power to do anything will be given. But Roane's animosity toward the National Bank did not prevent his investing funds in its stock at ten to twelve above par for his son William.[41]

The articles were well received at the time, and heartily endorsed by the majority of the Democrats. The State Rights doctrine was much discussed, and the subject of many toasts, such as "States Rights, may they never be abandoned by the friends of freedom," or "The government of the United States, the creature of the States sovereignties, may these sovereignties never want the wisdom or vigor to restrict it to the purposes of its creation," or "The plea of necessity and the doctrine of implication, equally dangerous to the liberty of the people."[42] All this shows the prevalence of the States Rights views as influenced by Roane's articles.

Following this series Roane published another under the pen name of "Hampden."[43] This series, consisting of four installments,

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[41]See letter to W. H. Roane, Jan. 4, 1819.

[42]*Enquirer*, July 9, 1819.

[43]*Enquirer*, June 11, 1819, et seq.

was even more widely read and approved than the other. It takes for its text the same decision, *McCulloch* v. *Maryland,* and contains the same views, advocating strict construction and criticising the opinion of the Supreme Court. The articles are ably written, and form an admirable statement of the States Rights doctrine. Jefferson wrote concerning it: "I have read in the *Enquirer,* and with great approbation the pieces signed 'Hampden,' and have read them again with redoubled approbation, in the copies you have been so kind as to send me. I subscribe to every tittle of them. They contain the true principles of the Revolution of 1800, for that was as real a revolution in the principles of our government as that of 1776 was in form; not effected indeed by the sword as that, but by the rational and peaceful instrument of reform, the suffrage of the people."[44] Madison, though he seems to have agreed with him in principle, was coy about expressing his opinion of the papers. He remembered possibly that he had written part of the Federalist, and that he had signed a bill instituting a United States Bank in 1816, and had also written the Virginia resolutions of 1799. John Taylor agreed, but President Monroe hesitated. He seems also to have agreed in principle, though as President he felt a delicacy in expressing an opinion. He gave "countenance to it by referring to his own resistance against the right of the government to make iternal improvements."[45] This discussion marks the beginning of a division in the old Republican party of Jefferson—a parting of the ways, as it were.[46] The strict constructionists, who were in the majority in Virginia, remained true to Jefferson, while those who were not so radical in their view of construction believed in internal improvements and banks. These were later to be represented by the party of Benjamin W. Leigh and John M.

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[44]Ford's Jefferson, X Vol., 140.

[45]John Q. Adams, V Vol., 264, et seq.

[46]See *Enquirer*, Sept. 4, 11, 14, 1821

Botts, in Virginia.[47] Roane continued true to his principle, and with Jefferson, ever remained a strict constructionist.

John Q. Adams, with his usual pointed sarcasm, considers these attacks of Roane a repetition of policy by which Jefferson became president in 1800, and only a means of getting in control of the government. He says, "The Virginian opposition to implied powers is therefore a convenient weapon to be taken up or laid aside as it suits the purposes of State turbulence and ambition; and as Virginia has no direct candidate to offer for the presidential election her aspiring demagogues are casting about them to place her again at the head of the formal opposition to the administration of the Union, that she may thus again obtain by conquest the administration itself. * * * They still possess to a superior degree the art of public management. * * * The tactics of the former war are again resorted to ,and Roane comes forth as the champion of Virginia."[48] This is from the pen of one intensely opposed to Roane's party and, of course, is partisan. We know from Roane's previous life such was not the case, and that his opposition was one of principle rather than ambition. It is said that in 1824 Jefferson wished him to run as vice-president, with Crawford, but when it was mentioned by a friend he said, rising from an invalid's couch, "Sir, is it necessary that I should disavow such wishes? If you think so, I will do it in my own name. I have no such pretentions. I am not ambitious of promotion. I am contented where I am. The business of administering justice is sufficiently useful to my countrymen to gratify my highest ambition."[49]

One other decision of the United States Supreme Court brought forth a strong series of articles by Roane in opposition to the principles which were involved. This was the famous *Cohens* v. *Virginia*.[50] This case involved the same principle as the case *Hunter* v.

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[47]III Schouler, 43-47.

[48]John Q. Adams, V Vol., 364, et seq.

[49]*Enquirer*, Sept. 17, 1822.

[50]6 Wheat., 264.

*Martin,* whether or not the Supreme Court had appellate jurisdiction over the State Court of Appeals. The Cohens, a firm in Washington, had sold lottery tickets in Norfolk contrary to the Virginia laws. They were fined in Norfolk and on writ of error appealed to the Supreme Court. Virginia asked for a dismissal on ground of want of jurisdiction. This was denied by Marshall on the ground that under the Judiciary Act the Supreme Court had appellate jurisdiction over the State courts in certain cases as when the suit was between a State and a citizen of another State. This decision, in direct opposition to all the established views of Roane, brought forth a storm of criticism; Roane's series of articles under the *non de plume* Algernon Sidney, are a remarkable expostulation against the doctrines of liberal construction. They were heartily endorsed by Jefferson and his school. He said in a letter to Johnson, June 12, 1823: "I considered these papers (those signed Algernon Sidnev) maturely as they came out and confess they appear to me to pulverize every word which had been delivered by Judge Marshall of the extra judicial part of his opinion. * * * This doctrine was so completey refuted by Roane that if he can be answered I surrender human reason as a vain and useless faculty; given to bewilder and not to guide us."[51] Madison was not in full accord with these principles, though he respected Roane and thought him a very able man. Jefferson wrote January 11, 1821: "I am sensible of the inroads daily working by the Federal into the jurisdiction of its co-ordinate associates, the State Governments. * * * The Judiciary branch is the instrument which, working like gravity without intermission, is to press us at last into one consolidated mass. Against this I know no one who, equally with Judge Roane himself, possesses the power and courage to make resistance; and to him I look and have long looked, as our strongest bulwark."[52]

These articles were received with equal enthusiasm by the majori-

[51]Ford's Writings of Jefferson, Vol. IX, p. 229.
[52]Ford's Writings of Jefferson, Vol. IX, p. 184.

ty of the papers. *The Lynchburg Press,* after commending them, says, they are "understood to be from the pen of Judge Spencer Roane, the organ of the old Republican party in Virginia at present its acknowledged leader, and the soundest interpreter of the Federal Constitution who has ever commented on its text."[53] *The Louisiana Advertiser* says, "We consider the following number of Algernon Sidney, taken from the *Richmond Enquirer,* as a piece having this (the right) tendency, and well worth publication."[54] The *Times Danaos,* the organ of De Witt Clinton, agreed also, but *The National Intelligencer* and *New York American* were opposed.[55]

It is interesting to note that as a result of these articles, resolutions were introduced in the House of Representatives in December 21, 1830, by Hon. W. R. Davis, of South Carolina, for the repeal of the twenty-fifth section of the Judiciary Act. The Committee reported favorably June 24, 1831, but was rejected by a small vote June 29, 1831.[56] They served, no doubt, to draw the line of States Rights, which was finally to be identified in the separation of the States.

This was his last important work. In the spring of 1822, he was taken with an indisposition and, going to the Warm Springs, in Bath county, to recuperate, died September the 4th, 1822. He died "without a pang or struggle. He retained the vigor of his great mind to the last. Sensible of his fate he met death with that invincible fortitude which he had evinced on every occasion."[57]

In private life, Roane was happy. He married Anne Henry, September 7, 1786, the daughter of Patrick Henry; and after her death, Miss Hoskins. Patrick Henry wrote to his daughter con-

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[53]*Enquirer,* June 12, 1821.

[54]*Louisiana Advertiser,* July 21, 1821.

[55]*Portsmouth Journal,* Aug. 3 and 18, 1821.

[56]See Records of Congress.

[57]*Enquirer,* Sept. 13, 1822.

cerning him, "You are allied to a man of honor, of talents, and an open, generous disposition."[58] His son, William H. Roane, became an eminent lawyer, was twice a member of the Executive Council of the State, member of the Legislature from Henrico, member of Congress, Presidential Elector, and United States Senator from 1837 to 1841.[59] One of Judge Roane's letters to his son in regard to his campaign for the Legislature is especially interesting, as it shows the aptitude of the older man for politics. He advises him: "I send 200 copies printed addresses to the freeholders. It was written by Dr. Brockenbrough, and corrected and approved by me. No doubt it will please you. Some of these may be stuck up in all public places in the district, and the rest distributed in the form of letters through the district. Being addressed to the freeholders generally they will be thereby gratified; while by endorsing them to influential characters, there will be a mark of attention to them which will also please." His was a domestic nature, and he was especially interested in his private business, in spite of his onerous public duties. His letters betoken a beautiful confidence and interest between him and his son. They discuss the crops, stock and investments with a zeal which no public business could hinder, and which was a notable trait in the statesmen of the old regime. He was constant and sincere, possibly a little irritable and searcastic, but always *just.* An amusing story is told in this connection: "The Second Auditor of the State found it necessary on one occasion to leave the city. He had a very trustworthy boy as one of his assistants, and he decided to make him head of affairs during his absence. It happened that a portion of the Judge's salary fell due about this time, and Roane found himself in want of money for immediate use. He called at the office, and applied for payment. To his astonishment the boy informed him that it would be due on such a day, and that if he would call on that day he would pay him. The judge turned off very angry, and on the

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[58]3 Vol. Henry's Life of Patrick Henry.

[59]His letter to W. H. Roane, March 10, 1815.

way to his office related the incident to a friend. The friend remonstrated with him, and told him as it would only be a short delay, not to take notice of it. "That is not it," said the Judge; "the d— little rascal is right, and I am wrong."[60] He was sociable and loved company—a great friend of his, Jefferson, visited him while on a visit to his relative, Mr. A. Brockenborough, near Charlottesville. And when the plans for the University were being laid, Jefferson invited Madison and Roane to join him at Monticello, and help him draw the scheme which was to be submitted to the Commission appointed for the purpose—the plan which was afterwards adopted by the Legislature and the Board of Trustees."[61] He did not care for quarrels, but lawyer-like, he fought to the end when he thought his rights invaded. This is shown by his petition to Chancellor Wythe praying him to take cognizance of some irregularity in Patrick Henry's will, by which the other heirs were trying to divest his children of their share of their grandfather's property.[62]

As a lawyer he was noted for his wide general knowledge, and his ability to go to the root of things. His clear insight into judicial principles, and his love of justice will always mark him as one of the greatest legal lights of the American Judiciary. J. Randolph Tucker said, "Pendleton and Wythe, Jefferson and Madison, John Taylor and Roane, and a host of others are a galaxy of great statesmen who were also thoughtful jurists, though not case lawyers; taught by a profound knowledge of human nature, and a large, varied experience in human affairs to rear the temple of sound jurisprudence upon the deep foundation of natural justice and upon the law of God."[63]

He was twice one of the revisers of the laws of his State. In

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[60] I am indebted to Miss Frances Harwood, of King and Queen Courthouse, for this incident.

[61] See his letter to W. H. Roane, Aug. 6, 1821.

[62] In Roane papers, document undated.

[63] J. R. Tucker, in House of Reps., Jan. 22, 1879.

1808, 1812 and 1816 he was a member of the College of Presidential Electors of the United States, and one of the Commissioners for locating the University of Virginia, in all of which positions he served with distinction, if we may judge from the deference paid him.

He it was who first did away with the method of Mansfield "of making opinions in secret, and delivering them as oracles of the court in mass. Judge Roane, when he came to the bench, broke up the practice, refused to hatch judgments in conclave or to let others deliver opinions for him."[64] This is the practice with Roane condemns so in the series on the *McCulloch* v. *Maryland* decision by complicity on and in which Madison and Justice Johnson agree with him.

"Though sensible of the good opinion of his countrymen, he never sacrificed to the phantom of the day what he regarded as the eternal principles of truth and honor."[65] For thirty-four years a member of the Judiciary, and for twenty the President of the Court of Appeals, he will be long looked upon as the greatest ornament to Virginia's Judiciary; and as one who feared not to do his duty as he saw it. He will probably rank in Virginia with Chancellor Kent, of New York. His name would not have been so nearly forgotten had not the civilization and system which he helped to found been completely overthrown by the War between the States.

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[64] Letter to Johnson, Oct. 27, 1822, IX Ford's Jefferson, 224.

[65] *Enquirer*, Sept. 17, 1822.

# ROBERT R. LIVINGSTON—BEGINNINGS OF AMERICAN DIPLOMACY.

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(CONCLUDED.)

LIVINGSTON PLEADS THE AMERICAN CAUSE.—Having thus arrived at some idea of the conditions existing in Europe and America; having considered the instructions of Congress to the American Commissioners, let us now examine the arguments which Secretary Livingston advanced in support of the American claims. Franklin declared his arguments to be forceful and concise, and acknowledged his indebtedness to Livingston for their expression.

The objects desired naturally grouped themselves under three heads: boundaries, fisheries, and the navigation of the Mississippi; while the claims of Loyalists for damages to property during the war must also be considered.

In reference to boundaries the Secretary did not apprehend any difficulty in settling the northern limit, as the line between the Colonies and Canada were quite well known. As to the western boundary being fixed at the Mississippi river, the Secretary assumed that all the territory in dispute was once the property or possession of the King of England by virtue of the Treaty of 1763. This being admitted, and the independence of the Colonies being recognized, it only remains to determine to what extent this territory is within the limits of some one or other of the States and the question is settled.[1]

"His (the King's) idea of these limits is apparent from charters granted by the Crown; and from recent grants made by its representatives in several of the States, it appears that they considered

[1] Wharton, V, 87 to 94, for Livingston's letter in full.

their authority to grant lands to the westward as co-extensive with the right of Great Britain, unless they were restricted by their interference with other governments." Upon this principle Virginia and New York had patented considerable tracts of western lands, even after the Proclamation of 1763, restricting such patents. But that proclamation, being only a temporary measure to retain the good will of the natives, and did not destroy the right itself, an evidence of the Colonies' right to these lands. Besides, the King's geographer has shown Virginia and the Carolinas as extending to the Mississippi.

"But this matter may, perhaps, be seen in a different light, and our pretensions placed on a more extensive basis, by recurring to general principles, and asking whence Great Britain derived her right to the waste lands in America." Her right has no other basis than the claim of sovereignty? If, then, these men throw off his sovereignty, do they not at the same time destroy all other rights based on the claim of severeignty? In the final analysis, then, the King has no claim on any territory in America, except as the inhabitants thereof recognize him as their ruler. A new sovereign being set up by the inhabitants of the territory all rights claimed by the old sovereign devolve upon the new. Nor can England base any claims of sovereignty to the lands on her protectorate over the Indians, negotiations with whom were always carried on by the Governors of the Colonies. However, failing in the attempt to secure this territory he advances as his individual opinion the advisability of granting it independence under the guarantee of France, Spain, Great Britain and America, as this would relieve the United States of the danger of having Great Britain on the west as a neighbor with her consequent control over the Indians. This should be agreeable to Spain, as the Floridas will thereby be made more secure to her. But, above all, Livingston declares it will be "impolitic and unjust" to give up to the jurisdiction of the English, the people who have settled in this section, and who acknowledged the jurisdiction of the United States.

"The *fisheries* will probably be another source of litigation, not because our rights are doubtful, but because Great Britain has never paid much attention to rights which interfere with her views."

"The argument on which the people of America found their claim to fish on the banks of Newfoundland arises first, from their having once formed a part of the British Empire, in which State they always enjoyed, as fully as the people of Britain themselves, the right of fishing on those banks. They have shared in all the wars for the extension of that right; and Britain could with no more justice have excluded them from the enjoyment of it (even supposing that one nation could possess it to the exclusion of another), while they formed a part of that Empire than they could exclude the people of London or Bristol." Having been, then, "tenants in common with Great Britain," their right still exists, unless it has been relinquished by treaty, which has not been done, the separation rather strengthening the right.

The second ground on which the Secretary bases this right, "is the right which nature gives to all mankind to use its common benefits so far as not to exclude others." No nation has a right to set up dominion over the sea. All nations have agreed to this, and have resisted such presumptious attempts. Of course, a nation participating in a common right must submit to the inconveniences which its location places upon it.

Turning from these considerations of abstract justice, Livingston states the very practical argument of the need of the fisheries to the New England States. Before the war the principal commerce of these States, Massachusetts especially, was in fish which they exchanged for the necessaries and comforts of life. If this right were denied them they would be subjected to greater distress, and consequently would become dissatisfied with an independence which sacrificed them to the interests of the other States.

Livingston then states the opinions prevalent that the French are desirous of excluding the Colonies from the fisheries, and shows how, to his mind, this opinion is false, as the American fisheries do

not compete with the French, and the many tokens of good will shown the Colonies by the French King being evidence of his honorable intentions towards them.

The final question for consideration is the probable claim of damages for the Tories whose property had been confiscated, or who had been banished from the country. By logical reasons Livingston justifies the treatment accorded the Loyalists because he considers them enemies of the State, and hence without any claim on its protection. He mentions the intense feeling of the Patriots against these renegades, and regards them as future enemies of the Government and of France. Many of them have grown rich by their duplicity, and it is unjust and impossible to raise the damages demanded by taxes on the Patriots. The Secretary had had this contingency in view for two months before he wrote the Governors of several of the States requesting estimates as to the wanton damage done to property in their respective States by the British troops.[2]

In conclusion, Livingston mentions that they shall stipulate for the return of all public and private records, particularly the records of New York, as well as the papers of "many gentlemen of the law in different parts of the continent."

Should the Floridas be ceded to Spain, the Commissioners were to fix their limits accurately, being guided in this matter by the instructions to Adams.

THE TREATY OF PEACE.—Congress having elected the Peace Commission, and having instructed that Commission, at least one member of which very strongly objected to that part of the instructions[3] making the American envoys dependent on the French King, must wait for developments. Some time in the winter of 1782, Richard Oswald began to hold informal conferences with Franklin on the probable points of difference in a peace ne-

[2]Wharton, IV, 839.

[3]Jay's Writings of John Jay, I, 121, et seq.

gotiation between Great Britain and the United States. Oswald was the representative of Shelburne, though then acting in an unofficial character. Franklin's informal conference with him had gone far enough to give that astute statesman cause for hoping that negotiations would soon begin, and accordingly in May he wrote Jay to join him at Paris immediately. Delighted at the prospect of leaving Spain, Jay set out at once, arriving in Paris on June 23d.

Being now fully persuaded that Spain and France had sinister designs on his native country, Jay refused to treat with the British envoy until the independence of the United States should be recognized independently of any treaty.[4] Oswald insisted that the part of his instructions which directed him to make independence one of the preliminary articles of a treaty was sufficient to show that no duplicity was intended. The point at dispute was submitted to Vergennes, and he advised the acceptance of the instructions and the beginning of negotiations.[5] Franklin agreed to this opinion. Jay was obstinate. He wished the independence of the United States to be assured in such a manner as to preclude any interference by Vergennes or any one else. The part of Oswald's instructions to which he objected read: "And we hereby authorize, empower and require you to treat, consult and conclude with any commission, or commissioners, named, or to be named, by the said colonies or plantations." As amended to meet Jay's objection they read ,"With any commissioners, or persons vested with equal powers by, and on the part of the thirteen United States of America."[6]

All hindrances being now removed, the business at hand was entered into, and on November 30, 1782, the provisional treaty was signed by Franklin, Jay and Adams, the latter having recently arrived in Paris from Holland. An enumeration of the provisions

[4] Wharton, VI, 16.
[5] Ib., 14.
[6] Wharton, V, 749.

of the treaty shows how well Livingston's instructions covered the ground.

Immediately on receipt of the treaty Livingston wrote the commissioners congratulating them on obtaining such advantageous terms. At the same time, he could not approve of their lack of confidence in concealing the treaty from the French Court until after it was signed, nor did he consider that they had acted wisely in signing the secret article, as he considered it would become a seed of discord with Spain. Later he suggested the clearing up in the definitive treaty of some ambiguities found in the provisional articles, at the same time advising them of the ratification of the provisional articles by Congress.

After the signing of the provisional treaty the ministry of Lord Shelburne was overthrown by a vote of censure, and the Duke of Portland came to the head of affairs with a compromise cabinet, which included Charles James Fox and Lord North, and David Hartley was sent to Paris to take Oswald's place in negotiating the definitive treaty. Secretary Livingston advised the commissioners of the carrying off of numbers of negroes by the British troops on the pretence that they were free, suggesting a settlement of the claim thereby arising.[7] But, though lengthy proposals were made by Adams, Jay, and Hartley for the negotiation of some kind of commercial treaty, their proposals all came to naught,[8] and on September 3, 1783, the provisional articles were signed as the definitive treaty. In June of this year Livingston resigned as Secretary for Foreign Affairs, as he did not consider that the country was longer in need of his services, and because his private estate was in need of his attention and the salary attached to the office was insufficient.[9] Besides, he wished to accept the Chancellorship of New York and a longer continuance in the office of Secretary of Foreign Affairs would exclude him therefrom. When he resigned

[7] Sparks, X, 148.
[8] Id., 151, 155, 158.
[9] Wharton, VI, 100, 158, 419.

Congress voted him a resolution of thanks for the fidelity and zeal with which he had discharged the duties of his office.[10]

LIVINGSTON'S CONDUCT OF THE OFFICE.—From the time of Livingston's entrance into the office of Secretary of Foreign Affairs, he was a valuable member of the government of the Confederation. Careful and painstaking in the gathering of information for the enlightenment of Congress, and in carrying out the instructions of that body; he was also diligent in the attempt to gather any and all information that would strengthen the position of the States in a negotiation for peace. To this end he requested the Governors of the various States and the Generals in the field to communicate to him all the happenings which came under their notice, and were of a serviceable character.[11] However, it does not appear that many of the Governors of the States gave a hearty response to his request. In his intercourse with the representatives of foreign courts he always maintained the dignity of his own government, without giving offense to others. When Luzerne complained that the United States were mentioned before the King in the resolution of Congress, thanking De Grasse and Rochambeau for the part they had taken in effecting the surrender of Cornwallis,[12] the Secretary waived the point of etiquette, but advised Congress that the King be given precedence. He informed Luzerne any settled rule, at the same time declaring his belief in the equality of the two governments, but stating the willingness of the United States to aid France in maintaining her ancient and honorable position.[13]

While it is true, perhaps, that Livingston had not the liberty of action enjoyed by the Secretary of State to-day, yet the instructions to ministers, and other public papers which passed through his hands, show the guiding hand of the Secretary of Foreign Af-

[10] Secret Jour. of Cong., III, 363.

[11] Wharton, VI, 795, 797, 802, 805, 809.

[12] Id., 821.

[13] Id., 832, 833.

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fairs. That he was a vital part of the government, and not a mere puppet in the hands of Congress is shown by the fact that, on at least one occasion, Congress submitted a letter from a foreign minister to him to be answered according to his judgment and discretion.[14] Besides this, he was frequently instructed to prepare and bring before Congress reports and resolutions on matters under consideration. Then, too, he sometimes drafted letters to foreign ministers and submitted them to Congress for approval before dispatching them.[15] All of which leads to the conclusion that his personality was not lost in the exercise of his official duties, and this government is under obligations to him for the patriotic and careful manner in which the infant department was administered.

Foreign Ministers.—At the time of the Revolution, the United States were not, of course, recognized as belonging to the family of nations; however, it was necessary to send representatives to the European governments. The English newspapers, and the Cabinet of George III., through the instrumentality of secret agents, were doing all in their power to prejudice the Continental governments against the American cause, and the many slanders circulated abroad were calculated to be injurious to that cause if not answered. Naturally, the capacity in which these ministers should go, caused much discussion. Livingston's policy was one of conservatism. At an early date he questioned the advisability of sending a minister to either St. Petersburg or Lisbon, as the success of the latter mission, at least, was uncertain and the expense considerable.[16] Later he instructed Dana, who was then at St. Petersburg: "You will continue, I presume, to appear only in a private character, as it would give Congress great pain to see you assume any other without an absolute certainty that you would be received and acknowledged. The United States, fired with the

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[14]Corr. and Public Papers of John Jay, II, 202.
[15]Wharton, V, 433.
[16]Wharton, V, 396.

prospect of their future glory, would blush to think that the history of any nation might represent them as humble suppliants for their favor."[17] These are very emphatic words, and do not agree with John Adams' opinion that "to send ministers to every great court in Europe is no more than becomes us."[18] It has been seen that the following of this principle by Adams, when sent to Holland, called down on his head the rebuke of Secretary Livingston. Franklin was in accord with the opinion of the Secretary, and expressed himself thus: "A virgin State should preserve the virgin character, and not go about suitoring for alliances, but wait with decent dignity for the applications of others."[19]

In this connection it may be interesting to note that, the question of the salary of a foreign minister being before Congress, the Secretary of Foreign Affairs was instructed to report on the conditions of living at the different European courts, and to make recommendations as to salaries. Pursuant to these instructions, Livingston, on May 8, 1782, reported on the relative cost of living at the different European courts, advising that foreign ministers should receive sufficient compensation to free them from all embarrassments from private affairs, and to permit them to live in such a manner as the dignity of the government demanded. On the following day he submitted a set of resolutions fixing the salary of minister plenipotentiary and of resident agent with the allowance each should have for a secretary and for household expenses.[20]

THE MAKING OF TREATIES.—As every treaty of commerce made with the United States was necessarily a recognition of their government, Livingston was anxious that such connections should be formed with as many European governments as possible in order that England might the more readily recognize the position and

[17] Id., 209.

[18] Sparks, V, 361.

[19] Sparks, II, 57.

[20] Wharton, V, 397, 402, 463.

power of the revolted colonies. He was much gratified when Franklin informed him of the desire of the King of Sweden for a commercial treaty with the United States, and mentioned to that minister the desirability of some such connection with the Barbary States also.[21] He preferred the provision of treaties to be accurately drawn rather than having any general provisions on the basis of the most favored nation.

Livingston was much surprised when, in the spring of 1783, he received a letter from Dana informing him that it was the custom in Russia, whenever a treaty was negotiated there, for the other party to the negotiation to make each of the four ministers of the Empress a present of four hundred roubles.[22] On communicating this information to Congress the Secretary expressed the hope that Dana had been misinformed, but stating that he did not consider the United States "under the least necessity of buying a treaty with Russia," and recommending that negotiations be terminated rather than accede to such a custom. Perhaps the best expression of Livingston's doctrine on this phase of international politics is found in his letter to Madison in 1801, in reference to Great Britain. "If a treaty is proposed that is not to be supported by arms, but by commercial exclusion, that shall not refer to the present war, and shall be open to all nations that choose to adopt it, I think it cannot fail to meet with sufficient support to establish a new law of nations, and our administration will have the glory of saying, in the words of the prophet, 'a new law I give unto you, that ye love one another.' "[23] This is a somewhat ideal expectation and perhaps far too broad to be realized as the result of treaty conventions, yet it shows the policy in which Livingston believed.

A Constructionist in Politics.—No one of the revolutionary

[21] Id., 871.
[22] Wharton, V, 701.
[23] Madison's Writings, I Introduction, 30.

statesmen of this country was more pronounced in his opposition to British rule than was Livingston, but, while he labored to overthrow that rule, he saw the need for establishing in its place some more liberal system. In attaining this purpose he believed in making use of the "accumulated experience and perfected forms" of other nations. The purely "expulsive," or "liberative" school of statesmen thought that no such means should be employed as they considered them contrary to Democratic principle. They would rely on "militia" measures—the undisciplined and unorganized impulses of the people—in diplomacy, in government and in finance. The evil of these so-called principles and the expediency of observing those advocated by Livingston and the other constructive statesmen was shown by the reckless issue of paper money, the incompetency of the "Committee of Secret Correspondence," and Washington's difficulties as commander of the army. Another unfavorable result of this unguided diplomacy was the bringing together in Paris of an unharmonious body of men who did nothing but quarrel among themselves and obstruct Franklin in his mission at the Court of Versailles. Livingston opposed these erratic measures, and after he assumed charge of the department of foreign affairs, no more such missions to European courts were established.

IN THE RATIFYING CONVENTION.—As a member of the Convention of New York State, called to consider the Federal Constitution, his constructive statesmanship was again enlisted in behalf of his country. In this Convention he took a leading part, making the opening speech in favor of ratification and being repeatedly on the floor in support of this step towards a stronger union.

A brief account of his service in the Convention may not be uninteresting. In the beginning, he asserts as an indubitable fact "that the happiness of nations, as well as of individuals, depends on peace." The United States have been fortunate among nations in attaining that desired eminence, and should now devote their

energies to insuring their continued stand thereon. The weakness of the Confederacy and of all other such governments seemed to him to lie in the fact that the responsible members of the State governments had not been subject to the confederated authority, which consequently became powerless.

The dangers in disunion were many, and would be felt by every State, but New York, by reason of her geographical position, would be more exposed than any other State. She was between two sections of the Confederation, and, besides, in case of foreign war, would be the first object of attack. All nations would prey upon her, and her weakness would force her to submit.

To those who would amend the Articles of Confederation so as to overcome the present objections and weaknesses, he would say that this was impracticable, because there would be no way of enforcing the decrees of the amended government except by an obedient State coercing a disobedient one. This would virtually be civil war, and the constant recurrence thereof would defeat all the aims of government.

The Chancellor could see no danger in giving Congress control over the army and the treasury, with power to regulate commerce. The country must be protected, and money was necessary to do this. The States would not protect each other, but would devote all their energies to their own individual preservation. Would it not, then, be better to entrust this matter to Congress and give the sword and the purse into their keeping? He could see no danger in the aristocratic rich so often criticized; the government would apply equally to all. Nor could he see any danger in the levying of an excise tax by the national government; the impost might be sufficient for all the needs of the government in time of peace, but the contingency of war must be considered, and war meant a necessary increase in revenue from taxes. These were the most important of the points considered by the Chancellor, whose influence was not the least potent in bringing New York into the Union under the Federal Constitution.

But it may be pertinent to ask if there was not some truth in the criticism of Melancthon Smith that the Chancellor and other apologists of the Federal Constitution were spending more time in pointing out the evils of the Confederacy than in explaining the excellencies of the Constitution, and that on account of the continued disparagement of the Articles of Confederation it had become customary for all opponents thereof to impute every untoward circumstance to these Articles.

Having now followed in this imperfect manner the career of Livingston through the beginning of the Revolution, the various movements that culminated in the assembling of the Revolutionary Congress in 1774, the confederation of the American States and the final achievement of their independence, which achievement was crowned perpetually by the adoption of the Federal Constitution, the object of this study has been compassed.

## ROANE ON THE NATIONAL CONSTITUTION.

1. PUBLIC LETTER OF "PLAIN DEALER" TO GOVERNOR RANDOLPH, FEBRUARY 13, 1788.*

*To the Editor of the Chronicle*:

"A writer calling himself Plain Dealer, who is bitter in Principle v. The Constitution, has attacked me in the paper. I suspect the author to be Mr. Spencer Roane, and the importunities of some to me in public and private are designed to throw me unequivocally and without condition into the opposition."

After a long and general expectancy of some dissertation on the subject of the proposed Federal Constitution, worthy the first magistrate of the respectable State of Virginia, a letter of His Excellency, Governor Randolph, of October 10, 1787, is at length presented to the public. Previous to the appearance of this letter, various opinions were prevailing in different parts of this country respecting the gentleman's *real* opinion on the subject of the said Constitution; and it becomes difficult for many to conjecture how His Excellency would devise a middle course, so as to catch the spirit of all his countrymen, and to reconcile himself to all parties. It was not known to me, at least, that His Excellency felt an "unwillingness to disturb the harmony of the assemblage" on this important subject, nor could I conceive that the sentiment of even the oldest man among us could "excite a contest unfavorable" to the fairest discussion of the question. On the other hand, I thought it right that the adversaries of the Constitution, as well

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***Mr. Paul Leicester Ford identified this letter and reprinted it in his "Essays on the Constitution," page 385, published in Brooklyn, 1892. It is republished now because of the scarcity of Roane's writings, and because it seems to have been the beginning of Roane's attacks on the proposed National Constitution and its interpretation by John Marshall in later years.**

as its framers, should candidly avow their real sentiments as early and decidedly as possible, for the information of those who are to determine. It is true, His Excellency was prevented from delivering his opinion sooner, "by motives of delicacy arising from two questions depending before the General Assembly—one respecting the Constitution, the other respecting himself," but I am of opinion that during the pendency of a question concerning the Constitution, every information on the subject is most properly to be adduced; and I did not know that being or not being Governor of Virginia (an office in a great degree nominal) was sufficient to deter a real patriot from speaking the warning voice of opposition, in behalf of the liberties of his country.

The letter above mentioned can derive no aid from panegyric as to the brilliancy and elegance of its style, for, unlike the threadbare discourses of other statesmen on the dry subject of Government, it amuses us with a number of fine words. But how shall I express my dislike of the ultimatum of His Excellency's letter, wherein he declares "that to offer our best effort for amendment, they cannot be obtained, he will adopt the Constitution as it is." How is this declaration reconcilable to a former opinion of His Excellency's, expressed to the Honorable Richard Henry Lee, and repeated by the latter gentleman in his letter,* as printed in the public papers, "that either a monarchy or an aristocracy will be generated from the proposed Constitution." Good God! how can the first magistrate and father of a pure republican government, after a feeble parade of opposition, and before his desired plan of amendments has been determined upon, declare that he will accept a Constitution which is to beget a monarchy or an aristocracy? How can such a determination be reconcilable to the feelings of Virginia, and to the principles which have prevailed in almost every Legislature of the Union, who looked no farther than the amendment of our present Republican Confederation? I have charity to believe that the respectable characters, who signed this Constitu-

*See Elliott's Debates, I, 503.

tion did so, thinking that neither a monarchy nor an aristocracy would ensue, but that they should thereby preserve and ameliorate the Republic of America; but never until now, that His Excellency has let the cat out of the bag, did I suppose that any member of the Convention, at least from the Republican State of Virginia, would accept a Constitution, whereby the Republic of his constituents is to be sacrificed in its infancy, and before it has had a fair trial. But His Excellency will adopt this Constitution "BECAUSE HE WOULD REGULATE HIMSELF BY THE SPIRIT OF AMERICA." But is His Excellency a prophet, as well as a politician? Can he foretell future events? How else can he at this time discover what the spirit of America is? But, admitting his infallibility for a moment, how far will his principle carry him? Why, that if the dominion of Shays, instead of that of the new Constitution, should be generally accepted, and become the spirit of America, His Excellency, too, would turn Shayite! And yet this question of the Constitution is "ONE ON WHICH THE FATE OF THOUSANDS YET UNBORN DEPENDS." It is His Excellency's opinion, as expressed in the aforesaid letter, that the powers which are acknowledged necessary for supporting the Union, cannot safely be entrusted to our Congress as at present constituted; and his vain objection is "that the representation of the States bears no proportion to their importance." This is literally true, but is equally true of the Senate of the proposed Constitution, which is to be an essential part of the Legislature; and yet His Excellency will accept the latter, and not agree to invest the necessary powers in the former, although the above objection equally applies to both. Nay, I am inclined to believe that the injurious consequences of this unequal representation will operate more strongly under the new government, for under the present Confederation the members of Congress are removable at the pleasure of their constituents; whereas, under the proposed Constitution, the only method of removing a wicked, unskilful or treacherous senator, will be by impeachment before the Senate itself, of which he is a member.

These, Mr. Printer, are some of the inconsistencies which even a slight observation of the above letter will suggest. It is not my purpose to oppose now, or to investigate, the merits of the Constitution. This I leave to abler pens, and to the common sense of my countrymen. The science of government is *in itself* simple and plain; and if in the history of mankind no perfect government can be found, let it be attributed to the chicane, perfidy and ambition of those who fabricate them, and who are, more or less, in common with all mankind, infected with a lust of power. It is, however, certainly not consistent with sound sense to accept a Constitution, knowing it to be imperfect; and His Excellency acknowledges the proposed one to have radical objections. A Constitution ought to be like Cæsar's wife, not only good, but unsuspected, since it is the highest compact which men are capable of forming, and involves the dearest rights of life, liberty and property. I fear His Excellency has done no service to his favorite scheme of amendment (and he, too, seems to be of the same opinion), by his very candid declaration at the end of his letter. Subtlety and chicane in politics are equally odious and dishonorable; but when it is considered that the present is not the golden age—the epoch of virtue, candor and integrity—that the views of ambitious and designing men are continually working to their own aggrandizement, and to the overthrow of liberty, and that the discordant interests of thirteen different Commonwealths are to be reconciled and promoted by one general government; common reason will teach us that the utmost caution, secrecy, and political sagacity is requisite to secure to each the important blessings of a good government.

I shall now take my leave of his Excellency and the above-mentioned letter, declaring my highest veneration for his character and abilities; and it can be no impeachment of the talents of any man who has not served a regular apprenticeship to politics, to say, that his opinions on an intricate political question are erroneous. For if, as the celebrated Dr. Blackstone observes, "in every art, occupation or science, commercial or mechanical, some method of instruc-

tion or apprenticeship is held necessary, how much more requisite will such apprenticeship be found to be, in the science of government, the noblest and most difficult of any.—A PLAIN DEALER.

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## 2. CASE OF McCULLOCH *v.* MARYLAND.*

### I.

*To the Editor of the Enquirer:*

SIR:—I have read with considerable attention the opinion pronounced by the Chief Justice of the U. S. in the case of McCulloch against the State of Maryland. In that opinion we are informed, First, That it is the *unanimous* and decided opinion of the Supreme Court, that the Act to incorporate the Bank of the U. S. is a law, made in pursuance of the Constitution, and is a part of the supreme law of the land; and, Secondly, That the court is also unanimously of opinion that the law of Maryland, imposing a tax on the Bank of Maryland, is unconstitutional and void. We are not informed whether this whole court united in the course of reasoning adopted by the Chief Justice, nor whether they all accorded in the various positions and principles which he advanced. It may be, that some of them admitted that the bank law is unconstitutional, and yet did not think proper to deny that the several States are parties to the Federal compact, it may be, that some of them, without giving to the term "necessary" the liberal and latitudinous construction attached to it by the Chief Justice, and before him by Mr. Secretary Hamilton, may yet have thought that the measure of incorporating a bank was "necessary and proper" for carrying into execution some of the specific powers granted to Congress; or some of them may have believed that it was the duty of Congress to have judged of that "necessity and propriety;" and having exercised their un-

*The papers signed "Amphictyon" have been identified by examination of the Jefferson and Madison correspondence now in the Library of Congress.

doubted functions in so deciding, that it was not consistent with judicial modesty to say "there was no such necessity," and thus to arrogate to themselves a right of putting their *veto* upon a law; or it may be, that some members of the court thought the bank law "necessary and proper" to carry into effect one power, whilst others thought that it was the instrument for effectuating another and a different power. Although they have all arrived at the same place, they may have traveled thither by different roads; although they have come to the same conclusion, yet their reasons may have been considerably variant from each other. I confess, that as a citizen, I should have been better pleased to have seen the separate opinions of the judges. The occasion called for seriatim opinions. On this great constitutional question, affecting very much the rights of the several States composing the confederacy, the decision of which abrogated the law of one State, and is supposed to have formed a rule for the future conduct of other States, the people had surely a right to expect that each judge should assign his own reasons for the vote which he gave. This court seems to have thought that it was sitting as an umpire to decide between the conflicting claims of a sovereign State on the one hand, and the whole United States on the other, and yet the judges decline the expression of the principles on which they have separately formed their judgments! Having thus declined the declaration of their separate opinions, we are driven, however reluctantly, to the conclusion that each judge approves of each argument and position advanced by the Chief Justice.

That this opinion is very able every one must admit. This was to have been expected, proceeding as it does from a man of the most profound legal attainments, and upon a subject which has employed his thoughts, his tongue, and his pen, as a politician, and an historian for more than thirty years. The subject, too, is one which has, perhaps more than any other, heretofore drawn a broad line of distinction between the two great parties in this country, on which line no one has taken a more distinguished and decided

rank than the judge who has thus expounded the supreme law of the land. It is not in my power to carry on a contest upon such a subject with a man of his gigantic powers, but I trust it will not be thought rash or presumptuous to endeavor to point out the consequences of some of the doctrines maintained by the Supreme Court, and to oppose to their adjudication some of the principles which have heretofore been advocated by the Republican party in this country.

There are two principles advocated and decided on by the Supreme Court, which appear to me to endanger the very existence of State Rights. The first is the denial that the powers of the Federal Government were delegated by the States; and the second is, that the grant of powers to that government, and particularly the grant of powers "necessary and proper" to carry the other powers into effect, ought to be construed in a liberal, rather than a restricted sense. Both of these principles tend directly to consolidation of the States, and to strip them of some of the most important attributes of their sovereignty. If the Congress of the United States should think proper to legislate to the full extent, upon the principles now adjudicated by the Supreme Court, it is difficult to say how small would be the remnant of power left in the hands of the State authorities.

The first position, that the powers of the Federal Government are not delegated by the States, or in other words, that the States are not parties to the compact, is untenable in itself, and fatal in its consequences. But for what purpose, I will ask, did the Federal Court decide that question? To ascertain whether the bank law was consistent with the Constitution, or not, it was necessary, I apprehend, that the court should have enquired into the source from whence the authority of the government was derived. Whether the powers of the Federal Government were delegated to it by the States in their sovereign capacity, or by the people, can make but little difference as to the extent of those powers. In either case, it is still true that the powers of that government are limited by

the charter which called it into existence; in either case, it is true that the departments of that government cannot either separately or conjointly transcend those limits without affecting the rights and liberties of the States, or of the people: in either case, the construction of the words of the Constitution ought to be the same. The decision of that question was then unnecessary; the court traveled out of the record to decide a point not necessarily growing out of it; the decision of that point is, therefore, *obiter*, extra-judicial, and not more binding or obligatory than the opinion of any other six intelligent members of the community. The opinion is erroneous. The several States did delegate to the Federal Government its powers, and they are parties to the compact. Who gave birth to the Constitution? The history of the times, and the instrument itself furnish the ready answer to the question. The Federal Convention of 1787 was composed of delegates appointed by the respective State legisatures; and who voted by States; the Constitution was submitted on their recommendation, to conventions elected by the people of the several States, that is to say, to the States themselves in their highest political and sovereign authority: by those separate conventions, representing, not the whole mass of the population of the United States, but the people only within the limits of the respective sovereign States, the Constitution was adopted and brought into existence. The individuality of the several States was still kept up when they assembled in convention: their sovereignty was still preserved, and the only effect of the adoption of the Constitution was to take from one set of their agents and servants, to wit: the State governments, a certain portion of specified powers, and to delegate that same portion to another set of servants and agents, then newly-created, namely, the Federal Government. If the powers of the Federal Government are to be viewed as the grant of the people, without regard to the distinctive features of the States, then it would follow that if a majority of the whole sovereign population of the United States had ratified the Constitution, it would immediately have been binding

on the minority, although that minority should consist of every individual in one or more States. But we know that such was not the case. Each State was an independent political society. The Constitution was not binding on any State, even the smallest, without its own free and voluntary consent. Although nineteen-twentieths of the whole people of the United States had approved of and adopted the Constitution, yet it was not a constitution obligatory on Rhode Island, until that small State became a party to it by its own act. The respective States then in their sovereign capacity did delegate to the Federal Government its powers, and in so doing were parties to the compact. The States not only gave birth to the Constitution, but its life depends upon the existence of the State governments. The Senate derives its being from them. The President is elected by persons who are as to numbers partly chosen on the Federal principle. Destroy the State governments, and you, by the same blow, destroy the Senate, and with it the Constitution. Again, how may this Constitution be amended or reformed? By the legislatures of three-fourths of the States, or by conventions of the same number of States in the manner provided for by the Fifth Article. The States then gave birth to the Constitution; they support its existence, and they alone are capable of reforming or changing its form and substance, and yet we are informed by a solemn adjudication that its powers are not derived from that source, and consequently, that they are not parties to it! This doctrine, now solemnly promulgated by the highest judicial tribunal of that government, is not, however, a novelty in our histoy. In the years 1798 and '99, after the Congress of that time had, by the force of implication passed a sedition law, and vested the President with arbitrary and despotic powers over the persons of alien friends, after many political writers, and some of the Federal courts had advocated the absurd and dangerous doctrine that the common law of England made a part of the law of these States, in their united and national capacity, then it was that this doctrine, which denies that the States are parties to the Federal com-

pact, was pressed with great zeal and ability. Having attempted to place shackles on the press, the glorious work could not be completed without imposing moral fetters on the independent minds of the several State legislatures. The doctrine, however, was exposed and refuted, and I did not expect that it would be brought forward at this day under the supposed sanction of the highest judicial authority.

The doctrine, if admitted to be true, would be of fatal consequence to the rights and freedom of the people of the States. If the States are not parties to the compact, the legislatures of the several States, who annually bring together the feelings, the wishes, and the opinions of the people within their respective limits, would not have a right to canvass the public measures of the Congress, or of the President, nor to remonstrate against the encroachments of power, nor to resist the advances of usurpation, tyranny and oppression. They would no longer be hailed as the sentinels of the public liberty, nor as the protectors of their own rights. Every government, which has ever yet been established, feels a disposition to increase its own powers. Without the restraints which are imposed by an enlightened public opinion, this tendency will inevitably conduct the freest government to the exercise of tyrannized power. If the right of resistance be denied, or taken away, despotism inevitably follows. It has, however, been supposed by some that the Constitution has provided a remedy for every evil: that the right of the State governments to protest against, or to resist encroachments on their authority is taken away, and transferred to the Federal Judiciary, whose power extends to all cases arising under the Constitution; that the Supreme Court is the umpire to decide between the States on the one side, and the United States on the other, in all questions touching the constitutionality of laws, or acts of the Executive. There are many cases which can never be brought before that tribunal, and I do humbly conceive that the States never could have committed an act of such egregious folly as to agree that their umpire should be altogether

appointed and paid by the other party. The Supreme Court may be a perfectly impartial tribunal to decide between two States, but cannot be considered in that point of view when the contest lies between the United States and one of its members.

That I am not singular in the opinion which I entertain upon this subject, is very certain. There have been two judicial decisions in two of the largest States in the Union, which expressly decide that the several States are parties to the Federal compact. I refer to the decision of the Supreme Court of Pennsylvania in the case of the Commonwealth against William Cobbett reported in the Third Volume of Dallas; and to the decision of the Court of Appeals of Virginia in Hunter against Martin, reported in Fourth Munford. But I cannot forbear on this occasion from bringing to my aid a part of the report of a committee of the House of Delegates of Virginia, in the year 1799, in which this subject is enforced with reasoning the most cogent and explained in language the most perspicuous. It will be recollected that in the session of 1798, sundry resolutions had been adopted complaining of sundry acts of usurpation on the part of Congress, and particularly of the alien and sedition laws. Those resolutions having been disapproved of by most of the other State legislatures, became the subject of examination at the succeeding session, and produced that remarkable commentary which has generally been known by the name of Madison's report. The third resolution is as follows:

"That this Assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government, as resulting from the compact, to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact; and that in case of a deliberate, palpable and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto, have the right, and they are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them."

"On this resolution, the Committee have bestowed all the attention which its importance merits: they have scanned it not merely with a strict, but severe eye; and they feel confidence in pronouncing, that in its just and fair construction, it is unexceptionably true in its several positions, as well as constitutional and conclusive in its inferences."

"The resolution declares, *first,* that 'it views the powers of the Federal Government, as resulting from the compact to which the States are parties;' in other words, that the Federal powers are derived from the Constitution, and that the Constitution is a compact to which the States are parties.

"Clear as the position must seem, that the Federal powers are derived from the Constitution, and from that alone, the Committee are apprized of a late doctrine which opens another source of Federal powers, not less extensive and important, than it is new and unexpected. The examination of this doctrine will be most conveniently connected with a review of a succeeding resolution. The Committee satisfy themselves here with briefly remarking, that in all the contemporary discussions and comments which the Constitution underwent, it was constantly justified and recommended on the ground, that the powers not given to the government were withheld from it; and that if any doubt could have existed on the subject, under the original text of the Constitution, it is removed, as far as words could remove it, by the Twelfth Amendment, now a part of the Constitution, which expressly declares, 'that the powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'"

The other position involved in this branch of the resolution, namely: "that the States are parties to the Constitution or compact" is, in the judgment of the Committee, equally free from objection. It is, indeed, true that the term "States" is sometimes used in a vague sense, and sometimes in different senses, according to the subject to which it is applied. Thus it sometimes means the

separate sections of territory occupied by the political societies within each; sometimes the particular governments, established by those societies; sometimes those societies as organized into those particular governments; and, lastly, it means the people composing those political societies, in their highest sovereign capacity. Although it might be wished that the perfection of language admitted less diversity in the signification of the same words; yet little inconveniency is produced by it, where the true sense can be collected with certainty from the different applications. In the present instance, whatever difference, whatever different constructions of the term "States," in the resolution may have been entertained, all will at least concur in the last mentioned; because in that sense, the Constitution was submitted to the "States." In that sense the "States" ratified it; and in that sense of the term "States," they are consequently parties to the compact from which the powers of the Federal Government result.

The next position is, that the General Assembly views the powers of the Federal Government "as limited by the plain sense and intention of the instrument constituting that compact," and "as no further valid than they are authorized by the grants therein enumerated." It does not seem that any just objection can lie against either of these clauses. The first amounts merely to a declaration that the compact ought to have the interpretation plainly intended by the parties to it; the other, to a declaration, that it ought to have the execution and effect intended by them. If the powers granted be valid, it is solely because they are granted; and if the granted powers are valid, because granted, all other powers not granted must not be valid.

The resolution having taken this view of the Federal compact, proceeds to infer, "that in case of a deliberate, palpable and dangerous exercise of other powers not granted by the said compact, the States who are parties thereto, have the right, and are in duty bound to interpose for arresting the progress of the evil, and for

maintaining within their respective limits, the authorities, rights and liberties appertaining to them."

It appears to your Committee to be a plain principle, founded on common sense, illustrated by common practice, and essential to the nature of compacts, that where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges in the last resort, whether the bargain made has been pursued or violated. The Constitution of the United States was founded by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the Constitution, that it rests on this legitimate and solid foundation. The States then being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority, to decide in the last resort, whether the compact made by them be violated; and consequently that as the parties to it they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to receive their interposition.

It does not follow, however, that because the States as sovereign parties to their constitutional compact, must ultimately decide whether it has been violated, that such a decision ought to be interposer either in a hasty manner or on doubtful and inferior occasions. Even in the case of ordinary conventions between different nations, when, by the strict rule of interpretation, a breach of a part may be deemed a breach of the whole: every part being deemed a condition of every other part, and of the whole, it is always laid down that the breach must be both wilful and material to justify an application of the rule. But in the case of an intimate and constitutional union, like that of the United States, it is evident that the interposition of the parties in their sovereign capacity can be called for by occasions only, deeply and essentially affecting the vital principles of their political system.

The resolution is accordingly guarded against any misapprehension of its object, by expressly requiring for such an interposi-

tion, "the case of a *deliberate, palpable,* and *dangerous* breach of the Constitution, by the exercise of *powers not granted* by it." It would be a case, not of a light and transient nature, but of a nature *dangerous* to the great purposes for which the Constitution was established. It must be a case, moreover, not obscure or doubtful in its construction, but plain and *palpable*. Lastly, it must be a case not resulting from a partial consideration, or hasty determination; but a case stamped with a final consideration and *deliberate* adherence. It is not necessary, because the the resolution does not require that the question should be discussed how far the exercise of any particular power, ungranted by the Constitution, would justify the interposition of the parties to it. As cases might easily be stated, which none should contend, ought to fall within that description; cases on the other hand, might, with equal ease, be stated, so dangerous and so fatal as to unite every opinion in placing them within the description. "But the resolution has done more than guard against misconstruction, by expressly referring to cases of a *deliberate, palpable,* and *dangerous* nature. It specifies the object of the interposition which it contemplates, to be solely that of arresting the progress of the *evil* of usurpation, and of maintaining the authorities, rights and liberties appertaining to the States, as parties to the Constitution. "From this view of the resolution, it would seem inconceivable that it can incur any just disapprobation from those, who laying aside all momentary impressions, and recollecting the genuine source and object of the Federal Constitution, shall candidly and accurately interpret the meaning of the General Assembly. If the deliberate exercise of dangerous powers, palpably withheld by the Constitution, could not justify the parties to it, in interposing even so far as to arrest the progress of the evil, and thereby to preserve the Constitution itself, as well as to provide for the safety of the parties to it: there would be an end to all relief from usurped power—and a direct subversion of the rights specified or recognized under all the State Constitutions, as

well as a plain denial of the fundamental principles on which our independence itself was declared.

But it is objected that the judicial authority is to be regarded as the sole expositor of the Constitution, in the last resort; and it may be asked for what reason the declaration by the General Assembly, supposing it to be theoretically true, could be required at the present day, and in so solemn a manner.

"On this objection it might be observed, *first*, that there may be instances of usurped power, which the forces of the Constitution would never draw within the control of the judicial department; *secondly*, that if the decision of the Judiciary be raised above the authority of the sovereign parties to the Constitution, the decisions of the other departments, not carried by the forces of the Constitution before the Judiciary, must be equally authoritative and final with the decisions of this department. But the proper answer to the objection is, that the resolution of the General Assembly relates to those great and extraordinary cases, in which all the forces of the Constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution that dangerous powers not delegated, may not only be usurped and excused by the other departments, but that the judicial department may also exercise or sanction dangerous powers beyond the grant of the Constitution; and consequently, that the ultimate right of the parties to the Constitution, to judge whether the compact has been dangerously violated, must extend to violation by one delegated authority, as well as by another; by the Judiciary, as well as by the executive, or the Legislature.

"However true, therefore, it may be that the judicial department, is, in all questions submitted to by the forces of the Constitution, to decide in the last resort; this resort must necessarily be deemed the last in relation to the authorities of other departments of the government; not in relation to the rights of the parties to the constitutional compact, from which the judicial as well as the other departments hold their delegated trusts. On any other hypo-

thesis, the delegation of judicial power, would annul the authority delegating it; and the concurrence of this department with the others in usurped powers, might subvert forever, and beyond all possible reach of any rightful remedy, the very Constitution, which all were instituted to preserve."

AMPHICTYON.

*Enquirer,* March 30, 1819.

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II.

*To the Editor of the Enquirer:*

SIR:—The other principle contained in the decision of the Supreme Court, which I apprehend to be of dangerous consequence, and on which I propose to make some remarks, is, that the grant of powers to Congress, which may be "*necessary* and *proper*" to carry into execution the other powers granted to them, or to any department of the government, ought to be construed in a liberal, rather than a restricted sense.

The danger arising from the implied powers has always been seen and felt by the people of the States. Those who opposed the Constitution always apprehended, that the powers of the Federal Government would be enlarged so much by the force of implication as to sweep off every design of power from the State governments. The progress of the government from the commencement of it to this day, proves that their fears are not without foundation. To counteract this irresistible tendency in the Federal Government to enlarge their own dominion, the vigilance of the people and State governments should constantly be exerted.

The first clause of the Eighth Section of the Constitution is that "Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and *general welfare* of the United States;" and the last clause of the same section is, "to make all laws which shall be *necessary* and

*proper* for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or any department or officer thereof."

Although every one admits that the Government of the United States is one of limited powers; that it cannot exercise any, but such as are actually granted; yet so wide is the latitude given to the words *"general welfare,"* in one of these clauses, and to the word *"necessary,"* in the other, that it will (if the construction be persisted in), really become a government of almost unlimited powers. If such a consequence will necessarily result from the liberal construction which has been contended for, ought we not to recur to first principles, and change the Constitution? Although the Supreme Court has attempted to establish the liberal meaning of the word *necessary* as the settled construction of the Constitution, or rather to take it from its place, and substitute another word for it; yet I trust that neither the Congress nor the President will consider themselves bound by that decision in any future case, but will pursue the true meaning of the Constitution, and not usurp powers never granted to them.

Why did the framers of the Constitution use the word *"necessary"?* They had other words at their command which they might have used, if those other words had conveyed the ideas which they had in their minds. Would they not have said, if they so intended it, that Congress shall have power to make all laws which may be *useful* or *convenient*, or conducive to the effectual execution of the foregoing powers? Will any man assert that the word *"necessary"* is synonymous with those other words? It certainly is not. Why then, should we change its meaning?

"But," says the Chief Justice, "this word necessary is susceptible to degrees of comparison," and as a proof of that in this clause it is not used to denote the greatest degree of necessity, he instances a part of the Tenth Section. No State shall lay any duties except what be *"absolutely necessary"* for executing its inspection laws. I

apprehend that nothing is gained by this example. What is *absolutely* necessary, is only *positively* necessary, that is, necessary.

It is said that in ascertaining the meaning of the word, "we may derive some aid from that with which it is associated." The word "*proper*" is associated with it, and my inference from that association is directly the reverse of that of the Supreme Court. The word "proper" has the larger meaning, and the word "necessary" restricts that meaning. Suppose the word necessary had been omitted. Then Congress might have made all laws which might be "proper," that is *suitable*, or *fit*, for carrying into execution the other powers; in that case they would have had a wider field of discretion: they would then have only been obliged to enquire what were the suitable means to obtain the desired end. But then comes the more important restriction. After you have ascertained the means which are suitable, or proper, you must go further and ascertain whether they are necessary. If they are not necessary to attain the end, although they may be good in themselves, yet you shall not use them.

We ought to construe these words in such manner as to give to each its appropriate meaning. They are not analogous. But if we say that "*necessary*" means *convenient*, or *useful*, or *conducive* to, then it might have been totally omitted, because the word *proper* would have conveyed the whole meaning. It is argued, however, that if Congress is not allowed to exercise its discretion in selecting such means "as are appropriate and conducive to the end," they cannot beneficially execute the great and important powers expressly delegated to them. It is difficult to perceive how this effect would follow, when they are allowed all the means necessary for executing those powers; but if on the contrary, they are allowed to use any means, however reasonably conducive to the execution of those powers, there is no limitation whatever to their authority. Thus, a power is given to them to lay and collect taxes. They pass a law to raise the sum of ten millions of dollars by a tax on land. The necessary and proper means for collecting this tax are easily

and directly within their reach, and indisputably adequate to execute the power; but this does not satisfy them. It would be extremely *convenient* and a very *appropriate* measure, and very *conducive* to their purpose of collecting this tax speedily and promptly, if the State governments could be prohibited during the same year from laying and collecting a land tax. Were they to pass such a law, and thereby directly encroach on one of the most undoubted rights of the States, the present liberal and sweeping construction of the clause by the Supreme Court would justify the measure. It may be said, however, that this supposes an extreme case, and that we ought not to argue from the abuse of a power; that we ought not to admit that our own representatives will so egregrously betray their solemn trusts. To this remark I would answer, that a fair conclusion drawn from your premises ought not to be opposed by the application of "*the magic word confidence.*" I cannot exclusively rely on any confidence in our representatives; if that were a sufficient guarantee for the preservation of our State rights, then there would be no necessity for a specific enumeration of granted powers.

It is contended by the Supreme Court, that if the word, *necessary* is restricted in its signification, to those means alone without which the powers given would be nugatory, the application to any of the powers of the government will be found so pernicious in its operation that we shall be compelled to discard it. This assertion is supported by reference to sundry examples. It is said that "the whole Penal Code of the United States rests on implication; that the power of punishing offenders is not to be found among the enumerated powers of government, except in two instances; and that the several powers of government might exist, although in a very imperfect state, and be carried into execution, although no punishment should be inflicted in cases when the right to punish is not expressly given." The ready answer to these positions is that the power of punishment is a natural and *necessary* incident to the power making laws; if the power to make the rule be given, the pow-

er of enforcing its observance is a *necessary* incident to that power. A law without its appropriate sanction is an absurdity in terms. It is no law, but a recommendation only. One example referred to by the court is the power "to establish post-offices and post-roads." It is said that this power is executed by the single act of making the establishment; that the right to carry the mail, and to punish the mail robber have been inferred from it, and that these rights are not indispensably *necessary* to the establishment of a post-office and post-road. In this conclusion I certainly do not concur. Without the right to carry the mail, the post-office, and post-roads would not be established. The right to carry the mail is not an implied power, but one which is involved in the very power to establish the office *to which* the mail is to be carried, and the roads, *along which* it is to travel. The right to punish the mail robber is incidental, and is implied *necessarily* from the power to carry the mail. So, too, the power of punishing the crimes of falsifying records, &c., and of perjuries, is a *necessary* power to the administration of justice by the courts of the United States; because the administration of justice *could not* be carried on if these crimes could be perpetrated with impunity. With respect to the other example quoted by the Chief Justice, there is at the first view some difficulty, but when we examine it more critically, the difficulty vanishes. He says that there is only one oath prescribed by the Constitution, namely, the oath to support it; that the powers vested in Congress can all be executed without requiring any other oath; but that Congress have imposed the oath of office, and that no man has yet doubted their power to require such an oath, or any other their wisdom might suggest. In reply to this remark, I would ask, why Congress or any other legislative body have been in the habit of passing laws requiring this sanction. Because the infirmity of human nature has been supposed to require it, or in other words, to render it *necessary;* because it has been believed that with respect to mankind in general, it is deemed indispensable that the existence of God, the dispenser of rewards and punishments

in a future life, should always be present to the mind of the man who is called on to give testimony in a court of justice, or to execute any important official function. Let us not then be told at this day "that the power to exact this security for the faithful performance of duty is not indispensably necessary." That remark might well be made by some youthful theorist, by some Utopian, or Goldwinian speculator, but proceeds with a very bad grace from the lips of the sage judges of the land. The practical politicians of Europe and America all concur in requiring oaths as a necessary sanction for the performance of official duties; Paley and all the most approved moralists inculcate the *necessity* of them. It is, therefore, perfectly clear that the requisition of an oath is within the constitutional powers of Congress.

If the examples, which the Chief Justice has thus chosen for the purpose of showing that the restricted sense of the term *"necessary"* would be found pernicious in its operation, be the strongest examples that can be put (and who will doubt it, as *he* has chosen them?) I think it follows inevitably that we shall not be obliged to discard it.

It has been frequently asserted during the debates on the Constitution, and before its adoption, that this clause was in reality no grant of power, that it conveyed nothing but what would have resulted to the government by unavoidable implication. "No axiom is more clearly established by law.," says the *Federalist,* No. 44, (Madison), "than that wherever a general power to do a thing is given, every particular power *necessary* for doing it is included." This maxim is well expressed by the ancient authors of the English law. *"Quando lex aliquid aticui concedet, concedere videtur et id, sine quo res esse non protest."* When the law grants anything to a person, it also gives that *without which* the thing itself cannot be. Or, as Lord Coke interprets it, "When the law doth give anything to one, it giveth impliedly whatsoever is *necessary* for the taxing and enjoying the same." Thus, "when lands are

let by one man to another at the will of the lessor, and the lessee sows the land, and the lessor after it is sown, and before the corn is ripe, put him out, yet the lessee shall have the corn, and *shall have free entry, egress, and regress to cut and carry away the corn.*" This Latin maxim affords the best definition of what is meant by *necessary means.* They are those means *without which* the end *could not* be attained. The clause then conveys no grant of powers; it was inserted from abundant caution, or, perhaps, for the purpose of letting the power contained in the latter part of the clause, and of vesting in the legislature rather than in the other departments the power of making laws to carry into effect the other powers vested in the government, or *in any department or officers thereof.* Let us then suppose that this clause had not been inserted. Congress then would have had a right to use the means *necessary* to effectuate their granted powers, and no more; they could only have used those means *sine quo* (without which) their express powers could not have been carried into execution. The insertion of the clause has no greater effect: it confers no new powers. When a law is about to pass, the inquiry which ought to be made by Congress is, does the Constitution expressly grant this power? If not, then, is this law one *without which* some power cannot be executed. If it is not, then it is a power reserved to the States, or to the people, and we may not use the means, nor pass the law.

The Government of the United States is one of specified and limited powers. Although limited, they are yet ample, they are vast. It is entrusted with the regulation of all our external concerns; it is empowered to protect us from foreign nations, and from internal dissensions. For this purpose it may lay taxes, borrow money, raise armies, govern the militia, build ships, and exercise every power which it is necessary should be exercised to attain those great and desirable objects. The purse and the sword are placed in its hands. The State governments have all residuary power; everything necessary for the protection of the lives, liberty and property

of individuals is left subject to their control; the contracts of every class of society, agricultural, mercantile, or mechanical, are regulated by their laws, except in those cases where uniformity was desirable, in which case the States fully surrendered the power. This residuary power was left in possession of the States for wise purposes. It is necessary that the laws which regulate the daily transactions of men should have a regard to their interests, their feelings, even their prejudices. This can better be done when the territory is of moderate dimensions, than when it is immense; it is more peculiarly proper, too, in the situation of our society, where we have been always accustomed to our own laws, and our own legislatures, and where the laws of one State will not suit the people of another; it is still more important that this division of legislative power into external and internal should be rigidly adhered to; and its proper distribution religiously observed, when we reflect that the accumulation of these powers into the hands of one government would render it too strong for the liberty of the people, and would inevitably erect a throne upon the ruins of the Republic. Why then should the Federal Government grasp at powers not necessary for carrying into effect their acknowledged powers? Why should they trench upon those interior measures which were reserved by the States for their own regulation and control? Why should they so eagerly, year after year, and session after session, encroach upon State rights, and make one encroachment a precedent for another? or why should they assume even doubtful powers, when they are vested with so many undoubted powers perfectly adequate for all their legitimate purposes?

I think it clear that the intention of the Constitution was to confer on Congress the power of resorting to such means as are incidental to the express powers; to such means as directly and necessarily tend to produce the desired effect. If the chief or principal object of the instrument intended to be used, be such as to produce other effects, or to conduce to some other end, it cannot be considered as a necessary instrument for effectuating the desired

end, although it may remotely have a tendency to produce the desired effect. Thus, a bank is primarily intended for individual merchants and traders: it is said to increase their capitals, or any rate, to make them, by means of the credit which they acquire by banking operations, to push their mercantile dealings and speculations farther than they could do without that aid: true, after they are established, they may afford some facilities to the government in collecting and distributing their taxes, and may sometimes enable it to borrow money—but, that is not the chief object of their institution; nor would those advantages ever accrue to a government from the institution, unless through the medium of benefits rendered to individuals. But laws incorporating banks for the benefit of individuals, fall naturally and properly within the jurisdiction of the State governments. Those governments regulate the internal affairs of the people, and banks not being *necessary* to enable the Federal Government either to collect its taxes, or to borrow money, their incorporation seems not to have been intended to be given, and, therefore, was reserved to the States.

It may, however, be asked, whether I can at this day pretend to argue against the constitutionality of a bank established by Congress. In answer, I reply, that it is my intention by these remarks to bring that subject into discussion. I am willing to acquiesce in this particular case, so long as the charter continues without being violated—because it has been repeatedly argued before Congress, and not only in 1791, but in 1815, was so solemnly decided in favor of the measure. But it is against the *principles* which brought it into life in the year 1791, and those by which it is supported now by the Supreme Court, that I protest: I deprecate the consequences of those principles, and wish to raise my feeble voice in warning my countrymen of the danger of them. There is supposed to have been a very wide difference between the principles which caused that bank to be established in 1791, and those of 1815. On the first occasion it was boldly urged by Mr. Hamilton that *necessary* meant *useful,* or *conducive* to; that the bank, although

not indispensably necessary, would be convenient, and would facilitate the collection of the revenue, and the borrowing of money; and the preamble to the Bank Bill recited that "it is conceived to be conducive to the successful conducting of the finances, and conceived to *tend* to give facility to the obtaining of loans." The reason, however, which prevailed in 1815 was different. It was then conceived that the establishment of a bank was a *necessary* means for conducting the fiscal operations of the government; it was urged with great warmth that the government could not go on without it. Although in 1811 the charter of the old bank expired, there could not be found friends enough to renew it; but in 1815 the paper which had been thrown into circulation by the establishment of numerous State banks, having become extremely depreciated, and the commerce of the country become thereby very much embarrassed, many members of Congress began to believe that the only cure for the evil was the establishment of a national bank. It was believed by some, that, without it, the revenue could neither be collected nor distributed. They thought that the necessity which the Constitution required was now apparent, and under the influence of this opinion, a majority was obtained, and the measure was, (I think unfortunately,) ushered into existence. Under the influence of this opinion, and perhaps under a belief that the long acquiescence of the people under a bank law justified it, the President, Madison, approved of the bill, notwithstanding his former hostility to such a law. Subsequent events have rendered it extremely doubtful whether any benefit will result from it. This change of opinion is, however, referred to in the opinion of the Supreme Court, and is arrayed with great force against the opponents of the measure. The reference to that change of opinion shows how extremely cautious we ought to be in admitting an enlarged construction of the powers given to Congress, since this very admission has been wielded with great force; and there is every reason to believe that it will in future cases be used as a

wedge whereby to let in other powers of indefinite extent, and inconceivable capacity.

The consequences of giving an enlarged, or, what is called a liberal, construction to the grant of powers, are alarming to the States and the people. The disposition to give this enlarged construction has manifested itself on many occasions, and particularly during the short and eventful period of Mr. Adams' administration. Whilst this disposition exists, unchecked and uncontrolled, the first clause of the eighth section is big with dangers. "Congress shall have power to levy and collect taxes, etc., to pay the debts, and provide for the common defence and *general welfare* of the United States." Whilst the Constitution was under discussion, its opponents foretold that this clause would be construed into an unlimited commission to exercise every power, which might be alleged to be necessary to the general welfare. The Federalist, No. 4 (Madison) treated that prophecy with contempt. He asked, "For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general powers?" Notwithstanding the opinion of the Federalist, the prophecy of the opponents of the Constitution turned out to be true. It was contended by some that Congress had a right to pass any law by which they might "provide for the general welfare," and they brought in the preamble to their aid; whilst others only claimed the privilege of providing for the general welfare in ALL cases in which there might be an application of the money to be raised by taxes. In this latter sense it was understood by the first Secretary of the Treasury, who maintained that there was "no room for doubt that whatever concerns the general interests of learning, of agriculture, of manufacturers, are within the sphere of the national councils, as far as regards an application of money." The effect of either of these constructions is to render nugatory the particular enumeration of powers. There was no necessity for a specific enumeration of authorities, the execution of which required the raising of money by taxes, and the expendi-

ture thereof if the general phrase authorized the Congress to pass laws in all cases in which the expenditure of money might promote the general welfare.

This liberal disposition for granting power is unhappily sanctioned by the late decision of the Supreme Court. I dread the result. Take the two clauses together, construe them liberally and point out, if you can, the limit which may be assigned to the exercise of their powers.

They may lay out their money in roads and canals; they may grant writs of *quod damnum* to condemn the land on which the road may pass, and finding that the object could be better attained and the money more judiciously applied by corporate bodies than by their own agents, they may create boards for internal improvement.

They may build universities, academies and school houses for the poor, and incorporate companies for the better management thereof.

They may incorporate companies for the promotion of agriculture, and vest in those companies a portion of their own funds in order to contribute to the general welfare.

They may build churches because it promotes the general welfare of the people to resort to places of public worship, and they may support from the Treasury those ministers of the Gospel, whose tenets may, in their opinion, best advance the general welfare; that is, conduce to the strength of the government.

When consequences such as these are plainly deducible from the enlarged construction of the Constitution we must, without hesitation, pronounce that such construction is inadmissible.

The Supreme Court have remarked that there may be cases in which "it would become the painful duty of that tribunal to say that an act of Congress was not the law of the land." I apprehend this can hardly ever be the case, where the act is one which gives power to the Federal government. The latitude of their construction will render it unnecessary for them to discharge a duty so "painful" to their feelings. Every dollar of which Congress au-

thorized the expenditure, and every power which they assume, in some way or other, "to promote the general welfare," will be an useful or convenient instrument, or will "conduce to" some good end which they may have in view. Congress, too, are the sole judges of the *necessity;* that is, the convenience of any instrument, and to attempt to control their discretion, would be treading on legislative ground.

The safety of the States will be found in their own firmness, their own vigilance, and their own wisdom.

I will make no remarks on the second question decided by the Supreme Court.

If the Bank law be constitutional, or if it be acquiesced in as such, it seems to follow that the States cannot forbid the establishment of one in their territory, nor expel it; and I think the conclusion drawn by the court is at least feasible that it cannot be taxed. *The same course of reasoning, however, which would prove that the States cannot tax the bank, or other institutions established by Congress, would also prove that the Congress cannot tax the banks or other institutions established by the States.

The principal satisfactory reason why the States cannot tax an institution of the United States is, that the power of taxation involves the power of destruction; and that "one government has not the right to pull down where there is an acknowledged right in another to build up; nor a right in one government to destroy where there is a right in another to preserve."

Now, it is admitted that the States have an undisputed right to incorporate companies for all purposes whatsoever. That right is reserved to them in its fullest latitude. If the United States can tax the operations of a State bank, or of a canal company, or any other company established by a State, they my tax it so high as to destroy it altogether; and it would be impossible for any State

*On this proposition, however, I have not bestowed much reflection, and should be glad to see the argument of the counsel for the State of Maryland on it.—R.

institution to continue its operations without the approbation or permission of Congress. Such a result would destroy the sovereignty of the States within that very sphere in which it is admitted they may act without control; it would render them subordinate in everything. If, then, the undisputed right of the States to lay taxes be limited by the Constitutional right of Congress to create certain institutions, such as custom houses, post-offices, the mint, etc., it necessarily follows that the right of Congress to lay taxes is also limited by the right of the States to erect banking institutions, or any other corporation. If the governments are to move on harmoniouslv, neither ought to attempt to pull down what the other has a right to build up. And this duty is as imperative on the government of the United States as it is on those of the several States.

The conduct of our own State upon the subject of taxing the Bank of the United States is worthy of praise. The Legislature of Virginia have always been of the opinion that Congress had no right to establish a bank. They have remonstrated against the exercise of the power, they instructed their senators to vote against the measure, and most of our representatives have uniformly been opposed to it. Yet in Virginia no tax has been laid on the operations of the bank. Her course is more wise. When unconstitutional laws are passed this State calmly passes her resolutions to that effect; she endeavors to convince the public mind of the baneful effect of usurped powers; she endeavors to unite and combine the moral force of the States against usurpation, and she never will employ force to support her doctrines till other measures have entirely failed.* May this continue to be her policy, and may the other States follow her example. I do most ardently hope that this decision of the Supreme Court will attract the attention of the State Legislature, and that Virginia will, as heretofore, do her duty.

*Enquirer,* April 2, 1819. AMPHICTYON.

*This sentence ought to be noted by students of the doctrine of secession.—Editor.

## 3. Rights of the States and of the People.*

### I.

*To the Editor of the Enquirer:*

By means of a letter to you, sir, I beg leave to address my fellow citizens. I address them on a momentous subject. I address them with diffidence, and with respect; with the respect which is due the most favored, if not the most respectable section of the human race: and with the diffidence which I ought to feel, when I compare the smallness of my means with the greatness of my undertaking. I address my fellow citizens without any distinction of parties. Although some of them will, doubtless, lend a more willing ear than others, to the important truths I shall endeavor to articulate, none can hear them with indifference. None of them can be prepared to give a *carte blanche* to our federal rulers, and to obliterate the State governments, forever, from our political system.

It has been the happiness of the American people to be connected together in a confederate republic; to be united by a system, which extends the sphere of popular government, and rec-

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***Numbers 1 and 2 of this series, printed last year in the Branch Papers, directed against the decision of the Supreme Court of the Unted States in the case of *McCulloh* vs. *Maryland*, are reprinted this year for the sake of unity; numbers 3 and 4 are added this year. For identification see Ford's ,Writings of Jefferson,Vol. X, 140. The articles were signed Hampden, and ran through four issues of the *Richmond Enquirer*, beginning June 11, and concluding June 29, 1819.**

***We cannot too earnestly press upon our readers the following exposition of the alarming errors of the Supreme Court of the United States in their late interpretation of the Constitution. We conceive the errors to be most alarming, and this exposition most satisfactory. Whenever State rights are threatened or invaded, Virginia will not be the last to sound the tocsin. Again, we earnestly recommend the following to the attention of the reader.—Editor *Richmond Enquirer***

onciles the advantages of monarchy with those of a republic; a system which combines all the internal advantages of the latter, with all the force of the former. It has been our happiness to believe, that in the partition of powers between the general and State governments, the former possessed only such as were expressly granted, or passed therewith as necessary incidents, while all the residuary powers were reserved by the latter. It was deemed by the enlightened founders of the Constitution, as essential to the internal happiness and welfare of their constituents, to reserve some powers to the State governments; as to their external safety, to grant others to the government of the union. This, it is believed, was done by the Constitution, in its original shape; but such were the natural fears and jealousies of our citizens, in relation to this all-important subject, that it was deemed necessary to quiet those fears by the tenth amendment to the Constitution. It is not easy to devise stronger terms to effect that object than those used in that amendment.

Such, however, is the proneness of all men to extend and abuse their power—to "feel power and forget right"—that even this article has afforded us no security. That legislative power which is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex, has blinked even the strong words of this amendment. That judicial power, which, according to Montesquieu is, "in some measure, next to nothing;" and whose province this great writer limits to "punishing criminals and determining the disputes which arise between individuals"; that judiciary which, in Rome, according to the same author, was not entrusted to decide questions which concerned "the interests of the State, in the relation which it bears to its citizens"; and which, in England, has only invaded the Constitution in the worst of times, and then, always, on the side of arbitrary power, has also deemed its interference necessary, in our country. It will readily be perceived that I allude to the decision of the Supreme Court

of the United States, in the case of M'Culloh against the State of Maryland.

The warfare carried on by the legislature of the Union, against the rights of "the States" and of "the people" has been with various success and always by detachment. *They* have not dared to break down the barriers of the Constitution by a *general* act declaratory of their power. That measure was too bold for these ephemeral duties of the people. The people hold them in check by a short rein, and would consign them to merited infamy, at the next election. . . . . . They have adopted a safer course. *Crescit Eundo* is their maxim; and they have succeeded in seeing the Constitution expounded, not by what it actually contains, but by the *abuses* committed under it. A new mode of amending the Constitution has been added to the ample ones provided in that instrument, and the strongest checks established in it have been made to yield to the force of precedents! The time will soon arrive, if it is not already at hand, when the Constitution may be expounded without ever looking into it!—by merely reading the acts of a renegade Congress, or adopting the outrageous doctrines of Pickering, Lloyd or Sheffey!

The warfare waged by the judicial body has been of a bolder tone and character. It was not enough for them to sanction, in former times, the detestable doctrines of Pickering & Co., as aforesaid: it was not enough for them to annihilate the freedom of the press, by incarcerating all those who dare, with a manly freedom, to canvass the conduct of their public agents; it was not enough for the predecessors of the present judges to preach political sermons from the bench of justice and bolster up the most unconstitutional measures of the most abandoned of our rulers; it did not suffice to do the business in detail, and ratify, one by one, the legislative infractions of the Constitution. That process would have been too slow, and perhaps too troublesome. It was possible, also, that some *Hampden* might make a stand against some ship-money measure of the government, and although he

would lose his cause with the court, might ultimately gain it with the *people.* They resolved, therefore, to put down all discussions of the kind, in future, by a judicial *coup de main;* to give a *general* letter of attorney to the future legislators of the Union; and to tread under foot all those parts and articles of the Constitution which had been, heretofore, deemed to set limits to the power of the federal legislature. That man must be a deplorable idiot who does not see that there is no earthly difference between an *unlimited* grant of power and a grant limited in its terms, but accompanied with *unlimited* means of carrying it into execution.

The Supreme Court of the United States have not only granted this *general* power of attorney to Congress, but they have gone out of the record to do it, in the case in question. It was only necessary, in that case, to decide whether or not the bank law was "necessary and proper," within the meaning of the Constitution, for carrying into effect some of the granted powers; but the court have, in effect, expunged those words from the Constitution. There is no essential difference between expunging words from an instrument, by erasure, and reading them in a sense entirely arbitrary with the reader, and which they do not naturally bear. Great as is the confidence of the nation in all its tribunals, they are not at liberty to change the meaning of our language. I might, therefore, justly contend that this opinion of the court, in so far as it outgoes the actual case depending before it, and so far as it established a *general* and *abstract* doctrine, was entirely extrajudicial and without authority. I shall not, however, press this point, as it is entirely merged in another, which I believe will be found conclusive—namely, that that court had no power to adjudicate away the *reserved* rights of a sovereign member of the confederacy, and vest them in the general government.

It results from these remarks, Mr. Editor, that my opinion is, that the Supreme Court had no jurisdiction justifying the judgment which it gave, and that it decided the question wrongly. The power of the Supreme Court is indeed great, but it does not

extend to everything; it is not great enough to *change* the Constitution. . . . These points I shall endeavor to maintain in one or more subsequent numbers. I shall also briefly touch upon the bank law of the United States. That law is neither justified by the Constitution, nor ratified by any acquiescence.

Had this opinion of the Supreme Court, however, not been pronounced, I should not have deemed it necessary to address the public on the subject. I should not have been moved by any *particular* measure of aggression. I know full well that however guarded our Constitution may be, we must submit to particular infractions of it. I know that our forefathers, of glorious and revolutionary memory, submitted to many particular acts of oppression, inflicted upon them by the British parliament. I know that "all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed"; and I know that it was only the *general* declaration by the British parliament of their right "to legislate for us in all cases whatsoever," that combined the American people, as one man, against the oppressions of the British tyrant.

Such a declaration is now at hand. It exists, in the opinion of the Supreme Court. If the limits imposed on the general government, by the Constitution, are stricken off, they have, *literally,* the power to legislate for us "in all cases whatsoever"; and then we may bid a last adieu to the State governments.

In discussing these momentous questions, I shall not hesitate to speak with the spirit of a freeman. I shall not be overawed by the parasites of a government gigantic in itself, and inflated with recent victories. I love the honor, and, if you please, the glory of my country, but I love its liberty better. Truth and liberty are dearer to me than Plato or Socrates. I speak only of the measures of our public functionaries, but of them I shall speak freely. I am not a political surgeon; but this I know, that a wound which threatens to be mortal must be probed to the bottom. The crisis

is one which portends destruction to the liberties of the American people.

I address you, Mr. Editor, on this great subject with no sanguine presage of success. I must say to my fellow citizens that they are sunk in apathy, and that a torpor has fallen upon them. Instead of that noble and magnanimous spirit which achieved our independence, and has often preserved us since, we are sodden in the *luxuries* of banking. A money-loving, funding, stock-jobbing spirit has taken foothold among us. We are almost prepared to sell our liberties for a "mess of pottage." If Mason or Henry could lift their patriot heads from the grave, while they mourned the complete fulfillment of their prophecies, they would almost exclaim, with Jugurtha, "Venal people! you will soon perish if you can find a purchaser."

In examining this great subject, I shall only resort to authorities the most unquestionable. I shall *chiefly* test my doctrines by those of the enlightened *advocates* of the Constitution, at the time of its adoption. I shall also resort to a book, written, at least in part, by one of the highest-toned statesmen in America. That book is "The Federalist," and the writer alluded to is Mr. Hamilton. The authors of that book have been eulogised by the Chief Justice, in his "Life of Washington," for their talents and love of union; and by the Supreme Court, in the opinion before us. The court has even gone so far as to say that as to the opinions contained in that book, "no tribute can be paid to their *worth,* which exceeds their *merit.*" If I have any adversaries in this discussion, these *advocates* and this book are *their* witnesses, and I shall take leave to cross-examine them. That witness is the best for the defendant, who is produced on the part of the plaintiff: and he is most to be believed who is both lauded by the court and testifies against his interest or his prejudices. I shall also use, occasionally, the celebrated report of the legislature of Virginia, in the year 1799. It has often been called by an eloquent statesman his political Bible. For truth, perspicuity and moderation,

it has never been surpassed. It is entirely federal. It was the *Magna Charta* on which the Republicans settled down, after the great struggle in the year 1799. Its principles have only *been departed* from since by turn-coats and apostates. The principles of this report equally consult the rights and happiness of the several States, and the safety and independence of the Union.

I shall commence, in the next number, *some* examination of the opinion of the Supreme Court. It is in every respect entitled to the chief notice. I have great reason to distrust myself in this undertaking. I am provided with a sling and a stone, but I fear the inspiration will be wanting. I consider that opinion as the "*Alpha* and *Omega,* the beginning and the *end,* the first and the *last,* of federal usurpations."

HAMPDEN.

From the *Richmond Enquirer,* June 11, 1819.

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## II.

*To the Editor of the Enquirer:*

According to the regular course of legal proceedings I ought, in the first place, to urge my plea in abatement to the jurisdiction of the court. As, however, we are not now in a court of justice, and such a course might imply some want of confidence in the merits of my cause, I will postpone that enquiry, for the present, and proceed directly to the merits. In investigating those merits, I shall sometimes discuss particular points stated by the Supreme Court, and at others, urge propositions inconsistent with them. I pledge myself to object to nothing in the opinion in question, which does not appear to me to be materially subject to error.

I beg leave to lay down the following propositions, as being equally incontestable in themselves, and assented to by the en-

lightened *advocates* of the Constitution, at the time of its adoption.

1. That that Constitution conveyed only a limited grant of powers to the general government, and reserved the residuary powers to the governments of the States, and to the people; and that the tenth amendment was merely declaratory of this principle, and inserted only to quiet what the court is pleased to call "the excessive jealousies of the people;"

2. That the limited grant to Congress of certain enumerated powers only carried with it such additional powers as were *fairly incidental* to them, or, in other words, were necessary and proper for their execution;

And 3. That the insertion of the words "necessary and proper," in the last part of the eighth section of the first article, did not enlarge the powers previously given, but were inserted only through abundant caution.

On the first point it is to be remarked that the Constitution does not give to Congress *general* legislative powers, but the legislative powers *"herein granted."* . . . 1st Art. of Const. . . . . So it is said in "The Federalist," that the jurisdiction of the general government extends to certain enumerated objects only and leaves to the States a residuary and inviolable sovereignty over all other objects; that in the *new,* as well as the old government, the general powers are limited, and the States, in all the unenumerated cases, are left in the enjoyment of their sovereign and independent jurisdiction; that the powers given to the general government are few and defined; and that all authorities of which the States are not *explicitly* divested, in favor of the Union, remain with them in full force; as is admitted by the affirmative grants to the general government, and the prohibitions of some powers, by negative clauses to the State governments.

It was said by Mr. Madison, in the convention of Virginia, that the powers of the general government were enumerated and that its legislative powers are on defined objects, beyond which it can-

not extend its jurisdiction; that the general government has no power but what is given and delegated, and that the delegation alone warranted the power; and that the powers of the general government are but *few,* and relate to external objects, whereas those of the States relate to those great objects which immediately concern the prosperity of the people. It was said by Mr. Marshall that Congress cannot go beyond the delegated powers, and that a law not warranted by any of the enumerated powers would be void; and that the powers not given to Congress were *retained* by the States, and *that* without the aid of implication. Mr. Randolph said that every power not given by this system is left with the States. And it was said by Mr. Geo. Nicholas that the people retain the powers not conferred on the general government, and that Congress cannot meddle with a power not enumerated.

It was resolved in the legislature of Virginia, in acting upon the celebrated report of 1799 (of which Mr. Madison, the great patron of the Constitution, was the author), that the powers vested in the general government result from the *compact,* to which the *States* are the parties; that they are limited by the plain sense of that instrument (the Constitution), and extend no further than they are authorized by the grant; that the Constitution had been constantly discussed and justified by *its friends,* on the ground that the powers not given to the government were withheld from it; and that if any doubts could have existed on the original text of the Constitution, they are removed by the tenth amendment; that if the powers granted be valid, it is only because they are *granted,* and that all others are retained; that both from the original Constitution and the tenth amendment, it results that it is incumbent on the general government to *prove,* from the Constitution, that it grants the *particular* powers; that it is *immaterial* whether unlimited powers be exercised under the name of unlimited powers, or under that of unlimited means of carrying a limited power into execution; that in all the discussions and ratifications of the Constitution it was urged as a characteristic of the government,

that powers not given were retained, and that none were given but those which were *expressly* granted, or were fairly incident to them; and that in the ratification of the Constitution by Virginia, it was expressly asserted that every power *not granted* by the Constitution remained with them (the people of Virginia), and *at their will.*

2. I am to show in the second place that by the provisions of the Constitution (taken in exclusion of the words, "necessary and proper" in the 8th of the 1st article) such powers were only conveyed to the general government as were expressly granted or were (to use the language of the report), fairly incident to them. I shall afterwards show that the insertion of those words, in that article, made no difference whatever and created no extension of the powers previously granted.

I take it to be a clear principle of universal law—of the law of nature, of nations, of war, of reason and of the common law—that the general grant of a thing or power, carries with it all those means (and those only) which are necessary to the perfection of the grant, or the execution of the power. All those entirely concur in this respect, and are bestowed upon a clear principle. That principle is one which, while it completely effects the object of the grant or power, is a safe one, as it relates to the reserved rights of the other party. This is the true principle, and it is an universal one, applying to *all* pacts and conventions, high or low, or of which nature or kind soever. It cannot be stretched or extended even in relation to the American government; although, for purposes which can easily be conjectured, the Supreme Court has used high sounding words as to it. They have stated it to be a government extending from St. Croix to the Gulf of Mexico, and from the Atlantic to the Pacific Ocean. This principle depends on a basis which applies to all cases whatsoever, and is inflexible and universal.

If, in relation to the powers of the general government, the express grants, aided by this principle under its true limitation, do

not confer on that government power sufficiently ample, let those powers be extended by an amendment to the Constitution. Let us now do what our convention did in 1787, in relation to the articles of confederation. Let us extend their powers, but let this be the act of the *people,* and not that of subordinate agents. But let us see how far the amendments *are* to extend, and not, by opening wide the door of implied or constructive powers, grant we know not how much, nor enter into a field of interminable limits. Let us, in the language of the venerable Clinton, extend the powers of the general government, if it be necessary; but until they are extended, let us only exercise such powers as are clear and undoubted.

In making some quotations from the laws of nature, of nations, of war, of reason, and the common law, it will be seen that these establish not only the principle I contend for, but the limits under which the incidental powers are to be exercised. It is in this last relation that I ask the principal attention of the reader. While these limits must always, in a degree, depend upon the circumstances of every particular case, the cases I shall give the general character of the power. It will be seen that that power is always limited by necessity; which, although it may not be, in all cases, a sheer necessity, falls far short of the extensive range claimed, in this instance, by the Supreme Court. I need not say to the legal part of our citizens, that the exception proves the rule; nor that the allowance of a power *up* to a given limit, is a denial of it beyond it.

We are told by Vattel that "since a nation is obliged to preserve itself, it has a right to everything *necessary* for its preservation, for that the *law of nature* gives us a right to everything WITHOUT WHICH we could not fulfil an obligation: otherwise it would oblige us to do *impossibilities,* or rather contradict itself, in prescribing a duty and prohibiting, at the same time, the *only means* of fulfilling it." Again, he tells us that a nation has a right to everything *without which* it cannot obtain the perfection of the members, and the State. Again, we are told, by him, that a tacit faith may

be given by a princė, etc. And that "everything *without which* what is agreed upon, cannot take place," is tacitly granted,—as, if a promise is made to an army of the enemy, which has advanced far into the country "that it shall return home in safety," provisions are also granted, for they cannot return *without them.* * * * We are further told that in granting or accepting an interview *full security* is also tacitly granted. The *provisions* and the *security* are each of them a *sine quo non* of the fulfillment of the grant, or promise: they are both *indispensible.* So he tells us that if a man grants to one his house, and to another his garden, the only entrance into which is through the house, the right of going through the house passes as an incident, for that it is absurd to give a garden to a man, into which he could not enter. We are further told by this writer that the grant of a passage for troops includes everything connected with the passage, and *without which* it would not be practicable as exercising military discipline, buying provisions, etc.; that he who promises security to another by a safe conduct, is not only to forbear violating it himself, but also to *punish* those who do, and compel them to make reparation: that a safe conconduct naturally includes the baggage of the party, and everything *necessary* for the journey, but that the *safest* and *modern* way is, to *particularize* even the baggage: and that a permission to *settle* anywhere includes the wife and children, for that when a man settles anywhere he carries his wife and children with him, but that the case is different as to a safe conduct, for that when a man travels his family is usually left at home.

These examples quoted from the laws of nature, of nations, and of war, have a remarkable and entire coincidence with the principles of the common law, and show that great principles extend themselves alike into every code. In all of them the incidental power is limited to what is *necessary*: and in none of them is a latitude allowed, as extensive as that claimed by the Supreme Court.

The principle of the common law is, that when any one grants

a thing he grants also that *without which* the grant cannot have its effect; as, if I grant you my trees in a wood, you may come with carts over my land to carry the wood off. So a right of way arises on the same principle of necessity, by operation of law; as, if a man grants me a piece of land in the middle of his field he tacitly and implicitly gives me a right to come on it. We are again told that when the law giveth anything to any one, it implicitly giveth whatever is necessary for taking or enjoying the same: it giveth "what is *convenient, viz.*: entry, egress and regress as much as is *necessary.*" The term "convenient" is here used in a sense convertible with the term "necessary" and is not allowed the latitude of meaning given to it by the Supreme Court. It is so restricted in tenderness to the rights of the other party. The rights of way passing in the case above mentioned, is also that, merely, of a *private* way, and does not give a high road or avenue through another's land, though such might be most *convenient* to the purposes of the grantee. It is also a principle of the common law that the incident is to be taken according to "a *reasonable* and *easy* sense," and not strained to comprehend things remote, "unlikely or unusual." The connection between the grant and the incident must be easy and clear: the grant does not carry with it as incidents, things which are remote or doubtful.

These quotations from the common law are conclusive in favor of a restricted construction of the incidental powers. They show that nothing is granted but what is *necessary*...They exclude everythingthing that is only *remotely* necessary, or which only *tends* to the fulfillment.

These doctrines of the common law control the present case. But it is immaterial, as I have already said, by what code it is to be tested. On this point there is no difference between them; for they all depend upon an inflexible and immutable principle. The common law, however, governs this case. That law is often resorted to, of necessity, in expounding the Constitution. * * * Many of the powers given by the Constitution, are given in terms only

known in the common law. The authority of that law is universally admitted to a certain extent in expounding the Constitution. It is admitted both by the report of 1799, and by the Virginia Legislature of the same year, in relation to such parts thereof as have a sanction from the Constitution by the technical phrases used therin, expressing the powers given to the general governmnt, and also as to such parts thereof as may be adopted by Congress, as necessary and proper for carrying into execution the powers expressly delegated.[1] Is not this admission full up to the very point of referring to that law in this case, and adopting the standard which it has established?

That law not only affords this standard, but it was wise in the Constitution to refer to a standard which is equally familiar to all the States, and is corroborated by the corresponding principles on every other code. By the common law the term incident is also well defined, as the examples I have quoted will show. It is the part of wisdom to define the terms as you go, or at least to refer to a standard which contains their definition. I have another preference for this code, and for the term "incident," which it uses, and that is that that term is *particular*. The term "means" started up on the first occasion, is not only undefined, but is *general;* and *"dolus latet in generalibus"* (guile covers itself under general expressions). Why should the Supreme Court trump up a term on this occasion, which is equally novel, undefined and *general.* Why should they select a term which is broad enough to demolish the limits prescribed by the general government, by the Constitution? I will now proceed to show that the terms "necessary" and *"incidental"* powers were those uniformly used at the outset of the Constitution, while the term "means" is entirely of modern origin. It is at least so when offered as a substitute for the term "incident" or "incidental powers."

We are told in the *Federalist* that all powers *indispensably nec-*

[1]Madison's Report, 67; see instructions to the senators of Virginia, Jan. 11, 1800.

*essary* are granted by the Constitution, though they be not expressly;" and that all the particular powers *requisite* to carry the enumerated ones into effect, would have resulted to the government by unavoidable implications, *without* the words "necessary and proper;" and that when a power is given, every particular power *necessary* for doing it is included. Again, it is said that a power is nothing but the ability or faculty of doing a thing, and that that ablity includes the means *necessary* for its execution.

It is laid down in the report before mentioned that Congress under the terms "necessary and proper" have only all incidental powers necessary and proper, etc., and that the only enquiry is whether the power is properly an *incident* to an express power and *necessary* to its execution, and that if it is not, Congress cannot exercise it: and that this Constitution provided during all the discussions and ratifications of the Constitution, and is *absolutely necessary* to *consist* with the idea of defined or particular powers: again, it is said, that none but the express powers and those *fairly incident* to them were granted by the Constitution.

The terms "incident" and "incidental powers" are not only the terms used in the early stages and by the *friends* of the Constitution, but they are the terms used by the *court* itself, in more passages than one, in relation to the power in question. The same terms are used by the Chief Justice in his "Life of Washington" (Vol 5, 293).
as relative to the implied powers. So it is said by Mr. Clinton, in his rejection of the bank bill before mentioned, that the means must be *accessorial* and *subordinate* to the end. Mr. Clay also said on the same occasion that the implied powers must be *accessorial* and *obviously flow* from the enumerated ones. Having shown the universal adoption of these terms, we will now recur to their real meaning. In Co. Litt. 151 b. (Coke on Littleton), an incident is defined, in the common law, to be a thing "appertaining to or *following* another as more worthy of *principal.*" So Johnson defines it to be "means following in beside the *main* design."

Can it be then said that means which are of an independent or *paramount* character can be implied as incidental ones? Certainly not, unless, to say the least, they be absolutely necessary.

Can it be said after this that we are at liberty to invent terms at our pleasure, in relation to this all-important question? Are we not tied down to the terms used by the founders of the Constitution; terms, too, of limited, well defined and established signification? On the contrary, I see great danger in using the *general* term now introduced; it may cover the latent designs of ambition, and change the nature of the general government. It is entirely unimportant, as is before said, by what means this end is effected.

3. I come in the third place to show that the words "necessary and proper," in the Constitution, add nothing to the powers before given to the general government. They were only added (says "*The Federalist*"), for greater caution, and are tautologous and redundant, though *harmless*. It is also said in the *report* aforesaid, that these words *do not amount* to a grant of *new* power, but for the removal of all uncertainty the declaration was made that the means were included in the grant. I might multiply authorities on this point to infinity; but if these do not suffice, neither would one were he to arise from the dead. If this power existed in the government, before these words were used, its repetition or reduplication, in the Constitution, does not increase it. The "expression of that which before existed in the grant, has no operation." So these words "necessary and proper," have no power or other effect than if they had been annexed to and repeated in every specific grant; and in that case they would have been equally unnecessary and harmless. As a friend, however, to the just powers of the general government, I do not object to them, considered as merely declaratory words, and inserted for greater caution: I only deny to them an extension to which they are not entitled, and which may be fatal to the reserved rights by the States and of the people.

In my next number, Mr. Editor, I shall examine more particular-

ly some of the principles contained in the opinion of the Supreme Court.

HAMPDEN.

From the *Richmond Enquirer,* June 15, 1819.

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III.

I trust I have shown by the preceding detail, that the words "necessary and proper," contained in the Constitution, were tautologous and redundant, and carried nothing more to the general government than was conveyed by the general grant of a specified power. I have also shown, that, in that case, such means were implied, and such only, as were *essential* to effectuate the power: and that this is the case, in all the codes, of the law of nature, of nations, of war, of reason, and the common law. The means, and the only means, admitted by them all, and especially by the common law, are laid down, emphatically, to such, *without which* the grant cannot have its effect: And I have also endeavored to show that by that law, the construction in this case is to be governed. In all these codes, this implied and ulterior power has the *same* limitation. In none of them is a claim as extensive as that asserted by the Supreme Court, recognized or tolerated; while, on the other hand, claims far inferior in point of latitude have been often reprobated. This principle, while it carries to the grantee what is necessary, carries nothing more. It respects the rights of both parties. It remembers that there is a grantor, as well as a grantee. It recognizes the golden principle *"sic utere tuo ut alienum non ladis."* But when you get beyond this criterion of necessity, you embark in a field without limits; and everything then depending on *discretion,* the rights of the weaker party will be swept away. This principle, so sacred in all the codes, exists, emphatically, in ours, in which the Constitution has imposed *express* limits to the granted powers by the strong words used in the Tenth Amendment.

The Supreme Court has said that there is no expression in the Constitution like those in the former confederation, excluding implied or incidental powers. While this is admitted, it is denied that any greater latitude is given to these powers by the Constitution, than they possess under the law of reason and justice, under the great principle which runs through all the codes. If there be any clause in the Constitution having that effect, let it be pointed out. There is none such, and it is incumbent on the party claiming an extension of the general principle, to show that such extension has been made. The State governments being originally in possession of all the legislative powers, are still to retain such as are not *shown* to have been relinquished.

The Supreme Court, sensible of this necessity, and not being able to show a specific extension of the principle, have argued in favor of an enlarged construction by saying that these terms "necessary and proper," are placed in the Constitution among the *powers,* and not among the limitations on those powers. If the object in using them was merely for greater caution, and to put down all uncertainty on the subject, *that* was the proper place for them. It would have been wrong to have placed them among the prohibitions, as they are not intended to prohibit anything to the general government: it is only contended that they create no enlargement of the powers previously given: In what place, therefore, could these words have been so properly inserted?

The court is also pleased to say, that these terms *purport* to enlarge the powers previously given. It is difficult to see how a reiteration of the words can increase the power; and it is unimportant whether that power was merely implied or was expressed. A given power is not enlarged by being merely repeated. The Supreme Court itself admits that these terms were used, and *only used* to remove all doubts of the implied powers of the national legislature, in relation to the great mass of concerns entrusted to it. This is an admission by the court that they were not used for the purpose of *enlargement;* and it is entirely inconsistent with their

other pretension, that these words were put in or purported to enlarge the powers.

The Supreme Court has also claimed such enlargement on the ground that our Constitution is one of a vast republic whose limits they have pompously swelled and greatly exaggerated. The high-sounding words they have used, in describing those, cannot alter the force of great principles. The Constitution is a *compact* between the people of each State, and those of all the States, and it is nothing more than a compact. The principles I have mentioned are immutable, and apply to *all* compacts. It is entirely unimportant, whether the territory to which the compact relates, extends from "Indus to the Pole," or be no longer than that of the county of Warwick. There is no code which graduates this principle, by the extent of the territory to which it relates.

The Supreme Court has also claimed favor, in this particular, on the ground of the magnitude of the trust confided to the general government. If that trust be great, neither is that reserved to the State governments small, or unimportant. On this point, let what the court is pleased to call "the excessive jealousies" of the States stand as authority. That trust is not small or unimportant, which produced these jealousies: jealousies which could only be quieted by the strong words of reservation, contained in the Tenth Amendment of the Constitution. That trust is not small which relates to "those great objects which immediately concern the prosperity of the people."

The court is pleased to remind us, with the same view, that it is a *constitution* we are expounding. That constitution, however, conveys only *limited* and specified powers to the government, the extent of which must be traced in the instrument itself. The residuary powers abide in the State governments, and the people. If it is a constitution, it is also a *compact,* and a limited and defined compact. The States have also constitutions, and their people rights, which ought also to be respected. It is in behalf of these constitutions, and these rights that the enlarged and bound-

less power of the general government is objected to. * * * The construction which gives it, is in entire derogation of them.

It is said by the Supreme Court, that a constitution cannot select among the various means which may be found necessary, in the execution of granted powers. This is distinctly admitted: but the Constitution ought to establish, as ours has established, a *criterion* in relation to them: and that criterion should be the *law* to the several departments, in making *their* selection. That criterion is afforded in the present instance, by the means being "necessary and proper," to the execution of the power, or not so, as the case may be. * * * A choice may safely be left to Congress, *within* that limit: but if their choice of means is to go beyond it, and to range at large, without stint or limits, it is in vain to talk of its being a limited government. That government is one of unlimited powers, which is at liberty to use means which are *unlimited.*

The Supreme Court has said that Congress must "according to the *dictates of reason* be permitted to select means." What then, becomes of the terms "necessary and proper?" They further say that those who object to their using any *appropriate* means must show that it is *excepted.* On the contrary, we are told by the *report,* (Madison's) and by all the authorities, that "it is incumbent on the general government to *prove* that the Constitution grants the *particular* power."

The Supreme Court seems to consider it as quite unimportant, so long as the great principles involving human liberty are not invaded, by which act of the representatives of the people, the powers of government are to be exercised I beg leave to say, on the other hand, that the adjustment of those powers made by the Constitution, between the general and State governments, is beyond their power, and ought not to be set aside. That adjustment has been made by the *people* themselves, and they only are competent to change it. It ought to be respected by the functionaries of both governments. The rights of the States ought not to be usurped and taken from them; for the powers delegated to the general govern-

ment are few and deferred, and relate to external objects; while the States retain a residuary and inviolable sovereignty over all other subjects; over all those great subjects which immediately concern the prosperity of the people. Are these last powers of so trivial a character that it is entirely unimportant which of the governments act upon them? Are the representatives of Connecticut in Congress best qualified to make laws on the subject of our Negro population? Or ought the South Carolina nabobs to regulate their steady habits? Is it the wish of any State, or at least of any of the larger States, that the whole circle of legislative powers should be confided to a body in which, in one branch at least, the small State of Delaware has as much weight as the great State of New York; having fourteen times its population? The Supreme Court thinks such a change as this entirely unimportant. On this, as on other occasions, I would "render unto Cæsar the things which are Cæsar's." I would construe the Constitution as it really is.

The Supreme Court is of opinion, that a government having such ample powers as that of the Union, should have ample means for their execution. Within the criterion I have contended for, this is admitted: beyond that criterion, the proposition is denied. If this criterion be inadequate to the true interests of the Union, let the Supreme Court show it to the *people*, or to the next convention, and these means will be enlarged. They will, in that case, be enlarged by the only competent power. With the Supreme Court the question, and the only question, was, what powers and what means had been granted. The *powers* of the old confederation were sufficiently ample. They extended at least to making war and peace, which so vitally involve human happiness: but the *means* of carrying on a war, it did not possess. For those means Congress were entirely dependent on the State governments. The means were not stretched up, by construction, to equal the acknowledged amplitude of the powers. No court or Congress dared to do this: but an appeal was made to the people, in convention, and they amplified the means, by the present Constitution. This is a case ex-

actly in point, and determines the course proper to be pursued, if indeed, the true principle relative to implied powers is not sufficiently extensive.

Indeed, Mr. Editor, the great fault of the present time is, in considering the Constitution as perfect. It is considered as a nose of wax, and is stretched and contradicted at the arbitrary will and pleasure of those who are entrusted to administer it. It is considered as *perfect*, in contravention of the opinion of those who formed it. Their opinion is greatly manifested, in the ample provisions it contains for its amendment. It is so considered in contravention of everything that is human: for nothing made by man is perfect. It is construed to this effect, by the *ins*, to the prejudice of the *outs;* by the agents of one government in prejudice of the rights of another; and by those, who, possessing power, will not fail to "feel it, and forget right."

The Supreme Court has said, that it is a clear proposition, that the general government, though limited in its powers, is supreme within the sphere of its action: and, again, that the government, though limited in its powers, is supreme. The court had before admitted, in terms, that the government could only exercise the power granted to it. I do not understand this jargon. This word "supreme" does not sound well in a government which acts under a limited constitution. The *people* only are supreme. The Constitution is subordinate to them, and the departments of the government are subordinate to the Constitution. To use the language of the report of 1799, "the authority of constitutions over governments, and of the people over the constitutions, are truths which are ever kept in mind." If the court only means that the government is supreme *up to* the limits of the Constitution, and no further, there is no difference of opinion between us: but in that case their language is inaccurate. A body which is subordinate to a compact, which is subordinate to another body, can scarcely be said to be supreme.

The Supreme Court have said, that the great powers granted to

the government cannot be supposed to draw after them, such powers only, as are *inferior*. I have already given an answer to this position: in addition, I will say that the powers taken into service must be "necessary and proper." It is a sophism to say, that the annexation of the last word to the first enlarges its signification: both these terms are requisite to define, completely, the character of the power. It must be one which is not only that is peculiar to that end, but also necessary. I shall refer more particularly, presently, to the meaning of these terms.

The court is of the opinion that the right to establish a bank stands on the same foundation with that to exact oaths of office, and that he would be charged with insanity who would deny to Congress the latter power. Of banks, I shall presently show, that, while they are not necessary to the execution of any power, they cut deeply into the reserved rights of the several States. In both of these respects the case of oaths is widely different. * * * I would charge *him* with insanity who would say that under the actual state of the world they are not necessary. They impose on *some* men, at least, a solemn obligation to tell the truth: they do it by applying to a future state of rewards and punishments. The convention itself has settled this point by exacting an oath from the President and from other public agents. If it is necessary for the highest officer in the government to stand under this solemn sanction, much more ought those who are inferior. So, while these oaths are necessary, they are entirely *harmless*. They invade no rights of the State governments, or of the people: and the ground on which the objection rests in the case before us, has no existence as to them.

The denial of the right to establish banks is also said, by the Supreme Court, to carry with it the denial of that of annexing punishments to crimes. That punishment is indispensably necessary: it is a *sine quo non* of the prohibition of crimes. A penal law without sanction is unknown among civilized men; and that sanction is always vindicatory, rather than renumeratory.

Several other cases put by the Supreme Court on this head stand on the same foundation, and are susceptible of the same answer. In all the other cases, also, the powers implied are *necessary* to effect the specific objects of the grant. So, on the other hand, they work no injury to the rights of the States or of the people.

What are we to think of the case before us, when the analogies resorted to, to support it, are so widely different from it.

The Supreme Court is further of the opinion, that the power of incorporating banks is justified by the admitted right of Congress to establish governments for the vacant territories of the United States; which governments are also said to be corporations. It is astonishing that the court did not perceive the difference. Those territories have no other local legislatures but the Congress: and consequently, Congress has the same power in them, in this particular, as the State governments have in the several States. The erection of such governments also invades no right of any State: it is not only *harmless* as to the States, but absolutely necessary for the preservation of this part of the public property. This power is as harmless as to the States, as that, even, of imposing oaths. This view of the subject makes it unnecessary to consider the effect of another provision in the Constitution—authorizing Congress to make "all needful rules and regulations" in regard to such territories. These words, alone, it is at present supposed, would be sufficient to carry the power.

I come now, to ascertain, more particularly, the meaning of the terms "necessary and proper," used in the Constitution. I have, before me Johnson's Dictionary, which is believed to be the best in the English language. By it I find that "necessary" means "needful," "indispensably requisite": and that "proper" means "peculiar," "not common or belonging to more." To justify a measure under the Constitution it must, therefore, be either "necessary and proper," or which is the same thing: "indispensably requisite" and "peculiar" to the execution of a given power. So far from the Bank of the United States being *peculiar* to any of the given

powers, its friends have not yet agreed upon the particular power to which it is to be attached! Hence, it is that the present bank law is wholly *without* a preamble, stating the grounds on which it was predicated. At the same time that Congress were under this inability, they were not able to agree with Mr. Hamilton, as to the grounds of the first bank law, nor with the Supreme Court. They could not agree with Mr. Hamilton that it should be accepted because it would be "*conducive* to the successful conducting of the national finances, *tend* to *give facility* to the obtaining of loans, and be *productive* of considerable advantage to trade and industry in general." The Supreme Court has admitted an incorporation not to be *peculiar* to any of the powers, by contending that it is a means common to many ends, such as building cities and the like. This power, therefore, to say the least, is not *peculiar* or *necessary* to the execution of any of the granted powers; and Mr. Hamilton has himself admitted this, by using the diffuse and ductile terms contained in the preamble to this bill. I will ask with Madison, in his celebrated speech against the first bank law, is it possible to consider these words used by Mr. Hamilton, as synonymous with the words "necessary and proper," used in the Constitution?

Having shown what the true meaning of these words is, I repeat that it is an universal rule of construction in relation to all treaties, pacts and promises, that we ought not to deviate from the common use of language, unless we have the strongest reasons for it. These reasons are in this case, the other way. Again, we are told that when a *pact* or treaty is expressed in clear terms, there is no reason to refuse them the sense they naturally bear. Unless you take the words before us in their proper sense, everything belonging to the States will be swept away. They will be engulfed in the vortex of the general government.

Yet the Supreme Court has said, that the term "necessary" frequently means "convenient or useful," and that it sometimes means "*conducive to.*" This last sense of the word is at least not its

natural sense, and has not been revived, before, since the days of Mr. Hamilton, and of the famous sedition law. It opens too wide a door, to the powers of the general government. In relation to the power of quelling insurrections, for example, the incidental power heretofore implied, has been limited to that of raising armies, and applying force against insurgents. Yet it would be *very conducive* to the end of suppressing insurrections, to prevent them, by establishing good systems of religious and moral instruction. That is a means highly *conducive* to this end, and on the construction of the Supreme Court would justify Congress in taking our schools and churches into their care! This construction would even give Congress a right to *disarm* the people, as nothing is more *conducive* to insurrection, than having the means to make it successful. The latitude of construction now favored by the Supreme Court, is precisely that which brought the memorable sedition act into our code. The object of that law was, to prevent sedition by the people and as *conducive* to that end, all *inflammatory* publications in the newspapers were prohibited! That law has, however, been scouted from the American code. Although prohibiting such publications might be *conducive* to the end in view, it has not *lately* been considered as a direct and incidental power, within the meaning of the Constitution.

It is supposed by the court that the word "necessary" is not to be taken in the sense I contended for, because, in another part of the Constitution, the term indispensably is added to it. If there be any essential difference between "indispensably necessary," and "indispensably requisite" (one of the meanings of the word "necessary," given by Johnson), I am not able to discern it.

Again, the Supreme Court has said, that Congress may use any means "appropriate or adapted to the end." They have not that latitude of power, unless you expunge the word "necessary" from the Constitution.

I had intended, Mr. Editor, to enter into a more detailed enquiry as to the constitutionality of the Bank of the United States.

That, however, is but a single measure, and must probably be submitted to. With respect to it, the maxim "*factum valet fieri non debet,*" must, perhaps, apply. I would yield to it on the single principle, of giving up a part to save the whole. I principally make war against the declaratory decision of the Supreme Court, giving Congress power to "bind us in all cases whatsoever." That measure, the bank, has, perhaps, so entwined itself into the interests and transactions of our people, that it may not, without difficulty, be cast off. There is a great difference, too, between *particular* infractions of the Constitution, and declaratory doctrines having the effect to change the Constitution. That bank, however, is certainly not *necessary* to the existence of the general government. It is not more so, than the banks of the several States It may, like the State banks, *refuse* to lend money to the general government. If with a view to *secure* these loans Congress should take the bank entirely into its own hands, it would so augment the powers of the government as to endanger the liberties of the people. The old bank expired before the late war commenced, and the present one was only established since the peace; so that our country got along without it, through a bloody war, against a most powerful nation, and when a band of internal traitors were arrayed against it. After this, can a bank be said to be *essential* to the existence of a country? Russia, Prussia, and other European governments, of high rank, have no bank, nor had England prior to the period of her revolution. They are, therefore, not indispensable. While this institution is not *necessary,* in relation to the government of the United States, its establishment cuts deep. on the other hand, into the rights of the several States. Among other objections to it, coming under this head, it enables the corporation of the bank, by its *by-laws,* to *repeal* the laws of the several States, (Section 7, of the Act of Establishing the Bank); a right only given to the *Congress* itself, by the Constitution, and that only when acting under its provisions. It repeals a right before possessed by the States, to limit the number of banks within their ter-

ritory. It inundates them with paper money, under pain of submitting to that evil, or breaking faith with their own banks, previously established. If they should consent to this last alternative, as the lesser of two evils, it obliges them to refund from their treasuries, the premiums they have received therefor. These banks increase usury, in the several States contrary to the policy of their laws, not only by permitting them to trade upon perhaps three or four times their capital stock, but by the saving which our banks have been, universally, found to produce. They exempt the persons of the stockholders from imprisonment for their bank debts, and the *other* property of the said stockholders from its liability to pay their said debts, in equal violation of justice, and the laws of the several States. They give exclusive privileges within the States, without any public services rendered to the State therefor, equally contravening a great principle, and the Fourth Article of the Virginia Bill of Rights; and they enable aliens and foreigners to hold lands, within the several States, in contravention of the general policy of their laws. The Supreme Court were pleased to go out of the record and, to tell us, that some of our distinguished functionaries had changed their opinion on this subject. They forgot, however, to inform us, that a motion was made and *rejected,* in the General Convention, to give Congress the power of erecting corporations. They also omitted to state, that Washington hesitated on this subject, till the last moment, and then decided, against the *majority* of his Cabinet, and particularly against the opinion of Mr. Jefferson. As to the point of acquiescence, in addition to the few remarks I made before, it is to be observed that only two bills have passed for establishing banks, while two have been rejected. So that the account stands two and two. There was an interregnum, if I may so say, as to this institution. There has been a chasm in the time of its continuance. It has not even that characteristic which is essential to the goodness of a custom, by the common law. It has not been *continued.* This interrupted acquiescence, too, may have arisen

from another cause. The contract being made, it may have been supposed, that the public faith required that it should be permitted to have its effect; or to run out. We are told by Vattel, that the *suspension* of a right does not *abandon* it, for that the suspension may have been prudent. There is no doubt but many of those who voted for the bank, did it under what was supposed the peculiar pressure of the times. It was not adopted in relation to ordinary times, nor on the ground of its being a constitutional measure. I am possessed of facts on this point, which entirely justify the idea.

Yet this equivocal and interrupted acquiescence has been deemed by the court, in some measure, to settle the question! There have been also some *subsilentio* decisions upon the subject. The court, however, well knows, that decisions of this character, do not *settle* great questions. No decision is deemed solemn and final, which is not rendered upon consideration and argument.

I cannot conclude this number, Mr. Editor, without expressing my regret at another position taken by the Supreme Court. They say, that if the *necessity* of the bank was less apparent than it is, it being an *appropriate* measure, the degree of the necessity is to be *exclusively* decided on, by Congress. If it is only an *appropriate* means, how does the question of *necessity* arise? And, if Congress should assume a power under a degree of necessity short of that contemplated by the Constitution, ought not the court to interfere? Are Congress, "although there is a written Constitution, to follow their own will and pleasure?"

HAMPDEN.

From *Richmond Enquirer,* June 18, 1819.

## IV.

I come now to urge my objection to the jurisdiction of the court. It goes on the ground, that it is not competent to the general government, to usurp rights reserved to the States, nor for its courts to adjudicate them away. It is bottomed upon the clear and broad principle, that our government is a *federal,* and not a consolidated government. I differ entirely from the Supreme Court when they say, that by *that tribunal,* alone, can the decision which they have made be made; and when they further say, that on the Supreme Court has the *Constitution* devolved that important duty.

I am not able to say with certainty from the *language* of the Supreme Court, whether they aver our government to be a national government, or admit it to fe a *federal* one. Two very respectable writers seem to be at issue upon this question, and I shall not undertake to determine the controversy, *absolutely,* between them. Such is the indistinctiveness of the *language* used by the court that it might not be perfectly easy to do it. On the one hand they use the term *people* in a sense seemingly clear to impart the people of the United States, as contradistinguished from the people of the several States, from which the inference would arise, that the States were not known in the establishment of the Constitution, and, on the other hand, they admit that the State of Maryland is a *sovereign State,* and a *member* of the general government, and that the *conflicting powers* of the government of the Union and of its *members* are to be settled by the decision. It is not easy to discern how a government whose *members* are *sovereign* States, and whose powers conflict with those of such States, can be a national or consolidated government. These traits indicate, only, a *federal* government: a consolidated government, on the other hand, is one which acts only on individuals, and in which other States and governments are not known. The opinion of the Supreme Court seems further to incline to the side of consolidation, from their con-

sidering the government as no alliance or league, and from their *seeming* to say that a federal government must be the offspring of the State *governments.* On the contrary, I contend, that those governments have no power whatever to make or to alter the Constitution, and that if a confederal government can be established at all, it must be by the *people* of the several States, and by them only.

Whatever may be the *language* of the court, their doctrines admit of no controversy. *They* show the government to be in the opinion of the court, a consolidated and not a *federal* government. *They* are wholly inapplicable to a government of the latter character. Differing from the court entirely on this subject, I will beg leave to give my own view of it.

The Constitution of the United States was not adopted by the people of the United States, as one people. It was adopted by the several States, in their highest sovereign character, that is, by the people of the said States, respectively; such people being competent, and *they* only competent, to alter the pre-existing governments operating in the said States.

We are told by the *Federalist* that the Constitution was founded on the assent of America, but that this assent was given by them, not as individuals composing one entire nation, but as composing the distinct States: and that the assent is that of the *several States,* derived from the supreme authority in each State, that of the people thereof respectively: and that therefore, the establishment of the Constitution is *not* a *national,* but a *federal* act. We are further told on the same page, that its being a federal and not a national act is obvious from this, that the ratification results not from a majority of the people of the Union, nor even from that of majority of the States; but that it must result from the unanimous assent of all the States that are parties to it, differing not otherwise from their ordinary assent, than its being expressed, not by the legislative authority, but by the *people* themselves: and that were the people regarded in this transaction, as forming one nation, the

will of the majority would bind the minority, but that neither a majority of votes, nor of States, has decided. It is again stated in the same book that the States of New Hampshire, Georgia, Rhode Island, Jersey, Delaware, South Carolina, and Maryland, being a majority of the then States, did not contain *one-third* of the people of the Union; so that a majority of the States were a monarchy of the people of the Union; and that if you even added New York, and Connecticut (to make *nine*, the number of States necessary to the adoption), the people in them all would be still *less* than a majority. If to this fact you add another, namely, that while these nine adopting States might carry the Constitution by mere majorities, the non-adopting States might be *unanimously* against it, the portion of the people of America, who, in that case, might adopt the government, would be, indeed, extremely small. This was not, at the time, an extreme or improbable supposition. It was very reasonable to suppose that the people of the great States, would be almost unanimously against a government, which not only vastly extended the sphere of general legislation, but put the small States, in the Senate, on an entire equality with themselves. A government adopted by this *fragment* of people of the United States, could not be justly considered as a *national* government, but as a federal one; the character of which government is, that all its members, however small, are to be regarded as sovereignties, and placed upon an equal footing.

In the Convention of Virginia, it was said by Mr. Madison, that the people are parties to the government, but not the people as composing one great body, but as composing *thirteen* sovereignties: that were if the act of the former, the assent of a majority would be sufficient, and that that assent being already obtained, (by the previous adoptions of other States), we need not now deliberate upon it. It was said in the same body by Mr. H. Lee that if this were a consolidated government, it ought to be ratified by the people as individuals, and not as States; and that if Virginia, Connecticut, Massachusetts, and Pennsylvania had ratified it, these be-

ing a majority of the people, would by their adoption have made it binding on all States, which not being so, shows that it is not a consolidated government.

So it is stated in the report of 1799, that the powers of the general government result from a *compact,* to which the *States* are parties: and, again, that the *States* are parties to the compact, not in the other senses in which the term "state" is sometimes used, but in the sense of the people—of the States, in their highest sovereign capacity, and that in that sense *they* are consequently parties to the compact.

Can it be said, after this, that the Constitution was adopted by the people of the United States as one people? Or can it be denied that it was adopted by the several States, by the people of the said States respectively, and are *they* not parties to the compact?

The Supreme Court seems to have laid great stress upon the ex-expression, "We, the people of the United States," contained in the preamble to the Constitution. This expression does not necessarily import the people of *America,* in exclusion of those of the *several States.*

In the last sense it may be justly taken, and thus correspond with the *fact,* as to its adoption. But if this were not so, this declaration in the preamble, would be controlled by the fact of the case. A declaration in the preamble of a deed, that it was executed by three persons, does not make it a deed of them *all,* if it were executed by *two* of them only: and *far less* can it make *that* the deed of A, which was only executed by B. It is not here to be forgotten that the preamble is no part of the Constitution. If it were, it would carry to Congress all powers which are conducive to "the general welfare;" which is an idea long since exploded.

The opinion of the Supreme Court would *seem* to import, as aforesaid, that ours is not a federal government because it was not adopted by the *governments* of the several States. The old confederation, I admit, was adopted by the legislatures of the several States: but the validity of that adoption may well be ques-

tioned. That adoption took place, in the infancy of our Republic, and when we had not emancipated ourselves from the opinion, which still prevails in Europe, that the sovereignty of states abides in their kings, or *governments*. *That* is, in this country, and at this day, an outrageous heresy. None but the *people* of a State, in exclusion of its government, are competent to make or reform a government of whatever nature. The governments are their deputies, for limited and defined objects. It is a principle of common sense, as well as common law, that a deputy cannot make a deputy. The power of changing the government was, therefore, not vested in the *governments*, but remained with the people thereof. To say, therefore, that there can be no *federal* government, unless it be adopted by the *governments* of the several States, is to say, that there can be no *federal* government at all. A *federal* government can be made, as ours was made, by the *people* of the several States, and can be made by none other.

The Supreme Court would, perhaps, infer that ours is a consolidated, and not a federal government from the unequal representation which exists, (considered in relation to the several States), in the House of Representatives; and from that government's acting, in some instances, directly upon the people. Neither of these circumstances operates that effect, either under the opinions of learned writers on that subject, in general, nor under authorities particularly applicable in our own country.

As to the first, Montesquieu tells us that the *Lycian* Republic was an association of twenty-three towns, unequally represented in the common council, that these towns contributed to the expenses of the state, according to the ratio of suffrage, and that the judges and town magistrates of the several towns, were elected *not* by themselves, but by the common council. That republic was entirely analogous to ours in the first two particulars, and *stronger* in the last; and yet that learned author says, "Were I to give a model of an excellent federal republic, I should pitch upon that of Lycia."

This idea of that writer is entirely approved by the authors of

the *Federalist.* After quoting the facts just mentioned, respecting the Lycian Republic, and saying of the appointment of the judges and magistrates of the respective cities, that it was a most delicate species of interference in their *internal* administration, and which seemed exclusively to betray the *local* jurisdictions, this work entirely adopts objections founded on those circumstances, and which it entirely overrules, are "the novel refinements of an erroneous theory."

So it is said in the same book, (the *Federalist*), that it is not essential to a *confederacy,* that its authority should be restricted to its members, in their collective capacities, without reaching the individuals of whom they are composed. Again, it is said, that so long as the *separate organization* of the members of a confederate republic be not abolished, so long as it exists for local purposes, it would still be in fact and theory, an association of states, or a *confederacy*: it is further said, that our Constitution, so far from implying an abolition of the State *governments,* makes *them* constituent parts of the national government, by allowing them a direct representation in the Senate, and leaves in their possession, certain exclusive, and very important portions of the sovereign power; and that this corresponds, in every rational import of the terms, with the idea of a federal government: again, it is said, that the State governments are *constitutent* and essential parts of the Federal Government, and that the equal votes of the States in the Senate, is, at once, a constitutional recognition of the portion of sovereignty remaining in the *States,* and an instrument for preserving them. It is said, in another part of the same work that each State ratifying the Constitution, is considered as a *sovereign* body, independent of all others, and only to be bound by its own voluntary act, and that in this relation, the Constitution is a *federal* and not a national Constitution: and, again, that the States are considered as distinct and independent sovereignties by the proposed Constitution. In the same book, while it is admitted that the government has many national traits or features, and is of a

mixed character, it is asserted to have *at least* as many *federal* as national features.

In the Convention of Virginia, it was said, by Mr. Madison, that the government is of a mixed nature: that in some respects it is of a *federal,* and in others, of a consolidated nature, and that it is shown to be *federal* by the equal representation in the Senate.

The *federal* character of the government is further manifested by the provision (2d Sec. of 1 Art. of Consti.), that each State is to have *at least one* member in the House of Representatives; and this, although its population should fall below that of a congressional district. On what other principle is this, than that the States are preserved and the government a *federal* one?

The court has been pleased to say that no State is willing to allow others to control the measures of the general government. If those measures violate the rights of *all* the States, they will be pleased at it. But this is entirely unimportant. Each State has a *several* interest of its own under the compact, which it is its right and duty to preserve.

It results from those principles and authorities, that neither by the mode of its adoption, nor in consequence of its having *some* national features, others being purely federal, and the State governments being indispensably necessary to be kept up to sustain that of the Union, is our government to be considered a consolidated one. It is a *federal* government, with some features of nationality. The State governments are not only kept up in it, but they are so important that they may actually alter and even abolish the present system. By the Fifth Article of the Constitution, the State legislatures may institute amendments to the Constitution, which when reported to and ratified by them, became a part of the Constitution. They may thus amend that instrument from the word, "whereas;" and thus they may even abolish it. Is it not absurd to say, after this, that this is not a federal government, and that the State governments are not known in it? They can mould and modify, the general government, at their pleasure, and they can arrest

its operations by refusing to appoint senators. The power here admitted to belong to the State legislatures to *amend* the Constitution, is no departure from a principle I have before contended for. These amendments are, in effect, made by the *people* themselves, of the several States. They are made by their legislatures, by virtue of a specific warrant of attorney.

Our general government then, with due submission to the opinion of the Supreme Court, is as much a federal government, or a "league," as was the former confederation. The only difference is, that the powers of the government are much *extended.*

In fact, this government may be, in some sense, considered, as a continuation of the *former* federal government. We are told in the *Federalist,* that "in truth, the general principles of the Constitution may be considered less as absolutely *new,* than as an *expansion* of the principles contained in the articles of confederation, though the enlargement of the powers is so great, as to give it the *aspect* of an entire transformation of the old government." Again, it is said, that the new Constitution consists less in the addition of *new* powers, to the government of the Union, than in the invigorating of its original powers. It was also said by Mr. Madison, in the Virginia Convention, that the powers vested in the proposed government, are not so much an augumentation of powers in the general government, as a change rendered necessary for the purpose of giving efficacy to those vested in it *before.*

If, then, everything conspires to show that our government is a *confederal,* and not a consolidated one, how far can a State be bound by acts of the general government violating, to its injury, rights guaranteed to it, by the federal compact? If the founders of our Constitution did not foresee the clashings between the respective governments, nor provide an impartial tribunal to decide them, it only affords another instance of the imperfection of the instrument: of which imperfection its authors themselves were most sensible. We are not without a precedent in favor of such a tribunal: for we are told by Vattel that the Princes of Neufchatel es-

tablished in 1406 the Canton of Bern the judge and perpetual arbitration of their disputes; and many other similar instances are there given.

That great writer also tells us, that among sovereigns who acknowledged no superior treaties form the *only* mode of adjusting their several pretensions, and are sacred and inviolable; and that the faith of treaties form the only security of the contracting parties. It is further said by him, that *neither* of the contradicting parties, has a right to interpret the *pact* or treaty, at his pleasure; for that makes *me* promise to grant or *give* whatever *you* have a mind to, contrary to my intention and *beyond* my real agreement.

In the *Federalist,* the supremacy of either party, in such cases, seems denied. It is said, in substance, that the ultimate redress against unconstitutional acts of the general government, sanctioned by the authority of their Judiciary, there being thus an invasion of the rights of the people, may be redressed by *them,* and people, and effect a change. Again, it is said, that we may safely expect that their *State legislatures* will be ready to sound the alarm to erect barriers against the encroachments of the national authority. It is further said, in the report of 1799, that an appeal was emphatically made, (and not without effect), in the conventions, to the State governments, that they would descry danger at a distance, and sound the alarm to the people. Another writer entitled to consideration has also said, that in case of infractions of the Constitution, by the general government, the State legislatures will sound the alarm; as was done by that of Massachusetts, in relation to what has been called the suability of States.*

*That the State governments are parties to the Federal compact, and able to combine for the purpose of protecting their common liberty, seems to have been admitted by the author of the letters of Publius: "It may safely be received as an axiom in our political system, that the State governments will in all possible contingencies afford complete security against invasions of the public liberty by

In the Virginia Convention, it was said by Mr. Randolph, that if Congress should attempt an usurpation of power, the influence of the State governments will stop it in the bud of hope; and again, that the *States* can *combine*, to insist on amending the ambiguities in the Constitution.

In the celebrated report of 1799, it is stated, as before has been said, that the authority of the Constitution is paramount over that of the governments: that in the case of an infraction of the Constitution, the *States* have a right to interpose, and arrest the progress of the evil; and that it is *essential* to the nature of compacts, that when resort can be had to no tribunal superior to the authority of the parties, the *parties* themselves must be the rightful judges, whether the compact has been violated, and that, in this respect, there can be no tribunal above their authority. It is further stated, in the said report, that if this cannot be done, there would be an end to all relief from usurped power, and that the principle on which our independence was established, would be violated. It is further said, that the *Judiciary is not,* in such cases, a competent tribunal, for that there may be many cases of usurpation, which cannot be regularly brought before it; that if one of the parties, in such cases, is not an impartial and competent judge, neither can its *subordinate* departments; and that, in truth, the usurpation may be made by the *Judiciary itself*. It is further said, that the last resort by the Judiciary, is in relation to the authority of the *other* departments of the government, and not in relation to the rights of

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the national authority. Projects of usurpation cannot be masked under pretenses, so likely to escape the penetration of select bodies of men as of the people at large. The legislatures will have better means of information—they can discover danger at a distance; and, possessing all the organs of civil power, and the confidence of the people, they can at once adopt a regular plan of opposition, in which they can combine all the resources of the community. They can readily communicate with each other in the different States, and unite their common forces for the protection of their common liberty." (See *Federalist*, No. 28.)

the parties to the compact under which the Judiciary is defined; and that on any other hypothesis, the delegation of the judicial power would *annul* the authority delegating it, and its concurrence in usurpation, might subvert, forever, that Constitution which all were interested to preserve.

It, too, says, the report of 1799 (p. 40), if the acts of the *Judiciary* be raised above the authority of the sovereign parties to the Constitution, so may the decisions of the other departments of the general government, which are not carried before the Judiciary, by the forms of the Constitution. This would subject the State rights to violation by the chief *executive* magistrate also, without appeal.

There have been some judicial decisions in full accordance with these principles. In the Court of Appeals of Virginia, in the case of Hunter *v.* Fairfax, that court deemed it its duty to declare an act of Congress unconstitutional, although it had been sanctioned by the opinion of the Supreme Court of the United States. It made this decision, on behalf of what it deemed the *reserved* rights of that State under the federal compact. In the State of Pennsylvania, in the case of Commonwealth *v.* Cobbett, the Supreme Court with the learned and venerable McKean at its head, resolved in the most explicit terms, that all powers not granted to the government of the United States, remained with the several States; that the Federal Government was a *league* or treaty, made by the individual States as one party, and all the States as another; and that when two nations differ about the construction of a league or treaty between them, *neither* has the exclusive right to decide it; and that if one of the States should differ from the United States, as to the extent of the grant made to them, there is *no* common umpire between them, but the *people;* and went on to render a judgment bottomed on these principles, and in opposition to the provisions of an act of Congress.

The Legislature of that State, also, by an act, instructing their senators to oppose the proposed bank law of 1811, has shown its

entire accordance in these principles. The terms of that act are so emphatical and appropriate, that I must beg leave to quote a part of it, *in haec verba, viz:*

"*In the General Assembly of the Commonwealth of Pennsylvania.* * * * The people of the United States, by the adoption of the federal Constitution, established the general government, for *specified* purposes, *reserving* to themselves, respectively, the rights and authorities not delegated in that instrument. To the *compact* thereby created, *each State* acceded in its character as a State, and is a party, the United States forming as to it, the other party. The act of union thus entered into, being to *all* intents and purposes a *treaty* between sovereign States, the general government, by this treaty, was *not* constituted the *exclusive* or final judge of the powers it was to exercise; for if it were to so judge, then *its judgment,* and not the Constitution, would be the measure of its authority. Should the general government, in any of its departments, violate the provisions of the Constitution, it rests with the *States* and with the *people* to apply suitable remedies.

"With these impressions, the Legislature of Pennsylvania, ever solicitous to secure an administration of the federal and State governments comformably to the true spirit of their respective constitutions, feel it their duty to express their sentiments, upon an important subject now before Congress—viz.: the continuance or establishment of a bank. From a careful review of the powers vested in the general government, they have the most positive conviction that the authority to grant charters of incorporation, within the jurisdiction of any State, without the consent thereof, is not recognized in that instrument, either expressively or by any *warrantable implication.* Therefore, resolved, by the said House of Representatives, of the said Commonwealth of Pennsylvania, in general assembly met, that the senators of this State in the Senate of the United States, be and they are hereby, instructed, and the representatives of this State, in the House of Representatives of the United States, be and they are hereby, requested, to use every

exertion in their power, to prevent the charter of the Bank of the United States from being renewed, or any other bank from being chartered by Congress, designed to have operation within the jurisdiction of any State, without first having obtained the consent of the Legislature of such State."—"Passed both houses, the 11th January, 1811."

I have no knowledge, Mr. Editor, of what may have passed in other States on this all important subject. It gives me, however, great pleasure to quote these high acts of the judicial and legislative bodies, of the respectable State of Pennsylvania. That State, great in its population, in its resources, and its devotion to the cause of republicanism, ought to be heard, and its principles and its doctrines accord entirely, with those of the fathers of the Constitution.

Of these two judgments of the Supreme Court of the respectable States of Pennsylvania and Virginia, I may truly say, that they passed on great deliberation, and *unanimously.* I am justified in making this *last* declaration, by the example of the Supreme Court. For reasons which may easily be conjectured, they have vaunted that the opinion now in question was rendered unanimously in that court. We hear it also said from another quarter, and no doubt with the same view, that *some* of the judges who gave it, had before been accounted republicans. If so, their works would lead me to believe that they have changed their politics, in thus changing, they have undergone the common fate attending the possession of power. Few men come out from high places, as pure as they went in. It is only the elect who can pass, unhurt, through a fiery furnace. We read of a fabled den, in ancient times: from which were seen no returning footsteps—*"nulla vestigia retrorsum."* All the victims were slain as soon as they entered into it. Our judges have met a happier fate; but *if* the information now alluded to, be correct, it would seem that their politics have at least been changed.

How, after all this, Mr. Editor, in this contest between the head and one of the members of our confederacy, in this vital contest

for power, between them, can the Supreme Court assert its *exclusive* right to determine the controversy. It is not denied but that the Judiciary of this country is in the daily habit of far outgoing that of any other. It often puts its veto upon the acts of the immediate representatives of the people. It, in fact assumes legislative powers, by repealing laws which the Legislature have enacted. This has been acquiesced in, and may be right, but the present claim on the part of the Judiciary, is, to give unlimited powers to a government only clothed, by the people, with those which are limited. It claims the right, in effect, to change the government: to convert a federal into a consolidated government. The Supreme Court is also pleased to say, that this important right and duty has been devolved upon it by the *Constitution.*

If there be a clause to that effect in the Constitution, I wish the Supreme Court had placed their finger upon it. I should be glad to see it set out *haec verba.* * * * When a right is claimed by one of the contracting parties to pass finally upon the rights or powers of another, we ought at least to expect to see an *express* provision for it. That necessity is increased, when the right is claimed for a *deputy* or department of such contracting party. The Supreme Court is but a department of the general government. A department is not competent to do that to which the whole government is inadequate. The general government cannot decide this controversy, and much less can one of its departments. They cannot do it, unless we tread under foot the principle which forbids a party to decide his own cause.

While we are told by Vattell, in a passage formerly quoted, it is often proper for the head and members of a confederacy to establish an umpire or arbitrator of their deputies, he also tells us that that head is competent to decide the troubles which exist between the several members. The head has not the jurisdiction in the first case, because it is interested; and has it in the second because it is not. The head of the government is entirely disinterested, in relation to the disputes of its *members.* Our Constitution has gone by this principle,

in both its aspects. It *has* given to the Supreme Court, in express terms, a right to decide controversies between two or more States: it has not given to it a jurisdiction over its own controversies, with a State or States. It could not give it, without violating a great principle; and we certainly cannot supply by *implication*, that which the convention dared not to express. In deriving such a power the least that should satisfy us would be an *express* provision in the Constitution. If it be said that this power is carried, under the *general* words of extending the jurisdiction of the Supreme Court to "all cases arising under the Constitution;" the answer is, that these words may be otherwise abundantly satisfied: they do not *oblige* us to violate the great principle before mentioned. As to this case, the Constitution is a law *sub graviori lege*. That paramount law is the great principle I have just mentioned. A constitution giving by these words, a jurisdiction in the case before us, would equally subject the Emperor of Russia to the jurisdiction of the Supreme Court! There is another principle which is also conclusive. The rank of this controversy between the head and one of the members of the confederacy, may be said to be *superior* to those depending between two of the members: and the lawyers well know, that a specification beginning with a person of inferior grade, excludes those of a superior. If in the face of these great principles, this power was intended to be given would it not have been expressly provided for in the Constitution?

I have thus, Mr. Editor, stated to you SOME of the objections I have to the opinion of the Supreme Court. There are other points in that opinion, equally objectionable. I leave them to abler hands. The objections I have stated are of overruling influence if they be well founded. I have shown, or endeavored to show, that the Supreme Court has erroneously decided the actual question depending before it: that it has gone far beyond that question, and in an extra-judicial manner, established an *abstract* doctrine: that they have established it in terms so loose and general, as to give Congress an unbounded authority, and enable them to shake off the lim-

its imposed on them by the Constitution: I have also endeavored to show that the Supreme Court has, without authority, and in the teeth of great principles, created itself the *exclusive* judge in this controversy. I have shown that these measures may work an entire change in the Constitution, and destroy entirely the State authorities. In the prosecution of this plan, it has been deemed expedient to put the State legislatures *hors du combat*. *They* might serve, at least, to concentrate public opinion, and arrest, as they have heretofore done, the progress of federal usurpation. The people of this vast country when their State legislatures are put aside, will be so sparse and diluted, that they cannot make any effectual head against an invasion of their rights. The triumph over our liberties will be consequently easy and complete. Nothing can arrest this calamity, but a conviction of the danger being brought home to the minds of the people. That people, who, in this country have, heretofore, put down the enforcement of the sedition law, which, in the eyes of the judges, was entirely unexceptionable!: that people, who, in England, reversed the infamous judgment in the case of ship money, and the no less infamous doctrines of Mansfield, on the law of libels, can reverse the judgment now in question. To that authority I appeal. I invoke no revolutionary or insurrectionary measures. I only claim that the people should understand this question. The force of public opinion will calmly rectify this evil. I repeat, however, that I have no sanguine presages of success. Such is the torpor of the public mind, and such the temper of the present times, that we can count on nothing with certainty. It would require more than the pen of Junius, and all the patriotism of Hampden, to rouse our people from the fatal coma which has fallen upon them.

HAMPDEN.

June 22, 1819.

## LIST OF PRINCIPAL AUTHORITIES.

The Roane MSS., kindly loaned by Mr. E. C. Harrison.
Files of the *Richmond Enquirer.*
Times of the Tylers.
Journals of the Va. House of Delegates.
Virginia Law Register.
John Quincy Adams' Diary.
Jefferson's and Madison's writings.
Virginia Law cases.
Writings of J. Randolph Tucker.
Wheaton's reports.
Call's reports.
Cranch's reports.
Leigh's reports.
Munford ibid.
Henry's Life of Patrick Henry.
Green Bag, Vol. V, 320, article by S. S. P. Patteson.
Making of the Nation, Walker.
Adams' and Schouler's Histories of the United States.
Hart's Formation of the Union.
Ford, Paul Leicester, Essays on the Constitution.

N. B.—The author desires to express his hearty thanks to Judge T. R. B. Wright, Mr. E. C. Harrison, Mrs. James Roane, Miss Frances Harwood, Mr. B. B. Minor, and others, for valuable information furnished.

# ROANE CORRESPONDENCE.*

SPENCER ROANE TO JAMES MONROE.

KING AND QUEEN COUNTY, MARCH 28, 1799.

DEAR SIR:—I have to reproach myself for having omitted to write to you since your return to America. Believe me, it has not been owing to any diminution of my former friendship, and I trust you know me well enough to be convinced, that my respect for your public character has been increased, on contemplating your Republican and patriotic, (though illy requited), conduct in France.

A particular circumstance now impels me to write you. I am credibly informed that P. Henry, Esq., has offered himself a delegate for the county of Charlotte, and that there is little or no doubt of his being elected. He has avowed, in a public speech, his design to be to arrest the progress of the State Legislature in opposing the measures of the general government; which is, as I conceive, to attack the republican cause in its last citadel. You may judge, from my connection with that gentleman, † how I am chagrined and hurt by the present aspect of his political opinions: but that regret has given place to an ardent desire on my part, to counteract him, by every means tending to defeat his schemes. It appears to me advisable to notify the above circumstances to some of my Republican friends; and I hope and trust, that yourself and your illustrious friend, Madison, will not hesitate in coming into the Legislature, on such a momentous occasion. Lest the latter gentleman not be apprized of the above circumstance, I submit it to your judgment, whether you had not better acquaint him therewith.

Be pleased to present my respects to Mrs. Monroe, and believe me to be, with much respect and esteem,

Yr. Mo. obt. Svt.,

*Jas. Monroe.* SPENCER ROANE.

*These letters were furnished by Mr. E. C. Harrison, of Virginia, and by the Bureau of Manuscripts of the Library of Congress, through the kindness of its chief, Mr. Worthington C. Ford.

†Roane's first wife was a daughter of Henry.

### Spencer Roane to Edmund Randolph.

King and Queen, August 18,1799.

Dear Sir:—I had the pleasure to receive yours of 13th two days ago. I am highly sensible of the honor you do me in submitting to my perusal your labors upon a most important Topic, and in requesting a communication of my sentiments thereupon. Under ordinary circumstances I would most cheerfully turn my thoughts to that subject, and convey the result to you, feeble and unsatisfactory as it might be: But, my dear sir, such is the unhappiness of my present situation, arising from the loss of a beloved and amiable wife, that my mind is wholly incapable of such an exertion, as would enable me in the smallest degree to embrace that important and comprehensive subject. I have no hesitation, however, to say, that I have always entirely concurred with you in opinion, as to the erroneousness and mischief of that theory which sets up the common law as a part of the Code of the United States. Should it be perfectly convenient for you to favor me with your strictures upon that subject, without counting with any kind of certainty upon any observations from me, I should be extremely gratified with the perusal.

Just at the time of receiving your letter, I was mediating to request your opinion upon a law case. It respects myself, and arises out of the will of Mr. Henry. He has, in that will, given a very large estate principally to his widow and his children by her, in derogation, as I conceive, of justice, and of promises made to me, and others, to make the portions of his daughters equal. As I never expected any considerable portion with his daughter to whom I was married, and count money as nothing compared with conjugal happiness of which her death has bereaved me, I should rest satisfied even under the disposition of this will, but that I understand some of the favored parties are concluding, and no doubt, wishing, that

the small legacy left to my late wife, is lapsed by means of her dying in the lifetime of the testator.

I will take the liberty to send you herewith a copy of Mr. Henry's will and codicil, together with copies of certain other documents, and a statement of facts, and request the favor of your opinion upon certain points therein particularly specified.

If it should be your opinion that I have any rights under the said will, or paramount therto, I wish to assert them, in an amicable manner, if his executors are similarly disposed, and with all proper respect for Mr. H.'s memory. Partly with this view, in that event, I have thought of traveling up the country shortly; and I will be much obliged to you, if you can do it conveniently, to furnish me with your opinion by the return of the bearer. He rides post to Richmond, and I expect will wait a reasonable time for your answer. If, however, he does not, will you be pleased to put a letter for me into the post-office at Richmond, and I shall get it by the post after, unless I should have occasion to send to you for it sooner.

I am, dear sir,

With real respect and esteem,

Yr. Mo. obt. Svt.,

SPENCER ROANE.

*Edmund Randolph, Esq.*

SPENCER ROANE TO WILLIAM H. ROANE.

RICHMOND, VA., March 10, 1815.

DEAR WILLIAM:—Judge Brockenbrough will have published in the *Enquirer* and *Argus* of *to-morrow* a simple notification that you are a candidate. These papers will get to the Bowling Green before Monday. I send also, near 200 *short* printed addresses to the Freeholders. It was written by Brockenbrough, and corrected and approved by me. No doubt it will please you. Some of these may

be stuck up in all publc places in district; and the rest distributed in the form of letters, through the district. Being addressed to the Freeholders generally, they will be thereby gratified, while by endorsing them to influential characters, that will be a mark of attention to them which will also please. You had better be as speedy as possible in distributing them through your zealous and tried friends. Judge Brooke has arrived and will, I believe, write to some influential men in Caroline, and *I* think we will have the notification published also in the Fredericksburgh paper. Brooke thinks your chance good. Judge Brockenbro' and myself think you had better go to Caroline Court if possible, and where ever you go address the people in a short speech. But if you do not go, make the proper arrangements, and perhaps an apology for not going may be necessary. I entirely concur with you that a publication of y'r intentions promptly may keep down opposition. In Caroline there are many candidates for the county. Hay Battail (?), F. Corbin, J. Bernard, &c., &c. Send addresses to them. But I forbear to give you any further counsel. Brockenbro' has written to Essex and to Coleman. Dr. Austin Brockenbrough w'd distribute the papers for you in Essex.

In every point of view y'r success in y'r present pretentions is very important—but your health is much more so. Take care of yourself, and by all means avoid exposure and colds. Iam charged by Dr. Everett to urge this upon you. I think you had best to get a gig to make the LONG rides—as it may be too fatiguing on horse back to go very far. I again entreat you to take care of your health, and write me by the next mail, and by every opportunity how it is and what are your prospects—I am in haste. Dr. Wm. y'r aff. father, S. ROANE.

P. S.—I am nearly well. I shall retain 2 or 3 of the addresses, and *perhaps* get Judge Brooke to send them to Caroline.

☞Pray take care and avoid the *epidemic.*

*Wm. H. Roane, Esq., Dunkirk, King & Queen co.*

FRAGMENT OF COMPLAINT AGAINST THE WILL OF PATRICK HENRY.

To the Honorable George Wythe, Judge of the High Court of Chancery.

Humbly complaining shewith unto your Honour your orator, Spencer Roane, of the county of King and Queen, in his own right, and as administrator of Anne Roane, deceased his late wife: That sometime in the spring of the year one thousand seven hundred and eighty-six, your orator was induced to pay his addresses to the said Anne, a Daughter of Patrick Henry, now deceased, by his first marriage. That this was with the entire consent and approbation of the said Henry. Your orator charges that it was generally understood and stated by those with whom he conversed as having been uniformly declared by the said Patrick Henry himself, that he intended to make the fortunes of all his Daughters Equal, and that this intention was expressly and particularly declared by the said Henry to your orator, when he gave his permission to address his said Daughter as aforesaid. Your orator further charges that finding his addresses likely to prove successful, and apprehending also from his increased acquaintance with the family of the said Patrick Henry that there was considerable Danger of the Children of his first marriage being unjustly dealt by through the influence of his then wife, the present defendant, Dorothea Henry, which apprehension has since been fully verified to your orator's great loss and injury, he conceived it proper to state to the said Patrick Henry the circumstances of his own private fortune, which was but moderate, by a letter addressed to him, which letter was also calculated to lead him, the said Henry, in a delicate manner, if he so chose, to declare particularly what he meant for the portion of his said Daughter, so that your orator might be under a Certainty of not suffering through the influence aforesaid. Your orator charges that the said Henry received the letter aforesaid, that he declined a written answer thereto, but desired a personal interview with your

orator, which accordingly took place, but without the presence of any third person, and the said Patrcik Henry thereat did expressly and explicitly declare that he would make the portion of the said Anne at least one thousand pounds, and fully equal to what he might give to any other daughter. Your orator further charges that shortly after this a treaty was held by the said Patrick Henry with Callohill Minnis, on behalf of and acting as guardian for Philip Aylett, then a minor, who was addressing Elizabeth, another Daughter of the said Patrick Henry, in which your orator is informed, and so expressly charges that the said Henry declared his Intention to be to give Each of his said Daughters, Elizabeth and Anne, one thousand pounds at least, and to make them fully Equal to any of his other Daughters, and that shortly afterwards, viz: on or about the sixteenth day of August, in the same year of one thousand seven hundred and eighty-six, the said Patrick wrote a letter to the said Callohill, bearing Date the same Day, entirely and fully to the same Purport and Effect, to which letter or an authenticated Copy thereof, your orator begs leave particularly to refer, and prays that it may be taken as a part of this bill. Your orator further charges that this letter was shown to him by the said Philip Aylett soon after the receipt thereof, and before his your orator's marriage; and being fully and entirely confirmatory of similar declarations made by the said Henry repeatedly to your orator and to others, who communicated the same to your orator, and amounting in itself as your orator humbly conceives to a complete agreement in favour of all such who might with his consent address any of his Daughters; it had the Effect to banish from your orator's mind, in addition to the declaration and information before stated, every idea that it was possible that he might be injured through the influence before mentioned, or any other cause whatever. Your orator expressly charges that relying upon the said letter, the said declarations, and the said information, he intermarried with the said Anne with the entire consent and approbation of the said Patrick Henry, her said father; and that this was on or about the sixth day

of September, in the year aforesaid, a considerable time after the said circumstances came to his knowledge. Your orator further begs leave to state to your honour that the aforesaid letter to said Minnis bears no marks of being a mere confidential letter to him, and for his sole perusal; that there was no restrictions upon the said Minnis not to show it to others; that the said Patrick Henry was not in the habit of commuicating confidentially with the said Minnis; and that the said letter being written to the guardian of a person who was addressing one of his Daughters, it must necessarily have been supposed by the writer that it would be shewn, or at least its contents communicated to another suitor of another daughter, known by the said writer to be on terms of intimacy with that suitor for whose benefit it was particularly written. Your orator also further charges that the said Patrick Henry did on a variety of occasions, and to sundry persons, both before and after the marriage of your orator as aforesaid, and even until the time of his death, declare his Intention to be to make all his Daughters Equal in Point of fortune; and especially did often declare to that Effect to his wife, the present defendant, Dorothea Henry, without any injunction on her to keep it secret, or without such declaration being in any manner private or confidential. Your orator further expressly charges and expects to be able to prove to the satisfaction of your Honour that his said Widow, Dorothea Henry a Defendant hereto, has often declared both before your orator's marriage, as aforesaid, during her Coverture, and since her widowhood, especially the latter, that her said husband's intentions relative to the fortunes of her daughters were always avowed by him as above mentioned; and that these declarations of the said Dorothea were made by her in the most open manner, well calculated to inspire a belief in suitors to that Effect. Your orator also expressly charges and expects to be able to prove, that the said Dorothea has acknowledged that her said husband in his lifetime informed her of the contents thereto in substance as is above stated. He, your orator, also expressly charges and expects to be able to prove that the

said Dorothea has frequently admitted since the decease of her said husband that the declarations of him in favour of the said Anne, and Elizabeth Aylett, his Daughters, would Entitle them to recover as much as has been by him *directly* given to her daughters, but wished to except from the operation of such declarations by him to his daughter, Martha Fontaine; whereas, your orator entirely confides that there is no ground whatever for such an exception— all which several declarations and acknowledgements of her, the said Dorothea, your orator prays she may make answer unto particularly and specially, and hereby expressly charges and puts them in issue. Your orator also expressly charges that he and his said deceased wife, in her lifetime, have received a variety of letters at sundry times from her said father, which with some others written to other persons he will in due time exhibit to this honourable court, confirming in the fullest manner his declared intentions as aforesaid, of Equality among his Daughters as to fortune, and expressing the greatest regard and affection for his said Daughter, Anne; and in particular your orator charges that he did by many declarations, and many letters declare an Entire Equality as between his said two Daughters, Elisabeth and Anne, not only in point of amount, but also as to the time of advancement never giving even a Negro or a horse to one without making a similar advance to the other, or acknowledging himself indebted to that other in consequence thereof.

Your orator further charges as a particular fact indicative of the said testator's own sense of his agreement as aforesaid to your orator, that some time in the fall of the year one thousand seven hundred and eighty-seven, on the application of your orator to him for money, he being at that time considerably distressed in his Circumstances, the said Patrick Henry transmitted to your orator a deed for one thousand acres of land lying in Norfolk county, on the back whereof was written a letter to your orator, stating that he, the said Patrick Henry, had once refused twenty-seven shillings per acre therefor, and at another time, nineteen shillings per

acre. Your orator charges expressly that he had before this time received near three hundred pounds worth of property from the said Patrick Henry, which added to the price of the said land as estimated by him, the said Henry will make a sum far greater than the sum of one thousand pounds; though, perhaps, less than was advanced to some other Daughter, and your orator expressly relies upon this circumstance to show the said Henry's own sense of his agreement as aforesaid. Your orator further charges that not being able to sell the above land readily for Cash, it being unsalable singly, as being an undivided tract of a large tract belonging to the said Henry, and others called green-sea land. He some short time thereafter returned the said deed with the said letter thereon indorsed, to the said Henry, who your orator is informed has since sold the said land at what price, particularly, your orator is ignorant, and prays it may now be disclosed; but your orator has never received any kind of compensation therefor. Your orator prays that the said Deed and letter may now be produced by these defendants to establish the—

SPENCER ROANE TO THOMAS JEFFERSON.

RICHMOND, OCT. 28, 1815.

DEAR SIR:—I received a few days ago, your favor of the 12th inst., enclosing the scheme of my opinion, in case of Martin *vs.* Hunter. I am very much flattered and gratified by the receipt of that letter.

Going up to the springs about the last of August, I had intended to avail myself of that opportunity, to pay homage of my respects, to our first citizen. Your absence from home both as I went and came, deprived me of that pleasure, which was to me a source of real regret. Believing the question discussed in that paper to be of the first importance, and that your willingness to aid the cause of truth and public utility, was only equalled by your ability to

serve it, I had designed had it fallen in my way, to ask your opinion upon it. With my present impression on that subject, I am not sure that the opinion (merely), of any man, could have produced a change: but if there be such an opinion, I am frank to say it would be that of Mr. Jefferson. Finding my friend, Colo. Monroe, at the springs, I submitted the paper to his perusal and as he seemed entirely to concur in my conclusion, it strengthened the claim of this paper to your inspection. I was, therefore, highly satisfied, when, on my return, he offered to send it to you.

I am much flattered and gratified by the result of your letter: flattered by the very civil manner in which you are pleased to speak of my humble labours; and gratified to find, that I have not erred, in the great principles at least, on which the question seems to turn. Your opinion, as far as it goes, is a great authority, both for the considerations before alluded to, and because you are believed to be equally friendly to the just claims of both documents.

With sentiments of highest consideration, respect and esteem, I am, Dear Sir,

Yr. mo. obt. servt.,

SPENCER ROANE.

*Thomas Jefferson, Esq.*

SPENCER ROANE TO WILLIAM H. ROANE.

JAN. 29, 1817.

DEAR WM.:—I have received yours covering one from Dr. S.—. I have no inform'n at all on the subject, and suppose your —— may be right. I have seen your votes on the Compensation Law and do not know that I should have differed. I presume you *meant* to have voted to give the repeal operation from the first, this session, but was out voted. There is a great difference between not disturbing the law *before* it was known to be disagreeable, and what would rip up and disturb vested rights, and cause money actually

received to be refunded, and making the repeal take Effect, after the public sentiment was shown. It would *seem* that the repeal was put off to Receive the benefit of the Law.

You ask my op'n as to receiving 6 dollars only for the present session. I would not receive more; I would *release* to the public the surplus; and if your Engagements Should make this Course very inconvenient to you, you may call on me for aid. I cannot give you a more decisive proof of my opinion.

The family desire their love. Write me often, and say how yr. health is. In haste,

Yr. Aff. father,

S. Roane.

*Wm. H. Roane, in Congress, Washington.*

Thomas Jefferson to Spencer Roane.*

Monticello, June 28, 1818.

Dear Sir:—I was much rejoiced to see your name on the roll of Commissioners to meet at Rockfish Gap, and to report to the Legislature on the subject of our University. The day of our meeting will be important in the history of our country because it will decide whether we are to leave this fair inheritance to barbarians or civilized men. The subject of our consultations is vast, because it spreads over all science, and will, I hope, engage several of our colleagues to prepare such sketches, at least, of a report as will require more consideration than can be given to it there. I pressed Mr. Madison very much to undertake this task, but he perseveringly threw back the undertaking on myself. I shall accordingly prepare the best sketch I can, and the object of this letter is to pray you to make a stage of this place, and to meet Mr. Madison here a day or two beforehand, that we may advise on what will be proposed. I mention this to nobody but yourself and him, to

*Hitherto unpublished.

avoid jealousy, and that even this little conciliabutum may be unknown and unsuspected. We shall leave this place together the Thursday preceding the 1st of Aug.; would ask you, therefore, to give us the Wednesday at this place, and of course, that you should arrive here on Thursday at farthest, as he will. I set out within 3 or 4 days for Bedford, but shall be returned in time to receive you here; and in the hope you will do me this favor, I salute you with high respect and friendship.

TH. JEFFERSON.

*Judge Roane.*

SPENCER ROANE TO WILLIAM H. ROANE.

RICHMOND, JAN. 4TH, 1819.

DEAR WILLIAM:—I have received your three last letters—the last by Mr. Newton, whom I have not seen—with papers relating to the claim against Garnett, which I will read as soon as I can. I am glad to find your health is improving, and hope you will not give it a relapse by exposure to cold or the like, tho' we wish to have you with us. I presume Norfolk is a milder climate than this, until towards the close of winter. Fleet has paid 5,000 and taken in his bond. The money is in the bank. I intended to consult Dr. Brockenbro' as to the U. S. Bank stock, and will get it invested if I can at 110 (illegible), or you cd. get W. Dykes to do it for you. The Dr. is extremely busy to-day, and I cd. not speak to him. Some of his clerks inform me the price of U. S. Bank stock is say 110 to 112—advance. Bro'bro will advise for the best.

I am just come up from the bank, and I am happy to say that Mr. Dykes is continued a director, I believe, without any difficulty. I had found Bro'bro' very much disposed (illegible) him.

Give my respects to Mr. Dykes, and write us often about yr.

health. Has your cough and spitting blood entirely ceased? The family send their love.

Yr. Aff. father,

SPENCER ROANE.

*Directed: William H. Roane, Esq., now in Norfolk.—Mail.*

SPENCER ROANE TO WILLIAM H. ROANE.

RICHMOND (?), 4TH FEBY., 1819.

DEAR WILLIAM:—I am glad to hear by Tazewell and Pollard that you are nearly or quite well. Whenever it suits you to come up, we shall be glad to see you, and I hope the bulk of the winter will be shortly over. I have just seen Dandridge. The stock is not yet purchased, but he has given orders that it shd. be [illegible] close on consultation he says with Dr. Bro'bro', which orders ought before to have been peremptory. He supposes it will be had at or under par. I have not received a letter from Barbour, who is for sustaining the Bank of U. S., though he says great sins have been committed by the Directors.

Hearing that you are well, and Eliza having recd. many courtesies from others, she will give to-morrow ev'g a party at which will be all or most of your friends. On Sunday Pollard and I shall expect Tazewell. I hope Julia and Anne are doing tolerably. As usual, in great haste,

Your affectionate father,

S. ROANE.

I hear of failure in Norfolk. Are any of our friends involved? *Directed: Wm. H. Roane, Esq., now in Norfolk.—Mail.*

SPENCER ROANE TO WILLIAM H. ROANE.

RICHMOND, FEB. 16, 1819.

DEAR WILLIAM:—I yesterday received a letter from Mr. Dykes, by which I was glad to learn that you were well (as others had also informed me), tho' you yourself made some complaints in your last. Tho' we wish very much to see you, I think you had better praize the bridge that carries you safe over, and remain somewhat longer where you are, especially as Mr. D. seems so much pleased with your company. The weather here for a few days past has been *very bad,* and the streets almost impassible. I hope before the Assembly (which will be ab't the 5th of March), you can safely come up, as I also wish you to see your friends before they disperse. Nothing but your own good wd. prevent my urging you to come up *immediately*.

I have to-day deposited in the vaults of the Virga. bank a certificate in your name for 50 shares U. S. bank stock, as per memo., by Mr. Dandridge Enclosed. The shares cost, as you will see, $98 each. I have the $87.13, as also about $30 dollars rec'd from Brewster at your command. I presented your Draft on the Auditor, but as he told me you were only allowed about $70, I declined receiving it. He told me, however, that there was some *private* agreement among the counsellors by wch. you wd. receive more. I leave it to you to settle when you come up. We are well. I have not heard very lately from Julia. Washington is slowly recovering, but I fear he will have a stiff ancle. I am so busy is the reason I have not written more to my wife and Eliza. Desire their love.

Yr. Aff. father,

S. ROANE.

*Hon'ble Wm. H. Roane, Norfolk, care of Mr. Dykes.*

*Feb.* 16, 1819.

SPENCER ROANE TO JAMES MADISON.

RICHMOND, MAY 22, 1819.

DEAR SIR:—The enclosed numbers, written by me, were published a few weeks ago in the *Enquirer*. They relate to a subject as cardinal, in my judgment, as that which involved our independence. Mr. Ritchie had some extra copies struck, and has furnished me with a few, to be distributed among my particular and my distinguished friends. I presume to ask your acceptance of a copy.

No man in our country has done so much as you in establishing our present happy system of government, or can feel a greater interest in preserving it.

Be pleased to accept the renewed assurance of my high consideration, respect and esteem. I am, dear sir,

Your obt. servt.,

SPENCER ROANE.

*James Madison, Esq.*

SPENCER ROANE TO THOMAS JEFFERSON.

RICHMOND, FEB. 25, 1821.

DEAR SIR:—Mr. Thweatt has sent me your favour to him of 19th ultimo. As that letter was produced by mine to him, I owe you an apology for having caused you the trouble. Be assured that no man respects your repose more than I do, or would be more unwilling to disturb it. Your claims to that repose, arising from the most eminent services, and from the weight of years, are so strong and touchingly portrayed, that I am compelled to say, "almost thou persuadest me to be a Christian." Although, therefore, in losing our leader, we run the risk of losing our all,

not a whisper of my breath shall be raised against it. Your latter days ought to be as serene and as happy as your life has been illustrious and useful to your fellow-men.

The very flattering mention you are pleased to make of me, in your letter, I shall prize as the highest honor of my life. I have neither power nor leisure to render any political service to my fellow-citizens, yet I see the dangers which surround us, and shall be always ready to lift my voice against them. On account of the last paragraph in your letter, I have taken the liberty to send it to Colo. Taylor. I have done this under the approbation of Governor Randolph. Colo. Taylor will be highly gratified by your just and strong testimony in favor of his inestimable work. To that work may already, in a measure, be ascribed the revival which has taken place in the subject of State rights.

I congratulate you on the resolutions of our Assembly produced by the citation of the Commonwealth into the Federal Court; and I also congratulate you most sincerely on the support which the university has again received.

With sentiments of the highest consideration, respect and esteem, I am, dear sir, Your obt. servant,

SPENCER ROANE.

*Thomas Jefferson, Esq.*

THOMAS JEFFERSON TO SPENCER ROANE.*

MONTICELLO, JUNE 25, 1821.

DEAR SIR:—Encloses his Algernon Sydney papers to Jefferson and receives the hearty endorsement of the same from J. as follows:

I have now to thank you for the papers of Algernon Sydney, which I had before read with great approbation successively, as they came out. I had hoped Mr. Ritchie would publish them in

* Hitherto unpublished.

pamphlet form, in which case I would have taken half a dozen or a dozen myself, and enclosed them to some of my friends in the different States, in the hope of exciting others to attend to this case, whose stepping forward in opposition would be more auspicious than for Virginia to do it. I should expect that New York, Ohio, and perhaps Maryland might agree to bring it forward, and the two former being anti-Missourians, might recommend it to that party. The 2d No. of Fletcher concentrates the points of alarm very strongly.

Ever affectionately and respectfully yrs.,

TH. JEFFERSON.

*Judge Roane.*

SPENCER ROANE TO WILLIAM H. ROANE.

AUGUST 6, 1821.

DEAR WILLIAM:—We arrived here this morning. I am greatly better, and think I shall be soon quite well. Mr. Jefferson and Judge Carr have just called on me. The former is quite well, and has exacted a promise from us to call on him on our return. The University looks well, and has greatly progressed.

On reflecting upon Obadraks conduct, I wish you could sell him, to be sent *out of the State*. He is well worth $600, but you may take $500 or thereabout for him. You can recommend him as an excellent driver, and house servant, tolerable carpenter, and good for almost any business. You may also say that he is merely sold for insolence to his mistress, and if you can sell him (with't much trouble), you had best not let him know it till it is done. If he is with Drewry, sell him, nevertheless. Please write me at once about the Rams, &c. Our horses have performed well, so far, but the roads are bad.

Your Aff. father,

S. ROANE.

P. S.—Eliza desires me to repeat to you her wish that you wd. get 2 pr. of shoes of her's from [illegible], and send them by Mr. Selden or other oppo. to the Sulphur Sprngs. In case of selling Oba., please to look out for another for me. S. R.

I have just got a note from Dr. Everette; he is waiting for us at Mr. Divers's.

*William H. Roane, Esq., Richmond.—Mail.*

### Spencer Roane to Archibald Thweatt.

Richmond, 11 Dec., 1821.

Dear Sir:—Last night I duly received your favour of yesterday. I had before received the pamphlets and (———) them all except that for Col. Taylor, which will be sent on to-day. They were well received, and as soon as my business will admit, I will give mine another reading. I had also received the subscription paper you sent me; which (feeling myself delicately situated in regard to it), I put into the hands of Mr. Nicholas, who lodged it with Ritchie. There I expect it will sleep. Ritchie and Gooch have not liberality and public spirit enough to engage in the publication of books or pamphlets unless they conduce to their immediate emolument.

The Governor's patriotic message on the subject of the Supreme Court has been very well received by the republicans here, in consequence of the public mind having been somewhat prepaired on the subject. But such is the apathy of the times, and the dearth of talents in the Legislature, that I doubt whether anything will be done by that body. Certainly not, I expect, unless they should be aided by some of our veteran statesmen. I shall write to Colo. Taylor to-day and touch on that subject. If you could do likewise with Mr. Jefferson (as I cannot take the liberty to do), his name would settle the controversy. The career

of this high court must be stopped or the liberties of our country are annihilated.

Colo. Taylor has another work in the press at Washington. It is styled "Tyranny Unmasked," and I hope it will do much good. I lost the reading of it, in manuscript, by being at the Springs; but I understand it is, perhaps his chef d'œuvre, and that the style is popular and pleasing. This venerable patriot deserves great praise for his intrepid and unceasing efforts to preserve our beloved confederacy.

The letter you enclosed was duly sent to the Gent., to whom it related, was confirmed in his office on Saturday last.

My health is now tolerable. I thank you for the interest you take in relation to it. With great respect and esteem, I am

Your friend and servant,

SPENCER ROANE.

*To Archibald Thweatt—in great haste.*

SPENCER ROANE TO ARCHIBALD THWEATT.

RICHMOND, DEC. 24, '21.

DEAR SIR:—I have just a moment to acknowledge the receipt of your favor of 22nd. The subject of amending the Constitution, in relation to decisions of the Federal Courts, has been taken up in the Senate, as you will see, on the res. of Mr. Johnson, of Kentucky, supported by Barbour. With a view to aid them, or rather to lead, on this important subject, I have prepared some amendments to the Constitution to be adopted by our Assembly. They are very mild, but go the full length of the wishes of the republicans on this subject. They will be copied by another hand and circulated among the members. I would not wish to injure the great cause by being known as the author. My name would

damn them, as I believe, nay hope with the Tories. Could you not jog your Chesterfield delegates on the subject, as also Spooner and other good republicans? Jefferson and Madison hang back too much in this great crisis—Jefferson, at least, ought to do, in regard to republicanism and republicans, what one of the French literati did in regard to the French language. Being on his deathbed and surrounded by his friends, one of them sinned against the purity of that language, whereupon the sick man corrected him with great energy. One of his other friends seeming surprised that he should do this, under his extreme situation, he replied with increased energy that "he would defend the purity of the French language with his last gasp," and instantly expired.

Yours with great truth,

SPENCER ROANE.

*To Archibald Thweatt, and enclosed in letter to Jefferson.*

# THE JOHN P. BRANCH
# HISTORICAL PAPERS

....OF....

## RANDOLPH-MACON COLLEGE.

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ADDRESS WM. E. DODD, EDITOR, ASHLAND, VA.

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# THE JOHN P. BRANCH HISTORICAL PAPERS

## RANDOLPH-MACON COLLEGE.

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## INTRODUCTION.

The *Branch Papers* present this year the result of a careful study of the public life of R. M. T. Hunter. The importance of Hunter's position in the South just prior to the outbreak of the civil war would justify a fuller biography than is here offered. However, until such a work is forthcoming it is hoped that this may prove serviceable to students of American History and of the war between the States.

The examination of Chief Justice Marshall's opinion in the case of *Cohens vs. the State of Virginia* by Judge Spencer Roane is nothing less than a commentary on the national constitution in matters touching the relative rights of the States and of the Union. The bitterness of the conflict between the Virginia judge and the United States Supreme Court can be clearly seen in these articles after the lapse of nearly a century. For a complete study of this subject it is necessary to refer to the *Branch Papers* of 1905, in which a detailed outline of Roane's life appeared. The importance of Roane's position may be inferred by recalling the political situation in 1821. The newspapers of the South, with not a few of those of the North, discussed freely these *Algernon Sidney Papers*, which were generally understood to represent the views of the Virginia Supreme Court as well as the Virginia Democracy. This installment concludes the publications on Roane.

WM. E. DODD.

# Robert Mercer Taliaferro Hunter.

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THE PERIOD of Robert M. T. Hunter's public life was the most momentous in our history. It was the period of the financial panic of 1837, the establisnment of the Independent Treasury, and the adoption of nemerous important tariff measures; the period of the Mexican War and the Oregon contest; of the many slavery disputes—the annexation of Texas and the Wilmot Proviso; the compromise of 1850 and abolitionism; the Kansas struggle and the Nebraska act; the Dred Scott Decision and the organization of the Republican Party; of Secession, Civil War, and Reconstruction. It was indeed a "half century of conflict." It was fifty years fraught with trying vicissitudes for Mr. Hunter's section of the country and his native state. His entrance into public life found southern ideas predominant; he saw the decline of the South; he witnessed her attempt to stand alone and the bloody conflict by which she was reduced to submission; and he passed through the painful days of Reconstruction and felt a flutter of the reviving hopes of his people. He was a leader in those stirring combats, and the history of his life is an epitome of the events from 1837 to 1887—and particularly a summary of the part played during these years by the Southern States.

We are therefore mainly concerned with Hunter's public life. His private life has been left in the main to his daughter, Miss Martha T. Hunter, whose "Memoir"[1] covers the ground more familiarly than the writer could do. Hunter was born on the 21st of April, 1809—that year which gave birth

[1] A memoir of Robert M. T. Hunter by Martha T. Hunter. Washington Neale, 1903. To this work I am indebted for many incidents of Hunter's private life.

to so many other distinguished men—Abraham Lincoln, Charles Darwin, W. E. Gladstone,—at the Garnett homestead in the county of Essex, Virginia. His family is of Scotch descent, the American branch going back to a James Hunter, from Dunse, Scotland. The Hunters had been a family of means; but by the time of the inheritance of James Hunter, Robert's father, their fortune had been much diminished. R. M. T. Hunter's father who was a man of business ability as well as of literary tastes and strength of character restored the family financial independence. James Hunter married his cousin, Miss Maria Garnett, by whom he had eight children. The family of Mrs. James Hunter was distinguished for its intellectual ability, two brothers representing in Congress the district to which Essex belonged; and Mrs. Hunter herself is said to have been a woman of remarkable powers. From either father or mother Hunter might have derived his literary tastes, strength of mind, and force of character.

One of his earliest recollections was of being called up at late hours of the night to read to his father history and biography. In this way both a love for reading was stimulated and the particular field of his reading determined His early education was received at the hands of his father and sisters—his mother having already died—or at a school at "Rose Hill" to which, two miles and a half from home, Robert and Austin, his colored boy, walked every morning. By his seventeenth year, his father had died and Robert was left at the head of a large family of brothers and sisters. He attended the University of Virginia, entering at its first session, and was one of its first graduates. Finishing the Academic course at the University, he attended the law school of Judge Henry St. George Tucker at Winches-

ter, Virginia. On his return from the law school, he removed the family from Hunter's Hill—his father's home place, to an estate near Lloyds, farther from the Rappahannock and more healthful than the old homestead. He called the new place "Fonthill," a name which it still bears. From 1830 to 1835, Mr. Hunter practiced law in his native county. In the latter year, on the day of his eligibility, he was elected to the House of Delegates of Virginia.

I have not thought it necessary or interesting to pay close attention to Hunter's services in the House of Delegates. He served in 1835-6, 1836-7 during the term of Governor Littleton Waller Tazewell. Some of his contemporaries at the first session were Thomas W. Gilmer, Valentine Southall, Edmund P. Hunter, William R. Johnson, John M. Gregory, Fayette McMullen, John Minor Botts, Hugh A. Garland, George W. Summers, Vincent Witcher, and O. M. Crutchfield, and in 1836-7 some of the above, together with Thomas H. Bagley, Alexander Rives, Thomas Jefferson Randolph, A. H. H. Stuart, William L. Goggin, Robert W. Withers, John R. Edmunds, Robert McCandlish, Joseph Segar, and Samuel McDowell Moore.[1] This was the period of the formation of anti-slavery associations in the north and the southern excitement resulting from them. The American Anti-slavery Society had been organized in 1833—animated not with the purpose of such movements as the African Colonization Society of 1816,[2] but infused with the new spirit preached by Garrison in the "Liberator." It demanded the "immediate and total abolishment of slavery throughout the country, laws and constitutions to the con-

[1]See A. R. Micou in the *Richmond Dispatch*, Dec. 13, 1891, and Miss Hunter (who copies from Micou) p. 46.

[2]Woodrow Wilson's Division and Reunion, p. 120.

trary notwithstanding."[1] The year previous the "New England Anti-slavery Society" had been formed, and many similar societies followed in the north.[2] These organizations arising so quickly after the slave insurrection of 1831, seemed portentous of evil to the south now in too great a state of apprehension and frenzy to realize that the abolitionists even at the north were in the minority and that the force of government was arrayed against them.[3]

The fight over slave petitions and incendiary literature was raging in Congress. A meeting at Richmond itself in 1835 had prayed the Postmaster-General to stop the delivery of this incendiary literature and called upon all conservatives of the north to repress the abolition societies "by strong but lawful means."[4] Such was the condition when Hunter entered the legislature. The Virginia legislature of which he was a member adopted resolutions against these abolition societies.[5] But probably the first speech made by Hunter in the House of Delegates was on Feb. 26, 1836, on the subject of the Expunging Resolutions.[6] Though Hunter had cast his first vote in a presidential election for Jackson, yet he had been elected to the Legislature on the issue of opposition to the proclamation of 1832 and the Force Bill. He therefore thought Jackson deserved the censure which Congress had placed upon him and voted against expunging these resolutions. He also opposed the policy of the distribution of the surplus and the protective tariff, but supported Jackson's veto of the national bank.[7] This lat-

[1] Woodrow Wilson's Division and Reunion, p. 121.
[2] Schouler, History of the United States, Vol. IV, p. 214.
[3] Schouler, History of the United States, Vol. IV, p. 221.
[4] Schouler, History of the United States, Vol. IV, p. 217.
[5] Micou in Hunter, p. 46.
[6] Micou in Hunter, p. 46.
[7] Savage, Living Represenative Men, p. 829.

ter act is interesting in the light of his future record in Congress.

In these sessions of the legislature, Hunter gave evidence of his ability as a financier, in which field he was to figure so long and so conspicuously. During this period he married Mary Evelina Dandridge, the niece of the wife of Judge Tucker, his old law teacher, and heroine, so it is said, of Philip Pendleton Cooke's "Florence Vane."[1]

The period of Hunter's labors in the national field began in 1837, when he first took his seat in the House of Representatives. His career in that body, though possibly not brilliant was something better—highly honorable, distinguished by incorruptibility, independence, and high ideals. He was elected to Congress by the State Rights branch of the Whig party.[2] He came to the National Legislature when the financial question was the one uppermost in the minds of the people and of Congress. Jackson's war on the banks and the general craze for speculation had brought a crisis. Removal of deposits, the fostering of "pet banks," inflation, the specie circular had united with the enthusiasm for wild ventures of investment to bring on the great panic of 1837. Jackson, who had at least hastened the crisis, passed off the stage—and after him, in the time of Van Buren, the deluge came. Men looked to Congress for relief. Credit which had been abundant was now staggering. Prices had risen rapidly. Bankers suspended specie payment. The President had to call an extra session of Congress for the first Monday in September to consider measures of relief.[3] The immediate attention of Van Buren was devoted more to a relief of government than to a relief of the people. In his

[1] Miss Hunter, p. 49.
[2] Savage, p. 329.
[3] Wilson's Division and Reunion, p. 98.

message he recommended that the government should not interfere directly with the panic. The Independent—or Sub-Treasury was the administration scheme to enable the givernment to protect itself. The plan was not a National bank or "pet banks," but divorce of government and bank by leaving revenues in the hands of collectors who should disburse and handle them giving bonds for fidelity.[1] The administration plan was adopted by the Senate three times, but as often defeated in the House. It was only on July 4, 1840, in Hunter's second term, that it finally became a law,[2] and then only to be repealed by the incoming Whigs.[3] Hunter, though acting as a "speaking member" with the Whigs. Clay, Webster, and their following, in assailing the message of the President to the extra session, yet was a strenuous advocate of the Independent Treasury. On this subject his first speech in the House was delivered October 11, 1837 in committee of the whole.

The bill under discussion was termed the "Divorce Banks Bill" or a "bill imposing additional duties as depositories in certain cases, on public officers." Hunter in his advocacy of the Independent Treasury system delivered himself first of all against the National Bank both as to its expediency and its constitutionality, and to it he attributed "both present and past commercial distresses." The American banking system was a system "which by law of its creation, hurries to its downfall as the necessary result of its own action; and this catastrophe is only hastened by the excitement of the connection between it and the Government." The "pet banks" receive their attention, and against the use of the banks for political ends, Hunter hurls his wrath. "I

1 Ibid, p. 94.
2 Ibid, p. 97.
3 Johnston, American Politics, p. 141.

never wish," he says, "to see the banks converted into political engines again. Of all the enormous additions which have been made to executive patronage in late years, I regarded its connection with state banks as the most fearful."

Having denounced the method of handling public revenue that had been tried, he proceeds to suggest what he regards as a better plan. He gives this plan in the following words: "If the selection were left to me, sir, I should adopt the plan of special deposits. The General Government should be independent of the banks as to the medium in which its revenues are collected, and banks would be independent of the Government when they were no longer exposed to the power of its rewards through the privilege of trading upon the public deposits. If such an arrrangement could be affected by giving the banks a fair compensation for keeping the public money, at the same time that they were effectually restrained from using it, I should prefer it to the system proposed by the Committee of Ways and Means. The pecuniary responsibility would be greater than that of individual collectors, and its custody of the public revenues would perhaps, be safer." "But the chief recommendation would be in the means which this plan would afford the representatives of the people to ascertain the state of public money, if at any time there was cause to suspect either the ability or the honesty of the Secretary of the Treasury—I should greatly prefer a bill carefully framed upon this basis to the one now before us; but I give to that the decided preference over the other alternatives, of a United States Bank or the connection between the Government and the state banks."[1] The bill was tabled by a combination of Whigs and con-

[1]Congressional Globe, 25th Congress, Extra Session, Appendix, pp. 184-188.

servative Democrats,[1] although having passed the Senate.

In the first regular session of the 25th Congress, the Independent Treasury being urged by the administration, Hunter again discussed the subject in a long speech on June 21st and 22nd, 1838. He sets forth the evils of the banking system, of the inflation, and though protesting against sudden return to specie payment, comes out strongly for specie currency. He declares that there is no man who advocates a measure so dangerous as this sudden return which "would affect so injuriously the relations between creditor and debtor," but as to the "abstract question" whether "specie currency is the best" he maintains the proposition and is "not afraid to avow it."

There is no need to tire the reader by too many extracts from the wearying pages of the Congressional Globe; I shall therefore quote one more passage from this speech because it gives Hunter's attitude on the very delicate question of party allegiance Hunter's position is highly honorable and sincerely taken, and though he was consistently devoted to certain principles, yet it will be found that he was more than usually independent in action. He even endangered his political life on at least one occasion because of having a conscientious opinion of his own.

However much we may believe in the necessity for political parties yet far more honestly and efficiently would the government be conducted if more politicians could conscientiously use the following words: For myself, I am governed by no party motives upon such a question as this. I feel myself to be proudly above them. In saying this, I mean no disrespect to those who adopt the rules of party actions; they have the authority of eminent names, perhaps

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[1]Johnston's American Politics, p. 135.

of public opinion itself to sustain them in the propriety of submitting their conduct to such rules. For one, however, I will never consent to merge all individuality of sentiment and action in the great mass of party. I never will take upon myself that allegiance which should bind me to obey the will of a party, even though the obedience involved a sacrifice of the wishes and dearest interests of those who sent me here."[1]

The Whigs and conservative Democrats were again successful in defeating the sub-treasury measure in the House, though it passed the Senate.[2] There is no record of any other important act of Hunter in the 25th Congress. We read only that he was appointed on a committee of five on the subject of purchasing Gilbert Stewart's original portraits of the first five presidents of the United States.[3] Yet Hunter had made an enviable record in his first term. He had asserted his opposition to a National bank, to State Banks fostered by the National Government, to inflation of the currency; he had advocated strenuously the Independent Treasury and hard money. He had established his right to a reputation for sound financial ideas. And more important, he had dared to go against the policies of his party, because of superior devotion to the public good.

He, however, could not expect his Whig constituents to view the matter in the way in which he viewed it, and when he announced his candidacy for the 26th Congress, he found that he had alienated his old party friends. He also could hope for little support from the Democrats; for, however much he had acted with them, he would not pledge himself to Martin Van Buren. His hopes for reelection were slight.

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[1]Congressional Globe, 25th Congress, 1st Session, Appendix, p. 488.
[2]Johnston's American Politics, p. 135
[3]Congressional Globe, 25th Congress, 2nd Session, p. 167.

Finally, he secured the "cold support" of his party and this with the effort of his personal friends secured his reelection. When Congress reopened, Hunter was there, but a disheartened man and determined not to run again for Congress. The revelation of a few days was, therefore, a surprise and encouragement which neither he nor any one else had expected.[1]

The 26th Congress met Dec. 2nd, 1839. The failure of the Van Buren administration to provide any remedy for the condition of the country has led to a reaction. There were, consequently, many Whig victories in the election, but the final seating after a three months' fight of the Democratic contestants as the New Jersey delegation gave a majority to the Democrats.[2] In the meantime there was a hot struggle over the speakership. For three days Congress met with no presiding officer. John Quincy Adams, on Dec. 5th, was chosen chairman *pro tempore*. Fifteen days after the opening of the session, a speaker was chosen and much to everybody's surprise, Hunter was the fortunate man. Eleven ballots were taken and the election was doubtful till the last. On the first ballot, his name did not occur; he received only one vote on the second, four on the third, twenty-nine on the fourth, sixty-eight on the fifth, thirty-three on the sixth, twenty-two on the seventh, on the eighth, sixteen, on the ninth, fifty-nine, on the tenth, eighty-five, on the eleventh, one hundred and nineteen, and was declared elected. It would appear from this showing that Hunter had no original strength—was the choice of no party, was hardly thought of, but that in the course of balloting he was found to be the available man.

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[1]Calhoun's Letters, Report of American Historical Association, 1899, Vol. II p. 486.

[2]Johnston's American Politics, pp. 136-137.

And indeed this seems to be the way it was. The facts apparently are that the Democrats intended to nominate Pickens, of South Carolina, but on his failure to appear, selected Dixon H. Lewis for nomination. The friends of Pickens, being offended at this discourtesy to their favorite, did not support Lewis and he failed of nomination in the caucus. Jones of Virginia was finally nominated; but disaffection on the part of Lewis' friends defeated him in the House.[1] The friends of Calhoun who "had just returned to the body of the party against which they had been acting"[2] determined to control the election, named Lewis as the man whom they would support. Lewis was now selected by the caucus and pledges were given, but the friends of Benton, "who would not capitulate to half a dozen members,"[3] avoided the caucus and then threw their votes away. The Democrats seemed able to do nothing. The Whigs had appeared in the like quandary. Bell was the choice of their majority, but there was a fraction of their party whom they could not control. They, too, tried alliance with their old friends the State Rights Democrats, former State Rights Whigs, and Hunter who had voted with the Whigs in the New Jersey election cases was agreeable to both parties to the bargain.[4] The Whigs now won a majority, and Hunter was elected, a result "which but a few days since no one dreamed of." The election was a victory for Calhoun. The consuming idea of each was State Rights. Hunter, a man, like his great friend, without a party, a deserter from the Whigs and an incomplete convert to Democracy secured one of the

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1 Calhoun's Letters, p. 486.

2 Benton's Thirty Years' View, Vol. II, p. 160.

3 Benton's Thirty Years' View, Vol. II, p. 160.

4 Benton's Thirty Years' View, Vol. II, p, 160.

most influential offices in the government—an office which no predecessor had won in his second term.[1]

The speaker realized the circumstances of his election; for in his address thanking the House for the honor conferred upon him, he said, "called as I have been to this high station, not so much from any merits of my own as from the independence of my position, I shall feel [it?] as especially due from me to you to preside as the speaker not of a party but of the House." As a speaker his service was distinguished by dignity and impartiality. The first session was a very stormy one; for the question of seating the New Jersey delegation was not settled till March 1840. There were consequently many delicate questions that came up for decision by the presiding officer. One of Hunter's notable acts as speaker was that of casting a deciding vote that members must be sworn in before they can adopt rules for the government of the House.[2] An incident that occurred in the New Jersey contest must be mentioned.

On February 6th, 1840, we find the Speaker laying before Congress a letter written by him to the governor of New Jersey. The Governor had transmitted to Hunter for presentation to the House, resolutions of the Council and General Assembly of that state addressed to the "Hon. R. M. T. Hunter, a representative from the State of Virginia." Hunter refused to comply with this request on the ground that the refusal of the New Jersey people to acknowledge him as speaker was a reflection on the propriety of the House in electing him.[3] During the session few important measures of general interest were passed. So much time

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[1] Savage, Living Representative Men, p. 332.
[2] Stephen's War Between the States, Vol. II, p. 193.
[3] Congressional Globe, 26th Congress, 1st Session, pp. 166-167.

was consumed in the party contests over the election of the speaker and in the seating of the New Jersey delegation, that little was left for measures of public concern. Yet the Independent Treasury scheme, whose adoption the President had desired so much, and for which Hunter had so ably and faithfully labored during this session, passed both houses and was signed by the President. And, also, appropriations for internal improvements were suspended.[1]

In the session there was little party contest. Congress adjourned March 3, 1841. That Hunter discharged the duties of speaker at a particularly arduous time with ability and honesty can hardly be denied. In his farewell address to the House, he speaks of the circumstances of his election, of the stormy period during which he had to preside, of his being without a party, and of his endeavor in all things to be fair to both sides. The usual vote of thanks was accorded him at the close of his service in the words, "Resolved, That the thanks of the House of Represenatives be presented to Hon. R. M. T. Hunter for the able, impartial, and dignified manner in which he has discharged the duties of the chair during the 26th Congress."

When the second extra session of Congress called by President Harrison opened, Hunter was again in his seat. The first speech of any length made by him was July 10, 1841 on the bill authorizing a loan not exceeding twelve millions of dollars by the issue of stock at 5 per cent. to be applied to the redemption of treasury notes and to defray other authorized public expenses. The speech in itself is of little interest except as illustrating Hunter's ability to play easily the game of handling millions on paper, and his tendency to resent imputations on southern loyalty—both of which character-

[1] Johnston's American Politics, p. 187.

istics were equally prominent in him. He opposed the proposition of the Secretary of the Treasury on the ground of its being unnecessary, but particularly as being a part of the system including protective tariff, National Bank, distribution of public lands, "which seems to have been the primary object of the Secretary's recommendations," and to which Hunter as a loyal southern State Rights man was violently opposed. He strikes hard blows at the whole Whig system, although he had been elected to Congress twice by the Whigs and had been made speaker by the same party.

But the great question of this session was a bill to incorporate "the Fiscal Bank of the United States." The Sub-Treasury plan, which had been adopted by the 26th Congress, had by this Congress been repealed, and this action had received the confirmation of the President's signature[1] Hunter consistently voted against the repeal. Some other plan had to be devised, and the Whigs now in control brought forward the old National Bank idea under the name of the "Fiscal Bank of the United States." Many objectionable features of the old National Bank had been removed and the bill was passed in both Houses. Yet on account of its unconstitutionality, in the President's opinion, the scheme was vetoed.[2] Hunter who, it will be remembered, had at every opportunity even from his service in the State Legislature fought the National Bank, to which he had attributed the evils of the times, threw his force against the passage of the present bill. Putting aside with few words its unconstitutionality, he proceeded to give the evil effects of the banking system on production, on taxation, and on a "stable standard of value and a uniform system of ex-

[1] Ibid, p. 141.
[2] Ibid, p. 141.

changes." He fought the bill also because of the social and political powers bestowed by it on the bank, but was particularly provoked because of the arrangement attempted by which to reconcile those who believe that by a compact with a state, Congress may establish such an institution as a bank, and others who believe that, if Congress cannot establish a bank itself, it gains no further authority from a compact with states. The last point gave Hunter opportunity to proclaim his fovorite doctrine, State Rights, and he did it with much justice in the following language:

"Mr. Chairman, the ancients displayed profound skill and deep knowledge of human nature when they erected altars to the god, "Terminus" and consecrated that question of boundary which separates and distinguishes private rights to property. How much more important is it to preserve the landmarks which define the limits between two great and coordinate jurisdictions, which operate within the same territory and over the same people! Dark, indeed, to the American people will be that day in which they shall recognize this new source of Federal authority, and obliterate the lines that divide the State and General governments. The spirit of the Union as our fathers framed it, will exist no more; and the beautiful arrangements of our well ordered system of government will be destroyed by the unskillful hands which shall thus pervert them to purposes for which they were not designed."

The other subjects in which Hunter took active part were the veto and the tariff. The President by his veto of Whig measures for a Fiscal Bank, even when drawn, as the Whigs claimed, according to his instructions, had greatly angered the party which had placed him in power. In justice to Tyler, it must be said, however, that the Whigs had bar-

gained with an old Democrat with a full knowledge of his convictions. Tyler had not disguised his opinions at any time, and the Whigs had only themselves to blame when on his accession to power, he held to his well known views.[1] Yet the Whigs were irate with Tyler, and both he and they were in a bad plight. The victorious party seemed robbed of its victory and an accidental President seemed without support. The Whig members of Congress issued addresses to the people in which they declared that all political connection between them and John Tyler was at an end from that day forth."[2] Again when the Whigs secured the passage of a bill keeping in force the compromise tariff bill of 1833, and providing for the distribution of any surplus revenue among the states, this was vetoed by the President because it did not provide for the abolition of protection by the year 1842, as promised in the compromise of 1833.[3] A tariff for revenue still containing the feature of distribution was brought forward and this was vetoed. The veto message was referred to a committee in the House, and the report of the committee condemned the President as assuming too much power. The objectionable clause of distribution was then left out, the bill passed and was signed this time by the President as the tariff of 1842.

In this contest in the House on the President's veto message, Hunter defended the veto power against the assault of the Whigs. And he also opposed in a "great speech" the tariff bill of 1842. In this Congress he opposed the Tyler policy in another instance by voting against the bill distributing among the states the public land revenue, a bill

[1] Wise's Seven Decades of the Union, pp. 174-178.
[2] Johnston, American Politics, p. 141-2,
[3] Ibid, p. 143.

intended as an indirect assumption of the $200,000,000 due by states and corporations to foreign creditors. President Tyler had recommended the passage of such a measure in his first regular message to Congress. "It was a vicious recommendation, and a flagrant and pernicious violation of the constitution."[1] The bill had to be repealed by the very men who had passed it, and the measure of repeal was signed by President Tyler twelve months after he had signed the original measure. Hunter in his opposition as usual followed Calhoun, and as usual was in the right in matters of finance.

Mr. Hunter was defeated in his candidacy for a seat in the 28th Congress—though only by a small majority. The cause of his failure is to be attributed to his being thrown by the new apportionment into a partially new congressional district.[2] His fortunate opponent was Hon. Willoughby Newton of Westmoreland County. Hunter, however, was not idle even though absent from the arena in whose conflicts he loved to join. His interest in politics did not flag; and his efforts in behalf of the principles for which he stood were unrelaxed. The campaign for the Presidency of the United States was on, and Hunter's chief friend and political master was aspiring to realize the ambition which he had so long nursed. Hunter fought Calhoun's battles in Virginia. Their cause was the cause of state rights and slavery. During this campaign, the Great Nullifier and his friend carried on a frequent correspondence, the character of which indicates both the reverence of pupil for teacher and the confidence of master in disciple. The principal fear both of Hunter and Calhoun as to Virginia was Thomas Ritchie, the Van Buren leader in that State

[1] Benton, Thirty Years View, II, p. 241.
[2] L. Q. Washington, Oration on Hunter in Miss Hunter's Memoirs, p. 148.

and the distinguished editor of the "Richmond Enquirer." To him in their correspondence, they refer many times, but never in complimentary terms. They regard Ritchie as having betrayed the state of Virginia and the South into the hands of the New York polticians. He had advocated the "cunningly devised scheme" of adopting conventions as the means of nominating presidential candidates, the general acceptance of which plan would throw control of elections with the "great central, non-slave-holding states," would "centralize the powers of the Union," and "establish the most intolerable despotism."[1] By so doing, he and his associates had sunk "Virginia from her high and proud position of standing at the head of the South, to make her the humble and dependent follower of New York—to be the tail instead of the head of the South."[2] Ritchie was leaving nothing undone to throw the strength of Virginia to Van Buren in the coming Convention of the Democratic party at Baltimore. Calhoun believed in aggressive measures in dealing with him, and advised Hunter to draw an attack and then "carry the war into Africa;"[3] but Hunter feared that Ritchie had too many "well-wishers" even "amongst our own friends," and preferred "hanging upon his flank until he opened himself so as to justify an attack upon his centre." It was feared by Calhoun men, so Hunter says, that in order to weaken the great State Rights chief, Ritchie may endeavor to put him on the Van Buren ticket as candidate for the Vice-Presidency, an honor which Hunter did not desire his chief to have. The Calhounites aside from matters of principle contended in matters of policy for two

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[1]Calhoun to Hunter, April 2, 1843, Report of the American Historical Association, 1899, Vol. II, p. 528.

[2]Calhoun to Hunter, April 2, 1843, Report of the American Historical Association, 1899, Vol. II, p. 528.

[3]Ibid, p. 529.

things: the selection of the spring of 1844 as the time for the National Convention instead of November, 1843, as preferred by the friends of Van Buren, and 2nd, the selection of delegates to that convention by districts instead of by a method to be chosen by the states, as preferred by the friends of Van Buren. The first contention by hard fighting the Calhounites won; against the other they found the opposition unyielding. Hunter's mode of procedure in the campaign was to win first of all his own district if possible The best he could do at home even was to have delegates selected who were unpledged to any candidate.[1] He endeavored to secure as far as possible congressional organization and to prevent the state convention to be held at Richmond from pledging itself to the support of the nominee of the Baltimore convention.

In the meantime under instructions from Calhoun, he was endeavoring to use his influence with politicians in other states. In New Hampshire, if we can trust his own report to his chief, he was somewhat successful. There on account of his advice to Woodbury, the convention made no nomination—a blow to Van Buren—recommended district delegates, and May 1844—the date preferred by Calhoun—for the Baltimore Convention.[2] In order to give as much strength to Calhoun and his principles as possible, and particularly in Virginia to be able to fight Thomas Ritchie on his own ground, it was proposed by Calhoun that a paper be established at Richmond. This plan seems to have been given up and Hunter was offered the editorship of a Calhoun paper, the "Spectator," and urged by Cal-

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[1] Hunter to Calhoun, Jan. 19, 1844, Report of the American Historical Association, 1899, Vol. II, pp. 914-916.

[2] Hunter to Calhoun, June 16, 1843, Ibid, pp. 865-866.

houn to accept. Pickens was authorized to offer Hunter $4,000 a year, and Calhoun says that Hunter's name would give the paper a large circulation and an established character.[1] Hunter, however, does not see fit to accept. Yet he prepares a campaign biography of Calhoun published by Harper's.

The Democratic convention for Virginia finally comes off at Richmond. Hunter is on hand. He finds it, however, inadvisable to place his chief's name before the Convention, fearing that it would weaken instead of strengthen him. The friends of Calhoun did not wish to expose his strength; nor to aid in any way the election of Clay, and the victory of Whig policies. Such an event would be of incalculable injury to future aspirations of Calhoun, and a blow to the State Rights faction. A meeting of Calhoun's friends at the Richmond Convention was held in the rooms of James A. Seddon. It was determined to offer a proposition to Ritchie that the South Carolinian's name should not be presented to the convention, on condition that the convention adopt satisfactory State Rights resolutions. Ritchie agreed and the plan went through the convention, which contrary to expectation, was now harmonious.[2] The resolutions were therefore adopted. No pledge of loyalty to the party nominee was required. The Calhoun men issued by agreement with Ritchie[3] an address in which they condemned the organization of the Baltimore Convention and expressed a willingness to accept the nominee of that convention if that nomination should promote the resolutions adopted by the Richmond Convention. This address was written by Hun-

[1] Ibid, June 3, 1843, pp. 535-536.
[2] James A. Seddon to Calhoun, Feb. 5, 1844, Ibid, pp. 923-927.
[3] James A. Seddon to Calhoun, Feb. 5, 1844, Ibid, pp. 923-927

ter and Seddon. So successful were the State Rights faction that even Ritchie congratulated them and said that he intended doing everything short of giving up Van Buren entirely to bring the party round to their way of thinking. Hunter, though fearing what Calhoun might say of their failure to present his name—although Calhoun had withdrawn from the race January 20, 1844[1] —and of the compromise with the Van Buren men, writes that he thinks, as a result of their move, Calhoun's position is secure in Virginia for the nomination of the Democratic party in the canvass of four years to come.[2] Mr. Hunter was chosen as delegate to the Baltimore Convention. As we know, neither Calhoun nor Van Buren carried the Convention. Van Buren received a plurality but not a sufficient majority and was defeated on account of the two-thirds rule. A dark horse was brought in and secured the trophy. Hunter accepted the result of that Convention and worked for Polk and Dallas, against Clay and Frelinghuysen of his old Whig associates, and J. G. Birney of the new Liberty party, with as much zeal as he had fought for Calhoun before the Convention, and he himself, to the joy of Calhoun, who needed him, went back to Congress to do his part in carrying forward Democratic policy and State Rights.

The Democratic Convention at Baltimore had set forward as among its policies a demand for the "re-occupation of Oregon, and the re-annexation of Texas." However much these phrases may have been meant as an election cry, yet it is also certain that the Democrats took them seriously and endeavored to carry them out. Polk soon after his installation into office declared to Bancroft: "There are four great

[1] Von Holtz' Calhoun, p. 216.

[2] The authority for my whole account of Hunter and the Virginia convention is a letter of Hunter to Calhoun, Feb. 6, 1844, American Historical Association, 1899, Vol. II, pp. 927-931, and the letter of Seddon referred to above

measures which are to be the measures of my administration; one, a reduction of the tariff; another, the Independent Treasury; a third, the settlement of the Oregon boundary question; and, lastly, the acquisition of California."[1] The first one of these questions to be discussed was that of Oregon. The President had declared in his inaugural address that our title to the Oregon country was "clear an unquestionable" and must be maintained.[2] Somewhere between 42°, the northern boundary of Mexico, and 54° 40′, the southern boundary of Russian territory, lay the proper line between the United States and Canada. In 1818 a joint occupancy of the whole disputed territory had been agreed upon and this arrangement, continued in 1827, was still in force. Our government had declared itself willing to accept the parallel of 49° as the northern boundary, but this would give us the valley of the Columbia Great Britain refused compliance. We in turn, had refused an offer from Great Britian to run along the 49th degree to the Columbia and then along that river to the Pacific, and also an offer of arbitration. Now the cry of belligerent America had become "54° 40′ or fight," and a resolution was introduced into Congress that the President give the requisite twelve months' notice of our determination to abrogate the convention of 1818 The resolution was couched in warlike terms, and Hunter as a genuine lover of peace could not favor it. He opposed it in a forceful speech January 10, 1846. As a true Democrat he believed that we had a right to the whole of the disputed territory up to 54° 40′; and he also desired, for commercial reasons for us to secure this line. But he

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[1] Schouler, Vol. IV, p. 498.
[2] Schouler, Vol. IV, p. 495.

doubted the wisdom of sending the notice proposed in the bill as a means to secure that territory, and he preferred a surrender of part of the territory to our being the aggressor in a war with England, which he thought would follow the notice. He deemed the country unprepared for war and thought that by it "we should lose as much or more of Oregon than would be given up by any treaty likely to be made." He believed that by peaceful means the whole of the territory could be gained, and the means he suggests are those of colonization, for which we are much better fitted than Great Britain. "Let us pass such measures as may encourage our settlements in the disputed territory," he says, "Without contravening any treaty stipulations." The most noteworthy passage in the speech is that in which he sets forth the true glory and policy of the United States, and the attitude exhibited in it is characteristic of the whole career of Hunter in both national and confederate service. As the passage is also worth perusal, I will quote it: "we were not organized for a career of war and conquest, and I thank God for it; for then we should have required a far more despotic form of government, and we might have stood as fair a chance as any to become the curse of mankind, instead of being the benefactors, as I maintain we have been by the example of our institutions and our progress. We have always been proud to believe that ours was a higher and more glorious destiny; we have believed it to be our destiny to achieve our triumphs in the useful arts of peace, to subdue the difficulties and master the secrets of nature, to adorn and cultivate the earth, to introduce a new and a higher civilization, to develop better forms of social and political organization, and to minister to the progress and the universal peace and happiness of mankind by the beneficent ex-

ample of a free and happy people, who were wealthy without rapine, strong without crime, great without war, and peaceful without fear. Towards these great and beneficent ends we have already done much; and in doing it we have won more true glory than if, like Tamerlane, we had left pyramids of human heads as the monuments of victory, or like Attila or Alaric, the scourge of God and the pest of nations, ravaged and desolated the earth in the storm of our warfare. Our thousands of miles of railroads and canals which have thrown down the barriers of nature to the affiliations of our people and to the common and kindly interchange of so much that ministers to the happiness of man, are far nobler monuments to the genius of a people than the column of Trajan or the palace of Blenheim. These are the monuments which are worthy our name and our destiny."[1]

The bill authorizing the President to give notice to Great Britian was finally passed, but only after its warlike spirit had been modified so that the resolution was "inoffensive" to England. An agreement was reached, Great Britian accepting the line of 49° with certain minor concessions on our part, and she was led to do so by the very means which Hunter had suggested as being our weapon—that of colonization by American settlers.[2]

On May 8, 1846, Hunter made his next elaborate speech. As Chairman of the Committee on the District of Columbia he presented a resolution providing for the retrocession to Virginia of the county of Alexandria—the portion of the District originally ceded by Virginia. The District was larger than needed, an unnecessary expense to the United States

[1]Congressional Globe, 1st Session 29th Congress, pp. 89-93.
[2]Schouler, U. S., IV, p. 518.

Government, and also a greater deprivation of "political rights and privileges" on the part of more citizens "than may be indispensable for the purposes of safety and security in the seat of government." And Hunter likewise favored the retrocession, for a reason which he and the Southern school applied at every opportunity, its possible interference with the rights of states; for in his opinion "this grant of exclusive jurisdiction here, and some omissions in the Constitution, place this Government in an anomalous and, in some degree dangerous position toward the states."[1]

To Hunter is due the credit for the restoration of Alexandria to the embrace of her mother state.

The most lengthy and elaborate of Hunter's speeches in this Congress was made in favor of the Tariff of 1846 commonly called the Walker Tariff. This was a record of the measures on which Polk staked the success of his administration. It was based on the strict constructionist theory of tariff for revenue only. Hunter as a strict constructionist could not but favor the bill, though it did not go as far as he desired it to go in returning to the basis of revenue. The speech abounds in tables, statistics, and citations, and contains in impressive and conclusive array those facts and arguments which prove the advantage of the revenue over the protective system. It would be both unnecessary and tiresome to report these arguments and facts; but there is a characteristic of this speech as is characteristic of his speeches in general a breadth of view, a belief in principle, and an idealism which some may call academic, unpractical but which idealism and imagination is the great distinction between a statesman and a political tyro. Hunter believed in free trade not only as a means of promoting industry

[1]Congressional Globe, 29th Congress, 1st Session, p. 894.

and prosperity at home, but as a means of cultivating "a spirit of peace and good-will amongst men" and of securing "all the benefits of a common and kindly intercourse between the nations of the earth." He adds: "The whole course of modern discovery, whether in government or in the arts, seems to have tended toward a closer and kindlier intercourse amongst men, and an increase not only in social power, but of individual liberty. Half a century of free trade, with the facilities for intercourse already within our reach, would probably make it more difficult to disturb the peace of the world than it has hitherto been to preserve it. The arts of civilization would probably effect more revolution in human affairs than force has ever achieved by arms."[1]

The bill for re-establishing the Independent Treasury, so ruthlessly destroyed by the Whigs in the twenty-seventh Congress, was presented this Congress. Hunter, who had made two forceful speeches in support of the sub-treasury in Van Buren's administration and his own first term in Washington, and had voted against the repeal in 1841, naturally supported a bill for its re-establishment. Likewise as a true Southerner and Calhoun man, he voted for a joint resolution formally admitting Texas, she having conformed to the conditions, prescribed by the 28th Congress, of adopting a republican constitution. As a slavery man again he opposed the Wilmot Proviso. Another bill which he favored in this Congress was one which he subsequently did so much to make a law—a bill providing for the establishment of a warehousing system.

In the next Congress, Hunter was advanced to the senatorship. The seal of approval had been placed upon his

[1] Congressional Globe, 1st Session, 29th Congress, p. 1025.

record in the lower house, and it might justly be declared "well done." From the start he had taken an important part in the discussions of Congress; in his second term he had secured an honor never before awarded to a man of so little experience; he had stood for Independent Treasury, low tariff and sound money; and better than all else he had despite his unalterable devotion to state rights and slavery, shown independence of mind and indifference to the party lash. Besides there had been that far-seeing idealism of the statesman. His financial ability was recognized in his election to the Committee on Finance; his service on the House Committee on the District of Columbia was recognized in his election to the similar committee in the Senate. Besides he was made chairman of the Committee on Public Buildings.

At the opening of the session the question of peace with Mexico and the amount of territory to be wrested from her were subjects of consideration. Hunter was an advocate of moderation in dealing with Mexico. On the occasion of the consideration of the "ten-regiment" bill, although favoring any bill whose passage might be necessary for the efficiency of the American army, yet he expressed himself in strong terms as being opposed to the absorption of all Mexican territory. He believed "that our interests, both as regards our character in the eyes of the world, and the perpetuity of our free institutions, pointed to a course of moderation." Five days, however, before these words were delivered, a treaty had been signed at Guadaloupe Hidalgo, and Mexico had given up all claims to Texas, had accepted the Rio Grande as her northern boundary, and had ceded for a portion of its value the territory of New Mexico and California, out of which, in addition to the present New

Mexico and California, Nevada and Utah, parts of Colorado, Wyoming, and Arizona have been carved.

In his last term in the House, Hunter had discussed the contention between Great Britain and the United States over Oregon; in his first term in the Senate, he for the first time has opportunity in connection with the Oregon discussion to announce at length his views as to the entrance of slavery into the territories. The position is the position we expect him to take—that of Jefferson Davis, Toombs, and the whole southern school—that Congress had no right to interfere with slavery in the territories, as such interference would be a violation of the equality of states and the rights to property. He also defended slavery and believed it no worse than other forms by which men are put under the power of others. "Congress," he says: "is bound to maintain the equality of the citizens and the equality of the states—Congress may not touch the right of the States to colonize the newly-acquired territories. If the power to govern territories devolves on Congress, it brings with it the obligation of Congress to protect the property of the citizen—instead of the owner being divested of his property whenever he moves with it into another state, he has a right to expect that it shall be protected—if the South cannot be treated as an equal by the North; if she is to be deprived of her proper share in the benefits of the General Government, what white citizens would consent to remain in a slave state?—what is slavery? In what country do we not find the authority exercised by parent over child? What is this but the authority of man over man?" This was productive of benefit to the whole. The connection between master and slave was almost as dear a relation as that between parent and child." "Look," he continues "at

the pauper system of England—that focus and hot bed of abolitionism—and see if the condition of the pauper is not worse than the condition of the slave[1] —Here the slave is sure of his subsistence. His position is more favorable than that of the white pauper."

These quotations contain an outline of the views which Hunter so frequently after this time expressed in the speech. As was later said of him, he "never tries to ride down a political opponent by *declamation*, but coolly *argues* the point of difference. During the most exciting debates he keeps his temper, and though in political matters, especially upon the slavery question, he is ultra southern in his views, he is so watchful, so prudent, so mild in his speech, that he contrives to win the esteem of his northern associates, and to be very popular with them."[2]

Hunter voted for the amendment to the bill organizing Oregon, providing for the extension of the Missouri compromise line to the Pacific. This amendment was passed in the Senate but lost in the House. The Senate finally receded, Hunter still voting for the amendment. During this session also he voted against the abolition of slavery in the District of Columbia. In one instance during this session he even went beyond his political father, Calhoun, in interpreting strict construction. The principle of internal improvements being brought forward in a bill for the improvement and repair of the dam at the head of Cumberland Island, Ohio River, Calhoun upheld and voted for the bill. Hunter voted against it on the ground of its being an unwarranted use of Federal power.

In the second session of the Congress, Hunter advocated

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[1] Congressional Globe, 1st Session, 30th Congress, pp. 921-922.
[2] Bartlett's Presidential Candidates, pp. 244-245.

enlarging the field covered by the census so that it would give a "full view of the whole resources and the whole industrial operations of this country;" opposed a bill establishing reciprocity with Canada on certain articles because he believed it partial to New England and New York; presented some proslavery resolutions passed by the Virginia legislature; strongly opposed the bill of March 3rd, 1849, establishing our Department of the Interior, on the ground in part that it would "draw within the Federal vortex powers long considered the sacred property of the States!"[1]

The most interesting performance of this session, however, was the attempt of the Senate to attach to the General Appropriation Bill for government expenses a "rider" organizing the territories of New Mexico and California, permitting slavery. The House substituted for this rider a "provision that until June 4th, 1850, the existing Mexican laws of those Territories should remain in force." As Mexico had abolished slavery this would have made the new Territories free.[2] Hunter's position was one of shrewd compromise. He was willing to accept any proposition leaving in abeyance the question as to whether Mexican laws forbidding slavery should remain in existence and providing only for a government to secure order and prevent anarchy. He believed in enforcing "so much of the existing Mexican law as shall not be inconsistent with the constitution and the rights of the states." He says: "I wish if I can, to do all in my power to promote some scheme of compromise in order that this vexed question of the Territories may be settled, and that they may have a government suitable to their protection and necessary to their prosperity. The only

[1] Congressional Globe, 2nd Session, 30th Congress, 669-680.
[2] Johnston, American Politics, p. 158.

mode in which this object can be affected is, by leaving this question, as to the existence of the Mexican law prohibiting slavery, undecided and in abeyance." On the last night of the session the Senate receded from its "rider" and then struck out the substitute of the House. It passed the Civil Appropriations Bill as originally received from the House, leaving the question of the organization of the Territories unsettled. Hunter voted for the recession.

The first measure in which Hunter took great interest in the 31st Congress was a resolution instructing the Committee on Foreign Relations "to enquire into the expediency of suspending diplomatic relations with Austria." The bill had been submitted on December 24th by Lewis Cass, and was based on the Austrian treatment of the Hungarians. Hunter, who was generally conservative and always peace-loving, opposed with great force this resolution in a speech of January 31st, 1850. He declared that the resolution seemed to be "founded upon an utter mis-conception of the nature and objects of diplomatic institutions," and "to suppose that one of the uses which may be made of them is to reward or punish other Governments by continuing or suspending such relations, according as we approve or condemn their course towards their subjects," and because it "assumes the right of one Government to interfere in the domestic affairs of Austria—a right which would be dangerous, in the last degree, to the peace and liberties of mankind." He took this position not because he did not feel tenderly toward the suffering Hungarians, for he had been "no uninterested observer of this [the Hungarians'] struggle—no unmoved witness of its final catastrophe;" but because in this case as in the Oregon Boundary dispute and in all other cases in which war was in prospect or irreverent

changes in our policy contemplated, he advocated the course which would maintain peace and time-honored conservative attitudes.[1] He might be counted on to uphold the Constitution, and to defend the institutions of the country against assault. He looked with disfavor upon even an attempt to lay aside a parliamentary rule as an immodest liberty taken with the comely form of established government.

The most important question, however, to come up for consideration at this session was the Territorial Question. This was the session during which the Omnibus Bill, or the Compromise of 1850 was adopted. Mr. Hunter took occasion on March 25th 1850 while the Message of the President, accompanying the constitution of California, was under consideration, to give his views on the slavery dispute. They had not changed since they were announced on the occasion of the contest over the orginization of Oregon, and though they were given at great length and form an excellent summary of the arguments by which the Southern position was maintained from 1850-1860, they need not detain us long. "The evil" he says, "of which the South complains arises out of the fact that a party in the North, by no means contemptible in point of numbers, is seeking to convert this Government, through its direct legislation, into an instrument of warfare upon the institution of slavery in the states, and from the fear that a majority of those in the free states, who are hereafter to control and manage this Government, will use, if not its positive legislation, at least its moral influence, for that purpose." He reviews the history of the slavery controversy from the Compromise of 1820, which he regards as "depriving the South of the right to settle the larger portion of the territory acquired by the

[1] Congressional Globe, 31st Congress, 1st Session, Appendix, pp. 84-87.

Louisiana cession;" he pronounces against anti-slavery associations, the "run of petitions," the failure of the Federal Government to protect slavery against foreign powers; he declares that southern security is dependent upon the admission of slave states from the "common property" held by the Government as "the trustee" of the states; he upholds the right of settlers to carry their slaves into any territory; further still he goes on endeavoring to prove by figures and citations the failure of emancipation in the British colonies and the unfavorable comparison laborers of other lands bear to the slaves of the south; he is easily lead to question whether the Union can endure "if the South, on account of its social organization, is to be put under the ban of the empire and excluded from a participation in the right to acquire power and importance, because of its alleged inferiority," and concludes with a striking description of the omnipresence of the slavery question, which he would like to avoid if possible as a question which "like the plague of darkness that rested on the land of Egypt—pervades the world without" and "fills the home within."[1]

On the day after the admission of California, Mr. Hunter presented a paper signed by ten leading Southern Senators protesting against the act of admission, and asking that this protest be spread on the Journal of the Senate. The paper was not received, but it became one of the Southern "Bills of Rights."

In this session, also, he addressed the Senate on a bill which he had introduced advocating a Board, similar to our Court of Claims, which he called a "Board of Accounts." His bill was designed to remedy "a great and growing evil—the delay and sometimes the denial of justice to individuals

[1] Ibid, pp. 375-382.

who have claims against the Government, by establishing a tribunal which will give a prompt, fair, and intelligent decision in all such cases." [1] His bill passed the Senate May 9th, 1850. Although the Court of Claims was not established until 1855, Hunter can certainly be given some of the credit due to those who made that addition to our judiciary. The second session of the 31st Congress was devoted mainly to routine matters, the question of slavery being regarded as settled by the Compromise measure of 1850, and the Democratic majority in both houses being sufficient to carry out the administration programme. Hunter's principal speech was one in opposition to the payment of the claims of American citizens growing out of French Spoliations prior to 1800. During this Congress he was made Chairman of the Finance Committee, a position which he held and filled admirably until a short while before the secession of Virginia in 1860.

His financial theories are well given in his speech against the spoliation claims. He says: "I fear it has become an odious business to oppose extravagant expenditures of any description. Economy, that highest virtue of a Government, I fear has long since ceased to be at all regarded here. I say economy is the highest virtue of a Government, because, rightly understood, it includes justice—justice, simple, severe, exact." He also says, "the path which nations tread to bankruptcy, or by which they make so near an approach to it as often to shake Governments and convulse society, is indeed an abyss strewn with flowers, and the man who would attempt to warn them as to the consequences when in midcareer should expect to find himself discharging but a thankless office." [2] He may have been mistaken about the

[1] Ibid, pp. 505-508.
[2] Congressional Globe, 31st Congress, 2nd Session, Appendix, pp. 83-88.

morality of paying the claims, according to the presidential address of Prof. McMaster at the Baltimore meeting of the American Historical Association, but he was right in his endeavor to defend the treasury of the United States from every kind of claim until he was satisfied as to their justice. In the new Congress, in a course of a debate, Lewis Cass had occasion to speak of Hunter's work as Chairman of the Finance Committee. "I congratulate the Senate,"[1] Mr. Cass says, "and the country, that we have at the head of that important committee a gentleman, as willing as he is able to look into the expenditures of the country, to try them by the test of public utility, to restrain, as far as he can, that disposition, which seems inherent in every Government, to increase its expenses, and to substitute profusion, where it exists, for a wise economy."[1]

In the second session, Mr. Hunter opposed the payment of "such creditors of the late Republic of Texas as are comprehended in the Act of Congress of September 9th, 1850;" and an amendment to the General Appropriation Bills providing for an appropriation of $100,000 for the person who discovered the anaesthetic power of ether. In its discussion he again took occasion to announce his financial views and wisely to oppose attaching to General Appropriation Bills all kinds of amendments calling for drafts on the United States Treasury. The three bills I have mentioned—the bill for payment of claims on account of French Spoliation, the Texas debt claim, and the bill to reward the discoverer of the properties of ether are but illustrations of the many instances in which he faithfully played the rôle of "watch-dog of the Treasury."

In addition to the routine duties of a Chairman of a

[1]Congressional Globe, 32nd Congress, 1st Session, p. 1288.

Finance Committee, there was one other bill of a financial nature for which Mr. Hunter was responsible. That was a bill "to extend the warehousing system by establishing private bonded warehouses, and for other purposes." An original act had passed August 6, 1846, and had been amended March 3rd, 1849, but was insufficient for the needs of commerce. Hunter's bill passed the Senate but was not taken up this Congress in the House for lack of time. It was brought up again in the 33rd Congress and after being amended it became a law. To him then, has to be given the credit for the system by which importers can stow their goods in convenient places and for sufficient length of time. The Senator had opportunity again to exemplify his State Rights views when a bill came up "making a grant of land to the state of Iowa, in aid of the construction of certain railroads in said state." He opposed the bill on the ground that it would authorize internal improvements and distribution of public lands, in opposition to both of which policies he thought the Democrats were committed. When he was twitted on being a State Rights man, even by a Southerner, he replied: "I beg to assure the Senator (Bell of Tennessee) that so far as I am concerned, I consider it no disparagement to be called a 'State Rights man.' I assure him that in my case at least he may call a spade a 'spade,' without risk of giving offense, and denominate me by any name which describes my opinions—I beg to tell that Senator that there is still a State Rights party in existence; that it has neither surrendered nor disbanded. They may be few in numbers. Their line may have been shaken and shattered by the onset of superior numbers; but still they stand by the defences of the rights of the States and cling to the

Constitution of the country."[1] In the second session, a bill for the organization for the Territory of Nebraska, mentioned in the first session, as the Platte Country, passed the House, but was tabled in the Senate. Hunter voted to have the bill tabled. During this Congress he secured the passage of an important act regulating the gold and silver coinage which remained the law of the land until the administration of President Grant.

The memorable Thirty-third Congress opened December 5, 1853. The Democratic majority, which had obtained in both houses during the last Congress, had been increased by the election in which Franklin Pierce became President. The country was seemingly at peace. Both sections had been lulled into security by the Compromise Measure of 1850, which President Pierce declared he intended "to carry out in all its parts."[2] But a most boisterous and momentous session—the session of Congress whose one important act had more to do with bringing on the civil war than any other bill ever passed--was to leave its mark on history. In the Senate, which, it will be remembered, had laid on the table the bill to organize the Nebraska Territory, now a bill for that purpose was introduced and the fight soon began. On January 23rd,1854, the fateful Kansas-Nebraska Bill—divider of old parties and conceiver of new—was introduced into the House. The old Nebraska Territory of the 32nd Congress had included the territory west of Missouri and Iowa from the parallel 37° to that of 43°. The new bill divided this territory in two parts at the parallel of 40°, the northern part to be called Nebraska, the southern part Kansas. They both lay above the line of 36° 30'

[1] Congressional Globe, 1st Session, 32nd Congress, p. 204.
[2] Johnston, American Politics, p. 167.

established in 1820 as the northern limit of slavery in the Louisiana cession, and according to this provision would come in as free states. But a distinct provision of the Kansas-Nebraska act repealed the Missouri Compromise and threw open to slavery all territory to be organized if its people should desire it. The debate on this act was fierce. Hunter had refused the proffer of the State Portfolio at the hands of his friend Pierce[1] to remain in the Senate. As a leader of the State Rights party and an upholder of slavery he was expected to take his part in the fight for slave territory. On February 24, 1854, he delivered a speech filling five pages in the Globe. He affirms that the Missouri Compromise was in reality repealed in 1850 as the one concession granted the South at that time. Moreover, the Missouri Compromise act was not the deed of the South, as it was proposed by northern men and carried by northern votes. It was not, in the strict sense of the word, a compromise, as the North conceded nothing that was not already southern right; neither had the North regarded the act, which she attempted to violate in 1821 when Missouri applied for admission with her constitution, nor the principle for she was unwilling to extend it to the territory acquired from Mexico and to Oregon. The Missouri restriction violated the equality of the states and therefore the constitution, and "no series of acts can give validity to unconstitutional legislation," nor could any legislation bind succeeding legislatures forever. The repeal of the Missouri Compromise would extend the constitutional principles, which have produced harmony and progress when obeyed, over the slavery question; would give a law by which to

[1] See Letter of J. B. Sener, October 25, 1887, to be found in the Clerk's office at Tappahannock, Virginia.

regulate our relations with other countries and especially the Blacks with whom we may come into contact in our expansion; and prevent the Africanization of the Southern States. Yet the repeal of the Missouri Compromise Act he did not regard a measure of any practical importance to the North. He asks: "Does any man believe that you will have a slave-holding State in Kansas or Nebraska? I confess," he continues, "that, for a moment, I permitted such an illusion to rest upon my mind. But upon a further examination of the subject, I came to the conclusion that it was utterly hopeless to endeavor to effect any such thing. Slavery might go there for a time; it might go into the Territories while other labor was dear, and assist in preparing the country for admission as a State into the Union. But in my opinion, it could not survive the formation of a State constitution; it would pass away into that region which was more suitable for the negro, and better fitted for his labor; a region which, for a long time to come, will be large enough for the employment of that labor, and more genial in every respect to the African race than that embraced in this bill." If required to give, then, the reason that he struggles for the repeal of the Missouri Compromise if it meant no more states for slavery, he replies: "I support it for its moral and political consequences—as a measure of peace (!) I desire to remove this great curse of disturbance and anxiety from our midst."

Between the supporters of the Kansas-Nebraska Bill there was a difference of construction given to this act, a difference which, for the sake of the passage of the bill, Hunter will not discuss at length, the measure being framed so as to leave the difference obscure. The bill proposed that the "legislature of these territories shall have power to legis-

late *over all rightful subjects of legislation, consistently with the constitution:*" Douglas and his friends holding "that the people of the Territories have a sort of natural right to exercise all power within those Territories," Hunter and his friends believing territorial legislation adverse to slavery, unconstitutional, but being willing for the courts to decide what was or was not a constitutional act of a territorial legislature.[1] In other words, Douglas believed in squatter sovereignty, Hunter in the sovereignty of the slavery cause everywhere. As is too well known the Kansas-Nebraska act passed, and the peace for which Hunter longed, in pursuit of which he had voted and fought for the repeal of the Missouri Compromise, never came until his country and most of all his section had been drenched in blood, and slavery, popular sovereignty, and his own fond Shibboleth, State Rights, lay prostrate with the bleeding body of his dear Southland. On other subjects during this session, he took firm stand, but the Nebraska Question overshadowed them all.

Two years before the passage of the Kansas-Nebraska act, there had appeared in American politics a secret organ ization with paraphernalia of ritual, pledges, signs, grips, and pass-words, and with purposes made known only to the higher degrees of the order. It was dubbed the Know-Nothing Party by the people, because even its members were ignorant of the purposes of the society, though more formally they answered to the name American Party.

The party was strong enough to carry nine state elections in 1855.[2] It was in this year that the great contest with the new party was fought in Virginia. "We can safely

[1] Congressional Globe; Vol. XXIX, pp. 221-228.
[2] Johnston's American Politics, p. 169.

assert," says the historian of that contest, "that political excitement never ran higher in any state, than in Virginia in 1855."[1] The Know-Nothing party in Virginia had been organized only one year, the first "council" being formed in Charlottesville in July 1854, by authority of the "Grand Council of 13" of the city of New York. It was introduced into Virginia under the specious guise of a great conservative organization; knowing no North, no South, no East, no West; repudiating all sectionalism, and utterly discarding old party lines and old party issues, "it had attracted many who were tired of sectional disputes and were anxious once more to belong to something which was "national, republican, and constitutional in all its tenets and intentions." The candidate of the Know-Nothings for Governor was Thomas S. Flournoy; of the Democratic Party was Henry A. Wise. The Know-Nothing ritual, first exposed in Illinois, had been sent to Mr. Wise. It was published simultaneously in the Examiner and the Enquirer and copied by all the Democratic papers in the state; so that the ridiculous forms and ungenerous platform of the new party were thoroughly exposed. Among the workers in this campaign was R. M. T. Hunter. He delivered a speech in Richmond which was eloquent and profound. As an opening argument, he accused the new party of being either affiliated with freesoilers or being indifferent to the slavery question. He proceeds to denounce it for its secret organization and its hostility to public opinion and the rule of the majority. In its denial to Catholics of the rights to hold office, it unprotestantizes Protestanism, destroying what Luther had established, "the right of pri-

[1]Hambleton, "A History of the Political Campaign in Virginia in 1855," p. 67, from which many of my facts and quotations have been taken.

vate judgment in matters of conscience;" in restricting the rights of aliens they would keep out the best foreigners and produce friction with those already in America. But not the least detrimental would be the moral effects of the new practices of the party—a transformation of "the old Virginian—frank, manly, and generous—with no secret malice nor mean revenge in his nature" into "the secret agitator, muffling his face, and treading the dark alley to the back door of his midnight conventicle, there to determine upon measures involving the welfare of his fellow citizens—sitting, perhaps in secret judgment upon some unsuspecting neighbor, trying him and condemning him unseen, or unheard."[1] The result of the campaign was an overwhelming victory for the Democrats; though a number of delegates were sent by the Americans to the State Legislature.

During all this time affairs had been growing troublesome in Kansas. The repeal of the Compromise of 1820 and the announcement of the squatter sovereignty doctrine had made the struggle on the question of slavery twofold—a contest in the territories and a further contest in Congress over the action of the territories, for it was found that the Kansas-Nebraska Bill had brought no peace to Washington. Immigrants poured into Kansas from both sections—young men from the South, who though not frequently taking with them slaves, yet anxious to do battle for Southern rights; and intending settlers from the North assisted by emigration societies anxious to win the territories for freedom. The two bands were inharmonious, both ready for the fray, and "bleeding Kansas was the outcome." The slave settlers were victorious in the early contests, by the

[1]The whole speech is in Hambleton's "A History of the Political Campaign in Virginia in 1855."

assistance of bands of Missourians who pre-empted lands in Kansas, and, though living in Missouri, laid claim, with some plausibility it must be said, to a right of helping to determine the government of the new territory. A pro-slavery delegate to Congress and a pro-slavery Legislature were elected and finally a pro-slavery constitution was adopted—all by July 1855. Subsequently, the free state settlers adopted a constitution to their liking, and under this elected state officers. This situation had to be dealt with by the General Government. The President of the United States in his message approved of the pro-slavery constitution, and denounced the Free State Government as an act of rebellion against the legitimate authority in the Territory. He also issued a proclamation placing under the authority of the Governor of the Territory troops of the United States with which to enforce the pro-slavery laws of the territorial legislature.

In accordance with this proclamation, the free state legislature in July 1856, attempting to meet at Topeka, was dispersed by United States troops. It was in this form that the question presented itself to the 34th Congress. A House appropriation bill contained a proviso declaring that "no part of the military force of the United States herein provided for shall be employed in the aid of the enforcement of the enactments of the alleged Legislative Assembly of the Territory of Kansas." This appropriation bill with the anti-slavery proviso coming to the Senate and being referred to the Finance Committee, Hunter reported it back with an amendment striking out the proviso. He was perfectly willing for the House to act on any bill they thought best, but he was unwilling for them to hinder the passage of a bill necessary to meet the expenses of government by an amend-

ment of a purely sectional nature on which the two Houses differed. If the House should insist on its amendment, the Appropriation Bill would fail, and the responsibility of embarrassing the government would be on those who had needlessly made its passage depend on an irrelevant question. The Senate took Mr. Hunter's view of the matter; both Houses insisted on their amendments; finally the regular session passed. An extra session was immediately called, and after further disagreement, finally the House concurred. Mr. Hunter had obstinately fought the battle both of administration and slavery, and won.

In the heat of the debate on Kansas. Senator Sumner of Massachusetts made a speech characterized by exaggeration and intemperance and full of insulting reflections on the Southern States and Southern men. No speech its equal in offensive phrases and personalities had probably ever been delivered in the Senate. On account of the references to Senator Butler and his state of South Carolina, Representative Preston S. Brooks of the same state made an assault on Sumner. The Massachusetts legislature hereupon adopted resolutions commending Sumner and calling for the expulsion of Brooks. These resolutions were presented to the Senate and laid on the table while Mr. Hunter was absent in Virginia; and on his return he took occasion to speak on them in the Senate. He could not understand how the Massachusetts Legislature could commend the course of Sumner in making his exasperating remarks on the South. To appreciate Hunter's position and the character of Sumner's speech, it may be well to call to mind the words used by the Massachusetts orator in reference to Hunter's colleague, Mr. Mason. In that celebrated speech occurs these words: "He [Mr. Mason] holds the commission of Virginia;

as a state under the Lecompton Constitution; the House passed the bill but with the provision for a re-submission of the constitution to the popular vote. The Senate having refused to concur, a conference committee was appointed. Among the members on the part of the Senate was Hunter. The Committee recommended what is called by some the English Bill[1] from the name of its author, a representative from Indiana on the Conference Committee, by others "Lecompton junior."[2] The plan was to offer Kansas a large grant of land; on which offer the people of the territory were to vote; if they accepted the grant they were to be admitted as a state; if they rejected, they were to wait until their population reached the number required for one representative in Congress. This bill has been usually looked upon as an attempt at bribery, an attempt "to corrupt the honest conscience of the governed."[3] But there is no doubt that many who favored it did so conscientiously.[4] There is no doubt that Hunter, for one, was conscientious in arguing "as a general proposition, that the people of no territory ought to be admitted as a state until they have population enough for one member of Congress," but that we may "waive these considerations for the sake of the peace of the country—provided, you will come in and make a final disposition of the whole matter. If, however, you refuse to come in and make a final disposition of the whole matter, the consideration fails upon which we were willing to incur the mischief of admitting a new state with an insufficient population;" also "we have no power either to change that instrument (the Kansas Constitution) or to require you to

1 Rhodes, History of the United States, Vol. II, p. 299.
2 Schouler, History of the United States, Vol. V, p 399.
3 Ibid, p. 400.
4 Rhodes, Vol. II, p. 301.

pass upon it in any other form than that which you have determined for yourselves; but in regard to the contract that you propose to us (the land grant which the Kansans wished), we have the right to change that, and we submit it to you to say whether you will or will not accept this modification which we propose of the contract."[1] The re-submission of the land question was not in Hunter's opinion a bribe in any way, but an endeavor on the part of the Government to make a better bargain than Kansas had proposed. Congress having a perfect right to refuse to make an unfavorable contract, and leaving the constitution out of the question, a perfect right to require of Kansas whether or not she insisted on the exact amount of land proposed in her ordinance. This may not have been the real view of many who voted for the English Bill, but in the writer's opinion it was the real view of Hunter. The English Bill was accepted by the Senate and then by the House and became a law; but Kansas refusing to accede to its conditions remained out of the Union, until in 1861 the Republicans, after the withdrawal of the Southern States, were able to admit her with a free constitution [2]

The 36th Congress met three days after the execution of John Brown. The whole nation was stirred with excitement, and this excitement was reflected in Congress. A resolution was without delay offered by Senator Mason, Hunter's colleague, that a select committee be appointed to inquire into the Harper's Ferry outrage. Hunter was in full accord with Mason in believing the assault on the Virginia town an "outrage," and favored the resolution that was offered. A month later he addressed the Senate at

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[1] Congressional Globe, 35th Congress, 1st Session, p. 1817.
[2] Johnston, American Politics, p. 195.

length on the bill offered by Douglas instructing the Committee on Judiciary "to report a bill to protect each state and territory of the Union against invasion by the authorities or people of any other State or Territory," and offers the usual pro-slavery arguments, with suggestion of the severance of the Union and the impossibility of coercing the South. Although more moderate in his expressions than many Southern Senators and Congressmen, yet he went as far as any in his belief in the wrongs of the South and his demands for redress and protection. He voted for all the Davis resolutions setting forth the Southern position, and opposed all amendments to those resolutions. The fourth resolution displays the new ground taken by the Southern politicians, a demand for an expression in legislative enactment of the principle of the Dred Scott Decision. The leaders had accepted this doctrine long before; for we have seen it expressed by Hunter in the Kansas-Nebraska act; but their demand for the incorporation into the law of the land of the doctrine of non-interference of Congress or the Territories with slavery in any way or in any territory was new ground.

Meantime the Democratic National Convention met at Charleston, April 23rd, 1860. In Virginia there had been a sharp contest over the policy to be adopted at Charleston. One party led by Henry A. Wise and supported by the Enquirer advocated with energy and spirit the incorporation into the platform of a clause demanding congressional *protection* for slavery in the territories; the other party led by R. M. T. Hunter, and supported by the Examiner advocated the adoption of the platform of the preceding Cincinnati convention. That platform had declared that "the Democratic party will resist all attempts at renewing, in

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Congress or out of it. the agitation of the slavery question;" and resolved that "the American Democracy recognize and adopt the principles contained in the organic laws establishing the territories of Nebraska and Kansas as embodying the only sound and safe solution of the slavery question."[1] It must not be inferred that Hunter would not have been willing to accept the new concession to the South; for he was behind none in his ideas of southern rights; but Hunter was prudent; he had a sincere love for the Union; and besides was a candidate for the Presidency. In his aspirations for the highest position in the gift of the people, he had many firm supporters. His successful record as Chairman of the Finance Committee for ten years, his endeavor to prevent dishonesty and reckless expenditure, and his friendly and conciliating disposition had made for him many admirers all over the country; and yet his firm belief in the righteousness of the Southern cause, his reputation as one of the Southern triumvirate in Congress gave him strong following in his own section. The Knoxville *Register* said of him: "He has never advocated or voted for any measure, that any man North, East, South or West, can charge was unconstitutional. We have yet to see a single paper, either Democratic or Opposition, say aught against his public or private character."[2] The Tallahassee *Journal* declares: "the multiplying evidences of popular support, which are now given him from all portions of the Union are not the ovations of partisans; they are tributes of approval rendered by an enlightened people to conduct which has won him the reputation of a great statesman and unselfish patriot."[3]

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[1] Rhodes, II, p. 171.
[2] Quoted in the Richmond Examiner, April 16, 1860.
[3] Quoted in the Richmond Examiner, April 16, 1860.

In the correspondence of the New York *Day Book*, after the adjournment of the Charleston Convention, the following eulogy occurs: "Ever calm, considerate and unimpassioned; of ripe experience; conservative in all his views, both of foreign and domestic policy, Mr. Hunter possesses, in a pre-eminent degree, all the elements necessary to constitute a safe and efficient chief magistrate—such as is peculiarly demanded by the present emergency—one in whose wisdom and integrity every interest, and every class, can repose entire confidence—under whose administration we should enjoy a return of the better days of the Republic."[1]

In the convention at Charleston, then, Hunter's name was prominent. The Virginia delegation refusing to secede when the cotton state proposition of the new test for the protection of slavery failed, remained in the convention casting their ballots each of the fifty-seven times for him. But from the first there appeared little general strength for the Virginia Senator, as on the first ballot, although he received the next highest, only forty-two votes were cast for him against one hundred and forty-five and a half for Douglas. The convention adjourned, however, on May 3rd, to meet in Baltimore on June 18th, having spent ten days in adopting a platform and trying to choose a candidate. Hunter's name was still kept before the public, as may be judged from the above extract from the *Tallahassee Journal;* and as late as June 5th, the *Examiner* presents his claims in a flattering editorial. But the convention having met in Baltimore, seeing the impossibility of nominating a Southern man, the Virginia delegation now seceded, followed by most of the delegates from North Carolina, Tennessee, Kentucky, and Maryland. The Baltimore seceders now met in

[1]Quoted in the Examiner, May 31st, 1860.

this same city and nominated Breckenridge and Lane upon the same platform proposed by the cotton states at Charleston; and the Charleston seceders, who on the advice of Sen. ator Hunter and eighteen others,[1] had delayed their meeting until after the Baltimore convention, now ratified their nomination unanimously. In the exciting campaign which followed after the different candidates had been put forward—Douglas for the Northern Democrats, Breckenridge for the Southern, Lincoln for the Republicans, and Bell for the "constitutional unionists"—Hunter took a very conspicuous part in Virginia. On August 17th, at Charlottesville, he made a strong appeal for Breckenridge and Lane as the only acceptable candidates for the South.[2] On October 6th, 1860, he spoke one hour and three quarters to a crowded assembly in Mechanics Hall, Petersburg, proclaim ing so eloquently the "blessings of the Union as established by our fathers," that his hearers were aroused to such a pitch of enthusiasm that they gave three hearty cheers for Hunter.[3] On October 5th, in the Metropolitan Hall, Richmond, "he enchained the attention of his hearers by a masterly and statesmanlike address."[4] Despite these and many other speeches by Hunter and other Democrats, Virginia cast her vote for the Conservative Bell; and the country as a gift from a warring Democracy, received the immortal Lincoln as her chief ruler.

The South now saw a party come to power whose express determination was to destroy the "peculiar institution" by penning it up within the narrow confines of the States; and who knows when they would stop after slavery was shut

[1] Examiner, May 21st, 1860.
[2] Examiner, August 25th, 1860.
[3] Examiner, October 12th, 1860.
[4] Semi-Weekly Enquirer, October 9th, 1860,

out of the territories? Would the faction whose smallest demand, in the opinion of Southern statesmen, was a violation of the compact of Union, be loath to make even larger demands—even emancipation of slaves throughout the Union—demands proceeding from the same spirit and violating the same organic law as the *restriction* of slavery? It was not enough to say that there was no immediate danger, to show that "the Republicans would be in a helpless minority in the new House of Representatives, and the Senate would be hostile to them."[1] If the anti-slavery force in the House had already leavened the whole lump, what could it not do when aided by Executive influence and patronage? Were not free States constantly increasing in number and Republican ascendancy becoming possible in the Senate itself, bulwark though it had been of the South? Had not this abolitionist propagandism in a few years been incredibly active, and who knew when the wavering Democrats who voted for Douglas would haul down colors and join the ranks of the lithe railsplitters? It was in this light that the situation appeared to the loyal Southerner of 1860, and believe though we may that slavery was both morally and econominally wrong, that secession was at least inexpedient, sagaciously wag our heads as we aver, "you brought it on yourself and now must pay the penalty"—surely we lack historical imagination if we cannot feel some sympathy for the alarm of the Southern statesmen when they felt that inch by inch they were losing ground and by the thousands the enemy were receiving reinforcements. Hunter gave expression to such apprehension in a lengthy letter published in the *Enquirer*, December 12, 1860, in reply to a request from that paper for his

[1]Channing, Student's History of the United States, p. 501.

views on the crisis. Commenting on the precarious situation, and overthrowing the coercion theory, he proceeds to find a solution of the difficulty. He declares secession "morally justifiable only when the infraction of the constitution is of such a character as to make secession the only remedy, or when the danger of such an infraction is so imminent that secession must be *immediate* to be a remedy at all. He thought Lincoln's election of itself an insufficient cause for secession, though if a State should secede on that ground, believing it a proper one, she had a right to do so, and no one had a right to question her act. In Virginia, however, Hunter preferred "an honest effort to preserve" the union "upon terms consistent with the rights and safety of the South." He advises a conference of Southern States to agree upon the securities they desire and to propose these as amendments to the constitution. But in case of the secession of the cotton states, South Carolina having set the example, and in case of Virginia's failure at mediating, and the consequent necessity of making a choice between the two sections, he favored her joining the party of her kindred and her social and business affiliations. Whatever befell "where she leads we will follow."

Mr. Hunter in his support of the Davis resolutions had already showed the character of the concessions which he thought ought to be made by the free states. On January 11, 1861, he presented some suggestions of his own. On the second instant he had introduced a resolution to authorize the President to retrocede under satisfactory conditions forts, arsenals, dockyards, etc., to such states as should desire such cession, and the speech referred to is in furtherance of that resolution. There must, he says, "be guarantee of a kind that will stop up all the avenues

through which they have threatened to assail the social system of the South. There must be constitutional amendments which shall provide: first, that Congress shall have no power to abolish slavery in the States, in the District of Columbia, in the dockyards, forts, and arsenals of the United States; second, that it shall not abolish, tax, or obstruct the slave trade between the States; third, that it shall be the duty of each of the States to suppress combinations within their jurisdiction for armed invasions of another; fourth, that States shall be admitted with or without slavery, according to the election of the people; fifth, that it shall be the duty of the States to restore fugitive slaves when within their borders, or to pay the value of the same; sixth, that fugitives from justice shall be deemed all those who have offended against the laws of a State within its jurisdiction, and who have escaped therefrom; seventh, that Congress shall recognize and protect as property whatever is held to be such by the laws and prescriptions of any State within the Territories, dockyards, forts, and arsenals of the United States, and wherever the United States has exclusive jurisdiction" with the provisions that a territory might pass a law, with the consent of a majority of Senators from both sections, assuming the right to legislate on slavery, or that a territory might be divided by Congress so that "involuntary servitude shall be prohibited in one portion of the territory, and recognized and protected in another." These are "the guarantees of principle, which, it seems to me, ought to be established by amendments to the Constitution."

Besides these "guarantees of principles," there are necessary "guarantees of power," "a veto power in the system, which would enable it (the South) to prevent it (the system)

from ever being perverted to its attack and destruction." This veto power consists in a dual executive, one to be elected by each section, one to be President of the nation for four years, the other President of the Senate with a veto power just as the first; these Presidents to be nominated by the representatives of "Presidential electoral districts" "and by them submitted to the people and those should be declared elected who received a majority of the districts." Then "in order to secure the proper enforcement of these rights for which there are no adequate remedies, the Supreme Court should also be adjusted." There should be ten justices, five from each section; and before this tribunal any State might bring another for failure to perform its constitutional obligations, and on its receiving judgment the plaintiff state might deprive the citizens of the offending state of the privileges possessed within its jurisdiction by all other states in the Union, and also to tax its "commerce and property," until it ceased to be in default."[1]

Such is the elaborate scheme of concessions and guarantees which in Hunter's judgment were necessary for the protection of the South; surely such a scheme would bring back the days of a "League of Friendship" and a "rope of sand," with an addition of which the people of those "critical" days were innocent—a perplexity of government machinery without a government, government by courtesy culminating in legitimate warfare.

This scheme was only one of a long list of attempts to adjust matters between the States; there was. however no prospect of the acceptance by Congress of either the Davis resolutions or Hunter's plan, as both aimed at satisfying the extreme demands of the South, without recognition

[1] Congressional Globe, 2nd Session: 36th Congress, pp. 328-329.

of any righteousness in the Northern contention. There was likelihood of success for a compromise presented by John J. Crittenden of Kentucky, according to which unalterable amendments were to be added to the Constitution recognizing slavery south of the line of 36° 30′ and prohibiting it north of that line, providing also that the Federal Government "should pay for slaves rescued from officers after arrest."[1] Hunter himself favored this compromise, preferring it to the proposition of the Peace Congress called by Virginiain accord with that spirit of mediation of which he had spoken in his letter in the Enquirer. As a matter of fact, immediately after the Senate took up the Report of the Peace Conference, he moved to substitute for its suggestions the Crittenden Resolutions, and both Hunter and Mason declared that the terms proposed in the report would not be satisfactory to Virginia.[2]

All three members of the "Southern Triumvirate," Davis, Toombs, and Hunter, declared that they would accept nothing which the Republicans would not support;[3] and the Crittenden Compromise failed because the Southerners refused to entertain it.[4]

But there were states that had not waited to learn the results of conciliatory schemes. Three days after the Crittenden Resolutions were presented, South Carolina had seceded, and three days before the Peace Conference met at Washington, six other states had followed doughty Carolina's example. On the very day of the meeting of the Washington Peace Congress, a convention met at Montgomery, Alabama, to organize the government of the "Con-

[1] Johnston, American Politics, p. 194.
[2] Burgess, The Civil War and the Constitution, Vol. I, 128, also Globe, p. 1806.
[3] Ibid, Vol. I, pp. 96-97.
[4] Johnston, American Politics, p. 194.

federate States of America;" by the eighth a provisional constitution had been adopted, and ten days later, Jefferson Davis was inaugurated chief executive. Three commissioners were appointed by the provisional government to negotiate for peaceful separation of the seceding states from the Union and to arrange a division of the public property in which they held interest. Hunter was chosen by these commissioners to interview Seward as to whether Lincoln would receive the commissioners, and as "a loyal senator from a loyal state" was received kindly. Seward replied that he would have to consult the President, and next day answered in a note that it would not be in his power to receive them.[1]

Hunter did not receive this reply in very good grace, and in referring to Lincoln's refusing to recognize the Confederate nationality long enough to treat with it for peace, he said, "Nothing beyond this is needed to stir the blood of Southern men—If our people exhibit the proper spirit they will bring forth the desexters from their caves; and the skulkers who are avoiding the perils of the field, will go forth to share the dangers of their countrymen."[2] Virginia meanwhile, though in the Union, had nevertheless since February 13th been holding a convention, and this assembly was "nominally controlled by Unionists," it had been a "constant menace and source of anxiety to the Government, ever since the new administration came into power.[3] However, after the fall of Sumter on April the 14th and Lincoln's call for troops made choice of either the Union or the Confederacy necessary, the Virginia convention in secret meeting on April 17th passed the ordinance of secession. Hunter

[1] Nicolay and Hay, Lincoln, Vol. III, pp. 401-402.
[2] Blaine, Twenty Years of Congress, Vol. II, p. 22.
[3] Schouler, IV, p. 18.

made no speeches urging this act. but no doubt had done "all in his power to secure the passage of the ordinance, in his quiet and effective way,"[1] as the majority of Southerners, having however favored secession only as a vantage ground from which the South might struggle for her cherished rights.

The long career of Hunter in the councils of the Union of our fathers was now ended. With the exception of two years, he had served continuously in Congress from 1837, and for ten years as Chairman of the Senate Finance Committee had more than any other individual controlled the expenditures of our Government. He had done his duty ably and honorably. And as we have twice shown, had won the respect from all sections as a wise and upright statesman. "He was a man of sturdy common sense, slow in his methods, but strong and honest in his processes of reasoning." [2] He was responsible for a number of important acts in legislation, and was influential in securing many others; but he stood out as a champion of the extreme doctrine of State Rights, and was considered "a conspicuous example of that class of border State Democrats who were blinded to all interests except that of slavery."[3]

The four years of service under a new flag were now at hand. The Virginia convention appointed five delegates to the provisional government at Montgomery, and R. M. T. Hunter was one of the five. He soon conceived the idea of the removal of the government to Richmond. It was said of him that every time he passed the marble works at Montgomery on his way to the capitol, and surveyed the tomb-

[1] Jones, A Rebel War Clerk's Diary, I, p. 32.
[2] Blaine, Vol. I, pp. 275-7.
[3] Blaine, Vol. I, pp. 275-7.

stones, he groaned in agony, and predicted that he would get sick and die there."[1] It is stated that the original plan of the founders of the Confederacy was to make Hunter President and Davis General-in-Chief of the Armies in the field.[2] Some proposed to make Hunter Secretary of War 'to kill him off" and some are relieved when on the resignation of Toombs, he accepts July 21st 1861, the Portfolio of State under the Provisional Government and think him disposed of "if he will stay."[3]

His most important duty as Secretary of State was to endeavor to set the new government in its proper light before the nations of the earth, and if possible to secure an acknowledgment of its nationality. He was, possibly, through the able papers of instructions sent to the representatives of the Confederacy abroad, in part responsible for the sympathy that was felt in foreign countries—particularly in England and France, but cogent as were his arguments nothing substantial was gained by them. His first official communication was addressed to "Hon. Wm. L. Yancey, Hon. P. A. Rost, Hon. A. D. Mann, Commissioners of the Confederate States" instructing them to make it known that the Confederate States are not "seeking to destroy the jurisdiction of a constitutional and common Government,"—that the commissioners are representatives not of rebellious subjects, warring against the proper authority of a lawful sovereign, on the contrary, of a Confederacy of sovereign states who have withdrawn from their former Union because the covenants and conditions of the compacts which formed it have been

[1] Jones, A Rebel War Clerk's Diary, I, p. 41.

[2] T. G. Garnett, Southern Historical Papers, 27, p. 164, a speech delivered at Tappahannock, Va.. June 20, 1898, in presenting Mr. Hunter's portrait to the Circuit Court of Essex.

[3] Rebel War Clerk's Diary, I, p. 60.

violated and disregarded by the other parties to the agreement." They are reminded that "the Confederate States, in asking for a recognized place among the nations" do not "demand any favors for which they do not offer equivalent, —we have never doubted our ability to defend and maintain our separate existence." Then special arguments are presented to Spain, because of her "interest" through her colonies, in the same social system which pervades the Confederate States, because of the productiveness and natural wealth of the South and her similarity to Spain.[1] Similarly in his instruction of September 23rd, 1861, to Hon. John Slidell he shows the real position of the South, her secession not in order to make rebellion but to preserve guaranteed rights; the productiveness of the South; the military success of the Confederacy; and then proceeds to exhibit the advantages that would accrue to France in having an agreement with a nation which could so cheaply furnish her with coal and raw materials for building a navy.[2] In like manner, Mason was to argue with Great Britain on the general principles of the Southern position, to show her the impossibility of coercion, to appeal to her as a leader "in the progress of Christian civilization" to recognize Southern independence and thus help to prevent further unavailing bloodshed, finally to display to her the advantages of unrestricted cotton trade with the South.[3]

But however well Hunter might have discharged the duties of cabinet member, he preferred the title which he had so long borne under his old government. Whether or not to his disappointment, Benjamin was supreme in the cabi-

[1] Messages and Papers of the Confederacy, Vol. II, pp. 72-76.
[2] Ibid, pp. 457-465.
[3] Life of J. M. Mason, by his Daughter, p. 252 and seq.

net, and although as member of the cabinet he had a right to participate in the operations of Congress, the man who had declined to be Secretary of State under Pierce was not likely to prefer to remain under Davis. So when the election for the first permanent Congress of the Confederacy was coming on, he announced his candidacy for senatorship from Virginia. It was not with general acquiescence that he made known his purpose. Mr. John S. Barbour was in the field and was regarded as being Hunter's particular opponent. The paper which in the canvass of 1860 had been Hunter's chief advocate now could find no good word for him though it found many flattering terms in which to describe Barbour. Yet the "true question" which the legislature had to decide was not Hunter's "moderate sized greatness, but "*whether Virginia shall be represented in the President's cabinet or not.*" "If the legislature elects Mr. Hunter to be a member of the Confederate Senate, it deprives the State of the benefit she may derive from the presence of a Virginian in the President's Cabinet, and gains nothing in return—not even the effect which Mr. Hunter's pretended talents may have on the counsels of the Senate."[1] Although the *Examiner* failed not on every appropriate occasion to press these views, and despite the charge that Hunter "never had any personal strength with the people of Virginia," "the strong support they had given him" being "due to adventitious circumstances," yet the majority of the Legislature seeing the matter in a different way elected Hunter, Barbour having finally withdrawn from a hopeless fight.

In the Senate Hunter was in a familiar field. The same activity he had shown in the Senate at Washington, he now showed in the Senate at Richmond. Yet this sen-

[1] Richmond Examiner, January 8, 1862.

atorial career unlike the other was unproductive of any permanent achievement, not indeed because of Hunter's inactivity or inability, but because to the fates it seemed otherwise. There was no Independent Treasury plan to be ingrafted on a national financial system, no great Tariff measure to make a landmark in the history of commerce, no war with Great Britain or Austria to prevent—all of which things and many others he had contributed largely to accomplish in the days when he strove with or against Webster and Sumner and Cass. But this Congress to which he now belonged was a smaller body, of lesser significance in the eyes of nations, with no millions to toss about in the game of legislation. It is true many of the ablest men of the old Congress were in this permanent Congress of the slave states, but none of them, not even the strongest, had the miraculous power to strike wealth from imprisoned cotton; there was therefore a feeling of the paucity of resources, and, stimulate their hope as brave men will, as months rolled by a deepening sense of the hopelessness of their contest—feelings which are not productive of large though inconsequential plans.

Hunter was immediately elected president *pro tem.* He was also made a member of the Finance Committee. Of his particular acts in the Congress of the Confederacy we will mention only a few. On March 12, 1862, he opposed a bill recommending to the farmers of the South to withdraw as much as possible from the cultivation of cotton and tobacco, and to devote their energies to raising cattle, hogs, and sheep; and also a substitute limiting specifically the number of pounds which might be produced for each hand employed He opposed this measure because he thought that the limitation of production would contribute to build

up the English East India cotton interests.[1] He was responsible for the tax in kind "which practically supported the Confederacy during the last two years of the war."[2] He opposed the Oldham Bill, proposing to levy a one per cent tax. offered only a short while before the surrender of Lee, on the ground that the tax proposed would be too onerous to be borne. amounting as it would do to 50 per cent Confederate money. On that occasion he gave a summary of his part in the financial history of the Confederacy, a part of "opposition to the policy which had been pursued." At the second session of the Provisional Congress, he had "proposed that, instead of interest-bearing Treasury notes, notes should be issued without interest, with a provision that the holder should fund them at his pleasure in an 8 per cent bond when interest was to be paid in specie—this bond to be reconvertible into Treasury notes whenever it was so desired by the owner. This bond—was designed as a regulator or balance wheel of the currency;" for when notes sank in value they would be converted into the bonds which were thought "would be worth par in specie." Due to circumstances not under Hunter's control, this policy had not been given a fair trial and had failed. Hunter was also the first to see and "to declare the necessity of limiting absolutely the amount of notes to be issued." His policy of raising money had been to sell government bonds "even below par if necessary, and by taxation. It was better, then as now to sell our bonds below par, and to measure our debts by a true standard of value than to borrow money by the issue of a depreciated paper." But "this policy did not meet the views of the administration." Later,

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[1] Examiner. March 13, 1862.
[2] Southern Historical Society Papers, Vol. XV, pp 418-419.

the President's message recommending no other tax, he had suggested a bill proposing "that each tax-payer should contribute one fifth of his income to the Government, and receive in exchange a Confederate bond. This bill had failed in the House. Notes continuing to be issued and the currency to depreciate, he felt "the necessity of a tax on real values," and consequently "suggested the tax in kind." Next the Finance Committee had "proposed to lay a tax by deducting from the face of each Treasury note two thirds of its value." This scheme had the merit of adding no new currency to the amount afloat, leaving the currency after reduction in the hands of those who held it before reduction. The scheme of the Committee was not adopted in full, only one third being deducted, and the measure, though productive of good, had been less effective. However Hunter thought neither he nor Congress was responsible for the condition of the public credit for "no legislation can sustain a currency which is founded on public credit in the face of such military reverses as we have experienced."[1] We shall have to agree with Hunter in this, and conclude further that the financial as well as the political and military ambitions of the Confederacy were doomed from the beginning of the fight for Southern independence.

The most interesting of the positions which Hunter took was in opposition, March 1865, to the bill giving the President authority to enlist negroes "under the same conditions as whites." His objections to this bill which even Lee desired as a measure of necessity were because it was an abandonment of the contest in which the South had engaged; because it authorized the Confederate Government to do exactly that for which they had left the Union—inter-

[1] Examiner, March 4, 1865.

fere with the institution of slavery; because in his opinion no considerable body of negro troops could be raised without stripping the country of necessary laborers; because of his apprehension that the presence of negro troops would have a demoralizing effect upon the rest of the army.[1] Mr. Hunter was a slave-holder, one of the most valiant of the defenders of the institution that the South had had in the days before secession, and it was hard for him as it was for others to reverse position, even in the face of the fact which none saw more plainly than Hunter himself, that probably the South would fail and slavery be abolished in any case unless something could be done, even a great sacrifice made, to add to her failing strength. Yet, he had to give his vote for the obnoxious bill; the Virginia legislature was not of the same mind as her Senator and gave him instructions as to her will.

A few days more than a month before this time, but while the scheme for the enlistment of negroes was under discussion, Hunter had occasion to figure conspicuously in the eyes of the world; for on February 3, 1865, occurred at Hampton Roads the famous Peace Conference between Lincoln and Seward on the one hand, and Stephens, Campbell and Hunter on the other. The situation at the South was so desperate—finances exhausted, troops dwindling away by slaughter, disease, or desertion, military reverses becoming more and more frequent, prices constantly rising—that peace would have been welcomed by many a war-sick heart. Hunter had the reputation of being one of these war-sick hearts. War Clerk Jones in his diary[2] on January 8, 1865, says: "Mr. Hunter sees affairs in a desperate condition, and he

1 Ibid, March 8, 1865.
2 Jones, Rebel War Clerk's Diary, Vol. II, p. 380.

has much to lose." Hunter had also sent to James A. Seddon, Secretary of War, with whom he cultivated friendly relations, a letter from a Virginia gentleman "stating that it is needful to inaugurate negotiations for the best possible terms without delay, as the army, demoralized and crumbling, cannot be relied upon to do more fighting;" and had endorsed upon it over his own name "I fear there is too much truth in it."[1] Speaking after the war of this distressing time, Hunter said: "But among the *considerate*, and those who had staked and lost both family and fortune in the war, feelings of despondency were beginning to prevail. Particularly was this the case among the *older class of legislators*."[2] So when Francis P. Blair came to Richmond with propositions looking to peace, Hunter was one of those who were not loathe to give him welcome.

The first person to whom Davis revealed the nature of Blair's visit to the capitol of the Confederacy was Hunter.[3] Against the protest of Stephens, Hunter and he received their commissions to represent the South, the Vice-President fearing that the absence of both the speaker and the speaker *pro tem* would make the enterprise too conspicuous. Davis overruled him, however, and so Hunter, in whom we are told Davis put his chief confidence,[4] was not prevented from participating Davis and he were in accord as to insistence upon Southern independence, though he regretted that the wording of the instructions to the commissioners was such as to be an embarrassment to the arrangement of the meeting, and though he objected to the

[1] Ibid, p. 396.

[2] Southern Historical Society Papers, Vol. III, p. 168.

[3] Stephens' War Between the States, Vol. II, 576 seq.

[4] Fitzhugh Lee in Century Magazine, Vol. LII, p. 476.

limitation of the range of discussion[1] by the phrase "for the purpose of securing peace to the two countries," which Davis had inserted to save his "personal" honor[2] in the original draft made by Secretary Benjamin.

In the conference upon Stephens pressing the project suggested by Blair of sending the Southern army to assert the Monroe doctrine against the French, Hunter declared the Southern people unwilling to such a policy and that for his part he "laid no such claim to the right of exclusive possession of the American continent for the American people," and that many Southerners would be "unwilling to have a war (more) upon a mere question of policy than of honor or right." Hereupon he asked President Lincoln upon what terms he would negotiate for peace. Upon Mr. Lincoln's replying that he could not treat with those who bore arms, Hunter reminded him of how Charles I had done such a thing, and received for reply one of those unanswerable witticisms of Lincoln, that all he knew about the case of Charles I was that he lost his head!

Then Hunter expressed himself fully and emphatically upon the attitude of President Lincoln, recapitulating "in forceful tones" the points that had been discussed and declaring that nothing was offered the South but unconditional surrender. Although Seward strenuously denied that only unconditional surrender was offered, the Southern commissioners being unwilling to accept any general assurances that the Constitution was their guarantee, or any premises on Lincoln's part that he would exercise the executive power with clemency, or any surmises of probable compensation on the emancipation of slaves, the conference concluded without bringing relief.

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[1] Southern Historical Pub. Vol. IV, pp. 305-306.

[2] Ibid, p. 213.

Hunter's opinion of the attitude of the President and Seward at Hampton Roads as expressed in after years is hardly in accord with the ideas which we have formed as to the spirit of the great Lincoln. "Neither Lincoln nor Seward," he says, "showed any wise or considerate regard for the whole country, or any desire to make the war as little disastrous to the whole country as possible." But we may be unwilling to accept this opinion when we find it naively supported by the mere fact that "their whole object seemed to be to force reunion and an abolition of slavery"—the first of which they were supposed to be fighting for and with the latter of which they might naturally have been considered as having some interest! Not less interesting is the comment "It was evident that both President and Secretary were afraid of the extreme men of their party"—more evident was the fact that both President and Secretary saw their victory within easy reach, and although by no means careless "whether the sufferings of the conquered party were to be mitigated,[1] yet were certainly not disposed to surrender to the "conquered" because the "conquered" increased their own sufferings by not surrendering to them.

On the return of the commissioners from Old Point, any delusive hopes of Federal desire for peace or willingness to compromise faded away. There seemed now only two courses open—surrender with faith in Lincoln's proffer of clemency, or continued struggle with renewed zeal, now that there seemed no hope of adjustment. It need not be said, what many true Southerners are prepared to admit today, that the former would have been the wiser course. But the administration did not think thus and probably a

[1]For this and the preceding quotations, see Southern Historical Pub., Vol. III, pp. 173-174.

majority of the people still had hope of success. An effort was made to revive Southern enthusiasm by a large mass meeting at the African church in Richmond. Hunter agreed reluctantly to preside, delivering a "carefully prepared patriotic speech." He repeated to his hearers the ignominious conditions proposed by the enemy, drew to them pictures of the results flowing from Confederate success and the praise which the world would give them, urged them to have faith "in the government, faith in ourselves, and faith in one another,"[1] but he knew that however much this cheering band of wearied men might applaud his speech and those of the other orators of the day, they could not save the Confederacy; for had love and sacrifice sufficed they had done it long ago.

This oration at the African church, Hunter regretted in after years and even at the time one of his friends remarked to him "that he had never heard the orator with so little pleasure." In the light of known facts it is difficult to think that he even at the time of the conference would "certainly not have accepted peace on the condition of reunion," although we believe Hunter so read his own mind; but in any case after the failure of the Hampton Roads meeting he would have been willing to accept a restoration of the Union. On his way to that conference the desperate condition of the Confederate forces had been revealed to him as he had not known it before Shortly after his return, he urged on Davis the expediency of endeavoring to secure terms of peace, offering, as he claims, to take the responsibility on himself by presenting the resolutions to the Senate, if only assured that the President would act according to them.[2] Davis declares only that he promised to make a

[1] Examiner, February 10th 1865.

[2] Southern Historical Society Papers, Vol. IV, pp. 303-318.

prompt reply and regarded Hunter and the other members who waited upon him as merely a "cabal." From this time on the President's "faith in Hunter was impaired," and though believing "his usefulness diminished by his timidity—had concluded to take him as God made him; esteeming him for his good qualities, despite his defects.[1] And likewise Mr. Hunter "learned how necessary it was to have a great man at the head of a government, to serve a people in spite of themselves "[2]

The next day after the consultation with Mr. Davis referred to, Hunter found it "bruited all over Richmond that the Senator had been thoroughly conquered," and found it necessary to publish a card stating that the prevalent idea that he was "in favor of a reconstruction of the Old Union" was "entirely erroneous"; for he had "always held that we ought to maintain the struggle for independence *as long as there is any hope for success,*" and that the decision of this matter rested with the President and highest military authorities whose hands "we should do all in our power to strengthen."[3] We can reconcile easily the wording of this card with the position we know Hunter held—and held by no means to his discredit. Attributing to Davis the publicity of his recommendations for peace, he would no longer consider engaging in any confidential work with the President until the former matter was explained. And in this determination he held out, even though General Lee came one night to his room, and, sadly relating to him the dreadful plight of the army, for hours urged him to present resolutions in the Senate, and though Gen. Breckenridge also,

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[1] Ibid, V, p. 223.

[2] See note 123.

[3] Examiner, March 20th, 1865.

some time after, repeated Lee's advice.[1] But events did not wait on the solution of embarrassing relations between Confederate officials. The Union army fast closed in upon the Capital; Richmond was evacuated, and finally even Lee, in whom all parties had confidence, had to yield. The days of the Confederacy were numbered, and here ends Hunter's conspicuous career.

When Mr. Lincoln came to Richmond, Hunter was one of the prominent Southerners with whom he desired to confer, to the end that the two sections might be brought together. Hunter was not accessible at the time and a future meeting was prevented by the assassination of the President. Two years before the surrender a special raid had been made on Mr. Hunter's property by order of General B. F. Butler; his mill was burned to the ground, his stock captured. While contending with poverty and family bereavement, he was arrested in May 1865 and imprisoned for several months in Fort Pulaski in company with his old friend, James A. Seddon.

Though imprisoned, new bereavement came to him in the death of his youngest son. However, by the influence of his wife and powerful friends, he was finally released from confinement and settled down at Fonthill to try to eke out a living. He may indeed be pardoned if after the war he felt gloomy[2] over the future of the South or even was somewhat bitter in his feelings towards the victorious section.[3] Occasionally he wrote an article dealing with the Confederacy, and in 1877 engaged in an unfortunate dispute with Jefferson Davis over the Hampton Roads conference, in

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[1] Southern Historical Society Papers, IV, 309.

[2] Letter to J. M. Mason, October 16th 1869, in Life of Mason by his Daughter, pp. 592-598.

[3] Southern Historical Pub. Vol. XIII, pp. 344-355.

which dispute, however, it must be said Hunter was not the aggressor, and in which he certainly showed the better spirit. He seldom now participated in public affairs, though in 1872, he delivered a political speech in New York City, and sometimes appeared in his own State. In 1874, he became Treasurer of Virginia, to be defeated for re-election in the triumph of the "Readjuster" party.

In 1885, he was appointed to the Collectorship of the port of Tappahannock and held this position when he died. Finally after new bereavements and new financial losses, having striven hard against reverses and the infirmities of age and disease, he died on July 18th 1887, and was buried in the family cemetery.

In person, Hunter was "short and thickset," and when in repose unprepossessing; in disposition, he was simple, kindly and cordial; in culture he was scholarly and classical; in religion he an abiding faith in Providence. He was a friend of good men and works. He loved his State and the South—for them he wrought, with them he suffered and as they, so must he be judged.

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10. Messages and Papers of the Confederacy.
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12. Southern Historical Society Papers.
13. Savage, Living Representative Men.
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15. Stephens, War Between the States.
16. Numerous other works have been referred to such as Blaine's Twenty Years in Congress, Nicolay and Hay's Lincoln, etc.
17. There are a few manuscript papers in possession of Miss Hunter. To these the writer for family reasons was not given access. Some of them are published in Miss Hunter's Memoir. Mr. Hunter's papers in the main were seized or scattered during the war. I have been unable to locate any except those possessed by his daughter.

## VIRGINIA OPPOSITION TO CHIEF JUSTICE MARSHALL.

(Richmond Enquirer, May 25 1821.)

### ON THE LOTTERY DECISION.

### NO. 1.

*To the people of the United States*:

I beg leave to address you, fellow-citizens, on the subject of the late decision of the Supreme Court. in the case of *Cohens* against the *State of Virginia* I address you on that great subject, from no light motives whatsoever. Far less have I any vain desire, to array myself againt the very able penman, by whom that opinion was composed. I approach you, on the contrary, with a heavy heart. I address you under a solemn conviction, that the liberties and constitution of our country are endangered—deeply and vitally endangered, by the fatal effects of that decision.

Drawn towards you. fellow-citizens. by every tie which can attach man to man; deeply penetrated by all those fond endearments, which bind the affections of a man to his native country, ought I to sit silent under such circumstances? Ought I not to raise my feeble voice, in behalf of liberties of myself and my childrens' children, to the latest generation? Ought I not to move when your liberties and those of your latest posterity are in peril?

I trust that my address to you, fellow-citizens, will not be deemed presumptuous. I address myself to you, because you, alone, are able to afford relief. I address you, in your primary and sovereign character: and I pray you, in that character, to correct the proceedings of your subordinate

agents:—I address you, also, in your peaceful character. I want from you, no insurrections, no rebellions, no revolutions. It would be almost a perversion of terms, to ask the sovereign people, to rebel against the acts of their inferior agents. I ask from you no revolution, but what consists in the preservation of an excellent constitution. I require from you no insurrection, but that of a frequent recurrence to fundamental principles.

My appeal to you. I trust, will not be made in vain. You are the same American people, who, twenty years ago put down an infamous sedition-law, by the mere force of public opinion. Yes! and you also put down, therewith, the equally infamous judgments of the federal courts, by which that statute was enforced. You put down, with indignation, and with scorn, those unjust judgments, which had fined and imprisoned divers of our citizens, for exercising the sacred rights of speaking and writing, guaranteed to them by the constitution. Where is now that act, and where are now those judgments? Crucified, dead and buried. They have descended together, to the tomb of the Capulets, and peace be to their names. I am sure that my appeal to you will not be heard with indifference You are the descendents of that magnanimous people, who, in our mother country, corrected the unanimous judgment, of twelve high and ermined judges, in the famous case of ship-money. That judgment had asserted the right of the King, to levy taxes without the consent of parliament and, thus, had put the axe to the root of the constitution of England. That judgment resisted by the firmness and virtue of the illustrious Hampden, eventuated in this:—that some of those judges changed their opinions, others were impeached, and the judgment itself, was ultimately cancelled by both Houses of the Eng-

lish parliament as well as by the voice of the English people. It was unanimously declared by both houses to be, contrary to the constitution, subversive of the liberties of the people, and contrary to the petition of rights. (*a*)

The judgment now before us, will not be less disastrous, in its consequences, than any of these memorable judgments. It completely negatives the idea, that the American States have a real existence, or are to be considered, in any sense, as sovereign and independent States. It does this by claiming a right to reverse the decisions of the highest judicial tribunals of those states. That state is a non-entity, as a sovereign power, the decisions of whose courts are subjected to such a revision. It is an anomaly in the science of government, that the courts of one independent government, are to control and reverse the judgments of the courts of another. The barriers and boundaries between the powers of two sovereign and independent governments, are so high and so strong, as to defy the jurisdiction, justly claimed by a superior court, over the judgments of such as are inferior. This decision also reprobates the idea that our system of government, is a confederation of free states. That is no federal republic, in which one of the parties to the compact, claims the exclusive right to pass finally upon the chartered rights of another. In such a government there is no common arbiter of their rights but the people. If this power of decision is once conceded to either party, the equilibrium established by the constitution is destroyed, and the compact exists thereafter, but in name. This decison also claims the right, to amend the federal constitution, at the mere will and pleasure of the supreme court. The constitution is not the less changed or amended because

(*a*) State Trials, Hampden's Case.

it is done by construction, and in the form of a decree or judgment. In point of substance, its effect is the same; and this construction becomes a part of the constitution, or of the fundamental laws. It becomes so, because it is not in the power of the ordinary legislature to alter or repeal it. This construction defies all power, but that of the people, in their primary and original character, although, in effect, it entirely changes the nature of our government. This assumption of power is the less excusable, too, fellow-citizens, because no government under Heaven, has provided so amply as ours, for necessary amendments of the constitution, by the legitimate power of the people. This decision also touches the sovereignty of the states, in another very tender point. It nullifies a statute made by one of them, to promote the morality of her people. It does this at the instance of the petty corporation of the city of Washington, and the statute of Virginia is made to yield, to an ordinance of the Common Hall of that city. It is so made to yield by means of the most remote and unwarrantable implication. This decision does not admit the competency of the courts of the states, to enforce their own penal-laws, against their own offending citizens. It does not admit them to be impartial, in deciding the controversies of the states, with their own citizens. Nor does it allow them to enforce an act, made to promote the morality of their people. Few measures are more promotive of that end, than the abolition of gambling—and that cannot be prohibited but by penalties, like the one in question. This decision also claims the right, to bring the state government before the courts, without their consent, and without, consequently, having the necessary parties. It claims to do this, in all cases whatsoever: or which is nearly the same thing, in all

cases in which the constitution, laws, and treaties of the United States may come in question. It claims that right also, at the suit of a citizen of that state: a right utterly disclaimed by our conventions, and primiaeval legislatures. It claims this right in the teeth of the eleventh amendment to the constitution, and of the enumeration contained in the third article of the original constitution, which specified the cases in which the states consented to be sued, in the federal court, and in which specification, the present case is not included. It claims it, also, in defiance of the tenth amendment to the constitution, which provides, that powers not delegated to the United States by the constitution, shall be deemed to be reserved to the several states. To "cap the climax" of this absurd picture, the court has sanctioned the right of the legislature of the district of Columbia, to act by deputy; and has exalted to the dignity of a statute of the United States an ordinance of the Common Hall of the city of Washington. It has given a force to that ordinance in every State in the Union, which is to supercede and repeal their most undoubted and salutary laws: a power, which a statute of the Congress of the United States has not, which the acts of no State in the Union have; and which is not reciprocal in favor of Virginia, either within the territory of this favored district, or that of any other State in the Union.

This most monstrous and unexampled decision, is without the apologies which may be offered for the judgments of which I have spoken. The judgments upon the sedition law, might, in some degree, be paliated, by being bottomed upon an act of the federal legislature; as that in the case of ship-money, was expressly predicated upon the supposed necessities of the kingdom. But the decision before us, finds no

support from any statute; and is adopted in the most prosperous epoch of our existence, as a nation. It professes to give a true exposition of the constitution, and does not deign to seek a shelter under the pressure of any circumstances. It can only be accounted for, from that love of power, which all history informs us infects and corrupts all who possess it, and from which even the high and ermined judges, themselves, are not exempted.

It is of no account, that the judgment in question was rendered for the state of Virginia. That great and opulent state is, indeed, permitted to retain the paltry sum of one hundred dollars; but the permission is only grounded, if I may so say, upon the defectiveness of the pleadings. Whenever the actual provisions of an act of Congress, and of the ordinance consequent thereon, shall show an intention that they should operate within the territories of the states, a different decision would be given. In that case, the supremacy of such act or ordinance, would be asserted, and the most salutary indubitable provisions of the laws of the states must succomb. It is impossible that the people of any state can be thus gulled, by any decision. The case is, most emphatically, decided against them. It is so decided on grounds and principles which go the full length of destroying the state governments altogether and establishing on their ruins, one great, national, and consolidated government.

Before I go into this subject more particularly, I must be permitted again to remark upon the pretentions—allow me to say the extravagant pretensions,—of those, by whom the judgment before us has been rendered. While in other countries the judiciary has been said to be the weakest of the several departments of government, and has been limited

to the mere decision of the causes brought before it, ours has aspired to a far more elevated function. It has claimed the right not only to control the operations of the co-ordinate department of its own government, but also, to settle, exclusively, as aforesaid, the chartered rights of the other parties to the compact. Being one, only, of the departments of the general government, it has claimed and exercised a right, not possessed by them all—that of judging, definitely, in its own cause, in the case of powers contested between the parties to the compact. It has claimed the right to destroy the compact, by which the states are confederated together, by construing that compact to be, whatever it pleases to make it. In a government admitted to be defective, all its defects are cured by applying the rule of *precrustes*, or are amended by the construing power of the supreme court; a power, which is equally unnecessary under the actual provisions of the constitution on that subject and dangerous, as it knows no limit but the arbitrary discretion of the judges. While that high court will scarcely allow that any other government, or any other department of its own government can do right, it acts upon the principle, that itself is never in the wrong. While it is profuse as we shall see in ascribing the most unworthy motives, to other governments, and other departments, it arrogates to itself a degree of purity scarcely equalled by the white ermine with which it is invested. It challenges a degree of infallibility scarcely claimed by the arrogant pretentions of the former Popes of Rome. There is but one higher grade in this climax of arrogance and absurdity, and that is, to claim to hold its powers by divine authority, and in utter contempt of the sovereign power of the people.

With respect to oppressions of violations of the consti-

tution, committed by the other departments of the government, they can easily be corrected, by the elective franchise; and that franchise will be graduated, by the degree of oppression which is inflicted. But the court in question claims to hold its authority paramount to the power of the people. It is not elected by, nor is amenable to them. Having been appointed in one generation, it claims to make laws and constitutions for another (*b*). It acts always upon the foundation of its own precedents, and progresses, "with a noiseless foot and unalarming advance," until it reaches the zenith of despotic power.

The supreme court seem to have entirely forgotten, that the American people are a people jealous of their rights and priveleges. Having passed through the Red-Sea of the revolution, and foiled a formidable tyrant in the conflict, the inestimable jewel then acquired, is not to be lightly cast away. They seem to have forgotton what all history teaches us, that power is an encroaching thing, and that all men who possess it, will "feel it, and forget right." They seem to have forgotton that liberty can only be preserved by frequent elections as to two of the departments of government, and by checks and limitations judiciously applied, to the third. They seem to have claimed an exemption from the restrictions of the constitution, by the unlimited right they have usurped, to alter the constitution as they please. American history will teach that high court, on almost every page, that our people have, in all vicissitudes and changes, stickled for the division and limitation of powers. They have retained, entirely to themselves many important powers, and have refused to delegate them to any govern-

(*b*) Judge Washington was appointed in the last century and Judge Marshall in the year one. [1801].

ment. The powers actually delegated, have been also divided between two governments, and again sub-divided between the different departments of each government. This division and limitation of the granted powers, and the checks necessarily resulting therefrom, forms the only security of our liberties. Without these checks the balance of power would always incline in favor of the strongest government, or the strongest department of each government. But for the purpose of establishing these checks, this limitation and division of power, would have been wholly unnecessary.

The supreme court, while it must admit, that both itself and its co-ordinate departments, are to be checked by each other, (and instances of which, I shall hereafter specify) denies that any check exists, in favor of the state governments. The inference would seem to hold, a *fortiori*, in favor of the latter. It would seem to be a much smaller abuse, of the federal constitution, that a power should be exercised by one department of the same government, which was confided to another, than that one government should usurp the just powers reserved to another. If the line of demarcation between the different departments of the same government, cannot be obliterated by implication or construction, neither can that broader and bolder line, which is established between the different governments. It would be a much greater calamity to the American people, to wipe out these broader lines between the two governments, and thus establish one great consolidated government, than, by obliterating the fainter lines drawn between the different departments, to vest all the proper powers of the general government in one department. In that case they would be still federal powers, which would be exercised: but the

calamity would be inconceivable, of submitting the local and municipal concern of one section of this vast country to members coming from another, and who have no common interest with them in relation thereto.

The supreme court ought not to have forgotten, that although our general government is a national one as to some purposes, it is a federal one as to others. They ought also to have remembered, that states giving up some of their rights, and becoming members of a federal republic, do not, thereby, cease to be sovereign states (*c*). If the sovereignty of states is to be tested by the portion of power reserved, or given up, that criterion would clearly incline in favor of the state. We are told in The Federalist (*d*) that the powers delegated to the general government, are "few and defined, and relate chiefly to external subjects, while the states retain a residuary and inviolable sovereignty over all other subjects; over all these great subjects, which immediately concern the prosperity of the people." Neither can that result be varied by adverting to the relative sizes, of the territories of the contracting governments. A criterion of that kind would exclude the little state of Delaware, from her equal sovereign rights under the confederation, with the great state of New York. If these facts are borne in mind, and if it is at the same time remembered, that neither the general government has received, nor the state governments have parted with, any powers but those which have been "delegated," it will be difficult to sustain the decision of the supreme court. That decision has proceeded upon the idea, that *quoad* the judicial power, the state governments are not to be respected, and the supreme courts of the several

(*c*) Vattel, p. 12.
(*d*) 1 Fed. 2 9, 360.

states are to be regarded as inferior federal tribunals. In relation to the judicial power, at least, the states are not admitted to be sovereign.

These, fellow-citizens, are some of the objections I have to make to the decision of the Supreme Court. I shall, probably, advert to many others in the progress of my observations upon it. It is my purpose to endeavor to examine that decision under all its objectionable aspects and bearings. It is no small proof of the badness of the cause. espoused by that decision, that the opinion before us is objectionable, not only in its principles, but, also, in its form and structure. Considering the great talents by which it was composed, this defect cannot be otherwise accounted for. The opinion, besides being unusually tedious, and tautologous abounds in defects which are more important. It often adopts premises which cannot be conceded. and takes for granted, the very points which are to be proved. Its slips in history and in facts are but few and its sophistries are glaring and innumerable. If my remarks are tedious, tautologous, and desultory, it is because the opinion, in itself, is so. I must also throw myself upon the indulgence of the public, in this particular, on another ground. I have not time to prune or to polish.

I shall make no apology, fellow-citizens, for canvassing this most momentous opinion with freedom. The court, itself, has, indeed, invited a discussion of it. It has adopted the very novel course, of appealing to you, through the public papers, for its justification.* As I differ from them, *toto coelo*, on this great subject, I shall not yield to their principles, my assent or approbation. On the contrary, I readily take up the gauntlet which they have thrown down.

*By publishing the decision. Editor.

I further remark it as a very extraordinary circumstance, that this most awful decision should have been given off-handed, and as it were, without a moment's consideration. A judgment of this high court, involving the destiny of the constitution, is pronounced with the rapidity of a judgment of a court of pie-powder! It is extremely remarkable, too, that all the judges should have been of the same opinion; not only as to the result of the discussion, but also, as to the numerous points and principles on which that result is founded. As the tendency of these principles is equally novel and alarming, it can only be ascribed to a culpable apathy in the other judges, or a confidence. not to be excused, in the principles and talents of their chief. It is indeed, to be regretted, that these high judges, have abandoned the practice of giving, each, their own opinions. That is well known to be one of the chief guarantees of the integrity and independence of the judges. I shall examine this opinion, with freedom; but not without a deep conviction of my inadequacy to do justice to the subject. No consciousness of inferiority, however, shall deter me from the undertaking. With my awful convictions on this subject, it would be an admission of treason to my country to decline it.

Yet, REPUBLICANS! I greatly fear that your sins have overtaken you. I deeply regret that you are found sleeping at your posts, and "that you could not watch one hour."(*e*) I greatly fear, that the day of retribution is at hand. The sceptre of power, is, I fear, about to depart "from beneath your feet." The leaders of that party, who were shorn of their political ascendancy, in 1801, are again beginning

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(e) Mark, ch. 14, v, 37.

to bestir themselves. The hair of the federal (*f*) Sampsons has again begun to grow, and with it their power and their strength. They are hoping, with great glory to bring their vanquished party once more into power. They are bowing themselves with all their might, to overthrow the temple of Dagon, and will, at length, I fear, completely avenge themselves, of their political adversaries. WOE! be to the unhappy Philistines, who shall be crushed beneath its fall.

ALGERNON SIDNEY.

(*f*) I use this term in its proper sense; as I shall, probably, do hereafter.

(Richmond Enquirer, May 29, 1821.)

## ON THE LOTTERY DECISION.

No. 2.

*To the People of the United States:*

The address of the supreme court is remarkable, fellow-citizens, in the very outset of their opinion After stating that the controversy in question, arose under conflicting acts of the general and state governments, it adds, that, in the state court the plaintiff in error claimed the "protection" of the act of Congress. This word "protection", seems to import the entire innocence of that party. It also implies, that the act of the corporation of Washington, under which he acted, was entirely without blemish, and that the statute of Virginia, under which he was prosecuted was wholly indefensible. Nothing can be more remote from the truth than all of these positions: and all this is even admitted by the supreme court itself. But for the conflicting act of the city of Washington, dignified by the supreme court with the name of a statute of the United States, there is no pretence to say that the statute of Virginia was at all objectionable; and the court itself has admitted that the act of the city of Washington is incompetent to retard its execution. This last mentioned act is under the actual decision of the court a void authority when taken in relation to the territory of Virginia: it, therefore, affords no justification, nor can give any "protection" to the person who acts under it. (a) From the showing of the court itself, therefore, the plaintiff in error was not innocent, nor could justly claim the

(a) 4. Bl. Com. 291—1 Strs. 711.

"protection" of the act of Congress. That word, therefore, was unfortunately selected by the court in this instance; but it was not so selected without an object. That object was to excite your sympathy on the side of the appellant and to propitiate your judgment in favor of the principles it had determined in this case to establish.

The courts have next proceeded to say, for the purpose of giving themselves jurisdiction, in this case, that the court of hustings, of the borough of Norfolk, in which the judgment appealed from was rendered, was the "highest court of the State, in which the cause was cognizable."

On the contrary, I humbly apprehend, that if the information in question be considered as a criminal prosecution, the circuit court for the county, and perhaps the general court of the commonwealth, have appellate jurisdiction. I infer this conclusively from the statutes referred to in the margin (*b*). I also think it not impossible, but that as the object of the information was to recover a sum of money due to the commonwealth, although, in form, it has the appearance of a criminal proceeding, in substance it might be held to be a decision upon a civil right;and if so, an appeal would lie upon it, to the supreme court of the commonwealth, under the distinction taken by that court in the case of *Bedinger* against *The Commonwealth* (*c*). In any view, however, the court of hustings, of the borough of Norfolk, was not the highest court in the State, in which the case was cognizable, and it was, therefore, prematurely carried into the Supreme Court of the United States. The error, if one existed, might have been equally well corrected in one of the appellate courts of the state. Probably, however,

(*b*) 1 Rev. Co. 230, 239; 221, 224.
(*c*) Call 470,

this point may have been conceded by the counsel, or, possibly, it may have been *feigned* by the court. A practice of that kind is not without example in that high court(*d*). Such a practice may be, also, very convenient to the supreme court in furthering its favorite object of expounding the Constitution, in the gross, and settling, by anticipation, the real causes which may come before it.

The court proceeds to say, that the defendant in error moves to dismiss the writ of error, on three grounds, which are particularly stated. If the foregoing ideas be correct, the court should have added another ground of objection, and, itself, have dismissed the suit. It should have permitted the appellate courts of the State to have corrected the error which is complained of.

It is said, by the supreme court, that two of the points made at the bar are of great magnitude, and may be said vitally to affect the Union. If they even do, and yet power has not been given to the supreme court to interfere, the evil must be submitted to. We must say, with the venerable George Clinton (*e*) "that the powers of the general government ought to be extended if it be necessary; but, until they are extended, let us only exercise such powers as are clear and undoubted." Several modes of amending the Constitution, being provided therein, the supreme court ought not, on the mere plea of danger, to interfere. This is always the tyrant's plea, and was the plea of the infamous ship money judges, mentioned in my first number. The supreme court must go by the charter of the Constitution, and have no right to say, that *that* would destroy the Union, which the convention did not think would do so. Besides, the

(*d*) See the opinion of Judge Johnson in Fletcher vs. Peck, 6 Cran. 87.

(*e*) In his rejection of the second Bank Bill.

confederacy of the states, and the constitution establishing it, is as well destroyed by taking from the members thereof, the powers reserved to them by that constitution, as by denying to the head of that confederacy, even those belonging to it. It can be as well destroyed by claims or powers of a centripetal, as those of a centrifugal tendancy.

The supreme court has said that the first point made in opposition to the jurisdiction of the court, is that "a state is a defendant". This is not a candid or accurate statement of the objection. It is admitted on all hands, that a state may be a defendant, in the supreme court of the United States, in the cases specified in the third article of the constitution; but it is denied that she can be so, at the suit of one of her own citizens, or that the jurisdiction of the supreme court, in the case of a state, can be exercised in its appellate character. As it is in this last character, that the jurisdiction in this case is claimed, and as it is admitted by the court that the plaintiffs in error are citizens of Virginia, it is evident that the objection has not been taken, in the broad terms in which it has been stated by the court. The next objection is, also, too broadly stated by the supreme court. It is that no writ of error lies from that court to the judgment of a state court. While it is not admitted that such a writ does lie, in *any* case, to the judgment of a state court, it is evident that there may be stronger cases in its favor than the one before us. It is also evident that even the general words in which the objection in question may be stated are to be restricted and graduated by the very case before the court. This position is sanctioned, by the supreme court itself, when it refers hereafter to its own decision in the case of *Marbury vs. Madison*. The objection, therefore, only is, in this case, that a writ of error does not lie from a

judgment by a state court rendered between such state and its own citizens. Both these objections are grounded upon the principle. that the general government. in all its departments, can only exercise the powers which have been *granted* to it by the constitution and it will be seen hereafter that no power has been granted conferring on the supreme court the jurisdiction in question.

The court proceeds to say that these objections proceed on the admission, that the constitution or laws of the United States may have been violated by the judgment in question, and it is contended, notwithstanding, that it is not in the power of the "government" to apply a corrective. I must be permitted to say, that the objection in this case being, to the competency of the supreme court, to settle a power disputed between the two governments, and being a matter in abatement only, no such admission can be fairly inferred from the objection. The objection is, in its nature, entirely antecedent to any enquiry on the merits. It may or may not be, that the judgment, appealed from. violates the federal constitution; but it is only *now* said that the question is triable before the courts of one of the contending parties. If this objection be valid, it is evident that the "government" of the United States, being one of the contending parties, cannot apply a corrective. The vice, if any, lies in the constitution itself, and *that* can only be remedied by the people. The people can only settle a controversy as to the rights which are reserved, and those which have been granted, between the head of the confederacy and one of its members.

The court is pleased to add that these points maintain that the nation does not possess a department capable of restraining peaceably and by authority of law attempts

which may be made by "a part against the whole," and that the government must submit to such attempts or resist them by "force." The fallacy of this argument consists, in keeping entirely out of view that our's is a federal government, consisting of divers members, having independent and sovereign rights From the use of the terms "part" and "whole," it would be insinuated that we are only *one* nation, and, if so, it is admitted that the tribunals of that nation can settle all controversies whatsoever. The "parts," in that case, are only citizens, or subjects of the great nation, and have no pretensions as sovereign and independent powers. The court is, also, incorrect in saying, that there are no alternatives but submission or "force." A peaceable appeal to the people by whom both governments were made would settle the clashing between the parties, as to their respective rights, and these delays are infinitely better than an absolute renunciation of our federal system, and the establishment of one great and consolidated government. These clashings, however, will not, perhaps, be as frequent as may have been supposed. At any rate, the defect, if it be one, can only be remedied in a constitutional manner.

The court proceeds to say that the constitution has provided a tribunal for the *final* construction of itself, and of the laws and treaties of the United States, and that that high duty is devolved by the constitution upon the supreme court. As this position goes the full length of saying, that this power is conclusive, even upon the reserved and constitutional rights of the several states, and excludes all other constructions and judicatures, whatsoever, it requires, indeed, the most serious consideration.

I will beg leave to remind that high court, that although,

to some purposes, our government is national; it is; as to others, federal; that the states, except as the powers *granted* to the general government, remain sovereign and independent states; that our Union is, in fact, a confederation of free states, and that that character was not lost by adopting the present constitution; and that, thus being a confederation of free states, there are two parties to the compact, and that, consequently, neither of them is competent to settle, conclusively, the chartered rights of the other I will endeavor to prove all these positions, by the most clear and unquestionable authorities.

In proof that our government remains a federal one, with some features of nationality in it, will be seen in The Federalist (*f*), that it is not essential to a *confederacy*, that its authority should be restricted to its members in their *collective* capacities, without reaching the individuals of whom they are composed Again it is said, that so long as the *separate organization* of the members of the confederate republic, be not abolished, so long as it exists for local purposes, it will still be in fact and theory, an association of states or a *confederacy;* it is further said that our *constitution* so far from implying an abolition of the *state governments*, makes them constituent parts of the national government, as by allowing them a direct representation in the senate, and leaves in their possession certain exclusive and very important portions of the sovereign power; and that this corresponds in every rational import of the terms, with the idea of a *federal* government (*g*). Again it is said, that the *state governments* are constituent and essential parts of the federal (*h*); and that the equal votes of the states, in

(*f*) 1. Fed. 4.
(*g*) Ib. 53.
(*h*) Ib. 306.

the senate, is at once a constitutional recognition of the portion of sovereignty remaining in the *states*, and an instrument for preserving it to them (*i*). Again it is said, that each state, in ratifying the constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act, and that, in this relation, is a *federal* and *not* a national constitution (*k*); and, again, that the states are considered as distinct and independent sovereignties, by the proposed constitution (*l*). It is also admitted by the same authors, that while it is conceded that the government has many national traits or features in it, and is of a mixed character, it has at *least* as many *federal* as national features (*m*). In the Convention of Virginia, it was said by Mr. Madison, that the government is of a mixed nature; that in some respects it is of a *federal*, and in others of a consolidated nature, and that is shewn, to be *federal*, by the equal representation in the senate (*n*). The federal character of the government is further manifested, by the provision 2 of article I of the constitution, declaring that each state shall have at *least* one member in the house of representatives, although its population should fall *below* that of a congressional district. On what other principle is this, than that the sovereignty of the states is preserved, and that the government is a *federal* one? It is also said in a very able work lately published (*o*), that the words "more perfect union" contained in the

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(*i*) Ib. 93.
(*k*) Ib. 257.
(*l*) Ib. 264.
(*m*) Ib. 258.
(*n*) Va. Debates, pa. 76
(*o*) "Construction Construed" pa. 48. N. B. This book contains a vast mass of good principles and valuable information. It has already received the most distinguished approbation. To republicans it is "a star from the East," but to the friends of consolidation, "it is foolishness."

preamble of the constitution, far from implying that the old parties to the Union were superseded, by the new. evidently mean, that the old parties (the states) were about to amend their old Union.

To show that the states, except as to the powers granted, remained free and sovereign states, I will add, to the authorities already quoted, the following: It is said in Vattel (*p*) that nations, like men, are considered as equal; that a dwarf is as much a man as a giant—and that a small republic is as much a sovereign state, as a powerful kingdom. Again, it is said (*q*), that a nation does not cease to be free, when she has fulfilled the obligations into which she has entered. Again, it is said (*r*), "that several sovereign and independent states may unite themselves together, by a perpetual confederacy, without each, in particular, ceasing to be a perfect state; and that they will form, together a federal republic." To come home to the case before us—it is said in The Federalist (*s*), that in truth "the great principles of the constitution may be considered, less as absolutely new, than as an *expansion* of the principles. contained in the articles of confederation; and again (*t*), that the new constitution consists less in the addition of new powers, than in the invigorating its *original* powers. It was also said by Mr. Madison, in the convention of Virginia (*u*), that "the powers vested in the proposed government. are not so much an augmentation of powers, in the general government, as a *charge* rendered necessary for the purpose of giving efficacy to those vested in it *before*." It was decided by the supreme

(*p*) Vattel, pa. 9.
(*q*) Ib. 18.
(*r*) Ib. 13.
(*s*) 8 Fed. 265.
(*t*) Ib. 303.
(*u*) Debates, pa. 188.

court itself, in the case of *Hunter vs. Martin* ($v$), that the sovereign powers vested in the state governments, remain unaltered and unimpaired, except so far as they are *granted*, to the government of the United States. It was also decided by the Court of Appeals of Virginia, in the case of *Warder vs. Arell* ($w$), that though the several states form a confederated government, yet they *retain* their individual *sovereignties*, and with respect to their municipal laws, are to each other *foreign*..

With respect to there being two parties to our national compact, and as to that compact being a league or treaty, between all the states on one part and each state on the other, the case of *Pennsylvnia vs. Corbett*, 3 Dallas 343, and *Hnnter vs. Martin*, 4 *Munf*. 1, may be referred to. In both these cases this position was clearly and *unanimously* repelled, by the supreme courts of Pennsylvania and Virginia. It is also taken *passim* in the celebrated report of the Virginia Legislature, in the year 1799. It is also stated by Prof. Tucker ($x$), that the federal constitution is a compact whereby the states and the people are bound to the United States, and, by which the federal government is bound to the several states, and to every citizen of the United States. It cannot be otherwise, if the state sovereignties exist at all, and have *any* treaty or compact as a general government.

As then there are two sovereign governments, connected together, by a league or treaty, are the courts of either competent to bind the constitutional rights of the other? And if so, which? And is not the right reciprocal? If this

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($v$) 1 Wheaton, 304.
($w$) 2 Wash. 293.
($x$) 1 Tuck. Bl. Appendix 140.

right exists, does it not exist in favor of the rights *reserved*, as well as the rights granted? And if this power exists, does it not hold *a fortiori*, in favor of the state judiciaries? These officers are bound by oath to support the constitution and laws of the United States whereas the federal judges are not so bound, in relation to the constitutions and laws of the several states. The judges of all the states have also an interest in the general government, and it is, emphatically, *their* government; but the judges of the federal courts have *no* interest in the government or laws of any state, but that of which they are citizens. As to every other state but that, they are, completely, aliens and foreigners.

On this great subject let us advert to some authorities. We are told by that noble martyr to the cause of liberty, Algernon Sidney, that when a controversy arises between *Caius* and *Seius*, neither of them may determine it, but that it must be referred to a judge, superior to them both; and that this is, not only, because each would judge in his own cause, but because both would have an *equal* right, and neither owe any subjection to the other. Again, he says, that no man can be my judge, but my *superior*, and that he cannot be my *superior* but by *my consent*, nor to any other purpose than I have consented to (*y*). In principle, this authority is decisive of the case before us. It is said in Vattel that no sovereign ought to set himself up as the judge of another (*z*). Again, he says, that it does not belong to nations to *usurp* the power of being the judges of each other (*aa*). Again, he says, that if there be any disputes in a state, respecting the fundamental laws, or on the prerog-

(*y*) 2 Sidney on Gov. 389.
(*z*) Vattel 242.
(*aa*) Ib. 250.

atives of the different powers of which it is composed, it is the business of the *nation* alone to judge and determine them (*bb*). He says also that it would be highly unbecoming in a prince, to resolve to be the judge in *his own* cause (*cc*). He, again, says (*dd*), that "neither of the contracting parties has a right to interpret the act or treaty, at *his pleasure*, for if (says he) you can give my promise what sense you please, you can oblige me to do what you please, contrary to my intention, and *beyond* my engagement." Again, he says, that the faith of treaties forms the only security of the contracting parties (*ee*). In the case of *Corbett vs. Pennsylvania*, before adverted to (*ff*), it was *unanimously* resolved by the supreme court of Pennsylvania, that all powers not granted to the government of the United States, remained with the several states; that the federal government was a *league* or treaty made by the individual states as one party, and all the states as another; that *neither* of the parties has the exclusive right to construe it, as to the extent of their respective rights; and that there is no common umpire between them but the people. The Legislature of the same great and patriotic state avowed precisely similar sentiments in their act instructing their senators to vote against the bank law, proposed in 1811, and added, "that the general government was not constituted the exclusive or *final* judge, of the powers it was to exercise, for that then, *its judgment* and not the constitution would be the measure of its authority (*gg*). In the celebrated report of Mr. Madison, and

(*bb*) Ib. 32.
(*cc*) Ib. 184.
(*dd*) Ib. 370.
(*ee*) Ib. 372.
(*ff*) 3 Dall. 342.
(*gg*) See this quoted in Mr. Leib's speech on that bill.

which was ratified by the Legislature of Virginia in 1799, it is stated, that it is essential to the nature of compacts, that when resort can be had to no tribunal *superior* to the authority of the parties, the *parties themselves* must be the rightful judges, whether it has been violated (*hh*), and that this was the principle upon which our independence was established. It was further resolved therein, that the *judiciary* is *not*, in such cases, a competent tribunal, for that there may be cases of usurpation, which can not be regularly brought before it; that if *one* of the parties, in such cases is not an impartial and competent judge, neither can its *subordinate* departments be so; that, in truth, usurpation may be made by the *judiciary itself* (*ii*); and that the last resort by the judiciary is not in relation to the rights of the parties under the compact, under which that judiciary is derived (*kk*). It is stated in the Federalist (*ll*) that each department of the government, and consequently each of the two governments, should have a will of its own, and check each other; that this is essential to liberty; and that ambition must be made to counteract ambition. Again, it is said (*mm*), "that in a single republic all the power surrendered by the people is committed to a single government, and that usurpation is guarded against, by a division thereof between the different departments"; but that "in the compound republic of America, the power is first divided between the two governments, and the portion alloted to each is sub-divided between distinct departments"; and that hence arises a *double security* to the rights of the people; and that

(*hh*) Report 39.
(*ii*) Report 40.
(*kk*) Ib. 40.
(*ll*) Ib. 2 Fed. 28.
[*mm*] Ib. 29.

the *different governments will control each other*, at the same time that each will be controlled by itself." The same work states another case which is entirely analogous and in point. It says, that in a free government the security for civil rights must be the same as that for *religious* rights. It consists in the one case, in the multiplication of sects, and that the degrees of security in both cases, will depend upon the number of interests and sects (*nn*). I will here say, with a writer before quoted (*oo*), that if the jurisdiction of the supreme court is only limited by its own will, it is *unlimited* and that power cannot be checked by itself, or by its subordinate agents. It is further said in the same work (*pp*), that if this most important power had been intended to be conferred on the court, it would have been *expressly* given, and that its omission is fairly accounted for, on the principle of the necessity of having checks: and again, that collisions between the two governments must have been, undoubtedly foreseen, but were submitted to as the lesser of evils, and on the ground that the people were the only arbiters who were thought safe or necessary (*qq*).

I close this long list of authorities by one which cannot be heard by the sons of freedom, with indifference. It is the authority of our most distinguished sage and patriot, THOMAS JEFFERSON. In the resolution adopted by the legis- of Kentucky, in the year 1798, and admitted to have been written by him, it is resolved, "that the several states composing the United States of America, are not united on the principle of unlimited submission to their general government; but that, by compact, they constituted a general gov-

(*nn*) Ib. 30.
(*oo*) Const'n Construed, 148,
(*pp*) Ib. 159.
(*qq*) Ib. 17.

ernment for *special purposes*, delegated to that government certain *definite powers*, *reserving each state to itself the residuary mass of right to their own self-government*; and that whensoever the general government assumes *undelegated* powers, its acts are unauthoritative, *void* and of no *force*. That to this compact each state acceded *as a state* and is an integral party, its co-states forming, as to itself, the other party; that the government created by this compact was *not* made the *exclusive or final judge ol the extent of the powers delegated to itself*, since that would have made its discretion, and not the constitution, the measure of its powers; but that, as in all other cases of compact, among parties having no common judge, *each party has an equal right to judge for itself*, as well of infractions as of the measure of redress" (*rr*).

These authorities are more than conclusive to show, that in a contest for rights between the two parties to the federal compact, neither is competent to bind the other, both because it would in such case, judge in its own cause, and make the contract what it pleased, and because they both have an equal right to interpret that contract, and neither is bound to yield the point to the other. The matter is to be referred to their common superior, the people, who will justly settle the dispute between them. We ought not lightly to suppose that either party will usurp upon the other; but that tendency would rather be imputed to the stronger government: and one too, whose officers are not bound by oath, to respect the rights of the other party. Collisions between them are not to be causelessly apprehended; but they are the lesser of evils, when compared to the despotic power which is now claimed for the supreme court, and which would sweep away the rights of the weaker

(rr) Kent'y resolutions of 1798.

party. It is said by the able writer before mentioned (*ss*), that it is better to bear with clashing constructions of the constitution, than to yield up all our powers to the general government. Again it is said in The Federalist (*tt*), that a *concurrent* power between the governments on the subject of taxation, is better than absolute subordination.

It is said by the supreme court, that this immense and unreasonable power is given to them by the constitution. By what articles and section of that instrument is it conferred? If it be given, the articles can be distinctly pointed out. None such can be found, and, as the lawyers say, this immense power ought not to rest only in averment. If it was intended to be given, in so important and unreasonable a case, would it not have been *expressly* given? When a right is claimed by one of the contracting parties, to bind the other to the extent of its pleasure and discretion, ought we not to have chapter and verse for it? When the great principle is to be set aside, which forbids a party to decide his own cause, ought that power to rest only upon a remote and doubtful implication?

If it be said that the power is carried by the *general* words, in the second section of the third article of the constitution, extending the judicial power to "all cases arising under the constitution" &c., it must be understood, with an exception of the cases to which the government is a party, in a contest with another contracting party. A general grant of power to the former chancellor of Virginia, over all causes in equity arising within the commonwealth, would not have enabled him, to decide *his own* cause. It is contrary to natural justice that any man, or any sovereign, should decide

(*ss*) Const. Const'd, 146.
(*tt*) Pa. 251 or 25 [almost illegible.]

his own controversy. In such case, the *general* words of the grant, would be limited by the principle aforesaid. It would be as to it, *lex sub graviorilege.* The same principle would limit the grant of jurisdiction, in cases. "to which the United States shall be a party". There are. besides, cases enough to satisfy the words of the grant. which would steer clear of the objection aforesaid; and it is a sound rule of construction, that where the words of an instrument may be, otherwise abundantly satisfied you are not to construe them to embrace the most unreasonable cases. It would, therefore, not only have been expected, that this power should have been *expressly* given, but it ought also to have been put at the head of the list. It is, in every view, a much more *important* power than that of deciding cases between the United States and individuals, or cases between two states. It ought, therefore, to have preceded the grant of the latter powers, had it been intended to have been conferred. All the lawyers well know that a specification beginning with a thing or *person* of *inferior* grade, excludes those which are superior.

All the departments of the general government, are checked and controlled by each other. Even the supreme court itself, powerful as it is, is not exempted from this control. Although, for example, it may render a judgment against the United States, it cannot take the money from the public treasury by execution. It is prevented by that clause of the constitution which declares, that no moneys shall be drawn from the public treasury, but in consequence of appropriations made by law. In this instance, the Congress of the United States have an evident check upon the judiciary. The whole instrument of the constitution abounds in these checks all around. They are essential to preserve the purity

of the constitution. There is no doubt, but that they are *more essential*, as between the two governments. They hold *a fortiori*, as to them. It is much more necessary that powers of an entirely different character should be kept separate, than that those of the same character, should not shift their hands. It is in every view important, that the municipal powers reserved to the several states, should not be managed by those who were only delegated to manage the general concerns of the nation.

I will only add on this part of the subject, that although the people of each state, are parties to the general government, as well as to their own state-governments, they are so, in different rights. It is as if A, in his individual character, should contract with a commercial firm, of which he, with many others, is also a member This last circumstance would not authorize that firm, to construe the contract, so as to bind him, in his individual character, to what amount it pleased. His other right, as an individual would be also respected. It is believed that this case is entirely analogous to the one before us. The interest of each state, in the federal government of the union, does not premit the administrators of that government to encroach on the municipal rights reserved to the several states, by the confederation. The people of each state had a right to choose how far they would subject their rights to the control of the other citizens of America; and any further exercise of power, over them is by wrong and usurpation. In the extension of these powers, to the injury of the several states, neither the general government, nor its courts, have more right to act finally, upon the subject, than has the commercial company just mentioned.

ALGERNON SIDNEY.

(Richmond Enquirer, June 1, 1821.)

## ON THE LOTTERY DECISION.

### No. 3.

*To the People of the United States:*

The supreme court sensible, fellow citizens, that a jurisdiction was not given to it in its *original* character, as to this case between a state and one of its own citizens, by the specification contained in the third article of the constitution, of the cases in which a jurisdiction was granted to the federal courts over the several states, seeks to remedy the deficiency. It seeks to supply the want of such specification as to this case, and to give the court jurisdiction of it on its appellate side, under the general phrase contained in that clause, which extends the judicial power to "all cases arising under the constitution and laws of the United States." The first remark I have to make upon this position is, that if a jurisdiction in this very delicate case, between a state and its own citizens, had been intended to be given, when certainly there existed no necessity for it, the specification in that article would have been *expressly* enlarged, so as to embrace it. Another remark is that it is not a natural construction to reach a case by the appellate jurisdiction of the court, which was withheld from it in its *original* character The difficulty is increased by having to step over the barrier erected between the two governments, and to correct the judgments rendered in another government. The general words in question presuppose cases in which there are proper parties, and also, if brought up by way of appeal, that they should come from a proper court.

These general words may be otherwise abundantly satisfied, and I repeat the remark that they are not, therefore, to be extended to cases surrounded on all sides with insurmountable difficulties. The court says, that these general words give an appellate jurisdiction, "whoever may be the parties", but in order to reach this case, they must add the words, "or from whatever court, whether of the union or of a particular state, the cause may have been brought up." The proposition is laid down infinitely too large by the court, and it is certainly not true, if at all, to the extent to which they have carried it. That high court itself, would not, I presume, entertain an appeal in a case in which they themselves were parties, nor a case in which the Emperor of Russia sued in the person of his ambassador, was a party. Nor would it, I apprehend, entertain an appeal brought into it from one of the courts of the Russian Empire, even although the constitution of the United States had, therein, come in question. It is entirely a new idea that persons may be legal parties, or otherwise, and a jurisdiction of the case entertained, or not, according to the dignity of the laws or documents, under which they claim. That is entirely a posterior enquiry. These documents or laws are never looked at or considered, until the question of parties is disposed of. The question of parties is a matter in abatement, and questionable in the first instance: those which arise under the constitution, &c., are matters in bar, and are reserved for a posterior enquiry. The only way of getting over these difficulties is to understand this general provision, if it applies at all, as at least requiring proper and legal parties and that the appeal should come from the proper court.

This indifference as to the proper and legal parties, in a

court of justice, seems an entire anomaly in the history of judicial proceedings. It is a novelty even in the supreme court itself. Many cases may be found in which causes have been stricken from the docket of that court, for want of proper and legal parties. In the case of *Emory vs. Greenough* (*a*) a cause was struck off the docket because the parties were not shown to be citizens of different states. So in the case of *Wise vs The Columbia Turnpike* (*b*) it was held that the supreme court had no jurisdiction in the case, because the sum awarded was under five hundred dollars. Again, it has been held in the supreme court, that no writ of error lies to it from the general court of the North Western territory (*c*). These cases abundantly show that in former times that court not only required the necessary parties to give it jurisdiction, but also that the sum should be sufficient, and that the appeal should come from a proper court. As in the case before us two of these essential ingredients have been dispensed with, I do not see how we can stickle for the third. I see nothing to impede this high court under the latitude they have taken, from entertaining an appeal where the amount of the judgment is only fifty dollars. Having passed the Rubicon, as to the parties and the court, they may well go thus far. It is only extending their power another grade, by this most remote and distant implication.

The court proceeds to say, that the clause aforesaid extends its appellate jurisdiction, to all the cases described, without making in its terms "any exception" whatsoever in relation to the condition of the party, and that such "exception" is not to be applied against the "express words" of

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(*a*) 3 Dall. 370.
(*b*) 7 Cranch 276.
(*c*) Whoat. Dig. 181.

the article. What these express words mean, and how they ought to be deemed restricted, I have already endeavored to show. They presuppose all necessary parties to the suit, and hence an exception becomes unnecessary. It was not necessary to make an exception from a grant, which, as to the point before us, in fact carried nothing.

The supreme court admits that the specification, in the second section of the third article of the constitution, does not extend to this case of a contest between a state and its own citizens; nor can an appellate jurisdiction be fairly inferred. If the jurisdiction, either original or appellate, had been intended to have been given in this delicate case, would it not have been provided for, and *that* in the first instance? The omission of this stronger or superior case shows that it was not intended to be given, under the undoubted rule of construction I have adverted to. If a cause of this kind is excluded from the original jurisdiction of the court, it can derive no aid from a matter which only arises in its progress, and on the merits. It is altogether casual and contingent, even upon the showing of the court itself, whether the cause will ever admit of an appeal or not.

This last idea is in entire unison with the famous provisions in the twenty-fifth section of the judicial act of the United States; and accordingly, that section has received the decided approbation of the court. That section exhibits the remarkable phenomenon, of the judgment of the supreme court of a state, being held to be final or not, according as it is rendered on one or the other side of a given question. It is founded upon a most unwarrantable jealousy of the state judiciaries, and finds nothing to warrant it in the constitution. This position has been justly exposed in all its various aspects, by the court of appeals of Virginia, in

the case of *Hunter* vs. *Martin* (*d*); and to that decision upon this point, I beg leave to refer.

In deducing the appellate jurisdiction in this case, under the general words before mentioned, the general proposition that a state cannot be sued but by its own consent, is admitted by the supreme court. I also admit with them, that that consent may be given by a *general* clause in the constitution; and if that consent. as applied to this case, can be inferred from a just construction of the general clause in question. then the states have submitted to be sued. There is no particular and express delegation of the power in this case, and the construction adopted by the court, is not only founded upon remote implication, but is confronted by the insuperable difficulties already mentioned. I shall only add on this part of the subject, that if the jurisdiction is not given in this case expressly, or by fair and necessary implication, the power is retained by the states, and the decision of the state court is, consequently final.

The court goes on to say, that if by a general act, the state has consented to be sued. it has parted with its sovereign right, of judging of its own pretensions, to that tribunal, in whose impartiality it confides. The state has certainly never forgotten that this high power might be abused, by that tribunal, and its rightful powers wrested from it. Nor did it ever mean to give up the check provided for it by the constitution, and which I have already endeavored to sustain. The position here laid down by the court would lead to passive obedience and non-resistance by the states until their confederacy was completely overthrown and a consolidated government erected.

The court seems to consider that the constitution adopted

(d) 4 Munf.

by the "American people," expected that large portions of the sovereignty of the states would be given up. On this I have no other remark to make, than that as much of that sovereignty is given up, as has been given up, expressly, or by fair and necessary implication. All other powers are retained by the states and the people. As to the term "American people" used by the court, it seems to savor too much of consolidation. The constitution was adopted by them, not as *one* people, but by the several states, by the people thereof, respectively. In support of this idea I will refer to The Federalist, and to Madison's celebrated report, in almost every page. I will refer also to the Debates in the Convention of Virginia. The difference is not unimportant. In the last view, the idea of a confederation of the states is retained, and a check upon the proceedings of the other government is made more manifest. The expression now used seems to pave the way for the consolidation, which must flow from the principles now established.

The court justifies its supremacy in all cases, in which "it is empowered" to act by the supremacy of the constitution and laws of the United States. I do not object to this passage, qualified as it is by the court, and reserving to the states the checks existing against an undue assumption of power. The supremacy yielded by the constitution, is to that constitution itself, and the laws duly made under it, but does not extend to unwarranted expositions thereof, by the courts of *one* of the contracting parties.

The court very adroitly hurries over a very important distinction, in relation to the powers of the two contracting parties. By that distinction the states retain all of the powers which they have not parted from, whereas the general government has only such as have been granted, to the

extent to which they have been granted. The term "supremacy" then, with which the court is so much enamored, dwindles into that of *granted* powers; and these gentlemen must come down from their high pretensions. A government which is only entrusted with a few powers, and is limited in acting upon those powers, by the expression of the constitution, as to such as are granted, and by the degree of the necessity as to such as are implied, can scarcely be said to be supreme.

The court is fond on this, and all other occasions, of vaunting that its powers are supreme. That court does not possess such powers. The whole government has them not. I take the bolder ground, and say, that the people themselves have them not. The sovereignty of even the people themselves is limited by reason and justice. These are paramount, not only to the text of written constitutions but even to the original power of the people. The people themselves, associated for the common good, cannot subvert that good. They cannot violate those great principles which soar above all constitutions, and are paramount to the rightful power of the people themselves. If therefore, the people themselves, have not this transcendent and unlimited power, neither have the messieurs judges. Not even these high characters, can justly deprive our people of their chartered rights, or violate the sacred duty imposed on the state governments, of preserving the morals of their people. It is not in their power to let loose a system of gambling among them.

To this "supreme government," the court says, the most ample powers are granted, and they refer to the *preamble* of the constitution, to show how ample these powers are. But the people, have also said, by the 10th amendment to

the constitution, that all powers which are not granted by the states are retained. Now it is a rule of construction, applying to all parts and contracts whatsoever, that in interpreting them, you are to take into consideration all their parts. As to this preamble, you are to narrow the general words therein used by the special grants contained in the instrument, and under the influence of the amendment just mentioned. You are specially, to narrow the general words of the preamble, which is, in fact, no part of a statute but only a key for the exposition thereof. The construction arising from the preamble only, would be so broad as to sweep away all the powers of the states, and this ground of construction was formerly given up. Nothing can preserve those powers but a steady adherence to the principle established by that amendment.

The general words of the preamble to the constitution, now relied on by the court, are introductory only, and not decretal (*e*). They only show what were the ends in view, not what are the actual provisions of the constitution. They have been universally given up ever since the decease of the famous sedition law; and the reasons on which they have been abandoned, are entirely unanswerable (*f*). That cause must be, indeed, desperate, which can again call up this odious and exploded ground of claim. If subscribed to, it at one blow destroys all the limitations contained in the constitution.

In answer to so much of the opinion as *repeats* that the jurisdiction of the supreme court extends to all cases of "every description" which arise under the constitution and laws of the United States, I must refer to my former

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(*e*) Cons. cons 165.
(*f*) See Federalist and Mad. Report.

remarks, as to the exceptions under which it is to be taken. If it was clear that these words comprehended a controversy also between a state and its own citizens, then that jurisdiction would pass, unless it were again restricted by a particular exception. But those words are not so extensive. They do not reach this cause, because of the delicate nature of the jurisdiction; the want of a necessity for it; and by being omitted in the particular specification, in this case, the principle of "all and some" emphatically applies. *All* powers are considered as given, where *some* are specifically enumerated. This is, in various instances, the very genius of the American constitution.

As to its being said, by the court that the general words, aforesaid, also embrace this case, that is the very thing which is to be proved. The case cannot come before the court, unless there be proper parties to the controversy, and a sovereign state cannot be made a party in the courts of another state without its consent. The authorities already referred to on this subject are quite conclusive. In a case of doubtful construction, this irresponsibility of the states to another jurisdiction should turn the scale and exclude the cognizance in question.

While it is admitted by the court, that a citizen cannot sue his state in the federal court, where his case depends upon the constitution or laws of such state, it is averred that the case is otherwise, where it depends on the constitution or laws of the United States. The ground of difference is supposed to be a want of impartiality in the state courts in relation to the latter. That idea, is however, reprobated by the omission to provide for such suits, in the supreme court in its *original* character. It is only by way of appeal that the pretension now in question is set up. But if the

ground of that pretension has a real existance, this case ought to have been included with the others, in the specification contained in the third article of the Constitution. I will here remark, that while controversies between two states ought not to be decided in the courts of either, and while it may be plausibly urged that the courts of a state may not be impartial in cases existing between its and citizens of *another* state, no such idea has been ever entertained in relation to its own citizens. I shall touch this point again, hereafter. At present I shall only again remark, that the ground of the pretension has no existence, for if it had *original* as well as appellate powers, jurisdiction would have been extended to it.

The court has claimed the extensive jurisdiction now in question on the principle, that the judicial power, in "every well-constituted government" should be co-extensive with that which is legislative. In a government of *general* powers this principle may perhaps be true. So it may be that our government is not "well-constituted" in this particular. If so, an amendment of the constitution is the correct remedy. But ours is not a government of *general* laws. All the departments of that government are restricted by the actual limitation of their powers. Congress, by the constitution, has no other legislative powers than those which are thereby granted, and the extent of the judicial powers is to be measured by the actual grant contained in the third article. This idea of the supreme court might deserve consideration in another *forum*. But in professing to decide what the constitution actually is, this idea is improper and inapplicable. A construction which is commensurate with the judicial power actually granted by the constitution, notwithstanding the general words aforesaid,

and which can be otherwise abundantly satisfied, cannot be said to be, in the language of the court, "contracted."

The court has foreseen great mischiefs, resulting from a denial of this jurisdiction. It is said, that the government and its laws would be prostrated at the feet of the several states. This argument turns in a circle. If, on the contrary, there is no check existing, on the part of the states, or rather on the part of the constitution, as provided for in favor of the states, all the states in the Union might be demolished by the supreme court. It is just as probable that the government of the United States will usurp more than its due share of power, as that the state will withhold what is its due. It is just as probable that unconstitutional laws will be executed to the injury of the states, as that those which are constitutional will be impeded or resisted. If the judgments of the state courts cannot be corrected by those of the courts of the United States, some inconveniences in some cases may ensue to the general government; but if they can, great oppression may arise to the states, and their laws and liberties be swept away. If each party possesses a *veto* upon the acts of the other, it may cause some delay and even an appeal to their common superior, the people. This, however, is better than that absolute submission by one part, and absolute despotism by the other, which is death to the existence of liberty. Such is not the genius of a federal government, where each party has its reciprocal rights. It is the blind and absolute despotism which exists in an army, or is exercised by a tyrant over his slaves. It is as well, if the court pleases, that the course of the general government should be arrested for a season, as that the rights of the states should be forever swept away.

The supreme court pursuing this idea, does not deny that confidence must be reposed; but they contend that it should only be reposed in them. If the states have sometimes erred in refusing to the general government its *due* powers granted by the constitution, it has only been in detail and without any concert between them. They have on the contrary, rescued the country from the greatest calamities, as for example, by the glorious revolution of 1801. Those who deprecate such insurrections, and bow the neck to arbitrary power will do well to nip the right of opposition in the bud. To them the doctrine of the supreme court is very convenient. *Obsta principiis* is their motto. The only difference between us, is that I would extend it also to the usurpations of the general government. If confidence must be reposed, let it be divided, and be also under the limitations of the constitution. The tyrannies and abuses of the general government have far exceeded those of the state, or any which can be expected from them.

The supreme court have not only set their faces against extreme acts of opposition on the part of the states but also against all the "gradations" of that opposition. As they have not condescended to draw the line upon this subject, it may in their discretion, be extended to all opposition whatsoever. The infamous sedition law may be again revived upon us by construction, and in a new shape. The uncertainty as to what may or may not be, an allowable degree of opposition, will work a complete silence and acquiescence on the part of the people, and thus, the despotism of the "supreme government," and of its courts, will be absolute and complete.

The court sees great evils resulting from the different constructions which may probably be adopted by the several

states. This results from our being a congeries of free and independent governments; from our having the happiness to form a federal republic. The only remedy for it is by wiping out the state governments altogether and establishing one great and consolidated empire. This diversity of opinion and of decision is better than an uniformity, which may be grinding and deadly to our liberties. It is better that liberty and state-rights should be maintained in some states, than no where. It is better that the Legislature of Virginia should solemnly protest against federal laws invading her laws in favor of the morality of her people and against the decisions upon them, than that they should be trampled under foot in silence, by the federal authorities. It is better that her courts should maintain their true and exclusive jurisdiction, as was firmly and constitutionally done, in the case *Hunter against Martin*, than that the boundary lines of the states should be forever obliterated, and that great commonwealth considered only as a district of the United States and her courts as only inferior federal courts.†

The uniformity of decision with which the supreme court seems so much enamoured, may have its advantages, but even they may be purchased too dearly. They ought not to be purchased by dispensing with the necessary parties to all legal controversies,—nor by breaking in upon the judicial independence of other states. They ought not to be essayed in cases in which the supreme court can neither enforce its judgments in the regular way, nor even compel a copy of the record upon the writ of error. In going in quest of this uniformity, the court should not shut its eyes upon those impassable barriers which exist, and should

† For controversy about this case see Branch Papers for 1905.

ever be maintained between the general and state governments. As for this uniformity however, too much stress seems to have been placed upon it. Uniformity of decision is not so desirable as rectitude of decision. The former is a bauble when compared to the latter. The former suits the meridian of a despotic; the latter, that of a free government.

The court complains of penalties, which, it says, may be unjustly inflicted by means of the state authorities. It is incident to all penal laws, to be enforced by means of penalties. If these laws are just and valid, the penalties enforcing them are not to be complained of. Of the validity of the powers of the states, touching their penal laws, the supreme court are not the exclusive judges. They cannot be so, unless in a contest for powers, under a compact, you admit that one of the parties is to construe the compact as he pleases.

The supreme court next supposes, that the legislatures and people of the states will imbibe improper prejudices against the general government; that the state judiciaries may not be exempt therefrom, and consequently, will not form perfectly impartial tribunals. Why should these prejudices exist in any of those parties against the government of their own creation? If these prejudices however do exist on the part of the people, that is, of the whole people, they are probably honest prejudices, and are, therefore, not to be objected to. If on the contrary these prejudices are confined to the state judiciaries, neither will the federal judges be exempt from *their* prejudices. Their prejudices will be on the side of power and of "the government which feeds them." Let FACTS speak upon this subject. Did not the federal judges lend themselves as willing instruments,

to a corrupt congress to enforce the infamous sedition law? Did not they, under that law, and in the very teeth of the first amendment to the constitution, incarcerate several of our citizens and break down entirely the freedom of the press? Has not this very court in this case manifested its willingness to extend the powers of the corporation of the city of Washington into the heart of the states, whenever congress shall give to its ordinances that form, and that extension; and this to the total overthrow of the reserved and salutary powers of the several states? How does it happen, but from these prejudices, that republican men, placed on the bench of the supreme court, and who had passed the ordeal of Thomas Jefferson, have abandoned their former politics? Have they not rebelled against the principles of the glorious revolution of 1799? How else is it that they also go all lengths with the ultra-federal leader who is at the head of their court? That leader is honorably distingushed from you messieurs judges. He is true to his former politics. He has even pushed them to an extreme never until now anticipated. He must be equally delighted and *surprised* to find his *Republican* brothers going with him. How is it, but from these prejudices, that they go with him, not only as to the results of his opinions, but as to all the points and positions contained in the most lengthy, artful and alarming opinions? It would be a miracle indeed, if these *former* republicans did actually concur, in all points in these outrageous doctrines. This is not the case. The federalists themselves, in so long a journey would dissent and differ in some of these multifarious and *daring* positions. How else is it that these judges have abandoned the practice of giving *seriatim* opinions? a practice so essential to their integrity and independence. If the correct opin-

ion of courts form proper subjects of impeachments—and God forbid they should not! this union of opinion whittles down the responsibility to nothing. Every corrupt judge in such a case becomes a witness for every other. The prejudice which the supreme court have without evidence imputed to the state judiciaries, have also, fellow-citizens, the most unbounded sway among themselves. They, also, are frail and fallible men. They have agreed to boggle at nothing, which is to advance the grand empire and give "powers to the government that feeds them."

The court has said that in "*many*" states the judges are dependent for "office", and "salary", on the will of the legislature, and that the constitution of the United States has furnished no security against the universal extension of this principle. It has also said that the constitution could not have intended, that the construction of itself, and of the laws of the United States should be confided to judges who might not be independent and impartial. It is not known or admitted that the judges in *any* of the states, are dependent on the mere will of the legislatures, for the tenure of their offices; though in one or two of the states, these offices are only held for limited periods. A reference to the constitution of the several states will show that the judges in *seven* of them hold their offices during good behavior; that in four of them they hold by the same tenure, but subject to removal, perhaps wisely so, on the application of two thirds of both branches of the legislature; and that in two of them, they hold for limited terms of years. It is only perhaps in the small state of Rhode Island, under her royal charter that the judges depend upon the legislature for the tenure of their offices. As to the newly erected states, I have not their constitutions, but it is believed that

they universally accord in the above principle. How then could this high court undertake to say that the judiciaries of *many* of the States were dependent upon their legislatures for the tenure of their offices? The foregoing specification, which I am sure will be found accurate, falsifies that assertion. It is in utter collision with it. As for "salaries", most of the judiciaries have a good security on that subject. The constitution of Virginia secures to her judges, "fixed and adequate salaries," and below this mark it is not in the power of the legislature to go. It would, perhaps, have been better, as in the case of the Governor, (Con. Virg. art. 9.) to have given "adequate but moderate salaries"; and also to have curtailed the power now possessed by both governments to increase these salaries at pleasure. It is well known that moderation in salaries, as in habits of living, is the best preservative of virtue: and the fifteenth article of the bill of rights of Virginia, which must have been given by divine inspiration, and ought to be written in letters of gold,—declares,—"That no free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, *moderation*, *temperance*, FRUGALITY, and *virtue*, and by *frequent recurrence to fundamental principles.*" The power to raise salaries, *ad libitum*, is not only possessed by the federal legislature, but has been very liberally exercised, in favor of the supreme court. It has been so exercised, in utter contempt of the principle contained in the golden article just quoted. It was very lately exercised by Congress, and the salaries of the supreme judges increased a thousand dollars per annum each: a sum fully equal to the whole salaries of judges in some of the states. This sum, added to the ample salaries they had before, entirely withdraws their case from the principle just stated. These

salaries are now some where about five thousand dollars each and they have consequently ceased to be "moderate." The addition in question was certainly not intended as a douceur to those judges, for opinions favorable to the powers of the general government; it was however, very unfortunately timed. It was made not only when an opinion was generally becoming to prevail, that the jurisdiction of the supreme court was already too great, and should be lessened, but also when a contest for powers was actually pending in the supreme courts between the two governments. I cannot for a moment suppose that that augmentation had any, the least influence upon that high tribunal; but it is certain that their opinion, which was delivered about that time, gives the clear victory to the general government. It also degraded the state governments to a pitch never before anticipated. One of these judges however, is entitled to a more particular notice. This seasonable increase of salary, probably prevented his being a very respectable collector at one of our important seaport towns (*g*). He has been, possibly, grateful to his benefactors for this very seasonable lift. He has been recently quite testy and peevish in that high court, in relation to what he is pleased to call "the encroaching disposition of the states" (*h*). On this particular point we find the venerable Mr. Pendleton saying in the Convention of Virginia, that he wished the restraint in the constitution had been extended to the increase, as well as diminution of the judges salaries (*i*). Mr. Grayson also said (*k*) that augmentation of salary is the only method that can be taken to corrupt a judge; that he is to be cor-

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(*g*) See his own very singular letter.
(*h*) This fact happened at the last term.
(*i*) Debates 368.
(*k*) Ib. 408.

rupted by the hopes of reward; and that common decency would prevent lessening his salary. He adds that throughout the page of history you will find the corruption of the judges to have arisen from the principle of the hope of reward, and that this is left open, in the federal constitution.

On the part of the states no such degrading occurrences have taken place within my knowledge. I speak principally of Virginia, but I believe I may extend the remark to all the other states. If there has been a concert of thinking and acting between the legislature and judiciary of Virginia, it was in cases in which no money nor salary was concerned. It was when the just rights of the states and their judiciaries had been grossly violated. The judiciary of that state had the virtue and the firmness to protest against encroachments on its powers; and she has been supported by the almost unanimous concurrence of the legislature on great consideration, by the executive, and also by the people. It was a disinterested and manly stand by them all, in behalf of sacred rights, reserved to the states by the constitution.

If the foregoing facts be true as to the tenure and salaries of the state judges, the constitution of the United States, *need not* have made any provision, in relation to the independence of those tribunals. No such provision was necessary. The evils apprehended by the supreme court, are only *imaginary*. They have no real existence, nor can they ever be reasonably apprehended. That defect, which the supreme court is pleased, without authority, to say existed in "*many*" states, exists in fact in NO state, save only, perhaps, in the small state of Rhode Island. The constitution needed not, therefore, to make a provision on the subject. There is no provision more fundamental with all the American people than that their judges should hold their offices by permanent tenure and receive fixed and adequate salaries.

It is the object of the supreme court, in this part of its opinion, to elevate their own independence, at the expense of that of the state judiciaries. That preference will be found to be a perfect *nonentity*. Where was that proud independence when these high judges lent their aid to a corrupt congress to extirpate the liberty of the press? The American people have spoken in a voice of thunder on that subject. Their judgments in those cases have been consigned to a merited infamy. It was only through the moderation and mercy of the republicans that these corrupt juoges escaped the fate of the infamous *Jeffries*. Do these lofty and high-minded judges plume themselves upon the mode of their appointment? They hold their offices by the breath of a *single* man; and he not having a personal knowledge of them, must depend for information respecting them upon his ministers and favorites. They it is who substantially appoint these judges, and the president only appoints them in point of form.

The judges of the states, on the contrary, (I speak particularly of Virginia) are elected by the joint ballot of both houses of the General Assmbly. In this pure and honorable mode of appointment, there is no room or opportunity for appliances, or servilities of any description. The man who is so elected must be known to his fellow-citizens and must possess their confidence.

As the supreme court has imputed to the state judiciaries, an undue subserviency to the wishes and views of their legislatures, and have in some measure invited a comparison on that subject, I will endeavor to gratify them. I confine myself to the operations in Virginia, as to which state only, I have the information which is requisite on the subject. In the year 1788, all the judges of Virginia, declined and refused

to execute a law establishing district courts, which had been passed by the preceding legislature on the ground of its being unconstitutional. (See their memorial to the legislature on the subject.) The legislature acquiesced in their opposition, and did away with the cause of their objection, by a subsequent act. In the year 1792 (see the reported case of *Kemper vs. Hawkins,*) the general court of Virginia declined to execute the power of granting injunctions, confided to it by the legislature. They *unanimously* declined this duty on the ground that the law was unconstitutional; and the provision in question was repealed. In the last session of the legislature one of the judges of the court of appeals, in a letter written to the governor, with the concurrence of ALL his brother judges declined to discharge executive duties cast on him, by a previous law. in relation to the literary fund: and the legislature new-modelled the board, and yielded to the objection of the judges. These instances (and others perhaps might be added) show no servility on the part of the judiciary in relation to the legislature, and the facts are equally honorable to the legislature. All these several laws thus declined to be executed, were *favorite* laws with the legislature. Yet that consideration could not prevail with an independent judiciary. So. that judiciary has shown itself to be equally firm in relation to the federal authorities. The court of appeals of Virginia, on great and solemn consideration in the case of *Hunter vs. Martin,* unanimously, declined *obedience* to the twenty-fifth section of the judicial act of the United States, and to a judgment of the supreme court enforcing it. As that high court itself had done in relation to another part of that act, in the case of *Marbury vs. Madison,* they *unanimously* declared

that section to be unconstitutional. It reprobated a judgment of the supreme court which considered the court of appeals as an inferior federal court and undertook to reverse its judgment. The reasons of the court of appeals are before the public, and it is believed, *cannot* be answered. Did the court in this instance show a dependence on the General Government? No! the oath they had also taken to support the constitution, and their independence as judges, forbade it. Notwithstanding the superior *allurements* on the side of the General Government, these faithful officers remained true to the constitution. They have taken sides with neither government, but have endeavored in all cases, and under all circumstances, to be guided only by the constitution. None of these judges have been *impeached* for high crimes and misdemeanors, and only found "not guilty." None of them have gone in quest of the highest salaries. "The administration of the law" in their hands, has never been complained of. If these facts do not rescue the state judges from the unjust imputation thus cast upon them by the supreme court neither could the testimony of one coming from the dead.

I will beg leave to close this disgusting but *necessary* part of this examination, by adverting to a position advanced by the court, in another part of its opinion. That high tribunal has permitted itself to *insinuate*, that not only the courts of the states, but even "those *States themselves*" may be influenced in their expositions of the constitution, by "motives which may not be fairly avowed." In regard to an imputation so broad, so general, and permit me to add, so ILLIBERAL, I will ask how comes it that the supreme court alone is pure and immaculate? If the contagion is *so* general as they insinuated, how have *they* escaped its baneful effects? or

are their prejudices all the other way? Let the *facts* I have stated on this subject answer that question. In regard to purity of motives, and of character, at least, the humble functionaries of the states need not decline a comparison even with these exalted judges.

ALGERNON SIDNEY.

(Richmond Enquirer, June 5, 1821.)

## ON THE LOTTERY DECISION.

### No. 4.

*To the People of the United States:*

The supreme court seems to perceive great evils, fellow-citizens, from suing in the state tribunals those who act under the authority of the laws of the United States. If those mischiefs do exist, yet the power to correct the decisions is not thereby carried to the federal courts. No power, whatever the mischief may be, is possessed by them, unless it has been fairly conferred The constitution is not whatever that court thinks it ought to be. On that point, the people of the United States have also *their* opinion. They may have thought, differing in opinion from the supreme court, that the general government might, also, be induced to do wrong and violate the rights of the states and the people, and on this ground have left the constitution as it is. They have left a check in the hands of the states against the effect of such abuses. They may have foreseen the actual occurrence of the sedition law, for example, and have left power with the states, or the people, to put down the abuse whenever it should happen. They may have had a better opinion of the state tribunals than their rivals for power are pleased to have on this occasion. They had neither been encouraged to take sides with the government which employs and pays them, nor been excited to consider those as groundless jealousies of the states, which are, in truth only rightful claims of their constitutional and indubitable rights. The American people, in forming their constitution,

took sides with neither of the parties to this contest for power, but regarded as well the just rights of the several states, as the granted powers of the general government. Although, they no doubt foresaw some clashing between the two governments, and their respective departments, it was submitted to, as the lesser of evils, and as the price paid by the people for their liberties. They were to choose between a pure model of a federal republic and a confederation of the states, on the one hand and an absolute consolidated government on the other. They did not hesitate in their choice between the two; but they differed in opinion from the supreme court.

The supreme court is pleased to say, that a constitution "which was designed to approach immortality," *ought not* to be so defective as not to have power to secure the execution of its own laws against all dangers. If that constitution was designed for immortality, it was certainly not so intended in its original form. It is admitted to have been eminently defective by the very provision contained in it for its amendment; and it has been accordingly, actually and greatly amended. Possibly, the point in question may be one of the very cases in which this amending power would be properly applied. What the constitution "ought to be," is one thing and what it actually *is*, is another. The last is the only question with which the supreme court has any legitimate concern.

The supreme court has referred to the history of the times, in which the constitution was established in support of the construction they have adopted. In joining issue with them as to that history, I shall often have occasion in the sequel to differ from them respecting the *facts* thereof. I must also say, that if in this case, history is to be relied on, *all* the his-

tory which relates to the case ought to be taken into consideration. This is an universal rule in expounding all contracts and documents whatsoever You are to go by the *whole*, and not by a part, of the sense of him who speaks. If the petty state of Rhode Island had in these times rebelled against the federal authority; if, in some instances, other states had also refused obedience to the federal requisitions, that is only *part* of the history of those times. It is also a part of that history that all the states, in entering into the present government, wished to preserve their state institutions. They wished only to enter into a federal government. The idea of one great national consolidated government was abhorrent to their minds Their preference of a general government, for general porposes, and of special governments for the preservation of their internal rights and liberties, had been perpetual, uniform and unbated.

*That* was the ground taken by the states in their contest with Great Britain. *That* was the sentiment, which induced all the states to declare, in the second of the articles of confederation, that "each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this confederation expressly delegated to the United States in Congress assembled." It was that sentiment which induced the American people to adopt a similar provision, in the tenth amendment to the constitution. It was that sentiment which even previously to the adoption of that amendment had grown into a principle of the American constitution by common consent (*a*) and that according to the testimony of those who were the least favorable to the establishment of a federal govern-

(*a*) 2. Fed. pa. 232.

ment. If these important facts be a part of the "history of the times", ought the supreme court to, have shut their eyes upon them? Ought they to have professed to be ignorant of their existence? Ought they to adopt a construction which cannot be reconciled with *this* part of the history of the times? Ought they still to deduce powers by distant and remote implication? Ought they by construction, to impute to the American people that they have made in effect, but one great consolidated government, when they have in fact established a confederation of independent states, have granted the powers it chose to confide to the general government, and reserved the rest to the states? Ought the court not to permit that government, which they say was "designed to approach immortality" to exist a single day in its original form and character?

The court seems to think that as the constitution enables it to reach the individuals directly and without the aid of any other power, they may protect them from punishment by executing the laws of the general government. So far as this implies a power of control over the judgments of the state courts, it must be first shown that that power has been given. The supreme court cannot *extend* the constitution so as to give themselves jurisdiction in this particular. Although that court might correct these judgments, under the general provisions of the constitution, if the state courts were federal courts, it can not do so, as they are not of this character. They are courts of another and a distinct government. It is not denied but that the people might have given an appeal in this case also, and possibly it ought to have been given. But they have not given it. It is an implication confronted by a thousand difficulties, that the

courts of one government should control the judgments of the courts of another; and a construction going that length would completely obliterate the state authorities, and work a consolidation of the Union. There is nothing in the constitution, however the question of inconvenience may be, that makes this construction necessary. There *are* inferior federal courts established by the constitution, (art. 3rd) which will satisfy the appellate claim of the superior court; and therefore we are not to go into a construction which is extravagant and unreasonable. Without this strained construction, every word in the judicial article may be fully satisfied.

In answer to the counsel for Virginia who averred that the suggestions of the supreme court, as to a general disposition of the states to resist the federal authority were entirely imaginary, and that if this disposition should really exist the states could, at once by a shorter cut, put an end to the federal government by refusing to elect senators, the court admitting the last and conceding that the first is an extreme and improbable case, yet say—that *quoad* minor instances of what it calls, usurpation by "*any parts*" of the people, they ought to be repelled by "those to whom the people have delegated their power of repelling it." If by the term "parts" here, is meant sections of the people, as individuals, short of their organization as states, the proposition is at once admitted. In that case, the contest is, only between the general government and the unauthorized acts of its own citizens. If on the other hand the regular acts of the state governments are intended, this word "parts" was very unhappily selected. It savors too much of consolidation. The opinion strikes at the existence and authority of the state governments in this particular, but

does it under an artful and ambiguous expression. A state government is not properly denominated a "part" of the American people, but is one of the sovereign and independent members, of which our confederacy is composed. Their acts therefore are not, unless authorized by the constitution, subjected to the control of the General Government, although the acts of the individuals of that government may be. Hence these words "a part," &c. were used, and they were not used but as a cover to disguise the pill. The proposition stated in its native shape, and using the term "states", might have been too unpalatable. It is here to be remarked, that the courts have conceded that the extreme case will not happen, and therefore, it cannot be argued from. The minor cases of opposition, then, are only to be apprehended. As for these petty collisions, and when it must be admitted that the states have no inducements to raise them without a cause, they had better be submitted to. They are the lesser of evils. It is better than sanctioning a power in the supreme court, which will set all the barriers of the state governments at defiance, and demolish the confederacy. As for what the court says of their being the tribunal, to whom this subject is confided, that as relates to contests for power between the two governments is taking for granted what ought, but cannot be proved. A compact between two parties is a nullity, as to one of them if the other by itself, or its agents, has the power of expounding it as it pleases.

The court says that the acknowledged inability of the government of the United States to contest the whole nation, acting in opposition thereto, is no sound argument in support of its constitutional inability, to preserve itself against a "section of the nation," acting in opposition to the gen-

eral will. Correctly speaking, the court should have said in the last instance, "a part of the people," and then, there would have been no difference of opinion between us. But if by the term they have used, they meant to include a "state," and in relation to the powers reserved to the states, by the constitution, then I boldly say, that *quoad* this question a state is not a "section of the nation." The states *quoad* these rights, are complete and independent sovereignties.

I must here take the liberty to remark once for all, that the supreme court not only takes a ground which, in effect, denies to the states any rights whatever, but also supposes that those states will always be in the wrong, and their favorite government always right They take the famous ground that is taken by the twenty-fifth section of the judicial act of Congress, namely, that a state court deciding in favor of an act of Congress is always right but always wrong when it decides against it. Nay, that act, I had almost said that absurd and ridiculous act, allows an appeal to the federal court in the last case, and denies it in the first.

The facts already stated show that no mischief will arise from any lack of independence or impartiality in the state judiciaries, and as for a due consideration of the cases, all of the states have provided for it by their regulations in favor of appellate and revisionary proceedings. The fears of the supreme court on this subject are therefore ideal and unfounded.

The supreme court has admitted the power of the states to destroy the General Government entirely, by all of them refusing to appoint Senators and electors of a President and Vice-President, and to destroy it, *quoad* the refusing states, by partial declensions in these particulars. They

must also admit that a general opposition by the state judiciaries against encroachments of the federal courts would have the same effect. At least, in such cases they must relinquish the aid of the state courts in executing their obnoxious judgments and thus abandon their claim that the courts are subordinate courts of the General Government. Does not this analogy also hold as to partial stands made by the judiciaries of some of the states? In such cases is there not at least a pause, which calls for adjustment, by that people by whom and for whom both judiciaries were made? If the state-judiciaries are right, and claim nothing but the reserved rights of their respective governments, ought they to be thus violently and promptly put down? But this is not all. The state judges, also sworn to support the federal government and having as much interest in it as the federal judges, may make their stand in behalf of the just rights of the General Government, They may, in truth, be more attached to that government than the latter judges themselves. Ought they, also, in this case be put down and thus the judges of the federal court, be permitted, maugre all the efforts of the state judges to destroy the constitution of the Union? That argument is not a good one which does not hold both ways, and this last view shows an absolute and fatal power in the federal judges to destroy as well the rights of the Union as of the states. Every argument drawn from the admission aforesaid, as to senators and electors, holds *a fortiori*, as to the case in question. A partial opposition by the state judiciaries does not stop even as to the opposing states as the other does to the whole General Government. It only, as to one of the departments of such states, creates a pause while the other benefits of the government are still enjoyed. This is one of the alternatives; the

other is an absolute despotism by the courts of one government over those of another, and *that* by remote implication. Virginia is still *another* government unless we have entirely given up the fond idea of a confederation of the states.

The supreme court again explicitly admits that no partiality is to be imputed to the state tribunals in relation to their own citizens; that suits cannot be brought against the states in federal courts at their instance; and that those courts are not competent to "establish a demand" by citizens upon their own states. This concession also overrides the jurisdiction of the court in the case before us. If those courts cannot interfere in such cases positively, neither can they negatively. A right is as well "established" in favor of a citizen by arresting the effect of a judgment of a state court against him as by rendering a judgment "establishing a demand" in his favor. The difference between the two cases is imaginary and unreal. There is no want of impartiality in the state tribunals in the one case more than in the other; and hence the *principle* which precludes the federal jurisdiction ought to apply to both. The conclusion is irresistible on this subject, when you can only *imply* the jurisdiction in the case before us. and when the rights of a sovereign state are to be invaded by such implication. There is no right more clearly appertaining to sovereignty than an exemption from being sued in the courts of another government. A court which has no prejudice against a party as a party, can have none arising from the nature of his cause. In relation to the citizens of a state at least, we cannot suppose that the constitution will be wantonly violated to their prejudice, by the tribunals of that state; and this cuts up the pretended ground of jurisdiction in this case by the roots. Besides, the objection of a state

to being sued in a foreign court is a matter in abatement and does not involve the merits of the controversy. It perhaps admits the right of being sued in its own courts. But the construction of the constitution or laws of the United States is a matter of bar and goes to the merits. So these two matters are further discriminated in this, that the first relates to, and is to be decided as it were, at the inception of the action; the other comes out for the first time in the remote progress of the pleadings. The right of a citizen to sue his state is not, therefore, in such case, coeval with the institution of his action, and the great principle is consequently violated which requires that there must be a cause of action, as well as proper parties at the time of instituting the suit. The ground of jurisdiction, or of action, may show itself for the first time, months and years after the institution of the suit, and the constitution or law, which is to give the court jurisdiction, may come out for the first time in the *surrebutter* of the defendant. In this case, therefore, the federal court may never have jurisdiction in the cause, and if there is ever a point of time at which the court has no jurisdiction, and especially if that be at the commencement of the action, the case should go off the docket. The court in this case have improved upon the famous provision of the twenty-fifth section aforesaid, giving an appeal from the highest state courts in cases in which the constitution, &c., were involved. In that case an appeal is allowed by Congress without an *iota* of the constitution to support it, IF, and only if, the decision is against that constitution or those laws. Where the decision of the court is the other way the decision of the state court is supposed to be correct and the appeal is denied. That section affords the rare anomaly of the jurisdiction of a court

being final or otherwise, not in reference to its own actual constitution, or the subject matter which it decides, but according as it decides on one side or another of a given question. But in that case the existence of proper *parties* is supposed. The court in the case before us, extending the same principle, have given a jurisdiction in cases in which proper parties are wanting. They give it, to use their own phrase, "whoever may be the parties." I have already stated cases in which there must be, from the nature of things, some limits on this subject of parties. One exception is that a cause of the judges themselves must be excepted notwithstanding the generality of the position as now laid down. The great error of the court consists in forgetting that in a case conferring jurisdiction the existence of necessary parties is always presupposed

The court have extended their jurisdiction in this case, where there is an admitted defect of proper parties, on the ground that otherwise the general clause respecting cases, arising under the constitution, &c., would be surplusage. That clause, however general, pre-supposes *cases* proper for the cognizance of the court, and those cases also pre-suppose the existence of necessary *parties*. The court can neither decide abstract points and questions, submitted to it, nor dispense with the requisite parties. It sits to decide *real* controversies depending between those who are authorized to come before it. Besides, the jurisdiction of the supreme court is only "extended" to embrace these cases and may have been so extended, only through abundant caution. That jurisdiction is, however, only concurrent in the federal courts, taken in relation to those of the states. Yet the pretension now set up is to exclude the previous jurisdiction of the state courts. It is so construed, without any

expression in the constitution to warrant it; when an invasion of the jurisdiction of the state courts is created thereby; and when without such invasion, the word "extend" can be otherwise fully satisfied.

The supreme court, after committing the great error of supposing that under the general words "all cases arising under the constitution," &c., these cases were included, also, in which there was a plain and palpable defect of parties, commit another great and alarming mistake. They say that jurisdiction in this case is carried to the federal court, as it is not "excepted" in favor of the states. On the contrary, while the powers of the general government and all its departments depend upon positive *grants* of power, by the constitution, and not upon remote implication, the rights of the states do not depend upon any "exceptions" in their favor. The tenth amendment to the constitution settles this matter unequivocally, and puts down this alarming idea of the supreme court. Unless a jurisdiction in this case, has been "delegated to the United States by the constitution," the court cannot assume it; and, on the contrary, an exemption from that jurisdiction is reserved to the states, or to the people, by not being "delegated." The principle asserted by this amendment, and which, also, was an acknowledged principle of construing the constitution *before*, loses none of its force when applied to the actual case before us. The case is a very strong one, and the grounds of objection very clear, in which one sovereign state refuses to be "dragged" into the courts of another.

The court proceeds to *repeat* the assertion that if their construction is not admitted, the state courts may "arrest the progress of the general government, in its constitutional course." That court throughout its opinion, indulges in

as the supreme judges themselves, be restrained from destroying it.

The court expressly avows an opinion that under the general words before mentioned, the constitution in its original shape gave a jurisdiction in this case, whenever the constitution and laws of the United States came in question "whoever might be the parties." This idea is of an entirely modern origin; and was never started until on the present occasion. I have examined the debates of the Virginia Convention with care, and no expression save one ever dropped from any member, insinuating a possibility that a state could be sued by its own citizens in the federal court in any shape, or under any circumstances. Mr. Henry in his excessive jealousies on this subject, and which in other instances induced him even to distort that instrument never indulged in such an idea.

No other man, save one, ever took up such an opinion. The amendments offered by Virginia at the time of adopting the constitution never foresaw the possibility of this objection and made no provision to restrain the jurisdiction. The refinement had not then occurred that a sovereign state could be sued without its consent in another government, nor that that could be effected in the appellate form which had not been granted in any other. Mr. Mason, indeed, did hazard some such idea (*b*), but being sharply reprehended by Mr. Nicholas therefor, who said that the idea was not warranted by the words of the constitution, the former gave it up. He admitted that he might have been mistaken, from his great age, and the defect of his memory. Mr. Marshall in the convention more than decided this case against his present opinion. He denied that, even in controversies

(b) Debates pa. 372.

between a state and citizens of *another* state, the states could be "dragged" to the bar of the federal court. He said that the express provision in the judicial article, in relation to this case, could not be expounded so as to make a sovereign state a *defendant*, in the federal courts (*c*). The opinion of this very able man was then governed by substance and not by forms. Great principles then operated on his luminous mind, not hair-splitting quibbles and verbal criticisms. Mr. Madison said that it was not in the power of even citizens of *another* state to call any state into the federal court: that the only operation the clause could have, would be that a state might sue a *citizen* as a plaintiff, and that if a state should *condescend* to go into the federal court, as plaintiff, the court might take cognizance of the case (*d*). So high was then the respect for the sovereignty of the states and so strict were these great men—the warmest friends, too, of the constitution—that even under the express provision in the third article and in relation to citizens of *other* states the construction, now in question, was reprobated. Every argument then used holds *a fortiori* between a state and its own citizens. That is the case under the original constitution, but the eleventh amendment to it has put the matter entirely at rest. I will only add, from a respectable writer (*e*) on this part of the subject, that the *original* constitution did not extend to *any* case, but between a state and its own citizens, and that now, by the eleventh amendment, the case is the same as to foreign subjects or citizens.

The court, while it admits that the appellate power now maintained is not derived to the supreme court, in the case

(*c*) Ib. 942.
(*d*) Ib. 278.
(*e*) Tuck Append. 423.

before us, under the words conveying the appellate power in the last part of the section relating to the same, contends that it is carried by the general words before mentioned. It goes so far as to say that this jurisdiction arises under those words in "all cases whatsoever," and "whoever may be the parties." This position has been shown to be not universally true; and the maxim *falsum in uno falsum in omnibus* emphatically applies. It is not true, I will further add, as to cases previously deposited with the supreme court in its original character, such as those respecting ambassadors, and in which a state is allowed to be a party. As to *these*, although constitutional questions may occur, no appeal would lie to the supreme court. It would not so lie, unless you encountered the absurdity of appealing from the decisions of a court to the *same* court. It would be a curious anomaly to see such an appeal as this prosecuted. The proposition, broad as it is, of the supreme court, is not therefore universally true, and a construction which leads to an absurdity is not to be adopted. Nor is it true in the case before us. It is scarcely less absurd to appeal from the decisions of a court to the same court, than to appeal to the appellate court of *another* government. An appeal cannot be construed to lie in such a case, because the reversing court has no power to coerce the execution of its sentence. All these absurdities and inconveniences will be avoided by considering the first clause as describing the classes of cases which are embraced by the federal jurisdiction in the general, and the second as parcelling out that jurisdiction between the supreme and inferior tribunals. Thus construing the general words aforesaid, and also regarding the specifications of jurisdiction which follow them, we should not infringe the approved maxim that all powers are not to be

considered as given when some are enumerated. A construction deduced by remote inferences, besieged by insuperable difficulties and leading to absurdities, is not to be lightly adopted. It is not to be adopted, when so far from being necessary, or producing any utility, it leads directly to overthrow the state governments; and disables their judiciaries from affording them any security against an inordinate lust of power in the general government.

Such a construction would completely verify the prophecy of Mr. Henry on this subject, in the Virginia Convention. "I see," said he, "arising out of that paper, a tribunal that is to be recurred to in all cases when the destruction of the state judiciaries shall happen, and that by it the state courts will soon be annihilated" (*f*). It would take from the states, in the language of Mr. Grayson, "their only *defensive armour*—the state judges, who are the principal defense of the state," and make the judiciary of Virginia be considered inferior federal tribunals (*g*). Mr. Mason also said (*h*), that "when we come to the judiciary we shall be more convinced that it will terminate in the annihilation of the state government."

It is further said, in support of the construction of the supreme court, that no "negative words" are used in the clause to oust the appellate power of the court, in the case in question. There are no such negative words used to prohibit the appellate power of the supreme court over *its own* decisions, and yet, I presume, it would not be sustained. Such words are equally unnecessary in relation to the decisions of the courts of *another* government. The want of these ex-

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(*f*) Deb. 325.
(*g*) Ib. 403.
(*h*) Ib. 84.

press words is amply supplied in both instances, by an invincible negative growing out of the intrinsic circumstances of the cases.

As for the case put by the supreme court, touching the jurisdiction in the case of ambassadors, it is to be observed, that whenever they sue, or are sued, in the federal courts, they have, in effect, the benefit of the appellate jurisdiction, by having their case already decided in the supreme court, in which all such suits must be brought. If they sue as *plaintiffs*, in the state courts, they have elected their jurisdiction, and cannot hesitate to abide by it; and in relation to the few cases, in which they may be found in the states, and sued in the state courts, I am inclined to think that they cannot vary the construction. That, however, is a stronger case than the one before us, and need not to be now decided. Such cases are few, and a construction is to be made in relation to cases, *quae frequentius accidunt*. When so many benefits are extended to ambassadors, by the actual provisions of our system, they cannot complain that this small and solitary privilege is denied them. The ambassador of Peter the Great, of Russia, in the memorable case, in the time of Queen Anne, was obliged to submit to the general and salutary provisions of the laws of England. The sovereigns of all the nations in Europe are bound to know that we live under a federal republican government; and are also bound to submit to the consequences of such a system. We have a great respect for peace, and for the privileges of foreign ministers: but they must not make demands upon us, which are interdicted by the actual provisions and nature of our government. I am inclined to think that if these ambassadors quit the seat of the general government, go into the states and contract debts with their citizens, they must

submit to be there sued: They will have their causes tried however, by judges as much bound to support the constitution, laws and treaties of the United States, as the judges of the supreme court themselves. Uniformity of decision may be desirable, in such cases, but of this the people are to judge. The constitution has not, I think, ousted the state courts of their jurisdiction, in such cases. The court is therefore probably mistaken in saying that the clause touching ambassadors was inserted for the purpose of excluding the jurisdiction of all courts other than the supreme court. The exclusion is, I think, only extended to all other courts of the federal government. The previous right of suing them in the state courts is not to be taken from the states by implication.

The court says, that the appellate jurisdiction of the supreme court is often exercised in relation to suits brought by foreign consuls, in our "prize courts." Those courts are a part of the federal judiciary, and the difficulty does not arise in that case which exists in this. It is natural that the superior courts should correct the judgment of the inferior courts of the same government. Although in such cases, an original jurisdiction in the supreme court, might perhaps, be claimed, under the constitution, it may also be relinquished. If those consuls do not get the opinion of the supreme court in the first instance, they ought, perhaps, to have it in the *dernier ressort.* By suing in the inferior federal courts, these persons disrobe themselves, as it were, of their consular character. This is especially the case, if as the court says, they sue for the benefit of *others.* In this case, then, they are not to be considered as consuls, and there is nothing to obstruct the ordinary appellate jurisdiction of the court. This case, however, has no similitude to

the case before us. It is probably because those consuls want the revisionary power of the supreme court that they bring their suits in the "prize courts" of the United States, instead of the courts of the several states. Their practice, then, entirely accords with my construction of the constitution, and overrules the pretension, now in question.

I shall not accompany the court in their explanation of what fell from them in the case of *Marbury against Madison*, upon this subject. While they are at perfect liberty to retract or explain away, what they said, on that occasion, I entirely accord with them in opinion that only what is directly pertinent, to the case in hand, is to be regarded as authority, and that everything else is to be rejected as extrajudicial. That concession, however, destroys several of the pillars, of the present opinion of the court, and will forever abolish almost all the volumes of Wheaton. The reports of that gentleman have become entire tracts and treaties upon constitutional subjects. A great part of the time of every session of the supreme court is occupied in amending—fatally amending— an existing constitution. I do not find it necessary to insist that anything contained in the case of *Marbury against Madison*, gives to the affirmative, words in the clause in question, a negative character. In relation to the claim of jurisdiction, now before us, it is reprobated by facts and circumstances more clear and emphatic, than any negative words whatsoever.

ALGERNON SIDNEY

(Richmond Enquirer, June 8, 1821.)

## ON THE LOTTERY DECISION.

## No. 5.

*To the People of the United States:*

In order to elude the force of the eleventh amendment to the constitution, fellow-citizens, the court is pleased to advert to what it terms a "part of our history." That history does not justify the assertion that "*all* the states were *greatly indebted*" at the time of adopting that amendment. If some states were debtors, others must probably have been their creditors, and had a contrary interest as to the amendment in question. Possibly, however, the court meant that the citizens of those states, rather than the states themselves, were indebted. If so, they only, and not the states, would be sued, and that case did not call for *this* amendment; nor "could the fear of these suits being prosecuted" in the federal courts, form "a very serious objection to the adoption of the constitution." Notwithstanding this amendment did take place these citizens have been sued, and these debts all recovered against them.

At the time of the amendment being adopted only three of the states had been sued in the federal court—Massachusetts, Georgia and Virginia (*a*.) As for Virginia, that suit was not brought for any "debt," due by her. It was for a land claim upon her by the Indiana Company which had been formerly decided in her favor, and this decision was pleaded in bar (*b*.) It is, therefore, a libel upon her to say

(*a*) 1 Tuck. Bl. Appen. 352.
(*b*) Acts of Virg. of '92, Resolution pa. 114.

that she was induced to this measure from any fear of debts being recovered against her. The court has not shown that any such existed. Again, as only *three* suits had been brought against the states, some other motive than the number of those suits, or the greatness of the danger arising therefrom, must have produced the amendment in question. If "the alarm was general," it was not from the fears aforesaid, but from a fear of consolidation, resulting from the judgment of the supreme court and the total change of the government On the third of December, 1793 (*c*,) the legislature of Virginia had resolved, "that a state cannot, under the constitution of the United States, be made a defendant at the suit of any individual, and that the decision of the supreme federal court, that a state may be placed in that situation, is ***inconsistent with***, and ***dangerous to***, ***the sovereignty and independence of the individual states***, as the same tends to a ***general consolidation*** of these ***confederate*** republics." It was, at the same time, resolved, that our senators and representatives in Congress be instructed to obtain such amendments to the constitution "as will remove or explain any clause or article of the said constitution, which can be construed to imply or justify a decision that a state is compellable to ANSWER, in any suit, by an individual or individuals, in any court of the United States." It was because the states claimed to be *sovereign* and independent states, although they had entered into a federal compact and because one sovereign state has no right to set itself up as the judge of another that this alarm took place; and not on the sordid ground of an unwillingness in the states to pay debts which are not shown to have had an existence.

The court infers that the motive of this amendment on

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(*c*) See the Acts of that session.

the part of the states was not to avoid the degradation of the said states by being carried into the courts of another government. It infers this because that jurisdiction is still ceded as to controversies between two states, or a state and a foreign state. As to these, the jurisdiction is strictly proper, the courts of neither party being competent to bind the other, and forms a just exception from the principle above stated. But the case contemplated by the eleventh amendment is of another character. There was no reason to yield up the sovereign rights of the states to individuals of other states, when it was withheld from our own citizens, and when our citizens did not receive a correspondent favor in other states or countries. It is clearly an error, therefore, to infer that this objection did not prevail with the states in relation to a case in which it forcibly and emphatically existed, because it was relinquished in another case in which it could not have been justly urged.

The court says there must be some other cause than the dignity of the state, which produced this amendment. That other cause was the great principle just alluded to. As it is asserted, that the dignity of the state was not the real cause of the opposition the assertion is promptly denied. In the biography of the patriotic Governor Hancock, in the Sanderson series, said on good authority to have been written by *John Adams*, it is said that the former "in *favoring a confederate republic*, did not vindicate with less scrupulousness the dignity of the individual states, and that in a suit brought against the state of Massachusetts in the court of the United States in which he was summoned as Governor to answer the *prosecution*, he *resisted* the process and maintained inviolate the SOVEREIGNTY of the commonwealth." As to the sense of the commonwealth of

Virginia on that subject in addition to what has already been said, I beg leave to refer to the following resolutions of her legislative body. In the session of October 1792 (*d*), the Legislature referring to the suit then depending against Virginia in the federal court, *inter alia*, resolved "that the state cannot be made a defendant in the said court at the suit of any individuals." Again in the session of 1796 (*e*), it was resolved that the executive take such measures to defend the above mentioned suit, "as may seem to them most conducive to the HONOR and interest of the commonwealth." I will only here add from The Federalist (*f*), that it is inherent in the nature of sovereignty not to be amenable, at the suit of an individual *without* its consent, and that this exemption is one of the attributes of sovereignty *now enjoyed* by the governments of every state in the Union, and that therefore, unless there be a *surrender* of this immunity, in the constitution, it will remain with the states. Again it is said (*g*), that "to ascribe to the federal courts by *mere implication* and in destruction of a pre-existing right of the state governments, a power which would involve such a consequence would be altogether *forced* and *unwarrantable*."

Although these just objections touching both the sovereignty and dignity of the states, existed as to suits brought by individuals and a jurisdiction was justly ceded to the federal courts as to claims by other states, for the purpose of a fair and equal arbitration of them, the anxiety of the states to obtain the eleventh amendment to the constitution is ascribed by the court to motives entirely sordid. They have said that the jurisdiction was denied thereby to

(*d*) Acts '92 pa. 114.
(*e*) Acts '98, pa. 42.
(*f*) 2 Fed. 238.
(*g*) Ib. 238.

the citizens of other states *because they* might be extensive creditors of the states, whereas other states, or foreign states might not be so. This imputation is equally unsupported and ungenerous. A good reason existed for the inhibition of the former class of cases which did not exist as to the latter. A jurisdiction as to the latter was permitted not only because it was in itself just and fair, but would avoid broils and wars with other powers. A foreign state may justly complain of the judgments of a rival state rendered against her, but the interests of her subjects will be concluded thereby and no cause of war afforded, unless at least the injustice be glaring. No nation especially can justly complain that the states do not give a preference to foreigners over their own citizens in their courts, as none of them give a similar preference to our citizens suing in their respective kingdoms.

The court goes on to say that they are led by the causes to which they have been pleased to ascribe the amendment in question (and which I have endeavored to show are not justly to be imputed to the states) to consider that amendment as only intended for those cases in which "some demand is made" against a state by an individual. Whatever may have been intended the words themselves of the amendment cannot be so restricted. They are comprehensive words as could be used to interdict all suits whatsoever commenced or prosecuted in a federal court. There is no reason resulting from the sovereignty or dignity of the states which does not apply as well to cases in which the state is exhibited as plaintiff, as defendant; and every reason which allows the state courts to have a just cognizance of the cause permits that cognizance to be final. The state *is* a defendant to a writ of error, sued out against her, and

there is but little difference between the summons by which an original suit is commenced, and a citation which is consequent on a writ of error. The object of both is to give notice of the existence of the suit, and both are, or ought to be, conceived in the least objectionable form.

The court still imputing to the states unworthy motives for wishing for the eleventh amendment to the constitution, on which it seeks to *narrow* the construction of that amendment, say that "a general interest might well be felt in leaving to a state the full power of consulting *its* convenience in the payment of *its* debts, or of other claims upon it, but no interest could be felt in so changing the relations between the whole and 'its parts,' as to strip the government of the the means of protecting, by the instrumentality of its courts, the constitution and laws from active violation." That general interest could not be felt, unless there was a general indebtment by the states, which is not shown, believed or admitted to be the fact. This, therefore, was not the real motive for the amendment in question, but the laudable and honorable ones I have already stated.

The court has entered into a string of technical quotations and subtleties to show that the eleventh amendment only applies to "demands" existing in favor of individuals, in the first instance and suits commenced therefor in exclusion of demands arising subsequently, to be relieved from what are supposed to be erroneous judgments in the state tribunals; and they say that the words of that amendment justify and "require" that construction. As to these words, if the objects of the states extended to the last as well as the first, what more comprehensive terms could have been used? "Commenced" and "prosecuted," embrace every possible case. *Referendo singula singulis*; this word "prose-

cuted" would reach a case brought into the federal court, although not originally "commenced" there. This natural construction of this word holds *a fortiori* as the objection to the federal jurisdiction, on account of the state dignity and sovereignty, is, in both cases the same. A technical and verbal criticism, contrary to these great principles, and withholding a case from the final cognizance of the state courts, which is in an equal degree, in derogation of the rights of the states, is unworthy of the cause and of the parties. The states who made the mandment would not have been satisfied by the inhibition, as now narrowed and explained. They would never have conceded that their courts are not as impartial in rendering a judgment in their favor as in giving a judgment against them. This is the ground of the distinction taken by the supreme court. Unless there be a difference in this respect against the impartiality of the state tribunals, a jurisdiction is inhibited in the first case as well as in the last. The court has here brought to its aid, and in extension of its own jurisdiction, principles too nice for common observation. They consist of filaments so slender as only to be seen through the magnifying glass invented by the court in favor of their own prejudices and love of power.

I join issue with the supreme court in its idea that a suit against a state is a process sued out against it (as the citation in the writ of error is) and for the purpose of establishing some claim against it by the judgment of a court. The object of the present writ of error is to get a judgment of exemption as to the hundred dollars now in controversy. In substance therefore this writ of error is entirely a suit. It is also undoubtedly a suit, technically speaking and in point of law. *That* is undoubtedly a suit or action which

can be relinquished by a release of all suits and actions. This is the case of a writ of error (*h*). That writ of error is to be released as a suit and therefore is a suit, by means of which the plaintiff is to recover or be restored to anything (*i*); although it is otherwise, as in the case of the reversal of an outlawry, &c., in which nothing had been recovered against the plaintiff. The plaintiff in error is restored to the thing recovered against him by the mere reversal of the judgment. It is not necessary that his money should have been taken from him and put into the pocket of the defendant. There need not be a change of *possession* or constitute a restoration of the property. And in some cases as where the goods are sold to a stranger, there cannot be a literal restoration of the property of the plaintiff in error. In those cases he is only restored to the money. No argument can be drawn against this construction from the *form* of the judgment. It is true the judgment in this case is only "*quoad judicium reverseter*," and no positive judgment is rendered by the appellate court for anything. Its effect is however the same. I retain my own property, and in fact recover it from you as well by destroying your judgment for it, as by obtaining a judgment against you in my own name.

The court, for the purpose of softening the case, and withdrawing writs of error from operation of the eleventh amendment, is pleased to style a writ of error "a commission," &c., yet it is also obliged to admit that it is an action, by admitting that a release of all actions will release a writ of error by wich a party "recovers" or "is restored to" any thing. As plaintiffs, failing to recover anything in the

(*h*) Co. Litt. 288b.
(*i*) 2 Line 297.

courts below, may bring error, as well as defendants against whom judgments have passed, the words, "recover," and be "restored to,"apply to those cases respectively. I have already said that an actual change of property is not necessary to give application and effect to the word "restore."

The court says that the object of the amendment was both to prohibit the commencement of future suits, and to "arrest the prosecution" of those which were pending at the time of the amendment: and that this object satisfies and gives the key to the word "prosecuted." It never could have been the intention of the amendment to interfere with the suits already existing. *That* would destroy the *lex temporis* altogether and set aside the great principle that suits rightly brought ought to be determined. As the federal court was still continued in existence, these suits should have been finished by it. In fact, (as the court is fond of history) the then pending suits were *not* immediately "arrested by virtue of that amendment. That amendment was *unanimously* adopted by the legislature of Virginia, in October, 1794, (*k*) and might, *before*, have become a part of the constitution by the adoption of other states, and yet the suit pending against Virginia in the supreme court, was pending on December 26th, 1796, as appears by a resolution before referred to. *This* suit therefore was not at once arrested by the supreme court, as most probably it would, had that been the sole purpose of this amendment I admit that at a future time it was decided by the supreme court, in the case of *Hollingsworth against the State of Virginia*, (*l*) that this amendment embraces cases, depending at the time on the docket; but it was also decided that it extended to

(*k*) Acts '95 pa. 54.
(*l*) 3 Dallas 382.

cases "prosecuted" in future. This decision negatives the idea of the court, that the term was *confined* to the cases then pending.

As it has this future operation also under this decision, and as the word "commenced" is also used in the amendment, for what other purpose could the word "prosecuted" have been inserted, but to embrace cases which, although not commenced in the federal courts were "prosecuted" there?

This idea of the supreme court is also entirely reprobated by another consideration. It is consistent with no rules of fair reasoning to construct an instrument, which the court itself says was "designed to attain immortality" by the pending and ephemeral incidents of the present time. It is wrong to draw any inferences in the teeth, too, of great principles, from the accidental existence at the time, of *three* causes on the docket of that court. The decision of the supreme court last mentioned overthrows this idea of their successors. It shows that the amendment as to the word "prosecuted" was not confined to the pending suits.

The court is entirely mistaken I conceive, in supposing that the only effect of a writ of error is "simply to bring the record into court" for the "sole purpose of an *enquiry* by that court, whether the judgment appeal from. violates the constitution," &c. It is brought for the far more important and substantial purpose of *reversing* a judgment, by which the party bringing it supposes himself to have been aggrieved. It is a real and substantial proceeding, and is not to settle mere abstract questions about the Constitution. It also changes the right of property, by declaring that money or property now belongs to the plaintiff in error, which had been before adjudged to belong to the de-

fendant. If this be not a suit, I cannot conceive what is. The court again says—repeating the same idea—that the plaintiff in error only asserts the constitutional right to have his defence examined by the superior court. This is the truth; but it is not the whole truth. He also claims a judgment from the supreme court, by which a judgment to his injury is to be reversed.

I must here remark once for all, that these are new and strong proofs among many others, of the artful manner in which the pretensions of the supreme court are almost always stated. Everything which makes against their side of the question is greatly distorted and aggravated, and everything in its favor is very much palliated and softened. They often assume premises which cannot be conceded and take for granted what ought to be proved. There are arts, I had almost said artifices, scarcely to be excused in an advocate and which are surely unworthy of the high character of the supreme court.

As for the hair-splitting distinction between a citation and a summons, taken with a view to discriminate between a writ of error and an action, I cannot comprehend it. Both are served upon, or left with the Governor, and he may attend to both, or decline them at his election; but the results are precisely the same. If he does not appear upon a summons, a judgment may be rendered against him by default, and if he neglects a citation, an existing judgment in his favor may, perhaps, be reversed. There is no substantial difference between the two processes.

For the purpose of showing that a writ of error is not a suit, and therefore, not interdicted by the eleventh amendment, the court says, that while the former has always lain against judgments in favor of the United States, it is "the

universally received opinion" that "no suit" can be commenced or prosecuted against the United States. By saying that this is "the universally received opinion," I infer that that matter has never been solemnly *decided* by the supreme court. On general principles I am clearly of opinion that such suits would lie. The objection only, is that a state cannot be sued in the courts of a foreign power. There is no objection to their being sued in their own courts. We are told by Vattel (*m*) that all just governments ought to appoint impartial judges, and that in all *free* and well-regulated states, the ordinary tribunals decide the cause in which the sovereign is concerned with as much freedom as those between private persons. Instead therefore of grinding the states to dust and ashes, and impairing their sovereignty by "dragging" (*n*) them before the federal courts, in the teeth both of great principles, and of the eleventh amendment, these judges should extend the golden principle I have just stated, so as to make the United States amenable to justice. They should extend the principle on which they have, without any legislative act upon the subject, already acted upon the United States, as they say by means of a writ of error, to other actions also. While there is nothing in the sovereignty or dignity of the United States, which forbids *their own* judges from passing upon them, they would be sufficiently shielded from unjust judgment by the check on the subject of appropriations provided by the constitution.

The court in concluding its opinion on this part of the subject, is equally politic and uncandid, as in the others. It would *again* insinuate that the *sole* purpose of the writ of

(*m*) Pa. 884.
(*n*) This was Mr. Marshall's phrase in the Convention.

error, is to re-examine the question whether the constitution, &c. had been violated. It is also uncandid to say, that the effect of that writ is not to restore the plaintiff to the possession of a thing, that he demands. If the money of the plaintiff in error had been made under the reversed judgment, I presume that it would have been restored to him by the effect of the writ of error, and the judgment of the reversal by the supreme court; and there can surely be no real difference between a writ of error sued out before or after the levying of the execution.

The court then goes to say, that if they are mistaken as to this effect of a writ of error, and if a writ of error be a suit within the meaning of the eleventh amendment to the constitution, the one before us is yet not a suit within the operation of that amendment, it not being a suit "prosecuted by a citizen of *another* state, (or by *a state*), or by a subject or citizen of a foreign state." I must here remark, by the way, that the court errs in supposing that that amendment extends to suits brought by "a state." I proceed to remark that the court is of this opinion, because, on the contrary, the plaintiff is a citizen of Virginia, and because, by the constitution as it originally stood, the judicial power was extended to all cases arising under the constitution &c. without respect of parties, and therefore included controversies between a state and its own citizens. The amount of this reasoning seems to be that, although the court would be bound by a jurisdiction once given, and then retracted by the people of the United States, even when the construction of that constitution should come in question, it would assume it without hesitation in a case, in which it has never been granted or, if granted, only granted by remote and distant implication; and yet the court is as much

bound by the tenth, as the eleventh amendment to the constitution—which declares, "that the powers not delegated to the United States, by the constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people."

As to a jurisdiction between a state and its own citizens, there never was any pretence to say that it ought to be granted to the courts of the general government in any form, or *quoad* and subjects. In addition to the general objection to it before stated, there was no necessity for it. The most feverish and unwarrantable jealousy of the state tribunals never apprehended any want of impartiality in them toward their own citizens. In relation to the citizens of *other* states, some imputations of partiality were indulged, and by the original constitution a jurisdiction as to them was conferred. Even that idea was spurned by the states, and hence resulted the eleventh amendment. In repudiating the jurisdiction of the federal courts in relation to the citizens of *other* states that amendment *more* than abandoned the claim as it related to citizens of the *same* state. It was abandoned on the principle that it had never been given; and on the further principle that the greater includes the lesser. No man had ever said or believed or thought, that it ought to have been given, or was given. The proposition would have been indignantly spurned, if made at the time of adopting the constitution. The idea is but newly started,—I had almost said trumped up. It has been drawn out from one of those hidden reservoirs, from which the supreme court is in the habit of drawing supplies of principles that are to demolish and destroy our happy confederation.

The supreme court in asserting its appellate power over

those of the states, denies that the judgments of the latter are independent of their power; or that the state *quoad* their judiciaries are to be considered as independent states; and they say that there are no *words* in the constitution, conveying a contrary idea. I might say with more force, *e converso*, that there are no words in that instrument delegating this appellate power to that court. I might also say that the appellate power given to the supreme court is amply satisfied by reference to the inferior courts of the general government.

The same system however, which for the favorite purpose of increasing the powers of the general government, dispenses with all laws and rules whatsoever, on the subject of *parties*, may as naturally go on and for the same purpose pass the boundaries established between the two governments; and thus the courts of one government be let in to reverse the judgments of another. While it is admitted with the supreme court that to many purposes the United States forms a single nation, it is claimed on the other hand that they form several and sovereign nations as to all other purposes. They form several states or nations, except in cases, and as to powers, as to which by grants of powers in the constitution they have consented to be one nation; and no such grant as that now in question is to be found in relation to the appellate power. In relation to such an anomalous, unusual and important power, it would not have rested on implication had it been intended to be conveyed; it would have been given in express terms. It is not enough for the supreme court therefore to say, that as to many purposes, the United States form a single nation. They ought to go on and say that they do so as to *this* purpose. They ought even to put their finger upon the specific

clause in the constitution, which contains the special delegation of it. Nor is it enough for the court to say or even prove, that it is highly reasonable, that *quoad* this power also the United States should form but one nation. That is an enquiry proper for the next convention called to amend the constitution, or for the consideration of the people of the United States, but with which the court has certainly nothing to do.

The ideas entertained on this point at the time of adopting the constitution are in utter conflict with that now holden by the supreme court. They were so entertained in the Virginia Convention both by the friends and enemies of the Constitution. Mr. Pendleton whose authority, especially on subjects of this nature, is and ought to be great, says: (*o*) that it was probable the first experiment would be to appoint the state judges to have the inferior federal jurisdiction. Mr. Madison said (*p*) that it will be in the power of congress to *vest* the inferior federal jurisdiction in the state courts. Mr. Mason said (*q*) that this jurisdiction may be *vested* in the state courts. These expressions, "appoint," "have" and "vest" are entirely inconsistent with the idea that the state courts had that jurisdiction before. So Mr. Grayson said explicitly, (*r*) that there is *no connection* between the state and federal courts. Again he says (*s*) that the state judges form the principal defense of the rights of the states and that Congress should not take from them their "only defensive armour." Mr. Henry indeed says that "by *construction*, the supreme court will

(o) Debates 367, 388.
(p) Ib. 381.
(q) Ib. 417.
(r) Ib. 208.
(s) Ib. 408.

completely annihilate the state courts." That great political prophet too well foresaw that this "defensive armour" would be completely taken from us, and the state judiciaries completely annihilated. The venerable G. Mason said (*u*) that there were many gentlemen in the United States who thought it best to have one great consolidated government, and that this was to be IMPERCEPTIBLY effected by means of the federal judiciary.

Against these great and virtuous characters the supreme court—without deigning to advert to them!—is pleased to array the testimony of Mr. Hamilton. This witness stands condemned where the rights of the states are concerned, by his well known preference of a consolidated government, and by his having been in eager pursuit (*v*) of the ratification of the constitution when he wrote his essays. They were written as it were in the heat of a controversy and his treatise is not therefore to be considered as a calm and temperate construction of the constitution. The court is fond of coupling the name of Mr. Madison with that of this gentleman as the reputed authors of that work, the Federalist; but it is unquestionable that Mr. Hamilton wrote exclusively the sections in relation to judicial power. The passage quoted from that book by the court, to show the existence of the right of appeal in this case, is inconsistent with the opinions of Mr. Madison as stated to have been given in the Virginia Convention; and most probably the latter gentleman from his distant residence had not seen them until they were published. The authority of this passage is also much weakened by another from the same gentleman, which unquestionably proves *too much* (*w*). It

(*u*) Debates 371.
(*v*) 1 Federalist—preface and pa. 4.
(*w*) 2 Fed. 326-7,

shows that an appeal will lie from the *highest* state courts to "the *subordinate* federal tribunals!" or "to the *district* courts of the Union!"

This idea carries with it a preference for the federal tribunals, so marked and so unreasonable, and a suspicion of the state courts so derogatory and unjustifiable, as to weaken entirely the authority of the writer. I have, myself, often referred to the Essays in this work, and found great support to my opinions therefrom; but we ought not adopt therefrom *all* its ideas however absurd, rupugnant or unreasonable. If, without the jurisdiction now claimed, it is alleged that danger will ensue to the constitutional rights of the general government, let us not forget that there is another party to the compact. That party is the state governments who ought not to be deprived of "their only defensive armour."

As for the contemporaneous construction of the constitution by the congress who passed the judicial act of 1789, and relied upon, also, by the court, there are many circumstances combining to weaken its authority. One alone is conclusive. That act was passed in great haste by congress, and amidst a vast mass and pressure of other business. It had not *time* enough, therefore, to devote to every particular topic. The authority of that congress has also been reprobated by the judgment of the supreme court itself on another point, in the case of *Marbury* v. *Madison*. It was solemnly decided in that case that the act had erroneously given the power of issuing a mandamus to the supreme court. It was so decided, although none who read that decision, can for a moment doubt, that it would have been very grateful to the court to have sustained its jurisdiction.

The supreme court has also much exulted that its own uni-

form decisions in favor of its own jurisdiction, on the point of sustaining an appeal from a state court, have been assented to by "statesmen and legislators" of our country, and "with a single exception" by the courts of "every" state in the Union, whose judgments have been revised. It has not yet been shown how many of the states have had their judgments so revised. As for the "statesmen," I suppose that Mr. Hamilton is chiefly referred to by the court. I leave him upon what has been already said, and only adding that he has been greatly outweighed on this point by the great and venerable characters, whose opinions have been quoted. As for the "legislators" referred to by the court, none are particularized, but those of the congress of 1789, and their authority has been condemned by the supreme court itself, as I have already stated. As for the judges in general, before whom this matter may have come, it is well known how prone all men are to bend the knee to to superior power. The courts of *small* states cannot be well expected to array themselves, almost under any circumstances, against the supreme court of the United States; and as for the larger states it is a great undertaking for even their courts. Perhaps, too, the cases have not generally occurred in the state courts. Five and twenty years had ensued since the adoption of the constitution, before this question presented itself in the supreme court of Virginia. Prior to that time, that court could only have come at the question by a *feigned* case, as was done (as Judge Johnson informs us,) by the supreme court of the United States, in the famous Yazoo cause brought before it. The day of retribution may yet, however, come around, and the rights of the states, involved in those of their courts, resumed. Unless it be so we may bid a final adieu to the fond idea of a federal

government. As for the "single exception" alluded to by the supreme court, it was rendered upon great consideration by the *unanimous* opinion of the court of appeals of Virginia. The motives of the court have certainly never been questioned. The decision itself has met the decided approbation of the co-ordinate departments in that commonwealth. It is also believed to be in accordance with the general opinion of at least the Virginia people. The arguments used by the court are reported in 4 Munf. pa. 1, and it is believed *cannot* be answered. They certainly have not been answered in the case in Wheaton referred by the supreme court.

On this part of the subject I beg leave to add from a distinguished writer before quoted (*x*) that the supremacy bestowed by the judicial article is over the inferior courts *to be established* by congress, not over the state courts; that this is manifest from the division in the article between the supreme and inferior courts; and that the term "before mentioned" restricts the appellate jurisdiction to what was defined in the preceding article, and excludes cases abiding in the state courts. Again, he says (*y*) that the judicial federal power has as little to do with state judicial powers as the federal legislature has with the legislatures of the states. Again he says (*z*) that the spheres of the federal and the state judiciaries are as separate as those of the courts of the neighboring states or countries.

The supreme court in inferring a power which evidently leads to consolidation relies upon the *preamble* to the constitution which states one of its objects to be to "form a more perfect union." In addition to the arguments commonly

(*x*) Cons,--Const. pa. 130.
(*y*) Ib. 122.
(*z*) Ib. 436.

used to show that this preamble cannot be taken into the account, in deducing the powers of the General Government, I will add from the writer last mentioned (*aa*) that this expression, far from implying that the old articles of confederation, and "perpetual union" between the states were to be given up, in favor of a *new*, national, and consolidated government, strongly implies the contrary. He adds that a single compact among individuals for establishing a government, is never termed "an Union;" but that that term emphatically applies to compacts between distinct states; as was the case as aforesaid, in the *title* of our former articles of confederation. This idea is further corroborated by the expression "*more* perfect" connected with it. This last expression admits the existence of a former government which is to be continued and improved by a new government of the *same* character. It is absurd then to say that the old confederation is at an end or to stickle for powers which cannot be justified on no other idea.

The supreme court have justified their jurisdiction in the present case by referring to the jurisdiction of the appellate courts of the United States in prize causes under the former government. Congress, by that constitution, had power to establish courts for receiving and determining *finally* appeals in all cases of capture; but they had no authority to establish *inferior* courts of this character. Unless, therefore, these appellate courts acted under the decrees of the state courts, they would have been wholly without jurisdiction. That case then, does not apply to the one before us. In the present government, *inferior* federal courts are to be also established. The supreme court, therefore, can get a jurisdiction in cases without trenching upon the judiciaries of

(*aa*) Cons. Con't. pa. 43.

the states or passing the barrier which divides them. Every word in the constitution shows that that jurisdiction is so limited. There is no expression therein which can reach the jurisdiction of the state courts. The court repeats the idea that nothing contained in the constitution would justify the "withdrawal" of a judgment of a state court from the power of the federal appellate court. I retort the argument upon them by saying that what has never been granted need not to be "withdrawn."

The supreme court seems to have triumphed over one of the defendant's counsel who had said that the construction contended for would operate a *complete* consolidation of the states, so far as respects the judicial power. They have conceded in effect, however, that a *partial* consolidation must ensue. A consolidation must be the inevitable result, to the extent of, and *quoad* the right of reversal, actually claimed. That partial consolidation will soon become total by destroying the checks in favor of the rights of the states deposited with the state judiciaries.

The court winds up its opinion on this part of the subject by saying that the words which import the power in question should not be "restricted" by a "forced construction," and that those words justify that power. The words need not be "restricted" to import a contrary construction. The words of the judicial article, *taken* singly, only relate to the judicial power of the United States, and to the supreme and inferior courts thereof. Not an iota of them applies to the state courts. But these words must not be taken singly. There are, also, other words in the constitution which must not be forgotten; words which deny to the general government and reserve to the states all powers not "delegated" to the former, by the constitution.

The act under which the plaintiff in error founds his claim to "protection" (in the language of the court) in this case, is not an act of the congress of the United States. It is an act of the corporation of the city of Washington. This act is indeed bottomed upon an act of congress permitting that corporation to establish lotteries; but the act of congress in itself is entirely inchoate and imperfect.

It only grants authority to the city to act in such a case and may be considered as a general letter of attorney. It is only the act of the corporation of the city which assumes the form and character of a *specific* law. If, therefore this act or ordinance, be a statute of the United States, it is yet not one made by the congress of the United States, but by the corporation of the city of Washington. It has been decided by the supreme court to be an act of the United States, in the case in question. It has been so decided by sustaining the jurisdiction of the court, which has no pretence of an existence, but on the ground that it is a statute of the United States and has been decided against in the state court. It has indeed been also decided by the court that it is not such a statute of the United States, as is competent to over-rule the state law with which it conflicts; but this is only for want of words denoting an intention that its tickets may be sold in the several states. Had these last words been inserted in the power of attorney granted by congress, and in the ordinance made in pursuance thereof, the opinion of the supreme court is full up to the point of giving relief against the law of Virginia as well as of sustaining its jurisdiction. Admitting that an act made perfect on this subject, and completed by the congress itself, and not by its deputy, would have this extensive effect, the act before us cannot have it. It is a principle emphatically

applying to all legislatures that the powers delegated to them cannot be transferred to others. The confidence reposed in them is entirely personal. If there can be such a transference of power the congress might delegate it to a committee chosen by them, and that committee might again devolve it upon the member they have elected, as their chairman. Is the supreme court prepared to say that in such a case an act prepared and enacted by that chairman is a statute of the United States without the ratification of congress? I presume not. And yet such an act has claims to favor which the act before us has not. This committee and this chairman have all been elected as members of congress, by the people and the committee has been appointed by the house of representatives and their chairman appointed by them. But the corporate body of the city of Washington have not been elected into congress by the people of the United States, nor has congress elected or appointed the members of that body. They have been so appointed only by the people of the city and *that* for inferior and local purposes only. To call their act, then, a statute of the United States is to bind the whole people of the United States by the acts of a corporation elected by one city only. They were not as I have said, even appointed by congress. They were previously appointed by the district, and congress has only devolved the duty on them. To say therefore that this act is a statute of the United States, is *more* than saying that the aforementioned act of the committee or its chairman would be so. That committee holds its authority more directly from Congress and from the people than the corporation does, and is a *part* at least of those to whom the authority in question has been delegated. On this plain point I almost disdain to refer to authorities. I

find however that Prof. Tucker, for the mere information of his students, has explicitly said that "congress cannot delegate the power of legislating for the District of Columbia to another body." (*bb*) Admitting therefore that this act, if passed by congress, might have had the extensive operation now in question, yet being passed by the corporation aforesaid, it is not to be considered as a statute of the United States, even for the purpose of sustaining the court's jurisdiction. It should have been scouted by the court from its view as it appears from the first enacting clause thereof, to have been only an act ordained by the corporation of the city of Washington.

But if this document had been enacted by the congress itself and the words had been supplied in it which the court thinks are only wanting, it could not have had the very extensive effect now contended for. Such an act could not have had this effect considered as an ordinary act of congress under the grant of legislative power to it, by the constitution because that grant does not carry with it a right to establish lotteries and would be, besides, at most, concurrent with the admitted powers reserved to the several states.

It could not have an effect within the territory of Virginia, which no act of congress as such, can have; which the acts of no state in the Union can have; and which could not be reciprocal in favor of Virginia, either in the territories of the other states, or in that of the district in question. Nor could it have that effect, considered merely as an act of the local legislature of the district. They were not the less so devolved because congress acted also in another character. Where two rights concur in the same man, or set of men,

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(*bb*) 1 Tuck. Append 278.

they are to be considered as if the man or men were different; and if the right of legislating for the district had been confided to three men by name, and their successors, the ambiguity which is supposed to exist in this case, would not have appeared. It is not indeed, *expressly* said that this function is involved on the congress, *in auter droit:* nor was it necessary. This will be inferred from the nature of the grant itself. The terms. "exclusive legislation," used in the constitution on this subject, show that their legislation in this particular, is to be confined to the limits of the district. That is not a mere exclusive legislation over the district whieh soars as high as does the pretension now in question. The claim now set up is that of exclusive legislation also. in and over the territory of all the states! The congress would. in this case then go beyond its charter as the local legislature for the district. That charter does not authorize them to overrule the, at least, concurrent powers of the several states within their own territories. Far less can they devolve this great power upon the corporation of the city of Washington. I would here remark that if the act in question has not an operation, as the court has decided, beyond the limits of the district for want of *adequate words* to that effect, neither can the *constitution* have such operation, for want of similar words, in the clause in question. There is not only an omission of positive words. to convey this power, to the extent to which it is now claimed, but there are *restrictive* words to confine the operation of its laws, to the limits ot the territory.

If we advert to that history, in relation to this district, to which the court is so fond of referring. we shall find that it gives no manner of countenance to its construction in the present instance. The territory in question, and the powers

confided thereto grew out of particular circumstances and the jurisdiction reserved to the district was intended merely as a shield of defence to the deliberations of congress, and not as a sword of annoyance upon the rights of the states. We are told in The Federalist (*cc*) that a complete authority at the seat of government was necessary to secure the public authority from insult and its proceedings from interruption. In the convention we were told by Mr. Grayson (*dd*) that what originated the idea of exclusive legislation in the district was an insurrection in Philadelphia whereby congress was insulted, and for which they left the state. Mr. Madison said (*ee*) that without such exclusive legislation congress could not be guarded from insults. And again he says (*ff*) that congress should not carry on their deliberations under the *control* of any state; that it would impair the dignity and hazard the safety of congress; and that gentlemen could not have forgotten the disgraceful insult which congress received in Philadelphia. Mr. Marshall said (*gg*) that the power of legislation in the district is *exclusive* of the states, because it is expressed to be exclusive. Mr. Pendleton said (*hh*) that the power of exclusive legislation in the district was given in order to *preserve the police* of the place, and that congress may not be overawed and insulted. This great judge also, emphatically declared that this exclusive legislation could have no power "*without the limits of the district.*" The quotations show the express end and objects of the power, as well as the limits of the grant. That grant was intended as a shield of defence to the delibera-

(*cc*) Vol. 2, No. 48.
(*dd*) Debates pa. 308.
(*ee*) Ib. 397.
(*ff*) Ib. 71.
(*gg*) Ib. 298.
(*hh*) Ib. 342.

tions of congress, and not as a sword which should cut up and destroy the rights of the states. So the act of Virginia ceding this district to the United States (*ii*) gives up the exclusive jurisdiction and soil in that territory, but it cedes no right to interfere with the reserved territory of the commonwealth.

But if such had not been the avowed object of the grant in question; if the legislature is not to be limited by these circumstances, but on the contrary, if it had the most extensive commission of legislation ever confided to any country, I contend that its acts must be limited and local, in the particular in question, and could not have the effect to overthrow the authority of the several states within their respective limits. I maintain this doctrine upon the clearest principles of general law and upon the most unquestionable authorities. Before I refer to those authorities I must request your attention, fellow-citizens, to what I have said, to show that the states, taken in relation to the union, are only, as to *some subjects*, "parts of one whole," and that as to everything else, they are entire and independent sovereignties. At least, however, this is the case, in relation to the petty district of Columbia. The great state of Virginia cannot well be "a part" of that small district, and of course, the authorities of Virginia cannot be subordinate to her authorities. Virginia is as independent of *it* and them, as she is of the small island of Malta; and as to the subject in question, Virginia is to be considered in every sense, as a distinct and independent sovereignty.

We are told by Huberus (*kk*) in his chapter *de conflictu legum*, that the laws of every government have power only

(*ii*) 1 Rev. Co., pa. 45.
(*kk*) Praetectiones, Vol. 2, b, 1, let. 3.

within *its own* limits; that their having any effect *elsewhere* is by *courtesy* of nations; that this is by the laws of nations and is only permitted so far as it does not occasion a prejudice to the rights of the other governments or their citizens. He adds, that in this, we are to consult mutual convenience and the tacit consent of different people. He further says that it is the law of the state, and this tacit consent, which gives effect to foreign laws without, however, any prejudice to its sovereignty or the rights of its citizens, and regarding the mutual convenience of the governments, that is the foundation of these rules. He says that if the law of the place is inconsistent with our law in these respects, it is reasonable that "we observe our own laws and not the foreign laws," and that these cases form exceptions from the general rule, in favor of the *lex loci*, established by the consent of nations. He further states, as an illustration of his doctrine, that if, in a particular country, particular kinds of merchandise are prohibited to be sold there, a contract made in *another* country, to sell them there, is *void*. This is, in principle, the very case now before us, He further says, however, that the law of the place is imperious as to crimes, punishments and pardons; for that a crime committed in one country is a crime everywhere, and that the general convenience of nations is consulted by this rule.

Fonblanque taking up this passage, yields to it his unqualified approbation. He says that to give a binding force to a contract in *another* country, it must not violate the rights of persons not parties to it; that it must not violate a moral duty, or a right derived to a third person under the law of the state in which it is attempted to be enforced; for that in such a case *"in tali conflictu—magis jus nostrum, quam jus alienum servemus."* All these principles

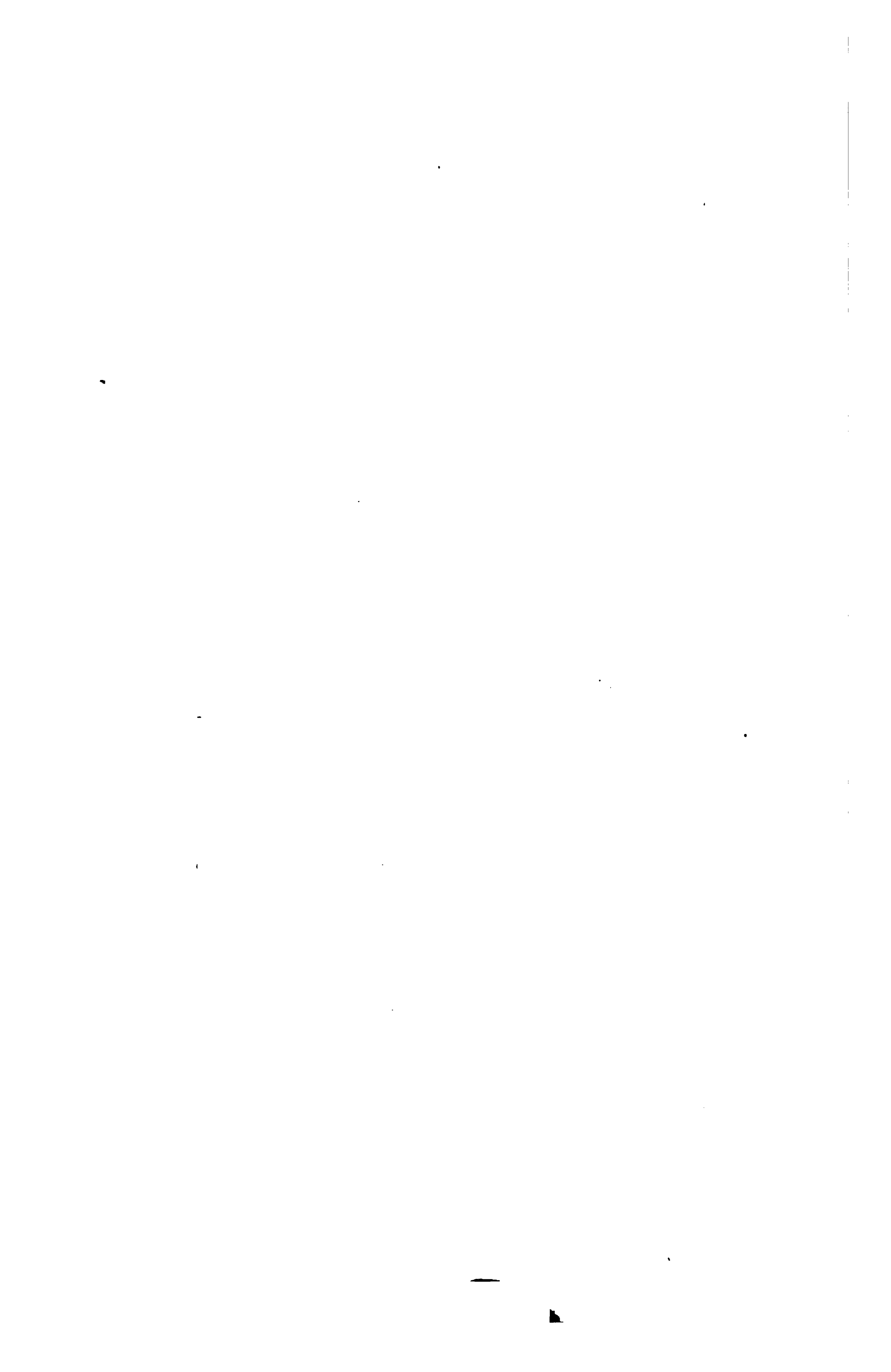
emphatically apply to the case before us. The sovereignty of Virginia must be maintained, and the morals of her people must be preserved, by the power of her proper legislature. These great and important functions must not be yielded up by her to the petty corporation of the city of Washington.

Nothing contrary to this doctrine is to be inferred from the admitted power mentioned by the supreme court, or arresting in any state, felons fleeing from justice from the district of Columbia, or the forts and arsenals of the United States. In such case, the *lex loci* is inflexible, and the crime committed in the district remains a crime everywhere. The second clause of the second section of the fourth article of the constitution on this subject is only in affirmance of this principle of the laws of nations. Even without such a clause in the constitution that principle would probably prevail. The principles of the law of nations need not be re-enacted in any country but for greater caution. Nor is my general principle at all impugned by the indulgence granted to the *lex loci* in every country in relation to contracts. That law even in relation to contracts is, however as we have seen, subject to some restrictions. It must not even, as to contracts, contravene the salutary regulations of other states. The exception made as to contracts however, proves the rule.

It was foretold by the celebrated George Mason however, in the convention of Virginia that this power in favor of the ten mile square was a dangerous power, might be "unquestionably extended by *implication* to *overthrow the rights of the states.*" It *has* been so extended, and THAT by the most remote and unwarrantable implication. This has

been done, by the decision which is now before us. That decision has made this small district a *fulcrum* from whence the most disastrous consequences will ensue. If it is not, like that of Archimedes, competent to move the earth, it is in the hands of the federal judges, at least competent to subvert and destroy the state governments.

ALGERNON SIDNEY.



# THE JOHN P. BRANCH
# HISTORICAL PAPERS
OF
# RANDOLPH-MACON COLLEGE

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# Preface

THE Branch Papers for this year embrace numbers 3 and 4 and complete volume II. For reasons not necessary to be stated here no "Papers" were published in 1907. In 1909 a complete edition of the available letters of Nathaniel Macon of North Carolina, for whom Randolph-Macon College was in part named, will be printed. These will fill a volume of some 300 pages. In addition, two or three short Virginia biographies (Thomas R. Dew, William C. Rives and John A. Broadnax) will be included. The price of the 1909 volume will be $2.00 net. If libraries or others desire copies it would be well to send in subscriptions at an early date.

As to the contents of the double number before us, a word ought to be said: For the verified transcripts of the Taylor letters

as they now exist among the Jefferson, Madison and Monroe papers in the Division of Manuscripts of the Library of Congress, I am indebted to Mr. Worthington C. Ford, chief of the Division, and his assistant Mr. Wilmer Ross Leech, now assistant to the New York State Historian. The editor greatly appreciates the kind, effective interest which these gentlemen have so clearly and generously manifested. It is also with the warmest gratitude that I recall here the assistance and co-operation which the students of the History Department of Randolph-Macon have always so readily rendered.

Some few of the Taylor letters bearing upon domestic or purely personal affairs have been omitted. But all his political, even parts of the social, papers which have come into my hands have been reproduced verbatim. Of course this is not thought to be a definitive collection, and it is hoped that the appearance of this small portion of his writings may bring to light other and perhaps more important letters and papers of this very remarkable Virginian leader of a hundred years ago.

The sketch of Taylor's career which precedes the correspondence is offered as a sort of commentary, with a view that it may lend somewhat to a better understanding of the Virginia Dynasty.

# BISHOP JOHN COWPER GRANBERY

BY PROFESSOR WILLIAM E. DODD.

Bishop John Cowper Granbery was born in Norfolk, December 5, 1829, of a good Virginia-Carolina family. His father was one of those intensely religious natures who see in everything the hand of God. There was also much of the Puritan-Quietist cult that made itself manifest every day in that home of the future leader of the Southern Methodists, and which has had such a vast influence in shaping the lives of most really able leaders of the present South. "Family worship returned with the morning and the evening; three times each day he knelt in secret communion with God; every Friday he fasted and spent in devotion the time saved from dinner. Sunrise on Sunday found him at class meeting until he reluctantly consented to lead a class that met in the afternoon. His Sunday-school work was to get the names of the absentees and visit their homes to inquire whether sickness kept them away, or what was the cause."[1]

In such an atmosphere young Granbery spent his early years, and while no marked signs of "worldliness" characterized the conduct of the boy, he was not within the pale of the Church at fourteen. The father was exceedingly anxious about the spiritual condition of the boy; his family and kinsmen were scarcely less concerned, when a great revival "broke out" in Norfolk. A special object of prayer was the young man who was then beginning to think of the law as a profession. His father[2] wrote concerning him to a cousin living in Richmond: "My two sons, William and John, are both at the altar seeking the Lord. John

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[1]Reminiscences, in Texas Christian Advocate, June 9, 1892.

[2]Richard Granbery, to Miss Louisa G. Drake, March 21, 184.

has been going up for a week and he seems determined to persevere." It was not long before the joy of the father was complete when he saw his sons united with the Church which the younger of them was in later years so signally to adorn.

The intense zeal and consuming religious interest of the Methodists of that day may be seen from the letter quoted above: "I have good news to tell you. The good Lord is reviving his word here among us. And what is better still, my two sons, William and John, are both at the altar seeking the Lord. John has been going up for a week and he seems determined to persevere. William has not been so long. I pray that it will not be long before they are both converted. I give glory to God for what He has done and is still doing for them, and I want you all to help me to praise Him for it. I have been praying three times a day for years that my Heavenly Father would convert them and call them to labor for His cause and for the good of men. I have trusted in Him and I believe He has begun and will accomplish it.

"Brother Smith spent the day with me not long since, and I told him that I wished all my sons to be preachers, and that I wished them to be distinguished men, especially for piety.

He looked at me with his large, blue eye, and said I was a proud man. There may be some pride in it, but I hope it is not sinful pride. Brothers Smith and Langhorne dined with us last Sunday. We had a love feast last Saturday night. John said he had covenanted with God to serve Him. The members seem much united and we expect to have a great revival if the devil does not get among us. We have all forgotten all about pews now. Brother Smith is on his high horse now and many of us feel like mounting up higher. In the commencement Brother S. told the members, now all that intend to pray and labor for this revival I want you to get down on your knees. But if you do

not intend to be here every night and labour, don't get down; mind now what I say. They began to kneel and Brother S. says, Why, I see many kneeling that don't profess religion and he hollowed, 'but glory to God for it.' "

That the future bishop was of the same mind as his earnest and religious father may be seen from a statement of his, made in public several years after he entered the episcopacy. Speaking of his later childhood, he said: "Though moral, and attentive to the outward observance of religious ordinances, I knew myself to be utterly destitute of piety, guilty and in danger of eternal perdition; without God, without Christ, and without hope in the world, my guilt being aggravated by the light and privileges of the gospel. Often in childhood my conscience was quickened, my desires after God were deeply stirred; I would be very circumspect in word and behaviour, and would retire to secret places for prayer."[1]

A year after his conversion the father was still concerned about the son's chosen calling, which it then seemed was to be the practice of law. But during a serious conversation between father and son, young Granbery, then about to leave home to enter Randolph-Macon College, announced his determination to enter the Christian ministry. The father was gratified and there is no reason to believe that the son ever regretted the choice.

He entered Randolph-Macon College a little later, where he graduated at the head of his class in June, 1848, being valedictorian of his class. In this then well-known institution he came into contact with the eminent William A. Smith, the president, and professor of moral philosophy, whose career was marked by his ardent advocacy of slavery as a divine institution, and by his talent as a controversialist. Smith attained such eminence as a pro-slavery champion that he was invited by the opponents of

[1] Texas Christian Advocate, June 9, 1892.

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end, I can not be so easily moved by a slight and temporary advantage or check which we may experience, as I would be if I thought that we would have a speedier and happier termination to these hostilities."

In 1860 our young minister had become acquainted with Miss Ella Winston, a direct descendant of Patrick Henry. Miss Winston was then a young woman of strong will and purpose, then at school at Murfreesborough, North Carolina. Together they visited Niagara Falls in the summer of 1860, and during the early years of the war they kept up a regular correspondence, a part of which is before the writer of this memoir. The strong yet gentle character of the young man is clearly shown in these letters written in the midst of turmoil and excitement. The couple were not married until after all of the vicissitudes of war had been experienced.

Being taken in the act of rendering religious assistance to a fallen soldier during the Seven Days battles around Richmond, he was carried a prisoner to Fort Warren in Boston. But when his real character was discovered he was returned to the Confederate army where his duties as a chaplain in Lee's army were cheerfully performed to the end. Once severely wounded and many times exposed to the dangers of the fighting line, he remained at his post one of the most faithful of Lee's followers. He took part in the remarkable "revivals" in the Confederate ranks during the early months of 1864, when the scarred Confederates seemed so ripe for religious impressions. With Dr. J. W. Jones, still an active Confederate chaplain, and Dr. W. W. Bennett, late president of Randolph-Macon College, he did valiant evangelical work in the great army—not least among the agencies which produced the terrible fighting of 1864.

When Lee's ranks began to fail him before Petersburg, Chaplain Granbery obtained leave to visit his future wife, then a refugee "up the James." He told her frankly that the struggle

was about to close and that the South would be the loser. She resented the remark as semi-traitorous, so firm was her belief, and that of the South in general, even early in 1865, that the Confederates were invincible!

At the close of the war Miss Winston and Mr. Granbery were married. They went to Market Street church in Petersburg in 1865, where they remained until 1868, when Dr. Granbery, as he now became by decree of his alma mater, was sent to Centenary church in Richmond. After four years in this charge he went to Broad Street, where he remained four years longer.

In 1875, soon after the opening of Vanderbilt University, he became professor of moral philosophy and practical theology there. His work there, as indeed it had been in all his former positions, was eminently successful. The young men who went out from Vanderbilt, even until the present time, speak with the greatest enthusiasm of their devoted teacher of practical theology, which indeed is the only kind of theology that has ever had any vogue in Methodism.

From Vanderbilt Granbery was called in 1882 to the episcopacy. His home then became St. Louis, from which point his visitations to the various Southern Conferences proceeded. He was exceedingly popular as a bishop, though he was not the man to seek popular applause. Quiet, dignified, approachable, he was a true ambassador of the Great Master whom he served with unswerving devotion.

Perhaps the most fruitful work of his life was the organization of the mission conferences of Mexico and South America, where his name and that of his family is still held in the greatest esteem. To this field he was frequently sent by the college of bishops; there his daughter and son-in-law were sent as missionaries; and there schools and colleges grew up to still further advance the work he had so close at heart, the conversion and education of the backward people of those great regions. The Bra-

zil Mission Conference, the most important of these Spanish-American organizations, was formed with three members, J. W. Tarbaux, J. W. Walling, and H. C. Tucker, son-in-law to Bishop Granbery. This was in 1886. It has since grown to a membership of sixty, with a church membership of six thousand; and from this central conference sprang the now prosperous Rio Grande de Sul organization, with one thousand communicants.

The most important mission educational institution in all Spanish America is the Granbery College, located in Rio de Janeiro, where there are 325 students and 25 teachers. J. W. Tarbaux is president and a man of great influence in the capital of Brazil. His institution trains men regularly for the high offices of the Republic; it does much of the work of a university already maintaining departments of dentistry, pharmacy, and is about to add a department of law.[1] Bishop Granbery was truly a missionary bishop, and his wife was his best helper and friend in this work, frequently accompanying him on his long journeys to South America. In view of what has been done and what promises to be done, is it too much to compare him to the historic figures of the Irish or English missionaries to the Germans of the seventh and eighth centuries?

When Bishop Granbery's health, which was never robust, became precarious in the late nineties, he ceased to visit so frequently the mission fields of his Church, the long journeys by land and sea proving too arduous; but he did not discontinue his active work as a presiding bishop until 1905, when he was superannuated after the style of his denomination.

About 1890 he came to Ashland, Virginia, where he built a comfortable home and "settled down" to end his days in the environs of his alma mater, in whose fortunes he took the deepest

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[1]Conversations with Rev. E. A. Tilly, a leading member of the Brazil Conference, now on leave of absence and teaching the English Bible courses in Randolph-Macon College.

interest. Here he was accustomed to deliver lectures to the divinity students when occasion offered; here he lived the simple and absolutely ideal life of the servant of God; and many and powerful were the influences which flowed from him during the last decade of his eminently useful career. His home was open to students and faculty at all times, and his ripe experience was frequently drawn upon by all classes of his neighbors. As president of the trustees of Randolph Macon College, his influence was felt in every crisis in the policy of that body, and the College authorities never failed to consult him in the settlement of difficult matters.

He was frequently engaged to deliver series of lectures both at Randolph-Macon and Trinity College, North Carolina, his Twelve Sermons, a volume of some four hundred pages, being the outcome of this activity. As a preacher he was eloquent, fervent and lofty in tone; his published work, as would be expected, is hardly a fair index to his power and influence, though his method as a thinker and his style as a writer were of a high order. Like most leaders of Methodism, his favorite themes were found in the Pauline epistles, and he was an authoritative student of this field of Biblical literature.

It may with propriety be said that Bishop Granbery seldom passed a day without physical suffering, due in part to the effect of a wound received during the war, and perhaps also in part to his very delicate and nervous constitution, which first showed signs of giving way in 1853. Frequently he must have felt that the end was near; frequently his family was convinced that life was almost at an end, yet he lived on and did a man's work in the world, reaching the ripe age of seventy-six. Once he was compelled to undergo the ordeal of a surgical operation, under the knife of the famous Hunter McGuire. He was unperturbed and, as a later most gentle and delicate letter manifested, more concerned about the great surgeon's personal salvation than his

own critical condition. These incidents best show the character of the man in the church dignitary, the earnest Christian in the important official.

The intellectual side of his life was far from being marked by the customary traditionalism so frequent in the clergy. He thought that the South lost incalculably by the suppression of free speech during the decades immediately preceding the Civil War, and after the war he was among the first to take "hold afresh," and without complaint help in the restoration of peace and unity. He was never one of those who became excited because some Southern college teacher or other publicist expressed strong disapproval of prevailing social, intellectual or political customs or habits. He was not afraid of freedom of speech; but rather looked to this as a means of great good both to the Church and society in general. In matters of church policy he was disposed to take the same view; but he deprecated the disposition of the leaders of his Church to push to the utmost extremity the differences of opinion which grew out of this liberty of individual thought and action. For example, he was greatly distressed during the long discussion of the question growing out of the acceptance of certain money from the United States Government in the year 1900, which money was in payment of damages done the property of the Church during the Civil War. He felt that the money might properly be accepted notwithstanding the highly improper conduct of certain representatives of the Church when the question was before the United States Senate. But he did not, of course, allow his anxiety to become generally known.

In 1906, when the Carnegie Foundation for the retirement and pensioning of college professors seemed to allow the teachers in Randolph-Macon Woman's College to participate, he was frequently appealed to for his opinion. When the trustees met in special session to consider the matter, he was present and occu-

pied the chair. As the vote was about to be taken he arose, and with great emphasis expressed the view that his vote, as he understood the situation, meant no change in the policy of the institution to be benefited. Since his name has been frequently referred to in the controversy that has since arisen about this matter, it seems necessary and proper that his position should be understood.

He was a liberal in the true sense, and his influence for good was unsurpassed. Such a life was indeed "an epistle known and read of all men" who came into the remotest touch with him. Truly did he fulfil the mission which his noble father wished for him.

# HUGH MERCER*

BY JAMES SPOTTSWOOD KEENE, A. B.

Hugh Mercer was born in Aberdeenshire, Scotland, about 1725. [1] It was that land, land of Wallace and of Bruce, which brought forth another son to fight—yea, die for liberty. There were two very different strains of Scottish blood which flowed through the veins of Hugh Mercer. The Mercers had been settled for generations around, and, sometimes in, Aberdeen. Some were ministers, while some were poets and soldiers. A second cousin of Hugh Mercer was James Mercer, poet, soldier and accomplished Greek scholar. He married a member of the Douglass family. Hugh Mercer was also related to William Mercer, poet, soldier and extensive writer, and friend of Warren Hastings. But Hugh Mercer's father, grandfather and great-grandfather were ministers of the Church of Scotland, located in the different districts of Aberdeenshire. His father, the Rev. William Mercer, was in charge of the Manse at Pittsligo, Aberdeenshire, from 1720 to 1748. It was, doubtless from his paternal ancestors that Hugh Mercer derived many of his religious characteristics. But he descended, also, from a fighting race. Anna Munroe, daughter of Sir Robert Munroe, was his mother. The father of Sir Robert Munroe was probably Col. Robert Munroe, who served in the German wars, and about 1640 participated in a dispute between the Covenanters and a party led by the Marquis of Huntley. Sir Robert Munroe fought with distinction in the British army at Fontenoy. He was ordered home to

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*Awarded the Bennett History Medal for 1908.

[1] See Goolrick's Mercer, page 12. For considerable information on Mercer's Life I am indebted to this article.

oppose the Young Pretender, and was in command of the British army at the battle of Falkirk, in 1746, at which battle he was killed. And we shall see that Hugh Mercer proved himself on the battle-field worthy of his maternal ancestors.[1]

The boy probably remained under his father's instruction until the year 1740. In that year he entered Marischal College, Aberdeen, as a student of medicine. Earl Marischal had endowed the Chair of Medicine only about forty years before. The college, however, was founded in 1593, by George Keith, fifth Earl Marischal, and it has been the alma mater of many noted men. The youth learned well, while at college, the principles of the profession in which he afterwards became prominent. In 1744 a 'Hugh Mercer' is mentioned in the 'Album Studiensis' as a fourth-year student. Hugh Mercer left college that year. It is not certainly known whether he graduated. But, knowing that he practiced his profession shortly after leaving college, we may infer that he did.[2]

Dr. Mercer was engaged in the practice of his profession when Prince Charles Edward landed July 28th, 1745, at Lochnannadle, Scotland. He joined the Young Pretender. When and where he joined "Prince Charley" is not known. He may have been at the seige of Carlisle, and later at Falkirk. But he acted as an assistant surgeon in the army of Prince Charles on April 16th, 1746, at Culloden Moor. After the crushing defeat at Culloden Moor, the vanquished were treated by the British soldiers with cruelty. It is no wonder, then, that Dr. Hugh Mercer, having

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[1]See Dictionary of National Biography by Sidney Lee, p. 265. Mercersburg Academy Literary Magazine for May, 1902. Goolrick's Mercer, pp. 12 and 13. The Great Historical Families of Scotland, by J. Taylor, p. 326.

[2]See Mercersburg Academy Literary Magazine for 1902. Dictionary of National Geography, by S. Lee, p. 264. Goolrick's Mercer, p. 13. Note in Scotland only graduates in medicine were allowed to practice.

bidden farewell to kindred and native land, embarked at Leith for America.[1]

He arrived at the port of Philadelphia in 1747. Several writers, however, give 1746 as the time that he reached that city. Just how long he remained there is not known. But some time after his arrival in this country he made his home on the frontier of Pennsylvania, at a place then described as "near Greencastle," now known as Mercersburg. Here he practiced his profession. As a physician he traversed the entire Conococheague Settlement, lying between Chambersburg and his own residence.[2] Then that section of the country was but little more than a wilderness. Dr. Mercer's work must have been arduous. For many years he labored as a doctor in that part of the State.[3]

Dr. Hugh Mercer, it is stated, was with Gen. Braddock at Monongahela, July 9th, 1755. But Winthrop Sargent, in his monograph of the expedition, implies uncertainty concerning this. Gen. Wilkinson says: "He served in the campaign of 1755 with Gen. Braddock, and was wounded through the shoulder in the unfortunate action near Fort Duquesne. Unable to retreat, he lay down under cover of a large fallen tree, and in the pursuit an Indian leaped upon this covert immediately over him, and after looking about a few seconds for the direction of the fugitives, he sprang off without observing the wounded man who lay at his feet. So soon as the Indians had killed the wounded, scalped the dead, rifled the baggage, and cleared the field, the unfortunate Mercer, finding himself exceedingly faint and thirsty from loss of blood, and after drinking plentifully found himself so

[1]See Goolrick's Mercer, pages 13 and 14; Crown Cyc., p. 496. Mercersburg Academy Literary Magazine for May, 1902. Howe's Historical Collections of Va., p. 480. Britannica Encyc., Vol. VI, p. 706. Washington and the Generals of the Revolution, by A. Hart, p. 217.

[2]A distance of about 15 miles.

[3]See Appleton's Cyc. of American Biography, account of Mercer. Mercersburg Academy Literary Magazine for May, 1902.

much refreshed that he was able to walk, and commenced his return by the road the army had advanced, but being without subsistence, and more than a hundred miles from any Christian settlement, he expected to die of famine, when he observed a rattlesnake on his path, which he killed and contrived to skin, and throwing it over his sound shoulder, he subsisted on it as the claims of nature urged until he reached Fort Cumberland on the Potomack.'"[1]

After the defeat of the English and their allies at Monongahela, the Indians became more and more troublesome to the settlers on the frontier of Pennsylvania. They, therefore, in self-defense formed among themselves companies of Rangers. Dr. Mercer was appointed captain of one of the companies, the date of his commission being March, 1756. The territory that was in his charge extended, from the Welsh Run district and what is now Mercersburg, to remote regions along the foot-hills. He frequently made McDowell's Fort, now Bridgeport, his headquarters. And when he was there he acted as surgeon to the garrison.[2]

In order to put a stop to the Indian depredations, a force set out in 1756 to penetrate into their country, and there strike a telling blow. The battalion under the command of Col. Armstrong consisted of about 250 men, a part of the First Pennsylvania Regiment. Captain Mercer, with his company, went with the troops. They reached as far as the Indian town of Kittaning, inhabited by the Delawares, on the southeast side of the Allegheny river, and within twenty-five miles of the French garrison of Ft. Duquesne. After a fight the town was destroyed and a

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[1]See Appleton's Cyc. of American Biography, account of Mercer; International Cyc., account of Mercer; Harper's Cyc. of U. S. History, p. 162. Dictionary of National Biography, by S. Lee, p. 264. Gen. J. Wilkinson's Memoirs, Vol. I, foot-notes, pp. 146 and 147. The author says he heard the anecdote.

[2]See Mercersburg Academy Literary Magazine for May, 1902.

small number of Indians killed. We find the following in an official report made by Col. Armstrong: "Captain Mercer's company—himself and one man wounded—seven killed—himself and ensign are missing." Nevertheless, he regained the settlements after suffering many and great hardships. The corporation of Philadelphia, in recognition of his services, presented him with a vote of thanks and a medal.[1]

Capt. Mercer, in the summer of 1757, was made commander of Shippensburg. And in December of that year he was given the rank of major in the forces of the province of Pennsylvania posted west of the Susquehanna. He became lieutenant-colonel in 1758, and marched with his troops in that year, under Gen. John Forbes, against Ft. Duquesne. It is thought that on that expedition he first became acquainted with George Washington, an acquaintance which ripened into friendship. Lieutenant-Colonel Mercer was left in charge of the fortress after its reduction. From a letter written by Col. Washington to Governor Fauquier, we know something of the importance of the place and the condition of the men left there. He says: "The General has in his letters told you what garrison he proposed to leave at Fort Duquesne, but the want of provisions rendered it impossible to leave more than two hundred men in all; and these, without great exertions, must, I fear, abandon the place or perish. * * * Unless the most effectual means shall be taken early in the spring to reinforce the garrison, the place will inevitably be lost, and then our frontiers will fall into the same distressed condition as heretofore. * * * Our men, left there, are in such a miserable condition, having hardly rags to cover their nakedness, and exposed to the inclemency of the weather in this rigorous season,

[1]See Va. State Papers, Vol. I, pp. 278, 279; Washington and the Generals of the Revolution, by A. Hart, pp. 218, 219, 220 and 234. Howe's Historical Collections of Va., p. 481. The Mercersburg Academy Literary Magazine for May, 1902. Appleton's Cyc. of American Biography, account of Mercer.

that, unless provision is made by the country for supplying them immediately, they must perish." But Colonel Mercer held the post for some time, remaining with the garrison until they were relieved.[1]

In 1759, Lieutenant-Colonel Mercer was elected a member of the Saint Andrew's Society of Philadelphia, organized in 1749 for the relief of Scotch immigrants. Not long after this, after the close of the French and Indian War, he removed from Pennsylvania to Fredericksburg, Virginia. He was, probably, greatly influenced to make the change by his friend, Col. Washington.[2]

At Fredericksburg he practiced his profession and conducted an apothecary shop, which was in the building with his office. There he married Isabella, the youngest daughter of John and Margaret Gordon. General George Weedon and he married sisters. Both were well-known Masons, members of the Fredericksburg Lodge No. 4, a lodge which furnished the Continental Army with five general officers, one of whom was the commander-in-chief. Dr. Mercer, at times, was Worshipful Master and Treasurer of the lodge.[3] An Englishman, who travelled in some of the colonies before the Revolution, has left record of his private character and medical ability. He says: "In Fredericksburg I called upon a worthy and intimate friend, Dr. Hugh Mercer, a physician of

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[1]See Mercersburg Academy Literary Magazine for May, 1902. Appleton's Cyc. of American Biography, account of Mercer. Johnston's Universal Cyc., account of Mercer. Washington and the Generals of the Revolution, by A. Hart, pp. 220 and 221. Spark's, The Writings of Washington, Vol. II. pp. 323 and 325.

[2]See The Daily Star for March 21, 1906, printed at Fredericksburg, Va., in which is a letter from the President of the Society. Appletons' Cyc. of American Biography, account of Mercer; Rodger's Biographical Dictionary, p. 334; Mercersburg Academy Literary Magazine for May, 1902.

[3]So informed by Past Master S. J. Quinn, who has compiled a history of the Lodge.

great merit and eminence, and, as a man, possessed of almost every virtue and accomplishment."[1]

Dr. Mercer occasionally visited Col. Washington at Mt. Vernon, and, no doubt, he discussed with his friend the difficulties which were beginning to arise between Great Britain and her colonies. We are told, also, that Dr. Mercer was an intimate associate with Washington's mother and sister, neighbors of his at Fredericksburg. Great excitement was caused at Fredericksburg in 1775 by Gov. Dunmore's removal of the powder from the magazine at Williamsburg to a vessel lying at Burwell's Ferry. On April 24, 1775, as soon as information of what had happened was received, a meeting of the Independent Company of the town was called. The meeting adopted a resolution that the members of the company should hold themselves in readiness to march as light-horse to Williamsburg on the following Saturday, the 29th, "for the purpose of recovering the gunpowder and securing the arms in the magazine." The next day this letter was written:

Fredericksburg, 25 April, 1775.

To Colonel George Washington:
Sir,

By intelligence from Williamsburg it appears, that Captain Collins of his Majesty's navy, at the head of fifteen marines, carried off the powder from the magazine in that city on the night of Thursday last, and conveyed it on board his vessel by order of the Governor. The gentlemen of the Independent Company of this town think this first public insult is not to be tamely submitted to, and determine, with your approbation, to join any

[1]See Goolrick's Mercer, pp. 30, 31 and 32. Rodger's Biographical Dictionary, p. 334. Note Gen. Mercer had four sons and a daughter. See The Pictorial Field-Book, by B. J. Lossing, Vol. II, p. 668. See The Mercersburg Academy Literary Magazine for May, 1902. Howe's Historical Collections of Va., p. 480.

other bodies of armed men, who are willing to appear in support of the honor of Virginia, as well as to secure the military stores yet remaining in the magazine. It is proposed to March from hence on Saturday next for Williamsburg, properly accoutred as light-horsemen.

Expresses are sent off to inform the commanding officers of companies in the adjacent counties of this our resolution, and we shall wait prepared for your instructions and their assistance.

We are, Sir, your humble servants,

HUGH MERCER,
G. WEEDON,
ALEXANDER SPOTSWOOD,
JOHN WILLIS.

P. S. As we are not sufficiently supplied with powder, it may be proper to request of the gentlemen, who join us from Fairfax or Prince William, to come provided with an over propotion of that article. Although more than six hundred men arrived at or near Fredericksburg by the 27th, yet they did not March for Williamsburg, due in part at least, to the receiving of letters from Col. Washington, and Peyton Randolph and Edmund Pendleton, both of which letters advised against the move at that time.[1]

Capt. Mercer, on September 12, 1775, was elected colonel of the minute-men for the counties of Caroline, Stafford, King George and Spottsylvania. The Independent Company of Fredericksburg had, probably, been discharged. During this year

[1]See History of the Colony and Ancient Dominion of Va., by C. Campbell, the edition printed in 1860, pp. 581, 608, 608, 610. History of the Life and Times of James Madison, by Rives, p. 90. The Writings of Washington, by J. Sparks, Vol. II, p. 507. History of Va., by Jno. Burke, Vol. III, edition published in 1805, pp. 410 and 41. Battles of America, Toomes, Vol. I, p. 437.

Colonel Mercer organized and drilled three regiments of minute-men encamped between the Massaponax. He may have been among the volunters, who arrived at Williamsburg, towards the latter part of the summer of 1775, for the purpose of gauarding the other towns of the lower country. But on Nov. 17th of this year, he was elected a member of the Committee of Safety for Spottsylvania county. At the Virginia State Convention, which met December 1st, 1775, Col. Mercer handed up to the President's Chair a scrap of paper, on which was written, 'Hugh Mercer will serve his adopted country, and the cause of liberty, in any rank or station to which he may be appointed.' In the convention, Patrick Henry's name was nominated for the Colonel of the First Virginia Regiment. "The opposition united on Captain Hugh Mercer, of Fredericksburg, who had served with great distinction under Washington in the French and Indian War of 1775. * * * The first ballot stood for Hugh Mercer 41, for Patrick Henry 40, for Thomas Nelson 8, and for William Woodford 1." There was objection to Col. Mercer, as he was a north briton. The reply was, "that he had uniformly distinguished himself as a warm and firm friend to the rights of America; and what was of principal consideration, that he possessed great military as well as literary abilities." Although Patrick Henry was elected colonel of the First Regiment, Hugh Mercer was on Jan. 10th, 1776, appointed to the colonelcy of the Third Virginia Regiment. Then, this is recorded of the Committee of Safety for Spottsylvania county:

"The committee of the county to express their approbation of the appointment of Col. Mercer and to pay a tribute, justly due to the noble and patriotic conduct which that gentleman has uniformly pursued since the commencement of our disputes with the Mother Country, which was so strikingly displayed on that occasion, entered into the following resolve:

Resolved, That the thanks of this Committee be presented to

Colonel Hugh Mercer, Commander-in-Chief of the Battalion of Minute-Men in the district of this County, the counties of Caroline, Stafford, and King George; expressing the high sense of the importance to the country of his appointment to that station, and our acknowledgments of his publick spirit, in sacrificing his private interest to the service of his Country."

ALEXANDER DICK, *Clerk.*[1]

For a time he was stationed at, or near Williamsburg. Col. Henery Lee, in speaking of Capt. Wm. Washington having been appointed to a command under Col. Mercer, says, "In no corps in our service was the substantial knowledge of the profession of arms more likely to be acquired." An anecdote is related which illustrates several of Col. Mercer's characteristic qualities. "Among the troops which arrived at Williamsburg, * * *, was a company of riflemen from beyond the mountains, commanded by Capt. Gibson. A reckless insubordination, and a violent opposition to military restraint, had gained for this corps the sarcastic name of "Gibson's Lambs." They had not been long in camp before a mutiny arose among them, producing much excitement in the army, and alarming the inhabitants of the city. Freed from all command, they roamed through the camp, threatening with instant death any officer who should presume to exercise authority over them. In the height of the rebellion, an officer was dispatched with the alarming tidings to the quarters of Col. Mercer. * * * Reckless of personal safety, he instantly repaired to the barracks of the mutinous

[1]See Goolrick's Mercer, pp. 38. 41, 42. Va. State Papers, Vol. I, p. 269. International Cyc., account of Mercer; Johnston Cyc., account of Mercer, and a letter of Jan. 15, 1838, in Va. State Library from Hon. Francis T. Brooke to Hugh Mercer, son of Gen. Hugh Mercer. See Burke's History of Va., Vol. IV, p. 56. William and Mary College Quarterly, Vol. IV., p. 249. Howe's Historical Collections of Va., p. 482. See Patrick Henry's Life, Correspondence and Speeches, by W. W. Henry, Vol. I, pp. 312 and 313.

band, and directing a general parade of the troops, he ordered Gibson's company to be drawn up as offenders and violators of law, and to be disarmed in his presence. The ring-leaders were placed under a strong guard, and, in the presence of the whole army, he addressed the offenders in an eloquent and feeling manner, impressing on them their duties as citizen-soldiers, and the certainty of death if they continued to disobey their officers, and remained in that mutinous spirit, equally disgraceful to them and hazardous to the interests they had marched to defend. Disorder was instantly checked, and, after a short confinement, those under imprisonment were released; and the whole company were ever after as exemplary in their deportment and conduct as any troops in the army."[1]

Through the influence of Gen. Washington, Congress made Col. Mercer a Brigadier General June 5th, 1776. His assignment was "with the Army around New York." President Hancock wrote to him, informing him of his appointment and enclosing his commission. Mercer replied to Hancock, in a letter dated from Williamsburg, June 15th, 1776. He expressed his "most grateful acknowledgements" to Congress for the honor they had conferred upon him. From the letter we also learn that he had been on duty, during a part of June, before Gwinn's Island, where Lord Dunmore had taken possession. Brig.-Gen. Mercer arrived in the camp around New York on July 3rd, 1776. On the day before, an order had been issued from Headquarters, placing the militia not under the immediate command of General Herd, under that of General Mercer, until the arrival of their own General Officer. And from a letter, dated July 6th of this year written by Washington to Gen. Livingston, we are told that Mercer had just set out for Jersey, and that he would

[1] See Jno. P. Branch Historical Papers of Randolph-Macon College, Va., No. 1, pp. 39 and 40. Howe's Historical Collections of Va., pp. 481 and 484.

proceed to Amboy after conferring with Livingston. He was placed in command of the troops at Paulus Hook, it being his duty to protect the fort from a threatening invasion by the British from Staten Island. The directing of a large detachment of Pennsylvania Militia was, also, intrusted to him. But, by July 20th, Mercer was in command of the Flying Camp, which was hovering between the enemy and Philadelphia. Gen. Mercer was kept busy at Amboy, in conjunction with Gen. Livingston, engaged in recruiting and keeping watch upon the enemy. On September 7th, 1776, he wrote, from Amboy, a letter to Gen. Washington, in which he set forth his ideas how the campaign should be conducted. He advised the retaining of New York, if possible, as he said the acquiring of that would give éclat to the arms of Britain. We are told that Gen. Mercer was ordered to detach a force from Amboy in order to take possession of and strengthen the works on the Jersey bank of the Hudson, called Fort Constitution; and subsequently he was ordered to take possession of and strengthen Fort Lee, on the New York side. Gen. Mercer, in company with other officers, viewed from a distance the fight around Ft. Washington, Nov. 16th. The officers, one of whom was Washington himself, were nearly captured by the enemy. Gen. Mercer was with the commander-in-chief on the retreat through New Jersey. On the march, the term of enlistment of the men of the Flying Camp expired and they, with the exception of a small part of those from Pennsylvania, left the army. Whether Mercer, after the American Army had crossed the Delaware, advised Gen. Washington to attack the enemy's outposts, we have no certain knowledge. However, Gen. (then Major) Armstrong, who acted as aid to Mercer, says, "Two or three days after we crossed the Delaware, there were several meetings between the adjutant-general and Gen. Mercer, at which I was permitted to be present, the questions were discussed whether the propriety and practicability did not

exist of carrying the outposts of the enemy, and ought not to be attempted. On this point no disagreement existed between the generals, and, to remove objections in other quarters, it was determined they should separately open the subject to the commander-in-chief, and to such officers as would probably compose his council of war, if any should be called. I am sure the first of these meetings was at least ten days before the attack on Trenton was made."[1]

Gen. Mercer was stationed, just before the battle of Trenton, at a Mr. Keith's, a little outside of Newtown, where Gen. Washington had his headquarters. And, he told Mrs. Keith, on the morning of the day that the Americans marched to McKoulsey's Ferry, that he dreamed, the previous night, a huge bear attacked and overpowered him. At Trenton, Dec. 26th, 1776, he contributed no little to the defeat of the British. For the attack, Gen. Washington divided his force into two divisions. Three brigades, under Gen. Sullivan, were to approach the village by the lower road, which was nearest to the river. The commander-in-chief, with four brigades, was to make a circuit by the Pennington highway. Gen. Mercer's brigade was with the latter division. His and Lord Sterling's brigades, however, were under the command of Maj.-Gen. Greene. An historian, in narrating the battle, says, "Greene's two leading brigades filed steadily and swiftly past the northern entrance of Trenton, and formed up in a continuous line extending from the Princeton highway to

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[1]See Appleton's Cyc. of American Biography, account of Mercer; International Cyc., account of Mercer; Washington and the Generals of the Revolution, by A. Hart, pp. 222, 223 and 229. See Mercersburg Academy Literary Magazine for May, 1902. Goolrick's Life of Mercer, pp. 46, 47 and 62. Reminiscences of S. B. Webb of Revolutionary Army, by W. Webb, pp. 37 and 43. Narrative and Critical History of America, by J. Winsor, p. 326. Correspondence of the Revolution, letters to Washington, Sparks, pp. 285 and 286. Battles of America, by Tomes, Vol. I, pp. 302 and 339. History of American People, by Wilson, Vol. II, p. 256. The Pictorial Field-Book of the Revolution, by Lossing, Vol. II, p. 621, foot-note. Writings of Washington, Sparks, Vol. I, p. 217.

the Assunpink Creek. His third brigade, which General Mercer commanded, turned off the road by which they had hitherto travelled, got into touch with Sullivan, and assailed the western skirts of the village"; and, again, he says, "Mercer's troops, who had penetrated within the confines of Trenton from the west, fired sharply, and close at hand, into the flank of the Hessians through the pales of a large tan-yard."[1]

Gen. Wilkinson narrates part of a conversation which took place between Gen. Mercer and others of the American army, not long before the battle of Princeton. He says "On the night of the 1st of January, Gen. Mercer, Colonel C. Bidde, and Doctor Cochran, spent the evening with Gen. St. Clair. Fatigued with the duties of the day, I had lain down in the same apartment, and my attention was attracted by the turn of their conversation, on the recent promotion of Captain William Washington, from a regiment of infantry to a major ot cavalry. General Mercer expressed his disapprobation of the measure; at which the gentlemen appeared surprised, as it was the reward of acknowledged gallantry; and Mercer, in explanation, observed: 'We are not engaged in a war of ambition; if it had been so, I should never have accepted a commission under a man who had not seen a day's service (alluding to the great orator, and distinguished patriot, Patrick Henry); and we serve not for ourselves but for our country, and every man should be content to fill the place in which he can be most useful. I know Washington to be a good captain of infantry, but I know not what sort of a major of horse he may make; and I have seen good captains make indifferent majors: for my own part, my views in this contest are confined to a single object, that is, the success of the cause, and God

[1]See Pictorial Field-Book of the Revolution, by Lossing, Vol. II, p. 19. Gen. Wilkinson's Memoirs, Vol. I, p. 128. American Revolution, by Trevelyan, Part II, Vol. II, pp. 98, 101, 104 and 106. Life and Correspondence of Henry Knox by Drake, p. 134.

can witness how cheerfully I would lay down my life to secure it."[1]

From good authority, we learn that Gen. Mercer suggested and advised the night march on Princeton. One writer, however, gives Gen. St. Clair the credit of proposing, in council, the movement. On the morning of the 3rd of January, 1777, Gen. Mercer, who with not more than 350 men was in the van of the American army, sighted a body of British troops not far from Princeton. These were marching to join Lord Cornwallis at Trenton. When the two corps recognized each other, they were less than 500 yards apart. An orchard lay midway between them, and each tried to reach it first. The Americans outstripped the enemy by about forty paces, and from behind a fence delivered the first fire. After three volleys had been exchanged, the British charged. And, with the exception of some of their officers, the Continentals broke and fled. Gen. Mercer, on foot, endeavored to rally his men. While attempting this a British soldier felled him to the ground with the but end of a musket. And, when they told him to surrender, calling him a rebel, he refused quarter, indignantly replying "I am no rebel." He arose and defended himself with his sword. But after a brief struggle, during which the enemy repeatedly bayoneted him, he was left for dead. Major Armstrong found him bleeding and insensible, and carried him off the field.[2]

At a farm-house, not far from the battle-field, he received medical attention and tender nursing. Gen. Washington sent

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[1] See Gen. Wilkinson's Memoirs, Vol. I, foot-note, p. 146.

[2] See Appleton's Cyc. of American Biography, account of Mercer; Harper's Encyc. of U. S. History, p. 162; Dictionary of National Biography, by Lee, p. 264. Wilkinson's Memoirs, Vol., pp. 140, 141 and 1142. Trevelyan's American Revolution, Part II, Vol. II, pp. 133 and 134; Johnston's Universal Cyc., account of Mercer. Pictorial Field-Book of the Revolution, Lossing, Vol. II, p. 29 and foot-note. Washington and Generals of the Revolution, by A. Hart, p. 219.

his nephew and aid-de-camp, Col. George Lewis, to be with his friend. But on Jan. 12th, 1777, after having suffered severely, the patriot expired in the arms of Col. Lewis.[1]

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1See Appleton's Cyc. of American Biography, account of Mercer; Mercersburg Academy Literary Magazine for May, 1902; Goolrick's Mercer, p. 55. See International Cyc. of American Biography, account of Mercer; Johnston's Universal Cyc., account of Mercer.

# JOHN TAYLOR, OF CAROLINE, PROPHET OF SECESSION

John Taylor, of Caroline county, Virginia, was born in Orange county, Virginia, near the ancestral home of James Madison, in the year 1754. As a boy he associated with the future "Father of the Constitution"; but this association was cut short when Taylor, at the age of ten, like Washington and Robert E. Lee, was left an orphan. The change, however, brought its compensation, for the boy was adopted by his mother's brother, Edmund Pendleton, of Caroline county, already an eminent man in the colony.

Taylor was trained by private tutors in the home of his uncle and at William and Mary College at a time when the ablest teachers in America graced her lecture rooms. The men who taught Jefferson and Marshall and Monroe also directed the studies of young Taylor. Graduating in 1770, the young man "read" law in the office of his uncle at Bowling Green, receiving license to practice that profession in 1774. But Taylor's early manhood was not to be devoted to the hum-drum of the petit proceedings of his county court. His ardent nature and aspiring disposition, as well as his patriotism swept him into the reform movement which Patrick Henry and Richard Henry Lee had precipitated in 1766, when they almost forced upon the legislature the investigation which laid bare the corruption of the public life of Virginia at the time and broke down the powerful machine which Speaker Robinson had guided for twenty years.[1]

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[1]Moses Coit Tyler's Life of Patrick Henry, 56; Journals of the House of Burgesses, 1766-'9.

The fearless and even drastic action of Lee and Henry caused many conservative heads to wag in despair before the great rift with England came in 1775 and 1776. Pendleton himself thought his "friends" were going too far with poor John Robinson. Not so young Taylor, who was from youth fiercely patriotic and honest beyond compare for that age. The young advocate laid down his books to join the first brigade of Virginia troops under command of his favorite, Patrick Henry, of Hanover. A little later when the committee of safety maneuvered Henry out of his position as a military leader and gave the command to William Woodford, a subordinate officer in the same regiment, but a more experienced militiaman, Taylor remained faithful to the cause and saw service as quarter-master at Great Bridge, where the combined forces of Virginia and North Carolina gained a decided victory in December, 1775.[1]

Next Taylor became, by election of the Continental Congress, a major in the army under Washington. As such he took part in the campaigns about New York and Philadelphia, and he was at Valley Forge where a reorganization of the little army became necessary on account of the many desertions of private soldiers or the expiration of the terms of enlistment. He became so disgusted with the management of the army that he regretted ever joining it, and when the rearrangement of officers incident to the change made at Valley Forge left no place for him, he resigned his commission and returned to Virginia, refusing, like so many others, then and after to enlist as a private.

But Taylor's attitude was dictated largely by the views of Richard Henry Lee and Patrick Henry who at this time honestly believed Washington unfit for the command of the Continental army. He was desirous of bringing about Washington's retirement, though neither he nor his Virginia followers were support-

[1] Address of Dr. J. A. C. Chandler, published in Richmond Dispatch. July 8, 1900.

ers of Gates and the Conway cabal. They never had believed Washington's appointment a wise one; Washington was too much of a conservative for such democratic reformers as Lee, Henry and Taylor. The conservative party in the Virginia legislature and out rallied to the commander-in-chief and the growth of disaffection among the radicals was checked. Lee, who was chairman of the military committee of Congress went too far in his opposition to Washington, and the Virginia legislature of 1778 failed to re-elect him to the Continental Congress, a conservative taking his place.

It was at this juncture that Taylor returned to Virginia and was at once elected from Caroline county to the House of Delegates. The crisis passed, and in 1780 Lee was restored to his place. Washington had won, and his opponents probably recognized now that they had carried their campaign too far. At least Henry seems to have thought so. As to Richard Henry Lee and Taylor, there was never a rapprochement and the "Father of his Country" was distrusted by them to the end.

In 1780, when storms threatened from the South, Taylor raised a portion of a regiment of volunteers who were sent to swell the forces of La Fayette, whom Washington had sent to Virginia to form a sort of second army to oppose Cornwallis, who was then in North Carolina. Taylor was made lieutenant-colonel of the regiment and was stationed with some two hundred men in Gloucester county to ward off the attacks of foraging parties, one of which looted Richard Henry Lee's house and came near capturing the arch-traitor himself. While doing service in this capacity the war came to an end at Yorktown, and there was no more occasion for heart burnings, at least not on the military score. The war had cost Taylor a large part of his fortune and the only medium of repayment on the part of Congress or the State government was public land lying as a rule west of the Ohio river. Taylor received 5,000 acres as reward for his services, but

nothing for his personal expense. However, he was fortunate in his accumulations from the law, to which he devoted himself assiduously during that fat period of 1781 to 1792, and retired from his profession in the latter year with a property of nearly $100,000. From 1776 to 1781 he was in the legislature steadily and firmly opposing all measures looking toward the formation of "a more perfect union."

When Washington's wise plans for bringing about such reforms in the confederation as would start the growth of a compact nation began to take shape, Taylor, Richard Henry Lee, Henry, and James Monroe redoubled their activity. They were able to secure the election of some radical democrats to the Philadelphia convention, but not to prevent the participation of Virginia in that famous assembly. When the plan of government was submitted to Virginia for ratification, George Mason, Taylor's beau-ideal in statecraft, published a pamphlet strongly opposing acceptation. Taylor now took up his pen and under one assumed name or another kept up the agitation until his Uncle Pendleton declared that Taylor thought he knew more about government than "all the rest of the world put together." Caroline county chose Pendleton rather than Taylor to represent her in the convention which assembled at Richmond in July, 1788, and Pendleton became an advocate—in accord with his past career—of the new scheme of government. It was Washington and the conservative party of 1766-1776, aided by not a few of those who had been out-and-out tories during the war, who now carried the Old Dominion, against her wishes, into the movement for a stronger national authority. Despite all the brilliant oratory of Henry and the powerful planning of Richard Henry Lee and Mason, the hated instrument was accepted and Virginia became a part of the American nation.

Taylor was not seen again in the legislature for several years. He turned his talents to agriculture, bought a handsome estate,

Hazelwood, near Port Royal on the Rappahannock river, and became a close student of books bearing on his new vocation. In 1803 he published *Arator,* one of the first treatises on agriculture ever written in the United States. And his private correspondence was filled with the details of the management of a large plantation. His suggestions about the improvement of the soil as against the prevailing method of clearing new lands when the old began to wear out, about the treatment and housing of slaves and the rotation of crops deserved much more attention than they received. He predicted the ruin of the South under the operation of slavery and lamented the ruthless destruction of invaluable forests and naturally fertile soil.[1] The burden of his correspondence with Jefferson and others during these years and even to the end of his life was agriculture and the possible improvements in which he was always experimenting. He became the first president of the Virginia Agricultural Society; he encouraged discussion of all manner of subjects looking to the betterment of the condition of the one vocation of his State and section, for he early learned to think of the South as separate and apart from the nation.

Deeply absorbed as he was in his new calling; in the welfare of his slaves, and in the rotation of crops, his heart was not weaned from politics—a peculiarly important matter for the agriculturists—he was prone to say. Virginia accepted the national constitution on the urgent recommendation of her great man, Washington, and cast her electoral vote unanimously for him; but she proceeded immediately thereafter to elect senators to Congress who were in entire accord with Patrick Henry, the other great man of the Old Dominion, and who then and for many years had been half-hostile to Washington. William Grayson and Richard Henry Lee were the first senators of Virginia. The leadership and wealth of Virginia were in favor of nationalism;

[1] Arator, undated edition in Virginia State Library, p. 77.

but the people were overwhelmingly opposed to it. Taylor was with the popular party and he rejoiced in the election of Lee to the Senate. Four years later, when Lee was forced into retirement by the dread disease, tuberculosis, the Governor of Virginia appointed Taylor to serve out the unexpired term. Before the expiration of his term the legislature chose him in regular order for the position. But Taylor declined, like Henry, all honors which contemplated a prolonged residence at the seat of the national government. He was disgusted with the trend of things in Philadelphia.

During the short term he was in the Senate he manifested deep interest in the defeat of Hamilton's bank scheme; and the investigation of the Treasury Department as proposed by William B. Giles and Nathaniel Macon was therefore welcome to him. He was resolutely in favor of opening the doors of the Senate to the public. He was, indeed, in every way in accord with the party then being organized by Thomas Jefferson.

While in the Senate and afterward, his home at Port Royal, Virginia, was a rendezvous for members of Congress from Eastern Virginia and the South. The going and returning lawmakers of his way of thinking loved to stop with Taylor to talk over the plans of their party to be carried out both in Congress and in their State legislatures.[1] At one such meeting a shrewd plan was laid to detach Benjamin Hawkins, senator from North Carolina, from Washington's administration. Madison's influence and great reputation were to be played upon. Macon, an intimate personal, but not political, friend of Hawkins, and Giles were helpers in the scheme. It did not succeed; but it shows how small politics were frequently played in the "good old times."

The most remarkable experience of Taylor while in the Sen-

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[1]Letter to Madison, May 11, 1793, in Madison Papers, Library of Congress.

ate, however, came from an informal conference with Rufus King and Oliver Ellsworth, representing a coterie of Federalist leaders, on May 8 or 9, 1794.[1] Taylor was about to resign his seat, having opposed almost everything the majority of the Senate favored during the whole term of his service. Leading Federalists desired to bring about closer relations between the United States and Great Britain and to that end they had planned to send Alexander Hamilton as a special envoy to London to negotiate a new treaty. Washington would not consent to nominate his Secretary of Treasury. The Chief Justice, John Jay, a friend and supporter of Hamilton, was next proposed and the nomination was promptly sent in. Taylor opposed the confirmation on the very good ground that Jay in his official capacity would probably have to sit in cases in which rights under a treaty negotiated by himself were questioned. King, George Cabot, Ellsworth and others were exasperated at this conduct of Taylor, who was supported too by his colleague, Monroe.[2]

Taylor had been, next to Jefferson, the very soul of the opposition to Hamilton in Virginia. In 1793 he wrote a pamphlet which was circulated at the expense of himself, Jefferson and Madison.[3] Passages from Taylor's pamphlet were printed in *Freneau's Gazette* and finally copies of it were sent to leading Republicans in the various State legislatures. The Virginia Assembly had approved Taylor's attitude and, advancing a step further in opposition to the Federalist rapprochement with England, had "instructed" Taylor and Monroe to move a bill in the Senate ordering the sequestration of British debts due from Americans. This was intended as retaliation for the failure of England to observe the conditions of the treaty of 1783 as well as punishment for the exasperating practice of searching

[1] Gaillard Hunt: Disunion sentiment in Congress, 1794; a pamphlet published in Washington, 1905.

[2] Ibid, p. 8.

[3] Letters of Taylor to Madison, May 11, June 20, and September 25, 1793.Madison Papers, Library of Congress.

American ships upon the high seas. Taylor's speech in support of the Virginia instructions was a severe castigation of the New England leaders for defending and apologizing for Great Britain;[1] and what gave even greater annoyance was the fear that Taylor and Monroe would be able to defeat the Federalist programme notwithstanding the friendly attitude of the President.

Knowing well how much discontent there was in Virginia, and that the spirit of opposition to Washington's administration in that State and the South generally was growing, King and Ellsworth asked Taylor into a committee room at the time mentioned above, to consult with him "upon a very important subject." The object of the interview was to propose a dissolution of the Union and evidently to sound the Virginia senators before committing themselves. Listening attentively to King's outline of a plan for peaceful separation, Taylor replied that he did not think the crisis so pressing. There was only one real disagreement between the East and the South, and that was on the "debt question," which he hoped might be amicably adjusted. To this the New Englanders replied that the recent change of sentiment in South Carolina would add two other senators to the Southern interest and that would enable that section to control legislation. This would force the East to turn to secession as the only remedy. Why not let it be a quiet and peaceable affair, the leaders in Congress agreeing upon a boundary line to be drawn between the Potomac and the Hudson. But Taylor insisted upon a further trial of the "great experiment" and the conference came to an end.[2]

Taylor regarded the revolutionary proposition of King and Ellsworth as serious, though Madison, now a friend whom he consulted, thought the purpose of the interview was to frighten

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[1]Hunt's pamphlet, p. 8.

[2]Fac-simile of Taylor's memorandum of this conference is printed in Hunt's pamphlet, pp. 21-23.

Virginia from her course.[1] Three days later the gist of the conversation with the New England senators was committed to paper. This document, in the handwriting of the Virginia senator, was long a portion of the Madison papers, but was extracted from them before they were turned over to the government by Mrs. Madison in 1836. It came to light for the first time in 1905, more than a century after the event it records.[2] Taylor resigned the senatorship, as already noted, at the close of this session, returning, like his friend Jefferson, to the delights of private life on a great Virginia plantation.

In Virginia, at the time Taylor and Jefferson were busily engaged in cultivating their potatoes, the radically democratic forces of 1776 were again in the ascendency, but Henry was not their leader and Richard Henry Lee was dead. Jefferson and Madison, the but recently widely known champion of conservatism, were at the helm. Henry, repelled by personal dislike of Jefferson and by his disgust perhaps with the conduct of Madison, was turning to the support of Washington. Before 1796 he was regarded as a good Federalist.[3] But Virginia was overwhelmingly Jeffersonian, the younger democrat having for himself something of that amazing popularity which had been the possession of Henry for thirty years.

John Taylor played his part in the realignment of the Virginia democracy. He contributed articles to the newspapers and circulated pamphlets denouncing in unmeasured terms the policies of Washington's administration and lauded the statesman of Monticello to the skies. He was the publicist of the Virginia triumvirate, Jefferson, Madison and Monroe, which was destined to give shape to Virginia public life for a half century and to control the national administration for twenty-five years.

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[1] Hunt's pamphlet, p. 23.

[2] Ibid preface.

[3] Tyler's Life of Henry, 360.

Jefferson failed in the campaign for the presidency in 1796 by a narrow margin, which only meant the renewal of the fight for 1800. Realizing clearly what this intense democratic activity in Virginia meant, Washington, soon after his retirement in 1797, cast his great influence into the scales against it. He mobilized the forces of conservatism in his beloved State and brought Henry and Marshall, the contending champions in the convention of 1788, into harmonious co-operation against Jefferson and Madison. There was bitterness of feeling, sharp discussion and shrewd manipulation in the Old Dominion during the last years of Washington's life, and John Taylor, his opponent in the War of Revolution, was still animating the radical forces who willingly honored the general of Yorktown, but not the recently retired president.

Washington's withdrawal of Monroe as the American Minister of France in 1796 had led to the suspension of friendly relations with that country and added one other able leader to the forces of opposition in Virginia. Taylor and Monroe were life-long friends. Together they made it appear that the cause of the recall was the anti-republican tendency of the President. An example therefore became necessary in order to teach "diplomatic men the distinction between public good and the will of the government."[1] France now practically began hostilities. President Adams made a manly appeal to loyal Americans of all parties to rally to their own government in the coming crisis. A commission, of which Marshall was the Virginia member, was sent to Paris in the effort to re-establish peaceful relations. This commission was practically dismissed the country after a vain effort on the part of Foreign Secretary Talleyrand to extort a loan for the French government and bribes for high officials. The replies of the commissioners to these appeals for money were published in the United States under the title of the X Y Z

[1]Taylor to Monroe, March 25, 1798, in Library of Congress.

papers, and aroused a generally friendly sentiment to the President and the administration. Washington was called once more to the service of the country; he began the organization of an army of defense against France and volunteering, even in Virginia, went briskly on. The congressional and local elections showed great gains for the Federalists, and the Congress which assembled in December, 1797, proved in 1798 to be made up of poor politicians, for they, carried away with the growing popularity of the administration, enacted a series of repressive laws not unlike those of William Pitt's ministry two or three years before.

Concerning the crisis which Taylor saw coming, he wrote to a representative in Congress from Virginia, Archibald New, suggesting the old Henry idea of an alliance between Virginia and North Carolina. New showed this letter to Jefferson which produced the very letter of the latter to Taylor on June 1, 1798, about which there has been much controversy.[1] Jefferson strongly discouraged the idea of secession as contained in the letter to New. Taylor replied at great length on June 25th, declaring that the time had come when party lines were geographically drawn and when the oppression of one section of the country by the other seemed a settled condition. "If in case of a scission of the union, party spirit will still be natural, how can it be said that our present situation, the characteristic of which is party spirit, is unnatural? * * * A transference of this ascendency [of the East] to other individuals [the South] will change the tyrant, but not remove the evil. Did the British people ever gain by a change of ministry? Saturated are preferable to hungry flies. A Southern aristocracy oppressing the Northern States would be as detestable as a Northern domineering over the Southern States. And what is the proper time for opposing this ascendency? Shall it be suffered to run through

[1]Ford's Writings of Jefferson, VII., 263, 266.

its natural course? How many years will bring it to decrepitude? Let England and all personal ascendencies reply. Let the ancient and modern system of villenage illustrate. Let them prove that such usurpation upon the rights of man are more assailable the more they are matured. * * * You will evidently see that the perfection and not the scission of the union was the object of the letter you refer to, to which end an appreciation of the strength of its [the Union's] soundest parts will probably tend, a probability of which the reigning power is so well convinced that it omits no means of its depreciation."

He then goes on to elaborate his ideas as to what ought to be done, concluding: "These measures [the Alien and Sedition laws] ought to lead to an amendment of the Constitution, if party and persecution are its offspring. A variety of alterations might apply to the evil: 1. An extension of the right of suffrage and an abbreviation of the tenure of service; 2. Rotation in office. If kings find it necessary to change vicegerents to preserve power, let the people proffit from the prudence of princes. Is not merit in office more likely to seduce the people than to deceive kings? 3. A new mode of abrogating [national] law. Why ought not the mode of repeal be naturalized with the mode of legislating? The concurrence in favor of existence ought to be the same with that necessary for creation. * * *

The limits of a letter forbid an enumeration of other remedies for the evil of party. *The right of the State governments to expound the constitution* might possibly be made the basis of a movement towards its amendment. If this is insufficient the people in state conventions are incontrovertibly the contracting parties and, possessing the infringing rights, may proceed by orderly steps to attain the object."[1]

Here then is a part of the programme which was adopted by the Republican leaders who met at Jefferson's home in October to prepare the Kentucky resolutions. Taylor was probably a

[1]Letter to Jefferson, June 25, 1798, Library of Congress.

member of the little party of five or six who set in motion a movement that was to have far-reaching effect on the history of the United States. Resolutions were drawn by Jefferson himself declaring that laws of Congress which were deemed unconstitutional might be set aside by individual States, or that they were of themselves void and of no effect. Breckenridge, a member of the party, carried the resolutions to Kentucky, where they received the stamp of approval in November following and in December Taylor introduced similar resolutions, drawn by Madison and approved by Jefferson, into the Virginia Assembly. The agitation thus begun spread over the Union and occupied public attention for near two years.

Not satisfied with the mere resolutions, Taylor desired to have a law passed formally declaring the alien and sedition acts unconstitutional. "That would have placed the State and general government at issue," which he thought would force the calling of a State convention. But Jefferson disapproved of this and Taylor contented himself with a speech in the legislature, of which he was a member, which exasperated, if it did not rout his opponents.[1] In these, as in most other matters, Taylor was in closest accord with Jefferson. Taylor was asked to manage affairs so that the vacancy caused by the death of Senator Tazewell, of Virginia, might be filled with a good Republican. Jefferson suggested Monroe; but Taylor favored Madison, reserving Monroe for Governor at the next turn. Taylor tried also to persuade his uncle, Edmund Pendleton, who had but recently issued an address to the people of Caroline county, to enter the national lists as a champion of the Jefferson party, but in this he failed. Jefferson collected the various documents bearing on the French

[1] A letter to Jefferson dated merely 1798, but which was written during the sesion of the Legislature. Jefferson MSS., Library of Congress.

negotiations and mailed them to the aged judge. A flattering and most enticing letter was likewise sent. Pendleton was out of sympathy with Marshall and the Federalists, but he declined to participate personally in the conflict.[1]

In October, 1799, Taylor wrote Jefferson that he gave up all for lost. "The malady of all government is monopoly. This is creeping and creeping into ours." But the dawn of a new day for him, at least, was approaching. The Federalists were about to break up into angry factions, while Jefferson's popularity was constantly on the increase.

So warm and active was Taylor on behalf of the great reform movement of 1800 that he was frequently accused of aiding and abetting anarchy. But against such charge his distinguished and conservative uncle, Pendleton, staunchly defended him. Feeling ran so high in 1798 to 1801 that representatives of the opposing parties refused to stop at the same hotels or to drink in the same bar-rooms. Marshall was insulted by the people of Fredericksburg in their own theatre, and neither Jefferson nor Madison would have been safe against ill-treatment had they risked a visit to Richmond on behalf of their cause. Money was freely used. Jefferson contributed $50 to a Scotch writer living in Richmond named Callender for the purpose of scandalously abusing the Federalists.[2] Marshall was said to have expended $6,000 in his campaign for congress in the spring of 1797, and he won then by the narrowest margins.[3] But Jefferson and his radical party won by overwhelming majorities in the South, and gained votes enough in Pennsylvania and New York to secure the control of the country; and the Virginia leaders did not lose their hold on the nation until the appearance of Andrew Jackson in 1828.

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[1]Taylor to Jefferson, Febuary 15, 1799.

[1]Chandler's address, Richmond Dispatch, July 8, 1900; Fleming's Life of Marshall 112.

[3]Jefferson's Writings VII., 282.

## CHAPTER II.

### The Peacemaker in the "Virginia Dynasty."

When the Republican party entered upon its official career in Washington, Taylor, to the surprise of most people, began to break away. But two years before Jefferson's election he had written the then Vice-President as follows: "Upon this consideration and upon that of our nation's character, I have made up my mind to get rid of that straight waistcoat which accident threw on and which has ever sat uneasily."[1] However, he was appointed to a temporary vacancy in the United States Senate in 1803, and there he was loyal enough to the party in power to materially aid the administration in the acquisition of Louisiana. Taylor and Speaker Macon and John Randolph formed a unique trio of independent Republicans who would now and then be led by so matchless a politician as the President, but who revolted at the first crack of the party lash. Together they engineered the Twelfth Amendment through both houses of congress, and they all three remained under the party roof until after the election of 1804. Taylor indeed headed the Jefferson electoral ticket in Virginia that year; but he refused to remain in the Senate, and it was not long after that he began openly to break away from Jefferson as well, because of his ingrained distrust of officialdom as of his close friendship for Monroe. In 1803, while the latter was yet in France, Taylor warned him against what seemed a disposition to blame him for blunders which he had not committed. Before 1806 he had observed the tendency of the White House circle to point out Madison as the heir to the throne: "Things here [Washington] are cloudy. * * * Those in the secret say that the government are unkind to you. I know not. But the suspicion excites some resentment on the

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[1]Letter to Jefferson February 15, 1799, Library of Congress, Jefferson MSS.

part of your friends, among whom are most of the republicans I know."[1]

Macon and Randolph were already out of the party harness, and Nicholson, of Maryland, and Richard Stanford, of North Carolina, were about to break away. The little group of Southern bolters, known to history as "The Quids," had already begun to play a role, and their chief political ambition was to defeat the plan of Jefferson for securing the election of Madison as his successor, and to put in the coveted place their own favorite Monroe, who was regarded as a better Republican. Monroe, after his work on the Louisiana Purchase was done, had negotiated a treaty with Great Britain which Jefferson felt compelled to cast into the political waste-basket, notwithstanding the heart-burnings he knew he would thus cause. Monroe was greatly disappointed and came home in 1807 to the warm embraces of the malcontents already described. John Randolph had already raised the standard of "Monroe for President," and Macon was a hearty if less sensational supporter. Taylor, it need not be said, was a friend to this movement, if for no other reason than that it would force official Republicanism to keep its ears to the ground.

For a year or more Monroe struggled along with his candidacy as best he could regarding Taylor, and quite correctly, as his staunchest supporter. *The Spirit of '76,* a paper edited by E. C. Stanard and published in Washington, became the mouthpiece of Monroe's cause, and Taylor wrote frequently for its columns, not failing in season and out to emphasize the claims of his friend for the presidency. The organ of the regular Republicans in Virginia, the Richmond *Enquirer,* watched this independentism quite closely through the year 1808, but doubtless considered it harmless. In the winter of 1809, when Madison's election had

[1]Letter to Monroe February 27, 1806. Monroe Papers, Library of Congress.

become a part of history, Thomas Richie, the editor of the *Enquirer* and intimate friend of Jefferson, taxed Taylor publicly with having been opposed to Madison and the real interests of the dominant party. A sharp controversy ensued, in which Tayhe did not win fresh laurels.[1] This completely alienated Taylor, at least in the public mind, from the administration and its supporters in Virginia. Taylor, as a free lance in politics and primarily a publicist, was not sensitive as to his isolation. He knew the members of the so-called Virginia dynasty well, and he was as a good Virginian as little desirous as any one else to see the sceptre fall to the lot of any other State. Indeed, his role, his most important office in the politics of his day—that of peacemaker—now began.

Even as early as February, 1808, Taylor had foreseen the success of Madison and the consequent isolation and political ruin of Monroe, should the latter persist in his determination to dispute the election with Jefferson's heir presumptive. The De Witt Clinton party in New York and the New England Federalists were already ranging themselves behind the standard of Monroe.[2] Taylor feared even the appearance of an alliance of this sort, and preferred to hold out to his friend the hope of an understanding with Jefferson and Madison whereby the coveted prize might be won without endangering in the least the hold of Virginia on the national government. The fact that Taylor, and more especially his friends in the ranks of the "Quids"—the little group of malcontents of the South—had co-operated with the Federalists and the Clinton faction in congress did not prevent him from seeing the danger of a more binding alliance. He deprecated a split in the Republican party, though he expected to criticise the acts of that party whenever occasion offered. The

[1]Richmond Enquirer, February-March, 1809.

[2]Letter to Monroe, February 22, 1808, in Library of Congress, Monroe Papers.

reason for this anomolous attitude appeared in his genuine Virginianism as well as in the belief that the nearest approach to good government in the United States was possible only with the Republican party at the helm.

Instead, then, of continuing the fight on Madison, this good friend of Monroe, an opponent of Madison, urged what must have seemed a strange doctrine to Monroe: reconciliation with Jefferson and the acceptance of the governorship of Orleans. "Mr. Jefferson is unquestionably your fast friend and earnestly desirous of advancing your prosperity. The offer of the Orleans government, which I hear he has made and you have refused, is a proof of it. * * * I view it [this post] as the best road yet opened for you towards wealth and power. New Orleans is precisely the point at which you would become the idol of the Western States. In a very few years these States will expect to supply a president and must be gratified. As their antidote the objection of your being Virginian will either be answered or overruled by the union of their votes with your eastern friends. * * * In the meantime, you will occupy a station which will keep you in the public eye, which will furbish your fame, instead of its rusting in a corner, and which will enable you to improve your fortune."[1]

This interesting letter closed with the statement that Monroe could then withdraw with an "accession of popularity." Yet, though such are my opinions, I have no idea of withdrawing from [supporting] the Monroe ticket should you persevere, but shall contentedly immolate any little popularity in the funeral pile which will consume yours." Not content with thus unbosoming himself, he wrote again within a month deprecating the apparent intention of Monroe to join his fortunes with those of De Witt Clinton and urging the necessity of calling upon

[1] Ibid.

his [Monroe's] friends in the various States for their opinions before consummating this coalition.

Monroe did not appreciate the value of this candid advice, for a year later[1] he wrote Taylor a long letter complaining bitterly of Jefferson's conduct with reference to the repudiated treaty of 1806. But the disappointed aspirant for the presidency was soothed by reflected signs of approbation on the part of Virginia, and before Madison was firmly seated in the Presidential chair both Monroe and Taylor had decided to support the new President loyally.[2] Taylor also assured his friend once more that Jefferson was not an enemy, and that Madison was too sensible and broadminded not to overlook past differences, adding significantly that in his opinion the "olive branch would be proffered and I entreat you cordially to accept it."

In November, 1809, Taylor wrote Monroe: "I heartily wish to see the Republicans united and that you and he [Madison] could make friends. If his measures should not please at all times, they may yet preserve our excellent form of government in *statu quo.* The best of the Roman emperors were accustomed to adopt successors with a view to the public good, and our bureau of State has been accustomed to contain the presidential ermine." And, after suggesting that the President would probably make a change in the cabinet, he counsels his friend to meet the President halfway, adding with real satisfaction: "I hear you are on good terms with the old sachem of our tribe."[3]

Monroe had declined the good advice of 1808. He continued for a long time to hope for the Presidency; he declined to take office under Jefferson; and until the year 1809 was well advanced he repelled every overture for a reconciliation with Jefferson and Madison. His political fortunes were at a low ebb;

[1]January 9, 1809.

[2]Ibid and Taylor to Monroe, January 15, 1809.

[3]Taylor to Monroe, November 8, 1809.

but Taylor did not desert him. He wrote articles for the *Spirit of '76*; urged Monroe himself to publish an account of his wasted efforts on behalf of the treaty with England in the hope that his fame might not "rust in a corner." But all these efforts brought the coveted honor, the Presidency, but slowly into view.[1]

At last the light began to break upon the little group of ambitious Virginians. The legislature of 1810, not without a hint from Jefferson, chose Monroe for Governor, though he had years before served the customary term. The people manifested such unmistakable pleasure at the choice, that Madison felt the more strongly constrained to call his recent rival to the Cabinet board. He was also pressed by the unbearable conduct of his Secretary of State, Robert Smith, of Maryland, to give Monroe that important portfolio. Smith was both incompetent to the duties of his station and disloyal to the administration. Though we have no record of it, there remains little doubt that the "Old Sachem" was consulted. It was, and had been for years, the plan of Jefferson to bring both his friends, Madison and Monroe, to the Presidency. The way was now smoothing, and with anything like deft management the happy consummation would be obtained. It was to be President Monroe after 1817.

About the middle of March, 1811, Monroe received the offer from the President. He at once consulted Taylor, who already knew of the approaching entente. On March 21, Taylor wrote from the Fredericksburg postoffice urging Monroe to accept and aid Madison in beating down the Smith faction, which was about to ruin Gallatin and the President. But Monroe was also urged to do all he could to prevent war with England, which *seemed* at the very threshold.[2] The Governor visited Washington to learn just how genuine might be the desire for him to enter the Cabinet. He received a surprisingly hearty welcome, which dis-

[1] Taylor to Monroe, March 12, 1810.

[2] Letter of March 21, 1811.

concerted and displeased the remnant of the "Quids," who had stood so long for his advancement. They did not like the approval of officialdom. There had never been much doubt that the overture would be accepted, and this cordial reception removed the little that remained. Monroe's appointment to the State Department proved a veritable boon to a discredited administration. The breach in the party was healed and energy was added to the public councils. It was but a few months before leading Southern politicians began to put forward the new secretary as the candidate of the Republicans for the successorship. Men were about to believe in the Old Dominion that no other region could produce statesmen of the first rank.

But Taylor's intense democracy and doctrinaireism led him into disagreement with his friend Monroe as soon as he finds the latter safely embarked on the high road to fame. Having been inveterately hostile to the building of the nation in 1788, he could never view the operations of the national government with any other than jealous and suspicious eyes, even though his bosom friend should be president. Having done as much as any other to elect Jefferson in 1800, he began, as has been shown, immediately after the inauguration to deprecate the policy of his great friend. Of Madison he was always suspicious, because of the innate "federalism" of the latter. And before Monroe was agreed upon as the candidate of undivided Republicanism he warned him that the inauguration day would be the Rubicon between them, and that he could never be entirely friendly to the president, though he might continue to think well of Mr. Monroe.

His position is well summarized in the following:[1] "No, no; the moment you are elected, though by my casting vote, carried an hundred miles in a snow-storm, my confidence in you would be most confoundedly diminished and I would instantly join

[1]Letter of January 31, 1811.

again the Republican minority. Majority republicanism is inevitably, widely corrupted with ministerial republicanism."[1]

Having heard that the "*Spirit of '76*" was about to be converted into an official organ, he earnestly advised against such a course, adding, what is better understood to-day, that no mere organ could ever become genuinely effective. He would make the "*Spirit of '76*" a successful independent paper, "write it into circulation," not force it by hot-house methods, and then if Monroe still measured up to the standard of statesmanship already set, a few words of commendation would go far to make him president.

But he did not have his way, and his comment upon the temporary success of his friends ran: "My opinion is that these gentlemen, having defeated me, will speedily defeat themselves; and that a paper which has been gradually made useful will perish."

In July following Taylor declared his old favorite paper unworthy of a contribution from an Independent, because its character had been ruined by government patronage; and Monroe himself was on the road to ill-favor with him because of the "gallimaufrey" of State secrets administered to the people for the purpose of stupefying them, as catfish are stupefied by casting poison into the water.[2]

When the new Congress assembled in December, 1811, with such vigorous war-dogs as Henry Clay and John C. Calhoun in the lead, Taylor began to urge upon Monroe the danger of a warlike policy. On January 2, 1812 he insists that Virginia is adverse to war; that private soldiers would not volunteer; that public sentiment would be almost unanimous against the administration which inaugurated a second conflict with Great Britain. And on March 12th he wrote again, charging the administration

[1] Condensed somewhat.
[2] July 27, 1811.

protest against Marshall's nationalist opinions from the Supreme bench. Taylor was a Virginian first and an American second; Marshall was a Nationalist first and next a Virginian, and one whom Virginia did not like to see on the supreme bench of the nation in 1815.

When the immense tract of land lying between the Upper Rappahannock and the Potomac, known as the Fairfax Grant, and confiscated as the property of an alien enemy during the Revolution, was awarded against the protest of the Virginia Supreme Court in 1815 by "Marshall's Court" to the Fairfax heirs, there was consternation in the camp of states rights advocates in the Old Dominion. Roane and Ritchie and Taylor, who had not been on friendly terms, became champions of the state's claim to the Fairfax grant and antagonists once more of Marshall. Marshall's overruling of the law of his own State under his interpretation of the clauses of the treaty of 1783 with Great Britain was tangible evidence to Taylor that the Federalists were still alive. The almost universal acquiescence of other States in Marshall's view added to his alarm.[1]

This was not all. Marshall rendered an opinion in 1819 in the case of *McCulloch* vs. *Maryland*, which went much further in the direction of Nationalism than Virginians were accustomed to imagine. The lawful existence of the United States Bank, a relict of the hated Hamilton system, had always been denied by Taylor and questioned by men of states rights leanings in all parts of the Union. The Chief Justice now not only affirmed its right to existence, but gave it powers superior to that of the States themselves. The leading lawyers of Virginia joined Taylor in denying the correctness of the decision; the newspapers argued staunchly against Marshall,[2] and Jeffersonian politicians —composing by far the great majority of public men—waxed

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[1]See article in Am. Hist. Rev., July, 1907, on Marshall and Virginia.
[2]Ibid.

warm in their canvasses when they came to discuss the rulings of the "renegade" Virginian on the Supreme bench.

Still the people of the country as a whole were not aroused. They had been taught by the stern necessities of the recent war that state supremacy, as manifested in Massachusetts, was dangerous, and that the national bank, though not authorized by the constituion, was indispensable to the administration of a sound financial system. Indeed, the war of 1812 had been brought on by such Nationalists as Calhoun, Clay and Porter, of New York—by men from all sections who had begun to feel as Americans, not as citizens simply of their respective states.

These men at the close of the war were not profoundly respectful toward the authority of the states. Clay ridiculed the states rights teachings of Virginia and Calhoun smothered whatever sentiment of this sort there was in South Carolina. Being in substantial control of the national administration during Madison's two terms, they embarked upon a policy at the close of the war which was intended not only to enhance the importance and power of the nation, but to eclipse the waning glory of the states. Their first item was a broad construction of the national constitution, in accordance with the ideas known to be entertained by the Justice of the Supreme Court, and already shown forth in the contest with the Virginia courts. The next was the adoption of a liberal protective tariff policy, designed not only to aid the many industries then suffering from sharp British competition, but to cause these powerful interests to look constantly to the government in Washington as their foster mother. Incidentally both Clay and Calhoun expected to be swept into the presidency as the result of their kindly statesmanship. The last important item of the new creed was to be the spending of the surplus income that might arise from the tariff in extensive public improvements, such as the building of in-

amending the national constitution and friendliness to judicial usurpation. He says the division of powers as provided in the constitution was intended to prevent any of these interests, so natural to all society, from attaining supremacy and not merely as a safeguard against possible usurpations of presidents or courts or legislatures.

As a final and decidedly advanced argument for Virginia and the country in the year 1814, he laid down the principle that education is essential to democratic government; and, not only so, it must be an education free from bias from any dominant class in the State. The idea was that colleges would, unless carefully guarded, fall into the hands of the governmental party or the privileged class; that young lawyers would be trained to think after the prejudices of the judiciary; that teachers would fawn before wealthy patrons, and thus all education would become perverted and fail of its purpose, which was, and is, to train men to think and act above class bias.

This book of valuable suggestion, filled, though it was, with endless verbiage and tiresome beyond endurance, was as extensively read and discussed in Virginia as the unfavorable conditions of the time allowed. It added much to the fame of the author, and, with his former writings, gave him the foremost place, after Jefferson and Madison, among Southern publicists. He was a Rousseau follower, a conscientious democrat in all things except the management of his own plantation, where slavery made him an autocrat, or in social life, where birth and training made him an aristocrat. He was the theorist of the "Quids" and their beau ideal in politics.

With a reputation that extended far beyond the bounds of Virginia, and known as the friend and confidant of Jefferson, he began soon after the close of the War of 1812 to answer Chief Justice Marshall, who made little pretense to legal lore, but whose decisions were doing more to establish the ideas of Hamilton than

all the laws of the Federalist regime could possibly have done. Taylor's task was now to convince Virginians who had drifted away from the true faith during the war, or who had been swept off their feet by the oratory and dictatorial leadership of Henry Clay, that the whole fabric of Marshall's constitutional interpretation was not only wrong, but aristocratic in tendency; that it would eventuate in the complete overthrow of the states.

His first book in answer to Marshall was *Construction Construed*, published in Washington in 1820. Jefferson endorsed everything in the volume and suggested that each state ought to put a copy of it into the hands of every Member of Congress as a standing instruction; and again in 1821 he caused his opinion of it to be published in the Virginia papers.[1] And the "Old Sachem" gave assurance that both Madison and Monroe were of the same opinion. This was enough to mobilize the forces of Virginia; it was but a short time before the press of the state renewed the states rights discussion with great ardor.

The chief contentions of Taylor's book were: That the United States Bank, which the Supreme Court had protected against taxation by the states, was unconstitutional for the reason that Congress could not lawfully create a corporation; that the spheres of activity of states and union, which Marshall had described in the opinion of the court, were legitimate indeed, but that the decision in *McCulloch* v. *Maryland* broke over the boundary between the two because Congress had created an institution (the bank) whose capital stock of thirty-five millions was exempted from state taxation. Now by the constitution, all property within the limits of states excepting foreign goods just imported, was subject to state taxation. Reasoning by analogy, Taylor contended that the State of Maryland might lay a tax upon imports to the same amount as she lost by the bank exemption.[2] Marshall

[1]Ford's Writings of Jefferson, Vol. X., 184, 189.
[2]"Construction Construed," 12 on.

had declared that the State of Maryland, if allowed to tax its national bank, could destroy a creature of the national government. Taylor replied that in the same way the nation could destroy the state by progressive exemption of state property from taxation. In both cases, he concluded, the constitution would be violated.

Further "Construction Construed" claims that the whole question was one of supremacy when no "supremacy" was established by the constitution. The states and the nation are both supreme in their spheres; but neither could invade the other realm. But what caused the controversy to assume a peculiarly ugly shape to Taylor was the fact that the national court had entered the lists on behalf of a corporation seeking and making use of privileges such as any of the many French monopolies that figured so fatally in bringing on the American Revolution had enjoyed. A corporation whose charter was a violation of its fundamental law now, by reason of Marshall's decision, overwhelms a sovereign state. He then enters upon a discussion of corporations and monopolies. They are but excrescences of American life; their aim is the wringing of wealth from the necessities of the people, which they do by reason of their "permits" from government. Though he does not say as much, his very premises assume that the conditions of 1820, the universal demand for privilege, for protection against competition, were but the recrudescence of the evils of British life at the beginning of the Stuart reign, or just prior to the American Revolution; and he says that both the Stuarts and George III found judges who would justify in law what privilege demanded. The remedy in England in 1640 was civil war; in 1776 war again. In 1820, what shall it be? He thought popular election of all judges would go far to ameliorate conditions.

Taylor thought the formation of the national government had been a reaction from the Revolution; that the election of 1800 had been a restoration, and that in 1820 a second reaction was on.

Marshall and the Supreme Court he regarded as the champions of the cause of privilege and a monied aristocracy.[1]

The book closes with a remarkable discussion of the Missouri Compromise. The thesis of this chapter, or political pamphlet, was that not slavery, but sectional ambition, was the foundation stone of the compromise of 1820-21. The first sentence runs: "The idea of a balance of power between two combinations of States, and not the existence of slavery, gave rise to this unfortunate, and, as I shall endeavor to prove, absurd controversy. What is the political attitude of nations toward each other, supposed by a balance of power? Hostility. What is the effect of hostility? War. A balance of power is therefore the most complete invention imaginable for involving one combination of States in a war with another."[2] In proof that it was sectional ambition, he asserts that the North wants no slaves and the South would be delighted to be rid of them, which was possibly true in 1820 for the older southern states, but which was not true even for Virginia ten years later.

The slavery problem he regarded as settled by the adoption of the national constitution; and to violate that settlement, he argued, would be to abrogate that "solemn compact." Property in negroes was to him, and perhaps he was right, simply a municipal institution; and property was property anywhere. Looking at the compromise legislation thus, he held that any of its clauses which had the effect to regulate or limit the natural attributes of property, were unconstiutional and void. Here he stood again with his old friend, Nathaniel Macon, who declared the same thing in a carefully prepared speech in the United States Senate.[3] John Randolph was of the same opinion, and, judging by the debates of the Virginia Convention of 1829-30, his great oppo-

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[1] "Construction Construed," 192 on.
[2] "Construction Construed," 291.
[3] Dodd, Wm. E., Life of Macon, 319-323.

nent, Marshall, was not contrariminded. If the slavery question was not settled in 1787, then the balancing of power in 1820 would not settle it, but only bring it into such a position that any succeeding congressional majority, looking to party victory, might and would reopen it and "resettle" it in such a way as to win party or temporary advantage.

The reason he advanced for this prophecy was that the North desired concession in the way of a higher protective tariff, which to Taylor was robbery; the West wanted internal improvements, and the South, though he did not say as much, desired guarantees for slavery. A combination of any two of these sections would secure whatever of "privilege" was aimed at, and might change the status of slavery. Two sections wanted monopolies which, under "liberal construction, Congress could give; and the third, already taking the conservative trend, only asked to be protected in what she already had. Such being the state of things, it was utter folly for Southern men to allow, and they could have prevented it, the passage of the compromise. Why admit any doubt about the rights of slave-owners when the result could injure the South alone?

For this fool's policy he held "ambitious politicians" responsible, Henry Clay more particularly. This latitudinarian, Virginian born though he was, looked then, as ever afterward, to the attainment of the presidency. To obtain it he must, according to Taylor, and with strong show of reason, promise the North protection, monopoly privilege; and the West lavish public expenditures. But the North demanded a limitation of the power of the South which slavery gave her. How to unite enough of the North, West and South to secure his aim was the problem. The compromise of 1820 was the first great experiment. And the South permitted it.

Thus did Southern men begin to unsettle, for the sake of the personal ambitions of favorite sons, the long settled but dynamic

problem! But few men agreed with the obsolete statesman and publicist; certainly none foresaw how statesmen and politicians of the North would come back, in 1854, to his argument that the compromise of 1820 was unconstitutional. "Construction construed" passed current for a while as the theorizing of an over-anxious student of public affairs; in Virginia its teachings were taken as correct and orthodox, as a matter of course, while in Washington they were ignored.

Before his book was well out of press the United States Supreme Court gave forth its opinion in the case of *Cohens* v. *The State of Virginia.*[1] In this decision of this celebrated cause Marshall went further in the direction of nationalism than he had ever gone before; he simply defied Taylor and the whole states rights school, notwithstanding his case was not a good one, and public opinion in Virginia was already greatly exercised by the outcome of the *McCulloch* v. *Maryland* contest. Chief Justice Roane, of the Virginia Court of Appeals, head of a powerful wing of the Jefferson party, undertook for a third time to refute Marshall. He succeeded in arousing a storm of hostile criticism, almost as fierce as that which produced the Virginia and Kentucky resolutions.[2]

Taylor did not take part directly in this contest, though his recent book was used as a magazine of argument for the states rights side by numerous newspaper editors and contributors. Taylor's next book was directed against the protective tariff, and it bore the name of *Tyranny Unmasked.* It was published in Washington in 1822, and was intended as an answer to the able report of the Committee of Congress on Manufactures of January 15, 1821. This report was in large part a product of Clay's activity. It was offered as the solution of the "hard times" which had oppressed the country for two years. Taylor had also diag-

[1]Branch Historical Papers, Vol. II, No. 2.
[2]American Historical Review, July, 1907.

nosed the case, and pronounced in the last chapter of his *Construction Construed* that over-sanguine speculation, coupled with bad legislation, had been the cause of the complaint, and that the patient would speedily recover if only natural forces be allowed to operate.

*Tyranny Unmasked* is mainly an adaptation of the teachings of Adam Smith. Its author, it need hardly be repeated, was an ardent *laissez-faireist*, who would have no sort of governmental aid for anything. The book created no great stir in the world, as none of its predecessors had done, but it had the advantage over the report to which it was a reply of being written by one who was familiar with the best literature of the subject, and who had no "axe to grind."

Still one other book came from his pen. In November, 1823, as he was about to return to his seat in the United States Senate, his "New Views of the Constitution" came from the press. In this, as in all his previous writings, he begs men to come back to the letter of the national constitution. His main point, however, was to bring the Supreme Court into contempt by showing how far afield that institution had wandered under the leadership of Chief Justice Marshall. Ex-President Madison also received a large share of the author's censure.

The point of departure was the Federal Convention of 1787. According to Taylor, there had been three parties in that body—those who, with Hamilton, desired to create a monarchy; the advocates of a national government; and the friends of the confederation who, like Luther Martin and others, continually reminded the members of the Convention of the limitations of their powers as contained in their credentials. The Monarchists failed, and, adding their strength to the Nationalists, were able to deadlock the body. Out of this balancing of parties and interests came a federal, not a national, Constitution. It had been due to the friends of the old confederation that the highly refined mix-

ture of national and State powers, of checks and balances, was due.

There was to be no superior department in the system, no final authority. Unappropriated powers were to be state powers; while specified powers only were to be exercised by the federal government. If states encroached upon the general government there was to be no redress; if the federal authority transcended its bounds there was also no recourse. The federal courts were not to consider cases that did not arise under the specified powers and the state courts were likewise to maintain a sphinx-like ignorance of national concerns. This was Taylor's Constitution as he looked at it from the vantage ground of 1823. It must be confessed that he was not far from the letter of the Constitution. Yet he had himself opposed the adoption of the great document by Virginia in 1788 on the ground that it was a national instrument likely to be used in the overthrow of all proper state authority. Inconsistency was, however, as much his privilege as Judge Marshall's or President Madison's. He therefore in true statesman's fashion "swallows" his former words and advances to the position that Marshall had occupied in the Virginia Convention. Indeed he had done this long before, but it nowhere appears so plainly as in this his last book.

He now contends that the Tories of 1776-1783 had combined with the slow-going revolutionists of that period, with the men of talent who always like strong government, to create a "real national authority" to take the place of the defunct British power. These able skeptics of democracy had been able to wring from democracy itself its utmost concession—the Federal Constitution. Not content with their victory, the same men in 1789-1801 had undertaken to "construe" the fundamental law to suit the exegencies of the party who desired to make the federal government one of unlimited powers. Jefferson, the one man of talent, equal to Hamilton himself, who took the democratic view

of things, broke down this unscrupulous party. But the epigones of the great master fell into the snare of those who desiré to ruin the cause of popular government in the world, and after the War of 1812 undertook, with the assistance of the Justices of the Supreme Court, to yet create a great power in Washington.

The plan of "construing" the constitution is still the method, and the great Virginia judge seemed to Taylor to have entered into a pact with Henry Clay to find something in the constitution to support any and all of the ardent Kentuckian's nationalist schemes.[1] Comparing Marshall with the elder brother in Swift's "Tale of a Tub," he declares that there would always be found a word or an idea or a significant omission which would be used to justify the needed expense or extravagance.[2] Without giving any names it could easily be seen who "Judge Construction" was. The book makes the policy of a liberal interpretation of the national charter appear exceedingly ridiculous. And the pains of the popular and unselfish states rights champion were not in vain. Virginians applauded what Taylor wrote; his ideas were as heretofore in harmony with the prevailing sentiment of the people of the State. Jefferson, as he had done several times before, gave his hearty approval of Taylor's "New Views." "I shall read them [the book] with the satisfaction and edification which I have ever derived from whatever he has written.

The "New Views" was designed to influence Congress in the But I fear it is the voice of one crying in the wilderness."[3] consideration of the several amendments then pending: The plan for limiting the term of the president; that for changing the method of choosing the presidents; and another for disposing of the problem of internal improvements. That the book bore some fruit in the speeches and votes of Southern members of Congress can scarcely be doubted, though no other evidence

[1]New Views, 233-235. [2]Ibid, 300-305.
[3]Jefferson's Writings (Ford, V. 294-95.

of this has been found than is to be seen in the sturdy but unsuccessful fight that was made on behalf of the proposed reforms.

But Taylor's role in "high politics" was not yet played out. Having done so much to raise his friend, Monroe, to his exalted station, he now essayed to bring Virginia's influence to bear on behalf of one of the many candidates for the successorship. Failing to see Monroe at the adjournment of Congress in March he wrote him a long letter late in April[1] proposing to start an agitation on behalf of John C. Calhoun, the Secretary of War, and in case of disapproval on the part of the President he would take up John Quincy Adams. He hopes Monroe will mention his plan to Jefferson and Madison, and that the delegates in the next Virginia Assembly from Albemarle will introduce a resolution favorable to his plan. This would serve to advertise Jefferson s preference and also to destroy Crawford, who had the ascendency. With Jefferson and the other members of the "Virginia dynasty," he thought General Jackson a dangerous man.[2]

That Calhoun himself knew of Taylor's plan to defeat Crawford in Virginia and start the movement for himself, can hardly be doubted. Calhoun's visit to Taylor a short while previous to the date of this letter goes far to dissipate such a doubt.[3] However, Taylor was not certain of Monroe's attitude and he was not unwilling to bring forward the Massachusetts man if the administration so desired. But it was all contingent on the approval of the great trio.

"If your three opinions should concur with mine, I will pay my mite towards opening a discussion, so as not to bring myself or anyone else into view. Should the representatives of Albemarle correspond in these ideas, they would have great weight

[1]To James Monroe, April 29, 1823.

[2]Jefferson's Writings, X. 331.

[3]Note first paragraph of the letter, as printed in these Papers.

in the assembly, if a discussion takes place during the summer. Could I have the pleasure of seeing you at my house, or of meeting you at Fredericksburg, other considerations might be added to those I have expressed. But having said enough to explain myself, it only remains to add, that I am, yours with great respect and regard—John Taylor."

This was a characteristic piece of political planning. The chasm-wide difference of opinion between the author of "New Views" and the South Carolina leader was disposed of with ease. Perhaps the general dislike of Jackson in Virginia aided the process of reconciliation with such a latitudinarian as Calhoun. Even stranger bed-fellows than these have been known to American politics. However, there is no evidence that the plan was seriously considered by any member of the "Virginia dynasty." Monroe persisted in his policy of "hands off" in the friendly contest for the Republican nomination. Virginia supported Crawford staunchly in the next Assembly and did more than any other state on behalf of that able politician.

Taylor's service in the next Congress was not conspicuous, his health being exceedingly precarious during many years before his death. He died August 21st, 1823, at his home near Port Royal, Caroline county, whose most distinguished son he was with the possible exception of his uncle, Edmund Pendleton. The country was so intensely absorbed in the game of president-making, or in the fitting entertainment of her distinguished guest, the aged La Fayette, that not three inches of space in any Virginia newspaper was given to a notice of the life and service of the great Revolutionary leader and incomparable states rights theorist. The Richmond *Enquirer* said, A great man has fallen in Israel . . . . Let Virginia weep over the ashes of the illustrious Patriot."

William E. Dodd.

# LETTERS OF JOHN TAYLOR, OF CAROLINE COUNTY, VIRGINIA

## John Taylor to James Madison.

Caroline, May 11, 1793.

Dr. Sir

By Colo. Monroe an opportunity occuring, I take it to inform you, that I have not been idle since my return. Upon reflection, it seemed to me, that at the next session of Congress, and at its very commencement, a direct, firm and resolute attack should be made upon the bank law. The newspapers are improper channels through which to make a considerable impression on the public mind, because they are a species of ephemera, and because the printers are not orthodox in general as to politicks. Hence a pamphlet appeared most advisable, and I have written, in length sufficient for a pamphlet. If its merit is counted by its pages, it is not deficient, but whether it possesses any other species of worth, myself, you know cannot judge. So soon then as I could transcribe it, I purposed to forward it to you, that a determination might be had, whether it ought to be comited to the flames or the press. Having no motive but the public good, there is not that kind of paternal sensibility about me, which sometimes attaches us even to deformity. Therefore when you see the work, freely correct, censure or condemn, without supposing it possible that the burning a few sheets of paper will effect me.

Could you not spare time to see us in this neighborhood. Mr. Pendleton[1] was but two days ago expressing his wish with anxiety, that your father, old Mr: Taylor and yourself would come and take pot luck with us this Spring?

But this work. If it is worth any thing, I have shot my bolt,

[1]Edmund Pendleton, Taylor's uncle and guardian in youth.

and therefore I may justly, and beneficially give place to some other person, who is full charged. If it is worth nothing, then it proves that I ought to make place for another, who may do some good, in the good cause. Either way the public will be served by my withdrawing from its service.

Hawkins[1] was here a day or two, with Macon and Giles. He appeared to strive to arrange himself right. A gentleman who knew him better than I do, informed me, that the most likely thing to fix him, would be a letter from you. Something in a kind of friendly stile. And having three or four pointed sentences against the bank law, and expressing a necessity for its repeal. His situation in his state is a little awkward, & he will probably strive to put it to rights. To help him along, he would show your letter, and if you make a *Carthago est deleta* business of the bank law, he would get so far enlisted in the idea, among his countrymen, that he could not retract. When your letter was seen, the reader would take up the idea, and gore Hawkins upon the subject. I cannot say more here, and perhaps I ought to apologise for having said so much on such a subject.

### John Taylor to James Madison.

Caroline June 20. 1793.

Dear Sir

In coming from Philadelphia, alone, and meditative, after Congress had risen, the occurrences which had trodden on each others heels, in too rapid succession for much reflection during the session, began to pass muster in my mind, and to piece themselves together, so as to exhibit an unity of design. Connecting these with several important laws of the union, a variety of fantasies were engendered between them, some of which, like youth-

[1]Benjamin Hawkins, of North Carolina, United States Senator and later Indian agent in Georgia.

ful dreams, made such an impression on me, that I have employed the few intervals of leisure which have occurred, in writing them down. And they are now presented to you.

Several ideas and arguments, which I thought it advisable to impress, are repeated. The impropriety of repetitions was not forgotten., but it was remembered that the performance was pro tempora—Oh tempora! The plagiarisms are few, and chiefly from myself. There is neither title or dedication. When the work was finished, I felt myself ready to exclaim, as Quin did on seeing a person ridiculously attired—

> "Angels & ministers of grace defend us!
> "Be thou a spirit of grace or goblin damned,
> "Bring with thee airs of heaven or blasts from hell,
> "Be thy intents wicked or charitable,
> "Thou comest in such a questionable shape,
> "That I will speak to thee. I'll call thee
> "By G—d I don't know what to call thee.

Some of my friends must therefore stand godfather to the brat, and baptize it, either with the holy ghost—or with fire.

And if Brutus could surmount a natural affection for his offspring of flesh and blood, so as calmly to behold the axe do its office, when the good of the commonwealth required it; doubt not but that my amor patriæ, can in humble imitation of his example, attain apathy enough towards mine of ink and paper, to bear with great composure its contorsions in the flames.

Having no private object in view, and knowing how much better you can judge of the publick good—besides you are impartial—I pray you to arrest without reserve this mischief—if it be a mischief. In this event the only reprieve I will ask for it, is, that you will return to me, to undergo perpetual imprisonment, by way of refining upon its punishment.

And if it is reclaimable by correction—correct it.

Should you approve of the production, ought it not to appear in a pamphlet or in the newspapers. The latter are mere ephemere, and tho' containing merit, read & forgotten. The best political essays being often supposed to proceed from the printers in a course of trade. Besides the sphere of their circulation is circumscribed.

Or would it be proper to print it in phila. to be distributed either among the state assemblies at their fall meeting, or at the opening of the next Congress. In the latter case, to make a direct impression on the members of Congress; in the first, to subjoin the influence of their constituents.

The repeal of the bank law and some emendations of the constitution, are the only fruits, to be expected from any such impression, and therefore it seems to me, that on the very meeting of the next Congress, a firm and bold attempt should be made to gather them.

Even a disappointment will not frustrate every use of such an attempt. It will operate as a check—gain time for new elections—and alarm the publick mind into a discussion of principles.

If the performance is adjudged worthy of being printed in a pamphlet, I submit it to you, whether it ought not to be done in the cheapest stile, for the sake of circulation, for it will hardly have merit enought to circulate itself.

But how is it to get printed? I would expend fifty dollars for my share, in that way, or more if I ought.

I have not written to Mr: Jefferson, because a justification for wasting any portion of his time did not present itself. But if you have an opportunity, the production may be laid before him, and I hereby invest him with a power over it, coextensive with your own.

I would also wish Colo. Monroe to see it. And although it

has been out of my power to prevent its being known here, that I have been writing something, it is my wish that no one else should be told what that something is.

If you could have been a week here, and the work is capable of being turned to any use, how useful might it have been made? Indeed you may yet give it great value, if you please. It begins and ends with a blank sheet.

Mr: Pendleton approves of its doctrines, and recommends its publication.

Through Randolph, whom I have not seen, I learn that the President, believes, that the Virga. interest, as it is called, designs to attack him, and that it gives him great uneasiness. Of what individuals he supposes the interest to be compounded, I know not. However this idea with the comments on his conduct in the papers—the addressing acts—and the cunning insinuation, that the republicans mean to intimidate him, correspond to inlist him in a party. I am not so conversant in cabinet affairs, as to form even a conjecture, touching his reclaimability from this error, or whether a well manufactured dedication to him, would operate towards that object?

I am convinced from the same source, that no impression unfavourable to the Se-y of the treasury, was made last winter, on the president's mind. R informed Mr: Pendleton, that the President thought him to be an honest man, and he brought & presented to him all Hamilton's reports, bound up in one book.

Besides in the case touching the suability of a state, page 20, the attorney[1] concludes his argument with these very great, extraordinary, and *unnecessary* expressions. "The states need not fear an assault from *bold ambition*, or any *approaches* of *covered strategem.*" I consider him as the best thermometer by which to measure the president's opinions at present.

But to return to this same production. Let me ask, whether

[1] Attorney-General Randolph.

political rectitude will not suffer me to withdraw from the political world? If I can earn my wages, they are earned. My bolt is shot. If the public good should be advanced by it, my discharge is demandable on the score of service—if not, it will be due on the score of insufficiency. Can not you think of some other as sharp set as I have been, to substitute in the place of one, gorged as I am, with publick service?

Besides, since I have been beating my brains for the good of the nation, two white hairs have appeared on the top of my head and have caused me to think very gravely.

I give up the idea as to H. It would probably succeed, but it might do mischief.

A man who has "given pledges to fortune," is confined within a magical circle, and can therefore promise nothing. Had my inclinations only governed my conduct, I should have accepted of your invitation without hesitation; but there are duties to be discharged.

And yet a trip to the mountains would probably help me, for I feel as if my malady last fall had regenerated me for the worse. Such a gratification of my wishes would be a considerable consolation for a suspension of health.

### John Taylor to James Madison.

Caroline, August 5th 1793

Dr. Sir

I have this moment parted with Giles & Venable, who have been two Days at my house; The contents of the packet I sent you by Mr: Maury were stated to them, and they request me to convey their respects, and their decided opinions to you. They think the production ought to be printed and dispersed as soon as possible. It may produce in the Virga. Assembly a repeal of the bank laws, and an expulsion of bank paper, on Mr: Jeffer-

son's idea—and this will operate against the banking system in Congress—1st. as it removes the argument of the state appropriation of the banking system. 2ly. As it will tend to draw specie from the other states to Virga., which effect will be foreseen. 3ly. As it will leave the other states exclusively subject to the bank tax. These gentlemen have promised to see me again in October. Permit me to ask the favor of hearing from you. Mr: Pendleton purposes shortly to visit his son in law Mr: M. Taylor, which will afford a good opportunity. Having but a moment, I will employ it in an ejaculation. Be happy!

### John Taylor to James Madison.

Bowling Green Sept. 25. 1793

Dr. Sir

Yours of the 20th is this instant handed to me.

Had you been present and wielding the pencil of a Hogarth, you might have depicted a lively sensation of human nature, on having the approbation it relates, announced to it.

The approbation of the good, is only inferior to a consciousness of having served mankind in the pleasurable emotions it excites.

The emendation of the paper, is not only permited, but highly approved of, by me.

But I observe that Freneau[1] is publishing extracts from it. This is both unwise and indelicate. Unwise, as mutilated anticipations, will weaken its effect, if it should appear in a pamphlet. Indelicate, as in that event, the performance will exhibit the ludicrous aspect, of a compilation from his newspapers.

Instantly on receipt of yours from Albemarle, notifications were dispersed, and in five days days, resolutions were formed

[1]Philip Freneau, a translating clerk in the Department of State, of which Jefferson was then the head. Freneau was also editor of the new Republican paper in Philadelphia, *The National Gazette.*

by a very numerous meeting. They are in some papers, and will appear in others. I hope you will approve of them. I wish they may differ enough for those of—sic—to avoid a suspicion of their being coined in the same mint. I was obliged to come forward in a specification. But, as I thought best, the chairman fathered & conducted, the whole business.

Be happy

### JOHN TAYLOR TO DANIEL CARROLL BRENT.

[Caroline, Octr. 9, 1796.]

Sir

Your letter was yesterday received, and I will answer it as fully as I can.

The conversation respecting which you ask information[1], is accurately stated at the end of this letter. It was not confidential but casual, and Colo. Langdon having mentioned it to some gentleman of New England, very soon after it passed, they applied to me to relate it, and this application induced me to put it in writing. Colo. Langdon is of New Hampshire, and was a member of the first Congress, and has, I believe, been more constantly of that body, than any other individual.

As to the quotation from Mr: Adam's book, in the address of Colo. Simms; an attempt to ascertain an author's principles, by so scanty a passage, when he himself has thought two long volumes necessary to display them, is evidently partial, and must be unsatisfactory.

But if upon examination, this quotation itself, will not sustain the inference, which Colo. Simms has bottomed upon it, a really felt performance for democratic republicanism, when

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[1]Conversation between Rufus King, Oliver Ellsworth and John Taylor in May, 1894, concerning the secession of New England. See Gaillard Hunt's pamphlet, 1905.

compared with monarchical republicanism, it was easy for him to have expressed it, in clear and explicit terms.

Now upon examining the quotation it will be found:
1st. That it only expressed a comparative preference of our constitution, when put in competition with others, and particularly with the English constitution. By looking into the whole book, it is evident that Mr: Adams considers the unequal and nominal representation of the people in the house of commons, as a great defect—indeed it can escape no honest man—and his preference resulted of course from that glaring defect. But it does not therefore follow, that Mr: Adams does also prefer a democratic republic, to a monarchy, limited and *ballanced* by an equal representation of the people, as well as by an hereditary aristocracy. That he meant to express no such opinion, is evident from a subsequent part of the quotation, and also by the tenor of his book—throughout. For he speaks of the "*powers* of the one, the *few*, and the *many* being ballanced." And he perpetually inculcates the necessity of such a ballance. This clearly admits that the one, the few, and the many, ought, in what he thinks a good government, to possess rights, not derivitative from either, but independent of each other; since nothing can more forceably assert the idea of equality, than the idea of ballance. Now this is so far from being the one constitution, that it has carefully preserved the power of the people, or the many, over the one and the few. By periodical elections of the one and the few. By a deprivation of the right of negative in the one, when the will of the many expressed by a prescribed organic majority. By the reservation of a mode, whereby to few (?) model the form of government, neither the concurrence of the one and the few. And by a variety of the fundamental rules.

For the idea of Mr: Adams's checks and ballances among coordinate powers, is not the principle of our constitution, altho' he labors to cultivate the public mind into such an opinion for

a very obvious purpose. His idea supposes a catalogue of distinct and independent rights to belong to each of his three orders, and that the rights of one are constantly in danger of being usurped by one or two of this capricious triumvirate; by contending for an equality among orders, he oversets all equality among men; and he even bestows upon the many by erecting classical rights but to take care that this will be judiciously and considerately expressed by all organs, all dependant upon, and not co-ordinate with the many; and the subordination of the one and the few, to the considerate expression of the will of the many, is its fundamental principle, with a design to preserve equality among men; so far is it from admiting a power in the one or the few to ballance the will of the many, for the purpose of erecting an equality among orders, which inevitably destroys an equality among men. Hence it is obvious, that Mr. Adams's governing principle, throughout his political system is consistent with a political system, and therefore it results, that he cannot be a friend to the one without renouncing the other; altho' he may admit of a comparative preference, in which his own system is not involved.

Again: by using the terms "English constitution" Mr Adams seems to sink a distinction, discovered and considered hitherto as important in America. The English have no constitution, expressing the national will, and paramount to the operating authorities. He must therefore consider an operating government, as a constitution and if so, the idea of perpetually existing veto upon constituted powers, is subverted; nor will a succession of political contrivances, gradually to introduce a different system, be a treason against the majesty of the nation, but only a legal and rightful expression of the public will, because our government must have powers as great as those of the English government, if our constitution be assimilated, to what Mr: Adams calls, their constitution. And how far this will of an

operating government may then be carried, is illustrated by recollecting, that a great lawyer, in considering whether the power of the English government was limited, very gravely discovers, that it could not turn a man into a woman.

2nd. The rest of this quotation expresses no opinion at all, but is merely intended as an abstract of our constitution, designed for the information of those who had not read it, and to aid the recollection of those who had. It tells us that our constitution conferred no hereditary offices, and that under it, the President and Senate were elective. But does it say, that the author was of the opinion, that an elective chief magistrate and Senate were preferable to hereditary? A comparative preference may be allowed, and is allowed, by many who opposed our constitution, as not having done enough for democratical rights, and also by many who supported it, tho' defective in not coming up to their ideas of a good limited monarchy; and yet one side would have prefered a government more democratic, and the other, one more monarchic—a fact clearly exhibited in the differences between a comparative, and an absolute disclosure of our political opinions. Indeed a preference which simply absolves us from the obligation of *blushing,* when we compare our constitution with the English government, if it does not insinuate that we ought to do so, in case the comparison was extended to that theory, as amended by Mr: Adams, is at best but a costive kind of complaint.

With respect to the charges urged against Mr: Jefferson by Colo. Simms, I believe them to be groundless. Being constantly a member of the assembly, and having also served in the militia whilst he was governor, I had a good opportunity of judging, and the strongest approbation of his conduct resulted from a particular attention to it.

Several powerful invasions of Virginia, happened whilst he was in office—by Leslie—by Arnold—and by Cornwallis. Genl.

Greene, with a strong body of veteran troops, and backed by the efforts of several states, was obliged to retreat from the last. Virginia, stript of its arms by her regular troops, could only provide arms for an inconsiderable body of militia; and the dispersed situation of her people and weapons, rendered a sudden assemblage of an equip't army, impossible. No exertion was as I thought, neglected. Mr: Jefferson, by private solicitations collected many old officers, and puting the militia chiefly under their command, effectually restrained Leslie's depredations. But an united force under Arnold, irresistable by the Virginia militia, both on account of the rapidity of its motions, and also from its natural strength, penetrated to Richmond, and did much mischief. The sufferers misplaced their resentment and the clamor became loud against Mr: Jefferson, inspired not by any negligence of his, but by a calamity, not within his power to controul.

It was evident that his dissatisfaction by dividing, would diminish the energy of the state, and if Mr: Jefferson had resigned from this motive only, it would have been meritorious. He continued to act, until his place could be supplied. and held a treaty with the Illinois Indians at Charlottesville, but a few days before Tarleton appeared at that place, and within a few days of Genl. Nelson's election at Stauntoun. The [To?] Charlottesville sundry public papers had been previously removed, when danger was not contemplated, nor if it had, could Mr: Jefferson have repelled the sudden movement made by Tarleton. For now, LaFayette was at the head of the Virginia militia, aided by a strong detachment from the continental army, and his supposed position between the British & Charlottesville, had inspired a confidence, of which the Assembly itself was nearly a victim.

At Stantoun, this dissatisfaction broke out into an actual impeachment [sentiment?] preceeded the resignation, and so I have written to Mr: J. Nicholas, to whom I will thank you to communi-

cate what I now say upon mere recollection. I am yet inclined to think that it did so, but I may be mistaken. It is however certain, that the resignation did not take place until the appearance of the unreasonable dissatisfaction above spoken of, which then threatened to eventuate as it did, and made Mr: Jefferson's re-election very improbable. The impeachment was previous to the election, and therefore had Mr: Jefferson solicited an investiture of power, to continue beyond the time of trial, it would have argued a distrust of his own conduct; and the injury which the public might have sustained. had he obstinately continued in the government, at that crisis—under a public accusation—and pursued by private dissatisfaction, was obvious. Zeal however on behalf of innocence, and a knowledge that this unmerited obloquy, was the cause of his resignation, produced an impropriety in the nomination of Mr: Jefferson, nor do I believe the resignation, made as it was under these circumstances, lost him a vote. But being in competition with a gentleman of acknowledged worth, and great popularity, he failed in the election, so that the government abandoned him.

Mr: Jefferson appeared at the day appointed for his trial, and altho' the unwarrantable impulse of the moment had then been succeeded by regret and repentance, he entered into an explanation of his conduct, and received an honorable, (I think) an unanimous, testimonial of his propriety, from a very full assembly.

The other resignation, said to have also been at a period of peril, is one of which a more general knowledge exists. The danger of a war, at that time and ever since, has indeed been the aegis of a party, and its reality has never been acknowledged by the steady opposers of affiances with the English, or any other European nation.

In the catalogue of Mr: Adams's merits, with which Colo. Simms has favored the public (from which I do not mean to subtract, excepting the single point of hereditary principles) it

is urged, that he seconded the motion for independence, *at a time which tried men's souls.* To unite at that period of real danger, in a declaration of independence, couched in such bold and daring language, was undoubtedly a proof of great resolution and personal firmness, and Mr: Adams is entitled to the part in fifty five (so many members in Congress having signed the instrument) of the whole merit arising from an unanimous concurrence. But at this very period *which tried men's souls,* Mr: Jefferson exposed himself to the particular malignity of the enemy, not only by placing his signature in something like a round Robin (as the seamen's phrase is) but by having drawn up the instrument itself, a copy of which was originally prepared by him, was at the time sent to Mr: Pendleton, then president. The Virginia convention, by inspection of which it will appear that the few alterations which took place, did by no means add to the energy of its stile. The charge of Mr: Jefferson's want of firmness is thus refuted upon Colo. Simms own principles because when he resigned the government, the existence of the French treaty, and the presence of the French army, left the United States exposed to local and temporary injuries only, and was by no means a period which threatened their political existence. To attribute Mr: Jefferson's resignation to fear, while Mr: Adams's concurrence in an instrument, which Mr: Jefferson had the additional hardihood to fabricate, is quoted as a decisive proof of his bravery, seems to be an incorrect mode of reasoning.

Mr: Jefferson was also the author of the declaration preceding the Virginia constitution, and did thus in two memorable instances stake his existence upon success, when it was most doubtful. Let these instruments be examined, and if they do not [?] proclaim as much liberty—as much firmness—and as much soul, as Mr: Adams's literary productions, then expunge Mr: Jefferson's name from the register of proved patriotism.

The bound of a letter (if I have observed any bound) will not

allow me to enter into a detail of Mr: Jefferson's merits, but as to this point of firmness, I cannot but call your attention to his negotiation with energy, as well as talents therein displayed, having extorted from a high minded nation, the best treaty hitherto made by the United States.

Of this letter you may make any use you please. Its length is chiefly owing, to the observations tending to prove, that there is no contradiction between Mr: Adams's verbal and written opinions, which it is not however incumbent upon me to reconcile. I am Sir

[P. S.]

The conversation between Mr. Adams, Colo. Langdon and myself happened in 1794. It arose from a difference of opinion, whether a democratic republican government, would be established in France. Mr: Adams urged the ignorance, vices and corruptions of Europe, to prove that such a government could not exist there. Upon its being observed, that some argument he used would extend to America, after admiting, that the greater degree of virtue existing here, from the circumstance of our being a young country, would have a temporary effect, and enable us to go on some time longer as a popular government, he subjoined "That he expected or wished, to live to hear Mr: Giles & myself acknowledge, that no government could long exist, or that no people could be happy, without an hereditary first magistrate, and an hereditary senate, or a senate for life."

These were I think the very words—but I am certain the ideas are truly stated.

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Since this letter was finished, I have received Mr: Jefferson's draft of a declaration of independence, & of the Virga, constitution, and they are ready to be exhibited in proof of what I have written. I have also gotten and inclose the resolution of the

assembly produced by the impeachment, and a copy of several other resolutions, of which he is said to have been the author.

JOHN TAYLOR TO JAMES MONROE.

Caroline March 25. 1798

Dear Sir

Your letter of January last found me in Richmond, about the time that my private affairs compeled me to leave the assembly; a necessity which deprived me of the opportunity of seeing you, and refused me time to prepare a publication, compounded upon its important disclosures. And one object which forced me from the Assembly, was the removal of my family to Rappahanock near Port Royal, which has engrossed my time almost to the present date, and operated a farther delay of answer.

A meeting might probably afford a mutual entertainment, because of the contrast in an exhibition, made up in the polite circles of Paris, and the wilds of Virginia. The fine gentleman and rough farmer, might not only be compared with each other by indifferent spectators, but even by the parties themselves, and the result might not strengthen the bonds of an old friendship, unless we should mutually struggle against some very common foibles of human nature. Perhaps therefore it is fortunate that we have not met, until you have settled down into your old every day habits, which time, and the society of your countrymen will gradually effect. Especially as I am not one of those who think (if indeed there are any such) that you have ever been a Frenchman in anything, except mere externals, and to have been such in some degree was not only [un]avoidable, but in my poor view of things, an indispensable part of your duty.

Your book in detached parts had made its way to Richmond before I left it, but it was so scrambled for, that I was able only to get in sight of the first fifty pages. In these parts, not a

single copy is to be had for love or money, so that I have not even seen the residue. As far as I read it, my warmest approbation was obtained; altho' I confess that its contents were not at all surprising to me, being very nearly such as my opinion of our government had led me to anticipate.

Perhaps however I do not entirely make myself understood by the term government. For I do not refer to the men which direct it, but to the principles upon which it is constituted. Whoever shall be in office, he will act politically unnaturally, if he does not pursue the same line of conduct hitherto adopted; and therefore I have for some time thought, that yourself, and other patriots, were not entirely right in directing your efforts towards a change of men, rather than a change of principles. It is true that a change of men might operate temporary public benefits, but they would certainly be transient, and constitutional error will still ultimately prevail. It would be only like the lucid intervals of a madman. Yet this effort has its merit, as a little sunshine is better than none.

If the mischief then, as I think, was done by the constitution —if that established a form of government, holding out to its administrators violent temptations to ambition and cupidity, is it surprising that they should have recourse to corruption, insincerity, and injustice as the only means of gratifying these passions? And is it not unreasonable, not to say unnatural, to expect that men, thus exposed to temptations which have almost universally proved irresistable, should heroically resist them, and confine their endeavours to the pure object of public good?

I am therefore strongly inclined to apologise for those who have not only injured you (but laid the foundation either of despotism or a civil war) at the expence of the constitution, by admiting that it would have been almost miraculous had they acted otherwise; and I most heartily wish, that you had concluded the establishment of every fact proved upon them in your

book, by acknowledging that they acted in perfect consistence, with that which such principles have uniformly produced.

Upon these principles and upon no other, is your crime discernable. No one can be so weak as to believe, that your letter to Logan, or your purpose to amuse yourself with scribbling about the affairs of France, were either of them offensive to the government; nor is it conceivable, that they thought your successor would serve his country better with the French people than you could. Your attempts to do this was your great error. You had not discovered a distinction between the government and the nation, which it is expected every executive man should discern, and you had unluckily looked to instructions for the true intent and meaning of your mission. An example therefore became necessary, in order to teach diplomatic men the distinction between public good, and the will of the government, and to inform them which they should cling to. You was therefor sacrificed.

The letter you inclosed me is in exact concord with these ideas. The confidential correspondence—the intrigue with Ld. Greenville, so evidently king-like—the concealment of your recal under an insincere gloss of frienship—this royal mode of disclosing gratitude for the favor you had done, in the warning of the intercepted letter—all are in fine and proper stile.

I am here entertained with the society of sundry carpenters and bricklayers—if you can make one of our group—if you can put up with an unfinished house—if you can bear the cry of "more bricks—mortar here"—and if you can bear the smell of oil and paint—I will do every thing in my power to make you happy, in case you call on,

Addressed:
Colo. James Monroe
Albemarle
Charlottesville

JOHN TAYLOR TO THE VICE-PRESIDENT.

June 25, '98

The observations contained in yours of the 4th instant, upon my letter to Colo. New, induce me to say something respecting our political institution, explanatory of an idea in that letter, of which you evidently disapprove. Convinced of the caution imposed on you by the malevolence of party, I have forborne the liberty I am now about to take; but considering your interrogatories as permissive, I will candidly state some of the considerations, which may perhaps have led me into error.

The party spirit amongst us is geographical or personal. If geographical, its superiority in either hemisphere, will beget the insolence of tyranny and the misery of slavery. A fluctuation of this superiority, will enlist revenge as an auxiliary passion, and annihilate the chance for human happiness.

If our party spirit is personal, it must arise from interest. This interest proceeds also from some cause. If the evil is in human nature, it may yet admit of alleviations. But if it springs from political encouragement, it is the work of art, and by art may be counteracted.

That parties, sufficiently malignant to destroy the public good, are not naturally the issue of every popular government, seems to be evinced by the examples of the state governments, and particularly by the eminent example of Connecticut, which has about two centuries enjoyed a compleat unanimity under a government, the most democratic of any representative form which ever existed. And that parties may be artificially produced the scheme of balancing power against power, is equally evinced by the example of England. It is not possible, that one great error has been an initiation of the latter precedent, by counterpoising power against power, instead of securing to liberty an ascendant over power, whether simple or complex.

What are checks and balances, but party and faction? If a good form of government too often fails, in making bad men good, a bad form of government will too often succeed in making good men bad. Activity can only be bestowed upon these checks and ballances by the exhibition of a prize. The prize can only consist of public property. This activity is then no evidence that a constitution has staked its existence upon the existence of faction and party and that it ensures their existence by purchasing it with public rights and wealth.

If in case of a scission of the union party spirit would still be natural, how can it be said that our present situation, the characteristic of which is party spirit, is unnatural? Admiting the former position, nature, not administration, is accountable for evil. Admiting the idea of geographical parties as unavoidable in any stated association, it allows that such an association is geographically unnatural, as would be an union between France and England. Under either admission, a reference to corruption and cupidity as the cause of party, is defeated, whence it would result that all complaints of mal-administration are groundless.

Indeed I am unable to discern any natural political state; not only is a political state in the antithesis to a state of nature, but as all countries and nations seem liable to revolutions in government, and even in character from artificial causes. Can even a good administration defeat a constitutional encouragement of wicked propensities; or does a change of men, operate any lasting change of government?

Admiting (as is conceded by a portion of your observations) that individuals have robbed liberty of its ascendency, so as to be able to convert the resources of the nation to the purpose of buying and supporting a party, can any remedy exist, except that of depriving individuals of this ascendency, and restoring it, not to other individuals, but to liberty? What endowed them

with it? A reformation in that form, a transference of this ascendency to other individuals, will change the tyrant, but not remove the evil. Did the British people ever gain by a change of ministry? Saturated are preferable to hungry flies. A southern aristocracy oppressing the northern States, would be as detestable, as a northern, domineering over the southern states.

And what is the proper time for opposing this ascendency? Shall it be suffered to run through its natural course? How many years will bring it to decrepitude? Let England and all personal ascendancies reply. Let the ancient and modern system of villenage, illustrate. Let them prove that such usurpation upon the rights of man, are more assailable, the more they are matured.

If the mass of our citizens are now republican, will submission to anti-republican measures, increase that Mass? Where are the converts made during the late eventful periods by this policy? Has it not already lost the advantage of the locality of political opinion in some degree? A fact, which violently opposes the idea, that party spirit is simply the child of nature, and evidently refers origin to artifice and management.

To preserve therefore the purity of the sound members, which comprise a majority, and by their help to administer medicine to the unsound, seems to be the only mode of restoring the body to health, before the prime vite are irreparably contaminated.

For it is my poor impression both that parties sufficiently malignant end in political exacerbation are not natural to a republican government really dependent on natural will, and also that there is nothing supernatural in the party paroxysm which now exists. If it arises from political causes, the cure must lie in the abolition of those causes; but if it is indeed owing to witchcraft, the spell must be broken by incantations on the part of the republicans. Every common rifle-man knows, that when his gun is deprived of its [?] by a spell, his remedy is to call

in the aid of some conjuror, more powerful than him who laid it on.

Does not your position "that the party game is for principles," countermand this current of ideas. Is it natural for all republicks to be divided upon fundamental principles? May not art and corruption produce such a division? Is man's natural propensity for liberty a sufficient curb upon this art and corruption? Monarchy will answer these questions. And let it prove, if it can, that an union in political principle is natural to man under a monarchy, but unnatural, under a republic. Of this I must doubt, until I see a republick so organized by annual & rotary officers—by breaking the intail of tax laws—and by equal representation, as to retain for the people, a real influence over the government. Constitutional paper vetos, are nothing, compared with a solid check, so woven into the form of government, as to be incapable of a separation from it.

You will evidently see, that the perfection, and not the scission of the union, was the object of the letter you refer to, to which end an appretiation of the strength of its soundest parts, will probably tend. A probability of which the reigning power is so well convinced, that it omits no means tending to its depreciation.

If persons, as well as principles are threatened, does not even self-preservation call for some measures. As to these I have opinions, but unless you should patronize efforts of the kind, I am convinced that they will prove abortive, and would of course aggravate the evil. For I must candidly declare, that I believe the chance is against a hope, that an individual will in a century, again unite the principles, powers, and confidence, adequate to such an undertaking.

These measures ought to lead to an amendment of the constitution, if party and persecution are its offspring. A variety of alterations might apply to the evil.

1. An extension of the right of suffrage, and an abbreviation of the tenure [?] of service.

2. Rotation in office. If kings find it necessary to change vicegerents to preserve power, let the people proffit from the prudence of princes. Is not merit in office more likely to seduce the people, than to decieve kings? The sole subject upon which talents operate, whether they be exerted to usurp upon despotism, or upon liberty, is the people.

3. A new mode of abrogating law. Why ought not the mode of repeal to be naturalized with the mode of legislating? The concurrence in favor of existence, ought to be the same with that necessary for creation. The existence of a bad law cannot require a less check than its passage, unless experience is more liable to error, than speculation; unless mankind are more injured by the creation of bad laws, than by their continuance.

If each enacting power could discontinue a law it would beget a new check upon party and faction by rendering advantages obtained under the annual tax laws. Standing armies are one cause of oppressive taxation. We prohibit one cause but tolerate the evil. Armies shall only be temporary, lest they perpetuate oppressive taxes, yet the taxes may be perpetuated under any other pretext.

Taxes are the subsistence of party. As the miasma of marshes contaminate the human body, those of taxes corrupt and putrify the body politic. Taxation transfers wealth from a mass to a selection. It destroys the political equality, which alone can save liberty; and yet no constitution, whilst devising checks upon power, has devised checks sufficiently strong upon the means which create it. Government, endowed with a right to transfer, bestow, and monopolise wealth in perpetuity, is in fact unlimited. It soon becomes feudal lord over a nation in villenage. Proffit, to be derived from a combination between the soil and the cultivator, constituted the absence of villenage. Power has altered

the means of extorting this proffit, from a regard to the interest of the master, not to the interest of the slave. Ignorant and barbarous power adheres to the ancient system of villenage, whilst the more artful, but not less despotic rulers of man, have discovered that he may be turned to great account by allowing him a normal liberty as an excitement to labor. Thus a nation becomes the vassal of a combination, cold pitiless and insatiable. Thus a temporary mitigation from individual benevolence, with which the feudal system was adorned and a chance of its subversion from its solitary weakness, by which it was restrained, are ravished from hopeless man. Avarice and ambition, entrenched behind perpetual taxation, in a disciplined corps, have become the lords paramount of the creation.

The limits of a letter forbid an enumeration of other remedies for the evil of party. The right of the State governments to expound the constitution, might possibly be made the basis of a movement towards its amendment. If this is insufficient, the people in state conventions, are incontrovertibly the contracting parties, and possessing the infringing rights, may proceed by orderly steps to attain the object.

I doubt whether I ought to apologise for this letter, long as it it, because every one has a right to explain himself—because your letter seemed to invite me to it—and because your charity will indulge me in the relief, afforded by prefering a portion of my political grief, towards the great hope for redress. But since government is getting into the habit of peeping into private letters and manufacturing a law, which may even make it criminal to pray God for better times, I shall be careful not to repeat so dangerous a liberty. I hope it may not be criminal to add a supplication for an individual—not—for I will be cautious—as a republican, but as a man.

May happiness & prosperity be your lot.

Caroline June 25, 1798.

JOHN TAYLOR TO THOMAS JEFFERSON.

[Richmond, 1798.]

It would be happy indeed for us, if agriculture and farming still continued to be interesting subjects—but alas! can we, when our house is on fire, be solicitious to save the kittens? How long is it to burn, or will it ever be extinguished? I would be almost content to save a single apartment.

If a sufficient spirit had appeared in our legislature, it was my project, by law to declare the unconstitutional laws of Congress void, and as that would have placed the State and general government at issue, to have submitted the point to the people in convention, as the only referee. This Measure seemed to be opposed properly to all those which have invested one man with despotic powers; for as it was the custom of the Roman aristocracy, whenever it felt itself in danger, to appoint a dictator, to see that the commonwealth sustained no injury, so the same office seemed to be peculiarly proper for a convention is a popular republic. Besides it was a measure calculated to attach to the real republicans the physical power of the State. It was however only a provisional project, and as you seem to disapprove of pushing on at present to this ultimate effort, I will forbear the attempt. Indeed there is yet but little prospect of its success.

An unsuccessful attempt was made to displace our speaker & clerk, and yet I believe it will produce good effects now and better in future. As however the disappointment might cause a damp on one side and strengthen the other from the sympathy of exultation, it seemed right to me to strike out immediately some proposition, which would rally principles into a mass, and furnish matter of private discussion without looking back. Accordingly on the next day I asked leave to bring in a bill "to secure the freedom of debate & proceedings in the Assembly"

upon the principle and precedent of the British law of Wm: & Mary, and upon that occasion hazarded some observations on the sedition law in general, & its tendency to consolidation in particular, by converting the state legislatures into simple organs of a superior power. The adversary was taken by surprise, acted distractedly, and some impression appeared to be made. The movement is very likely to succeed, because it applies forceably ad homines, and if it should succeed, it will be a bond and security for farther success.

The idea of reforming our jury establishment had struck me some time past, but was deserted on account of the difficulties which presented themselves, and the opinion that congress would disregard it. But I will try to forge something on the subject, altho' it should exhibit the rudeness of a first (draught?). Would it not suffice to confine it to pleas of the — *crown?*

Some resolutions have appeared here from Kentucky, not passed, but on the eve of passing that Legislature—as soon as they appear authenticated, the great effort will be directed to their approbation in the words of a *response.*

I would not wish my inclinations to be gratified by the slightest risque on your part—it is obvious that the common cause would thence also be exposed to injury—but whatever can be safely said, will be highly gratifying.

Health and happiness!

J. T. TO THE VICE PREST.

Caroline County, Feb. 15, 1799.

Your letter concerning a successor to Mr. Tazewell, took the rout to Richmond, and found me at home a few days past, for the assembly had risen before its arrival. It was my wish to have tried Colo. M[onroe] against Wood at the last session,[1] of which I informed Colo. Nicholas previous to its meeting, but it

[1]For Governor.

was prevented by a doubt of success. This however would have been a pledge for my exertions on his behalf whenever an opportunity occurred.

A decided character at the head of one government is of immense importance by the influence it will have upon public opinion. Even Wood has done great service to one side and inflicted a correspondent injury on the other. To this influence is also attached many essential powers which occasion will bring into view, besides the important one of commanding the militia. I have therefore always thought that the republicans have been too inattentive to the consequences of having a tory first magistrate & military commander of the state. The interregnum in the office of Senator is a little event which illustrates this truth. At the next session of assembly Wood himself will certainly be brought forward as a candidate.

The fluctuation, apparently, in the assembly representing appointments is for want of some of these characters capable of fixing it to a permanent system which our country could furnish, but unfortunately they will stay at home. I allude particularly to Mr. Madison as being able to condense our politicks with a view to some great object.

These efforts which could be made, are not made, as I really believe, that none which can be made will be successful, the omission of any so important renders our cause in my eye absolutely desperate.

Upon this consideration and upon that of our nations character I have made up my mind to get rid of that political strait waist coat, which accident threw on, and which has ever sat uneasily.

I hope I have mistaken our national character, but it appears to unfold itself by an insensibility to the efforts both [of] tyranny and despotism, exhibiting in the back ground sordid avarice and skulking fear. A tax-gatherer you think is the doctor

which will cure the disease; but this doctor is now under the protection of an army and navy, he may safely administer what doses he pleases. To take time by the forelock is therefore the only chance for time will otherwise benefit those most who play the whole game, nor is the use they have made of it already a proof that in future they will mismanage the advantage. An effort, upon some political promontory, to be made immediately in the Virginia legislature is the forlorn hope remaining. Yes, I have another, Philosophy teaches us to endure evil as well as to enjoy good.

Mr: Pendleton will not I fear be induced to comply with the recommendation of your letter which I have seconded with all my might. He has often amused himself by essays upon public measures which would have been very useful, but I have seldom prevailed on him to suffer them to be used. At this moment, he has by him an amiable satire upon these measures in the shape of presentments which the last grand jury ought to have made, and which embrace all the popular topicks, altho' they are strictly responsive to Judge Cushing's charge.

The business of juries propounded by the Albemarle petition was unavoidably postponed to the questions concerning the unconstitutional laws—the aspect of war—and the arming of the militia which absorbed our whole attention nearly to the close of the session, and left the members in such a state of impatience to get home that no important subject would have been taken up. The arms had been nearly defeated upon the score of expence, and as the same argument would have been used against the reformation of the jury system, its success, in the then temper of the house, was inevitable. Hence it would have been impolicy to hazard so probable a defeat upon a question clearly refering to the unconstitutional laws which would have fatally counterpoised the preceding victories gained by the republicans. It was their policy not to lose a question of importance.

Hereafter I mean to till a soil which promises to crown my labour with some success. Mother earth offers to her children subsistence & repose of which it seems to be their great business to rob each other. It was foolish to leave the bosom which nourished me for the sake of exposing my own to the unfraternal shafts of all the wicked passions. If upon returning to the pass [?], I find it yet sweet, in spite of the sherbat of taxation so copiously squeezed into it, you will probably long hence be troubled with another agricultural letter, 'till then, I pray God to keep you happy!

JOHN TAYLOR TO THOMAS JEFFERSON.

[May 6, 1799?]

Having removed to some distance from Mr: Martin's, his consideration of your letter of the 6th of April, and the drawing it covered, has been somewhat delayed.

He says, as indeed you will discover, that his amended machine, of which a drawing was lately sent you, has anticipated several of your objections, by having dispensed with the screw, and some of the wheels—that he has in the course of his experiments and reflections fully discussed the points of an inclined plane, and of causing the axis of the great spin wheel to be a feeding cylinder—and that the velocity and execution of his machine will he thinks considerably exceed the English invention, in proportion to the force applied.

He therefore earnestly requests you to obtain a patent for him, pursuant to his drawing, by which means the invention will be refered to the ground of merit. If it wants it, he can derive no benefit from it; otherwise, he thinks it not amiss, that his mechanical efforts in favor of agriculture, many impliments of which he has considerably improved, should for once retribute him in some small degree.

To this I will add that all those who have seen the machine work are in raptures with it. That above 500 are already applied for. That he has 40 workmen employed—and that by inventing modes for making each piece of his invention, he has enabled his people to finish the work in the time usually employed in laying it off, without using compass rule or square.

Mr: Martin regrets that he had adapted the workmanship of the drill to the purpose of husbandry, for which he supposed it to be intended, instead of having directed it to be finished in the stile of a model. He thinks he can extend his drill to any number of rows, and says that if you will exactly describe such a drill as you wish for, he will endeavour to supply it. The reason this enquiry is, that your letter contains two ideas upon the subject, and he is at a loss to know, to which you would give the preference.

We have had the instructions and negociation of our French mission for some time. They do not allay our suspicions of our domestic politicks. A calm or apathy seems to be the prevailing impression. Both parties are stun'd by the very expectation of what may happen. I see nothing to change the opinions which have long obtruded themselves upon my mind—namely—that the southern states must lose their capital and commerce—and that America is destined to war—standing armies—and oppressive taxation, by which the power of the few here, [as] in other countries, will be matured into an irresistable scourge of human happiness.

Will you be so good as to let me hear from you on the subject of Martin's patent as soon as it is convenient?

Farewell.

J[OHN] TAYLOR TO THE VICE-PRESIDENT.

Oct. 14, '99

[1]I have never seen Hamilton's pamphlet, but his idea of disproving one criminal charge, by confessing anotner, is at least novel, tho' it may not savour of his supposed acuteness. His speculations will only come to light, when his light is extinguished, and it may be a consolation perhaps to reflect that his children will enjoy them, and he will enjoy them, and he will have escaped an impeachment before our chief justice. Not Knowing he may not fear the constitution above.

But I give up all for lost. The malady of all governments is monopoly. This is creeping and creeping into ours. Here is a sort of abstract of the American constitutions published by William Smith L. L. D., in which he dogmatically settles sundry important political questions. He tells us that triennial elections—encreasing the power of one man or a few sundry modes—and of course diminishing that of the people will be ameliorations of the federal & state constitutions. And this book circulates, unanswered, like gospel.

Prosperity & happiness attend you!

J[OHN] TAYLOR TO JAMES MADISON.

Caroline Sept. 10. 1800

Dr. Sir

When Majr. Lindsay died, I have heard that you interested yourself on behalf of Mr: F. Taylor, as his successor. Colo. Byrd is now dead, and I take the liberty of informing you by the request of Mr: Taylor that he is again soliciting the naval officer's place at Norfolk.

I have heard Mr: Taylor frequently spoken of by merchants on this river, of opposed political principles, in terms of the high-

[1]A part of this, treating of agriculture, is omitted.

est approbation both as the naval officer in fact during Majr. Lindsay's time, and also as a man of well established reputation; from whence I concluded that you, knowing as you probably do, the same things, would feel a particular interest, in serving the public and advancing merit by patronizing him again with your powerful recommendation. And I wrote, because an opportunity of doing this would have been lost, unless you received the speediest notice of his application, a rapid decision upon which must inevitably ensue, from the nature of the case. I am with the highest respect & esteem,

### John Taylor to John Breckinridge.

Virginia, Caroline, Decr. 22d. 1801.

Dear Sir

An absence from home, when your letter arrived, has been the cause which delayed this answer.

I confess that I "have not abstracted myself from the political world" but I must at the same time acknowledge that this kind of world, of which I am a member, is quite distinct from that in which your country has placed you. Mine is a sort of metaphysical world over which the plastick power of the imagination is unlimited. Yours, being only physical, cannot be modulated by fancy. The ways of mine are smooth and soft; of yours, rugged and thorny. And a most prosperous traveller into the political world which I inhabit generally becomes unfortunate if he wanders into the region of which you are now a resident. Yet, as a solicitation for the continuance of your correspondence, I will venture upon a short excursion out of my own atmosphere, in relation to the subject you state.

By way of bringing the point into plain view I will suppose some cases. Suppose a congress and a president should conspire to erect five times as many courts and judges as were made by the last law, merely for the sake of giving salaries to themselves

or their friends and should annex to each office a salary of 100,000 dollars. Or suppose a president in order to reward his counsel on an impeachment, and the members of the Senate who voted for his acquittal, had used his influence with the legislature to erect useless tribunals, paid by him in fees or bribes. Or, lastly, suppose a long list of courts and judges to be established, without any ill intention, but merely from want of intellect in the legislature, which from experience are found to be useless, expensive and unpopular. Are all the evils originating in either fraud or error remediless under the principles of your institution?

The first question is whether the office thus established is to continue.

The second whether the officer is to continue, after the office is abolished, as being unnecessary.

Congress are empowered "from *time to time* to ordain and establish inferior courts."

The law for establishing the present inferior courts is a legislative construction affirming that under this clause congress may *abolish* as well as create these *judicial offices;* because it does expressly *abolish* the then existing inferior courts, for the purpose of making way for the present.

It is probable that this construction is correct, but it is equally pertinent to our object whether it is or not. If it is, then the present inferior courts may be abolished, as constitutionally as the last; if it is not, then the law for abolishing the former courts, and establishing the present, was unconstitutional, and being so, is undoubtedly repealable.

Thus the only ground which the present inferior courts can take, is, that congress may from time to time, regulate, create or abolish such events (?) as the public interest may dictate, because such is the very tenure under which they can exist.

The second question is whether the officer is to continue, after the office is abolished, as being useless or pernicious.

The constitution declares "that the judge shall hold his *office* during *good behaviour*". Could it mean, that he should hold the *office* after it was *abolished?* Could it mean that his tenure should be limited by behaving well in an office which did not exist? It must either have intended these absurdities or admit of a construction which will avoid them. This construction obviously is, that the officer should hold that which he might hold, namely, an existing office, so long as he did that which he might do, namely, his duty in that office; and not that he should hold an office, which did not exist, or perform duties not sanctioned by law. If therefore congress can abolish the courts, as they did by the last law, the officer dies with the office, unless you allow the constitution to intend impossibilities as well as absurdities. A construction bottomed upon either overturns the benefits of language and intellect.

The article of the constitution under consideration closes with an idea which strongly supports my construction.

The salary is to be paid "during their continuance in office." This limitation of salary is perfectly clear and distinct. It literally excludes the idea of paying a salary, when the officer is not in office, and it is undeniably certain that he cannot be in office when there is no office. There must have been same other mode by which the officer should cease to be in office, than that of *bad behaviour,* because, if this had not been the case, the constitution would have directed "that the judges should hold their officers and *salaries during good behaviour*", instead of directing "that they should" hold salaries during *their continuance in office.* This could only be an abolition of the office itself by which the salary would cease with the office, tho' the judge might have conducted himself unexceptionably.

This construction certainly coincides with the public opinion

and the principles of the constitution. By neither is the idea for a moment tolerated of maintaining burthensome sinecure officers to enrich unfruitful individuals.

Nor is it incompatible with the "good behaviour" tenure when its origin is considered. It was invented in England to counteract the influence of the crown over the judges and we have rushed into the principle with such precipitancy, in imitation of this our general prototype, as to have outstript monarchists in our efforts to establish a judicial oligarchy; their judges being removable by a joint vote of Lords and Commons, and ours by no similar or easy process.

The process however is evidently bottomed upon the idea of securing the honesty of Judges, whilst exercising the office, and not upon that of sustaining useless or pernicious officers for the sake of Judges. The regulation of offices in England, and indeed of inferior offices in most or all countries, depends upon the legislature; it is a part of the detail of government, which necessarily devolves upon it, and is beyond the foresight of a constitution, because it depends on variable circumstances. And in England, a regulation of the courts of justice, was never supposed to be a violation of the "good behaviour" tenure.

If this principle should disable congress from erecting tribunals which temporary circumstances might require without entailing them upon the society after these circumstances by ceasing, and converted them in grievances, it would be used in a mode contemplated neither in its original or duplicate.

Whether courts are erected by a regard to the administration of justice, or with the purpose of rewarding a meritorious faction, the legislature may certainly abolish them without infringing the Constitution, whenever they are not required by the administration of justice, or the merit of the faction is exploded, and their claim to reward disallowed.

With respect to going into the judiciary system farther at

present, the length of this trespass forbids it, and perhaps all idea tending towards the revision of our constitution would be superfluous, as I fear it is an object not now to be attained. All my hopes upon this question rest I confess with Mr: Jefferson, and yet I know how far he leans toward the revision. But he will see and the people will feel that his administration bears a distinct character from that of his predecessor, and of course discover this shocking truth, that the nature of our government depends upon the complection of the president and not upon the principles of the constitution. He will not leave historians to say "this was a good president, but like a good Roman Emperor he left the principles of the government unreformed, so that his country remained exposed to eternal repetitions of the oppressions after his death, which he had himself felt and healed during his life."

And yet my hopes are abated by some essays signed "Solon" published at Washington, and recommending amendments to the constitution. They are elegantly written, but merely skim along the surface of the subject without touching a radical idea. They seem to be suggested by the pernicious opinion that the administration only has been chargeable with the defectiveness of our operating government heretofore. Who is the author of these pieces?

Nothing can exceed our exultation on account of the president's message, and the countenance of Congress. Nothing can exceed the depression of the monarchists. They deprecate political happiness. We hope for the president's aid to place it on a rock before he dies.

It would have given me great pleasure to have seen you here, and I hope it may still be convenient for you to call. I close with your proposal to correspond, if the political wanderings of a man, almost in a state of vegitation, will be accepted for that interesting detail of real affairs with which you propose occasionally to treat me. I am, with great regard, &c.

JOHN TAYLOR TO JAMES MONROE.

City of Washington, Novr. 12, 1803.

Dear Sir

I should have taken the liberty of inclosing to you a letter to my son in Scotland, and asking the favor of you to let a servant place it in the post office, if the following occasion had not determined me to write to you.

Among the republican party here are individuals who in private parties censure you for not having used the appropriation of two millions cash to diminish the price of Louisiana; or for not having saved to this country the proffit made by the purchasers of its stock from the French government; or for not having changed the destination of the cash to be paid to our merchants as creditors of France, into an advance to the French government, for the purpose of diminishing the price of the purchase. Of all this I inform you in the strictest confidence, that knowing the fact, you may scatter among your friends a few private explanatory letters, as no doubt you can do, satisfactory as to these points without noticing that you have received any hint upon the subject; these explanations will be rapidly circulated among the republicans.

Some of us, in the conversation above mentioned, have hazarded a surmise, that probably the arrangements objected to, were necessary, for the purpose of conforming to the French custom requiring that their ministers who make a great treaty should be paid rich by it; so that if you were subject to any such constraint, a very distant hint thereof will have great weight upon the minds prepared to receive the impression.

This information is given to you, mearly from the consideration that your knowledge of it might not be unuseful.

The executive of Virginia, against my will, appointed me to

succeed Genl. Mason (who is dead) in the Senate—the appointment expires on the meeting of the Assembly—and I shall decline being in nomination for its revival. Of this I inform you, because before this letter can reach you, I shall have lost the power of serving you, or of acquiring information which may be proper for you to know; so that I would not wish to draw you into an unavailing correspondence, or even to put you to the trouble of answering this letter.

### John Taylor to James Monroe.

United States Washington Feb: 27: 1806

Dear Sir

Being at this place on private business, and hearing of a good conveyance to England, I seize it both to pay my respects and acknowledgements to you. The latter on account of an act of kindness extended to my son at Edinborough of which my son some time since informed me, by which he was aided in surmounting a distress inflicted on him by imprudences, trivial in themselves, but very afflicting to him for a period, because he avoided as long as possible to inform me of them. As soon as he did so, I remited to him the whole sum, sufficing as he stated, to relieve him, and I hope he has reimbursed to you that you were so good as to advance. If not, it will give me pleasure on the first opportunity to reimburse it, with interest, and to repeat my thanks. Will you be pleased to place in the first office the inclosed letter to him.

Things here are cloudy. A late minister is as successful in escaping censure, as he was in getting money. Those in the secret say that the government are unkind to you. I know not. But the suspicion excites some resentment on the part of your friends, among whom are most of the republicans I know. In Virginia this is not known or suspected. If it is true, I believe it would make that state more friendly towards you.

A third party between the federalists and republicans, recruited from both, is appearing in force. It is said here, God knows how true, that this third party are favored by the government. It is not the pensylvania 3d. party, not the Burr party of New York, but a distinct one. Yet those parties, being each too weak to effect an object, will shortly negotiate, and form temporary confederations. Symtoms of this begin to appear. The Clinton party of New York are said to be in your favor—the Livingston your foe.

The Virginia Assembly have wanted their wonted unanimity. Their divisions are yet trivial, and arise from the interests from banking—a system, spreading and forming a monied party. This will in my opinion join itself to the new third party.

But I suppose you will be infinitely better informed by your friends in the busy scenes of life, as to all these matters, than by a retired farmer. In that, my genuine character, I must tell you that our prospects are as good as they were ever known to be but, our prices low, owing to an hostile attitude in Congress towards England, which will blow over in case England should act with common prudence; as the public inclination bends strongly against it, without any other consequence than these low prices, so grievous to us poor tillers of the earth.

JOHN TAYLOR TO JAMES MONROE.

Caroline February 22d 1808.

Dear Monroe

Expecting to see you, I have forborne to unbosom to you in this imperfect mode some impressions made on my mind by your affairs; but the asperity to which the newspapers are rapidly conducting the discussion concerning the presidency creates an urgency for submiting the following observations to your consideration.

However far aloof you may hold yourself, you will reap the

harvest whether good or evil springing from the seed sown by your friends. Both the enmities & attachments they create will be visited upon you. A personal and lasting enmity from all or most of Mr: Madison's friends, and probably from himself, is to be one of your calculations.

If the federalists espouse your election, it will arise from a supposition that they are more friendly to England at this juncture, than Mr: Madison; or that it will split the republicans into exasperated factions. You cannot count upon any permanent friendship from them, both because they mean only to use you for their special objects, and because your principles can never unite with theirs.

In case of losing your election, you will probably lose all your future prospects, because the majority who have voted against you will become your enemies, the federalists will no longer be your friends, and a disagreeable sensation will be left on the minds of your real friends, from sharing in a defeat with the federalists and the Dewit [De Witt] Clinton party, which diminish their zeal.

This Clinton party is not a favorite; the old Governor is not considered as its chief; Dewit, [De Witt] if an ambitious intriguer, will desert you forever after the defeat, and probably become your enemy. It is very seldom that intriguing artists meet with an identical juncture of circumstances a second time, and therefore their support at one crisis is no security for it at an other.

In short an unsuccessful attempt will probably both close upon you for ever the avenue to the presidency, and utterly demolish your private fortunes. Consider well therefore whether these great stakes ought to be betted upon the chance of success. From what I can learn, it is certainly bad, probably desperate.

On the other hand lies a treasure of fame, wealth and honor, directly leading to the good I earnestly wish to see you reach.

Mr: Jefferson is unquestionably your best friend, and earnestly desirous of advancing your prosperity. The offer of the Orleans government, which I hear he has made and you have refused, is a proof of it. The opinion that he makes the offer to remove an obstacle to Mr: Madison's success is illiberal respecting both him and yourself, and certainly erroneous. I have no doubt but that your qualities for this post, the most important in the government, next to the presidency, was his first motive; and that he views it, in relation [to] the election, as beneficial to the country by preventing a great republican schism; and as beneficial to yourself, in shielding you from the calamities of a defeat.

I view it as the best road yet opened for you towards wealth and power. New Orleans is precisely the point at which you will become the idol of the western states. In a very few years these states will expect to supply a president, and must be gratified. As their candidate, the objection of your being a Virginian will either be answered, or over-ruled by the union of their votes, with your eastern friends. The votes by the erection of new states, and the progress of population, will become at the next census so numerous, as to be decisive, with the aid of this eastern interest. In the meantime you will occupy a station which will keep you in the public eye, which will furbish your fame, instead of its rusting in a corner, and which will enable you to improve your fortune.

These are benefits outstriping in my eye any which can spring from the loss of the election. The public good, equally with your private interest, requires you to reap them, if as I believe, that will be advanced by your being in the public service. It is by these convictions that the reserve of an old man has been overcome. It has only yielded to his good wishes for a nation he is leaving, and a friend in whose prosperity he can have no share.

With as much positiveness, as I ever formed an opinion, justified by the event, I believe that you [are] at the pivot of your

fate, that you ought to stop the canvass and decline the loss of the election and instantly accept the Orleans government.

The dangerous state of the country and the asperity begining to appear in the newspapers will enable you to withdraw from the contest with an accession of popularity. And the acceptance of a dangerous inferior post in preference to a prospect of a safe high one, can be also turned to your advantage.

Though such are my opinions, I have no idea of withdrawing from the ticket should you persevere, but shall contentedly immolate my little popularity in the funeral pile which will consume yours.

I make no apology for this letter, conceiving that its motive cannot be mistaken.

Addressed:

Colo. James Monroe
Richmond

JOHN TAYLOR TO JAMES MONROE.

Caroline Mar: 20. 1808

Dear Sir

It is quite out of my way to be in Richmond, as you purpose; and as my last was written, not to acquire information, but to suggest impressions for your consideration, there is no occasion to convince me that I am wrong if you are convinced of it yourself. Besides nothing which cannot be made public can have a material influence on the election; and curiosity only is too weak to draw an old man from his hearth.

The opinion of all your friends whom I have seen is, that a difference with Mr. Jefferson will destroy your popularity. Many have never even conceived its possibility. And a multitude

would desert you, if it was avowed that you would change, and Mr: Madison adhere to, the system of his administration.

Present appearances indicate a project of a coalition between Clinton and yourself on the ground of his being president. To me it seems preposterous and baleful. Is it likely that the nation will give up Jefferson on account of his age and elect Clinton? Can a man, declared by the constitution of his own State, to have been 20 years unfit for an inferior office from old age, be fit for the presidency of the United States? It is an essential object of our policy to avoid dotage and infancy, with the gradations between both, and the space of man's most perfect state of intellect. He arrives not to this state until 35, says the constitution; and altho' it leaves his departure from it to the discretion of election, it never intended thereby to insinuate, that intellect could be expected to remain unimpaired until eighty; or that its imperfection, tho' excluded from the presidency on one side of maturity, was a good repository of it on the other. I believe a majority of your friends in this State would prefer Mr: Madison to Mr: Clinton.

I should be sorry that my fears should be tested by experiment, being convinced yet that the public and yourself will suffer greatly in making it; and I wish before you venture on it, that some one at Richmond would collect information from your well informed friends, dispersed throughout the country. My ideas are I know entitled to very little weight, as arising from a very narrow sphere.

Whenever the considerations which have prevented you from visiting this neighborhod shall cease, it will be extremely gratifying to [see you here.]

Addressed:
Colo. James Monroe
Richmond

### James Monroe to John Taylor

Richmond Jany 9. 1809.

By Dr. Hoomes I lately recd. the Heard's

yr. oldest son called here sometime since in my absence &c—

I hardly ever say any thing respecting our publick affrs. from the relation they bear to me & never where my motive can be suspected or misrepresented. With you I may disperse with that reserve. They appear to be involved in great difficulty, and I am sorry to say that I do not perceive any place presented to us wh. seems likely to extricate them at an early period. The alternative wh. the rejected treaty offer'd wod. have placed us on a good footing with one of the powers, the desideratum so much deplored by the Committees of Congress. In reasoning on the general topick the Committee states that if we stood well with either party, we might oppose with better effect the other; but that it is embarassing to the most firm to encounter in actual war both at the same time. It is a little remarkable that in a private letter to a member of the admn., wh. was sent with the treaty I stated "that it was important to us to stand well with some one power." Had the admn. closed with the treaty, they wod. have made it as popular as they made it unpopular by rejecting it, & the very profitable commerce wh. we enjoyed wod. have been secured & improved to us. By arranging our difficulties in peace with England her merchants would have calculated on its preservation, & embarked most extensively in trade in our bottoms & in connection with our merchants. The interest in that country for the continuance of peace wod. have increased daily, & been too powerful for the present ministry to have disturbed it, especially when the ex: ministry who would have been interested in its support, and watched every violation of it, would have been ready to fall on their successors in such an event and

excited a general clamour throughout the nation. By rejecting the treaty the voice of the ex: ministry is silenc'd & the whole nation unites political parties united against us, at least so far as to render the opposition on this point quite feeble. Had the treaty been accepted our standing with France would have been much improved, for in that case a pressure from her, by tending to involve us in a war on the side of her antagonist would have been against the most obvious maxims of policy. In my opinion the ratification of the treaty would have prevented any explanation of the decree of Berlin, which varied from that given in the first instance, by the minister of the marine to Mr Armstrong. It is a remarkable fact that that explanation (the enlarged one) was not given by the French govt. until it was known that our govt. had rejected the treaty, as it likewise is that the orders of the British council, were not issued untill after the treaty was set aside as well by the British ministry, as by our government. I had never had a doubt that by accepting the treaty, we shod. have placed our govt. & country on high & triumphant ground; that we shod. have raised it to consideration among nations, while we gave credit, strength & stability to free govt. at home. By taking the other course we have lost the advantages, so far, nor do I see much prospect of regaining them soon. The coercive experiment which we have made, has not succeeded as yet in its object, and if it fails, it will do us incalculable injury not simply in the effect most sensible felt at home, but in other and perhaps more important respects. The embargo as a weapon to be used as a menace could not have failed to be a powerful one. But if the experiment proves its inefficacy, by shewing that Sheffield's predictions were true, that the British colonies & G. B. could live without us then it ceases to be an object of terror in future. The interior of our affrs. does not present to view a prospect much more favorable than the exterior. The ascendancy wh. the Essex Junta has

gained in Massachusetts is a very awkward circumstance. Federalism was at one time completely overwhelmed. It seems to revive in that quarter with considerable force. Of the great influence of that State over all the other States to the Eastward, we have had much experience in past time. Should collision take place between it & the general govt. on the subject of present measures, it is not easy to foresee the consequences. It is to be hoped & presumed that it would terminate in the complete political ruin of that Junto. Even in that case it would have been happier that the incident had not occurred.

In that state of things I have thought that the most decisive support of the govt. was the wise policy. It is not now a question of [by] what means we were brought into this distressing dilemma, [but] by what means we are to get out of it. We can only get out, in the constitutional mode & and by the exertions of the govt., aided by the people. The cause of the present embarassments has become an affr. of speculation for history—but it requires an united effort of all parties to surmount them. These hasty remarks are only for yourself. Having had to acknowledge the rect. of yours, I could not well confine myself to the subject of it.

Endorsed by Monroe: Col. Taylor.

### John Taylor to James Monroe.

Caroline Jan: 15. 1809.

Dear Sir

From the account Edmund gave me of your reception of him, I supposed that I had done something displeasing to you, and I was thinking of writing to you to know what it was; I am therefore glad to find that it arose from his own carelessness in not making himself known.

I entirely agree with you that the support of the administra-

tion has become absolutely necessary, not that I think that it can now have much influence on our foreign relations, but for the sake of supporting republicanism at home. It is extreme folly to suppose that the bulk of the people are influenced by abstract political principles; such was never the case with any nation. Neither the principles of the former administration, nor of the latter, caused their change of places or degrees of popularity. Both was done by taxes imposed and removed. And the federalists and tories will work as effectually with whatever grates the popular feeling, as the republicans did. A union of the latter may suspend the effect of the efforts which the former will make, for some short time longer; but nothing except some fortunate change of circumstances can ultimately defeat them.

You know that the treaty always seemed to me a good one, and its rejection impolitick. Had it not prevented the British orders of council, which must forever remain conjectural, its infringement by such orders, would have united us. And had it prevented those orders, it would have produced a state of things infinitely preferable to that which has occured. If a symptom of its being likely to do any good had appeared, I intended to have attempted a course of essays in defence of it, but instead of this upon hearing unqualified condemnation of it from all who favoured Mr: Madison, few or none of whom had ever taken the trouble to consider its provisions, I thought that a discussion of it at the prejudiced epoch, would do no hurt to one at a period less passionate, and have a tendency directly the reverse of my object. Nor am I sorry that I forbore to make an ineffectual experiment. I do not myself see anything omited in the affair of the treaty, which could have been done, except an answer to the note of the British commissioners, protesting against the reservation they pretended to claim. This, and this only, I will candidly say, seems to me to have been an oversight, but not one, which ought to have destroyed the treaty.

The profession of a statesman seems to me, to be one of the worst in the world. Neither talents or virtue, nor both, can secure a reputation for both or either. Not in the treaty, but on the concurrence of the government, depended your reputation to a considerable extent, for talents and virtue. Not on the embargo or non-intercourse projects, but on Bonapart's success in Spain, will depend also the reputation of the administration for the same qualities. Both you and they undoubtedly have intended well, and yet, though these intentions might have been as wise as good, a thousand accidents without the control of both, may procure censure for acts meriting praise; as they often also procure praise for acts meriting censure.

But I cannot help thinking that Mr: Jefferson, and even Mr: Madison also, are too liberal and wise to overlook such considerations, or to be governed by blind vulgar prejudices; and therefore, however they may have differed from you in opinion, I still believe, as I have before suggested, that they remain your firm friends. For I cannot entertain the least idea, that the presidency had any influence in the affair of the treaty. Surely these men cannot belong to the class of unprincipled statesmen. I rather think them obstinate in opinion, than versatile for the sake of experiment. But if it is otherwise, and the rejection of the treaty was mearly a will to secure the presidency, as some think, the end being attained, no motive remains to prosecute you further, but on the contrary a disposition to make amends, and the obvious advantages of accommodation, will I think cause the olive branch to be profered, and I intreat you cordially to accept it.

Addressed:

Colo. James Monroe

Richmond

JOHN TAYLOR TO JAMES MONROE.

Caroline Novr. 8. 1809

Dear Sir

Your favour by Mr: Stanard[1] would have been answered sooner, except that I was at a loss whether to direct you in Albemarle, or at Richmond.

It would give my wife and myself a great deal of pleasure to visit you and Mrs: Monroe, either in a cottage or a palace. Probably it would be purer in that which would inspire most simplicity and candour, there being a wonderful sympathy between externals and internals—between spirit and matter. But we are poor travellers. Habit bends souls and bodies. Such a journey must appear to us through one end of the teliscope, and to you and Mrs: Monroe through the other. The obstacle of distance to our visiting you, is infinitely greater than the same obstacle to your visiting us. It is enormous to those who seldom measure half a county, but nothing to those who have twice measured half the globe and, without a frape, we should be very glad to see you.

My book![2] Yes, I have written one, so blotted and interlined by keeping onwards ten years in fits and starts, and finding upon going back a multitude of angles and windings to be streightened, that Stanard and his assistant, seemed to me to stand agast at the idea of deciphering it; and as the thought of printing it was suggested by the idea of helping on Stanard's paper, by suffering him to insert any extract he chose, I of course yielded to their difficulties. Indeed I rather inclined to think them sound, for my scrip is hardly legible, and the composition needs no typographical mangling. It is intended as an answer to John

[1] E. C. Stanard, editor of a paper called "The Spirit of '76."

[2] An inquiry into the Principles and Policy of the Government of the United States, printed in Fredericksburg in 1814.

Adams's book, and an antidote against sliding into the English policy upon the skates of legislation. I intended once to have asked Mr: Jefferson to read it before it went to press, but there I am wrecked, whilst several who laugh at his principles and talents, have crept under his surtout. I think I shall print it if I live long enough to finish its correction (for I cannot copy it) and this has stopt for some months, and when it will end, I can not forsee.

I have forgotten publicola, nor have I a copy. That both the Adams's are monarchists, I never doubted. Whether monarchists, like pagans, can be converted by benefices, is a problem the solution of which I always feared Mr: Madison would attempt. A tincture of English political rudiments is discernible in the federalist, and though I believe him to be republican in the main, yet the gulf betwen the English policy and ours is rendered so narrow by these old impressions, that a politician of any activity can skip from side to side with vast ease, as even the elder Adams is alert enough to do, though he is but an awkward jumper. Oh that Mr: Madison had been a minor on the 1st. day of January 1777.

However, I heartily wish to see the republicans united, and that you and he could make friends. If his measures should not please at all times, they may yet preserve our excellent form of government in statu quo. The best of the Roman emperors were accustomed to adopt successors with a view to the public good, and our bureau of state has been accustomed to contain the presidential ermine. Mr: Madison I think ought to have immolated all his private griefs at the shrine of public good, and to have imitated these good emperors. By appointing you he would have closed a breach, and extended the republican confidence in himself. And should he yet incline to change his adoption, I have no hesitation in saying that I think your sacrifice ought to meet his at the same altar.

I hear that you are on good terms with the old sachem of our tribe. His fame would have been greater except for his goodness. Had he converted into reality one more of his good notions (the necessity of a good militia to a free government) the splendour of his orbit would have been unrivaled, our armies and gun boats have been worse than ciphers, whilst the money expended upon them, might have been applied to the decimal profit of a solid militia. But this goodness has in some cases kept him in the beaten tract, and in other exposed him to the influence of advisors. He will however resume all his former opinions none of which have I yet seen satisfactorily exploded even by himself.

I write very freely because I consider myself out of the world. Infirm as well as aged, I have more commerce with it than I wish, but I am lessening this commerce by giving away my estate as fast as I possibly can, to my sons. There is of course nobody better qualified to sympathise with you in the happiness of your retirement. It will be wonderful however if you can instantly so completely change your habits as to make money by agriculture. Be careful not to risque too much on the experiment, and rather keep a few eggs hatching in some of our money aviaries. If you would spend a week with me, I would drill you with seven days agricultural talk, uttered, like an anatomical lecture, with the subject lying before us.

Farewell.

P. S.

You must excuse me for paying the postage. I do it from the supposition that letters pour in upon you in such numbers, as to produce an accumulation of postage, like that of water from the junction of a multitude of streamlets.

JOHN TAYLOR TO JAMES MONROE.

Caroline Feb: 10. 1810.

Dear Sir

I promised to inform you whenever Mr: Magruder should sell Capt. Bankhead's land. Mr: Robb, I am informed has purchased it, and sold his own to Mr: Lightfoot for $10,000. If it should be necessary, as I suppose, for you to take a trip to Port Royal to secure this debt, it will give me pleasure if you will make my house your home.

It is said that Stanard's paper is gaining ground. It seems to me important for your interest and the public good that it should do so, but if I may judge by a comparison of stile, not more than 2 or 3 persons have hitherto lent it any aid. These will soon tire, the paper grow sick and die. It only wants a few tolerable writers to make it succeed, because its principles are plain and popular. Is there nobody who can put about half a dozen in motion? Unless you forbid it, an address will e're long appear in it to yourself, accusing you of some deficiency of duty to the public, for not giving it a full and candid history of your negotiations, in England, or even during your last trip to Europe. And requesting to know, whether there is any truth in the reports of a humiliating office having been offered to you. Such are undoubtedly abroad, but from what source I am unable to conjecture.

The anguish of the unproductive sacrifice of about an hundred millions, by the rejection of your treaty and the embargo and non-intercourse substitute, seems to have screwed up some gentlemen to a wish for war—expecting a cure from this hot medicine, as peppermint cures the colic; but the public opinion has screwed them down; and after they have wasted another hundred millions in commercial projects, they will find out that the

treaty was a very good one. It is infinitely better for us to waste our money than our liberty on projects of statesmen, and so as a citizen I rather exult than complain, and bless our friends for leaving us that which is above all price. With hearty wishes for your prosperity.

Addressed:
Colo. James Monroe
Milton, Albemarle.

JOHN TAYLOR TO JAMES MONROE.

Caroline March 12. 1810.

Dear Sir

The inclosed (returned according to your request) disclosed to me for the first time, the handsome compliment of reporting you as a defaulter even for your salaries. Was Mr: Jefferson to be now exhibited as one to the amount of $200,000 received for his presidential salary, it would be as friendly and honourable an act towards him.

Whether you should still adhere to a passive system, and rely on the lessons taught by events, or commence a thorough defence of yourself and even carry the war into the enemy's country, are questions which you can best consider and decide yourself. The danger of each system is obvious, whilst the result of either is doubtful. By the first, you will risque public oblivion, and a future reception like that of an old tale—by the second, a defeat from the power of your adversaries. Which will be the greatest risque, is the simple question. It is one, which from, the inclosed detail returned, is evidently in my view to be considered in connexion with a settled purpose to suppress you. The combination between an artful excitement of a pecuniary suspicion, and a contemporary proposal of an artful banishment,

leaves no other inference. Whether this suppression is to be resisted or submited to—whether it is an evil or a benefit—and whether it is to be avoided or courted, are questions indivisible from the mode of doing either, exhibited by the above alternative.

It would give me great pleasure to serve you in Bankhead's affair, and I will attempt it in any mode you may suggest, but for an abundance of reasons, too long, and also improper to trouble you with, I have an entire conviction, both that it is utterly impossible for me to render you any service in that case at present, and also, that unless you come down yourself, instantly on the receipt of this, and secure the debt, it is certainly and inevitable lost. You may I think form your determination, and upon an absolute reliance upon this opinion.

Lightfoot says nothing to me of his affair with you. As to the postage, it seems to me that I ought, with every body else, to pay all between you and me, because the multitude of letters drawn upon an individual by public services, would otherwise cause those services to beget penalties instead of compensations; and would place your friends by the side of the administration, which has paid you with that currency, for supporting it by your labours. For this reason I did wish, and yet wish to do it.

My book is revised slowly. It has hardly been looked [at] since you was here, owing to my having generally had company. The transmission of sheets to & fro would cause a loss, which, though it might beget little or no chasm, would cause me to repeat an operation, which I have already repeated 2 or 3 times, that of paging the manuscript. With great respect and esteem, I remain, &c.

### John Taylor to James Monroe.

Caroline June 15. 1810.

Dear Sir

Your letter of May 9th. came speedily to hand, but was not

answered, because it intimated an intention of writing again shortly, and a postponement of the answer might probably save you the trouble of receiving a useless letter. I informed Mr: Magruder of the favorable event in relation to Capt. Bankhead, and your desire that he would forward you the reduced balance by post. If he has not done it, and you will inclose me an order on him, I will endeavour to collect it for you.

Your reception at Washington corresponded with my anticipation. Nothing is more easy than to estimate the enmity or friendship of people in power, because it is graduated by well established rules. I have always thought as my letters have expressed, that Mr: Jefferson and Mr: Madison had some morever [?] friendship for you, which a perfect subordination on your part would have preserved, and the embers of which the fuel of political considerations, will re-kindle. Nothing has of late given me more pleasure, than that the blaze of this fuel, has had light enough to enable the government to see justice in the affair of your account; but I can not foresee what other fruit you will reap from it; nor whether supine or active policy is most likely to advance your prosperity, for which, as I think it likely to benefit the publick, I most heartily wish.

My conceptions on this question are, that an accommodation with the present policy, will lose you such of your friends, as differed with it, because it is really Mr: Hamilton's system, which bears cruelly upon the agricultural interest; and as thinking it extraniously unwise; in fact, that those who acted from honest motives will adhere to their principles, and separate from you, if they should think that you differ from them. That those who differed from the administration from private disappointment, will be very glad to make their piece under your auspice, and will zealously advance your interest, from a hope that you will be one day able to remunerate their services, and make them amends for former miscarriages, and that the candidates for

popularity among the administration party will generally exert themselves to keep down so dangerous a rival as yourself.

If the first section of your friends were tolerably numerous, and could be made active, I am inclined to think, that the very niche in the temple of fame successfully occupied by Mr: Jefferson, before his presidency, in opposition to Hamilton's system, is more invitingly open to you, and that by boldly steping into it, you would advance towards the presidency. Otherwise the supine system, or waiting for the leaves in the book of accidents to be turned over by man's instability, to some chapter in your favor, might be a safer course.

The second section of your friends, are, I hope, few; wherefore, and as their zeal would depend on your prospect of success, however useful they might prove on an emergency, they are not to be permanently relied on. They are of the DeWitt breed, so correctly anticipated in my letter at the commencement of the presidential contest.

If the present administration should give the Hamiltonian system a few hard blows, nothing would preserve the first section of our friends, but your public approbation of it; for the whole of this section would in that case give it their most cordial and earnest support. Of this some possibility exists, because no private compact with the federalists having been necessary to fix Mr: Madison's election, none was probably ever made; and the government may be therefore now at liberty to attack the Hamiltonian system.

This small contribution of materials towards the estimate you must make, flows from motives, every one of which I should most willingly expose to you without the least reserve. Alone they may be of little weight, but treasuries themselves are made heavier by pennies.

What I did in the account affair could not render you much aid. Perhaps the confidence expressed of its justice might add

somewhat to yours in its vindication; which was I confess the chief end I had in view; for I thought the magnitude of the charge, seemed to have operated as a discouragement, which I feared might in some degree lessen the force of your own efforts. For my part, I think the remaining item as much in your favor as any other; nor do I see the least impropriety in your pushing the claim, if you have a prospect of success. I am with great respect and regard, Dr. Sir, &c.

### John Taylor to James Monroe.

Caroline Octr, 26. 1810

Dear Sir

Your two letters of Sept. the 10th & Oct: the 25th under one cover, reached me yesterday, and it gave me great concern, that my habit of dashing out thoughts as they happen to rise, should have caused you so much trouble. In much of the matter of the political letter, we agree; in some we differ, as I was previously aware, particularly respecting a fleet; my own aversion to which had caused it to be disclosed to me several years past, that you had recommended one. I still think that it would only serve to excite wars, squander money and extend corruption. Of the latter, our yards and docks for building and equiping canoes only, have already created a stock above punishment and even shame; and this is, I think, enough.

My letters to you have long since shewn that we concur in relation to Mr: Jefferson and Mr: Madison. I wish they were as little displeased on account of my not liking some of their opinions, as I am on account of their not liking some of mine. Those who invariably agree with great men, are governed by a want of understanding or of honesty, and are fit for tools, but not friends. Yet the most powerful man in all nations, loves these tools better than friends, and considers independency of mind, not as a virtue, but as a vice, and a very great one too.

But we differ widely about parties. I think that the republican minority originated at a much earlier period than you state, and upon very different grounds. There were a number of people who soon thought, and said to one another, that Mr: Jefferson did many good things, but neglected some better things; and who now view his policy, as very like a compromise with Mr: Hamilton's. The persecution of a few individuals for obeying or affecting to obey their consciences, only discovered that which before existed; and which would have been discovered from some other cause. This mixture of federal and republican policy gained no federalists and disgusted many republicans. What could reflecting republicans see in a compromise between monarchy and democracy? And what can they now gain by forbearing to withstand it? Federalism, indeed having been defeated, has gained a new footing, by being taken into partnership with republicanism. It was this project which divided the republican party by changing its principles from real to nominal; and it ought to be met and opposed in all its pernicious consequences.

The tendency of the national temper to adhere to presidents with party zeal, is I think so far from being justified by the elective nature of the presidency, that it seems to me more dangerous to place a president at the head of a predominant party than a king. All history shows that the most ambitions power hitherto invented is an elective individual executive. It pants for uncontrol and permanency. Hereditary power has seldom anything to gain. A president at the head of a party stands above constitutional checks, and is possessed of the very best means for surmounting control and procuring permanency. His object to overturn a constitution; that of a hereditary king to maintain one. The moment therefore a man is made a president, he ought to be discarded as a party leader. To a republican

party he must either be an object of distrust, or it must become for him an engine for ambition.

I entirely agree with you, that the fate of parties or of individuals is not balanced a moment against the public good, and of course I infer that the minority as it is called, ought to disregard the former and steadily pursue the latter. But I believe a manly avowal and defence of their principles, will be more likely to raise this little party in the publick esteem than an attempt to insinuate itself back to the place of its disruption, which will be considered as a confession of guilt or error, and permanently attach to it the character of a fragment. Your recommendation to our government to take a manly attitude towards Spain and England, so happily indicated in your letter, would furnish a parody for this subject. If it would have been wise for a weak nation to have resisted the injuries of three strong ones in a contest to be decided by physical force, what may not a weak party hope for in a contest against two strong ones, to be decided by moral truth. The umpire was certainly against the weak nation, and may possibly be for the weak party. Galileo conquered the prejudices of a world, and Tom Paine those of 13 states. Sundry old republican principles, however violated or neglected, are still circulating in the body politick. Your talents, celebrity and persecutions, are all vantage grounds for engaging in their vindication. In short I believe, that if half a dozen tolerable writers would assiduously bring publick measures to the best of these sound old republican principles, they would force a respect from the government highly beneficial to the nation; and stand as good a chance to acquire publick respect as by any selfish, submissive or penetential oblation to executive influence.

Perhaps my notions, being imbibed at a period, when the ardor inspired by a military struggle for national existence, had smothered selfish designs, are not calculated for one of a political strug-

gle for wealth and power; but I believe that a great majority of the nation take no interest in the latter, and would keep the combatants upon this mephitical arena in good subjection, if it had distinguished and disinterested people to tell plain truth, and impress sound principles. If I am wrong, the sun of our liberty has passed its meridian, and will of course speedily set.

With respect to your entering into public service under the present administration,—should an eligible station be offered you, I never had the least doubt. Whenever the national interest comes in question, party and personal considerations go out of it, nor could any quarulous of your friends justify you for losing an opportunity of serving your country.

The sincerity of the dialogues of the dead, is so very fit a model for one who must soon be initiated into that agreeable society, and whose political death enables him to anticipate its pleasures, that I have gotten into the habit of expressing as I can, what I happen to think, and as habits are stubborn, I hope you will pardon my inability to bend them.

So far this letter was finished when your brother called. Company had prevented me from affording any attention to the legal questions suggested in yours, and as the political trash was of no consequence, I kept the answer until I could do so.

It seems to me that you had better settle with your unkle's legatees by a friendly suit of chancery; that if the questions are intricate, the chancery at Richmond is preferable to the county court; that the creditors need not be parties; that however you should bring the certain and also the possible amount of debts in view, to retain a sufficiency to meet them, under the authority of the court; that Yates's mortgage will have its full effect, if he had no notice of your title, or if its consideration was employed for the benefit of your unkle and yourself; that if he had notice of your title, and you derived no benefit from the money, the mortgage will not be allowed to injure your rights; and that it

would be better for you to buy the lands at publick sale, leaving yourself at liberty to sell them if you can at an advance for the legatees, or not, than to take up the debts on their security, which may produce a question, whether after paying the debts you will have a right to sell the lands at all; besides other inconveniences. Farewell.

Addressed: Colo. James Monroe
Albemarle

JOHN TAYLOR TO JAMES MONROE.

Caroline Novr. 25. 1810

Dear Sir

Major Woodford has some intention of becoming a candidate for an adjutant general's place in the gift of the assembly, and asks me to write to you on the subject, which I cannot refuse to do, first because I think him well qualified for the place, 2ly. because he is a worthy good man, 3ly. because he is a warm friend of yours, and lastly because I respect him highly and his daughter is married to my son. Perhaps on the score of the last consideration, I have said enough already, and what I shall add may be saying too much; for I confess that I am partial in my feelings towards him; and perhaps this very partiality may cause me to say too little; but I will endeavor to make these inducements balance each other in giving an account of his pretentions. Woodford, as you know, is the son of a man of merit who lost his life in the revolutionary war. This circumstance ought to obtain for him a preference over one who cannot urge it, but not over one who was himself an old officer, supposing the qualifications to be equal in either case. If a competition should occur with a militia officer, I do not believe that any such a competitor may be less so. But if in the latter case the qualification should

be equal, Majr. Woodford's disposition would undoubtedly induce him to withdraw from the contest. Majr. Woodford's military attachments copiously supply him with that zeal, so good a sponsor for exertion, and the best pledge for acquiring perfection, towards which, as regards military discipline, it has already caused him to make a considerable progress. His family is very numerous, and his fortune considerably impaired, not by any vice, but by liberality of temper, somewhat too great.

As I am writing, I also beg leave to ask your attention to an application from St. Mark's parish concerning an academy, and if it should need any assistance, and meet with your approbation, that you would lend it your countenance. The facts stated in the petition are all true.

Your last letter corresponds with my way of thinking. I never approved of anti-administration party, or of seeing our party system made up by the English model. An independent habit of approving or disapproving of the measures of government according to one's own conscience and judgment is better calculated I think for a republican meridian; but even this I admit ought to be restricted by prudence, and by no means suffered to riot in trifles. Hence I approve of every sacrifice of resentment and caprice for the public good, and applaud a forgetfulness of injuries for its advancement. And hence too I may probably differ with some of your friends in thinking, that if the government should happen to offer you an employment, not derogatory to your character and station, in which you may be able to render essential services to your country, that you ought in pursuance of your line of conduct hitherto to accept it with out hesitation. Yet I acknowledge that I believe a sound republican party, guided by principles and uninfluenced by names, is the only substantial security in nature, for the preservation of that freedom of government we at present enjoy. Upon public measures I have no less exercised my freedom of opinion, in

admiring many acts of Mr: Jefferson's administration, than in disapproving of his rejection of the treaty; nor do I see any value in the first, except the propriety of exercising the corresponding right, is admited. Upon the same grounds, I should applaud Mr: Madison if by his prudence we escape the visible trap set for us by the French emperor, and if there is any value in such applause, it must be reflected from the right of censuring him, should he lead us into it. And such I think is the complexion of all sentiments I have ever expressed; or at least that will serve as an explicit explanation of whatever I may have written to yourself, for which purpose these observations are intended.

From the first I considered and shall continue to consider your letters as confidential, but as Genl. Minor has informed me that some of your friends have seen a copy of that written before your journey to London, the responsibility attached to this confidence will not of course rest on me alone.

Addressed:

Colo. James Monroe of the Assembly, Richmond
Favored by Maj. Woodford

JOHN TAYLOR TO JAMES MONROE.

Caroline Jan: 31. 1811

Dear Sir

Yours of the 23t. inst. reached me this day. I do not often obtrude my "unreserved sentiments" which you ask for, on any body; because on sometimes doing so, with the best intentions, I have lost a friend whom I would rather have kept. But as you ask for them, you will not have the excuse of my taking an unreasonable liberty, for inflicting on me that calamity. I shall therefore make the most of the privilege you ask of me. Indeed your having borne philosophically the letter advising you to

withdraw from the competition for the presidency (calculated very well as every body will allow to inspire resentment) induces me to think that I may venture in my correspondence with you, to express my own opinions, without being cruelly punished for it.

You will probably lose your affiliation with the administration party, however guarded such of the republican minority, as possess a personal dislike for the men in power; and you will also lose the simpering of federalism for having crossed its intention. This is guess work with me however, for upon my faith, though I belong to this republican minority, and probably always shall, the ligaments which tie its members together are quite unknown to me; and therefore I am unable to discover, whether you have broken them, or how I shall myself avoid breaking them. I do not think I break them by approving as I most heartily do of your having taken the office you now hold. You can serve your country and follow your conscience in that office, and how either should offend the republican minority, I can't see. If indeed you should get the presidency as I hope you will one day or other, it would probably be an irreparable breach with the republican minority, should any such party then exist; because you must in some measure suffer yourself to be taken in tow by an administration party; and I do not recollect in the history of mankind a single instance of such a party being republican. Should I live to see that day, I hereby give you notice, that you are not to infer from my espousing your election, that I will join a party yell in favor of your administration; No, no, the moment you are elected, though by my casting vote, carried an hundred miles in a snow storm, my confidence in you would be most confoundedly deminished, and I would instantly join again the republican minority. I would however no more suppress a coincidence, than a difference of opinion, with my administration. But as I can never be brought to believe, that the monarchical principle of our constitution is a good guardian for the republican, and as

it will always pretend to be so, it follows of course, that I am destined to live and die a republican minority man.

For such a man your letter to Johnson would make a very good creed, and such a man cannot therefore quarrel with you for writing it. Its amount is that you will approve and disapprove of the acts of the government according to your conscience. This is the sum total of what I understand by minority republicanism. Majority republicanism is inevitably, widely (but not thoroughly) corrupted with ministerial republicanism, and it is also tinctured with the folly of certain sympathies, towards strong parties, popularity, and noise. Now the business and view of a true minority man is to unveil ministerial republicanism, and to awaken honest majority republicanism, when it is riding with its eyes shut directly from its own object, on one of these jack asses. Nor have I written or said any thing with any other view. In the same design I wished to see you engaged, as both leading to the presidency, and providing a national temper to control you, if you reached it.

"What is all this profession to me" say you. "I wanted your opinion of my political conduct, not an avowal of your wild notions."

I will tell you. An explanation of my notions is an explicit answer to your inquiry. Call not what I say, profession. Look at my private letters to yourself. You will see in them attempts to soften your resentments; you will find I think unequivocal opinions in favour of your taking an office; and you will not meet I think with anything which will prove that this letter ill accords with the tenor of my former conduct.

As to your shewing the letters you wrote to me, or even the answers, I had not the least objection to it. I think I understood before the assembly met, that you had shewn them to two of your friends, but I did not consider this as releasing me from your inhibition to do the same. However, after having learnt

that they were shewn in Richmond, I thought it would accord with your wishes, to shew them to Mr: James Garnett, and I mean to shew them also to Doctor Bankhead, when he recovers of an indisposition with which he is now afflicted.

Your friends in Washington before they heard of your late appointment, were, in my opinion, about to do a foolish thing. It was meditated to start the *Spirit of '76* as a professed party paper to enter upon a contest between yourself and Genl. Armstrong for the presidency. I have not heard how your late election has operated on the design. My plan, which I have striven unsuccessfully to effect, was to start that paper upon broad and liberal ground—to write it into circulation—and to get it into a state for being read before it was trusted with any important object. Such a paper would have ten times the effect of a party paper. Had you and Mr: Madison changed newspapers, it would have changed a multitude of votes. My opinion is that these gentlemen having defeated me will speedily defeat themselves, and that a paper which might have been gradually made very useful, will perish.

I am sorry that Mr: Randolph was hurt as you suppose by exaggerated reports, and I wish heartily I knew of any [way?] of moderating a little several of his warm impressions, without giving him pain. In Mr: Jefferson's administration, I differed with him in a great deal he said and did, and in some instances expressed that difference freely to a mutual friend. But I should be very sorry to see him become an administration republican. Surely any executive ought to be satisfied with a majority of ministers in Congress, and willing to allow a minority of ministers to the people, to watch and check it, since the constitution designed the whole Congress for this office. In discharging it I wish Randolph was more temperate, and I wish also that his high honor and eminent talents, had produced more moderation on the part of the administrationalists towards him. It was

enough to make him feel a little bitter, that his noble opposition to the Yazoo fraud, and honest conduct on a grand jury, should have been the true springs of his political disparagement, and I fear a personal caustick was applied to this tenderness, which would almost justify a little phrenzy. I have no pretence for approaching him on the subject of your letter, but as you think he had been imposed on by report, justice to yourself, and his former friendship towards you, seem to be good reasons for your endeavoring to remove the delusion.

If this letter does not completely lay open my mind to you, on your stating any doubts, I will strive to remove them, and be assured that I am sincerely (under the exception aforesaid after you get to be president, according to its true interpretation), your friend, &c.

Addressed:
Colo. James Monroe
Governor of Virginia
Richmond.

JOHN TAYLOR TO JAMES MONROE.

Port Royal Mar: 21. 1811

Dear Sir

Yours of the 15th. was this moment received, and an opportunity offering more rapid than the post, to get a letter to Fredericksburg, I answer it in the post office.

I am a very bad judge of the prejudices of party, and therefore I cannot furnish you with any fact in reference to that object, to be considered in forming your decision, upon the subject of your letter; at the same time I know that these prejudices must be weighed, in regard both to the public good, and your private benefit.

But my impression is, strongly, that you ought to accept the post, and inform the gentleman that you would do so; both in regard to the public and yourself. You will then have an opportunity of examining all the ground of executive policy, of determining upon better evidence than uninformed people can do, and of aiding the president by your advice. As he is undoubted an honest man, he will certainly consider whatever you advance, impartially, and thus may possibly render essential services to your country. As it regards party, your acceptance will have the effect of keeping the divisions of the republican party in such an attitude, that they may upon occasion, unite, and though I think there is no harm in portions of the republican party dissenting from the executive, honorably, and conscientiously, yet I am also impressed with the opinion, that it is extremely important to moderate these differences in judgment, so that they shall not produce a degree of acrimony, capable of being converted to the public injury. And so far as I am from thinking that those who elected you to your present office will be offended by your acceptance of one wherein you can serve the country more effectually, that I rather think they will consider it as a loyal fulfilment of the professions you have occasionally made. It is probably that some very respectable individuals may think that they ought only to go into office with your party, and your refusing to do it alone, would greatly countenance the pernicious British custom; if it was only to prevent its introduction here, even such a public benefit would in my view justify your acceptance. Again. I feel that a real faction besieges the president, and are laboring to drive off Gallatin who has more real weight of character than the whole together; if they succeed, he will really have nobody of weight of character about him, and as this faction are suspected as being a band of selfish intriguers, I fear it may cause him mischievous obstructions in administering the government; to prevent this might be an essential public

service. Your going into office might also advance an agreement with England, and if this should be the case, no event can I think equally contribute to your popularity.

I have touched upon sundry subjects hastily, but sufficiently to suggest them, if perchance any of them have escaped your recollection; and therefore it will be useless to write again, as much which I should have added verbally, cannot be trusted on paper. You may absolutely rely on the silence of,

Your affece. friend

John Taylor

Addressed:
His Excellency
James Monroe esqr.
Richmond

John Taylor to James Monroe.

Hazelwood Mar: 24. 1811

Dear Sir

Upon reading yours of the 15th again, I observe that you request an answer after I had considered it "attentively." Wherefore as the hasty letter from the post office, was not a compliance with this request, I have determined to trouble [you] with another; and to subjoin some reasons for the opinion expressed in the first, which it would be unwise for any one to do, who was not out of the busy world, and who had not the utmost confidence in his correspondent.

The weight of Mr: Jefferson's popularity was brought to bear upon you by the rejection of the treaty, and as I foresaw was heavily felt at the election. You know that I thought this pressure could only be avoided by withdrawing from the contest, and if you can now not only throw it off, but even transfer it to your own scale, the omission then will not only be rectified,

but a considerable advantage will be made of it. The appointment proposed will be a tacit acknowledgement that the odium then thrown upon you, was undeserved; and the public however erroneously, will construe it into a proof that this odium was created for the purpose of the election. So that a reaction of opinion in your favor will take place which will more than compensate the injury you then suffered.

Our foreign relations seem to be drawing to a crisis, and you ought to be in the publick eye when it happens for your own sake, independently of the services you can render your country. It is probable that this crisis will occur on a full discovery that France will not do our commerce any substantial good, without an equivalent, which will amount to its destruction. So soon as this discovery is made, the government in all its departments will alter its policy; and your occupancy of a conspicuous station will shed upon you the glory of its having come round to your opinion.

It is probably already wavering, and hence the application to you; or else it is made for the sake of evincing a disposition towards affiliation of the minority or at least to yourself. By closing with it, you will evince an equal disposition to advance the publick good, which is a thousand fold preferable to a victory over the present majority. A victory would continue and aggravate the enmity; a peace will put an end to it. The general disposition leans towards this peace. The public had anticipated the offer of this appointment [to] you on Mr: Madison's first going into office, from a desire for such an accommodation, and an attachment to yourself; and it will now be gratified by your acceptance of it from the same motives.

There are strong reasons for believing that some persons and measures were forced upon Mr: Jefferson, and that certain confidences which have also borne so hard upon Mr: Madison, as to have influenced him in a mode disapproved of by himself, and

by all who suspect it. This offer to you is an indication of a disposition in Mr: Madison to relieve himself from the burthen, and if you suffer yourself to lose the benefit of this disposition, another will gain it to your irretrievable injury.

Suppose this other should be a competitor for the presidency; will it not be a decisive advantage over you? Genl. Armstrong is probably taking measures for this object. It was so confidently expected at Washington, that before your election to the government of Virginia, the editor of the *Spirit of* '76 received an application to devote his paper to your support. That election displeased some of your friends, and I believe subverted the design; but it was premature; because this paper has no circulation equal to Duane's, which would have come out instantly against you and led its unwary followers into the same tract. Your acceptance of the offer will counteract such an error, and check Duane; and your presence at Washington, besides enabling you to form an acquaintance with the members of Congress, will also enable you gradually to advance the circulation of this paper, that when it is necessary, it may be useful. To do this, you will only have to procure for it some of the publick printing, and to engage a few of your friends to raise its reputation. This paper is the chanel through which such of your old friends as are angered by your late election, are to be reclaimed. The acceptance of the late offer, will not increase their displeasure; on the contrary it may serve to appease them by the gratification they will derive from the use they can make with the publick of Mr. Madison's having thus justified the suffrage of the minority.

One consideration of great weight, is, that the publick think you an honest man. If this opinion is true, the acceptance seems to be a duty, towards relieving it from the suspicion, that there are too many avaricious or ambitious intriguers of apparent influence, in the government. I suppose the president and Gallatin (whom I know) to be wholly guided by what they think to

be the publick good, and should you happen to concur with them, it will abate much of the jealousy (though I hope it will never be smothered) with which executive designs are viewed; and to moderate it under the perilous situation of the country is in my view desirable.

Your private interests seem here too united with the publick good, for if such a concurrence should happen, it will enable you to make a friend of Gallatin, who may not probably look to the presidency on account of his not being a native; and nothing could more effectually control the enmity of Duane; for he will take the side of Armstrong. His outrageous attacks upon the secretary and the majority of Pennsylvania will be an antidote against his prescriptions, if you do not neglect it.

As you have asked my opinion, I have given it freely, but not by way of advice, for I knew very well that it is a subject, as to which you are far better qualified to judge, than,

Your affc. friend

JOHN TAYLOR

Addressed:

James Monroe esqr.
Governor of Virginia
Richmond.

JOHN TAYLOR TO JAMES MONROE.

Port Royall July 27. 1811

William Taylor, a grandson of old Colo. George Taylor's, was an unkle of the president's, lives at Pointe Coupee in the Orleans territory. He was brought up as a merchant at Norfolk, which he left a few years past, soon after he came of age, on hearing that a brother of his and his young wife, had both died soon after emigrating from Kentucky to Orleans, leaving a helpless daughter, for the purpose of taking care of this infant.

He had made about $1500 dollars, which, with some unprofitable Kentucky land, was all his property; and he acts as a sheriffe at this time to maintain himself and his infant neice. This history I had from others, but I believe it; and for its conclusion I am endebted to Capt. James Bankhead, who has lately come to Port Royal. Having been well acquainted with Mr: Taylor whilst he lived in this State, and formed a very good opinion of him, his benevolence in the transaction I have related, awakens a wish that his condition could be a little mended and understanding that he would be glad to get the office of receiver for the sales of public lands, either at Epellousas or to the north of the red river, I have written this letter to take the chance of your being willing to communicate its contents to the president and Mr: Gallatin. Though of my name, Mr: Taylor is very distantly related to me; and I hope the distance of second cousin is far enough from the president, to remove the punctilio of relation-ship, should there be no other difficulty. He appears to me to be very well qualified for the business.

We country people have, you know, but little knowledge of politicks; but as I am writing I will trust to the possibility, that the pleasure and trouble of reading an abstract of the fancies in these parts, may balance the other. Pickering is consigned to dotage—Smith is ruined—neither have made a convert to the sides they wished—the answer to Smith is applauded—and the intrigue against Madison is suspected of the design to foster a real French faction, under colour of attacking an ideal one. The whole business has strengthened the administration. For this I am sorry, as the public good requires (in my view) that the ministerial party should always be kept in tight reins. Even the poor little minority to which I belong, will be broken up for the present by this job of Smith's; for most or all of it takes the side of the president, and may thus catch a blindness as to the public interest. This is bad.

Another thing is bad too. The "76" paper seems to be bought by federal advertisements. I had determined to select and write upon a few popular topicks to increase its circulation and begin with agriculture. If I should gain any credit, I intended upon occasion to announce you as the apostle of the plough, and in a late trip near your estate I found that your having actually worked, could be proved. Politicians who know what work is are what we plow-men want. But it is all over. I am ashamed to be known to put an essay into that paper, and regret the notion, though false, that it is yours.

Macon's bill No. 1. has been never inderstood until now; some think it the wisest stroke yet attempted in the commercial warfare. For my part, though I yield it that species of preference, I yet deny it absolute wisdom, because, when a wild beast gets loose among a number of people, it seems wiser for them to unite and defend themselves against him, than by jostling, tumbling over, and maiming each other, to make themselves an easy prey.

I ask you the favour not to answer this letter; for why should you take that trouble when you can say nothing? In fact the gallimaufrey [?] of state secrets lately administered to us the people, is so much like impregnating the water with a stupefying drug to catch fish, that we are highly affronted; and made so sore and touchy by the contempt, that I question whether a Secretary of State could even discover to his best friend, without giving him offence, when the moon changed at Washington. I tender you my best respects.

Addressed:

Colo. James Monroe
Secretary of State
Washington

JOHN TAYLOR TO JAMES MONROE.

Virga. Port Royal Jan: 2d. 1812

Dear Sir

I most cordialy congratulate you and Mrs. Monroe, on your escape from sharing in the dreadful calamity which has happened at Richmond. These sympathies ought to be indulged, as the only mitigation of the deep sorrow, with which all of us are penetrated by the event. To turn our eyes from our lost to our living friends, is allied to that solid consolation, resorted to by the parent of many children on the death of one.

As this may be the last letter I shall ever write to you, unless my state of health shall undergo a material change, as a sore calamity naturally suggests apprehensions of a worse, and as you might possibly have wished for a more comprehensive answer to your note than that sent, I subject to it the following postscript; for altho' the maxim "that we ought to live with our friends as if they may one day become our enemies" is necessary for the active class of politicians, yet as I am of the passive for life, it is no prohibition upon my writing to you in the most undisguised manner.

An opinion prevails here among the warmest friends to the administration, that its object is not war, but the repeal of the British orders; and that it has grounds for expecting success, unknown to the publick. Should this be the case, and should it succeed without a war, I shall of course retract my opinion "that posterity would assign the superiority in the triple negotiation to the French" if this success is real and substantial. It may possibly be rendered so, by assuaging in some mode or other the anguish of yielding, which the English will feel, and thus preventing a retraction after the juncture has past; but no permanent principle of the law of nations will ever be gotten out of transitory circumstances, nor any permanent safety for commerce, without a predominancy on the ocean, or being on good terms with the power which is predominant.

The law of nations never operates on an antagonist against his interest, however useful it may be to a government as a machine for exciting the people up to the "sticking point." How far it has with us accomplished that object, is clearly determined one way, if the warlike animation of Congress and state legislatures is good evidence; and as clearly the other, if the silence and wishes of the nation, are better. The people do not seem to me to possess the slightest tincture of a disposition for war. This is indeed confessed by the whisperings of the friends of the administration "that it will carry its point without it." Nay I have heard many of them, highly respectable, express their fears, lest the president in order to influence England by an appearance of war, should prime Congress so high, that it will not be in his power to prevent an explosion.

There is not even an appearance of ardour for war among those fit for common soldiers, nor the least hope of greater success in recruiting an army now than formerly. Even the resolution men in the state legislatures are excited only by an ardour to push themselves forward, and some of the orators in Congress are made eloquent by the same motive. The common people are as little warmed by these resolves and speeches, as they are by the wine the gentlemen drink; and it is as absurd to expect them to be made angry by what they do not understand, as to be made drunk by what they do not swallow.

The United States had two objects of terror to hold out to the English; an embargo and a war. The dread of one is wasted by using it, and we ought to be cautious how we waste the dread of the other. If you should make war and no conquest, your country is injured, and yourselves are ruined. I cannot help imagining that the federalists are feeble in their opposition, that the administration may take as much rope as it will, and come to its end in the same way theirs did. In all governments where the people have any weight, they are judges between parties, who

listen to no evidence but good or ill success. If therefore you fail to raise the proposed army, or fail to conquer with it, you fall, and deprive the country of its second check upon England.

Voluntary enlistments are precarious if not hopeless, and congress cannot impose a draft, nor is the country in a disposition to bear one, if the states should all attempt it. In these parts at public meetings, discussions as to the cause of war rarely happen, but many occur in reference to its calamities, the danger of a mercenary army, the hopes of peace, and the ruin of agriculture by a loss of commerce. And in my opinion these discussions have placed the public mind in a state, exactly fitted for the purpose of those who may wish to blow up the administration, if any untoward event shall furnish them with a match. The following anecdote illustrates this observation. An intelligent and republican farmer of the name of Wright, in a conversation lately with our friend Doctor Bankhead, observed, it is said, "that Jefferson had sold a crop of wheat for him at 4/ without rendering any benefit to the publick, and that he expected Madison would sell another at 18d. to as little purpose."

I think that the proposed War will be unsuccessful and ruinous, nor am I one of those who wish it, for the sake of manufacturing monarchical principles, or of wrecking the present administration. If I was I should not say to it "lo! here lies the rock." However erroneous my conceptions may be they are not tinctured with the least unfriendly disposition towards the administration, which will I hope succeed in every measure fraught with the public good, and particularly in the project for intimidating England into a repeal of the orders in Council. But if this project fails I hope it will not force upon the country, a remedy worse than the disease, likely to be ineffectual, and dangerous to our form of government. The responsibility will fall upon the administration, from the notoriety of its influence over con-

gress, as in England, where the parliament does not shield a minister for the same reason.

All politicians agree that fluctuation and not permanency is the characteristick of national and human affairs; all philosophers, that a change of cause moral or physical, must inevitably produce a change of consequences; how then is it possible to reap from the present situation of nations, a future establishment of our object, especially as the situation is so extremely anomalous? The policy of the United States hitherto, of reaping present good from the present state of the world, and of rejecting speculations for the future at the expense of present evil, has been approved by our own people and applauded by other nations, however it may have been censured by weak or designing individuals; and there is no reason now for changing it, which did not exist nearly from its commencement. For I cannot think that any marks upon paper, ought to influence a nation to change its policy, if it would have remained sound, had the paper remained white. Nations are generally ruined by the erroneous foresight of their governors, of which every page of the European history for the last fifteen years will furnish evidence; and therefore success ought to be, as it is, the test of wisdom, because it constitutes the only check upon this furor naticinus. Instead of yielding to it, we ought I think to extract some present good out of the present state of things, or at least to pursue a future object, upon the permanent ground of the permanent qualities of human nature, and not upon the slippery ground of a transitory juncture. That war is not a present good, ad that our commerce will not be in a better state, flagrante Bello, than at present, is admitted on all hands. By war therefore we lose the present good to be extracted out of the present state of things, besides drawing upon ourselves a considerable catalogue of other evils. The only question then is whether we have any security founded in the permanent qualities of human nature, for gain-

ing and holding our object in future, by encountering all these evils now. This is answered by asking ourselves, whether we are drawn into the war by the present circumstances of Europe, or by some such permanent quality? Would we go into it, if France and England had united in vexing our commerce in a state of peace with each other, as they have done in a state of war; or if England had not been in her present uneasy situation? If not, the chance of gaining and keeping our object by the proposed war, does not rest upon the solid rock of a permanent human quality, but upon the shallow sand of a transitory juncture; and whilst its present acquisition is extremely precarious, its speedy loss would be absolutely certain; because neither France nor England under different circumstances will act as they now do.

It seems therefore to me, that the only solid or permanent benefit to be extracted out of the present state of these countries, must be closely connected with a permanent interest; and that it is our policy to seize the occasion for interweaving such benefits for ourselves with some permanent interest, as may be likely to last, after the occasion shall have past; but not to extort concessions which will be resumed when it is gone; and much less to go to war for them, since they will be injurious to ourselves, by depriving us of the lasting benefits, which we might otherwise have drawn out of the occasion.

If this reasoning is sound hitherto, it follows that a war with England will be infinitely more calamitous and useless to us than one with France, because we can affect her interest, more deeply than we can affect the interest of France; and she ours more deeply than France can. Hence we can weave into a treaty with England a multitude of benefits to ourselves, guaranteed by her interest, the most permanent quality of human nature; whereas there can be no guarantee for the splendid and empty promise of France, but the present state of things, which must be overturned before she can be able to fulfil them. If this State shall

last, and by its existence, secure the fidelity of France to her concessions, yet these concessions however great, cannot be of much benefit to us during the present superiority of the British fleet. If this superiority is lost, then the guarantee of any concessions made by France is also lost, and with their sponsor, the concessions themselves. Thus a policy which draws upon itself evil out of the present state of things, in expectation of a future good, dooms itself to that evil as long as this state lasts, and being bottomed upon a transitory juncture, must be ultimately disappointed in its expectations by a change of circumstances.

This long letter (the first paragraph excepted) is dictated by a regard for myself; it is intended to convince you, that no species of prejudice, but a human quality which ought not to be controlled or surrendered, governs me; and that I am as little blamable for obeying this only just dictator in regard to my political opinions, as in subscribing myself,

Your friend

Addressed:

Colo. James Monroe
Secretary of State
Washington

JOHN TAYLOR TO JAMES MONROE.

Caroline Mar: 12. 1812.

Dear Sir

Presuming that the favour of inclosing a newspaper, containing Henry's disclosures, might proceed from a disposition to know how that affair would strike my mind, I will try to gratify it with as little reserve, as if the friend to whom I am writing, was never likely to see a president or Secretary of State.[1]

[1]He refers here to President Madisons' message laying before Congress proof of the intrigues of an English emissary, Henry, in New England.

In laying this business before Congress, I think the executive may have acted wisely or madly. If as an instrument to prevent war, as John Adams finally used the X Y Z artifice, it is wise; if to wind up the mob to make the war plunge, in my eyes, mad. That artifice, and this, are exactly of the same kind. Whoever doubted that European statesmen would take bribes, and use emissaries to divide rival nations? Neither that story nor this conveyed any new information to people of small share of understanding. All such know that both England and France have emissaries among us to advance their designs, to bribe newspapers and to produce divisions. Yet no man can think, that these vices of corrupt governments are a sound reason for involving even the unfortunate people governed by them in war; much less to make them equally miserable. If it is, we may without farther delay declare war against all nations who wish to work upon us, for it is folly to suppose that they do nat all work with the same tools.

A habit of blowing up a mob as boys blow up bladders, which by heating are made to burst with a great noise, would be in my opinion a dangerous tampering with our government at its base. It would teach the people to be frivolous, fickle and revengeful; and the operators themselves would encounter such vexations in prosecuting the system, as to be finally changed from friends to enemies of popular government, and to be wrought into an opinion that they would be acting as patriots in overturning and undermining it, whilst they would be in reality only the dupes of their own wrong system for managing the people.

The X Y Z bellows blew up the mob to a great heat, and the explosion finally fell on the bellows-makers themselves, although they were so wise as to foresee the refrigeration, and to provide for the dissolution of the smoke, by drawing a peace, instead

of a war, as they at first intended, out of the flame; but the intention sufficed to ruin them.

The HENRY bellows will also blow up a temporary heat only, which like a roast of chestnuts, will the sooner put out the fire on account of its crackling; and extinguishing engines, interest and common sense, will play with ten times the force on the second, that they did on the first flame, in case of an actual war.

The people are at least as certainly against this English war, as they were against that French one, and mouth for this as they did for that, either for the honest purpose of advancing the negociations of the government, from the jolly habit of joining in a chorus, or in some instances, with the knavish design of getting offices or contracts. But they were infinitely tender for Mr: Adams's war. As then, the last small squad excepted, they will again very soon leave the party in power in case of a war, unless it should make itself their master by means of the war, as the former party intended to do by the French war. And as I deprecate both these events, I deprecate what will cause either.

But it is right for the government, if it can, to use the odium into which the disclosure of the British spy will for a short time plunge the British administration both here and Europe; to gain a peace, by which it will gain the hearts of the people, those only excepted whose opinions are moulded by fraudulent designs, who are never to be gained but by advancing their frauds. There are but few of these, and therefore they are always too weak for a government which makes the people feel pleasant, and yet always too hard for one of a popular form, which makes the people feel uneasy, let its theories be what they will.

As to the part in the drama assigned to the northern federalists, it is only a repetition of a known fact also. It has

been always known, that many of them were monarchists. It was the policy of twisting our own government round to a monarchy by law, whilst the monarchical federalists guided it, or a desire for the loaves and fishes, which created the republican party. Allowing it honourable motive, we must allow it a knowledge of the facts producing the motive. It accuses its adversary of attempting to change the government, in power, by law, out of it, by intrigueing with England, only dividing the union. Would Mr: Jefferson or Mr: Madison have better known that Mr: King and the Adams's were monarchists, if Henry had told them so? Or would his telling them what they knew have caused them to persecute as traytors the men whom they trusted as patriots? If not, ought the nation to be plunged into a war, because a spy has told it, that which the republican party has been telling it these twenty years?

The good use however of crushing this monarchical and English faction, may be made of the occurrence, if it is applied to that object. But if it [be] diverted from that object, to the end of producing war,—so as to get us into the highway leading directly to monarchy, under pretence of keeping us out of a blind path inclining towards it, a far more dangerous faction will be created than crushed, and the nation will soon be encircled within the gripe of "an iron government itself" under pretence of curbing the ineffectual lamentations of the whiners for it. This use of Henry's disclosure is certain, and the advantage of thus using it, to the republican party, inevitable. This advantage will be lost by a war. If it can forward a peace, by causing the English government to dispair of a division here, to fear one at home, or to rebut the charge of an affected liberality towards us, it will be doubled.

Such are my impressions. They are derived from a wish that our political principles may be saved, and a belief that a great war, and a torrent of expence, will sweep them away, as this

kind of deluge has universally operated. I have no party impressions but those deduced from my principles, and I am at a loss to find a party which these will fit. But even this lambent zeal is often sent into its socket by a prospect of being removed to a climate, where the moral atmosphere is clearer, and my mental sight will be less dim. I hardly think I shall ever see you again, but as I may yet stay a long time in this dark world, you may possibly be in these parts, before I am gone; in which case, a call will give great pleasure to,

Your affe. friend

Addressed:
Colo. James Monroe
Secretary of State
Washington

### John Taylor to James Monroe.

Virginia Caroline May 10. 1812

Dear Sir

There would have been few things which I should have recollected with less pleasure, than the opinion I gave you in favour of your accepting your present office, except for the consolation, that it could not have influenced your resolution. For I now fear it would turn out to have been the most unfortunate step of your life; because if you had refused it, the present state of things would have drawn towards you the hearts and the eyes of the people.

At the time of that opinion, I calculated that the president and his cabinet would avoid embargoes and war; and being confident that this policy would secure the public approbation in spite of intrigues in or out of congress, I concluded that the share of yourself and Mr: Gallatin in it, would, at the end of Mr: Madison's eight years, secure to you two the first offices of the government; because the benefits flowing from a steady ad-

herence to a pacific policy would certainly have induced the people to cling to the men who had caused it, for the sake of its continuance.

But the vision has vanished in the clouds of the embargo and the war. Never did I know any measure so wholly destitute of approbation as the former throughout all classes, two or three Scotch merchants excepted who have tobacco in England. It seems to me that those who had heretofore given their mouths in favor of war, under a secret belief that the government wanted this apparent concurrence to assist its negociations, without entertaining the design in reality, have seized upon the very first occurrence to indicate the real wish of their hearts; and that as a more complete embargo than law can produce, is an obvious effect of war, and even among its smaller evils, the sensation upon that subject is an infalible prediction of the sensation to be expected from war.

I am convinced that the members of Congress have deceived themselves as to the public opinion, and that the executive in taking their votes as its true index, are also deceived. This charitable construction will not however be admited. It will hereafter be said that an application to stock-jobbers for loans, rather than to the nation for taxes, was a substitution of the will of money lenders for the public will, a confession of the national disapprobation of war, and an evasion of the constitutional provision for declaring it, suggested by the ample admonitions to be formed in the experience of England.

The conquest of Canada will insuffice to justify a war, because that is not its end and cannot constitute its recompense. If England lost thirteen provinces, rather than endanger her naval power, she will not endanger it to save Canada. If the Indians do not reimburse the English people for the burthens they reap from foreign conquest, neither will Canada reimburse the people of the United States. And it will be found from this war, as

from all others, nations gain taxes and tyranny by conquest, in every species of war, except in war for emigration and against invasion. Other kinds of war may be defensible in an estimate of profit and loss, where the interests of the government and of the people are distinct, it is made by the government and not by the people; that may reap an accession of power and wealth, and the people, a diminuation of both from the same war; but here it is marvelous that party heats should drive honest men into wars, which must make the people less happy, and can bestow nothing upon the government, except what they plunder from the constitution. To these considerations I attribute the symtoms of public dissatisfaction, and as actual evils will raise it higher than anticipated, I regret extremely that you have been drawn within the scope of its fall.

Such of these symtoms as may be collected from newspapers, are better known to you than to me. A few within my notice, though trifling in themselves are important indications. All the vessels and sailors able to do so in these parts, fled from the embargo to the English. Declarations by the latter of seeking employment among them were, I am told, frequent. Every attempt to avoid the embargo was approved by all parties. Even Doctor Bankhead worked 'til in aiding Sthreshly [?] to land a vessel for that purpose. In the senatorial district of Essex King & Queen and King William, John H Upshaw, allied to the powerful Roane interest, was turned out by a republican of inferior talents and connexions, but supposed to be less violent. In this county Doctor Hoomes, last year rejected, was elected for his enmity to war, though his popularity is slight, and he is chiefly an inhabitant of Richmond. Yesterday a respectable farmer informed me, that himself and eleven others, in a body, voted against the senators and representatives of last year, because the resolutions of our assembly approving of the course of the General government. These were among our best

citizens both as men and republicans, and it was their private act, for I never heard that the subject had been at all discussed.

The regret for having given you that opinion, and not any change in my wish "that you should forbear to answer any such letters as this from me" causes me to explain the motive which produced it, of which I have endeavoured to give you a correct impression, with the causes of this regret, so far as they regard yourself, without going into them as they regard the publick. Nor shall I trouble you with those considerations upon the latter ground, which satisfy me, that the republican party and the national interest have received shocks from the present Congress, which no future Congress will be able to repair. My object is to convince you of the integrity with which that opinion was given, before you have seen that it was a bad one; and to fix my justification in your mind, before you shall feel the consequences of going into the administration, that you may still consider me as,

Your friend

JOHN TAYLOR TO JAMES MONROE.

Virginia Caroline June 18. 1812

Dear Sir

Yours of the 13th instant reached me yesterday. It was never my intention to have drawn you into so much trouble, and this answer is sent as an acknowledgement for your distinct explanations, without the least design of inviting repetitions, forbidden by the labours of your station.

You have made me understand much better the difficulties the government have had to encounter, which I have never estimated under any other influence, than that of the public interest. This only has lead me to conclude, that formidable as the dangers of a different course undoubtedly were, the policy of armies and

stock-jobbers was more so; and from domestic considerations, my feather was thrown into the scale against war. I admit that a neglect of commerce would have been seized upon to excite the evils you describe, and that an opinion could only result from a conjectural counterpoise of the alternatives, whether the nation was most adequate to withstand the intrigues of party, or the effects of a system of paper capital, heavy taxes and standing armies. With my different conclusion from the government, no spice of personal disrespect is intermingled; on the contrary, a conviction of my own intellectual inferiority, greatly alleviates my fears for the success of its measures. If experience, as I ardently hope, shall disclose my error, an acknowledgement of its superior foresight, will testify to my sincerity. And if I should unhappily prove a Cassandra, I shall not forget, that a change of doctors, your ultimate remedy, was among my apprehended evils. No course could have prevented an attempt of this kind, but I concluded that whatever was most conducive to publick good would have furnished fewest tools for ambition and avarice.

I trust that you at least will do me the justice to distinguish between principle and unworthy intrigue. To the latter I have always ascribed the attack on the president at the time of your appointment, and the late extravagant deviations from the plan of the cabinet. My ideas of the last drama have so exactly accorded with your explanation, that if you should ever chance to hear them quoted, I must warn you against infering from it any deviation on my part from the strictest obligations of confidence. If my recollection is not incorrect, the letters which past between us, after the rejection of your treaty, will furnish a proof of my consistency, similar to that you so justly extract from your Richmond letter in proof of your own; and will shew, that a difference of opinion upon a particular question, does not necessarily include a malignant sensation. Then you publickly

expressed your general confidence in the government, though in a particular collision with it; and then also I believe my private letters to you, whilst I also disapproved of that rejection, and did not with-hold what was due to Mr: Jefferson and Mr: Madison, and perhaps went so far as to intimate a belief, that they would not suffer their friendship for you to be destroyed by that occasional difference. In a government whose power is very liable to fluctuate, those are not worse friends who are disposed to defend merit in all its vicissitudes, nor the least credible witnesses, who do not coincide with power in all its measures.

You will see that the object of this letter is to obviate the too usual consequence of a difference in opinion. War being determined on, it is useless to reason farther about it. Every one will contribute what he can to its success; and I ardently wish, what I do not expect. I suppose however it will begin well, if, as I conjecture from the movements I have observed, it is commenced on the back of Canada, by interposing an adequate force between the English and Indians. But the end, ah! there lies the rub. The risques of this war are uncommonly numerous. We may not be able to starve England and Portugal—we may be at war with all, and none of them may favour our trade—Bonaparte may be in a dropsy [?] or may die—his fortune may change, and English haughtiness may be aggravated—England Spain and Portugal may remember our attempt to starve them—the war may gain Canada and nothing beneficial—the people may not relish taxation to feed it—to avoid this temper, the government itself may cause much fraud and a general corruption of manners; and out of a rank dunghill of expedients, fungus after fungus may spring up, and prepare the way for a silencing phenomenon. My chance therefore for reaping from the war a crop [of] odium for defending integrity, is, I really

think, better then the government's for reaping a crop of applause. May God send you a safe deliverance! Farewell.

Addressed:

The Secretary
of State
Washington

JOHN TAYLOR TO JAMES MONROE.

Caroline Novr. 8. 1812

Dear Sir

I thank you for the message, the composition of which is like the author's. The ingenuity of telling the vulgar that the trade now going on, is abominable, and the astute, that it must be let alone, in one set of words, is admirable. But ingenuity like glass, is brittle as well as transparent. It will not long resist the tempest brewing around you. I see no chance of a peace, by which our ships and trade shall relieve France against the power of the British navy, or subject its sailors to the effect of our naturalized laws. If Bonapart is still successful, piratical principles will become more necessary for England; if he is beaten, her arrogance will increase. I never thought that our war would have any effect on the measures of either of these powers, nor do I think that the administration can carry it on twelve months longer, unless they get power enough to force the country to go on with it against its will. This would terminate our government. I think I expressed an opinion to you, during the last Congress, that the people were not for the war in these parts, though they were attached to Mr: Monroe and Mr: Madison. In that opinion I am confirmed by the apathy in choosing electors. These respectable and popular men, Colo. James Taylor and Doctor Bankhead, could not, I am told, get more than about 130 out of above 700 freeholders in this county, to attend and vote for

Mr: Madison. Among these were the most prominent minority men. I did not attend, because I could not apparently retract my disapprobation of the war, but I publickly expressed my preference of Mr: Madison before Mr: Clinton and Mr: King. About 20 I am told, voted for the federal ticket. I believe that the delusive flood in favour of the war is on its ebb even in Virginia, never to return. Accidental winds may retard or accelerate its velocity. If the president thinks that defeat has raised the spirit of the nation, and goes on with the war on that ground, he will find himself mistaken. It may be well to give currency to this notion for the present, but he must know mankind better than to confide in it. To me it appears that an usurpation of tyrannical persons or a peace, will very soon become the alternative, and that the longer the latter is defered, the more unavoidable will be the former. For if the war cannot be carried on without such powers, and Congress shall determine to carry it on, they will compel their instruments to do every thing necessary for its success, altho' they will at last become the victims of their own measures. If a peace is now made, the people are so anxious for it, that there will be no difficulty in persuading them, that the war, and even the defeats, have brought it about; and all honest men will join in the roar of joy and good humour, out of which popularity will pour upon the administration, as thunder causes rain to pour out of the black clouds, upon perishing plants.

Perhaps I look through spectacles made of prejudices, but I have hopes that it is not so, because I most heartily wish success to the war, highly approved of its plan so far as I conjectured it, and deeply regretted an unprecedented military conduct, so greatly outstriping foresight, that no ministry ought to be responsible for it. Yet whether it has been successful up to your hopes, or unfortunate beyond your fears, I believe that peace would have been now advisable, both for the interest of

the administration and of the country. This letter enables you to add to your mosaick collection manuscript raraties, to your illustrations of the value of foresight in the different accounts you receive of things actually seen, and to the proofs of the continuing respect and confidence of

Your friend

Addressed:

Colo. James Monroe
Secretary of State
Washington.

JOHN TAYLOR TO JAMES MONROE.

Virga. Port Royal Mar: 18. 1813

Dear Sir

Except for an apprehension that you might misconstrue my silence, I should not have acknowledged the receipt of the report of the committee for foreign relations, because I doubted whether you would derive any satisfaction from what I could say. This report is I fear a mischievous thing, if the goodness of its stile has deluded its authors into a continuance of the war, without exciting the nation up to the tone necessary to make it brilliant; for no degree of national spirit can make it beneficial. A talent for fine writing is often a great misfortune to politicians. They fly away from human nature upon the wings of their own compositions, and being excited themselves by their own elegant stile, they conclude that a nation, containing not one person in one thousand who read, understand and relish it, will also be excited. This report and the president's inaugural speech, have been already praised and forgotten, whilst the causes curing the nation of war, are daily and powerfully operating. These causes are rocks, rushing down mountains, and demolishing the stoutest

trees standing in their way; and the whole tribe of excitements, including indian massacres, are only rolling pebbles capable of bending a few shrubs in their way, which soon rise to their previous elevation. As an excitement even the sailor law will dwindle into nothing. As an angel of peace it would be worshiped. It enables the administration, to obey the people or congress, by yielding what it could not well yield, except for this kind of legal coertion. The confession that the wrong began with us, by offering to remove it if the English would discontinue their wrong, caused by ours; the admission of their whim of allegiance, and the abandonment of our whim of expatriation, though only dust before the popular besom, could not be conveniently gotten out of the natural brain, by an executive trepan. But Congress having laid these formidable spectres, the administration may sail out of an ocean of dispair with this popular gale. It has only to obtain from the English any stipulation, however slight, sense or nonsense, something or nothing, about their impressing our sailors, and absolutely to prevent the United States from employing theirs; to put an end to the impressment practice; and the pleasure of getting out of the war, national pride, party loyalty, and confiding ignorance, will joyously unite in construing the pacification exactly as it pleases. My position enables me to see distinctly, a wish for the continuance of war, united with invective deprecations of its consequences, for the sake of an end, to which the repugnance to the sailor bill opening for geting neatly out of it, is a plain index to my naked eye; however invisible it may be through a political telescope. If this opening is not entered, the sailor squabble cannot be the true cause of war, because the law is nothing as to the English, and only calculated for bringing our own wiseacres into a pacifick humour. No man of sense can expect that the English will place their allegiance principle under the care of our Congress, president,

marshals and juries; good honest and patriotick as they are. Even fellow citizen parties are not quite impartial triers of each other. Seeing no reason for this law, but to place a peace in the hands of the administration, without risqueing its popularity, I look for one speedily. As an excitement, it will have no more effect, than a smart fiery speech in Congress. The *mediaetate linguae* principle, might, I think, afford a good squadron of words to satisfy our war spirits. If a navy of unavailing gallantry, an appalling debt, a legion of officers without an army, a few detachments of raw soldiers without generals, and ruined commerce, a people divided into two parties neither of which is very willing to take the field or to pay taxes are not hopes, there remains no hope but peace. It cannot be wise to press forward to a little good, seen by some at a great distance, whilst others cannot see it at all, over sundry yawning caverns, into one of which it is highly probable we may fall. But the distance and caverns increase as we proceed. These multiplications are already visible in Bonaparte's Russian luck, in our Canada luck, in our recruiting luck, and in the growing division of national opinion. Wants and taxes will bring a few more to light. The policy of pursuing an object, from which we are daily removed by the vehicle in which we ride, is at least droll. I say nothing of the object towards which this retrograding vehicle is conducting us, because it has been shewn by the president of the United States in his defence of the Virginia resolution; and if he is not heard, need I speak?

I know that it is almost impossible for politicians to allow even frankness to be a pledge of friendship. Perhaps however you may be unable to find any motive for mine in this letter, except an ardent wish for the natural good, and the future safety and prosperity of republican principles. Perhaps that you may admit that the administration is included in the sentiment. For

these reasons I hope for some sympathy. If it gives you uneasiness, it will be matter of regrets to Yours, &c

Addressed:
Colo. James Monroe
Secretary of State
City of
Washington

JOHN TAYLOR TO JAMES MONROE.

Decr. 3. 1815.

Dear Sir

As you can do me a small service meerly by answering this letter, I take the liberty of asking it. I have an appeal from Kentucky in the supreme federal court and had employed Philip B. Key in it. He being dead, I must get other counsel. I understand that a lawyer, his relation, named Francis Key, lived in the city. Some reasons exist, inducing me to wish to employ him, if he practices in the supreme court, and will answer the purpose. Will you be so good as to let me know how these two points stand? It is a case which requires attention rather than great abilities. If he will do, it would add to the obligation, could you learn from him whether he will take the cause. But I do [not] wish you to do this, should it be inconvenient. If he will not do, can you inform me of some other person, who is diligent, and practices in the supreme court. One living at the city would be prefered, for the convenience of communication.

We had heard, before the late publication in the newspapers, that the preservation of New Orleans was owing to you, in a way which obtained credit, and gained for you great applause in this quarter. If it is true, the fact ought not to die, but

should be kept alive, and represented in all the lights it will bear. I wish I had vouchers to fix it, that I might retail them gradually in the news papers, at a proper crisis. The mob (and any twelve men can make a mob) must be fed by novelty. It seems to me, by comparing the periods of making the treaty and the attack on Orleans, that the British meant to hold the latter, had they taken it, and to have denied that the treaty extended to its restitution, upon the ground that our mode of acquiring Louisiana did not transfer it to us. If so, the saving of Orleans, saved this country from a long war. Indeed I fear that Spain and England, if their situation would permit it, are not unwilling still to go to war with us upon this ground.

I have been for three months tottering on the brink of the grave, and am now but barely convalescent. Your friend Bankhead has quitted the practice of physick, and removed out of this neighborhood, but he came and remained eight days at one time with me. Since I have recovered my senses (for they were long suspended or impaired) I am satisfied that his skill and care saved my life; but what is life worth at sixty one? Only the value of doing good to others for a short period, for that age cannot enjoy much pleasure. God bless you.

Addressed:
Colo. James Monroe
Secretary of State
Washington

JOHN TAYLOR TO JAMES MONROE.

Virginia—Port Royal—April 29. 1823.

Dear Sir

Whilst at Washington, I felt a strong inclination to communicate freely with you in relation to the next presidential election, and considerations not very important, prevented the

attempt; but I imbibed opinions, and settled a mode of making them publick, without exposing myself to notice. Upon further reflection, distrusting my own judgment, I abandoned the design. A recent visit from Mr: Calhoun, though it had not changed my previous impressions, has induced me to think, that they may possibly be [have] some weight, but still my doubts incline me to consult better judgments and more information.

It seems to me, that an example of obtaining the presidency by craft, intrigues and pecuniary influence, would materially corrupt the principles of our government, and lay the foundation of lasting evils. The assumption of State debts, the creation of a bank, bounties to factory owners, and the pension law, whether they were usurpations or not, united with other causes, have had the effect of transferring from a vast majority, many millions annually, to a capitalist and geographical minority, but little interested in the soil. This result, however effected, is neither just nor republican. It is merely a tribute, politically unwise, and personally oppressive, unalleviated by any means of getting the money back. It is further an accumulation in the hands of an avaritious combination, interested to invent subjects for investment, and to enhance profit, at the publick expense. It has established a powerful excitement to political craft and ambitious intrigues. By increasing the profit of pecuniary capital from six to fifteen per centum, whilst that of land remains as low as four or lower, money is made to flee from agricultural investure and improvement, or from loss to gain; and in fact the improvement of agriculture is prohibited by legislation. If candidates for the presidency intrigue upon the basis of favouring this capitalist interest, and should be elected by its influence, its political power will be established; its influence will be courted; to win, a monied aristocracy will be systematically nurtured; and this will gradually change completely the principles of our government. Tacit compacts between ambition and ava-

rice will take place, and even wars will be suggested to gratify both. The avowed approbation of further increasing this annual tribute, and further accumulation [of] pecuniary capital by prohibitory duties, to influence the presidential election, will also introduce into the federal cabinet the corrupt habit long prevalent in one state, of disciplining parties, not by the force of good principles, but by personal combinations to get money and offices, which by success, will become as well established, as the custom of keeping a president for eight years only; and this system both tributary and corrupt will lead to a dissolution of the union, or a destruction of its principles.

Although I believe that Mr: Calhoun and Mr: Adams entertain some opinions which I think erroneous, yet I discern no proofs that either would invest a coalition between political craft and pecuniary speculation with a power of making presidents. Mr: Calhoun, I suppose, is friendly to protecting duties, as providing for the event of war; but since the navy is a provision against the same event, I must hope that as the latter increases, he would not also be for increasing the former. Still more am I persuaded, that Mr: Adams would not both sustain a navy to protect commerce, and approve of prohibitory duties to destroy it. An increase of a navy and a diminution of commerce, are associates so incongruous, that an approbation of both can hardly be imagined, except when they are allied to the intrigues of ambition. On the contrary, the expense of one provision for war, seems to have been paid to avoid a tribute to factory capitalists, required by the other; and as one national expense is increased, integrity would diminish the other. It is probable that the bounties paid by protecting duties, makes each factory cost the nation as much as a ship of line.

Of Mr: Adams's opinion in relation to the division of power between the federal and State governments I know nothing. Mr: Calhoun considers it as a distinguishing pre-eminence in our

form of government, but I think he destroys his pre-eminence by endowing the federal government with a supremacy over the state governments whenever they come in conflict. Upon this point therefore I discern no preference of one of these gentlemen over the other.

I believe that Mr: Adams and his father were once admirers of a limited monarchy, and that such was never the case with Mr: Calhoun. You may perhaps smile to read, that I lay no great stress upon this distinction between these gentlemen, because I know that many of our wisest men and best patriots, at one time entertained the same prepossession, derived from habit; and because the idea of such a government is so far eradicated from the minds of honest men, that it cannot be revived, except by a previous concentration of power in the federal government, to furnish materials for craft, intrigue, and ambition.

There is however one distinction between them, apparently of considerable weight; that of the Missouri question; as to which, any observations would be superfluous. As to the important republican virtues of uncrafty moral restitude, and wise frugality, I believe they may be both classed with the best men.

In one point the comparison may not be so perfect, namely, that of disposition to sustain and foster the republican party. It is not agreed, even among its members, what principles make a republican. I believe that these gentlemen differ considerably with me as to some of these elements; yet as I also believe that I concur with them as to others. But the difference as I estimate them, compared with the dangerous experiment of using pecuniary capitalists and individual intriguers to make presidents, lose much of their weight; as honest differences of opinion to be decided by reasoning, are greatly preferable to ambition, avarice and craft, as arbiters of our fate. Words used as puppets have no meaning. Swift's exposition of the couplet,

Libertas et natale solum.
Fine words! I wonder where you stole 'em.

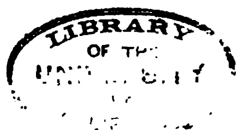
applies very well to the words "republican and federal" when united with avarice or ambition. In that case, I pay no respect to them; and the apparent absence seems to me to be greatly preferable to an apparent existence of such an association.

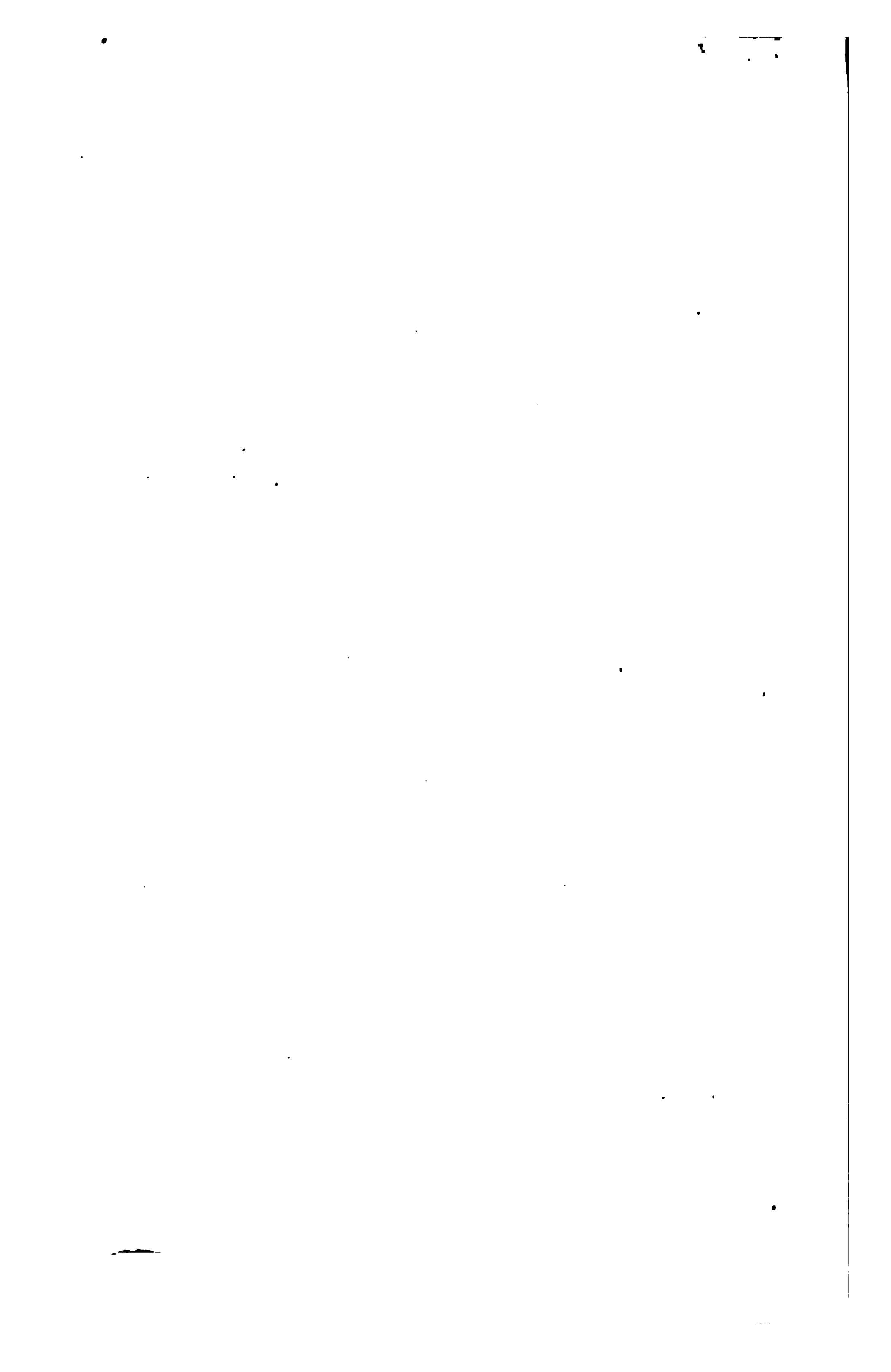
Although I should undoubtedly prefer a man, equally competent to the office, whose opinions more nearly correspond with my own, yet my judgment in the existing case, influenced only by a public good, leans sufficiently towards Mr: Calhoun or Mr: Adams, to suggest to my mind the question, whether the republicans of Virginia ought not to bring the matter before the people. The distinction between them and their competitors, as to the monied aristocracy (at this time an emergency) seems to me to be very much in their favour; and as to the other great existing points, in relation to local or supreme federal powers, they do not in my view, lose any thing by a comparison.

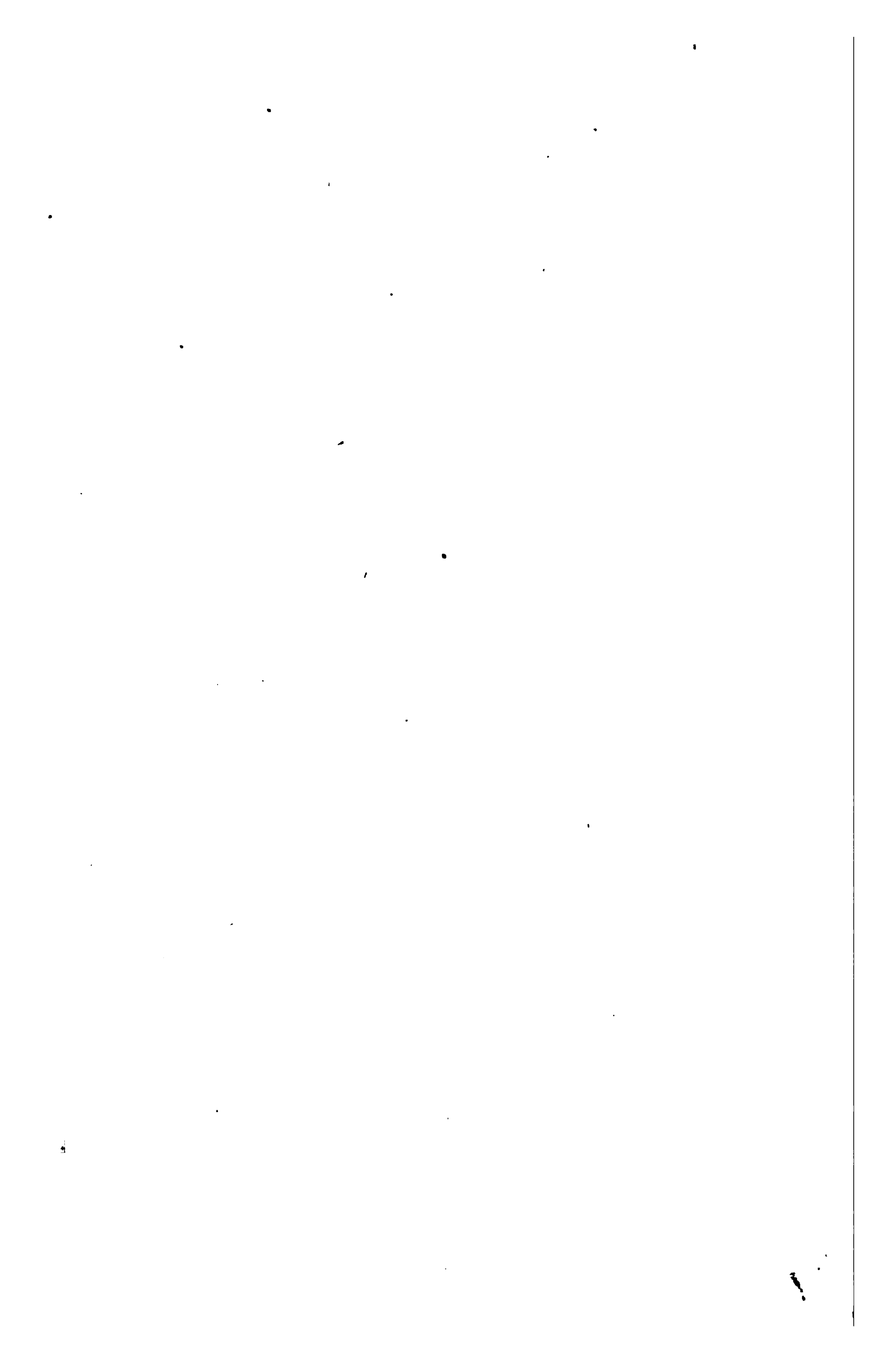
These hasty remarks are submitted to your consideration, in confidence, with a resolution to be satisfied with whatever you may do. If you think proper however to shew them to Mr: Jefferson or Mr: Madison, with the same suggestion, it would give me great pleasure to know their opinions. I cannot help thinking that Mr: Madison could never have intended, that his former opinions in relation to the federal judiciary, and protecting duties, should have been pushed to the extremities of creating a judicial censorship over the constitution, and of imposing an enormous annual tribute over two-thirds of the states, to be enhanced as the navy increases. If your three opinions should concur with mine, I will pay my mite towards opening a discussion, so as not to bring my self or any one else into view. Should the representatives of Albemarle correspond in these ideas, they would have great weight in the assembly, if a discussion takes

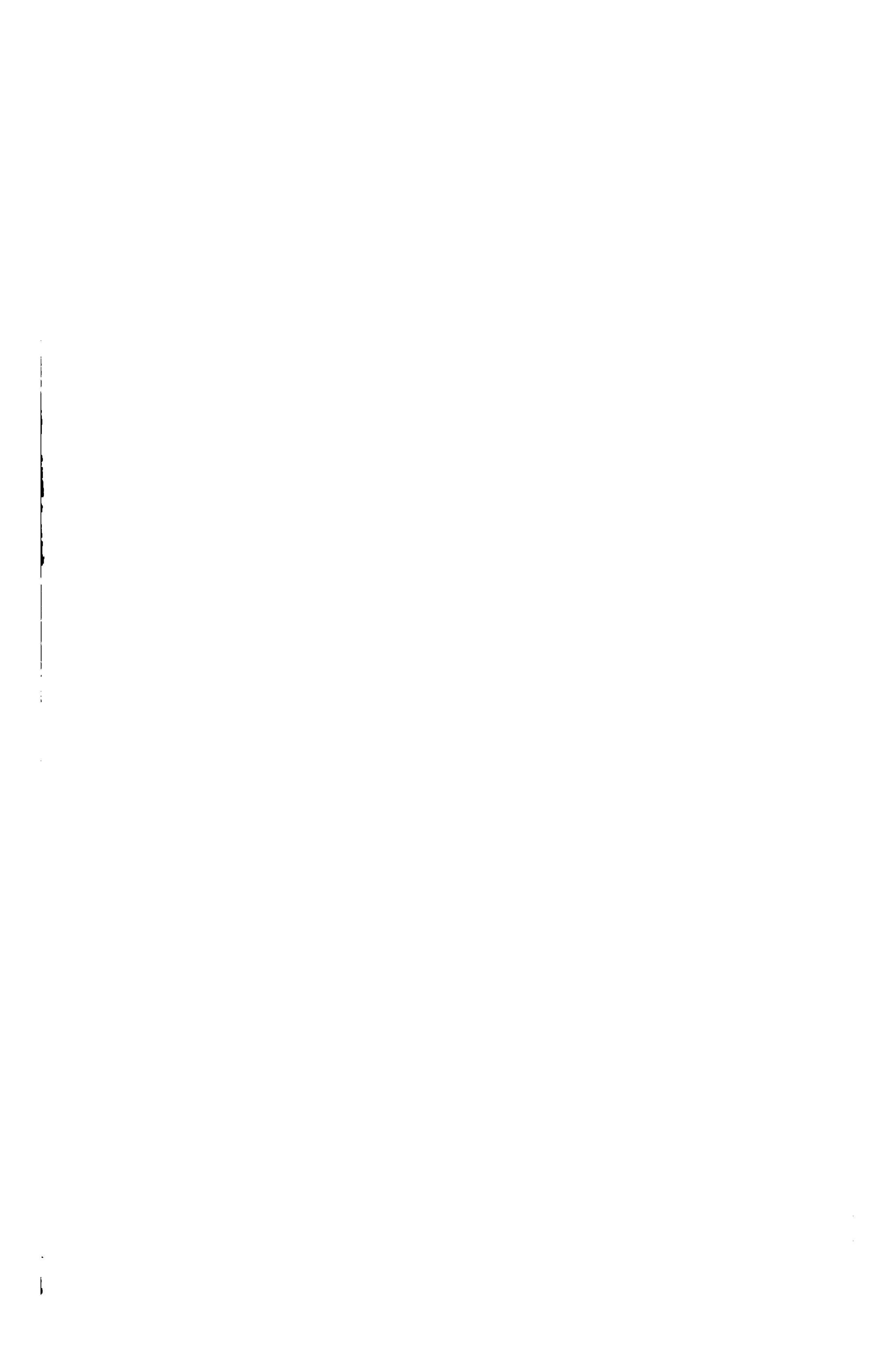
place during the summer. Could I have the pleasure of seeing you at my house, or of meeting you at Fredericksburg, other considerations might be added to those I have expressed. But having said enough to explain myself, it only remains to add, that I am, Yours, &c.

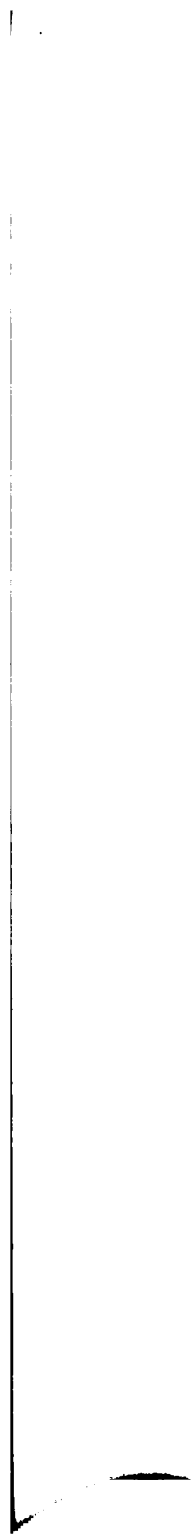
JOHN TAYLOR











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