This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world’s books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that’s often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book’s long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ **Make non-commercial use of the files** We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ **Refrain from automated querying** Do not send automated queries of any sort to Google’s system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ **Maintain attribution** The Google “watermark” you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ **Keep it legal** Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can’t offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book’s appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google’s mission is to organize the world’s information and to make it universally accessible and useful. Google Book Search helps readers discover the world’s books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at [http://books.google.com/](http://books.google.com/)
SECESSION AND
CONSTITUTIONAL LIBERTY

VOLUME I
SECESSION AND CONSTITUTIONAL LIBERTY

In Which Is Shown the Right of a Nation to Secede from a Compact of Federation and That Such Right Is Necessary to Constitutional Liberty and a Surety of Union

BY

BUNFORD SAMUEL

Volume I

"Construction furnishes many other arguments in favour of the consolidating school; . . . it supplies a vast mass of precedents and argumentation for removing collisions between the state and federal governments, and for proving the efficiency of a concentrated supremacy; to which I confess that only one poor observation can be opposed, namely, that if the state and federal governments may be occasionally scratched by the mutual check resulting from the division of powers, it may still be considered as the only brier which bears the rose called liberty, able to impart that rare flavour to our political nose-gay, highly agreeable to some people, but very offensive to others."

—JOHN TAYLOR, of Caroline, "New Views on the Constitution."

THE NEALE PUBLISHING COMPANY
440 FOURTH AVENUE, NEW YORK
MCMXX
# TABLE OF CONTENTS

**Volume I**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td></td>
<td>11</td>
</tr>
<tr>
<td>I</td>
<td>Statement of the Doctrine of Secession</td>
<td>21</td>
</tr>
<tr>
<td>II</td>
<td>The Declaration of Independence</td>
<td>24</td>
</tr>
<tr>
<td>III</td>
<td>The Confederation</td>
<td>36</td>
</tr>
<tr>
<td>IV</td>
<td>The Constitution a Compact by Sovereign States</td>
<td>42</td>
</tr>
<tr>
<td>V</td>
<td>Mr. Madison's Construction of the Constitutional Compact</td>
<td>76</td>
</tr>
<tr>
<td>VI</td>
<td>Mr. Buchanan's Doctrine</td>
<td>82</td>
</tr>
<tr>
<td>VII</td>
<td>Mr. Lincoln's Doctrine</td>
<td>96</td>
</tr>
<tr>
<td>VIII</td>
<td>The Ethical Questions Involved</td>
<td>98</td>
</tr>
<tr>
<td>Appendices</td>
<td></td>
<td>120</td>
</tr>
</tbody>
</table>
SECESSION AND
CONSTITUTIONAL LIBERTY
SECESSION AND CONSTITUTIONAL LIBERTY

PREFACE

"Mr. Bryce . . . intimated . . . a decided doubt whether the conflict in question would, as an historical episode and incident in the great evolutionary record, hereafter loom up in the same large proportions it always must bear in the minds of those of the American generations directly concerned in it. . . . The issues, he more than hinted, were in his judgment of no great fundamental importance . . . I . . . failed . . . to concur in Mr. Bryce’s judgment; for the more I reflected . . . the more I felt convinced that, as the years rolled by . . . the conflict he had referred to as now forgotten in Europe would assume ever larger world-proportions and become matter of more careful general study. In a word, our American Civil War would, when the final verdict is rendered, . . . become an accepted episode of . . . world-wide moment."

"Hardly any problem affecting the future of humanity is more important than the type and character which the great Republic of the West is hereafter destined to assume."

If one accepts Mr. Adams’s estimate of the moment of “our Civil War” (and to reject it consistently one must also widely differ from Mr. Lecky), how can the discussion of a political doctrine, the cause of so momentous an episode, be, as the former designates it, “academic”?

The word is used by him (and by others) to characterize a

question which has lost interest for "practical" men,—having been settled by force,—and, so used, is a narcotic to prolong the sleep of Liberty. Academic! If this question be "academic," what of that which developed into the Revolution of ’76? It is a far cry indeed from a time when a theory of government, unaccompanied by oppression, aroused colonies, probably as free as any in the world’s history, to rebellion,* to a time when a question involving (if Mr. Lecky be correct) "the future of humanity" has become "academic." Can a people so change? Or is man so constituted, alieni appetens, sui profusus, that where a thousand men will cheerfully give life for a shred of the cheapest sentiment, for an airy nothing of belief at once unknowable and incredible, for a rag of vanity, scarce a score can live in respect for their own or their neighbour’s rights?

"Then was the time to tell of virtue being raised from the dungeon, where priests and tyrants had confined her; and that science had been courted from the skies to meet her; then was the time to talk of restoring the golden age, without being laughed at; and many seemed to believe that a political millennium was about to commence." †

"It was possible to break old traditions, to revise institutions, and to think out a new philosophy to fit an infant society. . . . It was a marvelous opportunity; to the student of history and human institutions it seems incredible that it ever could have been offered. The men who founded this republic recognized that opportunity and tried to use it." ‡

Its most distinguished contemporary (for he may fairly be so called) had written not long before:

"Je conçois . . . qu’on ne doit trouver sur la terre que très-peu de républiques. Les hommes sont rarement dignes de se gouverner eux-mêmes. Ce bonheur ne doit appartenir qu’à des petits peuples, qui se cachent dans les îles, ou entre des montagnes, comme des lapins qui se dérobent aux animaux

* Appendix 45.
† Fisher Ames.
‡ "War, and Other Essays," by William Graham Sumner.
carnassiers; mais, à la longue, ils sont découverts et dévorés.” *

The words and work of “the men who founded this republic” show the countervailing principle upon which they worked. “Si une république est petite, elle est détruite par une force étrangère; si elle est grande, elle se détruit par un vice intérieur . . . aussi il y a grande apparence que les hommes auraient été à la fin obligés de vivre toujours sous le gouvernement d’un seul, s’ils n’avaient imaginé une manière de constitution qui a tous les avantages intérieurs du gouvernement républicain et la force extérieure du monarchique. Je parle de la république fédérative.” † It is not necessary to adopt that exaggerated tone of reverence, fashionable among us, as to either the men or their work. That they were actuated by the usual aims and ambitions of mankind their proceedings amply show. Yet, also, they were capable of estimating what their task meant. Before Mr. Lecky, they felt that their work “affected the future of humanity.” Hamilton begins The Federalist:

“You are called upon to deliberate on a new constitution for the United States of America. The subject speaks its own importance; comprehending in its consequences, nothing less than the existence of the UNION, the safety and welfare of the parts of which it is composed, the fate of an empire, in many respects the most interesting in the world. It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force. If there be any truth in the remark, the crisis, at which we are arrived, may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act, may, in this view, deserve to be considered as the general misfortune of mankind.”

*Voltaire, “Dictionnaire Philosophique.”
From the inaugural of Washington to the ephemeral newspaper letter of the period, the same note of free choice, of government founded, not upon force, but free assent, and instituted for "the safety and welfare of the parts which composed" the Union, is everywhere struck,—the more significantly that many of the leaders preferred a government more consolidated and coercive than they were able to achieve.\(^1\)

Was it all a fairy tale? Men had died happy that the eyes of Liberty, opened to their dying kiss as they broke the hedge of bayonets, would never again be closed by force or fraud. Little more than a hundred years later, within the easy span of two lives, indeed, while one then born might conceivably still be living, we are told that discussion of the most vital point of this momentous matter is "academic," in that it has been settled by war; \(i.e.,\) that "the question whether societies of men are really capable or not of establishing good governments from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force," has been decided by force.

Not only does the word "academic" thus restore those political ideals which the men of the Constitution supposed themselves to have shattered; it denies the teaching of history, throughout which force appears as the arbiter of the moment, indeed, yet fundamentally episodic. Reason, organically slow —reacting against force only when the ill effects of the latter become so general as to be inevitably obvious to the lower average of the majority mind—finally confirms or annuls its judgment: as nature, in the physical world, renders once more fertile the débris of its own convulsions. The principle is written throughout human progress. Without it there could not have been progress.

It is true that,

"During the war, necessity" [or what was considered such] "took the place of the Constitution, and we see the written guarantees of liberty grow dim in the smoke of battle. . . . There is no statute of limitation in the law of cause and effect, and the usurpations of the war and Reconstruction days are
the fundamental causes of the existing conditions to-day." *

The immediate results of a war may be readily pointed out: "Our Civil War may serve as an example . . . Think of the doctrines which were set aside as false, and of the others which were established as true . . . of the constitutional principles which were permanently stamped as heretical or orthodox." †

"A strong government was needed; and that fact has opened the way for Congress to interfere with private business, for instance in changing the tariff . . . much more frequently and extensively . . . Another significant fact is that the old controversy about internal improvements has died away since our government was centralised by war; and much money is wasted under that pretext by Congress." ‡

Yet, in a larger sense, there is "a statute of limitation in the law of cause and effect."

Political, like physical, disease, if within a nation's recuperative strength, permits recovery; if not, a people (as such) dies,—to be succeeded by a healthier organism.

From this point of view, then, inquiry cannot be "academic," unless the doctrine of secession has been effectively denied by reason, finally confirming the decree of force. But nothing could be more absurd than this supposition; a vast majority of those citizens upon whose intelligent understanding of the past must depend the welfare of the future do not even know what that doctrine is, still less the facts for, or against, it.

Although a voluminous literature on the subject might indicate that reason has already held its session, it may be said that even a true issue between the opposing doctrines has not been fully made up. Confusion of thought, political and ethical sophistry, and falsification of fact have made a Lernæan marsh, wherein hydra-headed error is yet to be destroyed before the point is even attained where honest and informed divergence of opinion is generally possible.

* Franklin Pierce, "Federal Usurpation"; N. Y., 1908.
† William Graham Sumner, "War."
When Sir James Fitzjames Stephen can say: "The Constitution no doubt did leave unsolved the great question as to the right of secession. The question whether or not, under the Constitution, construed as a legal document, the States had a right to secede, is about as ingenious a puzzle as any other question as to the meaning of a studiously ambiguous document," * discussion of it can scarcely be academic from this point of view.

Still less is it from that of sentiment. Force, attempting to destroy, preserves a creed,—allying reason with emotion, with admiration for fortitude, with pity for misfortune, with gratitude for self-devotion, with all that satisfies the human craving for excitement and hero-worship.

"Loin de nous amollir, que ce sort nous retrempe!  
Sachons le prix du don, mais ouvrions notre main.  
Nos pleurs et notre sang sont l'huile de la lampe  
Que Dieu fait porter devant le genre humain."

That lamp has gloriously, yet dangerously, lit the advance of humanity despite, and because, of force.

Though the historian should, with Tacitus, write *sine ira*, he cannot do so upon this subject for the reason given by that author, *quorum causas procul habeo*. To no man are the title-deeds of his liberty afar off

"for free liking  
Is yharnit our all othir thing."

If he does so, it can only be upon less personal, more philo-
sophic ground, *vis.*: the necessary acceptance of human error and wrong. Yet, if, remembering human infirmity, he must write *sine ira*, even of those who falsify the charter of free-
dom, it does not follow that he should write without gratitude of those who have withstood the attempt. In just so much as that infirmity is a palliative to anger in recording evil, it cor-
relatively enhances gratitude to those who "know the cost of the gift, but open the hand."

Mr. Judah P. Benjamin, apostrophizing the seceding South-
er Senators, said:

* "Essay on The Federalist."
"When in after days the story of the present shall be written, when history shall have passed her stern sentence . . . your names will derive fresh lustre . . . And when your children shall hear repeated the familiar tale it will be with glowing cheek and kindling eye, their very soul will stand a tip-toe as their sires are named and they will glory in their lineage from men of spirit as generous and of patriotism as high spirited as ever illustrated or adorned the American Senate." *

The prophecy may scarce be said to have been fulfilled—excepting in so far as regards filial feelings. The "iniquity of oblivion hath scattered her poppy." Yet it does so over the just and the unjust. That "stern sentence of history" is so soon forgotten; perhaps so little worth! Chance,roguey, ignorance, on the bench with justice, juggle the laurel and the pillory. Need one care which is decreed his name? "He knows the cost of the gift, but opens his hand;" and, for the rest, "What have I said amiss that the Athenians applaud me?"

Yet, even in this aspect, the question is not "academic." In this aspect it is farthest from being "academic." The import of the stern sentence of history concerns the judges, not the careless shades, its subject.

"Des ordures des grands le poète se rend sale
Quand il peint en César un ord Sardanapale,
Quand un traître Sinon pour sage est estimé,
Desguisant un Néron en Trajan bien-aymé;
Quand d'eux une Thais une Lucrèce est dite,
Quand ils nomment Achill' un infame Thersite;
Quand, par un fat sçavoir ils ont tant combattu
Que, souldoiez du vice, ils chassent la vertu."

"The noblest human work, nobler even than literature and science, is broad civil liberty, well secured and wisely handled." †

Without this, arts, sciences, literature, are but palliations—when not aggravations,—of degradation.

* February 4, 1861.
† F. Lieber.
I—2
When Liberty grows dim, what is best
Then becomes worst, what loveliest most deformed.

And civil liberty to be "well secured and wisely handled," must have its roots in the truth of history. False ideals, mean admirations, repay those who follow them with destruction. Justice to predecessors is inexorably mingled with the happiness of posterity.

If, then, reason has not said its last word, then but for one reason can further discussion be "academic"; viz., that like Livy's Rome, the commonwealth ad hae c tempora, quibus nec vitia nostra, nec remedia pati possumus, perventum est. We have not yet reached the point at which our political vices have become unbearable. When one perceives the ever-swelling myths in which avarice and political advantage have enveloped false causes and characters, the growing tendency to transmute the idea upon which free democratic political institutions are necessarily founded, viz.: that the average citizen is capable of taking care of himself, into the underlying principle of despotism, viz.: that the average citizen must be taken care of by government;* when one perceives the already too evident results, one may not indeed avoid the fear that we are near the point where we are unable to bear their remedies.

"The object of Tacitus," as Coleridge says, "was to demonstrate the desperate consequences of the loss of liberty on the minds and hearts of men"; he may have written sine ira, but he wrote "with despair in his breast breathed into many lines of his melancholy annals." † But he was looking backward. Looking forward, one may still say: "Quod futurum sit, plane nescio, spes tandem una est, aliquando populum romanum majorum simile fore." Cicero's hope proved vain for the Roman; the American people may yet return to the political ideals of their forefathers—"when the American spirit was in its youth . . . liberty, sir, was then the primary object." ‡

In conclusion, though in so intricate an impeach, the assertion of Bayle may scarce be fully supported: "Que les vérités

† Lieber.
‡ Patrick Henry.
historiques peuvent être poussées à un degré de certitude plus indubitable que ne l’est le degré de certitude à quoi l’on fait parvenir les vérités géométriques; bien entendu que l’on considérera ces deux sortes de vérités selon le genre de certitude qui leur est propre,” it is not a little if one may only say with Bacon: “In those things wherein I have erred, I am sure, I have not prejudiced the right with litigious arguments.”

The author acknowledges with gratitude the courteous and helpful efficiency of Mr. Luther E. Hewitt, Librarian of the Bar Association of Philadelphia. From New England friends, for anything herein asserted if untrue, he asks forgiveness. Let them not be aggrieved by truth. In either case,

“One may maintain
Peace sure with piety, though it come from Spain.”

Note: It has been thought unnecessary to append a bibliographical apparatus. The evidence upon which the determination of the subject should depend is extant in the instrument of the Constitution, the records of the acts and proceedings of the representatives of the people in the official bodies, the Conventions and Congresses of the time; it is of undisputed authenticity, not of unreasonable bulk, easy of access. (To think that records of a people’s freedom, not veiled in the mist of years, but before the ink with which they were written had faded, should have so successfully been perverted, is indeed a counsel of despair!) It has seemed unnecessary to enumerate expository works, able and authoritative as are many of them, further than as cited; when, it is hoped, they are indicated sufficiently for reference and acknowledgment.

January, 1917.

B. S.

November 15, 1918.

P.S.—This work, then about to issue from the press, was withheld when the United States entered on the war with Germany. One does not discuss family troubles while a burglar is trying the door. The worst of it is, dissenting members will consider it equally poor taste to discuss them amid the rejoicing of victory—or at any other time.
Tunc etiam Cassandra.

At least the sentiments as to the rights of self government of small nations, sacredness of treaties, etc., which to-day, polished up as good as new, adorn the speeches of statesmen and make beautiful the feet of the editor upon the newspaper—these at least illuminate the study of that League of Nations which existed in these United States. Coleridge deplores that the study of history, like the lantern at a ship's stern, but serves to light the wastes traversed; but possibly some reflected light may coldly furnish forth the prospect of that "League of Nations," our to-day's political panacea. It at least serves to show, though possibly the patient never believes, that there is no panacea in government or medicine. That, as James Fitzjames Stephen says: "Democracy has, as such, no definite or assignable relation to liberty. The degree in which the governing power interferes with individuals depends upon the size of the country, the closeness with which the people are packed, the degree in which they are made conscious by actual experience of their dependence upon each other, their national temper, and the like. The form of government has very little to do with the matter." (v. also Appendices 36A & 45, p. 391.)
CHAPTER I

STATEMENT OF THE DOCTRINE OF SECESSION

The Confederate government, asking recognition from France, made to M. Thouvenel, Minister of Foreign Affairs, July 21, 1862, through its Commissioner, Mr. Slidell, the following statement, viz.:

"Their [the United States] first union was formed by a compact of sovereign and independent states upon covenants and conditions expressly stipulated in a written instrument called the Constitution.

"In that Union the States constituted the units or integers and were bound to it only because the people of each accorded to it in their separate capacities through the acts of their representatives. That Confederacy was designed to unite under one Government two great and diverse social systems, under the one or the other of which all the States might be classified. As these two social systems were unequally represented in the common Government, it was sought to protect one against a warfare which might be urged by the other through the forms of law by carefully designed restrictions and limitations upon the power of the majority in the common Government. Without such restrictions and limitations it is known historically that the Union could not have been formed originally. But the dominant majority, which at last proved to be sectional in its character, not only used the machinery of Government which they wielded to plunder the minority through unequal legislation in the shape of protective tariffs and appropriations made for their own benefit; but proceeding from step to step, they waged through the forms of law a war upon the social system of the slaveholding States and threatened, when fully armed with political power, to use the
Government itself to disturb the domestic peace of those States. Finding that the covenants and conditions upon which the Union was formed were not only persistently violated, but that the common Government itself, then entirely in the hands of a sectional majority, was to be used for the purpose of warring upon the domestic institution which it was bound by express stipulations to protect, thirteen of the slaveholding States felt it to be due to themselves to withdraw from a Union when the conditions upon which it was formed either had been or were certainly about to be violated."

This statement lays the groundwork of the doctrine of Secession in the assertion that "Their first union was formed by a compact of sovereign and independent states . . . In that Union the States constituted the units or integers and were bound to it only because the people of each accorded to it in their separate capacities," etc. Having done this, it passes to a recital of injuries suffered, which, if true, afford justification for exercising the "natural" right of resistance, or revolution, but, in themselves, give no Constitutional right of "secession." "Secession" is not a (so-called) "natural" right. It may be established only upon precedent and law.

The "Declaration of the Immediate Causes which induce and justify the Secession of South Carolina" develops the doctrine in full; and, being published by the authority of the Convention which enacted the Ordinance of Secession of that State, may serve as the official statement of the doctrine. After reciting the Declaration of Independence and the Treaty acknowledging the same, it proceeds:

"Thus were established the two great principles asserted by the Colonies, namely: the right of a State to govern itself; and the right of a people to abolish a Government when it becomes destructive of the ends for which it was instituted. And concurrently with the establishment of these principles, was the fact, that each Colony became and was recognized by the Mother Country as a free, sovereign and independent state. . . . We hold that the Government thus established [i. e., by the Constitution] is subject to the two great principles
asserted in the Declaration of Independence; and we hold further, that the mode of its formation subjects it to a third principle, namely: the law of compact. We maintain that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part of the agreement entirely releases the obligation of the other; and that where no arbiter is provided, each party is remitted to his own judgment to determine the fact of failure, with all its consequences."

The doctrine of Secession depends upon these principles of law; the first two peculiarly American in their establishment; the other a long-established principle of international law, and, as such, applicable to all peoples. It is then necessary to ascertain if the "Union was formed by a compact of sovereign and independent States upon covenants and conditions expressly stipulated" (in a written instrument called the Constitution) before inquiring whether, this being so, "the mode of its formation subjects it to a third principle, namely: . . . that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part of the agreement entirely releases the obligation of the other; and that where no arbiter is provided, each party is remitted to his own judgment to determine the fact of failure with all its consequences."
CHAPTER II

THE DECLARATION

Was "the Union formed by a compact of sovereign and independent States"?

This question necessarily deals with four political periods,—the Colonial, and those of the Declaration of Independence, the Confederation, and the creation of the Constitution.

Colonial conditions may be briefly stated. It is not seriously denied that, prior to the Declaration of Independence, the British Colonies in America were without political connection save in their common dependence on Great Britain, and in brief local confederacy for particular purposes.³

"The thirteen colonies, as we all know, were independent commonwealths with respect to each other. They had little sympathy and a great deal of jealousy. They came into a union with each other upon terms which were stipulated and defined in the Constitution, but they united only unwillingly and under the pressure of necessity." *

The question to be discussed, then, arises with the act which declared their independence of Great Britain.

On the 15th of May, 1776, the convention of Virginia passed the following resolutions:

"... The king's representative in this Colony hath not only withheld all the powers of government from operating for our safety, but, having retired on board an armed ship, is carrying on a piratical and savage war against us, tempting our slaves, by every artifice, to resort to him, and training and employing them against their masters. In this state of extreme danger, we have no alternative left but an abject sub-

*William Graham Sumner, "The Conquest of the United States by Spain."
mission to the will of those overbearing tyrants, or a total separation from the crown and government of Great Britain, uniting and exerting the strength of all America for defence, and forming alliances with foreign powers for commerce and aid in war. Wherefore, appealing to the SEARCHER OF HEARTS for the sincerity of former declarations expressing our desire to preserve the connexion with that nation, and that we are driven from that inclination by their wicked councils, and the eternal laws of self-preservation:

"Resolved, unanimously, That the delegates appointed to represent this Colony in the General Congress, be instructed to propose to that respectable body, to declare the United Colonies free and independent States, absolved from all allegiance to, or dependence upon, the crown or parliament of Great Britain; and that they give the assent of this Colony to such declaration, and to whatever measures may be thought proper and necessary by the Congress for forming foreign alliances, and a confederation of the colonies, at such time and in the manner as to them shall seem best; Provided, the power of forming government for, and the regulations of the internal concerns of each Colony, be left to the respective colonial legislatures.

"Resolved, unanimously, That a committee be appointed to prepare a DECLARATION OF RIGHTS, and such a plan of government as will be most likely to maintain peace and order in this Colony, and secure substantial and equal liberty to the people."

In accordance with this,

"In Congress, Friday, June 7, 1776, the delegates from Virginia moved, in obedience to instructions from their constituents, that the Congress should declare that these United Colonies are, and of right ought to be, free and independent states . . . and a Confederation be formed to bind the colonies more closely together." *

The ensuing resolution of Congress (the real Declaration), precedent to the Declaration of Independence, is as follows:

"Resolved that these United Colonies are, and of right ought to be free and independent states, that they are absolved from all allegiance to the British Crown; and that all political connexion between them and the state of Great Britain is, and ought to be, totally dissolved."

The same phraseology obtains in "the Declaration of Independence," which continues:

"and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do."

In the Virginia Resolutions is unequivocally to be perceived a State (i. e., "Nation") declaring its injuries, its readiness to confederate with other States for a certain purpose, and reserving to itself self-government under that confederation. The phraseology of the ensuing resolution of Congress and Declaration of Independence is strictly in consonance with this declaration and with the consequences which would naturally ensue from precedent conditions, viz.: that each colony, being severally a dependency on Great Britain and unconnected with any other power, upon becoming independent of that country became a "free and independent state." The sequence of events, the phraseology, the legal consequence, and actual results are thus in entire agreement. The former do not indicate the latter to be that the colonies became a "free and independent state." 8

"Whilst the Colonies enjoyed the protection of the parent country . . . against foreign danger; and were coerced by its . . . control, against conflict among themselves, they continued independent of each other. . . .

"The Congress finding . . . that the popular voice began to call for an entire and perpetual dissolution of the political ties which had connected them with G. B. proceeded on the
memorable 4th of July, 1776, to declare the thirteen Colonies independent States.

"During the discussions of this solemn Act, a Committee consisting of a Member from each colony had been appointed to prepare and digest a form of Confederation for the future management of the common interests which had hitherto been left to the discretion of Congress guided by the exigencies of the contest, and by the known intentions or occasional instruction of the Colonial Legislatures." *

Although the very Resolutions asserting independence call for a confederation of the states, thereby necessarily excluding the idea of a consolidation of them, effected by the Resolutions the doctrine (suggested by Mr. James Wilson? *) that the States became independent, not severally, but as one body, has been accepted as a basis of party belief, has played its part in destroying the original theory of our government, and must be met in any attempt to retrace that theory.

"From the preceding view of the colonies prior to 1774, and while the ancient relations between them and the mother country continued, it is most manifest that they were as separate from each other, in all matters of internal government, as they now are. . . . No other controlling power did, or could exist then, under the old constitution of the Kingdom, than does now under that of the Union, save such as it imposed.

"Though they had assembled in Congress to consult on their common concerns, they had never made a government over themselves; and when they met in 1774, their proceedings showed in what capacity they acted. They first resolved, that each colony should have one vote, which was an explicit declaration, that they acted separately in all they did; their declaration of rights and resolutions are also too unequivocal for any double or doubtful meaning to be attached to them.

"After reciting the grievances suffered in consequence of certain acts of parliament, and of the crown, they declare the character and authority under which they act. 'The good people of the several colonies of New Hampshire, Massachusetts

* Madison, Preface to "Debates in Convention," 1787.
Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, New Castle, Kent, and Sussex on the Delaware, Maryland, Virginia, North Carolina, and South Carolina, jointly alarmed at these arbitrary proceedings of parliament and administration, have severally elected, constituted, and appointed deputies, to meet and sit in the city of Philadelphia, in order to obtain such establishment as their religion, laws, and liberties, may not be subverted.

"Whereupon, the deputies so appointed, being now assembled in a full and free representation of these colonies, taking into their most serious consideration the best means of attaining the ends aforesaid; do, in the first place, as Englishmen, their ancestors, in like cases have usually done, for asserting and vindicating their rights and liberties, declare,

"That all the inhabitants of the English colonies in North America by the immutable laws of nature, the principles of the English constitution, and their several charters and compacts, have the following rights:

"Resolved, N.C.D. 1. That they are entitled to life, liberty and property; and they have never ceded to any foreign power whatever, a right to dispose of either without their consent.

"Resolved, N.C.D. 2. . . .

"Resolved, N.C.D. 7. That these his majesty’s colonies are likewise entitled to all the immunities and privileges granted and confirmed to them by royal charters, or secured by their several codes of provincial laws.

"All and each of which the aforesaid deputies, in behalf of themselves and their constituents, do claim, demand, and insist on, as their indubitable rights and liberties; which cannot be legally taken from them, altered or abridged, by any power whatever, without their own consent, by their representatives in their several provincial legislatures." Journ. Cong. 28, 9.

"An Association was formed and signed by the members from the different colonies, beginning, ‘We, his majesty’s most loyal subjects, the delegates of the several colonies of New Hampshire,’ etc., etc. ‘And therefore we do for ourselves
and the inhabitants of the several colonies whom we represent.

"The letter to the people of Great Britain was headed in the same manner, and signed by the delegates of the several colonies. 1 Journ. 32. So were their other letters and addresses at that time, 62.

"These proceedings cannot be mistaken in the distinct assertion, that all the powers of government were vested in the several provincial legislatures, subject only to the restraints mentioned in the fourth resolution. There was no state or nation, to which the several colonies stood in the same relation as the counties and towns of England did ... The spirit and principles of this declaration were adopted by the colonies and congress. In October, 1775, congress, on the application of the provincial convention of New Hampshire, recommended them to call a full and free representation of the people, to establish such government as they thought proper, to continue during the dispute with Great Britain. ... This was done in a convention of the people in January, 1776, by a constitution which remained in force till 1784; declaring the dissolution of all connection with the British government, and 'assuming that equal rank among the powers of the earth for which nature had,' etc.

"The royal government had ceased in South Carolina in September, 1775, under the recommendation of Congress in Nov.: ... the people of that state formed a constitution in March, 1776, which all officers were sworn to support, 'till an accommodation with Great Britain, or they should be released from its obligation by the legislative authority of the colony. ...

"In April, 1776, congress resolved 'that trade was subject to such duties and impositions as by any of the colonies, and such regulations as may be imposed by the respective legislatures,' etc., which resolution congress directed to be communicated to foreign nations. ..."

"In May they resolved 'that every kind of authority under the crown should be totally suppressed, and all the powers of government under the authority of the people of these colonies
should be exerted. That it recommended to the respective assemblies and conventions of the united colonies, where no government sufficient to the exigency of their affairs hath been hitherto established, to adopt such a government, as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general . . .'

"On the 24th of June they declared, by their resolutions, 'that allegiance was due to the several colonies, that adherence to the King was treason against the colony within which the act was committed; and recommended that laws should be passed for punishing treason . . . 4 12

"In June the people of Virginia, in full convention, adopted a constitution; declaring that all power is vested in, and derived from the people, who have an indefeasible right to institute, reform, alter, or abolish government; that none separate from, or independent of that of Virginia, ought to be erected or established within the limits thereof; and that the government, under the British crown, is totally dissolved . . . This constitution remained unaltered till 1830 . . .

"On the 2d of July, 1776, the people of New Jersey, in convention, declared the authority of the Crown to be at an end; the royal government dissolved . . . and adopted a constitution, to become void on a reconciliation with Great Britain . . . which is yet unchanged . . . June 19th deputies from the cities and counties of Pennsylvania, approved the resolution of Congress passed in May; resolved that a convention be called to form a government on the authority of the people only; and declared, on the 24th, their willingness to concur in a vote of the congress declaring the united colonies free and independent states; provided, the forming the government, and regulating the internal police of the colony, be always reserved to the people of the colony . . .

"As there never was any other political connection between the colonies, than such as resulted from their common origin, by separate charters from the crown, in virtue of the royal prerogative, and the general supremacy of parliament, which extended to all the dominions of Great Britain; it was a neces-
ecessary consequence of the extinction of both the prerogative and legislative powers of the mother country, that there could remain no restraint on the legislation of the colonies, save what the people thereof should impose. No extraneous power could act within their respective limits, without their consent; from the moment that the authority of Great Britain ceased to operate, that of each colony became absolute and sovereign; and no government could exist thereout, which could prescribe laws within it. . . . Such was the unanimous expression of the universal sense of the people, in primary assemblies, in conventions of counties and states, legislatures and congress, from 1774; four colonies had become states by the adoption of constitutions of government by the inherent power of the people; the formation of a fifth was in progress on the same principles, which were solemnly promulgated by the original declaration of rights of the several colonies, and the people thereof. In June, 1776, there was not a colony in which any authority under Great Britain was exercised, except in warfare; and when Congress resolved that all allegiance was due to the several colonies; that treason was punishable in the colony wherein the act was committed; and that the regulation of trade was subject to the laws of the respective legislatures; it was tantamount to a declaration, that they were then independent, and had, in fact, 'assumed their equal station among the powers of the earth.' Congress had recommended that all the colonies should do so, by the establishment of a government on the authority of the people only; four states had exercised, a fifth had entered upon the exercise of this authority; and a convention of the people thereof had assembled, before the declaration of independence, by congress, was engrossed or signed by any member . . .

"From these proceedings the political results were plain and self-evident; each colony, by the uncontrollable exercise of all the powers of self-government, had in fact become an independent state; five were so, by their declarations of independence in the most solemn manner. No sovereignty did, or could exist over them, unless that of Great Britain should be restored by a reconciliation; which not happening, their dec-
laration of independence, in their separate conventions, became absolute; and these states were independent according to the universal opinion of the country, which is most clearly expressed in the language of this Court. 4 Cr. 212, M’Ilvaine vs. Cox. ’This opinion is predicated upon a principle, which is believed to be undeniable, that the several states which composed this Union, so far at least as regarded their municipal regulations, became entitled, from the time when they declared themselves independent, to all the rights and powers of sovereign states, and that they did not derive them from concessions by the British King. The treaty of peace contains a recognition of their independence, not a grant of it. From hence it results, that the laws of the several state governments were the laws of sovereign states; and as such were obligatory upon the people of such states, from the time they were enacted. . . .’ Such being the political condition of the colonies and states, it becomes a question of easy solution whether congress intended to make a solemn promulgation of these principles to the world, by declaring the great result of the revolution to have been, or to be, the establishment and continued existence of thirteen independent nations and states, with the powers of government separate and sovereign in each; or of one nation, one state, with one national government. Whether this great and crowning act of the revolution was intended to perpetuate, or prostrate, the rights and powers of the colonies, the states, and the people thereof, and to substitute one government in place of thirteen then in existence. To absolve the people of these states not only from their allegiance to the British crown, but from that allegiance which Congress, ten days before, had resolved the people owed to the several colonies; to abolish as well the royal, as the colonial and state governments, within the boundaries of the United States; to suppress alike the British constitution and those state constitutions, which, two months before, they had recommended to be formed, by the authority of the people of the several colonies alone; to proclaim to foreign nations in April, that the power to impose duties, impositions, and regulations on trade, was in the respective legislatures of the col-
onies; yet, in July, to declare to the world that the power 'to establish commerce,' etc., existed in one state, in one government, acting over all the states in their unity of political power, as the representatives of one people, of the one state. Taken in this sense, there must have been two American revolutions; one to suppress the government of Great Britain, the other to suppress the governments of the states, each of which was by the right of revolution; for there is no more pretence of any authority by the people of the states, or in the credentials of the members of congress, who were appointed by colonial or state legislatures, to abolish state governments, and constitute a national one, invested with supreme legislative powers over all the states, than there was by the King and parliament to abolish their supreme legislative, or prerogative powers, by any act of the several colonies or states, or when they were assembled in congress by their deputies. The states, by their several representatives, effected the first revolution in an assembly of the states; the congress effected the second, by imposing on the states—people, a new sovereign—themselves. Taken in the other sense, the declaration of congress, on the 4th July, 1776, announced one great revolution; on the great principles solemnly declared in 1774, and reiterated in every political movement by the people, whenever they expressed their opinion, in large or small popular assemblages, or through their representatives at home, or those deputed by their local legislatures, to consult, deliberate, and resolve in a congress.*

"If congress was, in 1776, a national legislature, with power to pass laws independently of the several states, and to control state legislatures, all subsequent acts were worse than useless; for the government was more absolute than the present." The declaration of independence admits of no qualification of the unlimited powers of a state. Taking it as the creation or recognition of a government, instituted by one people of one state, as guaranteed by the treaty of alliance with France, and acknowledged by the treaty of peace with Great

Britain; it was 'absolute and unlimited in matters of government, commerce, and possessions'; and all the rights of the crown, and powers of parliament, devolved upon, and passed definitively to the one state and nation, as well to the soil as the jurisdiction of the whole territory within the boundaries of the United States. That this view of the declaration of independence is contradicted by historical facts, by all the political events of the revolution, the proceedings of congress, the general and state conventions, and the adjudications of this Court is, I think, fully apparent . . . That there were thirteen colonies, with separate governments in each, without any control by one over another, is admitted; that they assembled by different representations; that they voted, acted, and signed the declaration by their separate delegates, is apparent on the journals of congress, and the face of the paper. The members who assembled as the delegates of colonies, were the same, who, as the representatives of the states, made the declaration in the name, and by the authority of the good people of these colonies; which was: 'That these united colonies are, and of right ought to be, free and independent states.'

"If this declaration had no bearing on the constitution, or if that instrument was not the most ill-fated one that was ever devised and written by man, not only being itself perverted, but made the cause of perverting every other instrument in writing which forms a part of its history, or can be referred to for illustration; there would be the same union of opinion as to its meaning as there has been for one hundred and fifty years in England, as to the declaration of rights, wrongs, and the effects thereof, in 1688. That it consummated a revolution in government, whereby all colonial dependence having ceased, each political community assumed, as a state, that separate and equal station among the powers of the earth, which other independent states held, and which each state then and thenceforth had and enjoyed; would have been the universal opinion, if no question of political power was involved in mystifying it. If this paper is taken as it reads, and means what it says, it contains neither a grant or recognition of the existence of any legislative powers within the limits of the once colonies and
then states; other than what was and had been in the several legislatures thereof, from their first settlement; and if it cannot be made so by bold assertion, or misinterpretation, there is no foundation for the theory of the *unity of power* in the 'one people,' in constituting a government for the United States."

CHAPTER III

THE CONFEDERATION

If additional proof were necessary that the Colonies became severally independent States by the Declaration of Independence, the history of the subsequent Confederation, its provisions, and the form and terms of its ratification show that they entered it as such; and therefore that, unless by some proceeding undiscovered by history, they had acquired their several independence between the Declaration and the Confederacy, they must have done so by the former act.7

Congress resolved, June 11, 1776, that a committee should be appointed to prepare the form of a confederation to be entered into between the Colonies; it was determined that the committee should consist of a member from each colony. Upon the report of the Committee, the subject was debated until November 15, 1777, when a form was agreed upon. Congress directed that these articles should be proposed to the legislatures of all the United States, and if by them approved, they were advised to authorize their delegates to ratify the same in the Congress of the United States; which being done, they should become valid. On June 16, 1778, the form of ratification of the Articles was adopted, and was signed on July 9 in behalf of their respective States by the delegates of New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, Pennsylvania, Virginia, and South Carolina. The delegates of North Carolina signed on the 21st of July, those of Georgia on the 24th, and those of New Jersey on November 26th. May 5, 1779, Delaware completed her signatures. Maryland did not ratify until 1781.

The manner of this establishment in itself necessarily implies the voluntary action of sovereign and independent communities. The language used alike by Congress, the States,
and in the Articles, establishes the same conclusion. The circular letter sent by Congress to the various States in company with the proposed Articles reads:

"Congress having agreed upon a plan of confederacy for securing the freedom, sovereignty and independence of the United States, authentic copies are now transmitted for the consideration of the respective legislatures. . . . Permit us then earnestly to recommend these articles to the immediate and dispassionate attention of the legislatures of the respective states. Let them be candidly reviewed under a sense of the difficulty of combining in one general system the various sentiments and interests of a continent divided into so many sovereign and independent communities," etc.

The form of the Confederation runs as follows: vis.:

"Articles of Confederation and Perpetual Union between the States of New Hampshire [the others named]. Article I. The stile of this Confederacy shall be 'The United States of America.' Article II. 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." 8

Equally what the Articles provide for and wherein they restrict the several States display the prior autonomy and independence of those States. They "enter into a firm league of friendship with each other for their common defence." They grant to the free inhabitants of each State the freedom of the other States. Finally Article XII provides:

"Every State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; 9 nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

"And, whereas it has pleased the Great Governor of the
world to incline the hearts of the Legislatures we respectively represent in Congress to approve of, and to authorize us to ratify the said articles of confederation and perpetual union, Know ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual . . . On the part and behalf of the State of New Hampshire, John Bartlett,” etc. [Other States signed in similar manner.]

Do these gentlemen mean nothing by stating that the authority for their act is “the Legislatures we respectively represent,” that they “plight the faith of our respective constituents,” that “the articles shall be inviolably observed by the States we respectively represent?” And is each delegation indeed, in spite of this language, acting for a hodgepodge of all the States in one?

The argument of those who would claim that the States became united as one State or Nation by the Declaration, or Confederation, must be either false, or, if true, is a proof that those States viewed “secession” as a natural concomitant of such an organization. Either they entered the Confederation as “sovereign and independent States”; or, if they regarded themselves as parts of a unified government, then they dissolved it, in spite of its having been made “perpetual,” by a partial and peaceful act; the agreement of nine only, of thirteen States, being necessary to the validity of the new agreement; and no provision whatever being made against adverse action by the remaining four. Two of these, Rhode Island
and North Carolina, did not become parties to the new government for two years after its formation. During that time these were not a part of the old Confederation, which was nonexistent; they were not a part of the new United States. If they were not "sovereign and independent states" in the fullest sense, what constitutes such sovereignty? Yet these two commonwealths had no other claims to sovereignty than those that existed in their sister States; therefore, if these two were sovereign, so were the others. Some citations may serve to show that the States conducted themselves during the Confederation as sovereign communities.

The process of adoption, briefly described by Marshall as follows, is verified by the various ratifications of the States:

"Various amendments, in some instances contradictory to each other, were proposed by the states respectively, but they successively yielded to the opinion that a federal compact would be of vast importance in the prosecution of the war." *

"... Now it is most strange that when we compare these proceedings with those which commenced in the colonies, in 1774, from the first assembling of congress till they made 'a declaration' of rights and wrongs, and entered into 'an association,' preparatory to a revolution; and from that time to July, 1776, when the revolution being effected, and the colonies had in fact become states, and made 'the unanimous declaration of the thirteen United States of America,' announcing that fact to the world; that both declarations patterned from the declaration of 1688, throughout, and in many parts copied, should be taken to be the declarations of one people, in a congress, representing one nation, instituting a national government thereof; and not as thirteen colonies or states una anima, declaring each to be a free and independent state, when the name of each was affixed, signed by their separate agents, calling themselves their representatives. It is equally strange, when in 1781, the same states by 'articles of confederation and perpetual union' between them, naming

each, entered into a confederacy or league of alliance, the style
of which was 'the United States of America,' the second article
whereof declared, 'each state retains its freedom, sovereignty
and independence, and every power, jurisdiction and right
which is not by this confederation expressly delegated to the
United States in congress assembled'; and by the third article,
'the said states hereby severally enter into a firm league of
friendship with each other,' etc.; that there then existed an
unity of political power, in the people and government of one
state or nation, compounding the people, and power of all the
states, into one, from 1776; so that no particular state had
any power, right, or jurisdiction to retain to itself, or delegate
to the United States. It is stranger still that it should be as-
serted, that congress acted as the representatives of one people,
state or nation; when it is an admitted fact, that the first rule
adopted by the congress of 1774, was, 'Resolved, That, in
determining questions in this congress, each colony or province
shall have one vote.' 1 Journ. 11. So it continued till the con-
federation which declared, 'each state shall have one vote';
1 Laws U. S. 14; and so it remained till the old congress was
dissolved, in 1788, by the adoption of the constitution by nine
states, each having one vote in a convention of the people
thereof.

"If there can be a political truth, it would seem to be this,
that where, in a body composed of sixty-five members, there
could be only thirteen votes, if all the states were present, and
there must be one vote less for each state that was absent;
that the body did not, and could not represent, and act for all
the states and the whole people, as a national legislature, 'serv-
ing for the whole realm,' nation or state. They were a mere
congress of states, colonies, or provinces; the legislature of
each of which was the separate constituent of its own deputies,
or 'ambassadors,' who gave the vote of their 'sovereign,' and
not their own; and, therefore, could by no political possibility,
be a legislature in any political sense, as the representatives of
a people in their aggregate collective capacity.'" 18 *

* Henry Baldwin, "View of the Constitution," pp. 59-60; Philadelphia,
1837.
The states then became severally independent and sovereign by the Declaration of Independence; in such a capacity entered upon a Confederation, and so remained until the Constitution of 1788. The question then becomes:

In what manner and degree was this relation affected by that instrument?
CHAPTER IV

THE CONSTITUTION A COMPACT BY SOVEREIGN STATES

Passing from the Confederation to the Constitution, the history of the movement toward this modification of their existing confederacy shows not less unmistakably than their foregoing history the action of sovereign States.

"At length two great parties were formed in every state . . . The one . . . in favor of enlarging the powers of the federal government . . . The other . . . were . . . led . . . to resist every attempt to transfer from their own hands into those of Congress, powers which by others were deemed essential to the preservation of the union. In many of the states, the party last mentioned constituted a decided majority of the people; in all of them it was very powerful . . . men . . . who were persuaded of the insecurity of both, if resting for their preservation on the concurrence of thirteen distinct sovereignties; arranged themselves generally in the first party," etc. *

The Convention which framed the Constitution took its rise, as alluded to in Washington's letter to Lafayette, May 10, 1788,† from a conference of certain commissioners appointed by the States of Virginia and Maryland "to form a compact relative to the navigation of the rivers Potomac and Pocomoke, and of part of the bay of Chesapeake, by the citizens of Virginia and Maryland . . . who assembled at Alexandria in March, 1785." While at Mount Vernon on a visit of consultation with Washington, they agreed to propose to their respective governments the appointment of other commissioners with power to make conjoint arrangements, to which

* Marshall's "Life of Washington."
† v. Appendix 5.

42
the assent of Congress was to be solicited, for maintaining a naval force in the Chesapeake. The commissioners were also to be empowered to establish a tariff of duties on imports to which the laws of both States should conform. When these propositions received the assent of the legislature of Virginia, an additional resolution was passed, directing that which respected the duties on imports to be communicated to all the States of the union, who were invited to send deputies to the meeting.

On the 21st of January, 1786, a few days after the passage of these resolutions, another was adopted appointing certain commissioners, "Who were to meet such as might be appointed by the other states in the union, at a time and place to be agreed on, to take into consideration the trade of the United States," etc., etc.

The meeting which took place at Annapolis, in pursuance of these resolutions, was attended by the commissioners from five States only. It was perceived that powers more ample than had been confided to them would be requisite to enable them to effect the purposes which they contemplated.

"For this reason, as well as in consideration of the small number of states which were represented, the convention determined to rise without coming to any specific resolutions on the particular subject which had been confided to them. Previous to their adjournment, however, they agreed on a report to be made to their respective states, in which was represented the necessity of extending the revision of the federal system to all its defects, and in which they recommended that deputies for that purpose be appointed by the several legislatures to meet in the city of Philadelphia, on the second day of the ensuing May . . . On receiving this report, the legislature of Virginia passed an act for the appointment of deputies to meet such as might be appointed by other states; to assemble in convention at Philadelphia, at the time and for the purpose specified in the recommendation, from the convention which had met at Annapolis." *

* Marshall, "Life of Washington."
The preliminary steps to the Constitution were thus made by purely State action.\textsuperscript{15}

So much was this the case that, according to Marshall:

"Congress was restrained from giving its sanction to the proposed convention, only by an apprehension that their taking an interest in the matter \textit{would impede rather than promote it}. From this embarrassment the members of that body were relieved by the legislature of New York. A vote of that state . . . instructed its delegates to move in Congress a resolution recommending the several states to appoint deputies to meet in convention for the purpose of revising and proposing amendments to the federal constitution." *

On the 21st of February, 1787, the day succeeding the reading of the instructions given by New York, it was resolved by Congress:

"Whereas there is provision in the Articles of Confederation and perpetual union for making alterations therein by the assent of a Congress of the United States and of the legislatures of the several states; And whereas . . . several of the States and particularly the State of New York by express instruction to their delegates in Congress have suggested a convention for the purpose expressed in the following resolution . . .

"Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several states be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of Government and the preservation of the Union."

It is to be noted in this Resolution that the delegates are to be appointed by the several States—not the people of the

* "Life of Washington," Vol. V, Chap. II.
states as one body; and that the revision is to become valid
when confirmed by the several States—not by the people at
large. Also that "the preservation of the Union" is the object
aimed at: which points to a potential—and, indeed, an ex-
pected—resolution of it into its component members.

The States of New Jersey, South Carolina, and Georgia date
their credentials to their delegates in the Federal Convention,
which was the outcome of this action:

"In the year of our Lord 1786, and of our sovereignty
and independence the eleventh."

Are they speaking of the "sovereignty and independence"
of the "United States" as a whole, in those instruments by
which they are severally taking action to revise, alter, enlarge,
or altogether withdraw (as did in fact North Carolina and
Rhode Island) the powers of the federal government? Such
an idea is a *reductio ad absurdum*. To use the words of
Governor Randolph (speaking to another point) "... then
you establish another doctrine that the creature can destroy
the creator, which is the most absurd and ridiculous of all
doctrines."

The credentials of Georgia begin: "The State of Georgia
by the grace of God, free Sovereign and Independent." The
credentials of Delaware begin: "In the Eleventh Year of the
Independence of the Delaware State." The credentials of
New York close: "In Testimony whereof I have caused the
Privy Seal of the said State to be hereunto affixed the Ninth
day of May in the Eleventh Year of the Independence of the
said State"; those of North Carolina: "Witness Richard
Caswell, our Governor . . . in the XI year of our Inde-
pendence." The two "ours" must evidently connote objects
both referring to the State.

Some of the States dated their ratifications in the eleventh
year of American independence, some in the eleventh year of
the Independence of the United States, some in the eleventh
year of the independence of their own State, and some, in the
same instrument, used the last form in one place and one of
the others in another; clearly showing that the one was regarded as the equivalent of the other.

The Journals of the Convention begin:

"On Monday the 14th of May . . . in virtue of appointments from their respective States sundry deputies to the federal Convention appeared. But a majority of the states not being represented, the members present adjourned from day to day until the other states were represented."

The letter from the Convention to Congress, accompanying its completed plan, is thus commented upon by Judge Baldwin:

"This difficulty did not cease by the unanimous act proposed by the general convention. In their letter submitting it to congress, we find them stating the same reasons which embarrassed their action, and long delayed its ratification by the states. 'It is obviously impracticable in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all.' It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved.' . . .

"There can be no misunderstanding of the meaning of this letter, that the convention had proposed the frame of a 'federal government of these states,' to be created by a surrender of the necessary powers by the several states, to be made by the people in separate conventions . . ." *

The signature of the instrument declares the mode of its formation.

"He [B. Franklin] then moved that the Constitution be signed by the members, and offered the following as a convenient form, viz.: 'Done in convention, by the unanimous consent of the states present.'" †

† Journals of Congress.
The correspondence of the delegates shows their understanding of the nature of the powers which created the government.\textsuperscript{16}

In the Federal Convention itself, as in the various ratifying conventions, the sovereignty of the States represented in it was repeatedly asserted, and never effectively (if even formally) denied. Upon the resolution "that the rights of suffrage in the national legislature ought to be apportioned to the quotas of contribution, or to the number of inhabitants, as the one or other rule may seem best in different cases," Judge Brearly, of New Jersey, objected that

"The present question is an important one. On the principle that each state in the Union was sovereign, Congress, in the Articles of Confederation, determined that each state in the public councils had one vote. If the states still remain sovereign, the form of the present resolve is founded on principles of injustice."

Mr. Patterson, of New Jersey, said:

"We are met here as the deputies of thirteen independent sovereign states," etc.

Mr. Bedford, of Delaware (carrying out the instructions of his State),\textsuperscript{17} said:

"That all the states at present are equally sovereign and independent, has been asserted from every quarter of this house. Our deliberations here are a proof of the fact; and I may add to it, that each of them acts from interested, and many from ambitious, motives . . . Will you crush the smaller states, or must they be left unmolested? Sooner than be ruined there are foreign powers who will take us by the hand."

Mr. Bedford's threat was deprecated by various members, but none undertook to controvert his statement.

To the like effect in more guarded language, Judge Ellsworth, of Connecticut, moved the compromise which saved the situation:
"I now move the following amendment to the resolve—that, in the second branch, each state have an equal vote . . . This will . . . meet the objections of the larger states . . . If the great states refuse this plan, we will be forever separated."

Governor Randolph, urging ratification, in the Virginia Ratifying Convention, said:

"What is the present situation of this state? She has possession of all rights of sovereignty, except those given to the Confederation."

Sherman and Ellsworth, in their letter transmitting the proposed Constitution to the Governor of Connecticut, September 26, 1787, say:

"Some additional powers are vested in Congress, which was a principal object that the states had in view in appointing the Convention. Those powers extend only to matters respecting the common interests of the Union, and are specially defined, so that the particular states retain their sovereignty in all other matters . . ." Ellsworth, defending the Constitution in the Ratifying Convention of Connecticut, says: "This Constitution does not attempt to coerce sovereign bodies, states, in their political capacities."

Fisher Ames, of Massachusetts, said:

"The senators represent the sovereignty of the states."

Randolph, in his letter to the Speaker of the House of Delegates of Virginia, explaining his advocacy of the Constitution, says:

"I earnestly pray that the recollection of common sufferings, which terminated in common glory, may check the sallies of violence and perpetuate mutual friendship between the states. But I cannot presume that . . . through all time . . . thirteen distinct communities, under no effective superintend-
ing control (as the United States confessedly now are . . .) will avoid a hatred to each other . . .”

Mr. Randolph, in premising the Virginia proposals, which much altered became the basis of the Constitution, animadverting upon the defects of the Confederation which it was intended to rectify, said that,

“Perhaps nothing better could be obtained from the jealousy of the states with regard to their sovereignty.”

Enumerating these defects, he said:

“. . . Secondly, that the federal government could not check the quarrels between states, nor a rebellion in any, not having constitutional power nor means. . . . Fourthly, that the federal government could not defend itself against encroachments from the states. Fifthly, that it was not even paramount to the State constitutions, ratified as it was in many of the states. . . .”

The Journal of the Convention, May 29, records that:

“Mr. Charles Pinckney . . . laid before the house . . . the draft of a federal government, to be agreed upon between the free and independent states of America.”

Finally the Constitution was given its only validity over the people of the several States, as their ratifications plainly and unmistakably express, by conventions held severally by the several people of the States; e. g.

“We, the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the General Assembly, and now met in Convention . . . in the name and behalf of the people of Virginia do, by these presents, assent to and ratify the Constitution . . . hereby announcing that the said Constitution is binding upon the said people . . .”

The published proceedings of various branches of government after the Constitution had been put into operation recognize the manner of its creation; e. g. the title page of the
"Journal of the third session of the Senate of the United States of America, begun . . . Dec. 6, 1790, and in the fifteenth year of the sovereignty of the United States." The sub-title runs: "Journal of the third session of the Senate of the United States to wit: New Hampshire" [here follow the other States] being the thirteen States that have respectively ratified the Constitution of Government for the United States, proposed by the Convention," etc.

The sovereignty and independence of the States instituting the Constitution being proven, what can such an agreement be but a compact?

"Let whatever meaning be given to the constitution; whether a league, confederation, agreement, compact or treaty, 'between the states so ratifying,' as it expresses itself in the seventh article; its substance, essence, and nature, is a contract between states or nations." *

Mr. Upshur ("Review of Story") says:

"That a deed, or other instrument, receives its distinctive character, not from the name which the parties may choose to give it, but from its legal effect and operation." 18

This compact, however, not only is such from its nature, its legal effect, and operation, but it was so named by the parties thereto.

Mr. James Wilson, who sought to transfer his theory of a single state created by the Declaration to that of one created by the Confederation, and later again to that of one created by the Constitution, speaking in the Ratifying Convention of Pennsylvania, says:

"We were told some days ago, by the honorable gentleman from Westmoreland, when speaking of this system and its objects, that the convention, no doubt, thought they were forming a compact or contract of the greatest importance. Sir, I confess I was much surprised at so late a stage of the

debate, to hear such principles maintained. It was a matter of surprise to see the great leading principles of the system still so very much misunderstood. 'The Convention, no doubt, thought they were forming a contract.' I cannot answer for what every member thought; but I believe it cannot be said that they thought they were forming a contract, because I cannot discover the least trace of a compact in that system. There can be no compact unless there are more parties than one. It is a new doctrine that one can make a compact with himself. 'The convention were forming compacts.' With whom? I know no bargains that were made there. I am unable to conceive who the parties could be. The state governments make a bargain with one another! that is the doctrine that is endeavoured to be established by gentlemen in opposition, their state sovereignties wish to be represented! But far other were the ideas of the convention, and far other those conveyed in the system itself.

"This, Mr. President, is not a government founded upon compact; it is founded upon the power of the people. They express in their name and their authority, 'We the People do ordain and establish,' etc. From their ratification, and their ratification alone, it is to take its constitutional authenticity; without that, it is no more than tabula rasa ... The secret is now declared, and it is discovered to be a dread that the boasted state sovereignties will under this system be disrobed of a part of their power ... upon what principle is it contended that the sovereign power resides in the state governments? The honourable gentleman has said truly that there can be no subordinate sovereignty. Now, if there cannot, my position is, that the sovereignty resides in the people, they have not parted with it ..."

According to Mr. Wilson's own language, in this same Convention, there were thirteen parties.

"The difficulty of the business was equal to its magnitude. No small share of wisdom and address is requisite to combine and reconcile the jarring interests that prevail, or seem to
prevail, in a single community. *The United States contain already thirteen governments mutually independent.* *

Again, in the Federal Convention, Mr. Wilson, speaking to the possible destruction of state by the Federal government, said:

“In all Confederated systems, ancient and modern, the reverse had happened,” etc.

How could it be a “confederated system” without separate parties thereto? Again, in the same convention, he said:

“In considering and developing the nature and end of the system before us, it is necessary to mention another kind of liberty, which has not yet, as far as I know, received a name. I shall distinguish it by the appellation of federal liberty. When a single government is instituted, the individuals, of which it is composed, surrender to it a part of their natural independence, which they before enjoyed as men. When a confederate republic is instituted, the communities, of which it is composed, surrender to it a part of their political independence, which they before enjoyed as states . . . Since *states* as well as *citizens* are represented in the Constitution before us, and form the objects on which that constitution is proposed to operate, it was necessary to notice and define federal as well as *civil* liberty.”

In the Federal Convention, again, August 30, Mr. Wilson remembered the component parts of the Constitution. Debating the question of the number of states whose consent might validate the proposed government, Mr. Madison

‘Remark that if the blank should be filled with ‘seven,’ ‘eight,’ or ‘nine,’ the Constitution, as it stands, might be put in force over the whole body of the people, though less than a majority of them should ratify it.

“Mr. Wilson. As the Constitution stands, the states only

* Italics are author’s.*
which ratify can be bound. We must, he said, in this case, go to the original powers of society."

In the Pennsylvania Convention on November 24, not two weeks before Mr. Wilson was so surprised at the idea of a compact, he had taken credit to himself for having taken part in such.

"To frame a government for a single city or State, is a business . . . widely different from the task entrusted to the Federal Convention, whose prospects were extended not only to thirteen independent and sovereign states . . . Can it then be a subject for surprise that . . . we should . . . influenced by the spirit of conciliation resort to mutual concessions, as the only means to obtain the great end for which we are convened . . . it is natural to presume that Providence has designed us for an united people under one great political compact."

Three paragraphs before Mr. Wilson expresses his surprise at the idea of a compact, and says:

"I know of no bargains that were made there," he stated, "though the jarring interests of the various states, and the different habits and inclinations of their inhabitants, all lay in the way, and rendered our prospects gloomy and discouraging indeed, yet such were the generous and mutual sacrifices offered up," etc.

Strange indeed that one and the same party could have "jarring interests" and "offer up mutual sacrifices!" How could the "jarring interests of the various states" be an obstacle unless the various States (i. e., the people thereof) were the contracting parties? What were the "mutual sacrifices" except those "bargains" which Mr. Wilson "knew not of"?

If there were no parties to make a compact, what does Mr. Wilson mean when, in this same ratifying convention, he says:

"The remaining system which the American states may adopt,* is a union of them under one confederate republic

* Italics are the author's.
If those opinions and wishes are as well founded as they have been general, the late convention were justified in proposing to their constituents one confederate republic as the best system for a national government for the United States?"?

On November 28, in the Ratifying Convention, Mr. Wilson said:

"When gentlemen assert that it was the intention of the federal convention to destroy the sovereignty of the states, they must conceive themselves better qualified to judge of the intention of that body than its own members of whom not one, I believe, entertained so improper an idea."

On October 6, addressing a meeting of the citizens of Philadelphia, Mr. Wilson said:

"Thus fettered I do not know of any act which the senate can of itself perform . . . But I will confess, that in the organization of this body, a compromise between contending interests is discernible; and when we reflect how various are the laws, commerce, habits, population and extent of the confederated states, this evidence of mutual concession and accommodation ought rather to command a generous applause than to excite jealousy and reproach."

In so far as regards the personal authority of Mr. Wilson, it must be evident that it is unnecessary to oppose it by any other authority than that of Mr. Wilson himself; yet if Mr. Wilson "could not discover the least trace of a compact in that system," 19 and "knew of no bargains which were made there," the other members of the Convention were by no means so ingenuously ignorant. 20

Mr. Wilson says that "There can be no compact unless there are more parties than one. It is a new doctrine that one may make a compact with himself." One might answer: "There can be no Union unless there are more parties than one. It is a new doctrine that one can form a union with himself." The title United States meant States united with one an-
other (and, in the earlier times of the republic, was commonly used with plural pronouns and verbs \(21\)), in other words, formally as well as essentially, a compact.

"Delegates were appointed to deliberate and to propose. They met, and performed their delegated trust. The result of their deliberations was laid before the people. It was discussed and scrutinized in the fullest, freest and severest manner,—by speaking, by writing and by printing—by individuals and by public bodies,—by its friends and by its enemies. What was the issue? Most favourable and most glorious to the system. In state after state, at time after time, it was ratified—in some states unanimously—on the whole, by a large and very respectable majority." *

Says Mr. Wilson:

"This, Mr. President, is not a government founded upon compact; it is founded upon the power of the people. They express in their name and their authority, 'We the People do ordain and establish,' etc. From their ratification, and their ratification alone, it is to take its constitutional authenticity, without that, it is no more than tabula rasa . . . The honourable gentleman has said truly that there can be no subordinate sovereignty. Now, if there cannot, my position is, that the sovereignty resides in the people, they have not parted with it . . . ."

There is no contradiction involved in the statement that a government "founded upon the power of the people" is also "founded upon compact." The one in question is both. The whole theory of government in the United States is based upon the assumption that ultimate sovereignty resides in the people. If this is what Mr. Wilson meant to assert, it is undeniable: it is also foreign to his argument. Whether the people of the several States contracted severally or as a whole is not a question formally raised by his statement.

There is, however, so little in any of the official instruments

*James Wilson, Oration, 4th of July, 1788. Italics by B. S.
which illustrate the Constitution, or in the history of its formation, to support the contention of Mr. Wilson’s school, that practically it is based upon the expression with which the preamble to the Constitution begins, as quoted by Judge Wilson, *\textit{viz.}: “We, the people of the United States.” This, it is insisted, means the people of the United States as a whole, not severally; and doubtless this is the point intended to be made by Mr. Wilson. But even the verbal construction does not bear out this meaning. As has been shown, the term “United States” was, at that time, used as the equivalent of its several components, not, as more lately, as a unifying term. So also the word “people” (of the United States) was commonly used to indicate the people of the several States.\footnote{Madison, Letter to John Tyler.}

The point has been made to bear an importance not inherent in it, since the effects, not the name, make the system:

“After all, in discussing & expounding the character & import of a Constn., let candor decide whether it be not more reasonable & just, to interpret the name or title by the facts on the face of it, than to make the title torture the facts by a bed of Procrustes into a fitness to the title.”* 

The facts on the face of this instrument not less clearly than the manner of ratification denote that “the people” were the people of the several United States.

“If the preamble truly points to the majority of the whole people of the United States, in their aggregate collective capacity, as the original depository of this power; that power is competent for all purposes of consolidating, or distributing it, in one, or among many governments; but it necessarily excludes federation between the several states. They must come into it as equals in power, who can acknowledge no federal head, except the one created by the act of federation; no federal legislation can be exercised, but by a legislature which represents the constituent parts. If congress is the creation of the sovereign power of one state or nation, whose people have done the act in the unity of their political power, it is no fed-
eral government; there are no constituent parts by which to compose it. The residuary sovereignty of the several states of this Union and the people thereof, cannot be the same as the absolute sovereignty of the one nation and people thereof; which by its own unaided power can institute a government over the whole thirteen states; the term absolute, admits no limitation as to power; residuary, can mean only that residuum which the absolute power has not pleased to exercise. The use of the terms absolute, and residuary sovereignty, thus applied, either in argument or illustration, is, of necessity, with a view to make the constitution operate by its grants and restriction; by an authority paramount to that of the people of the several states; and thus bear essentially on its exposition. Hence, the preamble has ever been the field selected . . . on which they maintain their proposition; if they abandon that field, the constitution gives them no other defensible position. The object can be no other than by the potency of the preamble, to control the provisions of the constitution; so as to give to the term, 'the people,' the same meaning and reference wherever it is used.

"The term is found only in three places; in the preamble it is 'the people of the United States'; in the second section, first article, it is 'the people of the several states'; and in the tenth amendment 'the states respectively, or the people'; in all it is connected with 'states'; but the phraseology is different as to both terms. It then becomes all important to examine, whether 'the people of the United States,' who established the constitution 'of the several states'; who elect the 'representation from each state'; and 'the states respectively or the people,' to whom all powers not granted or prohibited, are reserved; refer to the same or different bodies.

"It cannot well be doubted, that if the general term in the preamble refers to the whole people in the aggregate, as 'the people of the United States'; the still more general term in the tenth amendment must be taken in the same sense, 'the people'; if they are so taken, then the intermediate term 'the people of the several states,' must receive the same interpretation, or there must be this consequence; That the granting, restraining,
and the reserved powers, were, and are in the 'one people,' and the power of organizing and administering the government, is in the 'several people of each state'; of course there can be no reserved power in them, and it must remain in that body which could grant, restrain, except and reserve, according to the doctrine of this Court. . . . On the other hand, if the three terms mean the same thing, the one people, the words, 'several states,' 'each state,' are made to mean the states in the aggregate; by which the words 'several' and 'each' will be virtually expunged from the body of the instrument; and the words, 'in the aggregate or collectively,' inserted by construction. No one, then, can fail to perceive, that by adding these words, or taking out, or neutralizing the words 'several' and 'each,' the whole constitution is made to speak in different language; and to express an intention wholly different from that which its words import, read as they are. I, therefore, wholly disclaim this mode of construing the constitution, by adding or altering a word; the tendency whereof is too well understood to be mistaken. It is to draw the attention from the body, the provisions, and the operations of the instrument, in the terms of which there is no ambiguity in defining the term people or states, and confine it to its caption or preamble, which in itself may admit of a reference to suit the object, if it is not compared with what is ordained and established in detail.” *

“All admit, that in fact, the constitution was established by the ratification of the people of the several states, in separate conventions or representatives, whom they elected in the respective counties: yet the preponderance of political and professional authority, is in favour of the proposition, that it was the act of the people in their collective capacity. When this shall become settled doctrine, it will be seen how much better the nature and science of government is now understood, than it . . . was understood by the congresses and conventions of these states from 1774 to 1787. . . .

“The congress of the revolution, and the convention of 1787,

were ignorant of any other legislative power than that of the separate states. It is attributing to the members of Congress in 1777, the most utter and profound ignorance of the nature and powers of the government of the revolution, which they themselves administered for five years, if it was such an one as commentators now hold it to have been. In the letter recommending it to the states to adopt the articles of confederation, they say, 'Every motive calls upon us to hasten its conclusion;' 'it will add weight and respect to our councils at home, and to our treaties abroad.' 'In short this salutary measure can be no longer deferred. It seems essential to our very existence as a free people, and without it we may soon be constrained to bid adieu to independence, to liberty, and to safety,' etc. . . . The remedy was far worse than the disease, according to modern theory; but the practical statesmen and jurists of the day, deemed it of vital importance to have a government in form, though utterly defective in substance and execution. Bad as it was, it was better than none; a line of duty was prescribed to the states; if they did not follow it, it was not because it was not plain; whereas, before, the only line was drawn by the States themselves, in their separate instructions to their delegates, or in acting on their recommendation. When too it is recollected, that congress asked for the delegation of the shadow of power by states, when, according to the commentary, they had the substance already by delegation from the people; the men of the revolution were either ignorant in what a government consisted, or the expositors of their acts have made one which never existed but in their own fancy.

"The same remarks will apply to the members of the convention of 1787, if we so take the words of the preamble of the proposed constitution, as to be a declaration that the political existence, and organic power of the several states and people, had become so amalgamated into one body of supreme power, as to make it the sole grantor of the powers of the federal government, and competent to restrict the states, and control existing state constitutions. Their letter to congress, and of the latter to the several state legislatures, asking sep-
arate conventions of the people in each to ratify it; was an act indicating political fatuity, if the instrument contained, and was intended to be a declaration, that when ratified by such conventions of nine states, and thus established, it was not 'by the people of the several states,' but of all collectively.

"It would also be an imputation of political treachery to the states, who were the constituents of the convention, to draw up a frame of government, which in all its provisions explicitly declared the separate existence and action of 'the people of the several states, and of each state,' in all the movements of the government, in all time, in language admitting of no twofold interpretation; and then prefixing to it a declaration, by which the states, in their most sovereign capacity, in separate conventions of the people, are made to admit and acknowledge, that 'the absolute sovereignty' in matters of government, was not, and from July, 1776, had not been invested in the people of the separate states; and that they had, at the adoption of the constitution, only such 'residuary sovereignty,' as remained after a paramount power had made a supreme law over them.

. . . It is not credible, that when the power of parliament to legislate for colonies who avowed allegiance to the King, was utterly denied, even under the British constitution, the authority of which was universally admitted; the free and independent states, who had eleven years before renounced their allegiance to the crown, and abolished their old constitution, would have adopted a new one which left them less free in legislation, than they were in their colonial condition.

. . . Parliament never asserted by the plenitude of its omnipotence, such powers of legislation over the colonies, or attempted to impose such restrictions on colonial or provincial legislatures, as are exerted by the constitution; and if it is a supreme law, overriding state constitutions, by any other authority than that of the people of each, without and against their consent, it is one more sovereign over them than that which they threw off by the revolution. Every principle by which it was conducted, every object sought to be attained, was reversed and frustrated; if, in 1787, the states were not in that 'separate and equal station among the powers of the
earth,' which they assumed in 1776, and did not then retain all powers which they had not expressly delegated to the congress in 1781. Every state constitution asserted palpable falsehoods; and the people thereof exerted usurped powers, if the sole right of instituting any government over them was not in themselves alone. And thus, every solemn act, and written document of the congress, and the states, for thirteen years, will become utterly falsified; if the 'power, right, and jurisdiction' of the federal government, and the authority of the constitution is not by grant from each state, of what all had so often declared to be inherent in the people thereof, by original right, and which it had hitherto retained. If these powers were in the whole people of the United States, as one 'single sovereign power,' from 1774 till 1787, that power still exists in its original plenitude; and the judges of this, and all state courts, are bound to obey and expound it as the grant of that power, speaking in its words, and expressing thereby its intention, as the grantor in whom there was full and absolute right to do whatever it has ordained.

"If the constitution was only a grant of power, it would be of little importance to inquire whether it was to be considered as made by the one, or the separate people of the states who adopted it; for its obligations on those states would be unquestioned. But the importance of the question arises on the restrictions and amendments; whether a state restricts itself, or is restricted by an external power; whether the reservations are to the people collectively, or the people of each state. And it must be remembered, that the terms of reservation in the 10th amendment, make no change in the constitution, in virtue of the amending power of the fifth article; it is a declaration by the grantor, of the meaning and effect of the grant and prohibition which none but the granting power was competent to make. Hence, it is necessary that there should be: first, a competent power to grant the thing granted; and next, the grantor must have competent power to prohibit and restrain states and state laws; to make exceptions to the grants and restrictions, and to reserve to itself all other powers not exercised by the grant: and as B can make no
exception or reservation out of a grant made by A, all these powers must be original in the one who was competent to make the grant. If it is in A, the grant throughout being his act, is easily construed as one deed, with its various clauses; which, when referred to one person, whose intention it expresses, is taken as a simple, plain writing, the one part whereof explains the other, by reference and established rules. But if the grant is taken to be the act of A, in granting certain things to C, restraining a previous or subsequent grant by B to D; declaring what B or D may or may not do; and there is attached to the grant a proviso or defeasance by B, that what is not granted to C, or prohibited to B & D, shall be reserved to B or D, the whole is unintelligible. The exceptions and reservations being of original right and title, which is vested in A, are void and inoperative, if not made by A himself; they remain in him, and cannot pass to B or D without direct grant; of consequence, the grant becomes disencumbered of any exception or reservation; and must be taken, by all the rules of law, as if it contained none in terms. Taking, then, the constitution as the grant of the one people to congress, imposing restrictions on the states acting in the legislature thereof, and the people acting in convention; and the tenth amendment operating as a proviso or defeasance on every part thereof, not as an actual or intended alteration of any of its provisions; it must follow: That as it was made by a power subordinate to that which ordained the constitution, it was incompetent to except or reserve anything out of, or from it, to the people of the several states, if they are not the grantor; or to the states, respectively, if each was not a grantor. Not being parties to the grant, they are strangers to it; and no principle of law is better settled, than that an exception or reservation to a stranger, is void; it must be to the lessor, donor, or feoffor, and his heirs, who are privy in blood . . . It is then a necessary consequence of these rules, that the people of the several states, have now no reserved powers, or that they are the granting power of the constitution . . . Another rule results from the preceding ones, which this Court lays down as one 'to which all assent,' that an exception to any
power proves, that in the opinion of the lawgiver, the power was in existence had there been no exception . . . ." *

"Thus far the constitution delineates the action of the people, the states, or state legislatures, and the electors, in organizing the legislative and executive departments of the government, which enables it to execute all its functions and powers; it remains only to be seen, how, and by what power, this organization of government, the distribution and administration of its powers, was authorized and directed.

"'Art. 7. The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution, between the states so ratifying the same.'

"It is then, by the separate action of the states, in conventions of nine states (not in a convention of nine states), that the grant was made; the act of eight produced no result; but when the ninth acted, the great work was effected as between the nine. Until the other four so acted, they were no part of the United States; nor were the people of the non-ratifying states, any part of the people of the United States, who ordained and established it.

"That the term, conventions of states, meant conventions of delegates, elected by the people of the several states, for the express purpose of assenting or dissenting, to their adoption of the proposed constitution, is admitted by all; as also, that no general convention of the whole people was ever convened for any purpose; and that the members of the convention which framed it, met, and acted as states, consented to, and signed it for and in behalf of the states, whom they respectively represented, appears on its face. It was proposed to the people of each state separately, and was so ratified; it existed only between those states whose people had so accepted it. It would, therefore, most strangely contradict itself, throughout all its provisions, to so construe the preamble, as to make it a declaration, that it was ordained by any other power than that of the people of the several states, as distinct bodies politic, over whom no external power could be exerted, but by their own consent.

"These are not only the necessary conclusions, which flow from the plain language and definite provisions of the constitution itself, but their settled interpretation by this Court. 'From these conventions the constitution derives its whole authority. The government proceeds directly from the people, and is ordained and established in the name of the people.'

4. Wh. 403.

"If it is asked what people; the answer is at hand, 'A convention of delegates chosen in each state, by the people thereof, assembled in their several states.'" *

"There never has been, or can be, any difference of opinion as to the meaning of the ordaining parts of the constitution in the terms, 'the people of the several states'; 'the several states which may be included in this union'; 'each state'; for they do not admit of two meanings. They refer to those states which, having ratified the constitution, are each a constituent part of the United States, composing, by their union, The United States of America; and to the people of each state, as the people of the United States. When terms are so definite in the body of an instrument, and one less definite is used in the preamble, which can be made equally definite by reference, the established maxim applies—'id certum est quod certum reddi potest.' Let then the term, We, the people of the United States, be referred to the second section of the first article, and compared with the terms, 'the people of the several states'; 'the several states which may be included within this union'; the sense of both is identical. So, when we refer the terms to the seventh article, prescribing the manner of ordaining and establishing the constitution, there is the same identity of meaning. No other variance exists between the terms in the preamble and body, than exists in other terms which are varied in form, but are the same in substance, and used in the same intention; as 'each state'; 'the several states'; the several states 'which may be included within this union; the United States; the United States of America; a congress of the United States; the congress; congress,' &c. When the various parts of an instrument can be made to harmonize, by referring the

supposed doubtful words of one part to the certain words of another, without doing violence to their appropriate sense; every just rule of construction calls for such reference as will remove ambiguity: if the two terms cannot be reconciled, it is a settled rule, that the preamble is controlled by the enacting part. No case can arise to which these rules can be more applicable, and there is no discrepancy between the different terms; one is less full and explicit than the others, the name given to the granting power is not its substance; the thing is the power; whenever that is clearly defined, the name will be made to suit it. If this term in the preamble was, by common consent, or the settled course of professional and judicial opinion, taken as a mere name given to a thing of an agreed determinate nature, it would be a waste of time to inquire whether the name was appropriate to the thing; or whether the reasoning, which makes the action of thirteen distinct bodies, at so many different times and places, produce the same result, as the action of one on the same object, and may be deemed in legal contemplation, the sole action of one body, was metaphysical or sound; for it would be merely a discussion on words, which would not determine the sense of the constitution as to substance and things. That the states acted in the same distinct and separate capacity, in the creation of the government, as they did, and yet do in selecting their agents who administer its powers, is apparent in the seventh article, before quoted.

"The mode of action was by the people of each state, in conventions of delegates chosen by themselves; the action of the separate conventions being, by their express authority, delegated for the special purpose, was the action of the people. The grant was theirs, of their powers; and thus made it was in perfect harmony with all the provisions in its body, and as declared in its front; that, 'We, the people of the United States, do ordain and establish this Constitution for the United States of America.' The meaning is clear and plain, by a reference to the people of each of those States who ratified it in convention, and to the people of the several states who were to elect the representatives of the state, in a con-
gress of the United States; the same people performing different functions, the first in creating, the second in organizing the government of the States, which had been thus established between themselves.

"In so taking the declaratory part of the instrument, it harmonizes throughout; no violence is done, or a strained construction put to any part; every word has its own meaning, when it is referred to its subject matter of application; power flows from its original and acknowledged fountains, and is distributed by each depository, among the appropriate agents for its execution. It is the same power which had been exerted in the institution of a government for each state; was competent to do so for the states, which had been united by an alliance of mere confederation, without any legislative power in their congress; by making any change which an organic power, absolute and unlimited, could effect, and which this Court has often declared it did effect in its exertion by separate bodies. If it was so taken as settled doctrine, it would be easy to expound the instrument in which this power was exerted, as a charter or grant, ex visceribus suis, the law at the time it was made, the common, the statute, and constitutional law of England, the history and state of the times then and before, the acts of the people, the states, and of congress, in their domestic and foreign relations, in some of which sources there would be found satisfactory means of its interpretation. . . . The preamble declares, that 'We, the people of the United States, etc., do ordain and establish this constitution for the United States of America.' That it was done by the power of the people, and not of the state legislatures is universally admitted; as also that they had the competent power to do it. The only question which is open is, whether this power was in the people of the separate states, as separate bodies politic, or in the whole people of the United States, as one.

"This Court, as the appropriate tribunal for expounding the constitution, has used various terms to express their sense of the term; as, The people of the United States in 1 Wh. 324. The people of America, 4 Wh. 193. The American people, 4
Wh. 403, 6 Wh. 377, 380. It is deemed a term of 'becoming dignity,' suited to the solemnity of the occasion and instrument. 2 Dall. 471; 12 Wh. 354. But when they use the term, and describe how the people acted, and by what acts the instrument was adopted, they add this expression; which one would think was in language comprehensible and clear, excluding all construction, and admitting of no two-fold meaning or interpretation: 'No political dreamer was ever wild enough to think of breaking down the lines which separate the states, and of compounding the American people into one common mass. Of consequence, when they act, they act in their states.' 4 Wh. 403; M'Culloch v. Maryland . . ."*

"It is no imaginary power that can arrest the judicial arm, or a subordinate power that can, by its own authority, avoid the exercise of that judicial power over itself, which has been granted by a paramount power. Nor can 'the absolute sovereignty of the nation, which when the constitution was adopted,' was 'in the people of the nation'; be controlled by the 'residual sovereignty' of three-fourths of the states, in the people thereof, when the amendments were made. That sovereignty which can control all others, must be absolute: that which is controlled must be subordinate. If it is said that the constitution authorized this amendment, we should impute little of wisdom, foresight, or common prudence, to those who framed or adopted it, by ascribing its creation to a power so indifferent to its preservation; or to make three-fourths of the states competent to throw off the shackles on their laws, which all the states, and the whole people thereof, had imposed.

"There cannot, therefore, be, in my opinion, a proposition more hostile to the provisions of the fifth article, and these amendments as understood by this Court, than that the constitution was a creation of the whole people of the United States, in their aggregate collective capacity; as the one people, of one nation or state . . .†

"Under the first census of 1790, the free white population of the thirteen states was 3,100,000; of which, Massachusetts

† Ibid., p. 19.
had 469,900; New York, 314,000; Pennsylvania, 424,000; and Virginia (and Kentucky), 503,000; making 1,710,000; leaving 1,390,000 to the other nine states. These four states had 56 members in the House of Representatives, the other states 47; they had 8 votes in the Senate, the other states 18; they had 64 votes for President, the other states 65. Nine states, with a white population of 1,390,000, could dissolve the old confederation, establish the new constitution, and throw out of the union four states, containing 1,700,000, or could control them if they became parties to it.

"Was this a government of a majority of the people of the United States, as one people? Did the one people 'ordain and establish' this 'Constitution for the United States of America?"

"At the census of 1800, there were 16 states: the whole white population of which was 4,247,000; these four states, exclusive of Kentucky (taken from Virginia), contained 2,226,000, the other 12 contained 2,021,000; these 4 states had 74 votes in the House, 8 in the Senate, and 82 votes for President; the other 12 states had 67 votes in the House, 24 in the Senate, and 91 for President; the minority, in effect, controlling every branch of the government, and competent to amend the constitution. What became then of the government of the majority of the free white population, composing the people of the United States?

"At the census of 1810, there were 17 states, with a white population of 5,765,000: of which, these states contained 2,948,000, the other 13 contained 2,717,000; these 4 states had 93 votes in the House, 8 in the Senate, and 101 for President; the other 13 states had 88 votes in the House, 26 in the Senate and 114 for President, the minority of the people still controlling.

"At the census of 1820, there were 24 states, the white population 7,856,000; the 4 states, with Maine (taken from Mass.) and Kentucky, contained 4,199,000; the other 18 contained 3,657,000; the 6 states having 114 votes in the House, 12 in the Senate, and 126 for President; the other 18 had 99 votes in the House, 36 in the Senate, and 135 for President—the minority still ascendant.
"In 1830, the entire white population was 10,846,000, of which, these 6 states contained 5,535,000; the other 18 states, including the territories, 5,311,000; the six states have 124 votes in the House, 12 in the Senate, and 136 for President; the other 18 states have 117 votes in the House, 36 in the Senate, and 153 for President.

"It thus appears, that from the year 1790, till this time, the four states of Massachusetts, New York, Pennsylvania and Virginia, have contained within their original boundaries, a majority of the whole people of the United States: yet such is the structure of the government, that there is no one act which could be effected by such majority.

"Adding to the free white population of these states, according to the last census, and their present boundaries, that of Ohio and Tennessee, the 6 states contain 6,090,000; the other 18 states 4,646,000, leaving a majority in the six states of 1,444,000; which may be found to be perfectly passive for all purposes, except representation, in the House of Representatives. There are 9 states, . . . which can defeat a treaty, impeachment, proposition to amend the Constitution, or the passage of a law, without the approbation of the President, against the will of fifteen states, containing a majority of 8,146,000 of the people of the United States, in the aggregate. Thirteen states, with a population of 2,504,300, can elect a President in the last resort, in opposition to 11 states with 8,232,000. Congress is bound to call a convention to amend the constitution, on the application of the legislatures of two-thirds of states, whose population is only 3,546,000, less than one-third of the aggregate of all the states; and amendments may be adopted by 18 states, in opposition to an aggregate majority of 1,444,000; one of which amendments might give the smallest state, an equality of suffrage in the House of Representatives, and in voting for President by electors. Seven states, with a white population of only 812,000, may defeat any constitutional amendment; though it might be called for by the residue of the people of the Union, amounting to 9,924,000; so that a minority may force on a majority a new government; and less than one-thirteenth of the people of the United
States in the aggregate, may continue the present without any change whatever, though the reasons which call for an alteration, may be most imperative for the good of the whole.

"There are but two means of changing these results from the present organization of the government,—one is the division of the large, or the junction of small states into new ones; and the other, by giving them a representation in the senate, in proportion to their numbers. But the constitution has placed both beyond the power of any majority of the people, however preponderating; unless by a majority of the states in the one, and by all in the second case.

"'New states may be admitted by the congress into this Union; but no new state shall be formed or erected, within the jurisdiction of any other state, nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislature of the states concerned, as well as of the congress.' . . .

"The senators of any thirteen states can prevent the admission of any new states, or the junction of old ones; this can be remedied only by an amendment, which 7 states can prevent.

"The 5th article, providing for amending the constitution, contains this proviso: 'and that no state without its consent shall be deprived of its equal suffrage in the senate.' Thus the irrevocable, irrepealable supreme law of the land, has made Delaware, with an aggregate population of 77,000, the peer of New York in the senate, with her 2,000,000; and she may hold her rights in defiance of the constitutional power of 23 states, with an aggregate population of 12,789,000; equal to 166 to 1; in federal numbers, 165 to 1; and in free population 147 to 1.

"How contemptible are mere numbers, or majorities of the people, in comparison with the rights of states, by the standard of the constitution!!

"The basis of representation, composed of people and property, mixed into the constituent body of federal members, leads irresistibly to the character of the government. The inevitable effect of making 5 slaves equal to 3 freemen, is, to take power from a majority of the people: so long as this
apportionment of representation among the states continues; a minority of the people of the United States in the aggregate, may elect a majority of the members of the House of Representatives; and the conventions or legislatures of 7 of the slave-holding states, can perpetuate this state of things.

"The general result of the last census, including the District of Columbia and the territories, is: aggregate population 12,856,000; slaves, 2,010,000; federal numbers, 12,052,000; free people, 10,846,000; slaves represented, 1,206,000; thus, the representation of the states in which they are owned, is increased by the addition of twenty-seven members; is a representation of an actual minority of the free people; and though the minority, they may control even this branch of the government, by a majority equal to the slave representation.

"These results are not the effect of accident: they must have been foreseen at the adoption of the constitution: unless it was anticipated that the population of the states would be in an inverse ratio to their territory.

"In 1788, the whole territory of the thirteen states contained about 500,000 square miles; of which there was comprehended in the boundaries of Virginia and Kentucky, then one state, 103,000; in North Carolina, including Tennessee, 84,000; and in Georgia, including Mississippi and Alabama, 153,000; in the aggregate 340,000. The other ten states, included only 167,000, adding the territory ceded by Virginia and New York, now composing the states of Ohio, Indiana, and Illinois, containing 134,000; all that was in possession of the confederacy or the states, was 640,000 square miles; of which, three states had more than one-half, while three others had no more than one-eighth part; two of which had only the one hundred and ninety-third, and one only the four hundredth part.

"Yet this enormous disparity of territory had no more effect on the equality of a state with any other now, nor hereafter can have without its consent, than the disparity of population. Rhode Island, with 1,360 square miles of territory, is the peer of Virginia, with 64,000, Delaware is the equal of
New York, though their population is most enormously disproportionate. The rights of these states are emphatically the rights of a minority of the people; and a government which can be organized, administered, and reorganized, by a minority, whose power is expressly guaranteed against any majority of states or people, cannot be other than a 'federal government of these states.'

"There can be no political absurdity more palpable, than that which results from the theory that the people of the United States, as one people, have instituted a government of the people; a majority (of the people) government; or one which can be altered by the majority: for that majority has no one right, can do no one act under the constitution, or prevent such amendments as would expunge every semblance of a popular feature from it, by reducing New York to an equality with Delaware, in the House of Representatives, and in voting for President; these being the only particulars in which the people of the largest have any more right than those of the smallest states. Nor is there a political truth more apparent from the bills of rights in the constitutions of the several states; their unanimous declaration in congress, in October, 1774, and July, 1776; their alliance with France in 1778; with each other in 1781; and the supreme law of 1788, established by the people of each, between themselves, as each sovereign; than that the government which they have brought into existence, is a creature of the people of the several states, a government of a majority of the states; which may be in all its departments, and whole action, administered by the representatives of the minority of the people of the United States; and changed in its whole organization and distribution of powers, by such minority, in all respects save one; and that one is the provision which makes the right and power of the minority irresistible, by the equal suffrage in the Senate, forever secured to each state.

"The 13th article of the confederacy contained a similar provision: the assent of each state was necessary to any alteration.

"The principle, that a majority of states, of the people of
the United States, or of either, in any unity of political character, could, in any stage of our history, alter, abolish the old, or institute a new government, is utterly without any sanction in the acts of the states or congress. States were units who could impart or withdraw power at their pleasure, until they made an express delegation to congress by the league of 1781; each state had its option to become a party to the compact, constitution or grant, made in 1788, by nine states, or to remain a free, sovereign, independent state, nation or power, foreign to the new Union, after the old was dissolved.

"By becoming separate parties, they did not divest themselves of their individual unity of character; they remain units as to representation, and as units, reserve all powers not delegated or prohibited: and the ultimate power of revoking all parts but one of the grant, with the concurrence of three-fourths of their associates, and modifying it at their pleasure.

"This is the essence of supreme and sovereign power, which testifies that the ultimate absolute sovereignty, is in 'the several states,' and the people thereof; who can do by inherent right and power, anything in relation to the constitution, or change of government, except depriving the smallest state of its equal suffrage in the senate: not in the United States, or the people thereof, as one nation, or one people, who in their unity of character or power, can do nothing either by inherent right, or by representation, as a majority.

"The power which can rightfully exercise acts of supreme absolute sovereignty, is the sovereign power of a state; no body or power, which can neither move or act, can be sovereign: it exists constitutionally, but as matter incapable of either. The soil of the United States, is as much the source of political power as its aggregate population. Until the power which can establish government is brought into action, and designates the one or the other as the basis of representation or taxation, each is a perfect dead body; and both are perfectly so by the constitution, in reference to the United States in the aggregate, or as one nation. But in reference to the states, both the land and the population, within their separate boundaries, are brought into operation; its federal
numbers are made the stock from which representation arises, and become represented by the action of the qualified electors of the state; and the land in the state is assessed with taxation, by the same ratio as its representation is apportioned; by which land produces revenue, in the same proportion as population produces representation.

"This rule is perfectly arbitrary, being the result of a compromise: the people of the states could base representation on property or people; they could select either, or a proportion of both, and the kind of either; and three-fourths of the states or people thereof, can now change the proportion, by excluding slaves altogether, enumerating them as each a freeman, or substituting any other species of property than slaves.

"Representation by numbers is not by natural right: slaves have neither political rights or power; it is by compact, the will and pleasure of the states who have so ordained it, as separate sovereigns; and in doing so, have shown in whom the supreme power is vested, and yet remains to be exercised in the future, as it has been in the past.

"The institution of the federal government is decisive of the question, it shows the creature and the creator; the power which has made and can unmake the machine it has set in motion, as the work of its own hands, moving within defined limits, operating only on specified subjects, by delegated authority, revocable at will.

"The act of delegation is the exercise of sovereignty, and acting under it is a recognition of its supremacy: it may be without limitation in some cases, and until revoked it may be supreme; but it is so only as a delegated authority or agency,—the right to revoke, and render its exercise a nullity, is the test by which to ascertain in whom it is vested by original inherent right." 28 *

The historical fact is then established by the political results of the instrument itself, that "Their [the United States']
first union was formed by a compact of sovereign and inde-

DEPENDENT STATES UPON COVENANTS AND CONDITIONS EXPRESSLY STIPULATED IN A WRITTEN INSTRUMENT CALLED THE CONSTITUTION."

It is also historically established by the records of the Federal Convention which framed that instrument.

On the question of ratifying and giving validity to the proposed Constitution, Mr. Gouverneur Morris, with the express object of avoiding a ratification by the several constituent States, and its political consequences, said:

"WHEREAS, IN CASE OF AN APPEAL TO THE PEOPLE OF THE UNITED STATES, THE SUPREME AUTHORITY, THE FEDERAL COMPACT MAY BE ALTERED BY A MAJORITY OF THEM IN LIKE MANNER AS THE CONSTITUTION OF A PARTICULAR STATE MAY BE ALTERED BY THE MAJORITY OF THE PEOPLE OF A STATE." *

He, therefore

"MOVED THAT THE REFERENCE OF THE PLAN BE MADE TO ONE GENERAL CONVENTION, CHOSEN AND AUTHORIZED BY THE PEOPLE, TO CONSIDER, AMEND, AND ESTABLISH THE SAME. NOT seconded."

"ON THE QUESTION FOR AGREEING TO THE NINETEENTH RESOLUTION, TOUCHING THE MODE OF RATIFICATION, AS REPORTED FROM THE COMMITTEE OF THE WHOLE, VIS., TO REFER THE CONSTITUTION, AFTER THE APPROBATION OF CONGRESS, TO ASSEMBLIES CHosen BY THE PEOPLE,† NINE STATES VOTED 'AY'; ONE 'NO.'"

Thus the Convention, which would not even second a motion to refer its work to one "assembly of the people," the object of the motion being stated that "the federal compact may be altered by a majority of them in like manner as the constitution of a particular state may be altered by the majority of the people of a state," voted almost unanimously to refer it to assemblies of the same people divided into their several states.24

* Italics are the author's.
† N. B. Not "an assembly"; though the same term "people" is used.
CHAPTER V

MR. MADISON'S CONSTRUCTION OF THE CONSTITUTIONAL COMPACT

The historical fact, then, being established, that the Constitution is a compact between States sovereign and independent at their accession thereto, it remains to be seen if it results "that the mode of its formation subjects it to . . . the law of compact . . . that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part of the agreement entirely releases the obligation of the other; and that where no arbiter is provided each party is remitted to his own judgment to determine the fact of failure, with all its consequences."

"On the question for agreeing to the nineteenth resolution, touching the mode of ratification," Mr. Madison's Report of the Debates says:

"Mr. Gouverneur Morris considered the inference of Mr. Ellsworth from the plea of necessity, as applied to the establishment of a new system on the consent of the people of a part of the states, in favor of a like establishment on the consent of a part of the legislature, as a non sequitur. If the Confederation is to be pursued no alteration can be made without the unanimous consent of the legislatures. Legislative alterations not conformable to the federal compact would clearly not be valid. The judges would consider them as null and void. Whereas in case of an appeal to the people of the United States, the supreme authority, the federal compact may be altered by a majority of them, in like manner as the constitution of a particular state may be altered by the majority of the people of a state. The amendment moved by Mr. Ellsworth erroneously supposes that we are proceeding on the
basis of the Confederation. This Convention is unknown to the Confederation.

"Mr. Madison thought it clear that the legislatures were incompetent to the proposed changes. These changes would make essential inroads on the state constitutions, and it would be a novel and dangerous doctrine, that a legislature could change the constitution under which it held its existence. There might indeed be some constitutions within the Union, which had given a power to the legislature to concur in alterations of the federal compact. But there were certainly some which had not; and in the case of these, a ratification must of necessity be obtained from the people. He considered the difference between a system founded on the legislatures only, and one founded on the people, to be the true difference between a league or treaty, and a constitution.35 The former in point of moral obligation, might be as inviolable as the latter. In point of political operation, there were two important distinctions in favor of the latter.

"First, a law violating a treaty ratified by a preexisting law might be respected by the judges as a law, though an unwise or pernicious one. A law violating a constitution established by the people themselves would be considered by the judges as null and void. Secondly the doctrine laid down by the law of nations in the case of treaties is, that a breach of any one article by any of the parties frees the other parties from their engagements.* In the case of a union of people under one constitution, the nature of the pact has always been understood to exclude such an interpretation. Comparing the two modes, in point of expediency, he thought all the considerations which recommended this Convention, in preference to Congress, for proposing the reform, were in favor of state conventions, in preference to the legislatures, for examining and adopting it."

As a statement of the differing consequences resulting by the law of nations from a treaty between sovereign powers, or league, and a government established within itself by a sov-

* Italics by B. S.
ereign power, this conclusion cannot be questioned; and it was familiar to the makers of the Constitution. The difference between the conclusion of Mr. Madison and that of the Convention of South Carolina, which passed the Ordinance of Secession, lies neither as to the historical facts of the establishment of the Constitution, nor as to the validity of the principle here laid down by him, but as to the applicability of that principle to the Constitution; i. e.: Did that instrument constitute "a union of people under one constitution" in the sense used by Mr. Madison? This is the real point at issue in the doctrine of Secession.

According to Mr. Madison himself the Union was a union of various sovereign peoples, the citizens of which entered it not individually but in virtue of being citizens of States, each of which was a "union of people under one constitution," in the sense meant by Mr. Madison, and each of which accepted it for its own citizens only. These States did not enter it unreservedly. They made express reservation of all such rights of separate government as they did not specifically grant to the common government: thereby at once creating a radical and most important difference in kind between such a constitution and that wherein the majority rules. It could not be said of the Constitution, that "the nature of the pact had always been understood to exclude (the) interpretation . . . that a breach of any one article by any of the parties frees the other parties from their engagements," for the simple and adequate reason (among others) that no such pact as this had previously been known, and that no such people then existed, or was called into existence for the purpose of ratifying such a union. As Mr. Madison himself repeatedly says of the pact:

"It is in a manner unprecedented; we cannot find one express example in the experience of the world." 

But, obeying Mr. Madison's rule, and "seeking its character in itself," how far the result inferred by him from a conven-

* v. Appendix 31.
† Ibid.
‡ Debates in Virginia Ratifying Convention.
tional ratification of the Constitution by the people of the several states obtained may be conveniently tested by principles laid down by himself, at another stage of the Debates.

"Mr. Patterson... The Confederation is in the nature of a compact; and can any state, unless by the consent of the whole, either in politics or law, withdraw their powers? Let it be said by Pennsylvania, and the other large states, that they, for the sake of peace, assented to the Confederation; can she now resume her original right without the consent of the donee?"

Mr. Madison replied: "It had been alleged, that the Confederation, having been formed by unanimous consent, could be dissolved by unanimous consent only. Does this doctrine result from the nature of compacts? Does it arise from any particular stipulation in the Articles of Confederation? If we consider the Federal Union as analogous to the fundamental compact by which individuals compose one society, and which must, in its theoretic origin at least, have been the unanimous act of the component members, it cannot be said that no dissolution of the compact can be effected without unanimous consent. A breach of the fundamental principles of the compact, by a part of the society, would certainly absolve the other part from their obligations to it. If the breach of any article, by any of the parties, does not set the others at liberty, it is because the contrary is implied in the compact itself, and particularly by that law of it which gives an indefinite authority to the majority to bind the whole, in all cases. This latter circumstance shows, that we are not to consider the Federal Union as analogous to the social compact of individuals: for, if it were so, a majority would have a right to bind the rest, and even to form a new constitution for the whole; which the gentleman from New Jersey would be among the last to admit. If we consider the Federal Union as analogous, not to the social compacts among individual men, but to the conventions among individual states, what is the doctrine resulting from these conventions? Clearly, according to the expositors of the law of nations, that a breach of any one article, by any one
party, leaves all the other parties at liberty to consider the whole convention as dissolved, unless they choose rather to compel the delinquent party to repair the breach. In some treaties, indeed, it is expressly stipulated, that a violation of particular articles shall not have that consequence, and even that particular articles shall remain in force during war, which is in general understood to dissolve all subsisting treaties. But are there any exceptions of this sort to the Articles of Confederation? So far from it, that there is not even an express stipulation that force shall be used to compel an offending member of the . . . Federal Union to discharge its duty." *

How does the Constitutional compact differ from that of the Confederation in those decisive points here laid down by Mr. Madison? That it is not a "social compact among individual men" (besides being everywhere explicitly asserted by him) is necessarily to be deduced from his statements. So far from stipulating (or implying) any "law which gives an indefinite authority to the majority (of the people of the United States) to bind the whole, in all cases," the Constitution is, to the contrary, as has been shown, based on provisions wholly irreconcilable with any such law; and intended to prevent such rule of the majority. ²

"This . . . circumstance shows that we are not to consider the [Constitution] as analogous to the social compact of individuals: for, if it were so, a majority would have a right to bind the rest."

"If we consider the Federal Union as analogous, not to the social compacts among individual men, but to the conventions among individual states, what is the doctrine resulting from these conventions? Clearly, according to the expositors of the law of nations, that a breach of any one article, by any one party, leaves all the other parties at liberty to consider the whole convention as dissolved, unless they choose rather to compel the delinquent party to repair the breach. In some treaties, indeed, it is expressly stipulated, that a violation of

PARTICULAR ARTICLES SHALL NOT HAVE THIS CONSEQUENCE, AND EVEN THAT PARTICULAR ARTICLES SHALL REMAIN IN FORCE DURING WAR, WHICH IS IN GENERAL UNDERSTOOD TO DISSOLVE ALL SUBSISTING TREATIES. BUT ARE THERE ANY EXCEPTIONS OF THIS SORT TO THE ARTICLES OF CONFEDERATION?"

But are there any exceptions of this sort to the Constitution? It certainly is nowhere "expressly stipulated, that a violation of particular articles shall not have this consequence," vis.: "that a breach of any one article by any one party leaves all the other parties at liberty to consider the whole convention as dissolved." And so far from there being a stipulation (expressed or implied) "that force shall be used to compel an offending member of the Federal Union to discharge its duty," such a provision repeatedly proposed was as repeatedly denied under any form. The Federal Government was not even granted a negative upon State laws.

Therefore, if Mr. Madison's principles, as developed in the Federal Convention, be accepted, the South Carolina "Declaration" ("that the mode of its formation subjects it to a third principle, namely: the law of compact. . . . that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part of the agreement entirely releases the obligation of the other; and that where no arbiter is provided, each party is remitted to his own judgment to determine the fact of failure, with all its consequences") must be considered fully proven. Yet, if the Constitution was ratified under the belief that the "difference between a system founded on the legislatures only, and one founded on the people was the true difference between a league or treaty and a Constitution," in the sense of Mr. Madison, such belief would make it "a Constitution": but the proceedings of various ratifying conventions forbid such a supposition.

At a later date Mr. Madison discussed the question at length, without, however, in so far as is perceived, confuting the understanding here upheld of the principle in question.
CHAPTER VI

MR. BUCHANAN'S DOCTRINE

The political effects of any given construction of the Constitution, impractical, or disastrous, though they may be, do not in themselves definitively prove such construction to be contradictory to the intention of the instrument. They are, however, certainly corroborative of such a belief; indeed, strongly corroborative, if such impracticability, or disastrous effect, seems obviously to ensue upon such construction; since the framers of the instrument may be credited with at least ordinary political foresight. In this view it is worth while to consider Mr. Madison's doctrine dynamically, as put in practice by Mr. Buchanan.

Attorney-General Black replied to Mr. Buchanan's questions upon his Constitutional powers in reference to secession as follows:

"I come now to the point in your letter, which is probably of the greatest practical importance. By the act of 1807, you may employ such parts of the land and naval forces as you may judge necessary for the purpose of causing the laws to be duly executed, in all cases where it is lawful to use the militia for the same purpose. By the act of 1795 the militia may be called forth 'whenever the laws of the United States shall be opposed, or the execution thereof obstructed in any State by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals.' This imposes upon the President the sole responsibility of deciding whether the exigency has arisen which requires the use of military force; and in proportion to the magnitude of that responsibility will be his care not to overstep the limits of his legal and just authority."
"The laws referred to in the act of 1795 are manifestly those which are administered by the judges, and executed by the ministerial officers of the courts for the punishment of crime against the United States, for the protection of rights claimed under the Federal Constitution and laws, and for the enforcement of such obligations as come within the cognizance of the Federal Judiciary. To compel obedience to these laws, the courts have authority to punish all who obstruct their regular administration, and the marshals and their deputies have the same powers as sheriffs and their deputies in the several States in executing the laws of the States. These are the ordinary means provided for the execution of the laws; and the whole spirit of our system is opposed to the employment of any other except in cases of extreme necessity arising out of great and unusual combinations against them. Their agency must continue to be used until their incapacity to cope with the power opposed to them shall be plainly demonstrated. It is only upon clear evidence to that effect that a military force can be called into the field. Even then its operations must be purely defensive. It can suppress only such combinations as are found directly opposing the laws and obstructing the execution thereof. It can do no more than what might and ought to be done by a civil posse, if a civil posse could be raised large enough to meet the same opposition. On such occasions, especially, the military power must be kept in strict subordination to the civil authority, since it is only in aid of the latter that the former can act at all.

"But what if the feeling in any State against the United States should become so universal that the Federal officers themselves (including judges, district attorneys and marshals) would be reached by the same influences, and resign their places? Of course, the first step would be to appoint others in their stead, if others could be got to serve. But in such an event, it is more than probable that great difficulty would be found in filling the offices. We can easily conceive how it might become altogether impossible. We are therefore obliged to consider what can be done in case we have no courts to issue judicial process, and no ministerial officers to execute it.
In that event, troops would certainly be out of place, and their use wholly illegal. If they are sent to aid the courts and marshals, there must be courts and marshals to be aided. Without the exercise of those functions which belong exclusively to the civil service, the laws cannot be executed in any event, no matter what may be the physical strength which the Government has at its command. Under such circumstances, to send a military force into any State, with orders to act against the people, would be simply making war upon them.

"The existing laws put and keep the Federal Government strictly on the defensive. You can use force only to repel an assault on the public property and aid the courts in the performance of their duty. If the means given you to collect the revenue and execute the other laws be insufficient for that purpose, Congress may extend and make them more effectual to those ends.

"If one of the States should declare her independence, your action cannot depend upon the rightfulness of the cause upon which such declaration is based. Whether the retirement of the State from the Union be the exercise of a right reserved in the Constitution, or a revolutionary movement, it is certain that you have not in either case the authority to recognize her independence or to absolve her from her Federal obligations. Congress, or the other States in convention assembled, must take such measures as may be necessary and proper. In such an event, I see no course for you but to go straight onward in the path you have hitherto trodden—that is, execute the laws to the extent of the defensive means placed in your hands, and act generally upon the assumption that the present constitutional relations between the States and the Federal Government continue to exist, until a new code of things shall be established either by law or force.

"Whether Congress has the constitutional right to make war against one or more States, and require the Executive of the Federal Government to carry it on by means of force to be drawn from the other States, is a question for Congress itself to consider. It must be admitted that no such power is expressly given; nor are there any words in the Constitution
which imply it. Among the powers enumerated in Article 1st, Section 8, is that ‘to declare war, grant letters of marque and reprisal, and to make rules concerning captures on land and water.’ This certainly means nothing more than the power to commence and carry on hostilities against the foreign enemies of the nation. Another clause in the same section gives Congress the power ‘to provide for the calling forth the militia,’ and to use them within the limits of the State. But this power is so restricted by the words which immediately follow that it can be exercised only for one of the following purposes: 1. To execute the laws of the Union; that is, to aid the Federal officers in the performance of their regular duties. 2. To suppress insurrections against the State; but this is confined by Article IV, Section 4, to cases in which the State herself shall apply for assistance against her own people. 3. To repel the invasion of a State by enemies who come from abroad to assail her in her own territory. All these provisions are made to protect the States, not to authorize an attack by one part of the country upon another; to preserve the peace, and not to plunge them into civil war. Our forefathers do not seem to have thought that war was calculated ‘to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity.’ There was undoubtedly a strong and universal conviction among the men who framed and ratified the Constitution, that military force would not only be useless, but pernicious, as a means of holding the States together.

“If it be true that war cannot be declared, nor a system of general hostilities carried on by the Central Government against a State, then it seems to follow that an attempt to do so would be ipso facto an expulsion of such State from the Union. Being treated as an alien and an enemy, she would be compelled to act accordingly. And if Congress shall break up the present Union by unconstitutionally putting strife and enmity and armed hostility between different sections of the country, instead of the domestic tranquility which the Con-
stitution was meant to insure, will not all the States be absolved from their Federal obligations? Is any portion of the people bound to contribute their money or their blood to carry on a contest like that?

"The right of the General Government to preserve itself in its whole constitutional vigor by repelling a direct and positive aggression upon its property or its officers cannot be denied. But this is a totally different thing from an offensive war to punish the people for the political misdeeds of their State government, or to enforce an acknowledgment that the Government of the United States is supreme. The States are colleagues of one another, and if some of them shall conquer the rest, and hold them as subjugated provinces, it would totally destroy the whole theory upon which they are now connected.

"If this view of the subject be correct, as I think it is, then the Union must utterly perish at the moment when Congress shall arm one part of the people against another for any purpose beyond that of merely protecting the General Government in the exercise of its proper constitutional functions."

"I am, very respectfully, yours, etc.,

"J. S. Black."

Upon this advice Judge Curtis comments as follows:

"The soundness of Mr. Black's answers to the questions stated by the President does not admit of a doubt. Those who have assailed him and the President, who acted upon his official advice, have done so with very little regard to the supreme law of the land. They have not perceived the path in which the President had to move in the coming emergency, and they have overlooked the imperative obligation which rested upon him not to assume powers with which he had not been clothed by the Constitution and the laws. However certain it was that South Carolina would undertake to place herself out of the pale of the Union, no coercion could have been applied to her in her political capacity as a State, to prevent her from taking that step, without instantly bringing to her
side every other State whose sympathies were with her on the subject of slavery, however they might hesitate in regard to secession as a remedy against the apprehensions which were common, more or less, to the people of the whole slaveholding section. Even if the President had not been restrained by this consideration, he had no constitutional power to declare, no authority to prosecute, and no right to institute a war against a State. He could do nothing but to execute the laws of the United States within the limits of South Carolina, in case she should secede, by such means as the existing laws had placed in his hands, or such further means as the Congress which was about to assemble might see fit to give him, and to maintain the possession of the public property of the United States within the limits of that State. What the existing means were, for either of those purposes, was clearly pointed out by his official adviser, the Attorney General. For the execution of the laws, these means might wholly fail him, if the Federal civil officers in South Carolina should renounce their offices and others could not be procured to take their places. For maintaining possession of the public property of the United States, he had to act wholly upon the defensive.

"There is one part of Mr. Black's opinion on which it is proper to make some observations here, because it has a prospective bearing upon the basis on which the civil war is to be considered to have been subsequently prosecuted. It is not of much moment to inquire how individual statesmen, or publicists, or political parties, when the war had begun and was raging, regarded its legal basis; but it is of moment, in reference to the correctness of the doctrine acted upon by President Buchanan during the last four months of his administration, to consider what was the true basis of that subsequent war under the Constitution of the United States. The reader has seen that Mr. Black, in his official opinion, not only rejected the idea that the President could constitutionally make war upon a State of his own volition, but that he did not admit that the power to do so was expressly or implicitly given to Congress by the Constitution. What then did the Attorney
General means by instituting or carrying on war against one or more States? It is obvious, first, that he meant offensive war, waged against a State as if it were a foreign nation, to be carried on to the usual results of conquest and subjugation; second, that he fully admitted and maintained the right of the Federal Government to use a military force to suppress all obstructions to the execution of the laws of the United States throughout the Union, and to maintain the possession of its public property. This distinction was from the first, and always remained, of the utmost importance. It became entirely consistent with the recognition, for the time being, of a condition of territorial civil war, carried on by the lawful Government of the Union to suppress any and all military organizations arrayed against the exercise of its lawful authority; consistent with the concession of the belligerent character to the Confederate government as a de facto power having under its control the resources and the territory of numerous States; consistent also with the denial to that government of any character as a power de jure; and alike consistent with a purpose to suppress and destroy it. So far as the war subsequently waged was carried on upon this basis, it was carried on within the limits of the Constitution, and by the strictest constitutional right. So far as it was carried on upon any other basis, or made to result in anything more than the suppression of all unlawful obstructions to the exercise of the Federal authority throughout the Union, it was a war waged outside of the Constitution, and for objects that were not within the range of the powers bestowed by the Constitution on the Federal Government. In a word, the Federal Government had ample power under the Constitution to suppress and destroy the Confederate government and all its military array, from whatever sources that government or its military means were derived, but it had no constitutional authority to destroy a State, or to make war upon its unarmed population, as it would have under the principles of public law to destroy the political autonomy of a foreign nation with which it might be at war, or to promote hostilities against its people.
MR. BUCHANAN'S DOCTRINE

"Doubtless, as will be seen hereafter when I come to speak of that part of the President's message which related to this topic of making war upon a State, the language made use of was capable of misconstruction, and certain it is that it was made the subject of abundant cavil, by those who did not wish that the President should be rightly understood; as it was also made a subject of criticism by the Attorney General when the message was submitted to the cabinet. The language chosen by the President to express his opinion on the nature and kind of power which he believed that the Constitution had not delegated to Congress, described it as a 'power to coerce a State into submission which is attempting to withdraw, or has actually withdrawn from the Confederacy.' This was in substance a description of the same power which the framers of the Constitution had expressly rejected. It was before the Convention of 1787 in the shape of a clause 'authorizing an exertion of the force of the whole against a delinquent state,' which Mr. Madison opposed as 'the use of force against a State,' and which he said would look more like a declaration of war than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. On another occasion, Mr. Madison said that 'any government for the United States, formed on the supposed practicability of using force against the unconstitutional proceedings of the States, would prove as visionary and fallacious as the government of the [old] Congress.' When, therefore, after the rejection of the idea of using force to restrain a State from adopting an unconstitutional proceeding, the framers of the Constitution proceeded to create a government endowed with legislative, judicial and executive power over the individual inhabitants of a State, and authorized it to use the militia to execute the laws of the Union, they made and left upon our constitutional history and jurisprudence a clear distinction between coercing a State, in its sovereign and political character, to remain in the Union, and coercing individuals to obey the laws of the Union. Mr. Buchanan might then reasonably assume, that a distinction thus clearly graven upon the constitutional records of the
country would be known and recognized by all men; and
although the expression to 'coerce a State by force of arms
to remain in the Union,' might if severed from the accom-
panying explanation of its meaning, be regarded as ambiguous,
it will be found hereafter that it was not so used as to justify
the inference that if a State were to undertake to secede from
the Union, the President would disclaim or surrender the pow-
er to execute the laws of the Union within her borders. It
will be found also, by adverting to the Attorney General's
answers to the President's questions, that there was in truth
no real difference of opinion between them on this sub-
ject." 32 *

"Mr. Jefferson Davis, who represents, with as much logical
consistency as any one, the whole of the doctrine or theory of
secession, has always maintained that the distinction between
coercing a State, and coercing the individual inhabitants of
that State to submit to the laws of the United States, is no
distinction at all; that the people of the State are the State;
and that to use a military force to execute the laws of the
United States upon individuals, within the limits of a State
that has seceded from the Union, is to make war upon the
State. (See his speech in the Senate, January 10, 1861, and
his recent work on the  Rise and Fall of the Confederate Gov-
ernment. Index,  verb. 'Secession.') Let us, for a moment,
inquire whether Buchanan's distinction was answered 'by
reason of its very absurdity.'  51. The States, in their corpor-
ate and political capacity, are not the subjects or objects of
Federal legislation. The legislative powers of the Federal
Constitution are not intended to be exercised over States,
but they are intended to be exercised over individuals. An
Act of Congress never commands a State to do anything; it
commands private individuals to do a great many things.
The States are prohibited by the Constitution from doing
certain things, but these prohibitions execute themselves
through the action of the judicial power upon persons. No
State can be acted upon by the judicial power at the instance
of the United States. Every inhabitant of a State can be

acted upon by the judicial power, in regard to anything that is within the scope of the legislative powers of the Constitution. 2. The coercion of individuals to obey the laws of the United States constitutes the great difference between our present Constitution and the Articles of Confederation. 3. The right to use force to execute the laws of the United States, by removing all obstructions to their execution, not only results from the power to legislate on the particular subject, but it is expressly recognized by the Constitution. The character of that force and the modes in which it may be employed, depend both on direct constitutional provision, and on the legislative authority over all the people of the United States in respect to certain subjects and relations. All this will be conceded to be true, so long as a State remains in the Union. Does it cease to be true, when a State interposes her sovereign will, and says that the laws of the United States shall not be executed within her limits, because she has withdrawn the powers which she deposited with the General Government? What does this make, but a new case of obstruction to the execution of the Federal laws, to be removed by acting on the individuals through whom the obstruction is practically tried? And if, in the removal of the obstruction, the use of military power becomes necessary, is war made upon the State? It is not, unless we go the whole length of saying that the interposition of the sovereign will of the State ipso facto makes her an independent power, erects her into a foreign nation, and makes her capable of being dealt with as one enemy is dealt with by another. To deny the right of the United States to execute its laws, notwithstanding what is called the secession of a State, is to impale one's self upon the other horn of the dilemma: for if that right does not exist, it must be because the State has become absolutely free and independent of the United States, and may be made a party to an international war. Mr. Buchanan saw and constantly and consistently acted upon the true distinction between making war upon a State, and enforcing the laws of the United States upon the inhabitants of a State.”

Mr. Buchanan's doctrine then was (the same being also asserted by himself) that, while the Constitution absolutely disallowed the coercion of a State, qua State, by the Federal government, it permitted to the latter the coercion of all the individuals constituting such State.

Judge Curtis justifies this proposition by a chain of reasoning leading up to the following conclusion:

"And if, in the removal of the obstruction, the use of military power becomes necessary, is war made upon the State? It is not, unless we go the whole length of saying that the interposition of the sovereign will of the State ipso facto makes her an independent power, erects her into a foreign nation, and makes her capable of being dealt with as one enemy is dealt with by another."

This inquiry is to the point that this is exactly what "the interposition of the sovereign will of the State" does effect. Divested of verbiage, Mr. Curtis's argument is that the United States cannot constitutionally coerce a State to remain in the Union, but can constitutionally coerce all the citizens of the State to obey the laws of the Union. In other words, that the State has the constitutional right to erect itself into a foreign nation, provided its citizens remain under the laws of the confederation to which they have ceased to belong. Can any one suppose that the framers and ratifiers of the Constitution intended this?

Returning to the political effects of Mr. Buchanan's doctrine, Mr. Curtis says:

"Mr. Jefferson Davis, who represents, with as much logical consistency as any one, the whole of the doctrine or theory of secession, has always maintained that the distinction between coercing a State, and coercing the individual inhabitants of that State to submit to the laws of the United States, is no distinction at all; that the people of the State are the State; and that to use a military force to execute the laws of the United States upon individuals, within the limits of a State that has seceded from the Union, is to make war upon
the State. Let us, for a moment, inquire whether Buchanan's distinction was answered 'by reason of its very absurdity.'"

Replying to his own question, Mr. Curtis says:

"... What then did the Attorney General mean by instituting or carrying on war against one or more States? It is obvious, first, that he meant offensive war, waged against a State as if it were a foreign nation, to be carried on to the usual results of conquest and subjugation; second, that he fully admitted and maintained the right of the Federal Government to use a military force to suppress all obstructions to the execution of the laws of the United States throughout the Union, and to maintain the possession of its public property. This distinction was from the first, and always remained, of the utmost importance. It became entirely consistent with recognition, for the time being, of a condition of territorial civil war, carried on by the lawful Government of the Union to suppress any and all military organizations arrayed against the exercise of its lawful authority; consistent with the concession of the belligerent character to the Confederate government as a de facto power having under its control the resources and the territory of numerous States; consistent also with the denial to that government of any character as a power de jure; and alike consistent with a purpose to suppress and destroy it. So far as the war subsequently waged was carried on upon this basis, it was carried on within the limits of the Constitution, and by the strictest constitutional right. So far as it was carried on upon any other basis, or made to result in anything more than the suppression of all unlawful obstructions to the exercise of the Federal authority throughout the Union, it was a war waged outside of the Constitution, and for objects that were not within the range of the powers bestowed by the Constitution upon the Federal Government. ... When, therefore, after the rejection of the idea of using force to restrain a State from adopting an unconstitutional proceeding, the framers of the Constitution proceeded to create a government endowed with legislative, judicial and executive power over the individual inhabitants of a
State, and authorized it to use the militia to execute the laws of the Union, they made and left upon our constitutional history and jurisprudence a clear distinction between coercing a State, in its sovereign and political character, to remain in the Union, and coercing individuals to obey the laws of the Union. Mr. Buchanan might then reasonably assume, that a distinction thus clearly graven upon the constitutional records of the country would be known and recognized by all men; and although the expression to ‘coerce a State by force of arms to remain in the Union,’ might, if severed from the accompanying explanation of its meaning, be regarded as ambiguous, it will be found hereafter that it was not so used as to justify the inference that if a State were to undertake to secede from the Union, the President would disclaim or surrender the power to execute the laws of the Union within her borders.”

It is not necessary to the point now under discussion to consider if the “distinction, between coercing a State, in its sovereign and political character, to remain in the Union, and coercing [the] individuals [composing it] to obey the laws of the Union,” might be a “clear” one. The question now considered is if such a distinction has any such political effect as was expressly aimed at by the Constitution.

The object expressly aimed at by the refusal of the right of coercion to the general government was the avoidance of war between the States. Not “offensive” war, or war of any special abstract kind; but war, plain war, killing, destruction of property,—the common or garden variety, very well known to Count Tilly, General von Hindenburg, William Tecumseh Sherman, et al.

As Mr. Hamilton said:

“What picture does this idea present to our view? . . . Congress marching the troops of one state into the bosom of another; this state collecting auxiliaries, and forming, perhaps, a majority against its federal head. Here is a nation at war with itself. Can any reasonable man be well disposed towards a government which makes war and carnage the only means
of supporting itself—a government that can exist only by the sword? Every such war must involve the innocent with the guilty. This single consideration should be sufficient to dispose every peaceable citizen against such a government. But can we believe that one state will ever suffer itself to be used as an instrument of coercion? The thing is a dream; it is impossible.”

As Attorney-General Black stated:

“Our forefathers do not seem to have thought that war was calculated ‘to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity.’ There was undoubtedly a strong and universal conviction among the men who framed and ratified the Constitution, that military force would not only be useless, but pernicious, as a means of holding the States together.”

The rule laid down by Chief Justice Marshall, in Gibbons v. Ogden, is, it is thought, according to his expression, “a well settled rule” of construction, viz.:

“If from the imperfection of human language, there should be serious doubts respecting the extent of any given power, it is a well settled rule that the objects for which it was given, especially when those objects are expressed in the instrument itself, should have great influence on the construction.”

“The objects of the powers” of the Constitution are “to insure domestic tranquillity . . . promote the general welfare,” etc. How are these objects fulfilled by Mr. Black’s doctrine? Are “war and carnage” and its other accompaniments avoided? Or are these “domestic tranquillity,” etc.? Mr. Buchanan’s distinction was certain to graduate in war, whether for offensive or defensive purposes,—and, in point of fact, broke down in war.

CHAPTER VII

MR. LINCOLN’S DOCTRINE

Mr. Madison’s doctrine,—which seeks to reconcile the historical facts at the basis of the Federal government with a Constitutional power of coercion, direct or indirect, over the States, or their people, therein appertaining,—carried into action, thus leads to a logical impasse. The doctrine under which war was successfully waged against secession, and which must therefore be accepted as the official anti-secession doctrine, is as absolutely opposed in its premises to those of Mr. Madison as it is in its conclusion to that which he denied. Mr. Lincoln, the official and actual head of the anti-secession party, must be accepted as its mouthpiece. According to this doctrine, the United States is, in its origin and government, a consolidated republic to be governed by the majority of the people of all the States considered as one people.

“If the majority should not rule, who would be the judge? Where is such a judge to be found? We should all be bound by the majority of the American people; if not, then the minority must control. Would that be right? Would it be just or generous? Assuredly not. I reiterate that the majority should rule.” *

“... in what consists the special sacredness of a State? If a State and a county, in a given case, should be equal in extent of territory, and equal in number of inhabitants, in what, as a matter of principle is the State better than the county? ... On what rightful principle may a State, being not more than one-fiftieth part of the nation, in soil and population, break up the nation and then coerce a proportionally larger subdivision of itself, in the most arbitrary way? What

*Lincoln’s Address at Steubenville, Ohio, February 14, 1861.
96
MR. LINCOLN'S DOCTRINE

mysterious right to play tyrant is conferred on a district of country, with its people, by merely calling it a State?" 85 *

"We shall again be able not to declare that 'all States as States are equal,' nor yet that 'all citizens as citizens are equal,' but to renew the broader, better declaration, including both these and much more, that 'all men are created equal.'" 86 †

"This sophism derives much, perhaps the whole, of its currency from the assumption that there is some omnipotent and sacred supremacy pertaining to a State—to each State of our Federal Union. Our States have neither more nor less power than that reserved to them in the Union by the Constitution 87 —no one of them ever having been a State out of the Union. The original ones passed into the Union even before they cast off their British colonial dependence; 88 . . . Much is said about the 'sovereignty' of the States; but the word even is not in the National Constitution, nor, as is believed, in any of the State constitutions. 89 Originally some dependent colonies made the Union, and, in turn, the union threw off their old dependence for them, and made them States, such as they are. Not one of them ever had a State constitution independent of the Union. 40 . . . " ‡

In view of facts already presented, it must be either futile or unnecessary, more fully to canvass these statements. If they are correct, Mr. Lincoln was not a Constitutional President of the United States, having been elected by much less than a majority of the people of those States.

† At banquet in Chicago, December 20, 1856.
CHAPTER VIII

THE ETHICAL QUESTION INVOLVED

"SURELY," says old Sir Thomas Browne, "there goes a
great deal of Conscience to the compiling of a history; there is
no reproach to the scandal of a Story; it is such an authentic
kind of falsehood that with authority belies our good name to
all nations and Posterity."

Yet too much conscience is dangerous.

Consider the case of casuistry of Father Aldrovand and
Wilkin Flammock. Honest Wilkin, being in a very tight
place, diddled certain Welshmen out of certain beeves. Con-
sidering him as a "practical" politician, "confronted with a
condition not a theory," (and if any "unpractical" man wishes
a meaning put to the phrase, it means just what "art for art's
sake" means), etc., a jury (of his own men) well fed up on
the beeves, and hurrahs for the Welshmen's defeat, would
undoubtedly have found for the defendant, without leaving
their seats.

In a case once almost as celebrated, of much later date and
nearer home, Patrick Henry laughed the plaintiff out of court
for daring to ask payment for some other beeves, which had
been incorporated in good American soldiers. "But hark!
what notes of discord are these which disturb the general joy,
and silence the acclamations of victory—they are the notes
of John Hook, hoarsely bawling through the camp, 'Beef, beef,
beef.'" And all that poor John got was the hook; like Mr.
Hampden in the ballad, "happy to escape so," without a pa-
triotic garment of tar and feathers.

In time of war truth had as well stay in her well; even so ill-
favoured a poor girl is liable in war to be roughly entreated.
Yet, in truth, ill-favoured, ragged slut as she is,
THE ETHICAL QUESTION INVOLVED

"L'eurent à l'instant reconnue
A ses habits tout dechiris,"

Truth is most of all in danger after the fight is over. Father Aldrovand, being called upon to give thanks, cannot, hungry as he is (or rather was), condone Honest Wilkin's peccadillo on the ground that it was expedient, and eat his dinner without caring how it was come by. Honest Wilkin hits poor Truth a clout, and "Out of the way, wench!" The Reverend gentleman must needs prove his love for her,—much indeed as Death loved Sin, and with the same fatal progeny. In the interests of morality, truth, and his more squeamish stomach, it is necessary for him that Honest Wilkin's act, far from being a peccadillo, a venial sin, should be a virtue; "a great moral law," indeed. To prove by the Scriptures that Welshmen were intended to be diddled, that Raymond Berenger was a fool (possibly a "traitor" and atheist) for refusing to break his compact with them, is a first necessity, a tonic, a pepsin, an apéritif, a chasse café, a grace before and after meals, without which his "conscience" will not let his stomach be at peace, any more than would the balsam of Fierabras that of poor Sancho.

Frederick, "the Great" (was it not?) said: "When I want a province, I take it. I can always get a pedant to justify me."

The process, as Montaigne describes it, still goes merrily on: "Je ne veux pas croire qu'ils ayent rien changé quant au gros du faict; mais de contourner le jugement des événemens souvent contre raison à nostre avantages... ils en font mes-tier." e. g.:

"In the decade preceding the Civil War, when the moral indignation of the people was roused by the hideous barbarities and political encroachments of slavery, one case arose which stands in our judicial records as a warning that the strongest constitutional or legal barriers cannot always stand against the settled moral convictions of a people. In the case of Ableman v. Booth and United States v. Booth, Booth had been arrested and held on the charge of aiding the escape of a fugitive slave. While so held by the United States marshal,
he was released on a writ of habeas corpus by a judge of the Supreme Court of Wisconsin. He was subsequently indicted and convictd upon the same charge, and while undergoing sentence of the United States court, was again released on writ of habeas corpus by the Supreme Court of the State. The cases were carried to the Supreme Court of the United States on writ of error, and gave occasion for one of the ablest and most permanently valuable decisions of Chief-Justice Taney.

"I suppose no lawyer or statesman of standing would to-day undertake to defend the action or decisions of the court of Wisconsin on legal grounds. Those decisions were indeed without a shadow of support in law, and could never be defended except upon revolutionary grounds. They show impressively the dangers to every part of our political system involved in the protection afforded by the Constitution to that baleful and deadly foe to our national peace as well as to our great constitutional system and experiment,—warranting President Lincoln's brave and sagacious vaticination: 'This government cannot endure permanently half slave and half-free.' . . .

"The highest achievement of the English-speaking race is, I make no doubt, the subordination of all other powers and authorities to the power and authority of Law,—the enthrone-ment over all, the apotheosis, of that idea and fact which is the nearest approach, the most faithful echo which human ears ever catch, of the voice of God, not the voice of the people as heard at any given moment, but the voice of incarnated Reason and Truth—of Justice and Authority,—Law:

"'Sovereign law, that state's collected will, O'er thrones and globes elate.' "*

How does Mr. Chamberlain reconcile his statement that "The highest achievement of the English-speaking race is, . . . the subordination of all other powers and authorities to the power and authority of Law,—the enthrone-ment over

all, the apotheosis, of that idea and fact which is the nearest approach, the most faithful echo which human ears ever catch, of the voice of God, not the voice of the people as heard at any given moment, but the voice of incarnated Reason and Truth — of Justice and Authority,—Law,” with his approving mention, “That the strongest Constitutional or legal barriers cannot . . . stand against the settled moral convictions of a people?” How is “law the voice of incarnated reason and truth” and yet opposed to “the settled moral convictions,” etc.?

How are the “settled moral convictions of a people” to be made known excepting through their law,—“the voice of incarnated Reason and Truth”? And of all forms of law no other can be so solemn and imperative as that Constitution, which according to Mr. Chamberlain, “protected a deadly and [therefore it may be supposed] baleful foe” to itself. Mr. Chamberlain, it is true, makes a distinction between this law (the expression of “the settled moral convictions of a people”) and the “voice of the people as heard at any given moment.” (Then the Constitution was only “the voice of the people as heard at a given moment,” and that “moral indignation” which he so admires was “the settled moral conviction of a people”!)

Let Mr. Lincoln’s doctrine that “A majority held in restraint by constitutional checks . . . and . . . changing easily with deliberate changes of popular opinion . . . is the only true sovereign of a free people” be examined in this light.

“Liberty belongs to defined rights, regulated interests, specified duties, all determined in advance, before passions are excited and selfishness engaged,* prescribed in solemn documents, and guaranteed by institutions which work impersonally without fear or favor. . . . Civil liberty must therefore be an affair of positive law, of institutions, and of history. It varies from time to time, for the notion of rights is constantly in flux. The limiting line between the rights and duties of each man, up to which each may go without trenching on

* Italics by B. S.
the same rights and liberty of others, must be defined at any moment of time by the constitution, laws and institutions of the community. People often deny this, and revolt at it, because they say that one's notions of rights and liberty are not set for him by the laws of the state. The first man you meet will undoubtedly tell you that there are a number of laws now in force in the United States which he does not think are consistent with liberty and (natural) rights—I who write this would say so of laws restricting immigration, laying protective taxes, etc. But it is to be observed that behind the positive law existing at any time, there is the moral reflection of the community which is at work all the time. This is the field of study, debate, and reflection, on which moral convictions are constantly being formed; and when they are formed, they find their way into laws, constitutions, and institutions, provided that the political institutions are free, so as to allow this to take place . . . It is a constant phenomenon of all exaggerated philosophers of the state, that they obscure this distinction between public morals and positive law. The older abuse was to suppress public morals in the name of positive law; the later abuse is to introduce public morals into positive law directly and immaturely.”

Let this exposition be applied to the particular case. “It is to be observed that behind the positive law existing at any time, there is the moral reflection of the community which is at work all the time. This is the field of study, debate, and reflection, on which moral convictions are constantly being formed; and when they are formed, they find their way into laws, constitutions, and institutions, provided that the political institutions are free, so as to allow this to take place.” It is not believed that this statement of the relation of moral convictions to positive law can be successfully controverted. If, then, Mr. Chamberlain is correct, and “the strongest constitutional and legal barriers stood against the moral convictions of the people,” it must result that the political institutions of the United States were not free so as to allow this transmuta-

* Prof. Wm. G. Sumner, “Liberty and Responsibility,” in “Earth Hung-
tion of moral convictions into positive law to take place. But if they were not thus free, in a country in which the whole power resided both in theory and practice in the people, if they did not "change easily with deliberate changes" of a popular majority in the people, why were they not free? The answer reveals the sophism at the foundation of Mr. Chamberlain's moral doctrine: that same sophism found at the root of the whole anti-secession theory,—the sophism which asserts the United States to be politically one people, capable of acting by a majority of the whole in the same manner as the people of a single State would act. If this had been the fact, what power existed to prevent the "settled moral conviction of the people" from being transmuted into law?—to forbid "the majority from changing... with the... changes of popular opinion?"

Either, then, this was not "a people," or its majority did not have that settled moral conviction. This is a dilemma which no sophistry can evade. The only Constitutional power which could prevent complete freedom in a democracy such as that of the United States—the only "Constitutional checks and limitations" forbidding it to alter its laws in obedience to every whim of the majority, to each sound of "the voice of the people as heard at any given moment," was the Federative principle in the Constitution; which, being a compact, "designed to unite great States," had, as such, provisions restrictive of this complete freedom of the majority, to enforce its "settled moral convictions" upon the people of States, whose people might entertain diametrically opposed "settled moral convictions." This is, or was, indeed, the praise of the Constitution,—the feature through which its creators thought to procure its endurance. There was then no question of "the settled moral convictions of a people," for the very good reason (among others) that (Constitutionally) there was no such people to have a "settled moral conviction."

To repeat: if one people, it had the power freely to transmute any settled moral (or immoral) conviction into positive law; if, then, it had a "settled moral conviction" which it was unable constitutionally to transmute into positive law, it could
not have been one people. But, according to Mr. Chamberlain, it had the conviction and did not have the (Constitutional) power. To the contrary, it had to break Constitutional barriers in order to its exercise;—"the strongest constitutional or legal barriers cannot stand against the settled moral convictions of a people." Therefore it was not one people. But, if not one people, what becomes of "Mr. Lincoln's brave and sagacious vaticination," majority doctrine, etc.? What becomes of the moral,—let alone Constitutional,—grounds upon which he waged war against the Southern States?

At this date and in this connection it is not thought necessary to take issue at length with Mr. Chamberlain's "hideous barbarities," etc. Yet, having quoted it, a passing note must be made, not to seem to allow the charge to pass by default. As so used, the expression colours the whole community to which it was applied. That such barbarity not only did not so characterize the slave régime in the South, that it was not even really believed by the North so to do, may be sufficiently proved by two general reasons, without entering upon detail.

As regards the first proposition, the capabilities of the negro for sudden excitement and bloody revenge have been sufficiently proved by historical events in San Domingo and in many other instances; yet this people—impressionable, as they have always been; semi-savage in a large proportion; subjected through years to a systematic and most violent propaganda of revenge against their masters,—a propaganda which deliberately appealed to their strong animal characteristics,—when their masters' power was first menaced and then struck down, not only did not avail themselves of their opportunity to avenge their wrongs but in great numbers took upon themselves the protection and support of those who had once owned them. Such action was equally to their own credit and to that of the treatment they had received as slaves.

In regard to the second proposition, suppose that a "people of high intelligence" and "great moral ideas" neighbour on a people who take delight in the infliction of physical torture, the perpetration of "hideous barbarities," is it possible to believe that the former would wish to incorporate in itself a body of
people of this red Indian civilization?—would refuse to permit such to live apart, even when such refusal meant prolonged war? Surely not. To incorporate a people destitute of ordinary human feelings with another so superior, in a republic where the votes of the one would have the same operative force as those of the other, would be a political madness in the former, which ordinary common sense and sanity, let alone a high degree of civilization and intelligence, would shun as a kind of political suicide. Such a union would indeed be a house divided against itself. Far from fighting to perpetuate a union so unnatural, the former would fight to eject the latter. The people of the United States are not perhaps of the high intelligence and great moral ideas which Judge Chamberlain bestows upon them, but they have very readily refrained from incorporating with their own civic body the Indian. In fact the dilemma is apparent that if a people gave such individuals the vote in a republic, that people could not be one of high intelligence and great moral ideas. Either then the North did not really believe that the South was guilty of “hideous barbarities,” or the North was not a people of high intelligence and great moral ideas. Reversing the proposition: If the North did not believe in those “hideous barbarities,” which it assumed as a basis of its action, still less could that action be that of a people of “great moral ideas.”

The practical operation of this dilemma may surely be seen, under less powerfully influential motives (in a people of high moral ideas) than should be afforded by “hideous barbarities,” in the case of legislation against classes and races of immigrants.

A recent writer has put the case very neatly in another way, as follows:

“Our detractors have convicted themselves of the slanders they have uttered by taking the Southern slave from the cotton fields to the ballot box and vesting him with all the privileges of an American citizen. If the institution of slavery has so tutored the negro that immediately his bonds are loosened, he is qualified for the privileges of the ballot box, what a civi-
lizing tendency that institution must have had. If on the contrary that institution has kept him in utter ignorance of moral and Christian duty and made him the cringing, degraded creature he has been represented, what a monster must be he who proposes to vest in the untutored savage the power of governing others.” *

“A case was now presented which grew out of the Fugitive Slave law of September 18, 1850. With the heat of the decision in the Dred Scott case still glowing, the Supreme Court of Wisconsin undertook to pronounce this Act of Congress unconstitutional and void, and resisted, so far as it could, its administration by the Federal authorities. The opinion of the Chief-Justice, apparently adopted by all the judges, reviews the whole subject at length, and upholding the constitutionality of the Act of Congress, lays down certain principles which should have received the assent of all law-abiding citizens. But the crisis was rapidly approaching. It was held by the court, that the process of a State court, or judge, had no authority beyond the limits of the sovereignty conferring the judicial power. Hence, a habeas corpus issued by a State court, or judge, had no authority within the limits of sovereignty assigned by the Constitution of the United States. When such a writ of habeas corpus is served on a marshal or other person having one in custody under the authority of the United States, it is his duty, by a proper return, to make known the authority under which he holds the person detained; but he is bound to regard and execute the process of the United States and not to obey the process of the State authorities.

“No one can well question the soundness of these propositions, but the voice of the law was no longer heard; and in this connection we shall notice another case occurring a little later, when the fires of war were already appearing upon the horizon. I refer to the case of Commonwealth of Kentucky vs. Denison, in which Chief Justice Taney delivered the opinion of the court, announcing the following propositions:

THE ETHICAL QUESTION INVOLVED

"In a suit between two States, the Supreme Court has original jurisdiction, without further Act of Congress regulating the mode in which it shall be exercised. Suit by, or against, the governor of a State in his official capacity, is a suit by or against the State. A writ of mandamus does not issue in virtue of any prerogative power, and is nothing more than an ordinary action at law in cases where it is the appropriate remedy. The words "treason, felony, or other crime," in the second clause of the second section of the fourth article of the Constitution, include every offense forbidden and made punishable by the laws of the State where the offense is committed. It is the duty of the executive of Ohio, upon demand of the governor of Kentucky and the production of a certified copy of the indictment, to deliver up an alleged criminal to the governor of Kentucky. This duty is merely ministerial. But no law of Congress can compel a State officer to perform such duty."

"There is a tone of almost pathetic dignity in that portion of the opinion in which it is asserted that the performance of the duty in question was left to depend upon the fidelity of the State Executive to the compact entered into by the other States; when it was believed that a sense of justice and of mutual interest would insure the faithful execution of the clauses of the Constitution after it became the fundamental law of the land. . . .

"The Act of Congress of 18th Sept., 1850, commonly called the Fugitive Slave Law, . . . Notwithstanding that this law was obviously in the strict line of the constitutional provision upon the subject . . . it met with strong opposition in its passage through the two branches of the Federal legislature, and after its passage, in its execution in many of the Northern States. In the State of Pennsylvania, in particular, it gave rise to a trial for high treason in a case where it was contended that there was a concerted plan to prevent its execution.

"In truth, the subject lay beyond the domain of legislative or judicial action. The feeling is so deep-seated in the hearts of men to comment upon unfavorably, and to prevent if possible the exercise of, all authority distasteful to their passions
or their prejudices, that it is impossible to reason with it, or
even to contend against it, except by the exercise of physical
force. Especially is this so in free countries, and particularly
in one where the general level of intelligence is high, and the
means for concerted action abundant, by reason of the ability
for the almost instantaneous propagation of the thoughts and
opinions of the general mass. In vain shall you attempt to ap-
peal to the reason or patriotism of men thus aroused. You
may demonstrate with unerring truth that the Constitution is
incapable of more than one construction upon the point in
question, and you may show with the clearness of the noonday
sun that this construction favors the obnoxious practice. You
may further prove from the history of the times, with an
accuracy which admits of no challenge, that the compact by
which the several States were fused into one united body
would never have taken place without the concession which is
found enacted into words in the instrument of union. You
may talk of duty, justice, fairness, submission to the laws;
but you talk against the wind in doing so. When men's pas-
sions are aroused they no longer reason. Passion is at one
end of the line, reason at the other, and the latter is always out-
weighed by the former. Men simply rely upon their feelings
as their principle of action; and especially do they do this
when they can indulge in the luxury of gratifying these feel-
ings without expense to their pockets. Adam Smith wrote,
nearly a hundred years ago, that the resolution by which our
ancestors in Pennsylvania set at liberty their negro slaves,
must satisfy us that their number then could not have been
very great in that State, and before making this statement he
had demonstrated 'that the work done by slaves, though it
appears to cost only their maintenance, is in the end the dear-
est of any kind of labor.'

"The principle to which the great philosopher of modern
times attempted to reduce all the motives and actions of human
conduct, that of UTILITY, is always the safest, and indeed
the only guide to appeal to in the resolution of questions of
this kind. If the slaveholding States had believed that in
the long run the Union was more advantageous to them, even
without the practical carrying into effect of the provision of the Constitution in question, they should not have attempted the enforcement of a provision so unpopular in the North. Had the people of the non-slaveholding States regarded the value of the Union as superior to the enforcement of an unpopular provision, they would readily have acquiesced in submission to its requirements. The fault on both sides was a blunder of proportion in their moral and mental vision. The inestimable advantages of the Union not being brought instantly to their apprehension, were relegated to distant consideration, or rather were placed out of view altogether."

Mr. Biddle’s statement that “The principle . . . of utility is always the safest, and indeed the only guide to appeal to in the resolution of questions of this kind . . . The fault on both sides was a blunder of proportion in their moral and mental vision,” etc., is true, if “utility” is allowed to connote the preservation of the distinctive and highest qualities of humanity. But this is obviously just what it does not mean, since in this sense it would have no bearing on his argument. This being so, a safer guide may lie, one would fain hope, in the principle of honour,—in keeping engagements faithfully on the one hand, and, not less, in resenting their breach on the other.

The poets are sometimes the safest reasoners in political matters.

“What constitutes a state?
Not high rais’d battlements or labour’d mound
Thick wall or moated gate;
.
.
No:—men, high-minded men.
.
.
Men, who their duties know,
But know their rights, and knowing dare maintain,
Prevent the long-aim’d blow

* * * * *

These constitute a state
And sov’reign law, that state’s collected will.”

Sir William Jones, legislator and lawyer, as well as poet, thus makes the will to maintain rights under the law an integral part of the duty of a citizen,—as, indeed, all law ultimately depends upon that willingness for its sanction. When Shakespeare advises "Greatly to find quarrel in a straw when honour's at the stake," his psychology is infinitely more correct than Mr. Biddle's, from the viewpoint of "utility" itself. It is not a false instinct which admires Hampden's refusal to pay an unfelt shilling from an ample income for an improper tax, though he might thereby have avoided suffering and danger. No schoolboy but knows that, if he chooses Mr. Biddle's "utility" as "his guide to appeal to," he will be the butt of every bully,—that one shameful submission will lead to another yet more shameful.

To give up one's rights is to invite further aggression. "En nous acculant et tirant arrière nous appellons à nous et attirons la ruine, qui nous menace," says Montaigne. Nor has such doctrine ever been the motive of action of this country (or of any other that has survived as such long enough to have a place in history). "Did cowardice, did injustice, ever save a sinking state? Did any man, by giving up a portion of his just right, because he had not courage to maintain it, ever save the residue? The insolence of the aggressor is usually proportioned to the tameness of the sufferer." 44 *

Jackson in his message of 1833, said:

"Peace and friendly intercourse with all nations are as much the desire of our government as they are the interests of our people. But these objects are not to be permanently secured by surrendering . . . rights, or permitting . . . solemn treaties . . . to be abrogated or set aside."

"The superior power may offer peace with honour and with safety. Such an offer from such a power will be attributed to magnanimity. But the concessions of the weak are the concessions of fear. When such a one is disarmed, he is wholly at the mercy of his superior; and he loses forever that time

* Fisher Ames.
and those chances, which, as they happen to all men, are the strength and resources of all inferior power." *

Had "utility" only, in the sense in which Mr. Biddle uses it, been involved, the American Revolution had never been fought.45 Contrast Mr. Biddle's principle of action with that of the South: "Look here, upon this picture, and on this!" which is best fitted "to give the world assurance of a man?"

"Aye! but the Virginian made slavery the touchstone and the test in all things whatsoever, State or Federal. Truly he did, and why?

"This button here upon my cuff is valueless, whether for use or for ornament, but you shall not tear it from me and spit in my face besides; not if it cost me my life. And if your time be passed in the attempt to so take it, then my time and my every thought shall be spent in preventing such outrage. Let alone, the Virginian would gladly have made an end of slavery, but, strange hap! malevolence and meddling bound it up with every interest that was dear to his heart—wife, home, honor—and by a sad providence it became the midmost boss, the very centre of that buckler of State rights which he held up against the worst of tyrants—a sectional majority." †

When Mr. Biddle sustains that reason, justice, and patriotism, adherence to well-understood compact, and so on, cannot be relied upon, especially in free people of a high level of intelligence, to guide their actions, he asserts nothing less than that men are unfit for self-government, and Constitutions useless. It may well be true;

"It's human natur. P'raps 'tis so.
Oh! isn't human natur low."

But it is a poor justification for a party which claims great moral ideas as its raison d'être.

"The makers of constitutions designed to unite great states and to last for centuries can foresee and provide for but a

* Burke's Speech on Conciliation of the Colonies, 1775.
† "The Old Virginian Gentleman," by George W. Bagby.
small portion of the difficulties which may come. When emergencies unforeseen arise, the officers of government may look in vain to the source of their powers to see what should be done. But the government must be administered. The state must be preserved. Though a nation may have been formed by a written constitution, yet time will knit it together by a thousand ties stronger than those of any compact. And no people worthy of the name will allow itself to be destroyed, because of constitutional restraints. The thing which seems necessary for self-preservation will be done, and such justification found, as circumstances permit. Constitutional provisions will be strained, if necessary, and meanings discovered which would never have been thought of in quiet times."

Mr. Kent’s doctrine, like that of Mr. Biddle et al., is extra-Constitutional. The question to which such teachings really tend is not whether such and such action is in consonance with the provisions of the Constitution; it is whether a Constitution (or any other agreement) is binding upon the parties thereto.

What kind of a "higher law," a "settled moral conviction," is that which cannot be frankly announced or defended,—which "leaves compact thinking behind"; and basing itself upon the denial of historical fact, has, when the falsehood is unmasked, finally to be justified by an ethic which excuses the breaking of most solemn compacts on the one side, and blames the resenting this breach of faith by the other? Compared with it, the shape of Proteus was "settled." The Duchess’s baby was its archetype: "At first Alice could not hold it securely, when at last she found out the way, by holding it firmly by the left ear and right foot, she found that it was not a baby at all but a pigling."

"Woman to the waist, and fair (it seems);  
But ending foul in many a scaly fold  
Voluminous and vast; a serpent arm’d  
With mortal sting."

THE ETHICAL QUESTION INVOLVED

To hang on to one's own share of the profits, while calling on one's partner to live virtuously and give up his share of the bargain, is not merely "an alliance of Blifil with Black George, of the Puritan with the blackleg"; it exemplifies the not uncommon spectacle of the former sanctimoniously swindling the latter out of his share in the common plunder.

Honesty is the base of any conviction worth having,—except a conviction in the criminal court. If the trade shocks you, give up your profits in the business, and break the partnership; say to your wicked partner, "Get out! Go in peace." To insist on continuing the partnership and sharing in the profits, while you withdraw the capital you have put in, is not so uncommon either in daily life or history that we need praise it as a virtue to take precedence of constitution and laws, until we list Tartuffe and Hudibras among our heroes, and think it praiseworthy to

"Compound for vice we are inclined to
By damning that we have no mind to."

So far the ethical question is treated from the point of view of Mr. Buchanan, when he told the Northern States that "If slavery was a crime it was no more their crime than was the slavery of Brazil"; of Mr. Webster, when he wrote to John Taylor: "You have no more right to say that slavery ought not to exist in Virginia than a Virginian has to say that slavery ought to exist in New Hampshire. This is a question left to every State to decide for itself, and if we mean to keep the States together we must leave to every State this power of deciding for itself." *

And from this point of view it must appear that they violated the essential principle of freedom, which is common honesty.

"It must not be forgotten, that compact express or implied is the vital principle of free Governments as contradistinguished from Governments not free; and that a revolt against

* Letter of 1852.
this principle leaves no choice but between anarchy and despotism.” *

“We shall be unworthy to be ranked among civilized nations if we do not consider treaties in this view . . . Vattel . . . says, ‘There would be no more security, no longer any commerce between mankind, did they not believe themselves obliged to preserve their faith, and to keep their word.’ . . .” †

These United States are just now engaged in a very strenuous attempt to confute the results of such arguments as the following by Herr Treitschke (who, like Count Hermann, is “a very respectable man—for a German”), viz., “Treaty rights are never absolute rights. They are of human origin, therefore are imperfect and variable. There are conditions in which they do not agree with the truth of things. In such cases infringement of the right seems morally justified.” (I quote translation, not having seen original.)

But if this differs in any respect, save in being an abstract proposition of which they are concrete examples, from the doctrines here laid down by eminently respectable Americans, such as Messrs. Adams, McLaughlin, Kent, Chamberlain, etc., the writer is unable to perceive it.

But let the same question be considered even from the assumption that the people of the United States were one people, and the conclusion can be scarce more favourable to the action of the Northern States. This becomes apparent from two considerations: First, as to the propriety of the application of the spirit of humanitarianism as manifested; second, as to its sincerity.

The propriety of one individual seeking to impose his idea of right upon another (and a fortiori is the teaching applicable to nations or communities), not alone is opposed to any rational conception of liberty, ‡ but is looked upon with suspicion and reprobation alike in the moral law of the great

† C. C. Pinckney, in South Carolina Ratifying Convention.
‡ Vide Sumner; ante.
THE ETHICAL QUESTION INVOLVED

faiths and in the teaching of profane moralists: The Christian canon ordains: "Thou hypocrite, cast out first the beam out of thine own eye," etc., etc.; the Buddhist faith says:

"Easy to see the faults of others,
But hard one's own faults to see;
His neighbor's faults as chaff one winnoweth,
But hideth his own as a cheating gambler his die.
*  *  *  *
Because he carrieth the right by force
A man is not therefore Just." *

The noblest ethical doctrine of antiquity (perhaps there are some who think that no nobler has been attained by man), as developed in the thoughts of Marcus Aurelius (who, if any one, by official station might well have deemed himself his brother's keeper) repeatedly admonished itself: "Does another do wrong? The wrong is his own."—"Another's error—let it lie."—"If he did wrong, with him lies the evil. Suppose after all he did not."—"You cannot even be sure if they are doing wrong; for many actions depend upon some secondary end. In short, one has much to learn before one can make sure and certain what another's action."—"He gives me the impression of wrongdoing, but, after all, how do I know whether it is wrong?"—"If a man mistakes, reason with him kindly and point out his misconception. If you cannot prevail, blame yourself, or no one." †

"Mind your own business," homely as it sounds, is indeed "a great moral law"; so great that were it but "a settled moral conviction" of mankind, half our self-created miseries would disappear. According to Lord Acton, its adoption might transform the world. It is indeed no exaggeration to say that until this "great moral law" is acknowledged, freedom is at best toleration, not principle,—is at most recognized in certain of its phenomena, not in its essence. Neither "freedom of speech," nor "freedom of thought," nor any other "freedom," is logically consistent with a recognized right of one individual to overtly interfere in the concerns of another

† Rendall's translation.
against that other's will, excepting for cause of immediate injury to himself, resulting from that other's act; it is equally inconsistent with a similar moral right of one people in regard to other people. Most of all, perhaps, it is inconsistent with the moral right of a majority of a people over the minority. When this happens, freedom in any one thing is but a pale simulacrum of the reality, and is recognized inconsistently with logic. "The settled moral convictions of a people," if accepted as justification for aggressions upon the "settled moral convictions" of others, amply justified the Inquisition, the crusade against the Albigenses, as they have justified every despotism, every persecution, every breach of faith ever existent and committed. The one principle which utterly forbids all these things is the principle that any individual in any community, or any community in regard to others, has the right to pursue his own wishes, and judge of their righteousness, so long as those wishes do not directly, obviously, and unjustly interfere with those of his neighbour. The whole trend of "civilization," in so far as it has added to human happiness, has been but a development toward this point. In comparison to this all material improvements are slight; and all that the world has gained is dependent upon the observance of this principle. Let A first employ his "settled moral convictions" on curing his own ills. Be sure he will find enough to occupy him.

When A, instead of so doing, sets his "settled moral convictions" to work on B's business, his motives are always suspect,—though he set his life on the stake, they are not the less suspect; they are more to be suspected; and justly so. In such case always,—at least, in the case of nations,—one may find motives of animosity, or the desire for gain, in company with the moral ideas put forward as the reasons for aggression.

Human nature, in bulk, does not sacrifice itself from unalloyed altruism. Even in individuals such fanaticism of virtue is doubtfully admirable.
"L’immodération, vers le bien mesme, si elle ne m’offense, elle m’estonne, et me met en peine de la baptizer. Ny la mère de Pausanias, qui donna la première instruction, et porta la première pierre, à la mort de son fils: ny le dictateur Posthumius qui feit mourir le sien, que l’ardeur de jeunesse avoit heureusement poussé sur les ennemis un peu avant son reng, ne me semble si juste, comme estrange; et n’ayme ny à conseiller ny à suyvre une vertu si sauvage et si chère." 49 *

"Take up the white man’s burden" was an old song in Plutarch’s time: "... if they could not have quenched their unsatiable desire withal, they had an honest culler to have cloaked their ambitious desires, if it had beene but to have brought the barbarous people to a civill life." †

To say this is not to inscribe upon one’s shield the device:

"Of all my mammy’s chillun,
I loves myself the best;
As long as I’m perwided for,
The debbil take the rest."

It is not to deny the obligation of humanity.

Two courses of action lay open to the anti-slavery States, had that action been truly and entirely “a great moral law” guided by the unselfishness of love; had not the selfishness of hate and greed been a strong ingredient of their motive. Either of these might fairly have been dignified with the praise appertaining to high and pure ideals, even by those who might have disputed their wisdom. First, they might, by cooperating with the antagonists of that institution in the Southern States, who were neither few nor weak, and shunning domineering, threatening antagonism (the effects of which are so vividly stated by Mr. Bagby ‡ and other Southern writers, and pointed out by Mr. Webster), in all probability, have brought slavery to an end long before that consummation was reached; and have so brought it to an end without the convulsion and griefs of war and the long train of Constitutional ills

* Montaigne, on Moderation.
‡ Vide ante, p. 111.
therefrom arising to afflict themselves equally with the Southern States.50

Failing this, if, from a lack of understanding of the Constitution, they had considered slavery as a crime in which they were co-partners through that instrument, they might have themselves left that bond. But when they neither would do this nor allow the South to do so, when they insisted on their right to break their part of the bargain, insisting at the same time upon the duty of the South to go on paying the price stipulated for their observance of that bargain, the idea that such action can be called "a great moral idea" is surely a burlesque on morals, if honesty is an essential part of morality.

When Mr. Buchanan told the non-slaveholding States that if slavery was a crime it was no more their crime than was the crime of slaveholding among the Brazilians, he so spoke in accordance with fact. When early Pennsylvania friends advocated the secession of the non-slaveholding States in order not to be concerned in the guilt of slavery; when Mr. Garrison spoke of the Constitution as a compact with death and a covenant with Hell, and advocated the same doctrine,—whatever their wisdom, they may fairly be said to have been actuated by a "great moral law." They did not "take up new philosophic grounds" but admitted the facts of the Constitution, and prepared to forego its advantages, to clear themselves of what they considered its sin.

But, remembering how New England, by her bargain with Georgia and South Carolina, fastened slavery and the tariff for "protection" upon the United States, can it be denied that she forewent the bargain for which she prostituted herself, while retaining with a death grip the price of her dishonour? Judges of criminal courts are familiar with the practice of this "great moral law."

In fact, the South in its doctrine of secession was but following the precedent of a well-known decision in a similar case of that celebrated governor who "put" the island of Barataria "on the map": "Andad mucho de enhoramala. Andad churrillera, desvergonzada y embaidora."

Montesquieu had stated its principle of action to be the most
eligible one: "Le quatrième acte de justice, qui doit être le plus fréquent, est la renonciation à l’alliance du peuple dont on a à se plaindre." *

Honest Sancho's decision, however, was reversed by the War; with it went the doctrine that "the people have a right to abolish their government when it is perverted to their injury." The principles "that compact is the vital principle of free Governments: a revolt against this principle leaves no choice but between anarchy and despotism," and "that each party (i.e., State) has the right to construe this compact for itself," have been superseded by "a majority should rule: a revolt against this principle leaves no choice but between anarchy and despotism," and a great moral law, that each individual of that majority is to construe the laws made by it for himself.

* "Lettres Persanes," xcvi.
APPENDICES

APPENDIX I

(Page 14)

"Communities possessed of sufficient knowledge to discriminate between liberty and slavery, have uniformly laboured to invest governments with a portion of power sufficient to secure social happiness, but insufficient for its destruction. The United States understood the discrimination, and in the formation of the federal government endeavoured, by limitations and prohibitions, to reserve and secure as many of their individual rights as might be retained without defeating the end of providing for their common interest. The two principles of a division or a concentration of power, are the adversaries contending for preference. Every government must be of one or the other description. An absolute supremacy in one, belongs to the concentrating principle, like an absolute supremacy in one man. Hence it has happened that an aristocratical or representative body of men, exercising supreme power, has been as tyrannical, or more so, than a single despot. The United States saw that any geographical interest, if invested with supremacy by the establishment of a consolidated national government, would oppress some other geographical interest; and made a new effort to avoid this natural malignity of a concentrated supreme power, though lodged in the representatives of the people. . . . Accident sometimes directs us to valuable discoveries; but though our division into states induced us to consider the hostile principles of power concentrated or divided, in a geographical light, yet our decision was rather the result of an improvement in political knowledge, matured by reflection and experience, than casual. The dis-
quisitions produced in resisting the supremacy of the British parliament had shed volumes of light upon the subject; the people had imbibed convictions from critical examinations of history and of moral rights; and a profound consideration was bestowed upon the rival principles in the convention.

"Is it enthusiasm or reason which causes me to behold the finger of God conducting the United States into a situation happily contrived to try and place at rest forever, the doubt, whether human nature is able to maintain a fair, free, mild, and cheap government? No other people ever were, or ever will be in so good a situation to settle this question affirmatively; and their practical testimony will therefore be considered as conclusive. A great nation was made to nurture them up to independence. A despotic government was made an instrument towards effecting it. Their soils and climates bestow subsistence and energy, without possessing the exuberant fertility or alluring softness, by which conquerors are invited and the mind is enervated. They cover the largest space of the whole world, in which one language is spoken; so that ideas may be exchanged, prejudices encountered, and opinions examined, by one easy, rapid and familiar mode of communication throughout all their territories. A surprising concurrence of circumstances excluded orders and exclusive privileges; and the experience of two centuries taught them that they could do without these remnants of barbarous ages, and instruments of civilized tyranny. Various sects of Christians were wafted into them, without being actuated by the intention of establishing religious freedom, which yet sprung out of this circumstance without man's agency, except as the humble instrument of an overruling providence. Had all emigrants been of one faith, this half of human liberty would probably have been lost forever. Apparently, accident also produced a division of States, not less efficacious in favour of civil liberty, than are different sects in favour of religious. The wonderful concurrence of circumstances for effecting both ends, admonishes us to behold the division into States as also the work of

providence. We have been taught that religion flourishes best, without oppressing the people by expensive establishments, as if to disclose to man the next great truth, that civil liberty does not require them. Make religion rich, and she becomes the patron of vice. Let a government become expensive, and it becomes the patron of ambition and avarice. In neither case can self-government exist, because both are founded upon a supposed necessity, that men must be robbed of their property to preserve social order; and this policy invariably terminates in despotism. Providence seems to have shielded us against it, by producing the division of religious sects, and of a vast territory into separate States; and as if still more securely to protect us against the endless pretext for exposing nations to enslaving privileges and impoverishing expenses (drawn from the contiguity of powerful governments), so often used to destroy both religious and civil liberty; it has blessed us with a geographical position, apparently, that our understandings might have the fairest opportunity to detect impositions framed with national antipathies, but directed against private property; and increased our population, so as to place us beyond the reach of fear. In these circumstances I behold a miracle, worked for the salvation of liberty, and creating an awful responsibility on the people of the United States. They seem to have been selected to evince the capacity of man for sustaining a fair and free government; and if by their failure, with such preeminent advantages, they shall renounce the favours of heaven, and consign a whole world of endless generations to the tyranny of expensive governments, they will be reproved as another infatuated and rebellious people, who have rejected benefactions visibly flowing from an Almighty source.

"The commissions to overturn political idolatry thus entrusted to the United States, like that to overturn religious idolatry entrusted to the Jews, requires only that portion of sagacity, sufficient to discover a fact, of universal notoriety, incapable of contradiction, and acknowledged by every honest man, learned or unlearned. It is, that no species of property transferring policy, past or existing, foreign or domestic, ever
did or ever can enrich the laboring classes of any society whatever; but that it universally impoverishes them. To this fact not a single exception appears in the whole history of mankind.” *

“The opportunity, providentially given us, of forming plans of government on the most rational, just, and equal principles, has been altogether unparalleled. ‘I confess,—said a sensible and patriotic Divine (President Witherspoon), in the year 1775, and one who, the year following, signed his name in Congress to the DECLARATION OF AMERICAN INDEPENDENCE,—‘I confess I have always looked upon this with a kind of enthusiastic satisfaction. The case never happened before since the world began. All governments we have read of in former ages were settled by caprice or accident, by the influence of prevailing parties or particular persons, or prescribed by a conqueror. Important improvements have indeed been forced upon some constitutions by the spirit of daring men, supported by successful insurrections. But to see a government, in large and populous countries, settled from its foundation by deliberate counsel, and directed immediately to the public good of the present and future generations, while the people are waiting for the decision, with full confidence in the wisdom and impartiality of those to whom they have committed the important trust, is certainly altogether new. We learn, indeed, from history, that small tribes, and feeble new settlements, did sometimes employ one man of eminent wisdom to prepare a system of laws for them. Even this was a wise measure, and attended with happy effects. But how vast the difference! when we have the experience of all ages, the history of human societies, and the well-known causes of prosperity and misery in other governments to assist us in the choice.’” †

“Many nations, both ancient and modern, have had the glory of acquiring and for some time of preserving liberty by

† Abiel Holmes, Sermon, February 19, 1795, pp. 9-10; Boston, 1795.
the most noble and virtuous exertions. But *America*, I believe, furnished the first instance of a number of powerful and respectable States, impressed with the highest sense of liberty, voluntarily relinquishing large portions of power which they separately enjoyed, for the sake of forming a more perfect union for their future welfare. The success hath hitherto exceeded the most sanguine expectations. God grant that no subsequent disappointment may weaken the effect of so magnanimous an example." *

"When we were at liberty to form a government as we thought best, without regard to that or any theoretical principle we did not approve of, we decisively gave our sentiments against it, being willing to run all the risks of a government to be conducted on the principles then laid as the basis of it. The instance was new in the annals of mankind. No people had ever before deliberately met for so great a purpose. Other governments have been established by chance, caprice, or mere brutal force. Ours, thank God, sprang from the deliberate voice of the people. We provided, or meant to provide (God grant our purpose may not be defeated), for the security of every individual, as well as a fluctuating majority of the people. We knew the value of liberty too well to suffer it to depend on the capricious voice of popular favor, easily led astray by designing men, and courted for insidious purposes." †

"A people, free and enlightened, establishing and ratifying a system of government, which they have previously considered, examined and approved!—This is the spectacle, which we are assembled to celebrate; and it is the most dignified one that has yet appeared on our globe. . . . The scene before us is unexampled as well as magnificent. The greatest part of governments have been the deformed offspring of force and fear. . . ." ‡

‡ Oration by James Wilson, 4th of July, 1788.
Mr. Madison, speaking in the Ratifying Convention of his State, said:

"Mr. Chairman, nothing has excited more admiration in the world than the manner in which free governments have been established in America; for it was the first instance, from the creation of the world to the American Revolution, that free inhabitants have been seen deliberating on a form of government, and selecting such of their citizens as possessed their confidence, to determine upon and give effect to it. But why has this excited so much wonder and applause? Because it is of so much magnitude, and because it is liable to be frustrated by so many accidents. If it has excited so much wonder that the United States have, in the middle of war and confusion, formed free systems of government, how much more astonishment and admiration will be excited, should they be able, peaceably, freely, and satisfactorily, to establish one general government, when there is such a diversity of opinions and interests—when not cemented or stimulated by any common danger! How vast must be the difficulty of concentrating in one government, the interests, and conciliating the opinions, of so many different, heterogeneous bodies!"

Again he writes:

"The happy Union of these States is a wonder; their Consn. a miracle; their example the hope of Liberty throughout the world." *

"It appears to me, then, little short of a miracle, that the delegates from so many different States (which States you know are also different from each other, in their manners, circumstances, and prejudices) should unite in forming a system of national government," etc.†

"And, in the important revolution just accomplished in the system of their united government, the tranquil deliberations and voluntary consent of so many distinct communities, from which the event has resulted," etc.‡

† Washington to Lafayette, February 7, 1788.
‡ Washington's Inaugural Speech, April 30, 1789.
"A very large Field presents to our view without a single Straight or eligible Road that has been trodden by the feet of Nations. An Union of Sovereign States, preserving their Civil Liberties and connected together by such Tyes as to Preserve permanent & effective Governments is a system not described, it is a Circumstance that has not occurred in the History of Men . . ."*

George Mason, attending the Federal Convention, writes to his son:

"The eyes of the United States are turned upon this assembly, and their expectations raised to a very anxious degree. May God grant we may be able to gratify them, by establishing a wise and just government. For my own part, I never before felt myself in such a situation; and declare I would not, upon pecuniary motives, serve in this convention for a thousand pounds per day . . . to view, through the calm, sedate medium of reason the influence which the establishment may have upon the happiness or misery of millions yet unborn, is an object of such magnitude, as absorbs, and in a manner suspends the operations of the human understanding."

"The question now before you is such as no nation on earth, without the limits of America, has ever had the privilege of deciding upon. As the Supreme Ruler of the universe has seen fit to bestow upon us this glorious opportunity, let us decide upon it; appealing to Him for the rectitude of our intentions . . ."†

"I see beings of a higher order anxious concerning our decision. When I see beyond the horizon that bounds human eyes, and look at the final consummation of all human things, and see those intelligent beings which inhabit the ethereal mansions reviewing the political decisions and revolutions which, in the progress of time, will happen in America, and the consequent happiness or misery of mankind, I am led to believe that much of the account, on one side or the other, will depend on what we now decide. Our own happiness alone is

* North Carolina Delegates to Govr. Caswell, June 14, 1787.
† John Hancock, in Ratifying Convention of Massachusetts.
not affected by the event. All nations are interested in the determination. We have it in our power to secure the happiness of one half of the human race. Its adoption may involve the misery of the other hemisphere.”*

To sum up:

“The importance of the occasion was recognized by the delegates as well as by the public generally. When they and their work were the subject of prayer and preaching in the churches, when they became the second toast at banquets, following directly after ‘The United States,’ it is not surprising that the members of the Convention took their work seriously . . . . Madison asserted in the convention, and Hamilton repeated after him, that they ‘were now to decide forever the fate of Republican Government.’ A few days later Gouverneur Morris said that ‘the whole human race will be effected by the proceedings of this Convention.’ And after the convention was over Wilson said: ‘After the lapse of six thousand years since the creation of the world, America now presents the first instance of a people assembled to weigh deliberately and calmly, and to decide leisurely and peaceably, upon the form of government by which they will bind themselves and their posterity.’”†

APPENDIX 2

(Page 23)

Nor merely independent of each other, they were, severally and in groups, antagonistic in feeling; not infrequently, almost, or effectually, hostile in act, before, after, and in the very action of the Revolution: to all intents and purposes, separate nations under diverse forms of government, though

*Patrick Henry, in Ratifying Convention of Virginia. Mr. Henry, it should be said, was not advocating unconditional ratification.
†Max Farrand, “The Framing of the Constitution,” p. 6, New Haven, 1912.
speaking a common language and with, on the whole, similar social usages.

"I need not mention to you, who know so well, the peculiar circumstances of America at the commencement of this revolution. The several colonies were distinct and separate governments, each jealous of another, and kept apart by local interests and prejudices." *

Franklin likens the diversity of the States, even after eleven years of common action, to that of the different countries of Europe.

"I send you inclosed the proposed new Federal Constitution for these States . . . If it succeeds, I do not see why you might not in Europe carry the project of good Henry the 4th into Execution; by forming a Federal Union and One Grand Republick of all its different States & Kingdoms; by means of a like Convention; for we had many Interests to reconcile." †

"The union effected among the colonies by means of corresponding committees was a death blow to the authority of Britain . . . motives of common safety, when they had once assumed a hostile position, cemented the jarring interests of the colonies, and for the time subdued their inveterate jealousies . . . No longer did America exhibit the appearance of rival colonies, piquing themselves on separate rights, and boasting the relative advantages of different characters and different constitutions." ‡

". . . Les États n'ont réellement aucun intérêt pressant d'être sous un seul chef. Leur politique qui se borne à leurs speculations commerciales, leur inspire même réciproquement de l'aversion et de la jalousie, passions qui se trouvèrent absorbées pendant la guerre par l'enthousiasme de la liberté et de l'indépendance, mais qui com[m]ençent à reprendre toute leur force. Ces républicains n'ont plus de Philippe à leurs portes." §

* Charles Thomson to Benjamin Franklin, August 13, 1784.
† Letter to M. Grand, October 22, 1787.
‡ Adolphus, "History of England."
§ M. Otto, French Chargé d'Affaires, to the Comte de Montmorin, while the Federal Convention was sitting.
"It was found extremely difficult to prevent those irritations, animosities, and discontents, from shewing themselves between the troops of different states, which have so often broken coalitions," etc.*

"That a letter be written to General Schuyler, requesting him to recommend, in the strongest terms, harmony between the officers and troops of the different states; to discountenance and suppress all provincial reflexions and ungenerous jealousies of every kind, and to promote, by every possible means, discipline, order, and zeal in the public service.” †

"The particular jealousies and prejudices of the Continental troops from the different states, led them frequently to throw out reflections tending to irrate each other . . . A brigadier writes concerning the animosity in the American army above noticed. ‘It has already risen to such a height that the Pennsylvania and New England troops would as soon fight each other as the enemy . . . whole colonies (are) traduced and vilified as cheats, knaves, cowards, poltroons and hypocrites . . . for no other reason, but because they are situated east of New York.” ‡

"I hope none of my Friends will blame me for leaving the Service at this time. Be assured no man has the Good of the Service more at Heart, nor with more cheerfulness would risque Life in Defence of American Liberty, but at the same time my own Honour and indeed the Good of the Service require my Resignation, for be assured if indavours are made to keep Honour of preferment out of a Soldier’s reach the Army must in a Short time be Composed of People who only mean to get Rich in the Service. And thank God I am not a Yankey. . . . For God sake keep our Troops together and keep them out of this Damned Country if Possible.” §

† Journals of Congress, July 19, 1776.
§ Letter of Col. Wm. Thompson of the Penna. Rifle Battalion, Camp of Prospect Hill (before Boston), Jan. 25, 1776. "Pennsylvania Magazine of History,” etc., Vol. XXXV, p. 305; 1911. Col. Thompson served with credit, and was of sufficient importance to be exchanged for Baron von Riedesel when captured.
"In preparing his papers for the press, I noticed occasional sentences in letters written by Gen. Frazer to his wife, and his sister, which implied a lack of friendly feeling on the part of himself and his neighbors toward the New England people and troops. This struck me as peculiar in a man of such a broad and just nature, and I was puzzled to explain it. But the evidence that the people, of Chester County at least, disliked and mistrusted the 'Yankees' is undeniable.

"The first allusion to this feeling occurs in a letter to his wife written from Long Island May 23, 1776, very soon after he took the field. He says . . . 'If the New England troops do not fight better than their appearance indicates, they will make a poor hand of it' . . . July 15, he writes: 'There is not that dependence in the New England men that I expected. They make a most wretched appearance from home, as they are not able to endure hardship equal to the other American Troops. About three-fourths of them are now unfit for service, by what I can learn.' . . .

"In the next letter to her from the same place July 15, 1776 . . . 'We have heard that a large number of New England Troops are to be sent here to reinforce us. . . . The miserable appearance, and what is worse the miserable behaviour of the Yankees, is sufficient to make one sick of the service. They are by no means fit to endure hardships. Among them there is the strangest mixture of Negroes, Indians, and Whites, with old men and mere children, which together with a nasty lousy appearance make a most shocking spectacle. No man was ever more disappointed than I have been in respect to them. . . . The Pennsylvania Troops have not much Connection with the New England Troops, and am sorry we cannot be on more friendly terms.' . . .

"In a letter dated Ticonderoga August 6th 1776 to his wife he says: . . . 'Five hundred Troops from New England arrived at this place yesterday, and 1500 more are expected in a few days. I have not yet seen them but unless they are better than the greatest part of those that have been here before them, they had better stay at home. No man was ever more disappointed in his expectations respecting New Englanders in
general than I have been. They are a set of low, dirty, grip- 
ing, cowardly, lying rascals. There are some few exceptions 
and very few. They may do well enough at home, but every 
fresh man that comes here is so much loss to the army as they 
will get sick with the small-pox or some other lazy disorder, 
and those that are seasoned must take care of them and by 
that means weaken the army. . . . You may inform all your 
aquaintance not to be afraid that they will ever Conquer the 
other Provinces (which you know was much talked of), 
10,000 Pennsylvanians would I think be sufficient for ten times 
that number out of their own Country. All the Southern 
Troops live in great harmony. The others we have little or no 
connection with." . . .

"Here then is the secret of the antipathy. Evidently every- 
where out of New England, and in Pennsylvania as well as in 
the South, there was a wide spread apprehension that in case 
of victory to the American arms the Yankees would substitute 
their own tyranny for that of the mother country over the 
other Provinces. This is distinctly expressed in a letter to be 
later quoted. . . .

"In a letter from his wife, dated August 27, 1776, she says 
. . . 'The people seem middling well reconciled to independ- 
ency, but very much fear the heavy taxes that are to come 
upon us, but above all they fear the New Englanders should 
the Americans gain the day' . . . In her husband's letter to 
her, Ticonderoga Sept. 21, 1776, . . . 'Two or three 
Yankee Colonels have died lately, more of them are sick. In-
deed, the most of them look like spectres, miserable creatures 
they are, the more I am acquainted with them the worse I like 
them, I hoped it would be otherwise' . . .

This apprehension was seemingly not without some founda-
tion. My thanks are due to Lord Lansdowne, who has had 
the courtesy to furnish me with a copy of the following letter 
to Lord Shelburne, preserved in his collections: "My Lord, 
Having read in the Public Prints, an assertion said to be made 
by your Lordship—'that the Independence of the revolted 
 Colonies would be destructive of their Liberties as well as ruin-
ous to this Country'—if upon any declaration of your Lord-
ships it is allowable for so small a Being as I am to make use of the word support, I would say that I can support that assertion with the following matter. Mr. Sam. Adams and Mr. Gery (Gerry?) Members of Congress for Massachusetts Having appointed me to dine with them at German Town near Philadelphia and as I then sought information to guide my conduct, least on the one side I should engage in a foul Rebellion against my King & Country, or on the other in imposing a Tyranny over a Free People, I gave the closest attention to the conversation that ensued, and Having found that the Colonies were to be declared Independent of the Crown & Parliament of Great Britain and the most close alliance sought with France as the Power in Europe the most Inimical to as well as most capable of injuring the Mother Country, the conversation assumed such a complexion that I thought the leading men of the Colonies did not mean to Halt Here,—but to know where, I threw out—that a consolidation of the four New England Colonies into one making Boston the Capital & extending the Southern Limits to Hudsons River up the Mohawk to Oswego and striking a direct West Line through Canada embracing all to the N. & East including N. Scotia, Newfoundland &c. &c. such a consolidation calling the whole New England would make an Empire that in process of time & that not long would give laws to the World. I had not sooner done speaking than Adams starting from His chair took me by the Hand saying, my dear Friend extend the Boundery's to the South as far as the Delaware and if you had been in the very soul of me you could not Have expressed my sentiments more truly, and should we obtain Independence Old as I am I have not a doubt but I should see the rest compleated. Hence it is evident that even before the declaration of Independency was promulgated, the Conquest of Canada, N. Scotia &c. and the subdugation of the Provinces of N. York & the Jersey's were meditated. On this subject as on all others there seemed to be a perfect understanding between the Leaders of N. England & Virginia who stiled their Countries Elder & Younger Sisters to the exclusion of all intermediate Sisters saying that the other Provinces
were but Parts severed from them by the Policy of the Mother Country—and upon my saying the Policy of the Sisters should Bring them Back, they said, undoubtedly, and so it must be, then asked me where I would draw the line between N. England & Virginia. Answered, the Eastern Part of Maryland & the Susquehanna following its West Branch. they said this would be an Equitable Boundery, as it would prevent the large Province of Pensilvania from falling intire to either. during this conversation what seemed to me extraordinary was that the only Delegate then attending Congress from the Jersey’s being present gave His intire approbation to this Partition.

The first part of the above plan is to be the Conquest of all the British Settlements on the Continent. Hence the rejection of the terms lately offered, and also the necessity of their joining Hands & Hearts with France, Spain & Holland to wrest from us our possessions every where, particularly the W. India islands to gratify the Houses of Bourbon, which they Have Covenanted to do. and I am extremely sorry to add as it seems greatly to influence their Conduct—that the absolute ruin of Great Britain would be the absolute agrandisment of America. because all the money’d & industrious part of the People would go there. to effect the latter purpose I fear I am too well grounded in asserting that the Colonists need not go such lengths, but rest satisfied with a Peaceable Simple Independance as that alone would draw off 200000 families, which in a great measure accounts for the Indiscriminate support they meet with in this Country. Here I shall beg leave to observe—that from what I Have Heard and seen in that Country, and what I Have Heard & seen in this, it is to me a self evident proposition—that the absolute unconditional Independance of America, would be the absolute unconditional ruin of Great Britain. But that Both may yet be Happily averted and America Brought Back I Have not the smallest doubt.

My Lord, if you were not a Higher character from Abilities than even Station I should not have risked myself in this
address. But as wisdom cannot misconstrue, an Apology
would be an insult. I am, My Lord,
with the most perfect respect
Your Lordships

24 July 1782
Most Obedient Servt.
E. WRIXON.

at Mr. Reeds
Hamilton Street
Hyde Park Corner.

N.B.
the above signed was Major
of the Kings 38th regt. of foot and in the year 1776 a Vote
of Congress was passed appointing Him Chief Engineer of
the Continental Army with the Rank of Colonel, which He
refused, as appears by the Printed resolutions of Congress.
but Congress supposing the refusal to Have proceeded from
an expectation of more exalted rank, offered Him by a Com-
mittee of three to make Him Adjutant General of their Army
in the room of Gates, with the rank of Brigadier General also
refused & soon after was offered the rank of Majr. General
and finally a separate command to the Southward, Georgia
proposed But the whole refused. rendered the King all the
service in His Power got the knowledge of the particular
Powers given to Doctor Franklin relative to a close Alliance
with France which went to the final ruin of this Country, to
avert which by an immediate Communication He came off
the first opportunity, and Having landed at Nants, arrived at
Paris two days after Franklin and Instantly laid the whole
before Lord Stormont the Kings Ambassador who has been
pleased to acknowledge the information to be strictly just and
in consequence did Him the High Honor to mention Him to
the King.

in the above services He expended five Hundred pounds of
His private Property—for all which He Has now a pension
of £100 pr. An.

A record of the above services is now
in Mr. Rowe's office in the Treasury
authenticated By the Lords Stormont
& Sackville."
"It is well known that New England's influence in the Congress was greater than that of any other group of the Colonies. While sympathising with her the middle and southern colonies were not firmly persuaded that the critical point had been reached, when the domination of the New England contingent in Congress forced the hand of their colleagues and precipitated the war. It was doubtless due to this cause that the signatures of these colleagues to the Declaration of Independence were so slow in being affixed.

"But whatever be the reason it was unhappily true that the sections of this country in its infancy, like the sections of all other countries, regarded each other with a suspicion and almost hatred only less intense than the foreigner." *

"If we are to be slaves let us be so to the lion, and not to the lousy dirty vermin of New England." †

"We are going on within doors with tardiness enough . . . a kind of fatality still prevents our proceeding a step in the important affairs of confederation. Yesterday and the day before was wholly spent in passing resolutions to gratify New York, or, as they say, to prevent a civil war between that State and the Green Mountain men," etc.‡

The *Journals of Congress*, Mr. Madison's correspondence, and other records show that a prominent factor in allowing the New Hampshire Grants to be erected as the independent State of Vermont was the apprehension that otherwise they would enter into alliance with the British.

"Who . . . could imagine, that the most violent local prejudices would cease so soon; and that men who came from the different parts of the continent, strongly disposed . . . to despise and quarrel with each other would instantly become but one patriot band of brothers?" §

† "Minutes of a Conspiracy against the Liberties of America"; Phila. (reprinted), 1865.
§ Washington's Farewell Orders to the Armies of the United States, November 2, 1783.
Yet Washington himself, in his more intimate moments, did not love all his brothers.

"For notwithstanding all the public virtue which is ascribed to those people [i.e., of Massachusetts] there is no nation under the sun (that I ever came across) pay greater adoration to money than they do." *

"To be plain these people—among friends—are not to be depended upon if exposed . . ." †

Genl. Greene's defense of his section, it may be noted, is not very different from Washington's attack upon it.

"The common people [i.e., of Massachusetts] are exceedingly avaricious; the genius of the people is commercial . . . The sentiment of honor . . . has not yet got the better of interest . . ." Nathaniel Greene to Henry Ward, December 18, 1775.

To the same effect:

"Mercantile cupidity forms, perhaps, one of the distinctive traits of the American, especially of the northern people, and it will undoubtedly exercise an important influence on the future destiny of the Republic." ‡

"Mr. Carter Braxton of Virginia, speaking of the [men? people? A word is here missing in the MS.] of New England in the Virginia Convention before the Declaration of Independence, said 'I abhor their manners—I abhor their laws—I abhor their governments—I abhor their religion.' I on the contrary," etc. §

In fact New England was entirely distrusted by the other sections. Possibly, the view of its "conscience," as expounded

* Washington to Joseph Reed, February 10, 1776. This is also noteworthy in that he speaks of Massachusetts as "a nation."
† Washington (à propos of Bunker Hill).
APPENDIX 2

by Mr. Irving in the Sixth and Seventh Chapters of his "History of New York" (too long for quotation), and elsewhere, was, in their regard, somewhat less jocular than it seems.

"Before I touch upon the commercial points, I shall offer a few observations on the high and exalted pretensions of the people of the eastern states to superior morality and religion over the rest of the union. There has not been, it is true, quite so much parade with these exclusive claims as on the subject of commerce. Perhaps the reason is, that there was no political purpose to be answered by them. But that the people of that section of the union are in general thoroughly persuaded that they very far excel the rest of the nation in both religion and morals, no man who has been conversant with them can deny. This folly of self-righteousness, of exalting ourselves above others, is too general all over the world: but nowhere more prevalent, or to greater extent, than in the eastern states. To pretend to institute a comparison between the religion and morals of the people of Boston and those of Philadelphia, New York, or Baltimore, would be regarded as equally extravagant and absurd, with a comparison of the gambols of a cow to the sprightly and elegant curvetings of an Arabian courser. . . . The New England character for morality has been various at various times. It was not long since at a very low ebb indeed. It is within the memory of those over whose chins no razor has ever mowed a harvest, that Yankee and sharper were nearly synonymous. And this was not among the low and illiberal, the base and the vulgar. It pervaded all ranks of society. In the middle and southern states traders were universally very much on their guard against Yankee tricks when dealing with New Englanders."*

"They now arrogate to themselves (and, for party purposes, their claims are sometimes admitted by their political friends), to be as I have stated, a superior order to their fellow citizens. They look down on those of the southward with

as much contempt, and with as much foundation too, as the Pharisee of old did on the despised publican."*

"Calvinism, rigid, uncompromising Calvinism, is the inheritance the New Englanders have received from their forefathers; it was the sacred fire their ancestors bore with them into exile, and which has continued to burn in the hearts, and on the altars of their descendants; sometimes indeed like 'the furnace blue,' to which Moloch treated his worshippers, but of late years with a less fatal, though still angry, light, round which the trumpets and timbrels of the priests still sound 'in dreadful harmony.'

"Besides the indulgence of spiritual pride (for spiritual pride is a luxury of the highest rate to those who are too frugal, or too conscientious, to tolerate grosser enjoyments), the early colonists perceived the Calvinistick system of church discipline to be best suited to the poverty and simplicity of their condition. Calvinism has therefore grown up with republicanism, and from an accidental connexion, claims to be of the same kindred: but the vital spirit of Calvinism is intolerance, and intolerance is in no shape a republican principle."†

"The New Englanders . . . were far from being acceptable guests . . . the plodding Dutch and Germans of New York and Pennsylvania, held them in particular abhorrence, and as far as they could, hunted them from their neighbourhood, whenever they attempted to gain a footing in it. . . ."‡

The following extract, referring to the experience of the Schuyler family of New York, bears out the foregoing statement.

"The people of New England left the mother country, as banished from it by what they considered oppression; came over foaming with religious and political fury, . . . They might be compared to lava, discharged by the fury of internal combustion, from the bosom of the commonwealth, while in-

* Carey's "Olive Branch," pp. 256, 257; Phila., 1815.
† Francis Hall, "Travels in 1816 & 1817," pp. 446 et seq.; L., 1818.
‡ Ibid., p. 444.
flamed by contending elements. This lava, every one ac-
quainted with the convulsions of nature must know, takes a
long time to cool; and when at length it is cooled, turns to a
substance hard and barren, that long resists the kindly in-
fluence of the elements, before its surface resumes the appear-
ance of beauty and fertility. Such were the almost literal
effects of political convulsions, aggravated by a fiery and in-
tolerant zeal for their own mode of worship, on these self-
righteous colonists." *

"The winter at the Flats was sufficiently melancholy, and
rendered less agreeable by some unpleasant neighbours we had.
These were a family from New England, who had been pre-
cparing to occupy lands near those occupied by my father.
They had been the summer before recommended to Aunt's
generous humanity, as honest people, who merely wanted a
shelter in a room in her empty house, till they should build a
temporary hut on those new lands which they were about to
inhabit. When we came, the time permitted to them had long
elapsed, but my father, who was exceedingly humane, indulged
them with a fortnight more after our arrival, on the pretence
of the sickness of a child; and there they sat, and would not
remove for the winter, unless coercion had been used for that
purpose. We lived on the road side; there was at that time a
perpetual emigration going on from the province of New Eng-
land to our back settlements. Our acquaintance with the fam-
ily who kept possession beside us, and with many of even the
better sort, who came to bargain with my father about his
lands, gave us more insight than we wished into the prevalent
character of those people, whom we found conceited, litigious,
and selfish beyond measure. My father was told that the only
safe way to avoid being overreached by them in a bargain, was
to give them a kind of tacit permission to sit down on his
lands, and take his chance of settling with them when they
were brought into some degree of cultivation; for if one did
bargain with them, the custom was to have it three years free
for clearing, at the end of which, the rents or purchase money
was paid. By that time, any person who had expended much

labour on land, would rather pay a reasonable price or rent for it, than be removed.

"In the progress of his intercourse with these very vulgar, insolent, and truly disagreeable people, my father began to disrelish the thoughts of going up to liye among them." *

"Indeed the whole race of Yankee seamen are certainly the most enterprising people in the world. They are in all quarters of the globe where a penny is to be made. In short, they love money a little better than their own lives. What is worst, they are not always very nice about the means of making it; but are ready to break laws like cobwebs, whenever it suits their interest. You know we passed an embargo-law sometime ago, to starve the English out of house and home, and made all our coasting captains give bond and take oath, that they would not sail to any foreign port or place whatever. Suddenly, there began to blow a set of the most violent gales that had ever been known, and what was rather singular, they all insisted upon blowing towards the West Indies, in the very teeth of the law, as if on purpose to save the penalty of the bonds. It looked indeed, to good people, as if Providence had determined to take those islands under his care, and send them supplies to save them from famine, in spite of American congress. Our rulers, however, who had learnt from history that these Yankees used formerly to deal with witches, began to suspect that all these storms were raised by the black art, or at least were manufactured in a notary's office, expressly for the occasion, and therefore resolved to lay them at once. So they passed a law, which declared in substance, that no kind of accident or distress should be given in evidence to save the penalties of the bonds. This act poured sweet oil upon the ocean at once, and produced a profound calm, in spite of witches and notaries, and the winds soon went on to blow from all points of the compass as formerly, anything in the act entitled, an act laying an embargo, &c. to the contrary notwithstanding.

"'But bless me,' said I, putting in a word at last, as he stopped to draw his breath, 'is it possible that you Virginians

can laugh at your own countrymen at this rate?' 'O! as to that,' said he, 'they return the compliment as well as they can, and between ourselves if we have the most laugh, I am afraid we haven't always the most reason on our side.' Here a servant came, and called my young acquaintance away.' *

"The delegates for Connecticut informed the Congress, that they had met some of the delegates for Pennsylvania, in order to take into consideration the matters referred to them, but not being able to come to any agreement with them, and as the dispute between the people of the two colonies, on the waters of the Susquehannah, had proceeded to bloodshed, and in their apprehension may be attended with very dangerous consequences unless speedily prevented, they moved that a committee be appointed out of the other colonies to take this matter into consideration." †

Nov. 4. "The committee appointed on the difference between the people of Pennsylvania and Connecticut, brought in their report in Congress came to the following resolution.—The Congress considering that the most perfect union between all the colonies, is essentially necessary for the preservation of the just rights of North America, and being apprehensive that there is great danger of hostilities being commenced, at or near Wyoming, between the inhabitants of the colony of Pennsylvania and those of Connecticut," etc. ‡

"Let me, Sir, mention one circumstance in the recollection of every honourable gentleman who hears me. To the determination of congress are submitted all disputes between states, concerning boundary . . . In consequence of this power . . . this state [Pennsylvania] was successful enough to obtain a decree in her favour, in a difference then subsisting between her and Connecticut; but what was the consequence? the congress had no power to carry the decree into execution." §

‡ Ibid., 1775.
§ James Wilson, in Ratifying Convention of Pennsylvania. N.B.—The same gentleman who thought (v. p. 157) that the States were unified or made one state by the Declaration of Independence.
Pennsylvania also had trouble with other States on the question of boundary, etc.

"Whereas it appears to Congress, from the representation of the delegates of . . . Pennsylvania, that disputes have arisen between the states of Pennsylvania and Virginia, relative to the extent of their boundaries, which may probably," etc.*

"The pay, which has been voted to all the officers, which the continental congress intends to choose, is so large, that I fear our people [vis.: Massachusetts and New England] will think it extravagant, and be uneasy. Mr. Adams, Mr. Paine, and myself, used our utmost endeavours to reduce it, but in vain.

"Those ideas of equality, which are so agreeable to us natives of New-England, are very disagreeable to many gentlemen in the other colonies. They had a great opinion of the high importance of a continental general, and were determined to place him in an elevated point of light. They think the Massachusetts establishment too high for the privates, and too low for the officers, and they would have their own way." †

This dispute led to the first overt threat of secession by a state which I have met: the Legislature of Massachusetts wrote to Congress as follows:

"July 11, 1783 . . . It is thought to be essentially necessary, especially at the present time, that Congress should be expressly informed, that such measures as are complained of, are extremely opposite and irritating to the principles and feelings which the people of some eastern states, and of this in particular inherit from their ancestry.

"The legislature cannot without horror entertain the most distant idea of the dissolution of the union, which subsists between the United States, and the ruin which would inevitably ensue thereon; but with great pain they must observe, that the extraordinary grants and allowances which Congress have thought proper to make to their civil and military officers, have

* Journals of Congress, December 27, 1779.
† Letter from John Adams to Elbridge Gerry, June 18, 1775.
produced such effects in this commonwealth, as are of a threatening aspect.—From these sources, and particularly from the grant of half pay to the officers of the army, and the proposed commutation thereof, it has arisen, that the general court has not been able hitherto to agree in granting to the United States, an impost duty, agreeable to the recommendation of Congress.” *

April 30, 1784, the same gentleman wrote to Mr. Noah Webster as follows:

“. . . Some time in the month of September last, a gentleman in Connecticut, by his letter, requested me to give him my opinion of a subject (I think) too much altercation in that State as well as this—the commutation of the half-pay granted by Congress to the late officers of the army for life, for full pay during the term of five years. I did not hesitate to say in return, that Congress was, in the nature of their appointment, the sole judge of the necessary means of supporting the late army which had been raised for the defence of our common rights against the invasions of Great Britain; and if, upon their own deliberate counsels, and the repeated representations of the Commander-in-Chief of the army, they judged that the grant of half-pay for life was a measure absolutely necessary for the support of a disciplined army for that purpose, they had an undoubted right to make it; and as it was made in behalf of the United States, by their representatives authorized to do it, each State was held in justice and honor, even though it should seem to any to have been an ill-judged measure, to comply with it. Because States and individual persons are equally bound to fulfil their obligations; and it is given as a characteristic of a good and honest man, that ‘though he sweareth (or promiseth) to his own hurt, he changeth not.’ I moreover acquainted him, that, although I was never pleased with the idea of half-pay for life, for reasons which were satisfactory to myself, some of which I freely explained to him, yet I had always thought that, as the oppor-

*This is signed by no less a person than Samuel Adams. Journals of Congress, September, 1783.
tunities of the officers of the army for acquiring moderate fortunes, or making such provision for their families as men generally wish to make, were by no means equal to those of their fellow-citizens at home, it would be but just and reasonable that an adequate compensation should be made them at, or as soon as conveniently might be after, the end of the war, and that therefore a suitable compensation had fully coincided with my views of justice and policy." * 2A (v. p. 409, vol. 2).

"Among other reasons privately weighing with him, he had observed that many of the most respectable people of America supposed the preservation of the Confederacy essential to secure the blessings of the revolution; and permanent funds for discharging debts essential to the preservation of Union.

... Again without permanent & general funds he did not conceive that the danger of convulsions from the army could be effectually obviated. Lastly he did not think that any thing wd. be so likely to prevent disputes among the States with the calamities consequent on them. The States were jealous of each other, each supposing itself to be on the whole a creditor to the others. The Eastern States in particular thought themselves so with regard to the S. States. (See Mr. Ghoram [sic] in the debates of this day.) If general funds were not introduced it was not likely the balance wd. ever be discharged, even if they sd. be liquidated. The consequence wd. be a rupture of the confederacy. The E. States would at sea be powerful & rapacious; the Southern, opulent & weak. This wd. be a temptation; the demands on the S. St. would be an occasion; reprisals wd. be instituted; Foreign aid would be called in by first the weaker then the stronger side, & finally both be made subservient to the wars & politics of Europe." †

"You will suffer me to renew my exhortations to an exchange of your office under the State for a seat in the Legislature. It depends much in my opinion on the measures which may be pursued by Congress & the several States within the

ensuing period of 6 months whether prosperity & tranquillity, or confusion and disunion are to be the fruits of the Revolution. The seeds of the latter are so thickly sown, that nothing but the most enlightened and liberal policy will be able to stifle them. The Eastern States, particularly Massachusetts, conceive that, compared with the Southern, they are greatly in advance in the general account. A respectable Delegate from Massachusetts, a few days ago, being a little chafed by some expressions of Messrs. Lee & Mercer unfavorable to loan-office creditors, said that if justice was not to be obtained thro' general confederacy, the sooner it was known the better, that some States might be forming other confederacies adequate to the purpose, adding that some had suffered immensely from the want of a proportional compliance with demands for men & money by others. However erroneous these ideas may be, do they not merit serious attention? Unless some amicable & adequate arrangements be speedily taken for adjusting all the subsisting accounts, and discharging the public engagements, a dissolution of the Union will be inevitable. Will not, in that event, the Southern States which at sea will be opulent & weak, be an easy prey to the Eastern, which will be powerful & rapacious? and particularly if supposed claims of justice are on the side of the latter will there not be a ready pretext for reprisals? The consequence of such a situation would probably be that alliance would be sought first by the weaker & then by the stronger party & this country be made subject to the wars & politics of Europe.” *

The New England States could not even agree among themselves.

“This hostility, which, from the beginning, had characterized the intercourse of the other settlements with the fathers of Rhode-Island, in 1643, was embodied in the confederacy which was established among the colonies of New England. The leading object of this confederacy was the mutual protection of its members against the Indians, whose hostility was

threatened on every side, and against the rising settlements of the French and the Dutch, with whom England was then frequently at war. The circumstances of its formation are worthy of a moment's particular consideration. The contracting parties to the league, were the colonies of Massachusetts and Plymouth, of New Haven and Connecticut, each of which, by its Commissioners, signed the articles at Boston, on the 19th of May, 1643. This union, Rhode-Island was not invited to join, and subsequently, at her own application to be admitted a member, she was deliberately refused admission; an act which, taken in all its circumstances, stands out among the most unchristian and inhuman, recorded in Puritan history, in whose strange records are so often blended the direst atrocity and the loftiest virtue. Here was an infant, feeble colony, situated between two powerful races of savages—the Wampanoags on the east, and the Narragansetts on the west—and separated by the wide Atlantic, from the mother country. Its people were of the same Anglo-Saxon stock, and professed the same protestant faith with their neighbors. They had come from England in the same ships, which bore the colonists of Plymouth and Boston, of New-Haven and Hartford. Like them, they had lighted the fires of civilization in the wilderness, and, by their beneficent influence with the Indians, they had, more than once, saved the whole country from the desolations of savage war. Yet it was all in vain. They had adopted the startling heresy, that men are responsible for their opinions, to God alone—that the civil power may not interfere in religious concerns—and that before the law of the land, all should alike be equal—whether Protestants or Papists—whether Jews or Turks. For this opinion, which they had dared to proclaim, and to carry into practice, they were placed beneath the ban of universal proscription, and were deliberately excluded from the alliance and the sympathies of the whole civilization of the country—to perish, it might be, from the wastings of starvation and disease, or amid the terrors of Indian massacre and conflagration.”

* William Gammell, Address before the Rhode-Island Historical Society, November 20, 1844.
"In 1656, Massachusetts commenced the persecution of the Quakers, which soon extended through all New England. Banished from every other Colony, they fled to Rhode-Island, where, though they had but few sympathies with the inhabitants, they were kindly received, and were admitted to all the privileges of citizens and freemen. But the Commissioners of the United Colonies hunted them even here. In two several appeals, they urged the authorities of this colony, by every motive which could be addressed to the self-interest of a community, to join in the general persecution. . . . And, when finding all persuasives vain, the Commissioners, irritated at her inflexible adherence to her noble principles, threaten to suspend all intercourse, and thus dry up the very sources of subsistence to the colony, the Assembly calmly make their appeal to 'his Highness and honorable council' in England." *

"In the year 1644, the Indians in Virginia, under the instigation of Opechancanough, successor of Powhatan, undertook to exterminate the colonists in that province, when five hundred persons, who were engaged in celebrating a victory of the king over the Parliamentary army in the war then raging, were massacred at the first surprise. A ship was sent to Boston to procure powder for the defence of the colony, but the general court declined to furnish it. This refusal was owing to the fact that the people of Virginia sympathized with the king in the pending struggle, and to the further fact that three ministers sent out from New England at the instance of some of the 'elect,' who had found their way into Virginia, were sent out of the province by Governor Berkeley for violating the law—Governor Winthrop declaring that the massacre of the Virginians was a punishment 'for their reviling the Gospel and those faithful ministers.'" †

"In the present state of the country, closely united by a national representation, submitted to the operation of the same national law, and, as it were, amalgamated by the various relations arising from these causes, no opinion can be formed of the very dissimilar state of manners, habits of life, and modes

---

* Wm. Gammell, Address before R. I. Hist. Sec'y, Nov. 20, 1844.
of transacting public business, which existed at the commence-
ment of the revolution, in the different British provinces. Lit-
tle connexion subsisted between the different sections of the
country, however contiguous; the intercourse between the
extremes of the continent was limited, and only kept up from
motives of curiosity or business. England was the point of
universal attraction, and the exertions of industry, as well as
the calls of pleasure, terminated there.” *

“It is possible that in the phrase ‘American,’ I may be too
general. The United States form a continent of almost differ-
ent nations, and I must now, and always, be understood to
speak only of that portion of them which I have seen.” †

“The Americans, on the contrary, [at the siege of Boston]
. . . lived happy . . . awaiting the succours . . . These
succours were . . . furnished with much generosity by the
Southern Provinces; provinces, with which, under the Eng-
lish Government, they had no connexion whatever, and which
were more foreign to them than the mother country. It was
already a great mark of confidence, therefore, on the part of
the New Englanders to count upon that aid which was offered
by generosity alone.” ‡

“Si donc on veut se faire une idée de la république améri-
caine, il ne faut pas confondre les Virginis qui un esprit
aussi guerrier que mercantile, aussi ambiteux que spéculatif, a
conduit sur le continent, avec les nouveaux Anglais qui doivent
leur origine à l’enthousiasme religieux; il ne faut pas croire
trouver précisément les mêmes hommes en Pennsylvania . . .
et dans le Caroline méridionale . . . En voila assez pour
prouver que les mêmes principes, les mêmes opinions, les
mêmes habitudes ne peuvent pas se rencontrer dans les treize
Etats-Unis. . . .” §

Justice Story, in his “Commentaries,” says that “the col-
onies were . . . for many purposes one people”; one may

1828.
† Mrs. Trollope, “Domestic Manners of the Americans,” p. 35; N. Y.,
1832.
admit this, with the equally true assertion that "for many purposes" the States of Europe are "one people." All depends upon the meaning attached to "one people." But for a discussion of the point v. "Paper read before the Social Science Association, September 6, 1877," by the Hon. John Randolph Tucker.

Even at that day, before the young quat of slavery had been rubbed to the sense, in the generation of and after the framing of the Constitution, the alienation, if not antipathy, of the sections was noted not only by Americans, but by intelligent foreigners; e. g.:

"One of these days, the Northern and Southern powers will fight as vigorously against each other, as they have both united to do against the British," etc.*

"Can there ever be any thorough national fusion of the Northern and Southern states? I think not. In fact, the Union will be shaken almost to dislocation whenever a very serious question between the states arises." †

"What you say about the quarrel in the United States is sophistical. No doubt, taxation may, and perhaps in some cases must, press unequally, or apparently so, on different classes of people in a state . . . But when New England, which may be considered a state in itself, taxes the admission of foreign manufacturers in order to cherish manufactures of its own, and thereby forces the Carolinians, another state of itself . . . to buy worse articles at a higher price, it is altogether a different question, and is, in fact, downright tyranny of the worst, because of the most sordid kind. What would you think of a law which should tax every person in Devonshire for the pecuniary benefit of every person in Yorkshire? And yet that is a feeble image of the actual usurpation of the New England deputies over the property of the Southern States." ‡

"Mr. Madison said, that, having always conceived that the difference of interest in the United States lay not between the

† Coleridge, "Table Talk," January 4, 1833. Edin., 1905.
large and small, but the Northern and Southern States, and finding that the number of members allotted to the Northern States was greatly superior, he should have preferred an addition of two members to the Southern States—to wit, one to North and one to South Carolina, rather than of one member to Virginia." *

"A distinction had been set up, and urged between the Northern and Southern States. He had hitherto considered this doctrine as heretical. He still thought the distinction groundless. He sees, however, that it is persisted in; and the southern gentlemen will not be satisfied unless they see the way open to their gaining a majority in the public councils. The consequence of such a transfer of power from the maritime to the interior and landed interest will, he foresees, be such an oppression to commerce, that he shall be obliged to vote for the vicious principle of equality in the second branch, in order to provide some defence for the Northern States against it. But, to come more to the point—either this distinction is fictitious or real; if fictitious, let it be dismissed, and let us proceed with due confidence. If it be real, instead of attempting to blend incompatible things, let us at once take a friendly leave of each other. There can be no end of demands for security, if every particular interest is to be entitled to it. The Eastern States may claim it for their fishery, and for other objects, as the Southern States claim it for their peculiar objects. In this struggle between the two ends of the Union, what part ought the Middle States, in point of policy, to take? To join their eastern brethren, according to his ideas. If the Southern States get the power into their hands, and be joined, as they will be, with the interior country, they will inevitably bring on a war with Spain for the Mississippi. This language is already held. The interior country, having no property nor interest exposed on the sea, will be little affected by such a war. He wished to know what security the Northern and Middle States will have against this danger. It has been said that North Carolina, South Carolina, and Georgia only, will in a little time have a majority of the people of America. They

must in that case include the great interior country, and every-
thing was to be apprehended from their getting the power into
their hands." *

"There is a solid distinction, as to interest, between the
Southern and Northern States." †

"But I observe, with regret, that there is a general spirit
of jealousy with respect to our northern brethren. Had we
this political jealousy in 1775? If we had had, it would have
damped our ardor and intrepidity, and prevented that unani-
mous resistance which enabled us to triumph over our enemies.
It was not a Virginian, Carolinian, or Pennsylvanian, but the
glorious name of an American, that extended from one end of
the continent to the other, that was then beloved and confided
in. Did we then expect that, in case of success, we should be
armed against one another? I would have submitted to Brit-
ish tyranny rather than to northern tyranny, had what we have
been told been true—that they had no part of that philan-
thropic spirit which cherishes fraternal affection, unites
friends, enables them to achieve the most gallant exploits, and
renders them formidable to other nations.

"Gentlemen say that the states have not similar interests;
that what will accommodate their interests will be incompatible
with ours; and that the northern oppression will fetter and
manacle the hands of the southern people. Wherein does the
dissimilarity consist? Does not our existence as a nation
depend on our union? Is it to be supposed that their prin-
ciples will be so constuprated, and that they will be so blind
to their own true interests, as to alienate the affections of
the Southern States, and adopt measures which will produce
discontents, and terminate in a dissolution of a union as neces-
sary to their happiness as to ours? Will not brotherly affec-
tion rather be cultivated? Will not the great principles of
reciprocal friendship and mutual amity be constantly incul-
cated, so as to conciliate all parts of the Union? This will
be inevitably necessary, from the unity of their interests with
ours. To suppose that they would act contrary to these prin-

ciples, would be to suppose them to be not only destitute of honor and probity, but void of reason—not only bad, but mad men." *

"By requiring only a majority to make all commercial and navigation laws, the five Southern States (whose produce and circumstances are totally different from those of the eight Northern and Eastern States) will be ruined; for such rigid and premature regulations may be made, as will enable the merchants of the Northern and Eastern States not only to demand an exorbitant freight, but to monopolize the purchase of the commodities, at their own price, for many years, to the great injury of the landed interest, and the impoverishment of the people; and the danger is the greater, as the gain on one side will be in proportion to the loss on the other. . . ." †

"In this Congressional legislature, a bare majority of votes can enact commercial laws; so that the representatives of the seven Northern States, . . . can, by law, create the most oppressive monopoly upon the five Southern States, whose circumstances and productions are essentially different from theirs. . . ." ‡

"An opinion has prevailed that the southern states will be sacrificed to the eastern, and in some degree to the middle states, by the plan of manufacturers." §

"He must be short-sighted indeed who does not foresee, that, whenever the Southern States shall be more numerous than the Northern, they can and will hold a language that will awe them into justice. If they threaten to separate now in case injury shall be done them, will their threats be less urgent or effectual when force shall back their demands? Even in the intervening period there will be no point of time at which they will not be able to say, Do us justice, or we will separate." ||

"If there was real danger, I would give the smaller states

* Innes, in Virginia Ratifying Convention.
† George Mason's objections.
‡ Richard Henry Lee's Letter.
§ Tench Coxe, "View of the United States," p. 294; Phila., 1794.
the defensive weapons. But there is none from that quarter. The great danger to our general government is the great southern and northern interest of the continent being opposed to each other. Look to the votes in Congress, and most of them stand divided by the geography of the Country, not according to the size of the states.” *

“The Northern interest is all prevalent; their members are firmly united, & carry many measures disadvantageous to the Southern interest. They are laboring hard to get Vermont established as an independent State, which will give them another vote, by which the balance will be destroyed. In the midst of these great struggles between the Northern & Southern interests . . .” †

“Mr. Pinckney replied that his enumeration meant the five minute interests. It still left the two great divisions of northern and southern interests.” ‡

“And that his constituents, though prejudiced against the Eastern States, would be reconciled to this liberality. He had himself, he said, prejudices against the Eastern States before he came here, but would acknowledge that he had found them as liberal and candid as any men whatever.” §

“But his reasoning was not only inconsistent with his former reasoning, but with itself. At the same time that he recommended this implicit confidence to the Southern states in the northern majority . . .” ¶

“The States, he said, had different interests. Those of the Southern . . . were different from the Northern.” ||

“The President and 7 senators, as nearly as I can remember, can make a treaty which will be of great advantage to the Northern States, and equal injury to the Southern States.” **

---

** Porter’s speech in Debates of North Carolina, Elliot’s “Debates,” Vol. IV, p. 115.
"If the government is to be lasting, it must be founded in the confidence and affections of the people; and must be so construed as to obtain these. The majority will be governed by their interests. The Southern States are the minority in both houses. Is it to be expected that they will deliver themselves, bound hand and foot, to the Eastern States," etc. *

"But, sir, a great deal has been said about the amendments. Here again I refer to the debates. Such has been said to have been the past prevalence of the Northern States in Congress, the sameness of interest in a majority of the States, and their necessary adhesion to each other, that I think there can be no reasonable doubt of the success of any amendments proposed by Massachusetts."†

"We shall then be taxed by those who bear no part in the taxes themselves, and who consequently will be regardless of our interest in imposing them upon us. The efforts of our ten men will avail very little when opposed by the northern majority," etc.‡

"How can the southern members prevent the adoption of the most oppressive mode of taxation in the Southern States, as there is a majority in favor of the Northern States?" §

"But we are told that we have everything to fear from the Northern States, because they will prevent an accession of states to the south. The policy of states will sometimes change. This is the case with those states, if, indeed, they were enemies to the right; and therefore, as I am informed by very good authority, Congress has admitted Kentucky, as a state, into the Union. Then the law of nations will secure it to them, as the deprivation of territorial rights is obviously repugnant to that law." ||

"This contest of the Mississippi involves this great national contest; that is, whether one part of the continent shall govern the other. The Northern States have the majority, and will

---

† Symes, in Massachusetts Ratifying Convention.
§ Ibid.
|| Nicholas, in Virginia Ratifying Convention.
endeavor to retain it. This is, therefore, a contest for dominion—for empire.” *

“I confirmed him [i.e., Washington] in the fact of the great discontents to the south; that they were grounded on seeing that their judgments and interests were sacrificed to those of the eastern States on every occasion.” †

“A gentleman has said, with great force, that there is a contest for empire. There is also a contest for money. The states of the north wish to secure a superiority of interest and influence. In one part their deliberation is marked with wisdom, and in the other with the most liberal generosity. When we have paid all the gold and silver we could to replenish the congressional coffers, here they ask for confidence. Their hands will be tied up. They cannot merit confidence. Here is a transfer from the old to the new government, without the means of relieving the greatest distresses which can befall the people. This money might be scaled, sir; but the exclusion of ex post facto laws, and the laws impairing the obligation of contracts, steps in and prevents it. These were admitted by the old Confederation. There is a contest for money as well as empire, as I have said before. The Eastern States have speculated chiefly in this money. As there can be no congressional scale, their speculations will be extremely profitable. Not satisfied with a majority in the legislative councils, they must have all our property. I wish the southern genius of America had been more watchful.” ‡

“Mr. Grayson. Mr. Chairman: it appears to me, sir, under this section, there never can be a southern state admitted into the Union. There are seven states, which are a majority, and whose interest it is to prevent it. The balance being actually in their possession, they will have the regulation of commerce, and the federal ten miles square wherever they please. It is not to be supposed, then, that they will admit any southern state into the Union, so as to lose that majority.” 2A §

“Much is said about treaties. I do not dread this so much

* Grayson, in Virginia Ratifying Convention.
† Jefferson, “The Anas.”
‡ Henry, in Virginia Ratifying Convention.
§ Virginia Ratifying Convention.
as what will arise from the jarring interests of the Eastern, Southern, and the Middle States. They are different in soil, climate, customs, produce, and every thing. Regulations will be made evidently to the disadvantage of some part of the community, and most probably to ours.”

Mr. Butler “differed from those who considered the rejection of the motion as no concession on the part of the Southern States. He considered the interest of these and of the Eastern States to be as different as the interests of Russia and Turkey.”

“The States having ports for foreign commerce taxed & irritated the adjoining states trading thro’ them, as N. Y. Pena. Virga. & S. Carolina. Some of the States, as Connecticut, taxed imports as from Massts. higher than imports even from G.B. . . . In sundry instances as of N.Y. N.J. Pa. & Maryd. . . . the navigation laws treated the Citizens of other States as aliens.

“In certain cases the authy. of the Confederacy was disregarded, as in violation not only of the Treaty of peace; but of Treaties with France & Holland . . . In other cases the Fedl. authority was violated by Treaties & wars with Indians, as by Geo.: by troops, raised & kept up witht. the consent of Conigs. as by Massts.; by compacts witht. the consent of Congs. as between Pena. and N. Jersey and between Virga. & Maryd.” etc.

“Washington, Hamilton, and Pinckney depended for the support of their power and the system of their politics entirely on N. Y. & Pena. The northern & the southern States were immovably fixed in opposition to each other.”

“It appears possible, and not very improbable, that the time might come, when by greater cohesion, by more unanimity, by more address, the Representatives of one part of the Union might attempt to impose unequal taxes, or to relieve their

‡ Madison’s Preface to “Debates in Convention of 1787.”
§ J. Adams to James Lloyd, February 11, 1815.
constituents at the expense of other people. To prevent the possibility of such a combination, the articles that I have mentioned were inserted in the Constitution. . . .

"Perhaps the case I have put is too strong—Congress can never do a thing that is so palpably unjust—but this, sir, is the very mark at which the theory of bounties seems to point. The certain operation of that measure is the oppression of the Southern States, by superior numbers in the Northern interest. This was to be feared at the formation of this Government," etc.*

These indications of "old, unhappy, far-off things" (and the debates of the various Ratifying Conventions, etc., afford a vast store of similar matter) are cited not without a purpose; a modern school of writers,—with or without intention,—belittles these original differences between the States (e. g., Professor McLaughlin, Appendix 40).

Even Mr. Max Farrand, whose familiarity with the Conventional records may not be doubted, says:

"In view of subsequent developments in this country, it is not surprising that historical writers have very generally overemphasized the differing interests of north and south in the convention." †

Mr. Charles Francis Adams, who even enhances this animosity,—

"Each one of the thirteen original provinces asserted its sovereignty—loudly proclaimed itself a nation. The provincialism was intense; the mutual jealousies, dislikes, and aversions only short of racial, were quite as pronounced as those which formerly led to the downfall of the Achaian league, or as more recently excited in the four British nationalities; for Saxon never disliked or despised Gael or Celt more than did Carolinians the Yankee," etc. ‡—can yet hold the opinion developed in other parts of the same essay.

* Hugh Williamson, in House of Representatives, January 24, 1792.
New England has herself always been foremost in pro-
claiming the difference between herself and other States.
Comparisons are always odious, and, as between nations
or states are mostly silly. Therefore it is not here purposed
to discuss this matter. It is, nevertheless, apt to point out
certain overt manifestations of these New England character-
istics. New England was first,—most persistent, and for the
slightest causes,—in asserting not merely the doctrine, but
the practice of secession, as will be hereinafter shown. In
New England, alone in these United States, was there ever
organized religious persecution [a curious instance. "In 1693
a meteor appeared, and therefore a fresh persecution of the
Baptists and Quakers was promoted," etc.]; * it was the only
section in which witchcraft ever was believed in as a course
of action. While the dull and plodding Pennsylvania jury be-
fore which an old woman was first accused of witchcraft
(in 1683) promptly "brought her in guilty of having the
common fame of a witch, but not guilty," etc., thereby com-
pletely quashing the craze, in New England, down at least to
the nineteenth century, the inhabitants used to guard them-
sehems by "witch fenders," i.e., pieces of tin and so on, hung
about their houses.†

Coming down to our own times, the New England hysteria
of abolition may well be considered as in line with her treat-
ment of Rhode Island, Virginia, and the Friends, her various
cults as twentieth century analogies of the witch craze; while
a superiority in certain undesirable forms of criminality over
the more illiterate States, as marked as her superiority in
number of "free" schools and libraries, seems to continue the
tradition of some of her earliest criminal trials.

In short, there is still a difference between the various States
of the Union. Is it consistent with freedom, to have one law
covering all the functions of such diverse communities? Is
standardization, in spite of its convenience, always desirable?

† Vide "Commercial Advertiser," Monday, October 2, 1797; "The Tick-
ler."
“Jack Sprat could eat no fat, his wife could eat no lean,” so they lived happily forever afterward, not quarrelling for the choice bits. Even a German (nay, two Germans) has been able to perceive this; e.g., “Here let us heed Treitschke’s warning when he says ‘The idea of one universal empire is odious. The ideal of a State co-extensive with humanity is no ideal at all. In a single State the whole range of culture could never be fully spanned.’” Baron von Freytag-Loringhoven, Deductions from the World War. N. Y., 1918.

APPENDIX 2A

(Page 152)

This is another verified prophecy, fulfilled in the long dispute beginning with the obstruction to the admission of Missouri and continuing until the War between the States. Not infrequently avowed as a principle of action by Northern speakers, and States.*

APPENDIX 3

(Page 26)

“In order to determine whether the United States meant by the term union, to establish a supreme power or a limited association, we must commence our inquiry at their political birth, and accommodate our arguments with the principles they avowed in proclaiming their political existence. These are stated in the declaration of independence: ‘We the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, free and independent states; and that as free and independent states, they have full power to levy war, conclude

*E.g., J. Q. Adams, “On Admission of Louisiana”; Resolves of Massachusetts, March 26, 1845, etc., etc.
peace, contract alliances, establish commerce, and do all other acts and things, which independent states may of right do.' Such is the origin of our liberty, and the foundation of our form of government. The consolidating project ingeniously leaves unexamined the arguments suggested by this declaration, and commences its lectures at the end of the subject to be considered. If the declaration of independence is not obligatory, our entire political fabric has lost its magna charta, and is without any solid foundation. But if it is the basis of our form of government, it is the true expositor of the principles and terms we have adopted. The word 'united' is used in conjunction with the phrase 'free and independent states,' and this association recognises a compatibility between the sovereignty and the union of the several states. The regulation of commerce is enumerated among the rights of sovereignty, and this right having been exercised by each state under their first confederation, because it was not surrendered, is an evidence of what was meant by the sovereignty of the states, and a proof that the separate sovereignty of each, and not a consolidated sovereignty of all, was established by the declaration of independence. The same observation applies to the sovereign rights of the states, not surrendered by the existing federal constitution. Take from the states the political character they assumed by the declaration of independence, and they could not have united. To contract, to stipulate, to unite, are among the 'acts and things which independent states may of right do.' The first confederation or union recognises the compatibility between the union and the sovereignty of the states. The existing union adheres to the same idea, professes to establish a more perfect union of states created by the Declaration of Independence, and contains many provisions incapable of being executed except by state sovereignty. It uses the words 'United States,' taken by the first confederation from the declaration of independence, and transplanted from both these instruments, in which they are associated with positive assertions of the independence and sovereignty of each state; and therefore the last instrument, like the others, recog-
nises the compatibility between the union and the sovereignty of the several states.

"The notion that the 'freedom and independence of the states' refers to a consolidation of states, admits of a perfect refutation. It would render the language of the declaration of independence ungrammatical, because had this been intended, it ought to have recognised the rights of sovereignty as residing in one consolidated state, and not in several states." *

APPENDIX 4

(Page 27)

"Mr. Martin (of Maryland) said he considered that the separation from Great Britain placed the thirteen states in a state of nature towards each other; that they would have remained in that state till this time, but for the Confederation; that they entered into the Confederation on the footing of equality; that they met now to amend it, on the same footing; and that he could never accede to a plan that would introduce an inequality, and lay ten states at the mercy of Virginia, Massachusetts, and Pennsylvania.

"Mr. Wilson (of Pennsylvania) could not admit the doctrine that, when the colonies became independent of Great Britain, they became independent also of each other. He read the Declaration of Independence, observing thereon, that the United Colonies were declared to be free and independent states, and inferring that they were independent, not individually but unitedly and that they were confederated, as they were independent states." †

So far as the writer is aware, the only other noteworthy contemporary supporter of this doctrine was Gen. Charles Cotesworth Pinckney. 44

On January 18, 1788, in the Ratifying Convention of South Carolina, this gentleman said:

† Debates in Federal Convention, June, 1787.
“. . . I mean the Declaration of Independence, made in Congress the 4th of July, 1776. This admirable manifesto, which, for importance of matter and elegance of composition, stands unrivalled, sufficiently refutes the honorable gentleman’s doctrine of the individual sovereignty and independence of the several States.

“In that Declaration the several states are not even enumerated;*3 but . . . the declaration is made in the following words: . . . The separate independence and individual sovereignty of the several states were never thought of by the enlightened band of patriots who framed this Declaration,” etc.*40

Judge Story, adding a little to this theory, says:

“In the first place, antecedent to the declaration of independence, none of the colonies were, or pretended to be, sovereign states. . . . In the next place, the colonies did not severally act for themselves, and proclaim their own independence. . . . But the declaration of independence of all the colonies was the united act of all . . . it was emphatically the act of the whole people of the united colonies, by the instrumentality of their representatives.”†

Against these assertions of Mr. Wilson and Mr. Pinckney may be set the assertions of Mr. Pinckney and Mr. Wilson. In the Pennsylvania Ratifying Convention, Mr. Wilson said:

“The difficulty of the business [i. e., framing the Constitution] was equal to its magnitude. No small share of wisdom and address is requisite to combine and reconcile the jarring interests that prevail, or seem to prevail, in a single community. The United States contain already thirteen governments mutually independent.”

In the same Convention he said:

“To frame a government for a single city or State is a business . . . widely different from the task entrusted to

† “Commentaries.”
the Federal Convention, whose prospects were extended not only to thirteen independent and sovereign states;" etc.

In the Federal Convention, August 30, Mr. Wilson again remembered the independence of the several States. Debating the question of the number of States whose consent might validate the proposed frame of government, Mr. Madison "remarked that if the blank should be filled with 'seven,' 'eight,' or 'nine,' the Constitution, as it stands, might be put in force over the whole body of the people, though less than a majority of them should ratify it.

"Mr. Wilson. As the Constitution stands, the states only which ratify can be bound. We must, he said, in this case, go to the original powers of society."

"When the measure [the Declaration of Independence] began to be an object of contemplation in Congress, the Delegates of Pennsylvania were expressly restricted from consenting to it. My uniform language in Congress was, that I never would vote for it contrary to my instructions. I went further, and declared that I never would vote for it, without your authority. . . . When your authority was communicated . . . I then stood upon very different grounds . . . And was I to be blamed? Should this act have been the act of four or five individuals? Or should it have been yours? . . . I took the oath of allegiance to the state . . . For I thought it . . . necessary to draw a known line between those who were determined to support the independence of the state, and those who were not. I have engaged to receive the money lately emitted by this state as gold and silver . . . My country [Pennsylvania], however, did not," etc.*

Quotations from Mr. Wilson's speeches to the same point might be multiplied. But enough has been given to show either that, whatever the weight of his authority, it may be cited to the one opinion as to the other, and is therefore valueless; or that, in some unknown way, the States, which had

no separate independence by the Declaration of Independence, had gained it before the framing of the Constitution.

Mr. Charles C. Pinckney, speaking in the South Carolina Ratifying Convention, likewise appears to have forgotten his doctrine that the States were not severally independent, but an amalgamated body.

"... The present Constitution is but a proposition which the people [viz.: of South Carolina] may reject; but he conjured them to reflect seriously before they did reject it, as he did not think our state would obtain better terms by another convention. ... Every member who attended the Convention was ... sensible of the necessity of giving greater powers to the federal [note the phrase] government ... and I confess I did not expect we had conceded too much to the Eastern States, when ... Is there any one among us such a Quixote as to suppose that this state could long maintain her independence if she stood alone, or was only connected with the Southern States? ... Reflect for a moment on the situation of the Eastern States. ... They can enjoy their independence without our assistance. If our government is to be founded on equal compact, what inducement can they possibly have to be united with us without having these privileges ... it is admitted on all hands, that the general government has no powers but what are expressly granted by the Constitution, and that all rights not expressed were reserved by the several states," etc.

Is it possible to reconcile this speech wherein he speaks of the separate independence of South Carolina (and that of the Eastern States); of its powers of accepting, or rejecting, the proposed compact; where he refers to the several States granting certain powers to a federal government, and reserving others to themselves, of their forming "a compact," with his before-quoted assertion that the several states were, prior to that compact, not independent units, but already unified?

Again, arguing in favour of the right of the states to abrogate the Confederation, he says:
"The honorable gentleman says compacts should be binding and that the Confederation was a compact. It was so; but it was a compact that had been repeatedly broken by every state in the Union, and all the writers on the law of nations agree that, when the parties to a treaty violate it, it is no longer binding."

How could the States enter into treaties and compacts when already one people?

But individual opinion is not proof in such matters, it is merely illustrative, corroborative, or explanatory; as such, being participants in the actions, the meaning of which is in question, it has been thought proper to show by their own words the unsubstantiality of that of Mr. Wilson and General Pinckney.

Lacking this ground of importance, Judge Story's opinion is here only cursorily noted. His statement that, "In the first place, antecedent to the declaration of independence none of the colonies were, or pretended to be, sovereign States," is amply borne out by the Declaration itself. It is not perceived, however, that it has any bearing in support of the consequences he would deduce. When he states that "in the next place, the colonies did not severally act for themselves, and proclaim their own independence," their official proceedings show, as will be seen, a different opinion on their part, an opinion in harmony with the belief of the people of the States; e. g.:

"In June, 1776, the convention of Virginia formally declared that Virginia was a free, sovereign and independent state; and on the fourth of July, 1776, following, the United States, in Congress assembled, declared the thirteen United Colonies free and independent states . . . I consider this as a declaration not that the United Colonies jointly, in a collective capacity, were independent states, but that each of them had a right to govern itself by its own authority, and its own laws, without any control from any other power on earth . . . I have ever considered it as an established doctrine of the United States . . . that all laws made by the legisla-
tures of the several states after the Declaration of Independence, were the laws of sovereign and independent governments."*

"On the 15th, the pilgrims assembled at the Raleigh, in the very room where the Declaration of Independence had been digested and drafted by the committee of the Convention. The Declaration of Virginian Independence having been read the following toasts were given.

"1st toast. 'The 15th of May, 1776. The day on which the Convention of Virginia assembled in the old Capitol, in this city, and gave birth to the first independent American Republic.'

"2d toast. 'The virtuous, the enlightened, the patriotic Convention of the State of Virginia. That body which, with one voice, dared to declare their country Independent, and to propose a similar declaration to their sister States.'

"7th toast. 'Thomas Jefferson—the Friend of Man; His pen first traced the declaration of the Independence of the United States.'

"14th toast. 'To the memory of Edmund Pendleton, President of that Convention which raised his country to the rank of an Independent State.'"†

It is to be noted that, while these gentlemen speak of the separate independence of their country, Virginia, in unmistakable terms; they also use the phrase "independence of the United States"; a plain demonstration that the "United States" in this sense was the equivalent of the several States.

"Mr. Barbour observed. In 1776, the thirteen United States, then the Colonies of America, after having been lacerated to the midriff by the vulture fangs of British persecution, threw off their Colonial subjugation, and took a stand amongst the Nations of the earth. At this time, there were

* Justice Chase, in Ware vs. Hylton, Dallas, 3:224, 225.
† Report of the Proceedings of the late Jubilee at James-Town, in commemoration of. Together with the Proceedings at Williamsburg on the 15th, the day when the Convention of Virginia assembled in the old capitol declared her independent and recommended a similar procedure to Congress and to the other States. Petersburg, 1807.
thirteen independent Sovereignties tied together by the feeble bands of the Articles of Confederation. So long as the pressure of external danger was felt, so long the bond of union was found sufficiently strong. So long as all jealousies and rivalships were sacrificed on the altar of public good, the defects of that system were, in some measure, concealed. But, so soon as the pressure of foreign invasion was removed, so soon it was discovered that the system of union created by the Confederation was inadequate to the sublime purposes for which it was intended. The people of America saw and deplored the situation with which they were menaced; and the Virginia Legislature, sensible of the jeopardy to which their well earned Liberties were exposed, were the first to recommend a Resolution in the Compact by which the States were connected, notwithstanding the senseless yell and malicious calumnies with which certain hireling papers to the East teem, of a disposition in this State to shake off the Union. Influenced by this spirit, the Convention met in the year 1786, in Annapolis; but broke up without doing any thing effectual. In the year 1787, the Convention which met in Philadelphia gave birth to the Federal Constitution.”

APPENDIX 4A

(PAGE 159)

Prof. McLaughlin, in “Social Compact and Constitutional Construction,” says:

“I have already shown that some men believed that the states were not made independent of each other by declaring independence. See the speech of Pinckney before the South Carolina Convention.”

Prof. McLaughlin ignores Mr. Pinckney’s other speeches, here cited.

But, in fact, no men believed that the States were made independent of each other by declaring independence. They

*Debates in House of Delegates of Virginia, December 17, 1798.*
were already independent of each other, and merely declared their independence in regard to Great Britain. Unless in some way that act unified them, they remained,—as they had been,—independent of each other.

This is illustrated by Mr. Madison: he

"Begged the smaller states to consider the situation in which they would remain, in case their pertinacious adherence to an inadmissible plan should prevent the adoption of any plan... Let the union of the states be dissolved, and one of two consequences must happen. Either the states must remain individually independent and sovereign; or two or more confederacies must be formed among them," etc.*

APPENDIX 4B

(Page 160)

The Congress which acted under that Declaration in its official proceedings sometimes does not enumerate the States, using an equivalent abridgment: "The United States in Congress assembled." "His Britannic Majesty acknowledges the said United States, viz., New Hampshire [others named],... to be free, sovereign and independent states... Now know ye, that we the United States in Congress assembled... have approved, ratified and confirmed... the said articles." † The two forms are thus used in the same instrument referring to precisely the same States; and so used (according to Mr. Pinckney's argument) in a very significant manner: i.e., when His Britannic Majesty acknowledges the independency of the States, each State is named; whereas the equivalent term, "the United States in Congress assembled," is used for the ratification of the Treaty by the States. Other instruments show the identicality of the two forms.

But more frequently it names the separate States as its authority, e.g.:

"In Congress. The delegates of the United States of New Hampshire, Massachusetts Bay [others named] . . . to all unto whom these presents shall come," etc.†

"In Congress. The delegates of the United States of New Hampshire, Massachusetts Bay, . . . [others named] . . . to," etc. ‡

"The committee appointed to prepare the form of a ratification, brought in the same, which was read, and agreed to as follows: The Congress of the United States of New Hampshire, Massachusetts-Bay [others named], . . . by the grace of God, sovereign, free and independent, . . .

"Whereas . . . Benjamin Franklin . . . and Arthur Lee . . . were . . . appointed our commissioners . . . to treat . . . with . . . the King of France . . . upon a . . . peace, for the defence . . . of the subjects of his . . . Majesty and the people of the United States . . . ," etc. §

If, therefore, Mr. Pinckney thought that the enumeration of the respective states would have been a point against his assertion, it was one that was made. Also it becomes evident that when Congress said: "We, therefore, the representatives of the United States of America in General Congress assembled . . . do, in the name, and by authority of the good people of these colonies solemnly publish and declare," etc., they in effect and in intention stated themselves to be acting as "the representatives of the United States of America, viz., New Hampshire, Massachusetts Bay, etc."

"As preliminary to the very able discussions of the constitution which we have heard from the bar, and as having some influence on its construction, reference has been made to the political situation of these states anterior to its formation. It has been said, that they were sovereign, were completely independent, and were connected with each other only by a league. This is true. But when these allied sovereigns

‡ Form of Commission of Purchase, etc. Journals of Congress, July 2, 1777.
§ Journals of Congress, May 5, 1778.
converted their league into a government, when they converted their congress of ambassadors, deputed to deliberate on their common concerns, and to recommend measures of general utility, into a legislature, empowered to enact laws on the most interesting subjects, the whole character in which the states appear underwent a change, the extent of which must be determined by a fair consideration of the instrument by which that change was effected.” *

APPENDIX 4C

(Page 160)

It is strange,—it is passing strange,—this being so, that the gentleman to whom we owe the form of the Declaration repeatedly and consistently asserted the individual sovereignty and independence of the several States thereby declared, not merely at times when political action of moment depended upon such assertions (e. g., the Kentucky Resolutions), but when it was made merely incidentally, e. g., his letter to Chief John Baptist de Coigne of the Wabash and Illinois Indians:

“This is the advice which has been always given by the great Council of the Americans. We must give the same, because we are but one of thirteen nations, who have agreed to act and speak together. These nations keep a Council of wise men always sitting together, and each of us separately follow their advice.” *

“The alliance between the States under the old Articles of Confederation, for the purpose of joint defence against the aggression of Great Britain, was found insufficient, as treaties of alliance generally are, to enforce compliance with their mutual stipulations; and these, once fulfilled, that bond was to expire of itself, and each State to become sovereign and independent in all things. Yet it could not but occur to every one that these separate independencies, like the petty States

* Opinion of Judge Marshall, in Gibbons vs. Ogden.
* June, 1781.
of Greece, would be eternally at war with each other, and would become at length the mere partisans and satellites of the leading powers of Europe. All then must have looked forward to some further bond of union which would insure eternal peace, and a political system of our own, independent of that of Europe. Whether all should be consolidated into a single government, or each remain independent as to internal matters, and the whole form a single nation as to what was foreign only, and whether that national government should be a monarchy or republic, would of course divide opinions according to the constitutions, the habits, and the circumstances of each individual.”†

“We have had thirteen States independent for eleven years. There has been one rebellion. This comes to one rebellion in a century and a half to each State. What country before ever existed a century and a half without a rebellion.”‡

The form of this absolutely forbids any supposition, when he speaks of rebellions against the several States, etc., that he is speaking of anything but thirteen States severally independent.

“The States in North America which confederated to establish their independence of the government of Great Britain, of which Virginia was one, became, on that acquisition, free and independent States, and as such, authorized to constitute governments, each for itself, in such form as it thought best.” *

“I was on the spot, and can relate to you this transaction with precision. On the 7th of June, 1776, the delegates from Virginia moved, in obedience to instructions from their constituents, that Congress should declare the thirteen united colonies to be independent of Great Britain, that a confederation should be formed to bind them together, and measures be taken for procuring the assistance of foreign powers. The

† Jefferson’s “Anas,” edited by F. B. Sawvel, p. 26; 1903.
‡ Letter of November 13, 1787, quoted by Joseph P. Bradley in “The American Union and the Evils to which it has been Exposed,” p. 123; 1851.
* “Jefferson’s Works” (Solemn Declaration and Protest of Virginia), Vol. IX, p. 496; N. Y., 1854.
House ordered a punctual attendance of all their members the next day at ten o'clock, and then resolved themselves into a committee of the whole and entered on the discussion. It appeared in the course of the debates that seven States: viz., New Hampshire, Massachusetts, Rhode Island, Connecticut, Virginia, North Carolina and Georgia, were decided for a separation; but that six others still hesitated, to wit: New York, New Jersey, Pennsylvania, Delaware, Maryland, and South Carolina. Congress, desirous of unanimity, and seeing that the public mind was advancing rapidly to it, referred the further discussion to the first of July, appointing, in the meantime, a committee, to prepare a declaration of independence, a second to form articles for the confederation of the States, and a third to propose measures for obtaining foreign aid. On the 28th of June, the Declaration of Independence was reported to the House, and was laid on the table for the consideration of the members. On the first day of July, they resolved themselves into a committee of the whole, and resumed the consideration of the motion of June 7th. It was debated through the day, and at length was decided in the affirmative by the vote of nine States: viz., New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, Maryland, Virginia, North Carolina, and Georgia. Pennsylvania and South Carolina voted against it. Delaware, having but two members present, was divided. The delegates from New York declared they were for it, and their constituents also; but that the instructions against it which had been given them a twelvemonth before, were still unrepealed; that their convention was to meet in a few days, and they asked leave to suspend their vote till they could obtain a repeal of their instructions. Observe that all this was in a committee of the whole Congress, and that according to the mode of their proceedings, the resolution of that committee to declare themselves independent, was to be put to the same persons re-assuming their form as a Congress. It was now evening, the members exhausted by a debate of nine hours, during which all the powers of the soul had been distended with the magnitude of the object—without refreshment, without a pause—
and the delegates of South Carolina desired that the final decision might be put off to the next morning, that they might still weigh in their own minds their ultimate vote. It was put off, and in the morning of the second of July they joined the other nine States in voting for it. The members of the Pennsylvania delegation too, who had been absent the day before, came in and turned the vote of their State in favor of independence; and a third member of the State of Delaware, who, hearing of the division in the sentiments of his two colleagues, had travelled post to arrive in time, now came in and decided the vote of that State also for the resolution. Thus twelve States voted for it at the time of its passage, and the delegates of New York, the thirteenth State, received instructions within a few days to add theirs to the general vote.” *

“It was argued by Wilson, Robert R. Livingston, E. Rutledge, Dickinson, and others,—That though they were friends to the measures themselves . . . yet they were against adopting them at this time . . . That the people of the middle colonies (Maryland, Delaware, Pennsylvania, the Jerseys, and New York) were not yet ripe for bidding adieu to British connection, but that they were fast ripening, and in a short time would join in the general voice of America . . . That some of them had expressly forbidden their delegates to consent to such a declaration, and others had given no instructions, and consequently no power to give such consent. That if the delegates of any particular colony had no power to declare such colony independent, certain they were the others could not declare it for them; the colonies being as yet perfectly independent of each other . . . That if such a declaration should now be agreed to, these delegates must retire, and possibly their colonies might secede from the Union . . . It appearing in the course of these debates, that the colonies of New York (etc.) were not yet matured for falling from the parent stem, but that they were fast advancing to that state, it was thought most prudent to wait awhile for them, and to postpone the final decision to July 1st,” etc.*

"And with no body of men is this restraint more wanting than with the judges... they do not seem aware that it is not even a constitution formed by a single authority... but that it is a compact of many independent powers," etc. †

The other members of the Committee on the Declaration at various times made statements quite inconsistent with Mr. Pinckney's opinions: e. g., Franklin ‡ a decade later, likened the relations between the States to those between the different states of Europe; in Convention he also suggested the form: "Done in Convention by the unanimous consent of the States present," etc.

Mr. John Adams when President, in his first Inaugural to Congress, stated that at the time of the Confederation, half a dozen years later than the Declaration, it was seen that a permanent bond of union was not then entered upon.§

In January, 1776, the delegates of North Carolina were authorized by the colonial legislature, to apply to Mr. Adams for his views of the nature of the government it would be proper to form, in case of a final dissolution of the authority of the Crown. The following letter, addressed to Mr. John Penn, one of the number, was the reply:

"It has been the will of Heaven that we should be thrown into existence at a period when the greatest philosophers and lawgivers of antiquity would have wished to live. A period when a coincidence of circumstances without example, has afforded to thirteen Colonies, at once, an opportunity of beginning government anew from the foundation, and building as they choose. . . .

"In the present exigency of American affairs, when, by an Act of Parliament, we are put out of the royal protection, and consequently discharged from all obligations of allegiance; and when it has become necessary to assume governments for immediate security, the governor, lieutenant-governor, secretary, treasurer, and attorney-general, should be chosen by joint ballot of both houses. . . .

† Jefferson, Letter to G. Livingston, March 25, 1825.
‡ Appendix I.
§ Vide Appendix 9.
"Let indictments conclude: ‘against the peace of the Colony of North Carolina, and the dignity of the same’, or if you please: ‘against the peace of the Thirteen United Colonies.’

"We have heard much of a continental constitution; I see no occasion for any but a congress. Let that be made an equal and fair representative of the Colonies; and let its authority be confined to three cases,—war, trade, and controversies between colony and colony. If a confederation was formed, agreed on in Congress, and ratified by the assemblies, these Colonies, under such forms of government and such a confederation, would be unconquerable by all the monarchies of Europe." *

In his letter to Gen. Gates, on March 23, 1776, he says:

"I know not whether you have seen the act of parliament, called the restraining act, or piratical act, or plundering act, or act of independency, for by all these titles it is called. I think the most apposite is, the act of independency. For king, lords, and commons have united in sundering this country from that, I think, forever. It is a complete dismemberment of the British empire. It throws thirteen colonies out of the royal protection, levels all distinctions, and makes us independent in spite of our supplications and entreaties. It may be fortunate that the act of independency should come from the British parliament, rather than the American congress; but it is very odd that Americans should hesitate at accepting such a gift from them.

"However, my dear friend Gates, all our misfortunes arise from a single source, the reluctance of the southern colonies to republican government. The success of this war depends on a skilful steerage of the political vessel. The difficulty lies in forming particular constitutions for particular colonies, and a continental constitution for the whole. Each colony should establish its own government, and then a league should be formed between them all." †

In the debates in Congress, 1776, he moved that,

"Whereas the present state of America, and the cruel efforts of our enemies, render the most perfect and cordial union of the Colonies, and the utmost exertions of their strength, necessary for the preservation and establishment of their liberties, therefore,

"Resolved, That it be recommended to the several Assemblies and Conventions of these United Colonies, who have limited the powers of their delegates in this Congress, by any express instructions, that they repeal or suspend those instructions for a certain time, that this Congress may have power, without any unnecessary obstruction or embarrassment, to concert, direct, and order such further measures as may seem to them necessary for the defence and preservation, support and establishment of right and liberty in these Colonies." ("This is perhaps the first draught of the well known motion made in Committee of the Whole, on the sixth of May, which was reported to the House, on the tenth, in the shape in which it appears extracted from the Journal of that day.")*

"I constantly insisted that all such measures, instead of having any tendency to produce a reconciliation, would only be considered as proofs of our timidity and want of confidence in the ground we stood on, and would only encourage our enemies to greater exertions against us; that we should be driven to the necessity of declaring ourselves independent States, and that we ought now to be employed in preparing a plan of confederation for the Colonies."†

"In the beginning of May, I procured the appointment of a committee, to prepare a resolution recommending to the people of the States to institute governments. The committee, of whom I was one, requested me to draught a resolve, which I did, and by their direction reported it. Opposition was made to it, and Mr. Duane called it a machine to fabricate independence, but on the 15th of May, 1776, it passed. It was indeed, on all hands, considered by men of understanding as equivalent

to a declaration of independence, though a formal declaration of it was still opposed by Mr. Dickinson and his party.

"Not long after this, the three greatest measures of all were carried. Three committees were appointed, one for preparing a declaration of independence, another for reporting a plan of a treaty to be proposed to France, and a third to digest a system of articles of confederation to be proposed to the States. I was appointed on the committee of independence, and on that for preparing the form of a treaty with France."‡

APPENDIX 4½

(Page 30)

AN ORDINANCE of the STATE OF PENNSYLVANIA, Declaring what shall be TREASON, and for Punishing the same, and other Crimes and Practices against the State.

Whereas Government ought at all Times to take the most effectual Measures for the Safety and Security of the State, BE IT THEREFORE ORDAINED and DECLARED, and it is hereby ORDAINED and DECLARED, the Representatives of the Freemen of the State of Pennsylvania, in General Convention met, That all and every Person and Persons (except Prisoners of War) now inhabiting or residing within the Limits of the State of Pennsylvania, or that shall voluntarily come into the same hereafter, to inhabit or sojourn, DO and shall owe and pay Allegiance to the State of Pennsylvania.

AND BE IT FURTHER ORDAINED, by the Authority aforesaid, That all and every such Person and Persons, so owing Allegiance to the State of Pennsylvania, who, from and after the Publication hereof, shall levy War against this State, or be adherent to the King of Great Britain, or others the Enemies of this State, or to the Enemies of the United States of America, by giving him or them Aid or Assistance within the Limits of this State, or elsewhere, and shall be

thereof duly convicted in any Court of Oyer and Terminer hereafter to be erected, according to Law, shall be adjudged guilty of HIGH TREASON, and forfeit his Lands, Tenements, Goods and Chattels, to the Use of the State, and be imprisoned any Term not exceeding the Duration of the present War with Great-Britain, at the Discretion of the Judge or Judges... 

Passed in CONVENTION, September 5th, 1776, and signed by their Order,

B. FRANKLIN, President.

APPENDIX 5

(Page 33)

Vide the Remonstrance of New Hampshire, January 16, 1795, where this point is also made: viz.:

"... caused the adoption of the present constitution—an adoption totally unnecessary in point of principle, if the claims of former Congressional power are established."

"The notion that the 'freedom and independence of the states' refers to a consolidation of states... would render the language of the declaration of independence ungrammatical... It would have rendered the confederation unnecessary; because, had the declaration of independence invested a consolidation of states with a power to do 'all acts and things which a free and independent state may of right do,' there would not have existed the least reason for delegating powers to a federal Congress. It would have divested each province or state of the right to make and alter its own constitution and its own laws; and it would have converted the exercise of any sovereign power by a state, subsequently to the declaration of independence, into usurpation."

* John Taylor, of Caroline, "Views of the Constitution," p. 3; 1823.
APPENDIX 6

The logic of Judge Baldwin seems so convincing that mere expressions of opinion from other writers are unnecessary. Appended, however, is an opinion of a recent writer on the subject, and one of a distinguished foreign historian.

"When the sovereignty of Great Britain over the American Colonies was thrown off, it was thought that in the change from colonial dependence to a state of independence the authority of the British Parliament had been transferred to the legislatures of the colonies. The declaration in the bills of rights of the constitutions of 1776 indicate the general belief in this transfer of power." *

"In the American Confederation, which was formally adopted by the thirteen States in 1781, . . . the Congress . . . . was invested with very small powers, and was almost as completely overshadowed by the State rights of its constituents as the Cromwellian House of Commons had been by the military powers of the Commonwealth." †

Indeed, the contemporary testimony leaves no ground for honest and rational disbelief on this point.‡

"Resolved, That Congress is composed of delegates chosen by, and representing, the communities respectively inhabiting the territories of New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, as they respectively stood at the time of its first institution; that it was instituted for the purposes of securing and defending the communities aforesaid against the usurpations, oppressions, and hostile invasions of Great-Britain; and that therefore it cannot be intended that Congress by any of its proceedings, would

‡ Vide. Quotations from Jefferson, Appendix 2.
do or recommend or countenance anything injurious to the
rights and jurisdictions of the several communities which it
represents.

"Resolved, That the independent government, attempted to
be established by the people stiling themselves inhabitants of
the New Hampshire Grants, can derive no countenance or
justification from the act of Congress declaring the United
Colonies to be independent of the crown of Great Britain, nor
from any other act or resolution of Congress.

"Resolved, That the petition of Jonas Fay . . . in the
name and behalf of the people stiling themselves as aforesaid,
praying that 'their declaration that they would consider them-
selves as a free and independent state may be received; that
the district in the said petition described may be ranked among
the free and independent states, and that delegates therefrom
may be admitted to seats in Congress' be dismissed."*

"Resolved . . . That in case the inhabitants" (of the New
Hampshire grants) " . . . shall accede to the Articles of
Confederation . . . between the States of New Hampshire"
(the others named) " . . . their said delegates shall be ad-
mitted to sign the same, and thereupon the inhabitants of the
above described district shall be acknowledged a free, sov-
ereign and independent state . . ." †

Later, when the plea is granted, Vermont becomes "a sov-
ereign, independent state";

"Resolved . . . That . . . in the sense of your committee,
the people of the said district . . . have fully complied with
the stipulation, . . . required of them . . . as a preliminary
to a recognition of their sovereignty and independence, and
admission into the federal union of the states . . . your com-
mittee therefore submit the following resolution:

"That the district or territory called Vermont . . . be and
it is hereby recognized and acknowledged by the name of the
state of Vermont, as free, sovereign and independent . . .,”
etc. Journals of Congress, April 16, 1782.

* Journals of Congress, June 30, 1777.
† Ibid., March 1, 1782.
“Resolved . . . Art. 1st, That the independence of the state of Vermont be held sacred,” etc. ‡

In the same way, when the State of Kentucky is formed, it is referred to as “a sovereign, independent state.”

“That, in their opinion, it is expedient that the district of Kentucky be erected into an independent State.” §

The Delaware Convention, assembled at New Castle, August 27, 1776. Each member took the following oath, vis.:

“I, ——, will . . . support and maintain the independence of this state as declared by the honorable the Continental Congress; and I will . . . endeavor to form such a system of government for the people of this state as . . . may be best adapted to procure their happiness,” etc.

“Whereas the situation of the enemy’s ships and forces . . . in the state of Delaware, have rendered the operation of the civil authority there utterly ineffectual, whereby it has become not only essential to the preservation of the independency of that state,” etc.

“Resolved, That the unappropriated lands that may be ceded . . . to the United States . . . shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican states, which shall become members of the federal union, and have the same rights of sovereignty, freedom and independence, as the other states,” etc.*

“Resolved, That Gen. Sullivan be requested to inform lord Howe, that this Congress, being the representatives of the free and independent states of America . . . That the president be desired to write to gen. Washington, and acquaint him, that it is the opinion of Congress, no proposals for making peace between Great Britain and the United States of America, ought to be received or attended to, unless the same be . . . addressed to the representatives of the said States in Congress

‡ Journals of Congress, April 4, 1782.
§ Ibid., June 2, 1783.
And if application be made to him by any of the commanders of the British forces on that subject, that he inform them that these United States, . . . will cheerfully agree to peace on reasonable terms, whenever such shall be proposed to them in manner aforesaid.”

“The committee appointed to confer with lord Howe . . . brought in a report in writing, which was read as follows: . . . ‘that it was not till the late act of parliament, which denounced war against us, and put us out of the King’s protection, that we declared our independence; that this declaration had been called for by the people of the colonies in general; that every colony had approved of it, when made, and all now considered themselves as independent states, and were settling, or had settled, their governments accordingly; so, that it was not in the power of Congress to agree for them, that they should return to their former dependent state; that there was no doubt of their inclination to peace . . . that, though his lordship had, at present, no power to treat with them as independent states, he might, if there was the same good disposition in Britain, much sooner obtain fresh powers from thence, for that purpose than powers could be obtained by Congress, from the several colonies to consent to a submission.”

What can be more decisive than the foregoing?

“I . . . do acknowledge the Thirteen United States of America, namely, New Hampshire, Massachusetts Bay . . . [etc.], to be free, independent, and sovereign states,” etc.‡

“Resolved, That all persons abiding within any of the United Colonies, and deriving protection from the laws of the same, owe allegiance to the said laws, and are members of such colony; and that all persons passing through, visiting, or making a temporary stay in any of the said colonies, being entitled to the protection of the laws during the time of such passage,

* Journals of Congress, September 5, 1776.
† Journals of Congress, September 17, 1776.
‡ Oath of officers in Continental service; Journals of Congress, October 21, 1776.
visitation or temporary stay, owe, during the same, allegiance thereto.

"That all persons, members of, or owing allegiance to any of the United Colonies, as before described, who shall levy war against any of the said colonies within the same, or be adherent to the king of Great-Britain, or other enemies of the said colonies, or any of them, within the same, giving to him or them aid or comfort, are guilty of treason against such colony:

"That it be recommended to the legislatures of the several United Colonies, to pass laws for punishing, in such manner as to them shall seem fit, such persons before described, as shall be proveably attained of open deed, by people of their condition, of any of the treasons before described.

"Resolved, That it be recommended to the several legislatures of the United Colonies, to pass laws for punishing, in such manner as they shall think fit, persons who shall counterfeit, or aid or abet in counterfeiting, the continental bills of credit, or who shall pass any such bill in payment, knowing the same to be counterfeit." *

"Resolved, That Congress approve the conduct of general Washington in refusing to enter into any discussion with general Carlton on the subject of the treason laws passed by the several states.

"Resolved, That the states of America which compose the union, being sovereign and independent, the laws respectively passed by them . . . cannot be submitted to the discussion of a foreign power much less of an enemy." †

The report of Madison, Hamilton, and Ellsworth,—appointed a committee of Congress, April 18, 1783, to draft a plan asking the states to make certain provisions in relation to the public debt,—says:

"By the blessing of the Author of these rights, on the means exerted for their defence, they have prevailed against

* Journals of Congress, June 24, 1776.
† Ibid., August 12, 1782.
all opposition and formed the basis of thirteen independent states."

"Our enemies, as well foreign as domestic, have laboured to raise doubts on this head. They argue that the Confederation of the states remains yet to be perfected; that the union may be dissolved, Congress be abolished, and each state resuming its delegated powers proceed in future to hold and exercise all the rights of sovereignty appertaining to an independent state. In such an event, say they, the continental bills of credit created and supported by the union, would die with it. This position being assumed, they next proceed to assert this event to be probable, and in proof of it urge our divisions, our parties, our separate interests, distinct manners, former prejudices, and many other arguments equally plausible and equally fallacious. Examine this matter.

"For every purpose essential to the defence of these states in the present war, and necessary to the attainment of the objects of it, these states are now as fully, legally and absolutely confederated as it is possible for them to be. Read the credentials of the different delegates who composed the Congress in 1774, 1775, and part of 1776. You will find that they establish an union for the express purpose of opposing the oppressions of Britain and obtaining redress of grievances. On the 4th of July, 1776, your representatives in Congress, perceiving that nothing less than unconditional submission would satisfy our enemies, did in the name of the people of the Thirteen United Colonies declare them to be free and independent states, and 'for the support of that declaration, with a firm reliance on the protection of Divine Providence, did mutually pledge to each other their lives, their fortunes and their sacred honour.' Was ever confederation more formal, more solemn or explicit? It has been expressly assented to and ratified by every state in the union. Accordingly for the direct support of this declaration, that is for the support of the independence of these states, armies have been raised, and bills of credit emitted and loans made to pay and supply them. The redemption, therefore, of these bills, the payment of these debts and the settlement of the accounts of the sev-
eral states for expenditures or services for this common cause, are among the objects of this confederation; and consequently while all or any of its objects remain unattained, it cannot, so far as it may respect such objects, be dissolved, consistent with the laws of God or man.

"But we are persuaded, and our enemies will find, that our union is not to end here. They are mistaken when they suppose us kept together only by a sense of present danger. It is a fact which they only will dispute, that the people of these states were never so cordially united as at this day. By having been obliged to mix with each other, former prejudices have worn off, and their several manners become blended. . . .

"You are not uninformed that a plan for a perpetual confederation has been prepared and that twelve of the thirteen states have already acceded to it. But enough has been said to show that for every purpose of the present war, and all things incident to it, there does at present exist a perfect solemn confederation, and therefore that the states now are and always will be in political capacity to redeem their bills, pay their debts and settle their accounts." *

This statement contains an indisputable assertion of the original independence of the thirteen colonies, severally,—and of their several power to withdraw from the union should each or any see fit,—when it recites without contradiction the supposed argument of the enemies of the union as to "each state resuming its delegated powers proceed . . . to . . . exercise all the rights of sovereignty pertaining to an independent state." Is it possible to suppose that with such an argument in their power against the statement they are opposing as the fact that the States were not, and never had been, severally independent, it would have been omitted in this connection by Congress? Again, they state that "while all or any of its objects remain unattained" the Confederation "cannot so far as it may respect such objects be dissolved." These objects were the independence of the States, the redemp-

* Circular letter from the Congress of the United States to their constituents; Journals of Congress, September 13, 1779.
tion of the debts incurred by the war for their independence, etc. It necessarily follows by the argument that, these objects being satisfied, the States may severally resume "all the rights of sovereignty pertaining to an independent state." One of the objects being "the independence of the States," and the Union being dissolvable when all its objects are attained, it follows that the several independence of the States was the object aimed at.

"Resolved, that it . . . is recommended to the legislature of Virginia to take into consideration their act of cession, and revise the same so far as to empower the United States in Congress assembled, to make such a division of the territory of the United States lying northerly and westerly of the river Ohio, into distinct republican states . . . which states shall hereafter become members of the federal union, and have the same rights of sovereignty, freedom and independence as the original in conformity with the resolution of Congress . . ."*

"Resolved . . . That this confederacy is most sacredly pledged to support the liberty and independence of every one of its members," etc. †

"That the territory so ceded should be . . . formed into states . . . and admitted members of the federal union; having the same rights of sovereignty, freedom and independence as the other states." ‡

"Whereas the delegates of the United States of America in Congress assembled did, on the 15th day of November, in the year . . . 1777, and in the 2d year of the independence of America, agree to certain articles of confederation . . . between the states of New Hampshire . . . [others named], . . . And whereas it hath pleased the Great Governor of the world to incline the hearts of the legislatures, we respectively represent in Congress, to approve, and to authorize us to ratify the said articles of confederation . . . know ye that we the undersigned delegates, by virtue of the . . .

* July 7, 1786.
† Journals of Congress, June 23, 1780.
‡ On the Cession of the North West Territory by Virginia; Journals of Congress, September 13, 1783.
authority, to us given for that purpose, do . . . in the name and in behalf of our respective constituents . . . ratify . . . said articles of confederation. . . .” §

Do these gentlemen mean nothing by their repeated limitation of their action by the word “respective”? Are they indeed each representing not their “respective” state, but all the states? If they are not, by what act, at what time, did the states divest themselves of that oneness of action under which, as asserted by Mr. Wilson and his school, they acted in their previous Declaration?

In fact Congress can scarcely be said to have exercised any legitimate power. Its status is thus given by the editor of a “Plan of the new Constitution for the United States of America, agreed upon in a convention of the states [Note the term], with a preface by the editor. L., 1787:”

“The original powers given to Congress were principally for the purpose of conducting the war; and though it essentially answered the purpose, experience has proved it is not adequate to all the circumstances of peace.

“Very little defined power was necessary to be given to Congress during the war, because the spirit of the country being uniformly directed to one point, that of establishing its independence, required little more on the part of Congress than an arrangement of the measures by which the country was to act. The power, therefore, of Congress was chiefly discretionary; . . . it was not consistent with the principles of freedom in a time of peace, which required a legally defined power.”

“During the discussions of this solemn Act, [The Declaration of Independence] a committee consisting of a Member from each colony had been appointed to prepare & digest a form of Confederation for the future management of the common interests which had hitherto been left to the discretion of Congress guided by the exigencies of the contest, and by the

§ Journals of Congress, March 1, 1781.
known intentions or occasional instructions of the Colonial Legislatures." *

It is to be noted that the Confederation was not ratified until five years later than the date of Mr. Madison's description, conditions meantime remaining substantially the same.

"In executing the task, it may be of use, to look back to the colonial state of this country, prior to the revolution; to trace the effect of the revolution which converted the colonies into independent States; to enquire into the import of the articles of confederation, the first instrument by which the union of the States was regularly established; and finally, to consult the constitution of 1788, which is the oracle that must decide the important question." †

Judge Marshall's description is to the same effect:

"The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States; and provide that all intercourse with them shall be carried on exclusively by the government of the union.

"Is this the rightful exercise of power, or is it usurpation? While these states were colonies, this power, in its utmost extent, was admitted to reside in the crown. When our revolutionary struggle commenced, congress was composed of an assemblage of deputies acting under specific powers granted by the legislatures or conventions of the several colonies. It was a great popular movement, not perfectly organized; nor were the respective powers of those who were entrusted with the management of affairs accurately defined. The necessities of our situation produced a general conviction that those measures which concerned all must be transacted by a body in which the representatives of all were assembled, and which could command the confidence of all; congress, therefore, was considered as invested with all the powers of war and peace, and congress dissolved our connexion with the mother country, and declared these United Colonies to be independent

* Madison, Preface to the Debates in the Convention of 1787.
† Madison's Report on Virginia Resolutions.
states. Without any written definition of powers, they employed diplomatic agents to represent the United States at the several courts of Europe; offered to negotiate treaties with France. From the same necessity, and on the same principles, congress assumed the management of Indian affairs; first in the name of these United Colonies; and afterwards, in the name of the United States. Early attempts were made at negotiation, and to regulate trade with them. These not proving successful, war was carried on under the direction and with the forces of the United States, and the efforts to make peace, by treaty, were earnest and incessant. The confederation found congress in the exercise of the same powers of peace and war, in our relations with Indian nations, as with those of Europe.

"Such was the state of things when the confederation was adopted." *

Neither had Congress power to enforce its recommendations. Mr. Wilson, advocating ratification of the Constitution, asks:

"Shall congress any longer continue to make requisitions from the several states, to be treated sometimes with silent and sometimes with declared contempt? . . .

"Let me, Sir, mention one circumstance in the recollection of every honourable gentleman who hears me. To the determination of congress are submitted all disputes between states, concerning boundary . . . In consequence of this power . . . this state (Pennsylvania) was successful enough to obtain a decree in her favour, in a difference then subsisting between her and Connecticut; but what was the consequence? the congress had no power to carry the decree into execution."

"This clearly shows that our perilous situation was the cement of our union. How different the scene when this peril vanished, and peace was restored! The demands of Congress were treated with neglect. . . . Did not our compliance with any demand of Congress depend on our own free will? If we

* Worcester v. Georgia.
refused, I know of no coercive force to compel a compliance." *

So the French Chargé d’Affaires writes to Comte de Montmorin, April 10, 1787:

"Le Congrès n’est réellement qu’un phantôme de souveraineté destitué de pouvoir, d’ énergie et de considération."

And again:

"... les Etats n’ont réellement aucun intérêt pressant d’être sous un seul chef. Leur politique qui se borne à leurs spéculations commerciales, leur inspire même réciproquement de l’aversion et de la jalousie, passions qui se trouvèrent absorbées pendant la guerre par l’enthusiasme de la liberté et de l’indépendance, mais qui con[me]nent à reprendre toute leur force. Ces républicains n’ont plus de Philippe à leur portes." †

"Those intelligent minds, in which patriotism was combined with practical good sense, were by no means unapprised of the dangers to be apprehended from a system (the Confederacy) in which the national character was not even sought to be preserved; and by which the American confederacy became substantially an alliance of independent nations, whose several ambassadors assembled in a general congress for the purpose of recommending to their respective sovereigns that general plan of operations, which had been there concerted, and which each was at perfect liberty to pursue or to neglect." ‡

"To the Senate and House of Representatives of the United States in Congress assembled: The remonstrance of the Legislature of the State of New Hampshire, shoveth:—That the citizens of the State of New Hampshire adopted the federal constitution of the United States under the full conviction that more extensive general powers were necessary to be vested in Congress than they ever possessed, when they were

* Randolph, in Virginia Ratifying Convention.
† M. Otto, French Chargé d’Affaires.
entirely dependent on the good will or the resolves of the several states. But by this adoption they did not then intend, nor does their Legislature now choose to admit, that the Confederation was in force prior to March 1781 ... In fact the Legislature conceive, and feel no inclination to relinquish the idea, that Congress, in its origin, was merely an advisory body, chosen by the several States to consult upon measures for the general good of the whole; that the adoption of measures recommended by them was entirely in the breast of the several States or their Legislatures; that no measures could be carried into effect in any State without its agreement thereto ... that the declaration of Independence received effect from its being acceded to by the Legislatures of the several states." *

"... They again remonstrate to Congress against a violation of State independence and an unwarranted encroachment in the courts of the United States ... That this State had a right to oppose the British usurpation in the way it thought best; could make laws as it chose, with respect to every transaction where it had not explicitly granted the power to Congress; that the formation of courts for carrying those laws into execution belonged only to the several States; that Congress might advise and recommend, but the States only could enact and carry into execution; and that attempts repeatedly made to render the laws of this State in this respect null and void is a flagrant insult to the principle of the revolution ..."

"Can the remembrance of the manner of our opposition to tyranny, and the gradual adoption of federal ideas be so painful as to exclude ... the knowledge that Congress, in its origin, was merely an advisory body: that it entirely depended upon the will of the several Legislatures to enforce any measure they might recommend; that the inconveniences of this principle produced the confederation; and, even at that late day, it was declared that powers not expressly delegated to Congress are reserved to the States, or the people respectively; that the experience of years, of the inefficacy of thirteen Legis-

* February 20, 1792.
latures to provide for the wants and to procure the happiness of the American people, caused the adoption of the present constitution—an adoption totally unnecessary, in point of principle, if the claims of former Congressional power are established." *

Its own proceedings show its lack of power and entire dependence on the several States; e. g.:

"Resolved, That the proposed plan for a military establishment be postponed, and that a letter be addressed to the several states, and that they be requested to take into their most serious consideration and give their opinions on the following questions," etc.†

"A man by the name of De Longchamps entered the house of the French minister plenipotentiary in Philadelphia, and there threatened violence to the person of Francis Barbe Marbois, secretary of the French legation, Consul General of France, and Consul for the state of Pennsylvania; he afterwards assaulted and beat him in the public street. For this offence he was indicted and tried in the Court of Oyer and Terminer of Philadelphia and punished under its sentence. A question was made whether the authorities of Pennsylvania should not deliver up De Longchamps to the French government to be dealt with at their pleasure. It does not appear that the federal government was considered to possess any power over the subject, or that it was deemed proper to invoke its counsel or authority in any form. This case occurred in 1784, after the adoption of the articles of confederation; but if the powers of the federal government were less under those articles than before, it only proves that however great its previous powers may have been they were held at the will of the States, and were actually recalled by the articles of confederation." ‡

*Remonstrance of New Hampshire, January 16, 1795.
† Journals of Congress, April 16, 1778.
‡ Upshur, "Review of Story's Commentaries."
December 29, 1780, it was

"Resolved, That a committee of three be appointed to collect and cause to be published, 200 correct copies of the declaration of independence, the articles of confederation . . . the alliance between these United States and his most Christian Majesty, with the constitution or form of government of the several states . . ." *

This committee was composed of Mr. Bee (of South Carolina), Mr. Witherspoon (of New Jersey), Mr. Wolcott (of Connecticut). The work, published in 1781, went through various editions. Its title is "The Constitutions of the Several Independent States of America . . . The Articles of Confederation between the said States; The Treaties between His Most Christian Majesty and the United States of America," etc.

The use of the phrases "The Constitutions of the Several Independent States of America, the Articles of Confederation between the said States," and "The Treaties between His Most Christian Majesty and the United States," is most significant. Other editions of the Constitutions use the same distinctive phraseology.

The editors of this compilation, edition of 1782, say in their preface:

"After the Colonies of North America had completely renounced their allegiance to the Mother-Country, by their solemn Declaration of Independence . . . each of the States into which they were then divided, adopted different forms of independent governments," etc.

It is to be observed that this is not said polemically, but as explaining the cause of there having been no prior collection of the State constitutions published.

In 1786 was "published by order of Congress," in New York, "The Constitutions of the Several Independent States of America; the Declaration of Independence; the Articles of Confederation between the said States," etc.

* Journals of Congress.

1-18
May 15, 1776. The Virginia Convention resolved unanimously to instruct their delegates in the Continental Congress to propose

"to that respectable body to declare the Colonies free and independent States, . . . pledging their support . . . to whatever measures may be thought proper and necessary by the Congress for forming foreign alliances, and a confederation of the Colonies, at such time, and in the manner as to them shall seem best; Provided, that the power of forming government for, and the regulation of the internal concerns of each colony be left to the respective colonial legislatures."

So the other States, through their delegates in Congress, as shown by their credentials, pledged themselves alone, e. g., North Carolina:

"In Congress, December 20, 1776. Resolved, That William Hooper . . . be, and they are hereby, appointed delegates to attend the Congress of the United States of America, in behalf of this state . . . and they are invested with such powers as may make any act done by them, or any of them, or consent given in the said Congress, in behalf of this state, obligatory upon every inhabitant thereof." *

"You are hereby invested with such powers as may make any act done by you . . . or consent given in the said Congress, in behalf of this state, obligatory on every inhabitant thereof," etc. †


"Resolved unanimously, That the delegates of this state, in the Continental Congress, be, and they hereby are authorized to concert and adopt all such measures as they may deem conducive to the happiness and welfare of the United States of America." ‡

Massachusetts:

"Resolved, That the above named gentlemen be . . . empowered with other delegates from the American states . . .

* Credentials of Delegates of North Carolina.
† Ibid., Journals of Congress, June 2, 1777.
‡ Journals of Congress, July 15, 1776.
to concert . . . such . . . measures as to them shall appear best calculated for the establishment of right, liberty and independence to the American states . . . and guarding against all encroachments . . . of the enemies of the United States.” *

The New Hampshire Constitution of 1776 recited that

“The people inhabiting the territory formerly called the Province of New Hampshire, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent Body-politic or State, in the name of the State of New Hampshire.”

The preamble of the 1776 Constitution of Connecticut begins:

“The People of this State, being by the Providence of God, free and independent, have the sole and exclusive right of governing themselves as a free, sovereign, and independent state.”

The Constitution of Massachusetts of 1779, framed by John Adams, declares that

“The people inhabiting the territory formerly called the Province of Massachusetts-Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent body-politic or state, by the name of The Commonwealth of Massachusetts. . . .

“The people of this commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which are not, or may not hereafter be by them expressly delegated to the United States in Congress assembled.”

The Constitution of New York, of 1777, is particularly illuminative, for it incorporates the Declaration of Independence, etc., after reciting which, it continues:

*Credentials of the Delegates of Massachusetts, Dec. 12, 1777; Journals of Congress, January 7, 1778.
"By virtue of which several acts, declarations, and proceedings mentioned and contained in the aforesaid resolves or resolutions of the general Congress of the United American States, and of the congresses or conventions of this State, all power whatever therein hath reverted to the people thereof, and this convention hath by their suffrages and free choice been appointed, and among other things authorized to institute and establish such a government as they shall deem best calculated to secure the rights and liberties of the good people of this state. . . .

"That no authority shall on any pretence whatever, be exercised over the people or members of this State, but such as shall be derived from, or granted by them."

Thus, it is here expressly stated that the sovereignty formerly existent in Great Britain reverts by the Declaration of Independence to,—no abstractions of a general people of the United States—but to the people of New York State.

"The Congress (of New Jersey) empower and direct you, in the name of this colony, to join with the delegates of the other colonies, in continental Congress . . . and, if you shall judge it necessary or expedient for this purpose, we empower you to join with them in declaring the United Colonies independent of Great Britain, entering into a confederation for union and common defence . . . always observing, that whatever plan of confederacy you enter into, the regulating the internal police of this province is to be reserved to the colony legislature." *

"The people of the State of New York, one of the United States of America, by the grace of God free and independent, to their brethren of the other of the said United States in Congress assembled, and to all others who shall see these our letters patent, send greeting. . . .

"Whereas the freedom, sovereignty and independence . . . will, for a lasting and unshaken security, in a great measure depend . . . Witness our trusty and well-beloved George

*Credentials of New Jersey Delegates; Journals of Congress, June 21, 1776.
Clinton Esq., our governor of our said state, general and commander in chief of all the militia, and admiral of our navy of the same, the 16th day of February, in the second year of our independence and sovereignty.” *

Unless the “ours” refer to different substantives, then this ratification claims that at that time New York State was independent and sovereign. The same applies to the following citation.

“John Jay, a delegate for the state of New York, attended, and produced the credentials of his appointment, which were read as follows: *The people of the state of New York, by the grace of God free and independent, to all . . . Witness our trusty and well-beloved George Clinton Esq. our governor . . . this tenth day of November, in the third year of our independence . . . .” †

“State of New York, in Senate and Assembly, the 15th and 19th days of Nov. in the 6th year of the independence of the said State, 1781: . . .

“Resolved, That . . . the legislature of this state is greatly alarmed at the evident intention of Congress . . . to dismemberment, possessed by the revolted subjects of the state, into an independent state, and as such to admit them into the federal union of these United States,” etc. ‡

“In the eleventh year of the independence of the Delaware state. An act appointing Deputies from this State to the Convention proposed to be held in the City of Philadelphia, for the purpose of revising the Federal Constitution . . . So always and provided, that such alterations . . . do not extend to that part of the 5th article of the confederation of the said states, . . . which declares that ‘In determining questions in the United States in Congress assembled, each state shall have one vote.’ §

“The delegates from N. Carolina produced a new commission, which was read, as follows:

* Ratification of Articles of Confederation by New York.
† Journals of Congress, December 7, 1778.
‡ Ibid., October 19, 1782.
§ Credentials of the Deputies of Delaware to the Federal Convention, Feb. 3, 1787; Elliot, Vol. I.
"... hereby giving and granting unto any two of the said delegates present in Congress, full power ... to bind the inhabitants of this state in all cases, not inconsistent with ... its rights as an independent sovereign people ..." *

"The assembly of Rhode Island, having appointed two delegates to represent that colony in Congress, the credentials of their appointment were laid before Congress, and read, as follows: ... You are also authorized ... to enter into and adopt all such measures, taking the greatest care to secure to this colony, in the strongest and most perfect manner, its present established form and all the powers of government, so far as relates to its internal police and conduct of our own affairs, civil and religious," etc.†

"A resolution of the convention of Maryland, passed the 28th of June was laid before Congress and read, as follows: 'That the instructions given to their deputies in December last, be recalled, and the restrictions therein contained, removed; and that the deputies of said colony ... be authorized ... to concur with the other United Colonies ... in declaring the United Colonies free and independent states; in forming such further compact and confederation between them ... as shall be judged necessary for securing the liberties of America; and that said colony will hold itself bound, by the resolutions of the majority of the United Colonies, in the premises; provided, the sole and exclusive right of regulating the internal government and police of that colony be reserved to the people thereof.' ‡

"Although the pressure of immediate calamities ... may have induced some states to accede to the present confederation, contrary to their own interests ... it requires no great share of foresight to predict that when those causes cease to operate, the states which have thus acceded to the confederation will consider it as no longer binding, and will eagerly embrace the first occasion of asserting their just rights and securing their independence ... We are convinced

* Journals of Congress, Sept. 1, 1776.
† Journals of Congress, May 14, 1776.
‡ Ibid., July 1, 1776.
policy and justice require that a country unsettled at the commencement of this war, claimed by the British crown . . . if wrested from the common enemy by the blood and treasure of the thirteen states, should be considered as a common property, subject to be parcelled out by Congress into free . . . and independent governments . . . Thus convinced we should betray the trust reposed in us by our constituents, were we to authorize you to ratify in their behalf the confederation,” etc.*

“The Parliament of Great Britain . . . having endeavoured . . . to subjugate the United Colonies . . . and having at length constrained them to declare themselves independent States, and to assume government under the authority of the people:—Therefore, we, the Delegates of Maryland, . . . declare,” etc. †

“Francis Hopkinson, Esq., one of the delegates of New Jersey, attended, and produced the credentials of their appointment, which was read as follows, vis.:

‘. . . The Congress empower and direct you, in the name of this colony, to join with the delegates of the other colonies, in continental Congress, in the most vigorous measures for supporting the just rights and liberties of America; and, if you shall judge it necessary or expedient for this purpose, we empower you to join with them in declaring the United Colonies independent of Great-Britain, entering into a confederacy for union and common defence, making treaties with foreign nations for commerce and assistance, and to take such other measures, as may appear to them and you necessary for these great ends; promising to support them with the whole force of this province; always observing, that whatever plan of confederacy you enter into, the regulating the internal police of this province is to be reserved to the colony legislature.’” ‡

“The permitting any power other than the general assembly of the Commonwealth to levy duties or taxes upon the citizens

* Instructions laid before Congress by the Delegates of Maryland; Journals of Congress, May 21, 1779.
† Declaration of Rights of Maryland; Constitution of 1776.
‡ Journals of Congress, June 28, 1776.
of this State, within the same, is injurious to its sovereignty." *

“The delays and uncertainties incident to a revenue to be established and collected from time to time by thirteen independent authorities is at first view irreconcilable with the practical and essential,” etc.†

“A government which relies on thirteen independent sovereignties for the means of its existence, is a solecism in theory and a mere nullity in practice. . . . Can Congress, after the repeated unequivocal proofs it has experienced of the utter inutility and inefficacy of requisitions, reasonably expect that they would be hereafter effectual or productive.” ‡

Later on, pretty nearly every State at one time or another specifically asserted its sovereignty: e. g.:

“It never could have been contemplated by the framers of our excellent Constitution, who, it appears, in the most cautious manner, guarded the sovereignty of the States, or by the States who adopted it,” etc.§

The following extracts serve to show that the popular idea coincided with the official statements:

A broadside “Epitaph” on George III., Philadelphia, 1782 (preserved in the Library Company of Philadelphia, Ridgway Br.), runs as follows:

“Indignant Reader

Thus was begun

The most wonderful Revolution

* Virginia, Act of December 7, 1782, refusing to allow Congress to levy an impost duty.
† “Address to the States,” April 26, 1783.
‡ Madison, in Virginia Ratifying Convention.
§ Governor of Vermont’s Speech, October 23, 1813.
APPENDIX 6

And out of the ruins of a Cast-off Sunken Reprobate
Monarchy
Ascended Upwards
Thirteen Glorious Republics."

Thomas Pownall, Governor of Massachusetts Bay, etc., etc., published in 1783, a "Memorial addressed to the sovereigns of America." Whom he understood by that term is shown, inter alia, when he says:

"Therefore United States . . . I address you not only as Sovereign States, established and acknowledged," etc., etc.

David Ramsay, President of Congress (1785-'86), published in 1785 "The History of the Revolution of South Carolina, from a British Province to an Independent State."

In his "Address to the Freemen of South Carolina," 1787, he also says as follows:

"When thirteen persons constitute a family, each should forego everything that is injurious to the other twelve. When several families constitute a parish, or county, each may adopt any regulation it pleases with regard to its domestic affairs, but must be abridged of that liberty in other cases, where the good of the whole is concerned . . .

"When thirteen states combine in one government, the same principle must be observed . . ."

In the same "Address" he says:

"Connecticut and Rhode Island were nearly as free before the revolution as since. They had no royal governor or councils to control them or to legislate for them. Massachusetts and New Hampshire were much nearer independence in their late constitutions than we were . . . You were among the first states that formed an independent constitution, be not among the last in accepting and ratifying the proposed plan of federal government; . . . without it independence may prove a curse."

"Can we believe that a government of a federal nature, consisting of many coequal sovereignties?" etc.*

To the same effect, of the several independency of the States is, Noah Webster's "Examination into the Leading Principles of the Federal Constitution," Philadelphia, 1787.

"The only question . . . is, whether the new constitution delegates to Congress any powers which do not respect the general interests of the United States. If these powers intrude upon the present sovereignty of any State," etc.

The catalogue of Harvard College, published in Boston, 1782, is dated "Annoque Rerum Publicarum Americae Fæderatarum summæ potestatis septimo." "In the 7th year of the sovereignty of the Confederated Republics of America."

Cooper, the novelist and historian, practically a contemporary, gave his story of the Revolution, "Lionel Lincoln" (1825?), the half-title, "Legends of the Thirteen Republics."

Again, in "The Pilot" (Chapter XXIX) is the same phrase:

"'Down with your arms, you Englishmen!' said the daring intruder; 'and you, who fight in the cause of sacred liberty, stay your hands, that no unnecessary blood may flow. Yield yourself, proud Briton, to the power of the Thirteen Republics!'

"The declaration of Independence, though it annulled the power of Britain over the colonies, established no superintending government in its room; and each colony became a free and independent state." *

"To the Senate and House of Representatives of the Commonwealth of Pennsylvania.

"The petition of the subscribers, citizens of the said Commonwealth, . . . That your petitioners are fully aware of the many wise and salutary provisions contained in the constitution of this commonwealth . . . it would have been unreasonable to have expected the constitution without fault . . . The convention could be guided only by general principles, and formed their plan on a model not exactly suited to

* Analysis of the Report of the Committee of the Virginia Assembly on the Proceeding of some of the other States in answer to their Resolutions, by Alexander Addison; Philadelphia, 1800.
the condition of the people: They were establishing a republic on the ruins of a decayed monarchy . . .” *

Chief Justice Marshall, an actor in these scenes, whose strongly nationalistic tendency and most important influence towards consolidating the government by his judicial decisions render any adverse testimony by him doubly valuable, constantly refers, throughout his “Life of Washington,” to the original sovereignty and independence of the several States after the Declaration. A few examples will suffice.

“The extraordinary spectacle had been exhibited of thirteen distinct colonies, possessing at first no legitimate government and afterwards, when they became states, possessing governments entirely independent of each other, carrying on conjointly, by themselves, and by their deputies a burdensome war,” etc.†

“The attention of Congress was very early called to this interesting subject by General Washington; but that body performed its most important duties through the agency of sovereign states.” ‡

“The state sovereignties, where the real energies of government reside,” etc., etc.§

“Although the best dispositions existed, the proceedings of Congress were unavoidably slow, and the difficulty of bringing about a harmony and concert of measures among thirteen sovereign states was too great to be surmounted.” ¶

“But so difficult is it to effect any objects, however important, which are dependent on the concurrent assent of so many distinct sovereignties.” ﴾

“His [Washington’s] circular letter written on this occasion to the state sovereignties.” **

* Petition for an Amendment of the Constitution of Pennsylvania to Reduce the Power Vested in the Governor of the State. Read in the House, March 1, 1822. (In Ridgway Branch of Library Company of Philadelphia.)

§ Vol. III, p. 78.
¶ Vol. IV, p. 177.
† Vol. IV, p. 472.
** Vol. IV, p. 623.
"From requisitions alone to be made on sovereign states, were the supplies to be drawn." *

"That the debt of the United States should have greatly depreciated will excite no surprise, when it is recollected that the government of the union possessed no funds, and without the assent of jealous and independent sovereigns could acquire none." †

"That thirteen independent sovereignties, jealous of each other, could be induced to concur . . . few were so sanguine as to hope."

"A government authorized to declare war, but relying on independent states for the means of prosecuting it; capable of contracting debts, and of pledging the public faith for their payment, but depending on thirteen distinct sovereignties for the preservation of that faith; could only be rescued from ignominy and contempt by finding these sovereignties administered by men exempt from the passions incident to human nature." ‡

The same fact was always recognized by Mr. Marshall in those decisions by which, when Chief Justice, he sought to strengthen the Federal Government at the expense of the State Governments.

"Whatever respect might have been felt for the state sovereignties, it is not to be disguised that the framers of the constitution viewed with some apprehension the violent acts which might grow out of the feelings of the moment." §

"That a war broke out between Great Britain and her colonies, which terminated in a treaty of peace acknowledging them as sovereign and independent states." ||

"In considering this question, it must be recollected, that, previous to the formation of the new constitution, we were divided into independent states, united for some purposes, but in most respects sovereign. These states could exercise almost

† Ibid., Vol. V, p. 88.
‡ Ibid., Vol. V, p. 31.
|| Ibid., p. 139.
every power, and among others that of passing bankrupt laws. When the American people created a national legislature, with certain enumerated powers, it was neither necessary nor proper to define the powers retained by the states. These powers proceed not from the people of America, but from the people of the several states; and remain, after the adoption of the constitution, what they were before, except so far as they may be abridged by that instrument.” *

“The constitution does not grant to the states the power of passing bankrupt laws, or any other power; but finds them in possession of it, and may either prohibit its future exercise entirely, or restrain it so far as national policy may require.” †

“In the case now to be determined, the defendant, a sovereign state, denies the obligation of a law enacted by the legislature of the union, and the plaintiff, on his part, contests the validity of an act which has been passed by the legislature of that state.” ‡

“Much more might the legitimacy of the general government be doubted, had it been created by the states. The powers delegated to the state sovereignties were to be exercised by themselves, not by a distinct and independent sovereignty, created by themselves. To the formation of a league, such as was the confederation, the state sovereignties were certainly competent. But when, ‘in order to form a more perfect union,’ it was deemed necessary to change this alliance into an effective government, possessing great and sovereign powers, and acting directly on the people, the necessity of referring it to the people, and of deriving its powers directly from them, was felt and acknowledged by all.” §

“The creation of a corporation, it is said, appertains to sovereignty. This is admitted. But to what portion of sovereignty does it appertain? Does it belong to one more than to another? In America the powers of sovereignty are divided between the government of the union and those of the states. They are each sovereign with respect to the objects committed

† Sturges v. Crowninshield, ibid., p. 153.
‡ M’Culloch v. State of Maryland et al., ibid., p. 160.
§ Ibid., p. 163.
to it, and neither sovereign with respect to the objects committed to the other.” *

“The counsel for the defendant in error have undertaken to do this; and have laid down the general proposition, that a sovereign, independent state is not suable, except by its own consent.

“This general proposition will not be controverted. But its consent is not requisite in each particular case. It may be given in a general law. And if a state has surrendered any portion of its sovereignty, the question, whether a liability to suit be a part of this portion, depends on the instrument by which the surrender is made. If, upon a just construction of that instrument, it shall appear that the state has submitted to be sued, then it has parted with this sovereign right of judging in every case on the justice of its own pretensions, and has entrusted that power to a tribunal in whose impartiality it confides.” †

“As preliminary to the very able discussions of the constitution which we have heard from the bar, and as having some influence on its construction, reference has been made to the political situation of these states anterior to its formation. It has been said, that they were sovereign, were completely independent, and were connected with each other only by a league. This is true.” ‡

“The constitution of the United States was ordained and established, not by the states in their sovereign capacities, but, emphatically, as the preamble of the constitution declares, by “the people of the United States.” There can be no doubt that it was competent to the people to invest the general government with all the powers which they might deem proper and necessary, to extend or restrain these powers according to their own good pleasure and to give them a paramount and supreme authority. As little doubt can there be that the people had a right to prohibit to the states the exercise of any powers which

‡ Gibbons vs. Ogden, ibid., p. 288.
were, in their judgment, incompatible with the objects of the
genral compact; to make the powers of the state governments,
gen in given cases, subordinate to those of the nation, or to reserve
to themselves those sovereign authorities which they might
not choose to delegate to either. The constitution was not,
therefore, necessarily carved out of existing state sovereign-
ties, nor a surrender of powers already existing in state insti-
tutions; for the powers of the states depend upon their own
constitutions, and the people of every state had the right to
modify and restrain them according to their own views of
policy or principle. On the other hand, it is perfectly clear,
that the sovereign powers vested in the state governments by
their respective constitutions remained unaltered and unim-
paired, except so far as they were granted to the government
of the United States.” *

“The suit, then, might be as well sustained in a court of
equity as in a court of law, and the objection, that the interests
of the state are committed to subordinate agents, if true, is the
unavoidable consequence of exemption from being sued,—of
sovereignty.” †

“The state of Georgia, by giving to the bank the capacity
to sue and be sued, voluntarily strips itself of its sovereign
character, so far as respects the transactions of the bank, and
waives all the privileges of that character.” ‡

“It occurred to me that in a country where ‘all men are
equal,’ the government would be guilty of no great crime, did
it so far interfere as to give them all an opportunity of be-
coming Christians if they wished it. But should the federal
government dare to propose building a church and endowing
it, in some village that has never heard ‘the bringing home of
bell and burial,’ it is perfectly certain that not only the sov-
ereign state where such an abomination was proposed would
rush into the Congress to resent the odious interference, but
that all the other states would join the clamour, and such an

* “Marshall’s Writings,” B., 1839, Martin vs. Hunter’s Lessee.
† Osborn et al. vs. United States Bank.
‡ U. S. Bank vs. Planters’ Bank.
intermeddling administration would run great risk of impeachment and degradation." *

"If I mistake not, every debate I listened to in the American Congress was upon one and the same subject, namely the entire independence of each individual state with regard to the federal government. The jealousy on this point appeared to me to be the very strangest political feeling that ever got possession of the mind of man. I do not pretend to judge the merits of this question. I speak solely of the very singular effect of seeing man after man start eagerly to his feet, to declare that the greatest injury, the basest injustice, the most obnoxious tyranny that could be practised against the state of which he was a member, would be a vote of a few million dollars for the purpose of making their roads or canals, or in short for any purpose of improvement whatsoever." †

"I was denounced by men who, in the same breath, reviled me as an extravagant latitudinarian of constructive powers, because I believed that Congress might, without absolute annihilation to the liberties of the country, build an observatory, dig a canal, open a road, and institute an university for the education of youth." §

"The only question . . . is, whether the new Constitution delegates to Congress any powers, which do not respect the general interest . . . of the United States. If these powers entrench upon the present sovereignty of any state, without," etc. ¶

"The Federalist" is pervaded with the acknowledgment of State Sovereignty, although not infrequently its acknowledgment is bracketed with inconsistent statements.

"H. No. 9. 'The proposed constitution, so far from implying an abolition of the state governments, makes them constituent parts of the national sovereignty, by allowing them a direct representation in the senate, and leaves in their possession certain exclusive and very important portions of sov-

* Mrs. Trollope, "Domestic Manners of the Americans," p. 101; N. Y., 1832. Travels were in 1827 et seq.
† Ibid., p. 184.
§ Noah Webster, "Examination into the Leading Principles of the Federal Constitution"; Phila., 1787.
ereign power.’ The ambiguity of this sentence arises from the interpolation of the words national sovereignty, which are not in the constitution; from admitting that the powers not delegated were sovereign powers belonging to the governments of the states; and from making these governments constituent parts of a national sovereignty, in virtue of their representation in the senate; by which representation they became the subjects of the assumed national sovereignty. State sovereignty is lodged in the people of each state, but by supposing it to be lodged in their governments, and considering these governments as constituents of a national sovereignty in consequence of their representation in the senate, state rights are made to derive their security, not from the limitations and reservations of the federal compact, but from this representation of their governments, just as Englishmen derive theirs from their representation in parliament. Whatever may be the rights of Englishmen, representation invests the parliament with a supreme power over them; and whatever may be the rights of the political individuals called state governments, representation creates a national sovereignty over these also, according to this ingenious sentence.

"By taking it for granted that the constitution has established a national sovereignty, the difficulty of proving it is avoided. The phrase 'national sovereignty,' is assumed in correspondence with that of the British parliament; and the state governments are turned into its constituents by the structure of the senate. Mr. Hamilton thus concedes to himself the essential principle of his plan for a government; knowing that if the concession should succeed, its consequences would certainly follow. A national sovereignty would remove most obstacles to his system, and to use his own sound language, 'if it was once formed, it would maintain itself.'

"The most ingenious and conciliating ground upon which a national sovereignty is erected, is this of representation in the senate. It has an aspect of securing instead of abolishing the reserved rights of the states. This representation was not intended to create a sovereignty in Congress over the reserved rights of the states, but only as one check to secure a correct
exercise of the delegated powers. The rights of the states were not reserved to the senate of the United States, but to the states themselves; and are not conveyed to an imaginary national government, upon the ground that their governments are represented in the senate. The journal of the convention shews that a national sovereignty, founded upon the principle of representation, was contemplated so long as the project for a national government prevailed; but it does not contain a solitary intimation, after that project was abandoned, that the representative character, either of the president, the senate, or the house of representatives, conferred sovereign or supreme powers on one or all of these departments, as had been contemplated before a federal system was adopted. If representation is necessarily attended by sovereignty or supremacy, the Congress under the confederation was indeed a sovereign body, but a very dull one, in not having made the discovery; and no limitations of power can be created by constitutions which resort to representation, if it inherently possesses the quality of turning agents into sovereigns.

"Suppose it is admitted, as Mr. Hamilton seems to intimate, that the constitution has created two sovereignties, one of the federal and the other of the state governments. By dividing sovereignty into portions, and calling the portion of state governments exclusive, he states a very plain case. The owners of a loaf of bread divide it between two persons. The donation of one half, does not imply a right to eat up the other half. If the state governments possess exclusive sovereign powers, they cannot be deprived of this exclusiveness by their representation in the senate; and if that representation does not deprive them of their exclusive powers, it conveys nothing at all. It follows, that the powers of the federal government are derived from the constitution, and in no degree from representation. Under the constitution, it is a limited government; by inferring sovereignty from representation, it would become unlimited." *

"Let us add a few other arguments to those before advanced

* John Taylor, of Caroline, "Views on the Constitution," pp. 64-66; 1823.
upon a point which really includes the whole question. Under what authority have the several cessions of territory been made by particular states? One, I believe, has been made by Georgia, since the establishment of the federal constitution. A cession of territory is a very plain act of sovereignty. If the states had no original or inherent political rights, these cessions are void; if the cessions are good, the assertion is false.

"Upon what principle has the constitution declared, that no new state shall be formed within the jurisdiction of another state, nor by uniting two states or parts of states, without the consent of the legislatures of the states concerned, and of Congress? Undoubtedly for combining a sovereign and a federal consent, to effect an act, by which both the sovereign and the federal interest might be affected. If a territorial dismemberment cannot take place, except by the consent of the state possessed of the territorial sovereignty, no dismemberment of any other rights possessed by the same sovereignty can take place, except by its consent also; and the federal government or the federal court, might claim a power to regulate the territories of the states, upon as strong ground as they claim a power to regulate the other sovereign rights of the states, not ceded but reserved, like the sovereign right of territory. In short, by what tenure does the federal government hold the ten miles square, and the sites for forts, arsenals, and other federal buildings, if the states are not invested with sovereignty?

"The doctrine 'that the constitution has established a supreme national government, and that the states are only corporations having no inherent and original rights,' would reach and destroy the state sovereign right of territory, if it can reach and destroy any other sovereign right reserved by the states. But sovereignties and corporations are very easily distinguished. Sovereignty is distinctly seen in the rights to create a political society, to form leagues, to cede territory, to punish crimes, and to regulate property. Are corporations defined by such powers? As states and corporations have no resemblance in their origin or powers, a violent zeal for a con-
solidated government can only mistake one for the other; just as some hidden light within makes us see strange sights without. The term corporation, implies a derivation from a sovereign power, and the term state, a sovereignty. One is associated with the idea of dependence, and the other, of independence. Common sense never thought of proclaiming to the world the sovereignty and independence of thirteen corporations. What a figure would they have cut with such a declaration to prepare the way for a treaty with France? Corporations are the creatures and subjects, and also proofs of sovereignty. Hence the states, being sovereign, can empower their governments to create counties and corporations, as objects like individuals for sovereign power to act upon; and corporations or counties being subjects, cannot create other corporations and counties, constitute a state, cede territory, regulate property, or pass laws for punishing crimes. The rights of towns, counties, or corporations were not reserved, because they were subjects of sovereignties, whose rights were reserved. Whence did the reserved rights originate? Had they originated from an American nation, they would have been given and not reserved; and they must have been enumerated, like the rights given to the federal government. As the reserved rights were not given by an American nation, the states, as corporations, can have none. To find receptacles for the reservation, we must find rights; and if we can find rights, as they were not derived from the sovereignty of an American nation, we must find some other sovereignty having power to create them. We are therefore reduced to the alternative of admitting the sovereignties of the states, or allowing that the states are incorporated subjects of an imaginary American nation, and liable to be modified or abolished in virtue of its sovereignty.

"A corporate character implies a derivation from, and subjection to, some sovereignty; and a power to modify or abolish this corporate character, designates the exact place where the sovereignty resides. The federal government is derived from, and may be modified or abolished by the states; and its corporate character is its only tenure, good only on account of
the validity of the sovereignties by which it was bestowed. The style of the constitution, however hackneyed by construction, admits the fact explicitly. It is not 'We, the people of the united corporations of New-Hampshire,' &c. Could corporations, having no political powers, both create and retain the right of altering or resuming political powers? If not, the gift and limitation of federal powers, both create and retain the right of altering or resuming political powers? If not, the gift and limitation of federal powers, united with an actual exercise of the sovereign power of resuming and modifying them, point both to a sovereign and a corporate character. If we should admit that the sovereignty thus exercised, is spurious, its issue must also be spurious; and if we contend for the legitimacy of the issue, the parental competency to produce it, must be admitted.

"These observations are alone sufficient to refute the positions assumed in the convention, ... as the only basis for a supreme national government, contended for and denied by the parties for and against it. The first party assumed the ground work ... that on the meeting of the convention, all the elements of political power returned to the people, to receive a new modification and distribution by their sovereign will.' That which had never been possessed, could not be returned. Did a consolidated American nation ever possess all the elements, or any of the elements, of political power? A few gentlemen made a nation, only that they might make a consolidated government, either of a monarchical or national complexion. The federal party denied that any of the elements of political power were dissolved by the meeting of the convention; asserted that the meeting itself flowed from existing political power; and that its proceedings must be exposed to the ratification and future alteration of this state political power, thus recognised as existing. It was a strange dissolution of political elements, which no body perceived; and as credible, as if we were told that an eclipse of the sun had produced total darkness for several months, though we were all daily enjoying its light and warmth. If all the elements of political power ceased on the meeting of the convention, those only can exist, which were revived by the constitution. But it does not revive, and only reserves, state rights. Powers
which were dead, could not be reserved. If the convention
had not framed a constitution, or the states had not ratified it,
would no elements of political power have existed?

"The meeting of the state conventions must have been pe-
culiarly inauspicious, and provokingly irksome, under this doc-
trine. All the elements of political power were gone.
Whither? To these conventions? No. They could only
ratify or reject the constitution. To that or to this dissolution
of political power, their alternative was confined. They could
not revive any of these elements, not revived by that federal
instrument. Had the conventions of states been equivalent
to the convention of a consolidated nation, or a representation
of an American people, they might have modified political
power without restriction; but as they were only state organs
for expressing a state opinion, acceding to or rejecting a
federal compact between states, they had no power, if they
were so inclined, to change the existing political elements into
a national government, republican or monarchical. As these
conventions did not receive all the elements of political power,
but were limited to a single act, they were not the represen-
tatives of an American nation, and thence arises a complete
refutation of the construction which supposes that the words
'Ve, the people of the United States,' had any reference to a
consolidated nation; since the convention of such a people
would have constituted an unrestricted element of political
power. The truth is, that the idea of a consolidated nation
crept out of the convention, where it was invented before the
state conventions were even mentioned, and settled itself in
the minds of those gentlemen who still have in view one or the
other of the forms of government it was started to produce.
But if it is not too late to revive it, after the rejection of these
forms, and after the establishment of a federal government,
founded upon the co-equal sovereignties of the states, the
constitution is rotten at its base, and the superstructure must
be forever tottering." *

"The notoriety of this deception is fully illustrated by recol-

lecting, that the states, by their deputies (and they could only
do it by deputies), had made themselves sovereign and inde-
pendent; that they had already united in virtue of that char-
acter; that in virtue of that character, they had appointed
depuities to frame a more perfect union; that by these deputies
they voted as states; that they ratified the constitution as
states; that they immediately amended it as states; that they
reserved the supreme power of altering it as states; that they
vote in the senate as states; and that they are represented as
states in the other federal legislative branch. Further, the
declaration of independence was never repealed. Its annual
commemorations demonstrated, and continue to demonstrate,
a publick opinion, that it still lives; and the constitution did
not confer sovereignty and independence upon the federal
government, as the declaration of independence had done upon
the states. On the contrary, by the constitution, the states may
take away all the powers of the federal government, whilst
that government is prohibited from taking away a single power
reserved to the states. Under all these circumstances, is it
possible that any one state of the union, in ratifying the consti-
tution, which literally conformed to previous solemn acts, to
previous words and phrases, and to the settled rights of the
states, entertained the most distant idea, that it was destroying
itself; betraying its people; establishing a national govern-
ment; and creating a supreme negative over all its acts, politi-
cal and civil, or political only, with which the federal govern-
ment, or one of its departments, was invested by implication.

"Sovereignty is the highest degree of political power, and
the establishment of a form of government, the highest proof
which can be given of its existence. The states could not have
reserved any rights by the articles of their union, if they had
not been sovereign, because they could have no rights, unless
they flowed from that source. In the creation of the federal
government, the states exercised the highest act of sover-
eignty, and they may, if they please, repeat the proof of their
sovereignty, by its annihilation. But the union possesses no
innate sovereignty, like the states; it was not self-constituted;
it is conventional, and of course subordinate to the sovereign-
ties by which it was formed. Could the states have imagined, when they entered into a union, and retained the power of diminishing, extending, or destroying the powers of the federal government, that they who 'created and could destroy,' might have this maxim turned upon themselves, by their own creature; and that this misapplication of words was able both to deprive them of sovereignty, and bestow it upon a union subordinate to their will, even for existence. I have no idea of a sovereignty constituted upon better grounds than that of each state, nor of one which can be pretended to on worse, than that claimed for the federal government, or some portion of it. Conquest or force would give a much better title to sovereignty, than a limited deputation or delegation of authority. The deputations by sovereignties, far from being considered as killing the sovereignties from which they have derived limited powers, are evidences of their existence; and leagues between states demonstrate their vitality. The sovereignties which imposed the limitations upon the federal government, far from supposing that they perished by the exercise of a part of their faculties, were vindicated, by reserving powers in which their deputy, the federal government, could not participate; and the usual right of sovereigns to alter or revoke their commissions.

"If, under all these circumstances, the states could never have conceived that they had, by their union, relinquished their sovereignties; created a supreme negative power over their laws; or established a national government; their opinion ought to be the rule for the construction of the constitution. And if the constitution has, by implication, effected all these ends without their knowledge or consent, it is certainly the most recondite speculation that was ever formed, and the states of all cullies, the most excusable." *

"Those who deal most in paradox and superlatives, find the least truth. The consolidating school contends that we have two sovereignties; but that one is sovereign over the other; Mr. Hamilton, that we have co-ordinate sovereignties, each in-

* John Taylor, of Caroline, "Views on the Constitution," pp. 36, 37; 1823.
vested with exclusive powers, but that one is made superlative by the representation in the senate. That a federal senate should beget a national sovereignty, if we have one, is a political curiosity. These superlative sovereignties, in all their forms, have been less friendly to human happiness, than limited, divided, and balanced powers. Lodged either in a monarch, an aristocracy, or a representative body, they have an innate tendency towards tyranny. Lodged in one government, they have disclosed combinations among its members to extort from the people as much property as possible. They are uniformly oppressive in a high degree, when the territory is extensive. Such imperfections of a superlative sovereignty, indicated our improvement of a system for checking it, otherwise than by the agency of its own members, or of its own will. By returning to a sovereignty consolidated in one government, we should revive all the evils of which a superlative sovereignty has been productive, and surrender all the benefits, hitherto derived, from having superadded to the English mode of restraining the excesses of sovereignty condensed in one government, the new remedy of assigning different powers to two. The hostility of consolidated sovereignties to human happiness, is frequently demonstrated by their recourse to paradoxical arguments, in order to defend their measures. They contend, that the greater the revenue, the richer are the people; that frugality in the government is an evil; in the people, a good; that local partialities are blessings; that monopolies and exclusive privileges are general welfare; that a division of sovereignty will raise up a class of wicked, intriguing, self-interested politicians, in the states; and that human nature will be cleansed of these propensities by a sovereignty consolidated in one government. But in proportion as power becomes superlative, its ambition and avarice are inflamed; and our division of it between two governments, is one more attempt, in addition to those which have been unsuccessful, to assuage the inflammation, and diminish its malignity. The consolidating school rejects the experiment, however hopeful, and contends, that it degrades the federal government below the English standard. Such is the argu-
ment of limited kings, and such the motive by which they are stimulated to acquire the power enjoyed by absolute monarchs. The morbid suggestions of envy cause them to look with longing eyes upon a superiority of power; and it will not be contrary to human nature, if our statesmen should also contemplate the situation of English statesmen, as more desirable than their own, and should languish for an equal degree of exaltation.” *

“An adherence to our original principle of state sovereignty is demonstrated both by the confederation and constitution. Unanimity was necessary to put the first, and a concurrence of nine states to put the second, into operation. The operation of the first, when ratified, was to extend to all the states, and the operation of the second, ‘to the states ratifying only.’ Both consequences are deduced from state sovereignty, by which one state could defeat a union predicated upon unanimity, and four states might have refused to unite with nine. The latter circumstance displays the peculiar propriety of ordaining and establishing the constitution ‘for the United States of America.’ The refusing states, though states of America, did not constitute a portion of an American nation; and their right of refusal resulted from their acknowledged sovereignty and independence. ‘The United States of America’ would have consisted of nine states only, had four refused to accede to the Union; and therefore thirteen states could not have been contemplated by the constitution, as having been consolidated into one people. Hence it adheres to the idea of a league, by a style able to describe ‘the United States of America,’ had they consisted but of nine, and avoids a style applicable only to one nation or people consisting of thirteen states. By acknowledging the sovereignty of the refusing, it admits the sovereignty of the concurring states. Assent or dissent, was equally an evidence of it. The limitation of federal powers by assent, establishes the principle from which the assent flowed. There could be no sound assent, nor any sound limitation, unless one was given, and the other imposed, by a

competent authority; and no authority is competent to the establishment of a government, except it is sovereign. The same authority could only possess the right of rejecting the constitution. Had it been the act of an American nation or people, a state would have possessed no such right. The judicial sages have allowed the federal to be a limited government, but how can it be limited if the state sovereignties by which it was limited, do not exist, and if the state powers reserved, which define the limitation, are subject to its control?

"Having proved that state sovereignties were established by the declaration of independence; that their existence was asserted by the confederation of 1777; that they are recognised by the constitution of 1787, in the modes of its formation, ratification, and amendment; that this constitution employs the same words to describe the United States, used by the two preceding instruments; that the word state implies a sovereign community; that each state contained an associated people; that an American people never existed; that the constitution was ordained and established, for such states situated in America, as might accede to a union; that its limited powers was a partial and voluntary endowment of state sovereignties, to be exercised by a Congress of the states which should unite; that the word Congress implies a deputation from sovereignties, and was so expounded by the confederation; and that a reservation of sovereign powers cannot be executed without sovereignty; the reader will consider, whether all these principles, essential for the preservation both of the federal and state governments, were intended to be destroyed by the details of the constitution. The attempt to lose twenty-four states, in order to find a consolidated nation, or a judicial sovereignty, reverses the mode of reasoning hitherto admitted to be correct, by deducing principles from effects, and not effects from principles. But in construing the constitution, we shall never come at truth, if we suffer its details, intended to be subservient to established political principles, to deny their allegiance, and rebel against their sovereigns. A will to act, and a power to execute, constitutes sovereignty. The state governments, says the Federalist, are no more dependent on the
federal government, in the exercise of their reserved powers, than the federal government is on them, in the exercise of its delegated powers.

"The treaty between his Britannick majesty and the United States of America, acknowledges 'the said United States, viz., New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, to be free, sovereign, and independent states; as such he treats with them, and relinquishes all claim to their government and territorial rights.' This king acknowledges, individually, the sovereignty of the states; he relinquishes to them, individually, his territorial rights; three eminent envoys demanded this acknowledgment and relinquishment, as appertaining, individually, to the states; a Congress of the United States ratified the act and the doctrine; the treaty was then unanimously hailed, and is still generally considered, as a consummation of right, justice, and liberty; but now it is said that the states are corporations, subordinate bodies politic, and not sovereign. By the admirers of royal sovereignty, the treaty ought to be considered as valid; by those who confide in authority, it ought to be considered as authentick; by such as respect our revolutionary patriots, it ought to be venerated; and by honest expositors of the constitution, it will be allowed to afford conclusive proof, that the phrase 'United States of America,' used both in the treaty and the constitution, implied the existence, and not the abrogation, of state sovereignty. Consolidators, suprematists, and conquerors, however, will all equally disregard any instrument, however solemn and explicit, by which ambition and avarice will be restrained, and the happiness of mankind improved." *

* There must have been some general principle, to which these special delegations, reservations, and prohibitions, referred, because if none existed, and the constitution had created a supreme power, able to prohibit the states from exer-

* John Taylor, of Caroline, "Views of the Constitution," pp. 175-177; Wash., 1823.
cising rights not prohibited, and to allow the federal govern-
ment to exercise rights not delegated, both delegations and
prohibitions would have been useless and absurd; and there-
fore the existence of such a principle can alone make either
substantial. A previous principle must be admitted, to sustain
both exceptions and delegations. None can be found, except
a sovereignty able to bestow power, and to impose limitations.
To evade an argument so conclusive, recourse is had, first
to the acknowledged sovereignty of the people, and secondly
to a fabulous consolidated American nation; and the fable is
made to supplant the fact. The fact is, that the people and
the states are one and the same; but the fable supposes that
the states are distinguishable from the people, not to sustain,
but to destroy the principle, to which all our delegations, reser-
vations, and prohibitions of power, refer. When we speak
of Pennsylvanians or Virginians, it would be absurd, if these
people had not constituted themselves into states. The state
of Pennsylvania means the people of Pennsylvania. The con-
stitution, by reserving powers to the states or to the people,
recognises the words states and people, as perfectly equivalent,
and does not intend to express the absurd idea, that either
A or B shall exercise powers, without defining which shall
do so. The word or, is used to connect repetitions, and not
to express a contrariety. Admitting the latter to be the idea
intended to be expressed, yet the states, whatever they may
be, may exercise the same powers with the people. That they
are, however, the same with the people, results from the
recolletion that the state governments are not the states.
They are instruments used by the states or the people, for
exercising the powers reserved to them. The ingenuity of
dividing states from the people, consists in this. A sovereignty
of the people may be acknowledged as resting in an American
nation, to which the delegations, reservations, and prohibi-
tions, of the constitution, have no reference, as all are excep-
tions referring to state sovereignties, and none of course can
operate as exceptions to the fabulous national sovereignty. If,
therefore, the federal government can acquire a sovereignty
over the sovereignties referred to by the constitution, as being
the representative of a great fabulous nation, none of these
delegations, reservations, and prohibitions, can balance, check,
or control its power. And in this way an acknowledgment
of the sovereignty of the people is made to destroy their sov-
ereignty, by subverting the original principle to which the
delegations, reservations, and prohibitions of the constitution
refer.

"Why are the states prohibited from taxing imports and
exports? Because it was a right included by the established
principle of state sovereignty, which right the states con-
sented to relinquish. Why was the consent of Congress re-
quired to state laws in relation to duties, keeping troops in
time of peace, or entering into compacts? Because these also
were rights included in the principle of state sovereignty, sub-
jected to a limited federal control. Had a national sovereignty
existed, that would have possessed a general control over the
state sovereignties, of which these subordinate sovereignties
could not deprive it, by limited exceptions in favour of a fed-
eral department. Two of these sovereign state rights, of the
highest order, those of keeping armies and engaging in war
under certain circumstances, are retained by the states, for
the purpose of self-defence. The consent of Congress to
particular state acts would not have been required, if a fed-
eral or national supremacy over any other state acts existed;
and the sovereign state right of self-defence, would not have
been retained by subordinate corporations. The specification
of particular cases, in which the consent of Congress is re-
quired, admits an independent power in state legislation, as to
those cases in which the consent of Congress is not required.
The concurrent powers of the state and federal governments,
to tax, and to defend themselves, are happily contrived for
sustaining the mutual independence and control between these
primary divisions of power; and if one could impose on the
other a subordination in either of these powers, it would very
soon absorb all the rest. If it is admitted that the federal gov-
ernment possesses no supremacy over the two reserved state
rights of taxation and self-defence, it follows that all other
reserved state rights are held independently of any federal
supremacy. If these two rights are incidents of an original state sovereignty, all the other reserved rights must originate from the same source. The states have retained a right to defend themselves, if invaded by a federal army, because the constitution was not to be construed by force, but by the mutual control, and if that failed, by three-fourths of the states themselves."

APPENDIX 6A

(Page 206)

Mr. Adams was possibly thus aggrieved by "The Solemn Declaration and Protest of the Commonwealth of Virginia," the production of Mr. Jefferson, which asserts that

"The federal branch has assumed ... a right of enlarging its own powers by construction, inference ... They claim for example ... a right to construct roads, open canals, and effect other internal improvements within the territories and jurisdiction exclusively belonging to the several States," etc., etc. †

The principles underlying this "Protest" are condensed in a masterly presentation by John Taylor of Caroline:

"The question, 'whether a legal power can be constitutionally used to impair or destroy the principles of our policy,' has been already brought before the publick in the efforts of the general government to distribute gain or loss between the states by protecting duties, banking charters, making canals and roads, and other legal benefactions. The children of a father who lives forever, but annually makes a division of their property according to his own pleasure, are his slaves. If the general government gains a similar position in relation to the people and to the states, the principles of a division of power, of its responsibility, or protecting property, of its division by industry, of state confederation, and indeed all

† v. Appendix 19.
other principles constituting a genuine republick, are abol-
ished.” *

“In legislation contrary to genuine republican principles, 
sustained by a dominant party zeal, lies, in my view, the great-
est danger to the free form of government of the United 
States; nor can I conceive any augmentation of the danger, 
equivalent to an exercise of the power of distributing wealth 
by law. If, therefore, these essays should only prove, that 
it is the office of a republican government to protect, but not 
to bestow property, they may protract the period during which 
our government may remain the servant of the nation. For 
as worldly omnipotence is annexed to a power of dealing out 
wealth and poverty, nations are universally retributed for the 
folly and impiety of submitting to this species of human provi-
dence, by a divine decree, that it shall unexceptionably convert 
these servants into masters and tyrants.” †

In other words, as Professor Sumner puts it pithily: “A 
free man cannot take tips.” ‡

It is “significant,” indeed, to compare the foregoing with 
the fact stated by Mr. Holland (p. 15 of Preface), or with 
the praise one may read any day in any paper of the present, 
accorded a representative for urging some appropriation for 
his State for an institution, or for a class.

Mr. Taylor’s diagnosis of the necessary political results of 
the cancer of “protection” (and similar governmental benevo-
lences), made, as it was, before its infiltration through the 
whole American body politic had become evident, seems so self 
evident (brief and to one point only, as it is), so independent of 
the knowledge of political economy, so obvious to the most 
ordinary “common sense,” that to reflect on its denial is al-
most to despair of true democracy. For no doctrine more 
than that of protection is more fittingly described in Nassau 
Senior’s words (quoted from memory): “The most odious, 
and perhaps the most mischievous form of robbery is that to

† Ibid., pp. 655-656.
‡ “What Social Classes Owe to Each Other.”
which government makes itself accessory." And if a people can be led wholesale into the condonation of theft so destructive of freedom, either under self interest, or gulled by the words of self interest, what hope for that people?

The writings of Mr. Taylor are full of this prophetic insight; e.g.,

"To define the nature of a government truly, I would say, that a power to distribute property, able to gratify avarice and monopoly, designated a bad one; and that the absence of every such power, designated a good one.

"Of what value is an exchange of one system of monopoly for another? How shall we estimate the difference between noble and clerical orders, and between combinations of exclusive pecuniary privileges? Is pure avarice better than some honor and some sanctity? The encroachments upon property by noble and clerical combinations, once fixed by law, remained stationary; and each individual could calculate his fate with some certainty; but pecuniary combinations, once sanctioned as constitutional, will perpetually open new channels, and breed new invaders, whose whole business it will be, to make inroads upon the territories of industry." *

"If in England, representation, united with a concentrated supremacy, though assisted by a sympathy infinitely more perfect, fosters instead of checking wicked combinations, what would be the effects of our representation in Congress, uncontrolled by state rights, and urged by local interests to perpetrate geographical partialities? Success in obtaining local advantages would be considered as an evidence of patriotism by state representatives in Congress, and approved by their constituents; but it would be considered as fraudulent, and resisted as tyrannical, by the injured states. The malignity of a concentrated power to a free and fair government, being greater here than in England, it required better controls than have been there ineffectual; more especially as it would destroy our happy union. Geographical partialities would excite more indignation, than the patronage of indi-

vidual and corporate interests, involved in a national mass, prevented from acting in great combinations by an inextricable complication, and uncombined by distinct geographical circumstances. Oppressed or plundered states would do what Ireland is unable to do. If the national government proposed in the convention had succeeded, it could not have obliterated the local interests established by nature; and these would have remained as a pledge for a revolution. Even under the limitations of the constitution, local prejudices and partialities have been disclosed in Congress, and these occurrences have excited local resentments. A supreme power in the federal government over state rights, would accumulate local aggressions and dissatisfactions . . .”*

“Had it been proposed in forming our constitutions, to invest government with a power (over and above the power of exacting contributions for publick use) of taking away the property of some and giving it to others, it would have been rejected with indignation; yet this power is as much exercised by bestowing gratuities or exclusive privileges, as if the individuals, impoverished and enriched, had been named. This evasion of the freedom of property is particularly fraudulent, when a new society is constituted of men previously divided into distinct sects or occupations. Then the names of these sects or occupations are exactly the same as the names bestowed on infancy, as a medium for transferring property from one to another, and more difficult to exchange, in order to elude the imposition. Suppose, that at the period when the Highlands of Scotland were inhabited by a very few cognominal families, these families had united in a civil government by the names of tribes, either in the terms of the state or federal constitutions. In the first case, an assumption of power by their government to tax one family or tribe to enrich another, would have been exactly equivalent to state exclusive privileges in favour of some occupations, and injurious to others. In the second, an assumption of the same power would also have had this effect, and would more-

over have resembled partialities on the part of congress for and against particular states. The endowment of one class of men by the names of their occupations, at the expense of another, is evidently the same in substance, as to tax the McGregors to enrich the McDonalds. All these cases, however modified, are an actual subjection of labour and free will for self good, to the use of avarice; and if this be not tyranny, I know not what is so.” *

“It was an object of our constitutions to secure a common feeling between legislators and constituents under the operation of laws, whether good or bad. This is confessed to be a wise and just, and some think, an indispensable security for good laws. Can a legislator, who gives away the publick money to his friends, his clients, or his partisans; who is interested in the traffick of corporations to be created and nurtured by his laws, or who can increase his own wages by protracting a session in trying private suits, be any other than a representative of himself?

“Congress has already enlisted state governments among its clients, and these, like Roman provinces, are reduced to the necessity of providing patrons in the senate. An union between legislation and patronage will enlist an assortment of suitors, composed of individuals who ask for dollars, of companies who ask for millions, and of states which ask for bounties, roads and canals. Patronage begets clientship. States will soon vociferously demand local favours, to balance other local favours. Why should not congress endow schools in the old, as well as the new states? I see no end to the parties, intrigues and animosities, by an usurpation on the part of the federal government of internal and local powers, and of unlimited patronage. These will not be less dangerous, for being geographical. Federal favours are at first silken fetters to the states, which will gradually be converted into iron by the menstruum of precedents, as soft stones exposed to the atmosphere become hard.” †

“To discover whether actual tyranny is coming or has ar-

* John Taylor, “Construction Construed,” pp. 204-205; Richmond, 1820. † Ibid., p. 270.
rived, let us endeavour to establish some unequivocal evidence, by which tyranny may be known; some characteristick, as obvious to the senses as the difference of colours; and as clear to the understanding, as that two and two make four. The plain good sense of mankind has long since escaped from the intricacy of metaphysical reasoning, and discovered an infinitely more certain mode of ascertaining the existence of tyranny; but the artifices of ambition and avarice have constantly laboured to extinguish a light too luminous for their designs, and to perplex evidence too strong to be denied. When nations are induced, by the dexterities of ambition and avarice, to sear their senses against the plainest of all truths, their situation becomes hopeless, and their subjection to actual tyranny certain. The conviction of the truth of that which I am about to advance, is so universal, that abuses never evade its force, by urging that present evils will produce future good. They either endeavour to hide actual tyranny by some eulogized theory, or to draw off the publick attention from it, to some distant prospect embellished by the imagination, or to win confidence by ample promises. There is no resource for defeating such artifices, but that of clinging to the universal conviction of mankind.

"Money is a more accurate measure of liberty and tyranny, than of property. It is not only the best, but the only permanent measure to which civilized nations can resort, to ascertain their quantum of either, and for discovering whether tyranny is growing or decaying." *

"When Congress was divided into two parties, called federal and republican, only theoretically sectarian, and not geographically united, each had its own fashion of construing the constitution. The fluctuating constructions of money-hunting parties would be worse guardians for state rights, or for securing the purity of the constitution, than honest zealots. But now that these honest zealots no longer balance each other, a federal college of censors, either legislative or judicial, would be exposed to no check in deciding whether federal powers

ought to be increased or controlled. When the parties were nearly equal, and contending for the favour of the people, though contradictory constitutional constructions were produced, such excesses were avoided as would expose one party to publick censure, and risque the loss of power. Whilst this check remained, the better check of co-ordinate departments was not so necessary as it is at present. Besides, so far as these parties were influenced by speculative opinions in relation to the principles of government, they were expositors of the constitution, infinitely more honest than the geographical parties which a federal supremacy must produce. A speculative opinion may be upright; a geographical interest, opposed to another, is always a knave. The trivial geography of a president, sufficiently demonstrated, that Congress would be a bad guardian of state rights, even with the assistance of its federal court.” *

These anticipations seem prophecy, partly accomplished in the actions reprobated by an impartial observer (who added statesmanship of the higher kind to other great gifts), at the time of South Carolina’s nullification: “But when New England, which may be considered a state in itself, taxes the admission of foreign manufactures in order to cherish manufactures of its own, and thereby forces the Carolinians, another state of itself, with which there is little intercommunication, which has no such desire or interest to serve, to buy worse articles at a higher price, it is altogether a different question, and is, in fact, downright tyranny of the worst, because of the most sordid, kind. What would you think of a law which should tax every person in Devonshire for the pecuniary benefit of every person in Yorkshire? And yet that is a feeble image of the actual usurpation of the New England deputies over the property of the Southern States,” † and continuing to the present, when a recent non-political economist states them as “the more and more complete surrender

† Coleridge’s “Table Talk,” April 10, 1833. Edinburgh, 1905.
of the Republican party to the character of a conspiracy to hold power and use it for plutocratic ends." * Perhaps to be fulfilled in the prediction of Landor, that this country will fall apart in "the driving sirocco of avarice." †

"To be sure, modern times had already witnessed one great economic war. The American Civil War of the sixties of last century arose out of the economic antagonism between the trading and industrial States of the North and the cotton-growing States of the South of the Union. In the latter, cultivation by the aid of slaves formed the basis of the industry, and to this extent the slave question was a factor in the dispute. It was not, however, until later that the demand for the abolition of slavery found wide expression in the North and was utilized as a welcome means of stirring up feeling against the South. The real points at issue were that the Northern States wanted high protective duties, while the Southern States wanted to facilitate export, and that the Northern States had a special interest in utilizing the customs revenues for investments which should above all be of advantage to their trade, but which were a matter of indifference to the South. The American War of Secession, like everything else American at that time, attracted little attention with us. . . . Yet, different as were the cause, the development, and the other conditions of the American Civil War compared with the present World War, the economic factors which in each case found expression have engendered more than one similar phenomenon. The Northern States endeavoured at the outset, by the aid of their imposing fleet, to cut off the Southern States, which had no battle-fleet worth mentioning, from their seaborne supplies, and, also, on land, from the Mississippi and the corn-growing States of the Southwest, and thus paralyze them economically. The valour of the Southern troops, who were far inferior numerically, as well as of their generals, and, above, all, the distinguished leadership of Lee, for four years rendered impossible the accomplishment of this

* William Graham Sumner, "Mores of the Present and Future," in "War, and Other Essays."
† Letter to Southey, 1819.
APPENDIX 7

so-called “Anaconda plan,” until the Southern States finally succumbed to the blockade.”


In a democracy in particular, the paternal government must become adjunct to all kinds of “big business,” labor organizations, etc., etc., which find in its manipulation their most valuable asset at the expense of the unorganized part of the community.

APPENDIX 7

(Page 36)

The history of the adoption of these articles is thus summarized by a gentleman whose sympathies absolve him from suspicion of overstating any matter enhancing “State Rights.”

“But if the framers of this primary bond of union required any apology [for its inadequacy] the student of history need look no further than to the condition of the American mind at the time of the Confederation. The original committee to prepare the plan had been appointed simultaneously with that which drafted the Declaration of Independence. At the end of a month the report was submitted, and after a brief discussion, meeting with powerful opposition at the outset, it was suffered to lie unnoticed in Congress from month to month, despite the urgent appeals of its few advocates, until all but one of its originators had left that body. When it was at last taken up and adopted by Congress, they subjected it to a most rigid examination, and spared no pains to divest it of all possible objectionable features; and yet, after all, there was a long and weary interval before the divergent interests and jealousies of the several States could be harmonized so as to secure a general acceptance. Where the stickling for State rights was so universal, and an instrument demanding so few concessions to the federal power was adopted with such re-
luctance, it is clear that any plan embodying a stronger cen-
tral system would have entailed only a greater delay, if not, in
the end, total rejection," etc., etc.*

"By these articles [of Confederation] the nature of the
confederation, and its objects, were clearly defined: the rela-
tions of the states to each other, their separate powers, and
those of congress, explicitly declared. They were adopted
not by the people of the states, but by delegates who were the
representatives of the respective state legislatures; who were
expressly named as the constituents, who had authorized them
to be ratified and confirmed, and in the name and in behalf of
each; and which was so done by the delegates who signed
the same accordingly; 4 Laws U. S. 19, 20. For present pur-
poses it is necessary to refer only to three articles.

"'Art. 3. The said states hereby severally enter into a
firm league of friendship with each other, for their common
defence . . . against . . . attacks made upon them, or any of
them, on account of religion, sovereignty, trade, or any pre-
text whatever.

"'Art. 9. The United States, in congress assembled, shall
have the sole and exclusive right and power of sending and
receiving ambassadors, and entering into treaties and alli-
ances; provided that no treaty of commerce shall restrain the
legislative power of the respective states, from imposing such
imposts and duties on foreigners, as their own people are
subjected to . . . .' 1 Laws U. S. 16.

"This alliance, league, or confederacy of the states with
each other, can leave no doubt, that up to the time of the final
ratification in March, 1781, each state was separately sov-
ereign in its own inherent right; and so remained as to all
power not expressly delegated, as was declared in the second
article. The third article is also conclusive, that the object of
the alliance was to maintain and perpetuate their separate sov-
ereignty. This is the more manifest, when these articles are
taken in connection with the alliance of the states with France.
. . . as congress could not restrain the legislative power of

*William V. Wells, "Life of Samuel Adams," Vol. II, 481; Boston,
1865.
the states over commerce, as resolved in April 1776, and declared in this article, provision was made on the subject in the 6th article; 'no state shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States in congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by congress to the courts of France and Spain.' 1 Laws U. S. 15. Those of commerce and alliance with France were made in 1776. The commissioners' credentials, and treaties, were in the name of 'the thirteen United States of North America, to wit: New Hampshire,' etc. 2 Secret Journal 7. 1 Laws 74, 95; and the 2d article of the treaty of alliance declares its object most explicitly. 'The essential and direct end of the present defensive alliance, is to maintain effectually, the liberty, sovereignty, and independence, absolute and unlimited, of the said United States, as well in matters of government as of commerce.' In the 11th article, the parties make a mutual guaranty; in that of France, 'His most Christian majesty guaranties, on his part, to the United States, their liberty, sovereignty, and independence, absolute and unlimited, as well in matters of government as commerce; also their possessions, and the additions or conquests that their confederation may make during the war' . . .

"This guaranty was fulfilled by the treaty of peace, in which 'His Britannic Majesty acknowledges the said United States, to wit; New Hampshire, etc., to be free, sovereign and independent states' . . . This recognition relating back to the separate or unanimous declarations of the states, as this Court have [has?] held it; has the same effect as if the state had then assumed the same position, by the previous authority of the King; the treaty not being a grant, but a recognition, and subsequent ratification of their pre-existing condition; and all acts which had declared and defined it previous to the treaty, related back to 1776.

"Such being the relations of the several states, in their federal and foreign concerns, it follows, that as to their internal concerns, they were in the same attitude of absolute and unlimited sovereignty, before the articles of confederation as they
were afterwards, except so far as they abridged it. Each was a party to the treaty of alliance and peace, and each was bound by the guarantee to France after the confederation was abolished, and the constitution was established, as firmly as before: the states who delayed their ratification remained so bound, for they could by no act of their own, impair the rights of France: and they were equally entitled to the effects of the treaty of peace, whether they became constituent parts of the Union, by ratifying the constitution, or remained foreign states, by not adopting it. Their state constitutions and governments remained unimpaired by any surrender of their rights; so that of consequence, their sovereignty was perfect, so long as they continued free from any federal shackles; so the states acted, and so the people of each declared in all their conventions from 1776 to 1780.

"Congress had recommended to the colonies to form governments 'on the authority of the people alone,' this was done by the states who adopted constitutions before, and after the declaration of independence; by the assertion of the people in the separate convention of each state, that they had by nature and inherent right, all the powers of government, and that none could be exercised by anybody unless by their authority. They applied to themselves all the principles announced in their unanimous declaration in congress, in terms incapable of being misunderstood.

"The people of Pennsylvania declared 'that all power being originally in—and consequently derived from the people'; the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish government, in such manner, as shall be by that community judged most conducive to the public weal.'

"The people of North Carolina declared that 'all the territory within the bounds of the state was the right and property of the people, to be held by them in full sovereignty'... In their sovereign character, the people of each state could create what corporations they pleased for their own governments, either by written or tacit delegation of power, as best pleased them; their action in either mode had the same effect, whether
the body politic to be created was for one, or all the states, it was the exertion of the same sovereign authority, as the people . . .” *

APPENDIX 8

(Page 37)

“Note the distinction between the totality of sovereignty, freedom and independence retained, and the division between the powers, jurisdiction and rights delegated or retained. The former, which inhere in the civil body politic, are not impaired by a league or confederation to which a part of the sovereign powers, etc., may be delegated, while another part is reserved.” †

APPENDIX 9

(Page 37)

In view of the stress which has been laid upon the word “perpetual” in relation to the meaning of the Constitution, it is of some interest to note the opinion of a distinguished contemporary as to its force in the minds of those who used it in the preceding instrument.

“The zeal and ardor of the people during the revolutionary war, supplying the place of government, commanded a degree of order, sufficient at least for the temporary preservation of society. The confederation, which was early felt to be necessary, was prepared from the models of the Batavian and Helvetic confederacies, the only examples which remain, with any detail and precision, in history, and certainly the only ones which the people at large had ever considered. But, reflecting on the striking difference in so many particulars between this country and those where a courier may go from the seat of

† “The Relations of the United States to each other, as Modified by the War and Constitutional Amendments,” by John Randolph Tucker; 1877.
government to the frontier in a single day, it was then cer-
tainly foreseen by some, who assisted in Congress at the for-
mation of it, that it could not be durable.” *

APPENDIX 10

(Page 39)

“We are induced to hope that we shall not be altogether
considered as foreigners, having no particular affinity or con-
nection with the United States. But that trade and commerce,
upon which the prosperity of this state much depends, will be
preserved as free and open between this and the United States
as our different situations at present can possibly admit.” †

APPENDIX 11

(Page 39)

“At length two great parties were formed in every state
... The one ... in favour of enlarging the powers of the
federal government ... The other ... were ... led ... to resist
every attempt to transfer from their own hands into
those of Congress, powers which by others were deemed essen-
tial to the preservation of the union. In many of the states,
the party last mentioned constituted a decided majority of
the people; in all of them it was very powerful ... men of
enlarged and liberal minds ... who felt the full value of na-
tional honour ... and who were persuaded of the insecurity
of both, if resting for their preservation on the concurrence
of thirteen distinct sovereignties; arranged themselves gen-
erally in the first party.” ‡

To the same effect, in Ogden vs. Saunders:

“Our country exhibits the extraordinary spectacle of dis-
tinct, and in many respects, independent, governments over

* John Adams, Inaugural Speech, 1797.
† “Memorial from the State of Rhode Island and Providence Planta-
tions September, 1789. To the President ... of the Eleven United
States in Congress Assembled.”
the same territory and the same people . . . We cannot look back to the history of the times when the august spectacle was exhibited of the assemblage of a whole people by their representatives in convention, in order to unite thirteen independent sovereignties under one government, as far as might be necessary for the purpose of union, without," etc.*

These quotations, written of the period immediately previous to the formation of the constitution, and relating to the efforts which led up to it, show most strikingly from the mouth of an opponent, that the separate States at that time were sovereign and independent communities. Indeed, the work from which I quote is entitled "Life of George Washington . . . an introduction containing a compendious view of the colonies . . . from their settlement to . . . that war which terminated in their independence." † Does the first "their" speak of them disjunctively, while that immediately following has the opposite force of unifying them?

Extracts, too numerous for quotation, from Washington's own private letters and official communications, through the confederation, urging the Constitution, in his Presidency, show the same view of the several independency and original power and sovereignty of the States.

"To these fundamental errors may be added another . . . all the business is now attempted, for it is not done, by a timid kind of recommendation from Congress to the States; the consequence of which is, that . . . each State undertakes to determine 1st: whether they will comply or not . . . I do not scruple to add . . . that unless the States will . . . vest (Congress) with absolute powers . . . relative to the . . . purposes of war," etc.‡

"This, and ten thousand reasons, which I could assign, prove the necessity of something more than recommendatory powers in Congress." §

† Italics are the author's.
‡ Washington to Fielding Lewis, July 6, 1780.
§ Washington to Genl. Armstrong, March 26, 1781.
"It remains only for the States to be wise, and to establish their independence on the basis of an ... union." *

"This may be the ill-fated moment for relaxing the powers of the Union, annihilating the cement of the confederation, and exposing us to become the sport of European politics, which may play one State against another ... For according to the system of policy the States shall adopt at this moment, they will stand or fall."

"Although it may not be necessary ... to enter into a particular disquisition of the principles of the union, and to take up the great question which has frequently been agitated whether it be expedient and requisite for the states to delegate a larger proportion of power to congress or not," etc.†

"It now rests with the Confederated Powers, by the line of conduct they mean to adopt, to make this Country great ... To suppose that the general concerns of this country can be directed by thirteen heads ... is a solecism, the bad effects of which every man who has had the practical knowledge to judge from, that I have, is fully convinced of." ‡

"The disinclination of the individual States to yield competent powers to Congress for the federal government, their unreasonable jealousy of that body and of one another ... will ... be our downfall." §

"... We stand in a ridiculous point of view in the eyes of the nations of the world, with whom we are attempting to enter into commercial treaties, without means of carrying them into effect; who must see and feel that the Union or the States individually are sovereign, as best suits their purposes; in a word that we are one nation to-day and thirteen to-morrow! ... ." 11A ||

"At present, or under our existing form of confederation, it would be idle to think of making commercial regulations on our part. One State passes a prohibitory law respecting some

* Washington to Greene, March 31, 1783.
† Italics by the author. Washington's Circular Letter to the Governors of the States, June 8, 1783.
‡ Washington to Gordon, July 8, 1783.
§ Washington to Harrison, January 18, 1784.
|| Washington to McHenry, August 22, 1785.
article, another State opens wide the avenue for its admission. One Assembly makes a system, another Assembly unmakes it." *

"It behoves us then to establish just principles; and this . . . cannot be done by thirteen heads differently constructed and organized. The necessity, therefore, of a controlling power is obvious; and why it should be withheld is beyond my comprehension." †

". . . a measure, in which this State has taken the lead at its last session, will, it is to be hoped, give efficient powers to that body (Congress) for all commercial purposes. This is a nomination of some of its first characters to meet other commissioners from the several States, in order to consider of and decide upon such powers, as shall be necessary for the sovereign power of them to act under; which are to be reported to the several legislatures . . . for, it is to be hoped, final adoption; thereby avoiding those tedious and futile deliberations, which result from recommendations and partial concurrences." ‡

Answering Jay's letter of June 27, 1786, he writes:

"Be that as it may, requisitions are a perfect nullity, when thirteen sovereign, independent, disunited states, are in the habit of discussing, and refusing or complying with them at their option."

"Thirteen sovereignties pulling against each other, and all tugging at the Federal head, will soon bring ruin on the whole." §

"The alliance between the States under the old Articles of Confederation, for the purpose of joint defence against the aggression of Great Britain, was found insufficient, as treaties of alliance generally are, to enforce compliance with their mutual stipulations; and these once fulfilled, that bond was to expire of itself, and each State to become sovereign and independent in all things. Yet it could not but occur to every

---

* Washington to Lafayette, April 28, 1788.
† Washington to James Warren, October 7, 1785.
‡ Washington to Lafayette, May 10, 1786.
§ Washington to Madison, November 5, 1786.
one, that these separate independencies, like the petty States of Greece, would be eternally at war with each other, and would become at length the mere partisans and satellites of the leading powers of Europe.” *

“The close of the war however brought no cure for the public embarrassments. The States relieved from the pressure of foreign danger, and flushed with the enjoyment of independent and sovereign power; (instead of a diminished disposition to part with it,) persevered in omissions incompatible with their relation to the Federal Govt.,” etc.†

“The principal difficulties which embarrassed the progress, and retarded the completion of the plans of Confederation may be traced to 1. the natural reluctance of the parties to a relinquishment of power: 2. a natural jealousy of its abuse in other hands than their own: 3. the rule of suffrage among parties unequal in size, but equal in sovereignty,” etc.‡

“But the radical infirmity of the Arts. of Confederation was the dependence of Cong., on the voluntary and simultaneous compliance with its Requisitions, by so many independent communities, each consulting more or less its own particular interests,” etc.§

“Then to Mr. Peters, the Secretary to the Board of War . . . His house is not large, nor his office of great importance; for every thing which is not in the power of the General of the Army, depends on each particular state, much more than on Congress.” ||

“The United States have the same right, and can . . . regulate their foreign trade on the same principle; but it is a misfortune, that Congress have not yet been authorized for that purpose by all the States . . . It is of great importance and the happiness of the United States depends upon it that Congress should be vested with all the powers necessary to preserve the Union, to manage the general concerns of it, and secure and promote its common interest. . . . This matter,

* Jefferson’s “Anas.”
† Madison, Preface to Debates in Federal Convention.
‡ Ibid.
§ Ibid.
gentlemen, merits your attention; and if you think that Congress should be vested with ample power," etc.*

APPENDIX II

Page 236

The Duke of Dorset replied, March 26, 1785, to the American Commissioners, when they informed him that they were ready to make a treaty of commerce with his government:

"I have been instructed to learn from you, gentlemen, what is the real nature of the powers with which you are invested; whether you are merely commissioned by Congress, or have received separate powers from the separate States. The apparent determination of the respective States to regulate their own separate interests renders it absolutely necessary, towards forming a permanent system of commerce, that my Court should be informed how far the commissioners can be duly authorized to enter into any engagements with Great Britain, which it may not be in the power of any one of the States to render totally fruitless and ineffectual."

"The oppressed and degraded state of commerce previous to the adoption of the constitution can scarcely be forgotten. It was regulated by foreign nations with a single view to their own interests; and our disunited efforts to counteract their restrictions were rendered impotent by want of combination. Congress, indeed, possessed the power of making treaties; but the inability of the federal government to enforce them had become so apparent as to render that power in a great degree useless." †

* Address of Govr. Bowdoin of Massachusetts to the General Court of Massachusetts, 1785; Robert C. Winthrop, Address before the Maine Historical Society, September 5, 1849, p. 39.
† Judge Marshall, in Brown et al. vs. State of Maryland.
APPENDIX 12

"The delegates of Virginia laid before Congress certain powers and instructions to them given by the general assembly of their state, which were read, and are as follows: . . .

"Resolved, That our delegates in Congress be instructed to propose to Congress that they recommend to each of the states named as parties in the Articles of Confederation, heretofore laid before and ratified by this Assembly, that they authorize their delegates in Congress to ratify the said articles, together with the delegates of so many other of the said states as shall be willing, so that the same shall be forever binding on the states so ratifying, allowing, nevertheless, to the said states so declining, either a given or indefinite time, as to Congress shall seem best, for acceding to the said Confederation, and making themselves thereby members of the union," etc.*

"Resolutions preparatory to the formation of the Constitution Recommended September 17, 1787.

I. Resolved, that the Articles of Confederation ought to be so corrected and enlarged, as to accomplish the objects proposed by their institution, namely, common Defence, Security of Liberty and general welfare." The term "common defence" implying various communities; one does not speak of the "common defence" of a country.


"The house took into consideration the 13 articles of confederation . . . between the thirteen United States of America, as agreed to by the honourable Congress of the said states, and came to the following resolution thereon, viz.,

"Resolved, That we do agree to said articles of confederation . . . and do, for ourselves and constituents, engage that the same shall be inviolably observed by this state; and the delegates of this state for the time being, at the Congress

* Journals of Congress, May 20, 1779.
aforesaid, are hereby empowered and instructed to ratify the
same in behalf of this state."*

"Massachusetts Bay. Council Chamber, Boston, March 10,
1778.

"Gentlemen, The general court of the state of Massachu-
setts Bay, having . . . considered the articles of confedera-
tion . . . between the United States of America . . . do ap-
prove of them . . . as well calculated to secure the freedom,
sovereignty and independence of the United States . . . We
therefore . . . do in the name and behalf of the good people
of this state, instruct you, their delegates . . . to subscribe
said articles of Confederation."†

Could it be the "sovereignty and independence of the United
States" as a unit which Massachusetts desired to secure when
she [one of them] in terms and action thus operated in her
own several sovereignty?

"This assembly having taken into consideration the Articles
of Confederation . . . between the states of N. Hampshire,
Massachusetts-Bay [others named] . . . and considering also
the pressing necessity of completing the union as a mea-
sure essential to the preservation of the independence and
safety of the said states do vote . . . that . . . the delegates
to represent this state in Congress . . . are hereby author-
ized . . . on the part and in behalf of this state to accede to
. . . the said articles of confederation."‡

"Be it known that Henry Ward Esq., who hath . . . certi-
fied that the annexed copy, purporting an act of the general
assembly of the state aforesaid, empowering the delegates of
the said states in Congress to accede to . . . the articles of
Confederation."§

". . . Know ye, that we the said representatives having
taken into . . . consideration . . . the articles of confedera-
tion between the states of N. Hampshire [others named] . . .

* Journals of Congress, June 27, 1778.
† Journals of Congress, June 27, 1778.
‡ Ibid.
do by this present instrument . . . accede to, ratify, confirm and agree to the said articles . . ."* 

"The two houses of the general assembly have taken into consideration the confederacy proposed to the United States by the continental Congress, and have unanimously acceded thereto." †

". . . yet, under the full conviction of the present necessity of acceding to the confederacy proposed," etc.‡

"Under the . . . conviction of the present necessity of acceding to the confederacy proposed . . . Be it enacted . . . that the Hon. John Dickinson . . . be . . . authorized . . . on behalf of this state to subscribe and ratify the said articles of confederation . . . between the several states afore-said . . ." §

"At a general Assembly . . . of the state of Connecticut . . .

"It appearing to this assembly to be . . . necessary for the preservation . . . independence and sovereignty of the United States . . . that the articles of confederation . . . be acceded to . . . and whereas all of the said states except Maryland have . . . confirmed said articles of confederation . . . and whereas the confederation of thirteen states may not be considered as obligatory on twelve states only:

"Resolved, That the delegates of this state in Congress be directed . . . to . . . ratify . . . said articles of confederation . . . with the states of New Hampshire [others named] " . . . always provided that the state of Maryland be not thereby excluded from acceding to the said Confederation at any time hereafter," etc. ||

February 12, 1781. " . . . The delegates for Maryland laid before Congress . . . an act of the legislature of the state, which was read as follows:

"'An act to empower the delegates of this state in Congress, to . . . ratify the articles of confederation.

† Ratification of North Carolina, Journals of Congress, June 27, 1778.
‡ Ratification of New Jersey, Journals of Congress, November 25, 1779.
§ Ratification of Delaware, Journals of Congress, February 16, 1779.
|| Journals of Congress, May 21, 1779.
“'Whereas, it hath been said that the common enemy is encouraged by this state not acceding to the confederation to hope that the union of the sister states may be dissolved... to convince all the world of our unalterable resolution to support the independence of the United States... and to destroy forever any... hope in our enemies of this state being again united to Great Britain...’”

March 1, 1781. “... act of... New York... in the words following: 'Whereas nothing... can more effectually contribute to the... safety of the United States of America than a federal alliance,” etc.†

APPENDIX 13

(Page 40)

“Those intelligent minds, in which patriotism was combined with practical good sense, were by no means unapprised of the dangers to be apprehended from a system (the Confederacy) in which the national character was not even sought to be preserved; and by which the American confederacy became substantially an alliance of independent nations, whose several ambassadors assembled in a general congress for the purpose of recommending to their respective sovereigns that general plan of operations, which had been there concerted, and which each was at perfect liberty to pursue or to neglect.”‡

Mr. Marshall used the same phrase in his charge in Gibbons vs. Ogden:

“As preliminary to the very able discussions of the constitution which we have heard from the bar, and as having some influence on its construction, reference has been made to the political situation of these states anterior to its formation. It has been said, that they were sovereign, were com-

* Journals of Congress.
† Journals of Congress.
pletely independent, and were connected with each other only by a league. This is true. But when these allied sovereigns converted their league into a government, when they converted their congress of ambassadors, deputed to deliberate on their common concerns, and to recommend measures of general utility," etc.

A similar expression was used by Mr. Gouverneur Morris in the Federal Convention, arguing against State equality in the Senate, as reported in Yates's Minutes:

"A government by compact is no government at all. You may as well go back to your congressional federal government, where in the character of ambassadors they may form treaties for each state."

Also by the State of Connecticut:

"It was the force of external circumstances only that gave to the recommendations of the old congress the authority of laws. When the outward pressure was removed, the Union was practically dissolved, and anarchy ensued. Without the Judicial department, the Congress of the United States would now be but an assemblage of ambassadors whose efficiency would begin and end in advisory consultations." *

The idea persisted, even after the Constitution, among gentlemen who had been active in framing and advocating it; e.g.:

"The Senators represent the Sovereignty of the States . . . They are in the quality of ambassadors of the States." †

APPENDIX 14

(Page 43)

In view of later history, it is perhaps worth noting that the New England States, like the statues at the funeral of Julia, were conspicuous by their absence at this conference.

* Resolutions of Connecticut, May, 1831, on the Georgia Resolutions.
"Apropos; what prevented the Eastern States from Attending the September meeting at Annapolis?" *

According to Jefferson, the reason was as follows:

"This fact throws a blaze of light on the conduct of several members from New York and the eastern States in the convention of Annapolis, and the grand convention. At that of Annapolis, several eastern members most vehemently opposed Madison's proposition for a more general convention. . . . They wished things to get more and more into confusion to justify the violent measures they proposed. The idea of establishing a government by reasoning and agreement, they publicly ridiculed as an Utopian project." †

APPENDIX 15

(Page 44)

"Aside from the ordinary methods of parliamentary procedure, two things were agreed upon that are essential in understanding the working of the convention. In the first place, the whole organization of the convention was on the basis of state representation: each state having one vote, seven states making a quorum, and a majority of states present being competent to decide all questions, though the deputies of a state by simply requesting it might postpone the vote upon any question until the following day. This matter of state representation had been the subject of informal discussion during the days that elapsed while the delegates present were waiting for a quorum. The Pennsylvania delegates and Gouverneur Morris in particular urged 'that the large States should unite in firmly refusing to the small States an equal vote, as unreasonable, and as enabling the small States to negative every good system of Government.' The Virginia delegates, however, succeeded in stifling the project for fear that it 'might beget fatal altercations between the large and small States.'" ‡

* Washington to Henry Knox, December 26, 1786.
† "Anas," January 5, 1798; N. Y., 1903.
The Commissioners, who met at Annapolis in 1786, conclude their Report, advising another meeting with greater power and fuller representation, in these words, \textit{viz.:}:

"Though your Commissioners could not with propriety address these Observations and Sentiments to any but the States they have the honor to Represent, they have nevertheless concluded from motives of respect, to transmit Copies of this Report, to the United States in Congress Assembled, and to the Executives of the other States."

\textbf{APPENDIX 16}

\textit{(Page 47)}

"How long before the business of Convention will be finished is very uncertain . . . Believe me, Sir, it is no small task to bring to a conclusion the great objects of a United Government viewed in different points by thirteen Independent Sovereignties . . ." *

"Much time has been employed in drawing the outlines of the Subjects of their Deliberations in which as much unanimity has prevailed as could be well expected from so many Sentiments arising in twelve Independent Sovereign Bodies; Rhode Island not having deigned to Keep company with her Sister States on this Occasion." †

"A very large Field presents to our view without a single Straight or eligible Road that has been trodden by the feet of Nations. An Union of Sovereign States, preserving their Civil Liberties and connected together by such Tyes as to Preserve permanent & effective Governments is a system not described, it is a Circumstance that has not occurred in the History of Men . . ." ‡

"Your Excellency is not now to be informed that I am not

† Alexander Martin (delegate of N. C.) to Govr. Caswell, August 20, 1787.
‡ North Carolina delegates to Govr. Caswell, June 14, 1787.
at liberty to explain the particulars of the mode of government that the Convention have in contemplation, but I will venture to assure you that it will be such a form of government as I believe will be readily adopted by the several states." *

"The powers of the General Government are so defined as not to destroy the Sovereignty of the Individual States." †

"It appears to me, then, little short of a miracle, that the delegates from so many different States (which States you know are also different from each other), in their manners, circumstances, and prejudices, should unite in forming a system of national government," etc. ‡

"And, in the important revolution just accomplished in the system of their united government, the tranquil deliberations and voluntary consent of so many distinct communities, from which the event has resulted," etc. §

"It is a fact declared by the general convention, and universally understood, that the constitution of the United States was the result of a spirit of amity and mutual concession." ||

"After four months' session the house broke up, the represented states, eleven and a half, having unanimously agreed to the act [the proposed Constitution] handed to you." ‖

"Met in Convention when the Constitution received the unanimous assent of 11 States and Col. Hamilton for New York." **

Mr. Pelatiah Webster, to whom is sometimes credited the first idea of the Constitution, says:

"Indeed I begin to have hopes of Brutus . . . for I observe . . . the constitution he defines and adopts is the very same as that which the Federal Convention have proposed to us, viz.: 'That the Thirteen States should continue thirteen confederated republics, under the direction and control of a

* Hugh Williamson (delegate from N. C.) to Govr. Caswell, August 20, 1787.
† Pierce Butler (delegate of S. C.) to Weedon Butler, October 8, 1787.
‡ Washington to Lafayette, February 7, 1788.
§ Washington's Inaugural Speech, April 30, 1789.
‖ Washington, Message to House of Representatives, March 30, 1796.
‖ Washington to Jefferson, October 11, 1787.
** Washington's "Diary," September 17, 1787.
supreme federal head, for certain defined national purposes only. . . . His first question is, Whether a confederated government is best for the United States?

"I answer if Brutus . . . cannot find any benefit resulting from the union of the Thirteen States," etc.*

APPENDIX 17

(Page 47)

Delaware had foreseen and provided against attempts to derogate from her equality; and the significance of her instructions to her delegates was at once noted.

"In the eleventh year of the independence of the Delaware state. An act appointing Deputies from this State to the Convention proposed to be held in the City of Philadelphia, for the purpose of revising the Federal Constitution . . . So always and provided, that such alterations . . . do not extend to that part of the 5th article of the confederation of the said states, . . . which declares that 'In determining questions in the United States in Congress assembled, each state shall have one vote.'" †

"The state of Delaware has tied up the hands of her deputies by an express direction to retain the principle in the present confederation of each state having the same vote," ‡ etc.

"The representatives from the different states having met on the 25th of May, 1787, at the state-house in Philadelphia, General Washington having been unanimously placed in the chair, and Major Jackson, by the votes of all the states, except Pennsylvania, appointed secretary; the convention proceeded to read the powers given by the different states to their delegates, among which were particularly noticed the power of

† Credentials of the Delegates of Delaware to the Federal Convention, February 3, 1787; Elliot, Vol. I.
‡ Geo. Mason, Sr., to Geo. Mason, Jr., May 27, 1787.
Delaware, which restrained its delegates from assenting to an abolition of the fifth article of the confederation, by which it is declared 'that each state shall have one vote.'" *

On the question of the Confederation, Delaware had taken the same stand, thereby bringing into full debate the same question.

"Dr. Franklin thought, that the votes should be so proportioned in all cases. He took notice that the Delaware counties had bound up their delegates to disagree to this article. He thought it a very extraordinary language to be held by any State, that they would not confederate with us, unless we would let them dispose of our money." †

APPENDIX 18

(Page 50)

"After all, in discussing & expounding the character & import of a Constn., let candor decide whether it be not more reasonable & just to interpret the name or title by the facts on the face of it, than to make the title torture the facts by a bed of Procrustes into a fitness to the title." ‡

APPENDIX 19

(Page 54)

"Reflect for a moment on the situation of the Eastern States . . . They can enjoy their independence without our assistance. If our government is to be founded on equal compact, what inducement can they possibly have to be united to us without having," etc., etc. §

* Yates's "Secret Proceedings."
‡ Madison, Letter to John Tyler.
"I will not . . . trace the ills we suffer up to their source . . . For . . . those who inculcate principles inconsistent with all social union, charge the opponents of their disorganizing principles with an intention to separate the Eastern from the Southern States. That the course pursued . . . will, if persisted in, occasion that separation there can be but little doubt, but he who spent the flower of youth and the strength of manhood in labouring to promote and confirm the American union, can never, but in the last necessity, recommend its dissolution . . . Federalists are too proud of the name they bear, to view unmoved, the danger to which our federal compact is exposed . . . But although we deprecate the impending separation, yet we conceive that, under existing circumstances, prudent men should prepare for events, and fortify their hearts for such struggles as the cause of justice," etc.*

This is here introduced with special reference to the term, "federal compact." But the plain and undoubted implication of the propriety of a dissolution of the union under certain conditions (the same doctrine was yet more plainly stated by Mr. Morris, v. Appendix 328) is also particularly noteworthy, from the mouth of its propounder; Mr. Morris having been one of the strongest advocates of a strong and centralized government among the makers of the Constitution. He had used the same words, and in a way to define their meaning, in the Federal Convention:

"It had been said that it was high time to speak out. As one member, he would candidly do so. He came here to form a compact for the good of America. He was ready to do so with all the states. He hoped and believed that all would enter into such a compact. If they would not, he was ready to join with any states that would. But as the compact was to be voluntary, it is in vain for the Eastern States to insist on what the Southern States will never agree to. It is equally vain for the latter to require," etc. †

“And so in his letter to Lewis Sturges in 1814, he [Gouverneur Morris] says: ‘The Constitution was a compact, not between solitary individuals, but between political societies; the people, not of America, but of the United States, each enjoying sovereign power, and of course equal rights.’” *

Mr. Morris apparently considered the compromise which gave the States equality in the Senate a seal of compact; arguing against it, he said:

“A government by compact is no government at all. You may as well go back to your congressional federal government, where in the character of ambassadors they may form treaties for each state.” †

Mr. Wilson’s theory, however, has all the vitality of partisan convenience. Mr. Webster

“did not agree that in strictness of language the Constitution was a compact at all”; “I maintain that the Constitution of the United States is not a league, confederation, or compact between the people of the several States in their sovereign capacities,” answering Mr. Clay.

In his lauded reply to Mr. Hayne, he asserted:

“He has not shown, it cannot be shown, that the Constitution is a compact between State governments. It does not even say that it is established by the people of the several States; but it pronounces that it is established by the people of the United States in the aggregate.”

“The Defender of the Constitution” probably was aware that his native State, New Hampshire, and his adopted one, Massachusetts, thanked God officially for the “opportunity of entering into a compact.” The ratification of the former runs:

“In Convention of the Delegates of the People of the State of New Hampshire, June 21st, 1788:—

* John Randolph Tucker, “The Relations of the United States to Each Other,” p. 66; 1877.
† Yates’s "Minutes."
"The Convention . . . acknowledging with grateful hearts the Goodness of the Supreme Ruler of the Universe in affording the People of the United States . . . an opportunity, deliberately and peaceably, without fraud or surprise, of entering into an explicit and solemn compact with each other . . . Do in the name and behalf of the people of the State of New Hampshire, assent to and ratify the said Constitution," etc.

That of the latter:

"The Convention . . . acknowledging, with grateful hearts, the goodness of the supreme Ruler of the universe in affording the people of the United States . . . an opportunity, deliberately and peaceably, without fraud or surprise, of entering into an explicit and solemn compact with each other, by assenting to and ratifying a new Constitution, . . . do in the name and behalf of the people of the Commonwealth of Massachusetts, assent to and ratify the said Constitution for the United States of America."

Massachusetts was in earlier days rather conspicuously given to invoking the term, with its consequences, as the following extracts show:

"That the people in the solemn compact which is declared to be the supreme law of the land," etc.*

"Time was, when the United States were preeminently blessed, in this regard. For years after the national compact was carried into effect, this blessedness was conspicuous to every beholder." †

"The proportion of the political weight of each foreign State, composing this union, depends upon the number of the States, which have a voice under the compact . . . availing themselves of the contrariety of interests . . . which in such a confederacy of States necessarily arise," etc.‡

"We spurn the idea that the free, sovereign and independent

* Reply to the Virginia Resolutions, Feb. 9, 1799.
† John Foster, Sermon, p. 13; Cambridge, 1811.
‡ June 16, 1813, on admission of Louisiana. Showing it to be a compact of the several States, not of the whole people with each other as individuals.
State of Massachusetts is reduced to a mere municipal corporation, without power to protect its people, and defend them from oppression, from whatever quarter it comes . . . Whenever the national compact is violated . . . this legislature is bound to interpose its power," etc.*

Her delegate in the Convention, and later Senator, Mr. Rufus King, speaking in the Senate, said:

"The compromise on the subject of the Presidential election, which has always been binding in honor . . . Hence it has happened, from year to year, that attempts have been made by certain States, to alter the Constitution in the subject of the Presidential election, notwithstanding this election is matter of compromise and compact between the States, without which no Constitution could have been formed."

And again: "For this reason, measures which may be employed in the several States under regulations and provisions of simple and single sovereignties could not be adopted in the balanced system of the Constitution—a compact between the States." †

"It will not be contended that by the terms used in the constitutional compact, the power of the National Government is," etc. ‡

"If the legislature of a single State might, under such circumstances, endeavor to provide for its defence, without infringing the national compact," etc. §

"No pretence is urged that any . . . forcible violation of the constitutional compact, has ever happened in Massachusetts," etc. ||

"The objection to the Louisiana treaty was founded on the just construction of the compact between sovereign States." ¶

* General Court of Massachusetts, on the Embargo, February 22, 1814.
† March 23, 1824.
|| Ibid., p. 88.
¶ Ibid., p. 78.
In fact it continued the use of the term, etc., down to the time when it [and Mr. Webster] found the consequences necessarily to be deduced therefrom unpalatable: e. g.: "Resolved, That the people of Massachusetts, faithful to the compact between the people of the United States," etc.*

At that time also, one of its citizens, a contemporary of the Constitution, and of sufficient importance to have been President of the United States, Mr. John Quincy Adams, in his address against the annexation of Texas, said:

"It would be a violation of our national compact . . . so unjust . . . as in our opinion not only inevitably to result in a dissolution of the Union but fully to justify it."

Nor was it only by Massachusetts that the term and principle was explicitly recognized. Most, or all, of the original (and some of the admitted) States at various times did the same.

"This House considers such declaration as a revolutionary measure, destructive of the purest principles of our State and National compacts." †

"Resolved, That . . . a system of foreign colonization . . . might be adopted that would in due time effect the entire emancipation of the slaves in our country without any violation of the national compact," etc. ‡

In 1820 the Legislature of Ohio, in its Resolution against the Bank of the United States, also invokes the "compact," using the wording of the Kentucky Resolution.

"Foreseeing the terrible effects which might ensue from differences of opinion on national subjects . . . They [our ancestors] declared the compact [viz.: the Constitution] amendable," etc. §

"The further admission of territories into the union with-

* On the annexation of Texas, March 15, 1844.
† Reply of Pennsylvania to Kentucky Resolutions, February 9, 1799.
‡ Ohio, on Emancipation, etc., January 17, 1824.
§ Address of the minority of the House of Delegates of Virginia on the Resolution, 1798.
out restriction of slavery, would, in their opinion, essentially impair the right of this and other existing states to equal representation in Congress (a right at the foundation of the political compact)." *

"If, odious as slavery is, it was proposed to hasten its extinction by means injurious to the states upon which it was unhappily entailed, Pennsylvania would be among the first to insist upon a sacred observance of the Constitutional compact," etc. †

"The people of the United States by the adoption of the federal constitution established a general government for special purposes, reserving to themselves respectively, the rights and authorities not delegated in that instrument. To the compact thereby erected, each state acceded in its character as a state, and is a party. The act of union thus entered into being to all intents and purposes a treaty between sovereign states," etc. ‡

"The Constitution of the United States is a compact, a fundamental treaty." §

"Whereas, The Constitution of the United States is a compact between the several states and forms the basis of our Federal Union." ¶

"Thus has the question whether the Federal Courts are the sole expositors of the Constitution of the United States in the last resort, or whether the States 'as in all other cases of compact' ... been decided against the pretensions of the federal judges," etc. ‖

It is not thought necessary, in this connection, to give the various similar declarations of the Southern States. But it will be seen that a large proportion of the original States explicitly affirmed the fact, which "The Defender of the Constitution" asserted could not be shown, in such words as to forbid any assumption that the "compact" denoted was the "social

* Resolution of New Jersey, January 24, 1820.
† Resolution of Pennsylvania, December 22, 1819.
‡ Resolutions of Pennsylvania against the Bank, January 11, 1811.
§ Resolves of Iowa, on the Compromise; 1851.
¶ New Jersey, on the Compromise, January 30, 1852.
‖ Report of Ohio relative to the Bank, January 3, 1821.
compact,” or anything but a compact between States,—not state governments.

Later on, in his second speech at Capon Springs, June 28, 1851, Mr. Webster found himself compelled to make use of the same term to justify the contention he then supported.

“If large portions of public bodies, against their duty and their oaths, will persist in refusing to execute the Constitution, and do in fact prevent such execution, no remedy seems to lie by any application to the Supreme Court. The case now before the country clearly exemplifies my meaning. Suppose the North to have decided majorities in Congress, and suppose these majorities persist in refusing to pass laws for carrying into effect the clause of the Constitution, which declares that fugitive slaves shall be restored, it would be evident that no judicial process could compel them to do their duty, and what remedy would the South have?

“How absurd it is to suppose that when different parties enter into a compact for certain purposes, either can disregard any one provision, and expect nevertheless the other to observe the rest! . . .

“I have not hesitated to say and I repeat, that if the Northern States refuse wilfully and deliberately to carry into effect that part of the Constitution which respects the restoration of fugitive slaves, the South would no longer be bound to observe the compact. A bargain broken on one side is a bargain broken on all sides.”

Mr. Webster had, in fact, himself favoured the term at an even earlier date, as Mr. Calhoun pointed out with gentle sarcasm:

“I trust, however, that the Senator will excuse me, when he comes to hear my apology. In matters of criticism, authority is of the highest importance, and I have an authority of so high a character, in this case, for using the expression which he considers so obscure and so unconstitutional, as will justify me even in his eyes. It is no less than the authority of the Senator himself—given on a solemn occasion (the discussion
on Mr. Foote’s resolution), and doubtless with great deliberation, after having duly weighed the force of the expression . . . ‘Nevertheless, I do not complain, nor would I countenance any movement to alter this arrangement of representation. It is the original bargain—the compact—let it stand; let the advantage of it be fully enjoyed. The Union itself is too full of benefits to be hazarded in propositions for changing its original basis. I go for the constitution as it is, and for the Union as it is. But I am resolved not to submit in silence to accusations, either against myself individually, or against the north, wholly unfounded and unjust—accusations which impute to us a disposition to evade the CONSTITUTIONAL COMPACT, and to extend the power of the Government over the internal laws and domestic condition of the States.’

“It will be seen, by this extract, that the Senator not only used the phrase ‘constitutional compact,’ which he now so much condemns, but, what is still more important, he calls the constitution itself a compact—a bargain; which contains important admissions, having a direct and powerful bearing on the main issue involved in the discussion, as will appear in the sequel. . . .

“On this point there is a very important part of the constitution entirely and strangely overlooked by the Senator in this debate, as it is expressed in the first resolution, which furnishes conclusive evidence not only that the constitution is a compact, but a subsisting compact, binding between the States. I allude to the seventh article, which provides that ‘the ratification of the conventions of nine States shall be sufficient for the establishment of this constitution between the States so ratifying the same.’ Yes, ‘between the States.’ These little words mean a volume—compacts, not laws, bind between States; and it here binds, not as between individuals, but between the States: the States ratifying; implying, as strong as language can make it, that the constitution is what I have asserted it to be—a compact, ratified by the States, and a subsisting compact, binding the States ratifying it.”

*Calhoun’s Speech on State Rights, February 26, 1833; “Works,” Vol. VI, pp. 267-8, 269. Vide, also, Appendix 19A for extract from “Rockingham Memorial,” written by Mr. Webster.
In fact, the word, and the idea, was used at the time not only in speaking of the Constitution but by contracting parties to the deed by which they entered therein; it was the term in the mouths of the members of the Convention as well as others: *e.g.*, "The object of this meeting is very important to my mind—unless a system of government is adopted by **Compact, Force** I expect will plant the Standard; for such an anarchy as now exists cannot last long." *

"The real parties to the constl. compact of the U. S. are the **States**—that is, the people thereof respectively in their sovereign character, and they **alone**." †

"Do you enter into a compact first, and afterwards settle the terms of the government? It is admitted by every one that this is a compact." ‡

**Again:**

"Virginia . . . is called upon to accede to another compact which supersedes the present one." §

"Is it not necessary to speak of those things before you go into a compact? . . . In a compact there are two parties—one accepting and another proposing. As a party, we propose that we shall secure these three things; and before we have the assent of the other contracting party, we go into the compact and leave these things at their mercy." ||

"But a few years ago we were equal in votes and influence, though inferior in size and population, to the largest States. We consented to give up a certain portion of that influence for the general good, expressly retaining the other portion for our own protection and security. This instrument, the Constitution . . . is the new compact which that temper produced. It is the great plan of compromise between the great and small states," etc. ¶

"After serious investigation, it was solemnly determined

---

*Elbridge Gerry (of Massachusetts) to James Monroe, June 11, 1787.
‡Patrick Henry, in the Virginia Ratifying Convention, arguing against ratification prior to amendment.
¶Ibid., p. 599.
†Jonathan Dayton, of New Jersey, in U. S. Senate, December 2, 1803.
APPENDIX 19

... if ... that offensive feature ... could not be expunged ... we would secede from the convention, and, returning to our constituents inform them that no compact could be formed with the large states but one which would sacrifice our sovereignty and independence.” *

“The Federal Constitution establishes a Government of the last description ... the Government, and the powers which the Congress can administer, are the mere result of a Compact.” †

“This is the only Government founded in real Compact.” ‡

“Are we, then, to stand at arms? ... No, that must be the last resource, not to be thought of until much longer and greater sufferings. If every infraction of a compact of so many parties is to be resisted at once as a dissolution of it,” etc. §

“Whilst the General Assembly thus declares the rights retained by the States, rights which they have never yielded, and which this State will never voluntarily yield, they do not mean to raise the banner of disaffection, or of separation from their sister States, co-parties with themselves to this compact. They know and value too highly the blessings of their Union as to foreign nations and questions arising among themselves, to consider every infraction as to be met by actual resistance. They respect too affectionately the opinions of those possessing the same rights under the same instrument, to make every difference of construction a ground of immediate rupture. They would, indeed, consider such a rupture as among the greatest calamities which could befall them; but not the greatest. There is yet one greater, submission to a government of unlimited powers. It is only when the hope of avoiding this shall become absolutely desperate, that further forbearance could not be indulged. Should a majority of the co-parties, therefore, contrary to the expectation and hope of this as-

* Jonathan Dayton, as narrated by William Steele, to Jonathan D. Steele, September, 1825.
† Parsons in Massachusetts Ratifying Convention.
semble, prefer, at this time, acquiescence in these assumptions of power by the federal member of the government, we will be patient and suffer much, under the confidence that time, ere it be too late, will prove to them also the bitter consequences in which that usurpation will involve us all. In the meanwhile, we will breast with them, rather than separate from them, every misfortune, save that only of living under a government of unlimited powers. We owe every other sacrifice to ourselves, to our federal brethren, and to the world at large, to pursue with temper and perseverance the great experiment which shall prove that man is capable of living in society, governing itself by laws self-imposed, and securing to its members the enjoyment of life, liberty, property, and peace; and further to show, that even when the government of its choice shall manifest a tendency to degeneracy, we are not at once to despair but that the will and the watchfulness of its sounder parts will reform its aberrations, recall it to original and legitimate principles, and restrain it within the rightful limits of self-government. And these are the objects of this Declaration and Protest.” *

“But the federal branch has assumed in some cases, and claimed in others, a right of enlarging its own powers by constructions, inferences, and indefinite deductions from those directly given, which this assembly does declare to be usurpations of the powers retained to the independent branches, mere interpolations into the compact, and direct infractions of it.

“They claim, for example, and have commenced the exercise of a right to construct roads, open canals, and effect other internal improvements within the territories and jurisdictions exclusively belonging to the several States, which this assembly does declare has not been given to that branch by the constitutional compact, but remains to each State among its domestic and unalienated powers, exercisable within itself and by its domestic authorities alone.” †

† Ibid., Vol. IX, p. 467.
“We, the General Assembly of Virginia, on behalf, and in the name of the people thereof, do declare as follows:

“The States in North America which confederated to establish their independence of the government of Great Britain, of which Virginia was one, became, on that acquisition, free and independent States, and as such, authorized to constitute governments, each for itself, in such form as it thought best.

“They entered into a compact (which is called the Constitution of the United States of America), by which they agreed to unite in a single government as to their relations with each other, and with foreign nations, and as to certain other articles particularly specified. They retained at the same time, each to itself, the other rights of independent government, comprehending mainly their domestic interests.” *

“And with no body of men is this restraint more wanting than with the judges of what is commonly called our general government, but what I call our foreign department. They are practising on the constitution by inferences, analogies, and sophisms, as they would on an ordinary law. They do not seem aware that it is not even a constitution, formed by a single authority, and subject to a single superintendence and control; but that it is a compact of many independent powers, every single one of which claims an equal right to understand it, and to require its observance. However strong the cord of compact may be, there is a point of tension at which it will break. †

APPENDIX 19A

(PAGE 257)

Mr. Webster then also took exception to the word "accede" in reference to the States' adoption of the Constitution.

“The first Resolution declares that the people of the several States ‘acceded’ to the Constitution. . . . This word ‘ac-

cede' not found either in the Constitution itself, or in the rati-
fication of it by any one of the States, has been chosen for use
here, doubtless, not without a well considered purpose. The
natural converse of accession is secession; and, therefore,
when it is stated that the people of the States acceded to the
Union, it may more plausibly be argued that they may secede
from it. If, in adopting the Constitution nothing was done
but acceding to a Compact, nothing would seem necessary, to
break it up, but to secede from the same Compact." *

Mr. Calhoun says:

"But, strong as his objection is to the word 'constitutional,'
it is still stronger to the word 'accede,' which, he thinks, has
been introduced into the resolution with some deep design, as
I suppose, to entrap the Senate into an admission of the doc-
trine of State Rights. Here, again, I must shelter myself
under authority. But I suspect the Senator, by a sort of in-
stinct (for our instincts often strangely run before our knowl-
dge), had a prescience, which would account for his aversion
for the word, that this authority was no less than Thomas
Jefferson himself, the great apostle of the doctrine of State
Rights. The word was borrowed from him. It was taken
from the Kentucky Resolution, as well as the substance of the
resolution itself. But I trust I may neutralize whatever aver-
sion the authorship of this word may have excited in the mind
of the Senator, by the introduction of another authority—that
of Washington himself, who, in his speech to Congress, speak-
ing of the admission of North Carolina into the Union, used
this very term, which was repeated by the Senate in their
reply." †

Washington, indeed, used it more than once, both officially
and personally.

"The recent accession of the important State of North
Carolina," etc. ‡

* Webster, in reply to Calhoun.
† Calhoun's Speech in reply to Mr. Webster, on State Rights, February
‡ Speech to both Houses of Congress, January 8, 1790.
APPENDIX 19A

The answer of the Senate runs:

"To the President . . . We the Senate of the United States, return . . . The accession of the State of North Carolina . . . gives us much pleasure. . . ." *

"The constant report is, that North Carolina will soon accede to the new Union." †

"Let the opponents of the proposed Constitution . . . be asked . . . what line of conduct they would advise . . . if nine other States . . . should accede to the Constitution." ‡

"But of all arguments . . . the most prevailing one . . . will be that nine States at least will have acceded to it." §

"Their exhilaration was greatly increased . . . by the arrival of . . . the news that the Convention of New Hampshire had, on the 21st instant, acceded to the new Confederacy. . . ." ||

Madison says:

"The latter were not only averse to any interference on the subject; but solemnly declared that their constituents would never accede to a constitution containing such an article," etc.||

He had already used the same term in the Federal Convention, viz.:

"For he observed, that the people of the large states would, in some way or other, secure to themselves a weight proportioned to the importance accruing from their superior numbers. If they could not effect it by a proportional representation in the government, they would probably accede to no government which," etc. **

He again made use of it in the Virginia Ratifying Convention: "Suppose eight states only should ratify, and Virginia

* Proceedings of Senate, January, 1790.
‡ Washington to Bushrod Washington, November 10, 1787.
§ Washington to Madison, January 10, 1788.
|| Washington to C. C. Pinckney, June 28, 1788.
† Madison to Robert Walsh, November 27, 1819.
should propose certain alterations, as the previous condition of her accession." *

It was indeed commonly used in that Ratifying Convention, e. g.:

"If it be, sir, is it for us to accede to such a government?" †

"Virginia . . . is called upon to accede to another compact which supersedes the present one." ‡

"New York is an insurmountable obstacle to it, and North Carolina also. They will never accede to it [the Constitution] till it be amended." §

"For according to their mode, the Union would never be complete till the thirteen States had acceded to it." ||

"But we are told that we have everything to fear from the Northern States, because they will prevent an accession of states to the south." ||

". . . Admitting it was proper for the Convention to have inserted a bill of rights, it is not proper here to propose it as the condition of our accession to the Union," etc.**

A few years later the word still retained its application; e. g.:

"To the compact thereby erected, each state acceded in its character as a state, and is thereby a party." ††

The use of the word "accession" is indeed not without a certain significance in this connection. The word in the first case indicates voluntary action by the several States; secondly, it was used to connote the relation of the States to the Confederation. Its identical use in connection with their relation to the Constitution, perhaps in some degree indicates that they

† Henry.
† Nicholas, in Virginia Ratifying Convention.
†† Resolutions of Pennsylvania against the Bank, January 11, 1811.
were thought to enter the one form of government upon the same status as they had entered the other.

"In the article respecting Canada it was moved to strike out the word 'entirely' before 'joining' and read 'Canada acceding to this confederation and joining in the measures of the United States.'

"Resolved in the affirmative." *

"Canada acceding to this confederation . . . shall be admitted into . . . the union." †

"Resolved . . . That in case the inhabitants [of the New Hampshire grants] . . . shall accede to the Articles of Confederation . . . between the States of New Hampshire [others named] . . . their said delegates shall be admitted to sign the same, and thereupon the inhabitants of the above described district shall be acknowledged a free, sovereign and independent state . . ." ‡

"This assembly having taken into consideration the Articles of Confederation . . . between the states of N. Hampshire, Massachusetts-Bay [others named] . . . and considering also the pressing necessity of completing the union as a measure essential to the preservation of the independence and safety of the said states, do vote . . . that . . . the delegates to represent this state in Congress . . . are hereby authorized . . . on the part and in behalf of this state to accede to . . . the said articles of confederation." §

"Be it known that Henry Ward Esq., who hath . . . certified that the annexed copy, purporting an act of the general assembly of the state aforesaid, empowering the delegates of the said state in Congress to accede to . . . the articles of Confederation." ||

". . . Know ye, that we the said representatives having taken into . . . consideration . . . the articles of confederation between the states of N. Hampshire [others named]
. . . do by this present instrument . . . accede to ratify, confirm and agree to the said articles . . .” *

“The two houses of the general assembly have taken into consideration the confederacy proposed to the United States by the continental Congress, and have unanimously acceded thereto.” †

“. . . Yet, under the full conviction of the present necessity of acceding to the confederacy proposed,” etc. ‡

“Under the . . . conviction of the present necessity of acceding to the confederacy proposed . . . Be it enacted . . . that the Hon. John Dickinson . . . be . . . authorized . . . on behalf of this state to subscribe and ratify the said articles of confederation . . . between the several states aforesaid . . .” §

“At a general Assembly . . . of the state of Connecticut . . .

“It appearing to this assembly to be . . . necessary for the preservation . . . independence and sovereignty of the United States . . . that the articles of confederation . . . be acceded to . . .” ||

“. . . The delegates for Maryland laid before Congress . . . an act of the legislature of that state, which was read as follows:

“‘An act to empower the delegates of this state in Congress, to . . . ratify the articles of Confederation.

“‘Whereas, it hath been said that the common enemy is encouraged by this state not acceding to the confederation’ . . .” ||

“Although the pressure of immediate calamities . . . may have induced some states to accede to the present confederation,” etc.**

† Ratification of North Carolina, Journals of Congress, June 27, 1778.
‡ Ratification of New Jersey, Journals of Congress, November 25, 1778.
§ Ratification of Delaware, Journals of Congress, February 16, 1779.
|| Journals of Congress, May 21, 1779.
†† Journals of Congress, February 12, 1781.
** Instructions laid before Congress by the Delegates of Maryland, Journals of Congress, May 21, 1779.
Mr. Franklin even made use of the wickeder word "secession."

"Our strength and our prosperity will depend on our unity; and the secession of even four of the smallest states," etc.*

So did Mr. Dayton himself.

"After serious investigation it was solemnly determined . . . if . . . that offensive feature . . . could not be expunged . . . we would secede from the convention," etc.

Mr. Hamilton was guilty of the term, even after the formation of the Constitution:

"The eastern members particularly, who, with Smith from South Carolina, were the principal gamblers in these scenes, threatened a secession and dissolution. Hamilton was in despair. As I was going to the President's one day, I met him in the street. He walked me backwards and forwards before the President's door for half an hour. He painted pathetically the temper into which the legislature had been wrought; the disgust of those who were called the creditor States; the danger of the secession of their members, and the separation of the States." †

Another assertion of Mr. Webster's may in this connection be considered.

"I understand the honorable gentleman from South Carolina to maintain that it is a right of the State Legislature to interfere whenever, in their judgment, this government transcends its constitutional limits, and to arrest the operation of its laws.

"I understand him to maintain this right, as a right existing under the Constitution . . .

"I understand him to maintain an authority, on the part of the States, thus to interfere, for the purpose of correcting the exercise of power by the general government . . . I understand him to maintain that the ultimate power of judging of

*As reported in William Steele's anecdotes of Dayton, September, 1825, to Jonathan D. Steele.
the constitutional extent of its own authority is not lodged exclusively in the general government; or any branch of it; but that, on the contrary, the States may lawfully decide for themselves, and each State for itself, whether, in a given case, the act of the general government transcends its power.

"I understand him to insist that, if the exigency of the case, in the opinion of any State government, require it, such State government may, by its own sovereign authority, annul an act of the general government which it deems plainly and palpably unconstitutional.

"This is the sum of what I understand from him to be the South Carolina doctrine . . . And now, sir, what I have first to say on this subject is, that at no time, and under no circumstances, has New England, or any State in New England, or any respectable body of persons in New England, or any public man of standing in New England, put forth such a doctrine as the Carolina doctrine.

"The gentleman has found no cause, he can find none, to support his own opinion by New England authority. New England has studied the Constitution in other schools and under other teachers," etc.*

A few extracts from New England sources may aptly comment upon this statement of the honourable gentleman from Massachusetts. An extract from the declaration of the General Court of Massachusetts, on the Embargo, February 22, 1814, has already been given.

Mr. Webster may, without flattery, be considered "a public man of standing in New England." A citation or two from his own career may, therefore, fitly begin these few glosses (they might easily be made more numerous) on this statement. In August, 1812, Mr. Webster wrote the, so-called "Rockingham Memorial." Years later, avowing it in his autobiography, he confesses re-reading it with pride. Attacking the policy of the government therein, he says:

"We originally saw nothing, and can now see nothing, either in the letter, or the spirit, of the national compact, which makes

* Webster in reply to Hayne, January 26, 1830.
it our duty, to acquiesce in a system, tending to compel us to abandon our natural and accustomed pursuits. We regard the Constitution as 'an instrument of preservation, not of change.'

"We are, sir, from principle and habit attached to the union of the states. But our attachment is to the substance, and not to the form. It is to the good which this union is capable of producing, and not to the evil, which is suffered unnaturally to grow out of it. If the time should ever arrive, when this union shall be holden together by nothing but the authority of the law; when its incorporating, vital principle shall become extinct; when its principal exercises shall consist in acts of power and authority, not of protection and beneficence; when it shall lose the strong bond which it hath hitherto had in the public affection; and when, consequently, we shall be one, not in interest and mutual regard, but in name and form only; we, sir, shall look on that hour, as the closing scene of our country's prosperity.

"We shrink from the separation of the states, as an event fraught with incalculable evils, and it is among our strongest objections to the present course of measures, that they have, in our opinion, a very dangerous and alarming bearing on such an event. If a separation of the states ever should take place, it will be, on some occasion, when one portion of the country undertakes to control, to regulate, and to sacrifice the interest of another; when a small and heated majority in the Government, taking counsel of their passions, and not of their reason, contemptuously disregarding the interests, and perhaps stopping the mouths, of a large and respectable minority, shall by hasty, rash, and ruinous measures, threaten to destroy essential rights; and lay waste the most important interests.

"It shall be our most fervent supplication to Heaven to avert both the event and the occasion; and the Government may be assured, that the tie that binds us to the Union, will never be broken, by us.

"But although we lament the present war, on all accounts, yet do we deprecate it, most of all, as we view it, as we fear, the harbinger of French Alliance."
"On the subject, of any French connection, either close, or the more remote, we have made up our minds. We will, in no event, assist in uniting the Republic of America with the military despotism of France. We will have no connection with her principles, or her power. If her armed troops, under whatever name or character, should come here, we shall regard them as enemies. No pressure, domestic, or foreign, shall ever compel us to connect our interests with those of the house of Corsica; or to yoke ourselves, to the triumphal car of the conqueror and the tyrant of continental Europe. In forming this resolution, we have not been thoughtless of possible consequences. We have weighed them. We have reflected on the measures, which an adherence to this resolution might hereafter occasion. We have considered the events which may grow out of it. In the full and undisguised view of these consequences, we have formed this our resolution, and we affirm to you, sir, and to the world, that it is deep, fixed, and unchangeable." *

Later on Mr. Webster brought suit against Mr. Theodore Lyman, a leading Bostonian, for printing Mr. J. Q. Adams's statement that the Federal party of New England had been engaged in a plot to break up the Union and including Mr. Webster's name as a person implicated. It is not necessary here to go into the evidence (it may be stated that Mr. Webster was indubitably shown to have been one of the leaders of the Federal party when its proceedings culminated in the "Hartford Convention"). The leading counsel for the defense, Mr. Samuel Hubbard, at different times member of the House, of the Constitutional Convention of 1820, State Senator, and afterwards Justice of the Supreme Judicial Court, and a "man of public standing,"

"Maintained that the States had a Constitutional right to secede, and in argument stated this doctrine in the plainest terms, without correction by the Court, or dissent from Mr. Webster or the Solicitor General. Mr. Hubbard's words were: ' . . . A confederation of the New England States

*Webster's "Writings," Vol. III, pp. 600, 609, 610; B., 1903.
to confer with each other on the subject of dissolving the Union was no treason. The several States are independent and not dependent. Every State has a right to secede from the Union without committing treason. Here it is stated that certain gentlemen were traitors for threatening to dissolve the Union. The time will undoubtedly arrive when this subject of a dissolution of the Union will be openly discussed in all parts of the United States."

December 19, 1814, Mr. Webster

"Said in Congress that Congress had no power to raise armies by calling out the militia against the will of the States; and he added . . . 'It will be the solemn duty of the State Governments to protect their own authority over their own militia and to interpose between their own citizens and arbitrary power. These are among the objects for which the State Governments exist . . . And I shall exhort them to exercise their unquestionable right of providing for the security of their own liberties.' No word here of the power of the Federal Judiciary to decide the question—only an open and unqualified appeal to the doctrine of States' rights and a practical declaration of the right of the States to nullify the Acts of Congress. No wonder that such words were followed within one month by the declaration of the Hartford Convention, that 'In case of infractions of the Constitution affecting the sovereignty of a State and the liberty of its people, it is not only the right but the duty of such a State to interpose its authority for their protection . . . In such emergencies States which have no common umpire must be their own Judges and execute their own decisions.'"

Curious to contrast these words with the answer of the New England States to the Kentucky and Virginia Resolutions!

"In regard to the early utterances of Mr. Webster, the following is from a speech by him in the National House of Rep-

† Ibid., pp. 27, 28; B., 1904.
Ⅰ—18
resentatives, December 9, 1814. It should be borne in mind that this speech was delivered in the midst of the gloomiest period of the War of 1812-15, four months after the battle of Bladensburg and the capture of Washington, and one month before the British were defeated below New Orleans. The speech was first published (1902) by C. H. Van Tyne, in his edition of the 'Letters of Daniel Webster,' p. 67.

"In my opinion [the law under consideration for compulsory army and military service] ought not to be carried into effect. The operation of measures thus unconstitutional and illegal ought to be prevented, by a resort to other measures which are both constitutional and legal. It will be the solemn duty of the State Governments to protect their own authority over their own Militia and to interpose between their citizens and arbitrary power. These are among the objects for which the State Governments exist; and their highest obligations bind them to the preservation of their own rights and the liberties of their people. I express these sentiments here, Sir, because I shall express them to my constituents. Both they and myself live under a Constitution which teaches us, that "the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind." With the same earnestness with which I now exhort you to forbear from these measures, I shall exhort them to exercise their unquestionable right of [providing] for the security of their own liberties." *

In order to appreciate Mr. Webster's eloquent remark in his speech at Syracuse:

"This is the truth; and before the throne of God, and before the tribunal of an intelligent people, there is nothing valuable but truth, truth, truth. It is not glossary or commentary that is valuable; it is not that thing called eloquence, never of the greatest value, and often mischievous; but it is that which can stand the test of time and eternity alone—truth." †

† "Works," Vol. XIII, p. 413.
APPENDIX 19A

In order to appreciate this, it is only necessary to add that the foregoing trial for libel took place in 1828 and that Mr. Webster's answer to Hayne was in 1830, but two years later. Throughout New England at this time secession was advocated and threatened by the pulpit and the press; nullification was practiced by Governors, legislatures and organized bodies of militia; mobs offered forcible resistance to officers of the law who were carrying out the acts of the Federal Government; juries refused to commit persons prosecuted under those laws. With a final quotation from Mr. Benton's monograph, Mr. Webster's personal acts will be dismissed, and a slight chronological sketch of New England's "understanding of the Constitution" added.

"This prosecution of Mr. Lyman was one of the last acts in the long reign of the Federal oligarchy who ruled Massachusetts for nearly half a century. They had wealth, social position and political power, and tolerated no opposition to their ascendancy, and punished all political insubordination with relentless severity. They were the 'Federal Gentlemen' in Boston, the 'Essex Junto' in Essex, and the 'River Gods' in the Connecticut Valley. They were accomplished, able and patriotic men, who governed the Commonwealth wisely and well in its local affairs; but they yielded slowly and with extreme reluctance to the power of the National Government under the Federal Constitution. The Federal Union was to them good as long as it worked good to their local interests, and when it did not, they deemed it entirely patriotic to consider the question of its dissolution; hence the Northern Confederacy scheme of 1804, the violent and almost forcible opposition to the Embargo in 1809, and the determined opposition to the War of 1812, culminating in the nullification proceedings of the Hartford Convention in 1814."*

"... the British Government, through its public minister here, a secret agent of that Government was employed in certain States, more especially at the seat of government in Massachusetts, in fomenting disaffection to the constituted author-

ities of the nation, and in intrigues with the disaffected, for the purpose . . . eventually, in concert with a British force, of destroying the Union and forming the eastern part thereof into a political connection with Great Britain. In addition to the effect which the discovery of such a procedure ought to have on the public councils, it will not fail to render more dear to the hearts of all good citizens that happy union of these States which, under Divine Providence, is the guaranty of their liberties, their safety, their tranquillity, and their prosperity.” *

Nothing can better illustrate the spirit of “the schools in which New England studied the Constitution” than the resolution of the Massachusetts legislature, after Lawrence’s fight, that “it did not become a religious people to express any approbation of military or naval exploits not immediately defensive.”

“Resolved, That to preserve the Union, and support the constitution of the United States, it becomes the duty of the Legislatures of the States . . . to watch over, and . . . to maintain the power not delegated to the United States, but reserved to the States respectively, or to the people, and that a due regard to this duty will not permit this Assembly to assist . . . in giving effect to the aforesaid unconstitutional act to . . . enforce the Embargo.” †

“That acts of Congress in violation of the Constitution are absolutely void, is an undeniable position . . . in cases of deliberate, dangerous, and palpable infractions of the Constitution, affecting the sovereignty of a State, and liberties of the people; it is not only the right but the duty of such a State to interpose its authority for their protection, in the manner best calculated to secure that end. When emergencies occur which are either beyond the reach of the judicial tribunals, or too pressing to admit of the delay incident to their forms, States which have no common umpire, must be their own judges.

“Finally, if the Union be destined to dissolution, by reason

* Madison, Message to Congress, March 9, 1912.
† Resolution of General Assembly of Connecticut, 23d February, 1809.
of the multiplied abuses of bad administrations; it should, if possible, be the work of peaceable times, and deliberate consent.—Some new form of confederacy should be substituted among those States, which shall intend to maintain a federal relation to each other.—Events may prove that the causes of our calamities are deep and permanent. . . . Whenever it shall appear that these causes are radical and permanent, a separation by equitable arrangements, will be preferable to an alliance by constraint, among nominal friends, but real enemies, inflamed by mutual hatred and jealousies . . . But a severance of the Union by one or more States against the will of the rest, and especially in a time of war, can be justified only by absolute necessity. These are among the principal objections against precipitate measures tending to disunite the States, and when examined in connection with the farewell address of the Father of his country, they must, it is believed, be deemed conclusive.” *

Not to be allowed to tax other people was a grievance sufficient to call forth the threat:

“Northern speakers predicted the Deluge if the Bill of the Ways and Means Committee were adopted, and argued that Massachusetts would have as much right to secede if it were passed as South Carolina would in the event the protective system were continued.” †

Before the annexation of Texas Massachusetts

“Resolved, . . . That the project of the annexation of Texas, unless arrested on the threshold, may tend to drive these States into a dissolution of the Union.

“Approved by the Governor, March 15, 1844.”

After annexation took place, it again resolved: “Whereas, The Commonwealth of Massachusetts has, through her Legislature, with great unanimity, &c., solemnly and strenuously

† Cicero W. Harris, “The Sectional Struggle,” First Period, part concerning the early tariffs, etc., p. 222; Phila., 1902.
protested against the admission, by the Federal Government, of the foreign nation of Texas, as a State, into the Union, &c.

"And whereas, The consent of the executive and legislative departments of the Government of the United States has been given, by a resolution passed on the twenty-seventh day of February last, to the adoption of preliminary measures to accomplish this nefarious project; therefore, be it

"Resolved, That Massachusetts hereby refuses to acknowledge the act of the Government of the United States, authorizing the admission of Texas, as a legal act, in any way binding her from using her utmost exertions, in co-operation with other States, by every lawful and constitutional measure, to annul its conditions and defeat its accomplishment.

"Approved by the Governor, March 26, 1845.

"Resolved, That the Commonwealth of Massachusetts ... is determined, as it doubts not the other states are, to submit to undelegated powers in no body of men on earth." *

"Resolved, That it be ... recommended to the Legislatures of the several States represented in this Convention, to adopt all such measures as may be necessary effectually to protect the citizens of the said States from the operation and effects of all acts which have been or may be passed by the Congress of the United States, which shall contain provisions subjecting the militia or other citizens to forcible drafts, conscriptions or impressments, not authorized by the Constitution of the United States.” †

N. B.—These resolutions were approved by Massachusetts and Connecticut.

"That the people of this State, as one of the parties [italicized by B. S.] to the Federal compact, have a right to express their sense of any violation of its provisions, and that it is the duty of this General Assembly ... to interfere for the purpose of protecting them from the ruinous infliction of usurped and unconstitutional power,” etc. ‡

* Massachusetts, on annexation of Texas, March 15, 1844. It will be observed that this is a quotation from the Kentucky Resolutions of 1798.
† Resolution of Hartford Convention, January 4, 1815.
‡ Resolutions of Rhode Island on the Embargo, March 4, 1809.
“The people . . . see that the voice of the New England States . . . is lost in the national Councils, and that the spirit of accommodation . . . which produced the constitution . . . have been sacrificed to the bitterness of party, and to the aggrandizement of one section of the nation, at the expense of another . . . They have seen a power grow up in the southern and western sections of the Union, by the admission and multiplication of states, not contemplated by the parties to the constitution, and not warranted by its principles; and they foresee an almost infinite progression in this system of creation, which threatens eventually to reduce the voice of New England, once powerful . . . in the national councils, to the feeble expression of colonial complaints . . . This act is denounced . . . as a gross . . . violation of the principles of the Constitution; and . . . it cannot be submitted to without a pusillanimous surrender . . . The Committee are of opinion that the late act . . . is unconstitutional . . . upon the . . . broad . . . ground that the People never gave a power to Congress to enact . . . The sovereignty reserved to the States, was reserved to protect the Citizens from acts of violence by the United States . . . We spurn the idea that the free, sovereign, and independent State of Massachusetts is reduced to a mere municipal corporation, without power to protect its people, and defend them from oppression, from whatever quarter it comes. Whenever the national compact is violated . . . this legislature is bound to interpose its power, and wrest from the oppressor his victim . . .

"Resolved, That . . . the power of prohibiting to its citizens the exercise of these rights was never delegated to the general government, and that all Laws passed by that Government, intended to have such an effect, are therefore unconstitutional and void." *

“Resolved, That no territory hereafter applying to be admitted to the Union, as a State, should be admitted without a condition that domestic slavery should be utterly extinguished within its borders, and Massachusetts denies the validity of

*General Court of Massachusetts on the Embargo, February 22, 1814.
any compromise whatsoever, that may have been or that hereafter may be, entered into by persons in the government of the Union, intended to preclude the future application of such a condition by the people acting through their representatives in the Congress of the United States." *

"Resolved, That if that constitution shall finally be forced upon Kansas . . . then, in the opinion of this legislature, they will be justified in resisting it at all hazards and to the last extremity; and in so righteous a struggle, the people of Maine are ready to aid them, both by sympathy and action." †

"Indeed, it would be useful for the general good, if the State Legislatures were often to cast a watchful eye towards the general Government, with a view, candidly to consider, and judiciously discern, whether the powers delegated to the United States are not exceeded, or are so exercised as not to interfere with or counteract those which are reserved by the people for their own management. . . . Whenever our national legislature is led to overlap the prescribed bounds of their constitutional powers, on the State Legislatures, in great emergencies, devolves the arduous task—it is their right—it becomes their duty, to interpose their protecting shield between the right and liberty of the people, and the assumed power of the General Government." ‡

"On the fullest deliberation, your committee are not able to discover that the constitution of the United States justifies this claim . . . it must not be forgotten, that the state of Connecticut is a FREE, SOVEREIGN and INDEPENDENT state; that the United States are a confederacy of states; that we are a confederated and not a consolidated republic. The governor of this state is under a high and solemn obligation, 'to maintain the lawful rights and privileges thereof, as a sovereign, free and independent state,' as he is 'to support the constitution of the United States,' and the obligation to support the latter, imposes an additional obligation to support the former. . . . The government of this state, as it has ever

* Massachusetts, on the admission of Texas, March 26, 1845.
† Maine, March 16, 1858.
‡ Speech of Governor Trumbull to the Legislature of Connecticut, February, 1829.
been, so it will continue to be, ready to comply with all constitutional requisitions of the general government” [i. e., that which itself judges to be such]. “Faithful to itself and posterity, it will be faithful to the United States.” *

“On the second question, viz., when the militia are called for by the President of the United States, who is to be the judge whether those exigencies provided for by the constitution of the United States, exist or not? they were also unanimously of opinion that the executive of the State must, and of right ought to be judge. . . .

“It is very much to be regretted that there should exist a difference of opinion between the President of the United States and the government of the individual States in any case, and particularly so as it respects the disposing of the detailed militia, when the nation is involved in war. Satisfied, however, that the principle adopted, and the course this State has pursued on that subject is not only perfectly in agreement with the letter, but with the spirit of the Constitution of the United States, I conceive an adherence thereunto indispensable; but should this General Assembly think the course erroneous, there is now an opportunity to correct it.”†

“In 1813, Governor Martin Chittenden took a similar view of the constitutional relation of the state militia to the general government as that already adopted by the authorities of other New England States. . . . The majority of the Assembly adopted a report indorsing his views . . . By a Proclamation of November 10, the Governor commanded the recall of a portion of the militia which ‘has been ordered from our frontiers for the defense of a neighboring State, and has been placed under the command and at the disposal of an officer of the United States, out of the jurisdiction or control of the Executive of this State.’ The refusal of the troops to obey his orders, and the arrest of his representative, was followed by the introduction of a resolution in Congress instructing the prosecution of the Governor for treason. A counter resolution was presented in the Legislature of Massachusetts

* Connecticut, on the Militia Question, August 25, 1812.
† Rhode Island, on the Militia Question, October 6, 1812.
pledging the support of the State to the Governor and people of Vermont in their efforts to maintain their constitutional rights. This led the Legislature of New Jersey, Feb. 12, 1814, to adopt the following resolution: "Resolved, That the Legislature regards, with contempt and abhorrence, the ravings of an infuriated faction either as issuing from a legislative body, a maniac governor, or ambitious or discontented demagogues; that the friends of our country and government may rest assured, that the people of this State, will meet internal insurrection with the same promptitude they will the invasion of a cruel, vindictive and savage foe." The Legislature of Pennsylvania, March 10, 1814, also adopted a Report and Resolutions condemning the actions of the Governor and disapproving the proposed resolutions of Massachusetts as 'evidently intended to intimidate' and 'accompanied by a threat,' and 'calculated to add to the calamities of the war—the horrors of a civil war;' and finally resolving 'that they view with the utmost concern and disapprobation every attempt to screen from just punishment any individual or individuals, however elevated by station, who may violate the Constitution or laws of the United States, or who may directly adhere to or afford aid or comfort to the enemies of our beloved country.'" *

"And whereas the principles of the plan and bill aforesaid, are, in the opinion of this assembly, not only intolerably burdensome and oppressive, but utterly subversive of the rights and liberties of the people of this state, and the freedom, sovereignty, and independence of the same, and inconsistent with the principles of the constitution of the United States.

"Resolved, That . . . the Governor of this state is hereby requested forthwith to convocate the General Assembly; and, to avoid delay, he is hereby authorized and requested to issue his proclamation, requiring the attendance of the members thereof at such time and place as he may appoint, to the end that opportunity may be given to consider what measures may be adopted to secure and preserve the rights and liberties of the

* State Documents on Federal Relations, edited by Hermann V. Ames, to which the writer is indebted for a large proportion of citations in this Appendix.
people of this state, and the freedom, sovereignty and independence of the same." *

"Resolved, That the Constitution of the United States does not invest the General Government with unlimited and absolute powers, but confers only a special and modified sovereignty, without authority to cede to a foreign power any portion of territory belonging to a State, without its consent.

"Resolved, That this State protests against the adoption, by the Government of the United States, of the line of boundary recommended by the King of Holland as a suitable boundary between Great Britain and the United States; inasmuch as it will be a violation of the rights of Maine,—rights acknowledged and insisted upon by the General Government,—and will be a precedent, which endangers the integrity, as well as the independence, of every State in the Union.

"Resolved, That while the people of this State are disposed to yield a ready obedience to the Constitution and laws of the United States, they will never consent to surrender any portion of their territory, on the recommendation of a Foreign Power." †

"Resolved . . . that the Government of the United States, in permitting the same to be made a question by the said Commissioners, and to be by them submitted to the arbitration of the King of the Netherlands, without the consent of Massachusetts and Maine previously obtained, exceeded its constitutional powers, and that any decision which the said King might have given upon the said question, would have been entirely null and void, for want of constitutional power in the Government of the United States to make the submission. . . .

"Resolved, That the Government of the United States has no constitutional right to cede any portion of territory of the States composing the Union to any foreign power, or to deprive any State of any land, or other property without the consent of such State, previously obtained; and that the adopt-

* Connecticut, on Conscription Bill, October, 1814.
† Resolves of Maine, January 19, 1832.
tion of the aforesaid new boundary line, recommended, as aforesaid, by the King of the Netherlands, without the consent, previously obtained, of the States of Massachusetts and Maine, would be a violation of the rights of jurisdiction and property, belonging respectively to the said States, and secured to them by the Federal Constitution; and that any act, purporting to have such effect, would be wholly null and void, and in no way obligatory upon the Government or People of either of the said States.

"Resolved, That as the adoption, by the Government of the United States, of the aforesaid new boundary line, so recommended by the said King of the Netherlands, would deprive the Commonwealth of Massachusetts of large tracts of land, without equivalent, it is not expedient for the said Commonwealth to give consent thereto; and that the General Court hereby solemnly protest against such adoption, declaring, that any act, purporting to have such effect, will have been performed without the consent of the Commonwealth, and in violation of the rights thereof, as secured by the Federal Constitution, and will be consequently null and void and in no way obligatory upon the Government or people." *

"Resolved, That the Commonwealth of Massachusetts, faithful to the compact between the people of the United States, according to the plain meaning and intent in which it was understood and acceded to by them, is sincerely anxious for its preservation, but that it is determined, as it doubts not the other states are, to submit to undelegated powers in no body of men on earth; That the project of the annexation of Texas, unless arrested on the threshold, may tend to drive these states into a dissolution of the union, and will furnish new calumnies against republican governments of exposing the gross contradiction of a people professing to be free, and yet seeking to extend and perpetuate the subjugation of their slaves." †

"With us they will never suffer our common rights, under

* Resolution of Massachusetts, February 15, 1832.
† Massachusetts, on the annexation of Texas, March 15, 1844.
the constitution, to be prostrated by a government we have ourselves created." *

"While this state maintains its sovereignty and independence, all the citizens can find protection against outrage and injustice in the strong arm of the state government." †

". . . Nations acknowledge no judge between them upon earth, and their Governments, from necessity, must in their intercourse with each other decide when the failure of one party to a contract to perform its obligations, absolves the other from the reciprocal fulfilment of its own. But this last of earthly powers is not necessary to the freedom or independence of States, connected together by the immediate action of the people of whom they consist. To the people alone is there reserved, as well the dissolving as the constituent power. . . . and under these limitations, have the people of each State in the Union a right to secede from the confederated union itself.

"Thus stands the RIGHT. But the indissoluble link of union between the people of the several states of this confederated nation, is after all not in the right, but in the heart. If the day should ever come (may Heaven avert it) when the affections of the people of these states shall be alienated from each other; . . . far better will it be for the people of the disunited states to part in friendship from each other, than to be held together by constraint. Then will be the time for reverting to the precedents which occurred at the formation and adoption of the Constitution, to form again a more perfect union, by dissolving that which could no longer bind, and to leave the separated parts to be reunited by the law of political gravitation to the centre . . ." ‡

"I will not yet despair. I will rather anticipate a new confederacy, exempt from the corrupt and corrupting influence and oppression of the aristocratic democrats of the South. There will be (and our children, at farthest, will see it) a

* Legislature of Rhode Island, November 5, 1814.
† Massachusetts, on the Enforcement Act, February 15, 1809.
‡ John Quincy Adams, "The Jubilee of the Constitution, a Discourse," April 30, 1839; N. Y., 1839.
separation. The white and black population will mark the boundary," etc.*

"The principles of our Revolution point to the remedy—a separation. That this can be accomplished, and without spilling one drop of blood, I have little doubt . . .

"I do not believe in the practicability of a long continued Union. A Northern Confederacy would unite congenial characters and present a fairer prospect of public happiness; while the Southern States having a similarity of habits, might be left to manage their own affairs in their own way. If a separation were to take place, our mutual wants would render a friendly . . . intercourse inevitable . . . [The separation] must begin in Massachusetts," etc. †

"Pray look into the Constitution, and particularly to the 10th article of the amendments. How are the powers reserved to the States respectively, or to the people, to be maintained, but by the respective States judging for themselves and putting their negative on the usurpation of the general government." ‡

Mr. Pickering was, at the time, the political associate of Mr. Webster; Mr. Gore, to whom the latter letter was addressed (afterwards Governor of Massachusetts, and one of its Senators), was Mr. Webster’s legal preceptor, from whose office the latter had been admitted to the bar some four years earlier.

"If this bill passes, it is my deliberate opinion that it is virtually a dissolution of the Union; that it will free the States from their moral obligation; and it will be the right of all, as it will be the duty of some, definitely to prepare for a separation—amicably if they can, violently if they must." §

Mr. Quincy was called to order (by a Southern member). The Speaker sustained the point and ruled that the above suggestion was out of order. An appeal was taken from his de-

* Col. Timothy Pickering (Postmaster-General, Secretary of War, Secretary of State, etc., in Washington's Cabinet), Letter of December 24, 1803; Lodge, "Life of Cabot."
† Col. Timothy Pickering, Letter of January 29, 1804.
§ Hon. Josiah Quincy, member of Congress from Massachusetts in 1811, on Bill for Admission of Louisiana.
cision, and it was reversed. Mr. Quincy went on to vindicate his position, and said:

"Is there a principle of public law better settled or more conformable to the plainest suggestions of reason than that the violation of a contract by one of the parties may be considered as exempting the other from its obligations? Suppose, in private life, thirteen form a partnership . . . ." etc.

Was it the same Mr. Quincy (or did Mr. Quincy change with his circumstances?) who wrote in 1863 to Mr. Lincoln, referring to the latter's celebrated "Conkling letter":

"I write under the impression that the victory of the United States in this war is inevitable; compromise is impossible. Peace on any other basis would be the establishment of two nations . . . Can we leave to posterity a more cruel inheritance, or one more hopeless of happiness and prosperity?" *

Mr. John Quincy Adams affirmed that a plan to dissolve the Union

"had been formed in the winter of 1803-'4 [in New England immediately after and as consequence of the acquisition of Louisiana]. This he told Mr. Jefferson in 1809; about the same time he 'urged that a continuance of the embargo much longer would certainly be met by forcible resistance supported by the Legislature and probably by the judiciary of [Massa.] . . . That their [the leaders'] object was, and has been for several years, a dissolution of the Union . . . he knew from unequivocal evidence and that a military leader had even been selected to head the movement." †

These statements he reaffirmed in 1828, when himself President.

"If a separation were desirable to any part of the Union, it would be to the Middle and Southern States, particularly to the latter, who have been so long harassed with the complaints, the restlessness, the turbulence, and the ingratitude of

† Randall's "Life of Jefferson."
the Eastern States, that their patience has been tried almost beyond endurance."

The above statement is made in Carey’s “The Olive Branch” (1815). In view of the extracts herein given it seems that this assertion of Mr. Carey (a Northern man) was not without some justification.

“It must be borne in mind that not once in this plotting of 1803-4 was the right of a State or of a group of States to secede questioned. The only arguments against secession were (1) The immaturity of the plot, the unripeness of the people for following the leaders, and (2) The probability that nothing would be gained by withdrawal into a smaller confederacy. Hamilton’s only argument against the later phase of the movement was that the real trouble was not so much Union with the South, or even the influence of Virginia, but it was democracy; and he could not see that by subdivision of the union any other result would be achieved than to make in some parts democracy all the more concentrated and troublesome. Two or three of the leaders were growing into a conviction that possibly the people were not so very bad repositories of power, and they were trimming sails to catch the popular breeze. Rufus King and Oliver Wolcott were among these. But not one of them argued that neither New England nor New York nor any other section had a right to leave the Union. Washington had worked for ‘an indissoluble Union’; but his colleagues clearly did not suppose the Union indissoluble. Cabot, while unprepared for precipitate action, wished not to be misunderstood. ‘A separation now is impracticable because we do not feel the necessity or utility of it. Separation will be unavoidable when our loyalty to the Union is generally perceived to be the instrument of debasement and impoverishment.’ This was the average height of the logic used—secession rather than poverty. We look in vain for any high-keyed patriotism.” *

“The commission of one John Henry was made out by Sir

James Craig, Governor of the British provinces of North America. This commission asked for 'the earliest information as to how far, in case of war, England could look for assistance.' Henry reported that 'the Governor of Vermont made no secret of his determination, as commander-in-chief of the militia, to refuse obedience to any command of the general government.' From Boston he wrote in a similar vein. But not conceiving himself well treated, this spy turned all his papers over to our government. Madison declared it was perfidy quite unendurable on the part of a neighboring government.

"In April of 1812 Congress practically declared war by authorizing the President to call on the State executives to organize their militia for marching at a moment's warning. A formal declaration followed two months later. This act of the government called out at once from the Federalists in Congress an address to the people of New England declaring the war needless and unwise. It bore prompt fruit. The Massachusetts House of Representatives voted an address denouncing the war as a wanton sacrifice of the interests of New England. This address called for town meetings, to consult as to the best methods for protest and action;—not to aid the government but to hinder it. 'Express your sentiments without fear' was the advice given. 'And let the sound of your disapprobation of this war be loud and deep. If your sons be torn away from you by conscription, consign them to the care of God; but let there be no volunteers except for defensive war.' This was at the very outset practical secession. The State of Massachusetts asserted its supreme right, inside the Union, to decide above the Nation, and for the nation. It furthermore refused to fight in any war where not directly assailed on its own soil.

"...Dearborn, who had been appointed to command in the East, stayed in Boston waiting for something to turn up. Every possible hindrance was thrown in the way of his securing enlistments. Those who did enlist were arrested on real or fictitious charges of debt; and the Courts cheerfully insisted
that 'while the man was a debtor he was the property of the creditor, and could not leave the State' if he would.” *

“The condition of affairs brought about by these intrigues is illustrated by the following passage from the Rutland Herald of Vermont: ‘The intelligence that comes from every quarter denotes an uncommon agitation of the public mind, by the late measures of the Federal representatives. In several papers there are strong intimations that it will be soon necessary to dissolve the Federal Union, and not be embarrassed any longer with the debts and negroes of the Southern States. Calm and prudent counsels are certainly best in the present emergency. And it cannot be too often inculcated upon our citizens that their duty and safety requires that they pay a steady regard to civil and moral considerations in every movement they make. If it was ever necessary to look out for calm, prudent, and judicious men for Federal representatives, now is the time. A few hot, rash, and hasty men in Congress, and the Federal Union will most probably be rent asunder.’

“Secession or dissolution was in the air. Few believed it possible to hold together. The Alien and Sedition Acts were indiscreeet in the extreme, apart from their tyrannical character. Resistance became a virtue. New England was hardly behind Virginia in its disgust. The Middle States were turned over to Republican opposition. John Adams wrote that all the Southern and Western States were in unison with Virginia and Kentucky; and menaced separation.” †

“Of the Federal leaders there still remained in Washington, among others, Tracy, Griswold, Plumer, and Pickering formerly of Pennsylvania, now of Massachusetts. These beheld with dismay and horror the dissolution of the party and their own loss of power. Accustomed to rule, of a ruling caste, they now not only found themselves turned out of the offices of the nation, but Republicanism pursuing them into their own States, and depriving them of emolument and power, where before the Union they had been omnipotent. The South

† Ibid., pp. 89-90.
clearly had invaded their rights. Thomas Jefferson their arch-enemy was President. He gave no heed to their claims to the disposal of local offices. He had retorted on their clergy for their attacks, that they had 'wrapped the Christian religion in rags of their own. . . . Divest it of these, and it is a religion of all others friendly to liberty, science, and the finest expression of the human mind.' Political experience there was none for them to draw upon. They acted on the native impulses of their individual characters. They did not wait for a popular reaction, as a defeated party would now do; nor take any steps to deserve such a reaction. Hamilton devised a cunning scheme for a third party, to be called 'The Christian Constitutional Party'; hoping to rally the religious element of the nation against free thinking. For at this moment was taking place an alliance of liberty in the church and liberty in the state. Thomas Paine, who had been left to his ignominious and undeserved fate by Adams, was sent for by Jefferson and brought home in a national vessel. Every mile that the Puritans moved westward increased their tendency to break with precedent. Ames declared the overthrow of Federalism to be due to the newspapers. They are, he said, 'an overmatch for any government.' The only possible political devices left to the fallen leaders seemed to be an appeal to religious prejudice; the censorship of the press; the renewal of the Sedition and Alien Acts. But all these failed. Federalist judges were impeached by the Republicans; the tyrannous Acts were suppressed; religious liberty was encouraged. 'We must be prepared,' wrote one, 'to see the doom of every influential Federalist, and of every man of considerable property who is not of the reigning sect.'

'Desperation succeeded discouragement, and desperate measures followed political scheming. Judge Reeve of Connecticut wrote to Tracy in Congress, 'I have seen many of our friends; and all that I have seen, and most that I have heard from, believe that we must separate; and that this is the most favorable moment.' There was some effort at secrecy; but the conspirators could not have hoped not ultimately to be dis-
covered. They undoubtedly believed New England was with them; and they should be safe.

"Pickering was the-chief conspirator. Believing, without a wavering doubt, in his own political sagacity, he was unwilling to brook a suggestion of caution or delay. Cabot was well enough for a philosopher; but for action he was too slow and timid for Washington's Secretary of State. Nor did Pickering have a thought that Hamilton was as much entitled to leadership as himself. If delay were tolerated, he insisted that democracy would have its work of ruin accomplished. The attitude of Jefferson afforded apparently every advantage for conspirators to, at least, daily with plots. In his inaugural he had said, 'If there be any among us who would wish to dissolve the Union, or to change its republican form, let him stand undisturbed, as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.'

"Pickering believed the proposition to secede 'would be welcomed in Connecticut, and could we doubt of New Hampshire? But New York must be associated; and how is her concurrence to be obtained? She must be made the centre of the confederacy. Vermont and New Jersey would follow of course, and Rhode Island of necessity.' Roger Griswold, examining the finances, had found that the States above mentioned, to be embraced by the 'Northern Confederacy,' 'now pay as much or more of the public revenues, as would discharge their share of the public debts, due those States, and abroad.' Ex-Governor Griswold wrote to Oliver Wolcott, 'The project which we had formed was to induce if possible the legislatures of the three New England States who remain Federal, to commence measures, which should call for a reunion of the northern states.' The three States he relied on were Connecticut, Massachusetts then including Maine, and New Hampshire. 'The people of the East cannot reconcile their habits, views, and interests,' wrote Pickering, 'to those of the South and West.' George Cabot however wrote that, while 'a separation at some period not very remote may probably take place,' he thought 'a separation now is impracticable.
If it is prematurely attempted, those few only will promote it who discern what is hidden from the multitude; that is the multitude would not feel as the leaders felt who saw power sliding from their grasp. 'We shall go,' he added, 'the way of all governments wholly popular—from bad to worse—until the evils no longer tolerable shall generate their own remedies.' Here was clearly treason not only to the union, but to popular government; and it was evidently the sentiment of a very large class of Federalist leaders. Hamilton at a banquet in New York, expressed his views of popular government by shouting, 'The People! Gentlemen! the people are a great Beast!' John Adams now watched the traitors with the anxious eagerness of a detective. It was certain he had discovered more or less of their purposes; and was ready at the first move to pounce on them with genuine Adams' fury. Cabot wrote from Boston, after consulting Fisher Ames, Chief-Justice Parsons, and a few more, that, while some were of the same opinion as Pickering, most thought the time not quite ready. As for himself he could not believe essential good would come from secession: 'while we retain maxims and principles which all experience and reason pronounces to be impracticable and absurd. Even in New England, where there is among the body of the people more wisdom and virtue than in any other part of the United States, we are full of errors. We are too democratic altogether; and I hold democracy to be the government of the worst. . . . A separation now is impracticable, because we do not feel the necessity of it. The separation will be unavoidable when our loyalty is perceived to be the instrument of impoverishment.' In other words Cabot and 'the Essex Junto' saw the country so prosperous under Jefferson that they dared not precipitate secession. Griswold was in despair. He wrote to Wolcott that: 'whilst we are waiting for the time to arrive in New England, it is certain the democracy is making daily inroads on us, and our means of resistance are lessening every day. Yet it appears impossible to induce our friends to make any decisive exertions.'

"Utterly unable to move ahead without New York, there
was now initiated the most unprincipled plot ever conceived under a free government; ending in a fatality as wretched as the plot itself. New York was rapidly approaching its gubernatorial election. On the one side was the Federal party, with Morgan Lewis in nomination—backed by a large number of the Republicans; on the other Burr and his friends. Notwithstanding the fact that Burr had failed of securing the endorsement of Hamilton and the New York Federal caucus, the Federalist leaders of New England, Pickering, Griswold, Wolcott, and others, put their heads together, and agreed to throw all their influence for him, on the understanding that, thus securing New York, he should carry it into the proposed Northern Confederacy. Burr was nominated by a few Republicans Feb. 18, 1804. Griswold wrote: 'If Colonel Burr is elevated in New York to the office of Governor by the votes of Federalism, will he not be considered, and must he not in fact become the head of the Northern interest? But what else can we do? By supporting Mr. Burr, we gain some support, although it is of a doubtful nature, and of which God knows we have cause enough to be jealous. In short I see nothing else left for us.' Pickering with his usual frankness wrote: 'The Federalists anxiously desire the election of Mr. Burr. Mr. Burr alone we think can break the Democratic phalanx. And if a separation should be deemed proper, the New England States, New York, and New Jersey would naturally be united.' Rufus King was won over substantially in New York. But Hamilton, clearly seeing that such a conspiracy would only end in displacing himself as the great leader of the Federalists, threw all his weight against Burr. It was a sharp battle at the polls; and Burr failed by only seven thousand votes of carrying the State, while he barely carried the city of New York. The plot was killed. The New England conspirators could do nothing whatever but retire into their own States, and leave Burr to the fatal folly of their friendship."*

"Texas . . . will be the field of long and most angry battles

in our Congress next winter. But fear nothing. Should a vote for this object (annexionation) be obtained, the Union will be dissolved; and, as I believe, without a doubt, the emancipation of our slaves will thus be greatly hastened." * 

It is to be observed that some of these New England fulminations use the very language of the Kentucky and Virginia Resolutions (which at the time they so strongly deprecated—their own ox not being gored). Some of the extracts refer to a period later than Mr. Webster's speech and cannot therefore be taken strictly as contradictory of it. They serve, however, to show that "the truth of the statement of Alexander Johnston, that 'Almost every State in the Union in turn declared its own sovereignty and denounced as almost treasonable similar declarations in other cases by other States' is fully sustained by the following documents." †

Some of these inconsistencies are sufficiently amusing,—or painful, as one may look at it. 1041 For similar reasons I give a few early instances of New England tendencies to think, if not in an "organic," at least in a decidedly "non-compact" manner, 40b; viz.:

"It appears that Massachusetts contested the power of the united colonies to declare war (circa 1651), and notwithstanding the express grant of that power in the articles of union, (of 1643?) insisted that to be compelled to act by the decisions of the commissioners, was inconsistent with the liberty of the colonies." ‡

"A majority of the people of Massachusetts are in opposition to the government. Some of the leaders avow the subversion of it to be their object, together with the abolition of debts, the division of property, and a reunion with Great Britain. In all the eastern states, the same temper prevails more or less, and will certainly break forth whenever the opportune moment may arrive. The malcontents are in close

* Rev. Joseph Tuckerman, Letter to Blanco White, Boston, October 24, 1837; "Life of Blanco White."
connexion with Vermont, and that district, it is believed, is in negotiation with the government of Canada," etc.*

The Journals of Congress show that an influential motive of the recognition by Congress of the independence of the New Hampshire grants, or Vermont, was the fear that its people would otherwise make common cause with Great Britain.

"The legislature cannot, without horror, entertain the most distant idea of the dissolution of the union, which subsists between the United States, and the ruin which would inevitably insue thereon; but with great pain they must observe, that the extraordinary grants and allowances which Congress have thought proper to their civil and military officers, have produced such effects in this Commonwealth, as are of a threatening aspect," etc. †

"Congress met and adjourned from day to day without doing anything, the parties being too much out of temper to do business together. The eastern members particularly, who, with Smith from South Carolina, were the principal gamblers in these scenes, threatened a secession and dissolution." ‡

"Although a few threats were made later (than 1788) to dissolve the union, notably by Massachusetts when it seemed that assumption was defeated." §

"I remember the fearful excitement at the North when Jackson ordered the removal of the national deposits from the banks in Boston; and, looking back, I could name grave, sober men of that orderly city, and some of them of high social and moral standing, who talked, in the frenzy of the time, of 'muskets being shouldered, and a march to Washington.'" ||

"In 1856 Mr. Thomas Wentworth Higginson headed the

list of signatures to a call for a convention to assemble at
Worcester, with the ostensible object of considering measures
for the dissolution of the Union.” *

For other examples of “other teachers” under whom “New
England studied the Constitution,” see Henry Adams, “New
England Federalism.”

“All else is gone; from those great eyes
The soul has fled;
When faith is lost, when honor dies,
The man is dead.”

This emanation of “the New England conscience” was not
fulminated by Mr. Whittier when the “Defender of the Con-
stitution” was denying history in his efforts, but when, per-
ceiving to what end his country was tending, and, it may be
hoped, in repentant desire to prevent the evils to which such
statements had contributed, he was defending the compacts
of the Constitution.

APPENDIX 19A

(Page 293)

“Preamble and Resolutions on the propositions of Pennsyl-
vania to amend the constitution of the United States.

“The committee to whom was referred the communication
of the Governor of Pennsylvania, covering certain resolutions
of the Legislature of that State, proposing an amendment to
the constitution of the United States, by the appointment of
an impartial tribunal to decide disputes between the state and
federal judiciary, have had the same under their considera-
tion, and are of opinion that a tribunal is already provided by
the constitution of the United States, to wit, the Supreme
Court, . . .” Proceedings of Legislature of Virginia, 1810.

“Nor can the State of South Carolina derive the smallest
aid in sustaining its doctrine of resistance to the federal au-
thority, from the manner in which the Constitution was

formed; whether it was the work of the people of the United States collectively, or is to be considered as a compact between sovereign States, or between the people of the several States with each other, there is, there can be, there ought to be, but one rule, which is, that the majority must govern." *

"Resolved, That the People have conferred no power upon their State Legislature to impugn the Acts of the Federal Government or the decisions of the Supreme Court of the United States." †

APPENDIX 20

(Page 54)

"To the difficulties already mentioned, may be added the interfering pretensions of the larger and smaller states. We cannot err in supposing that the former would contend for a participation in the government, fully proportioned to their superior wealth and importance; and that the latter would not be less tenacious of the equality at present enjoyed by them. We may well suppose that neither side would entirely yield to the other, and consequently that the struggle could be terminated only by compromise. It is extremely probable also, that after the ratio of representation had been adjusted, this very compromise must have produced a fresh struggle between the same parties, to give such a turn to the organization of the government, and to the distribution of its powers, as would increase the importance of the branches, in forming which they had respectively obtained the greatest share of influence . . . Nor could it have been the large and small states only, which would marshal themselves in opposition to each other on various points. Other combinations, resulting from a difference of local position and policy, must have created additional difficulties. Would it be wonderful, if under the pres-

* Kentucky, Reply to South Carolina, January 27, 1830.
† Resolves of House of Representatives, South Carolina, December, 1824.
sure of all these difficulties, the convention should have been forced into some deviations from that artificial structure and regular symmetry, which an abstract view of the subject might lead an ingenious theorist to bestow on a constitution planned in his closet, or his imagination?" *

It is only necessary to observe that this extract, which so clearly shows the parties to the Constitution and the mode of its construction, though, for obvious reasons, written as if deduced from the Instrument, is a transcript from Mr. Madison's own experience.

"It is well known that the equality of the States in the Federal Senate was a compromise between the large and the small States . . . the former claiming . . . the latter an equality in both, as a safeguard to the reserved sovereignty of the States." †

Mr. Nicholas Gilman, delegate from New Hampshire, writes, September 18, to J. S. Gilman:

"The important business of the Convention being closed, the Secretary set off this morning to present Congress with a report of their proceedings, which I hope (will come before the States) in the manner directed, but as some time must necessarily elapse before that can take place, I do myself the pleasure to transmit the enclosed papers for your private satisfaction, forbearing all comments upon the plan but that it is the best that (could meet the unanimous concurrence of the States in Convention); it was done by bargain and compromise, yet, notwithstanding its imperfections, on the adoption of it depends (in my feeble judgment) whether we shall become," etc.

"He [B. Franklin] saw difficulties and objections, which might be urged by individual states against every scheme which had been proposed; and he was now, more than ever, convinced that the constitution which they were about to form,

* No. 37 of "The Federalist," by Madison.
† Madison, Letter of March, 1836.
in order to be *just* and *equal* must be formed on the basis of *compromise* and *mutual concession.* *

Mr. Charles Pinckney, justifying the proposed Constitution in the South Carolina legislature, January 16, 1788, said, upon the question of the proportionate influence of the states therein:

"After much anxious discussion—for had the Convention separated without determining upon a plan, it would have been on this point—a compromise was effected," etc.

"Mr. Dayton believed it would come to this, that when the question came to be discussed, and the rights of the small states maintained, the large States would threaten us with their power. The same threats had been heard in the old Congress, but they were laughed at, for the votes of the States were equal; they were heard in the Convention, but they were spurned at, for the votes were equal there also; the large States must be cautious here, for in this body too, the votes are equal. The gentleman had talked of a classification of States as a novelty, but he would ask if that gentleman pretended to be wiser than the Constitution? Look through that instrument from beginning to end, and you will not find an article which is not founded on the presumption of a clashing of interests. Was developing the election in particular circumstances in the House of Representatives intended for nothing? Was nothing meant by the provision of the Constitution, that no amendment should ever deprive the States of the equality of votes in this House? Yet it was that jealous caution which foresaw the necessity of guarding against the encroachments of large States. The States, whatever was their relative magnitude, were equal under the old Confederation, and the small States gave up a part of their rights as a compromise for a better form of government and security; but they cautiously preserved their equal rights in the Senate and in the choice of a Chief Magistrate. The same voice that now addresses you made the solemn claim and

*Franklin in the Convention, as reported by William Steele to Jonathan D. Steele, September, 1825.*
declared there was no safety in association unless the small states were protected here. The warning was taken and you find in that part, as in all others, a classification governs every line of the Constitution.” *

“The honorable gentleman from Maryland . . . has said, he was not surprised that those who had seats in the old Congress, should perplex themselves with the distinctions; but he could tell that gentleman, that it was not in the old Congress he had learnt them, for there he had seen all the votes of the States equal, and had known the comparatively little State of Maryland controlling the will of the Ancient Dominion. It was in the Federal Convention that distinction was made and acknowledged; and he defied that member to do, what had been before requested of the honorable gentleman from Virginia, viz., to open the Constitution, and point out a single article, if he could, that had not evidently been framed upon a presumption of diversity (he had almost said, adversity) of interest between the great and small States.” †

“If, in the new legislature, as in the old Congress, each had been equally represented, and each preserved an equal vote, the sacrifice of rights would have been equal. But when it was admitted that, in the National Legislature, the Representatives should be appointed according to the number of citizens, the sacrifice of rights was great, in proportion as the States were small. Thus Delaware, which had but one representative out of sixty-five, retained only one sixty-fifth part of the nation’s authority; and Virginia, which had ten Representatives, obtained two-thirtieths. Wherefore, since each had previously enjoyed one-thirteenth, Delaware lost four-fifths of its power, and that of Virginia was doubled, so that Delaware, compared to Virginia, was reduced under the new establishment from equality to one-tenth. It was moreover evident, that the course of population would daily increase this decided superiority of the great States . . . of course, if the whole power of the union had been expressly vested in the House of Representatives, the smaller States would never have

* Jonathan Dayton of New Jersey, in U. S. Senate, November 24, 1803.
† Jonathan Dayton, in U. S. Senate, November 29, 1803.
adopted the Constitution. But in the Senate they retained an equal representation, and to the Senate was given a considerable share of those powers exercised by the old Congress. One important point however, that of making war, was divided between the Senate and House of Representatives . . . the legislative authority being thus disposed of . . . care was taken to preserve to the Senate a feeble share of the ancient executive power of Congress, by their negatives to their appointments to office." *

He then goes on to show how the manner of electing the President was a result of the same compromise between the large and small states.

"My Plan was substantially adopted in the sequel except as to the Senate & giving more power to the Executive than I intended—the force of vote which the small and middling States had in the Convention prevented our obtaining a proportional representation in more than one branch & the great power given to the President was never intended to have been given to him while the Convention continued in that patient & coolly deliberative situation in which they had been for nearly the whole of the preceding five months of their session, nor was it until the last week or ten days that almost the whole of the Executive Department was altered—I can assure you as a fact that for more than Four months & a half out of Five The power of exclusively making treaties, appointing public Ministers & Judges of the Supreme Court was given to the Senate." †

Mr. Gerry, answering, in the Massachusetts Ratifying Convention, the question why Georgia had three representatives, by the proposed Constitution, to Massachusetts's eight, replied "that the apportionment was made not by any fixed principle, but by a compromise."

* Gouverneur Morris to Lewis R. Morris, Dec. 10, 1803.
† Charles Pinckney to J. Q. Adams, December 30, 1818, with his Draught for the Constitution. The latter part of this is noteworthy for its confirmation of Mr. Mason (v. pp. 304 et seq.), as to the state of the Convention.
“Mr. Strong. There were large debates on this subject in the Convention. The Convention would have broke up if it had not been agreed to allow an equal representation in the Senate. It was an accommodation reported by a Committee.”

“When the compromise took place on the subject of representation,” etc.*

“On the other hand the small states, seeing themselves embraced by the Confederation upon equal terms, wished to retain the advantages they already possessed. The large states, on the contrary, thought it improper that Rhode Island and Delaware should enjoy an equal suffrage with themselves. . . . It became necessary therefore to compromise, or the Convention must have dissolved without effecting anything.” †

“The truth is, the plan, in all its parts, was a plan of accommodation.” ‡

“Although it militates against every idea of just proportion that the little state of Rhode Island should have the same suffrage with Virginia, or the great commonwealth of Massachusetts, yet the small states would not consent to confederate without an equal voice in the formation of treaties. Without the equality, they apprehended that their interest would be neglected or sacrificed in negotiations. This difficulty could not be got over. It arose from the unalterable nature of things. Every man was convinced of the inflexibility of the little states in this point. It therefore became necessary to give them as absolute equality in making treaties.” §

“It is a fact declared by the General Convention, and universally understood, that the Constitution of the United States was the result of a spirit of amity and mutual concession. And it is well known that, under this influence, the smaller states were admitted to an equal representation in the Senate . . . And that this branch of the Government was invested with great powers; for on the equal participation of

---

* Luther Martin's Reply to "The Landholder," March 19, 1788.
† Alexander Hamilton, in the New York Convention, June 20, 1788.
‡ Hamilton, in New York Convention, June 23, 1788.
§ Mr. Davie, in North Carolina Ratifying Convention, July 28, 1788.
those powers, the sovereignty and political safety of the smaller States were deemed essentially to depend.”*  

‘At length the Committee of Detail brought forward their Resolution which gave to the larger States the same inequality in the Senate that they are now proposed to have in the House of Representatives—Virginia, Pennsylvania and Massachussetts would have one half—all the officers and even the President were to be chosen by the Legislature; so that these three States might have usurped the whole power . . . Threats were thrown out to compel the lesser States to confederate—They were told this would be the last opportunity that might offer to prevent a Dissolution of the Union; that once dissolve that band which held us together and the lesser States had no security for their existence even for a moment.’†

“The protection of the small States against the ambition and influence of the larger members could only be effected by arming them with an equal power in one branch of the legislature. On a contemplation of this matter, we shall find that the jealousies of the states could not be reconciled any other way. The lesser states would never have concurred unless this check had been given them, as a security for their political existence against the power and encroachments of the great states.”‡

“Mr. Chairman, I will state to the Committee the reasons upon which this officer was introduced. I had the honor to observe to the committee, before, the causes of the particular formation of the Senate—that it was owing, with other reasons, to the extreme jealousy of the lesser states of the power and influence of the larger members of the confederacy. It was in the Senate that the several political interests of the states were to be preserved, and where all their powers were to be perfectly balanced. The commercial jealousy between the Eastern and Southern States had a principal share in this business. It might happen, in important cases, that the voices

† Luther Martin before the Maryland House of Representatives, Nov. 29, 1787.  
‡ Mr. Davie, in North Carolina Ratifying Convention, July 24, 1788.
would be equally divided. Indecision might be dangerous and inconvenient to the public. It would then be necessary to have some person who should determine the question as impartially as possible. Had the Vice-President been taken from the representation of any of the states, the vote of that state would have been under local influence in the second . . .” *

“The threatening contest, in the Convention of 1787 did not turn on the degree of power to be granted to the Federal Govt.: but on the rule by which the States should be represented and vote in the Govt.: the smaller States insisting on the rule of equality in all respects; the larger on the rule of proportion to inhabitants and the Compromise which ensued was that which established an equality in the Senate, and an inequality in the House of Representatives. The contests & compromises turning on the grant of power, tho’ very important in some instances, were knots of a less Gordian Character.” †

“But when the organization of the respective branches of the legislature came under consideration, it was easy to be perceived that the eastern and southern states had distinct interests . . . and that the large states were disposed to form a constitution, in which the smaller ones would be mere appendages and satellites to the larger ones . . . it was evident that it must be a matter of compromise and material concession . . . After serious investigation, it was solemnly determined . . . if . . . that offensive feature . . . could not be expunged . . . we would secede from the convention, and, returning to our constituents inform them that no compact could be formed with the large states but one which would sacrifice our sovereignty and independence.” ‡

It is perhaps hardly necessary to quote further to establish the fact of bargain, or compact, between the larger States and the smaller. There was also such between the Northern and Southern States. The two struggles became, in a sort, merged.

* Mr. Davie, in North Carolina Ratifying Convention, July 25, 1788.
† Madison to Martin Van Buren, May 13, 1828.
‡ Jonathan Dayton, as narrated in letter by William Steele to Jonathan D. Steele, September, 1825.
"As to the intention of the framers of the Constitution in the clause relating to 'the migration and importation of persons &c' the best key may be found in the case which produced it . . . In the Convention the former States were anxious . . . to insert a provision for an immediate and absolute stop to the trade. The latter were not only averse to any interference on the subject; but solemnly declared that their constituents would never accede to a constitution containing such an article. Out of this conflict grew the middle measure . . . Such was the tone of opposition in the States of S. Carolina & Georgia, & such the desire to gain their acquiescence in a prohibitory power, that on a question between the epochs of 1800 & 1808 the States of N. Hampshire, Massatts. & Connecticut (all the eastern States in the convention); joined in the vote for the latter, influenced however by the collateral motive of reconciling those particular States to the power over commerce & navigation; against which they felt, as did some other States, a very strong repugnance. The earnestness of S. Carolina & Georgia was further manifested by their insisting on the security in the V. article, against any amendment to the Constitution affecting the right reserved to them, & their uniting with the small States who insisted on a like security for their equality in the Senate."*  

Mr. Charles Cotesworth Pinckney, who has been previously quoted to the effect that the Declaration of Independence resulted not in the several independency of the States but in their independence as amalgamated in one body, appears to have forgotten this doctrine in his speech of January, 1788, in the South Carolina Legislature, since he, in that, represents himself as entering into a bargain on behalf of his State with the gentlemen representing the other States; which could hardly have been done, had those States been already subordinate parts of one power. Among other things, Mr. Pinckney said:

"In conformity to this rule, joined to a spirit of concession, we determined that representatives should be apportioned  

* Madison to Robert Walsh, November 27, 1819.
among the several states, by adding to the whole number of free persons three-fifths of the slaves. We thus obtained a representation for our property; and I confess I did not expect that we had conceded too much to the Eastern States, when they allowed us a representation. Reflect for a moment on the situation of the Eastern States... They can enjoy their independence without our assistance. If our government is to be founded on equal compact, what inducement can they possibly have to be united to us without having these privileges?... The general then said he would make a few observations on the objections which the gentleman had thrown out on the restrictions that might be laid on the African trade after the year 1808. On this point your delegates had to contend with the religious and political prejudices of the Eastern and Middle States, and with the interested and inconsistent opinion of Virginia, who was warmly opposed to our importing more slaves... 'Show some period,' said the members from the Eastern States, 'when it may be in our power to put a stop, if we please, to the importation... and we will endeavour... to restrain the religious and political prejudices of our people on this subject.' The Middle States and Virginia made us no such proposition; they were for an immediate and total prohibition... In short... we have made the best terms for the security of this species of property it was in our power to make. We would have made them better if we could; but, on the whole, I do not think them bad.'

Mr. Mason shows the other side of this bargain, in a letter to Thomas Jefferson, May 26, 1788:

"I was under the necessity of refusing my Signature, as one of the Virginia Delegates; and drew up some general objections; which I intended to offer, by way of Protest; but was discouraged from doing so, by the precipitate, & intemperate, not to say indecent Manner, in which the Business was conducted, during the last week of the Convention, after the Patrons of this new Plan found they had a decided Majority in their Favour; which was obtained by a Compromise between the Eastern & the two Southern States, to permit the
latter to continue the Importation of Slaves for twenty odd Years; a more favourite object with them, than the Liberty and Happiness of the People."

Again, in the Virginia Ratifying Convention, June 21, 1788, Mr. Mason said:

"With respect to commerce and navigation . . . I will give you to the best of my recollection, the history of that affair. This business was discussed at Philadelphia for four months, during which time the subject of commerce and navigation was often under consideration; and I assert that eight states out of twelve, for more than three months, voted for requiring two thirds of the members present in each house to pass commercial and navigation laws. True it is, that afterwards it was carried by a majority, as it stands. If I am right, there was a great majority for requiring two thirds of the states in this business, till a compromise took place between the northern and southern states; the northern states agreeing to the temporary importation of slaves, and the southern states conceding in return, that navigation and commercial laws should be on the footing on which they now stand. If I am mistaken, let me be put right . . . The Newfoundland fisheries will require that kind of security which we are now in want of. The eastern states therefore agreed at length, that treaties should require the consent of two-thirds of the members present in the senate."

Among the Jefferson papers, and in the writings of Jefferson, is found a memorandum as given by Mr. Mason, September 30, 1792, to the same effect, but in more particular detail:

"The Constn. as agreed to till a fortnight before the convention rose was such a one as he wd. have set his hand & heart to. 1. The presidt. was to be elected for 7 years, then ineligible for 7 more. 2. rotation in the senate. 3. a vote of 3/5 in the legislature on particular subjects, & expressly on that of navigation. the 3 new Engd. states were constantly with us in all questions (Rho. isld not there, & N. York sel-
dom) so that it was these 3 states with the 5 Southern ones against Pennsva. Jersey & Delaware. with respect to the importn. of slaves it was left to Congress. This disturbed the two Southernmost states, who knew that Congress would immediately suppress the importn. of slaves. those 2 states therefore struck up a bargain with the 3 N. Engld. states if they would join to admit slaves for some years, the 2 Southernmost states wd. join in changing the clause which required ⅗ of the legislature in any vote. it was done. these articles were changed accordingly, & from that moment the two S. States and the 3 Northern ones joined Pen. Jers. & Del. & made the majority 8. to 3, against us instead of 8. to 3. for us as it had been thro' the whole Convention. under this coalition the great principles of the Constn. were changed in the last days of the Convention."

"Besides our Labours required the unanimous Consent of the States in Convention to Insure success from abroad. We were therefore in prudence obliged to Accommodate ourselves to Interests not only opposite but in some measure as you observe, Clashing. I will just mention one Object, and that an Important One, in which there appeared a Clashing of Interests—I mean Commerce—When we withdrew from G. Britain the Eastern States were deprived of a benefit they long enjoyed on a large participation of the Carrying Trade; with many other benefits that they had in Common with the British . . . What then did Our Brethren of the Eastern States gain by a long and bloody Contest? Why nothing but the honor of calling themselves Independent States. Let us turn Our Eyes for a moment to the Southern or Staple States . . . Thus Circumstanced we were obliged to Accommodate ourselves to the Interests of the Whole; and Our System should be considered as the result of a Spirit of Accommodation, and not as the most perfect System, that under the Circumstances could be devised by the Convention." *

"Mr. Spaight answered, that there was a contest between the Northern and Southern States; that the Southern States, whose principal support depended on the labor of slaves,

* Pierce Butler, of South Carolina, to Weedon Butler, May 5, 1788.
would not consent to the desire of the Northern States to exclude the importation of slaves absolutely; that South Carolina and Georgia insisted on this clause, as they were now in want of hands to cultivate their lands. . . . Mr. Spaight further explained the clause. That the limitation of this trade to the term of twenty years was a compromise between the Eastern States and the Southern States. . . .” *

“When you are pleased to lay this plan before the General Assembly we entreat that you will do us the justice to assure that honorable Body that no exertions have been wanting on our part to guard and promote the particular interest of North Carolina [Here follow reasons by which North Carolina benefits] . . . The Southern States have also a much better Security for the Return of Slaves who might endeavour to Escape than they had under the original Confederation. . . . While we were taking so much care to prevent ourselves from being overreached . . . it is not to be supposed that our Northern Brethren were Inattentive to their particular Interest. A navigation Act or the power to regulate Commerce in the Hands of the National Government . . . is the desirable weight that is thrown into the Northern scale. This is what the Southern States have given in Exchange for the advantages we mentioned above. . . .” †

Another compromise was in regard to the Presidential office.

“To this adjustment [in regard to election of President] which was brought about by compromise between the States,” etc. ‡

“The compromise on the subject of the Presidential election, which has always been binding in honor . . . Hence it has happened, from year to year, that attempts have been made by certain States, to alter the Constitution in the subject of the Presidential election, notwithstanding this election is matter of compromise and compact between the States, with-

* Debates in North Carolina Ratifying Convention, July 26, 1788.
† North Carolina Delegates to Govr. Caswell, September 18, 1787.
‡ Rufus King (delegate of Massachusetts in the Convention) in Senate, March 18, 1824.
out which no Constitution or Union could have been formed." *

"For this reason, measures which may be employed in the several States, under regulations and provisions of simple and single sovereignties could not be adopted in the balanced system of the Constitution of the United States—a compact between the States." †

"As the Constitution stands, and is regarded as the result of a compromise between the larger and smaller States, giving to the latter the advantage in selecting a President from the candidates, in consideration of the advantage possessed by the former in selecting the candidates from the people," etc. ‡

"The part of the arrangement which casts the eventual appointment [of President] on the House of Rep. voting by States, was, as you presume, an accommodation to the anxiety of the smaller States for their sovereign equality, and to the jealousy of the larger towards the cumulative functions of the Senate." §

"The two subjects, the structure of the Govt. and the question of power entrusted to it, were more or less inseparable in the minds of all, as depending a good deal, the one on the other, after the compromise which gave the small States an equality in one branch of the Legislature, and the large States an inequality in the other branch." ||

"In order that the committee may understand clearly the principles on which the general Convention acted, I think it necessary to explain some preliminary circumstances. Sir, the natural situation of this country seems to divide its interests into different classes. There are navigating and non-navigating states. The Northern are properly navigating states: the Southern appear to possess neither the means nor the spirit of navigation. This difference of situation naturally produces a dissimilarity of interests and views respecting foreign commerce. It was the interest of the Northern States that there

* Rufus King, in the Senate.
† Ibid., March 23, 1824.
‡ Madison to Henry Lee, January 14, 1825.
§ Madison to George Hay, August 23, 1823.
|| Madison to Theodore Sedgewick, Jr., February 12, 1831.
should be no restraints on their navigation, and they should have full power, by a majority in Congress, to make commercial regulations in favor of their own, and in restraint of the navigation of foreigners. The Southern States wished to impose a restraint on the Northern, by requiring that two thirds in Congress should be requisite to pass an act in regulation of commerce. They were apprehensive that the restraints of a navigation law would discourage foreigners, and, by obliging them to employ the shipping of the Northern States, would probably enhance their freight. This being the case, they insisted strenuously on having this provision ingrafted in the Constitution; and the Northern States were as anxious in opposing it. On the other hand, the small states, seeing themselves embraced by the Confederation upon equal terms, wished to retain the advantages which they already possessed. The large states, on the contrary, thought it improper that Rhode Island and Delaware should enjoy an equal suffrage with themselves. From these sources a delicate and difficult contest arose. It became necessary, therefore, to compromise, or the Convention must have dissolved without effecting anything. Would it have been wise and prudent in that body, in this critical situation, to have deserted their country? No. Every man who hears me, every wise man in the United States, would have condemned them. The Convention were obliged to appoint a committee for accommodation. In this committee, the arrangement was formed as it now stands, and their report was accepted. It was a delicate point, and it was necessary that all parties should be indulged. Gentlemen will see that, if there had not been an unanimity, nothing could have been done; for the Convention had not power to establish, but only to recommend, a government. Any other system would have been impracticable. Let a convention be called to-morrow; let them meet twenty times,—nay, twenty thousand times; they will have the same difficulties to encounter, the same clashing interests to reconcile.” *

“I only rise to state a fact with respect to the motives which operated in the general Convention. I had the honor to state

* Hamilton, in New York Ratifying Convention, June 20, 1788.
to the committee the diversity of interests which prevailed between the navigating and non-navigating, the large and the small states, and the influence which those states had upon the conduct of each. It is true, a difference did take place between the large and the small states, the latter insisting on equal advantages in the House of Representatives. Some private business calling me to New York, I left the Convention for a few days: on my return, I found a plan, reported by the committee of details; and soon after, a motion was made to increase the number of representatives. On this occasion, the members rose from one side and the other, and declared that the plan reported was entirely a work of accommodation, and that to make any alterations in it would destroy the Constitution. I discovered that several of the states, particularly New Hampshire, Connecticut, and New Jersey, thought it would be difficult to send a great number of delegates from the extremes of the continent to the national government: they apprehended their constituents would be displeased with a very expensive government; and they considered it as a formidable objection. After some debate on this motion, it was withdrawn. Many of the facts stated by the gentleman and myself are not substantially different. The truth is, the plan, in all its parts, was a plan of accommodation.”*

“But, my friends, expelling the enemy was only half our work. To erect a government, which should secure the advantages, was an object equally important. The defects of our old confederation were deeply felt. But, to devise, and persuade the states to adopt a constitution, which should harmonize the jarring interests, habits, and wishes of so many states, peopled from different nations, was truly an Herculean task. It was attempted, formed, and accepted.”†

These statements of Delegates (and others) show the universal and consistent habit of the time of thinking, speaking, and acting in terms of the States.

† Samuel Thacher, Oration, July 4, 1796, p. 16; Boston, 1796.
APPENDIX 20A

(Page 304)

Mr. Lincoln, trying to prove that the Democratic Party were endeavouring to reopen the slave trade, said:

"I have recently seen a letter of Judge Douglas' in which . . . he endeavors to make a distinction between the two. He says he is unalterably opposed to the repeal of the laws against the African slave trade. And why? He . . . seeks to give a reason that would not apply to his popular sovereignty in the Territories. What is that reason? 'The abolition of the African slave-trade is a compromise of the Constitution.' I deny it. There is no truth in the proposition that the African slave trade is a compromise of the Constitution. No man can put his finger on anything in the Constitution, or on the line of history, which shows it. It is mere barren assertion, made simply for the purpose of "etc., etc." . . . Compromise! What word of compromise was there about it. Why the public sense was then in favor of the abolition of the slave trade; but there was at the time a very great Commercial interest involved in it and extensive capital in that branch of trade. There were doubtless the incipient stages of improvement in the South in the way of farming, dependent on the slave-trade, and they made a proposition to Congress to abolish the trade after allowing it twenty years, a sufficient time for the capital and commerce engaged in it to be transferred to other channels. They made no provision that it should be abolished in twenty years; I do not doubt that they expected it would be; but they made no bargain about it . . . I repeat there is nothing in the history of those times in favor of that matter being a compromise of the Constitution." *

Gouverneur Morris said, in relation to the clause relating to the slave trade:

* Lincoln, Speech at Columbus, 1859.
"These things form a bargain among the Northern and Southern States."

"This [the 1808 prohibition] was one of the conspicuous and important compromises of the Constitution." *

Curiously enough, as it may seem to those who have read the history of that time only as written in this, denunciation of slavery came from the South, and more particularly from Virginia; and Northern opposition to it was avowedly based upon the political motives of representation and taxation. Its condonation was more particularly the part of New England.

Martin (of Maryland) said:

"Slaves weakened the union which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. Such a feature in the constitution was inconsistent with the principles of the revolution, and dishonorable to the American character."

"For my part were it practicable to put an end to the importation of slaves immediately, it would give me the greatest pleasure; for it certainly is a trade utterly inconsistent with the rights of humanity, and under which great cruelties have been exercised. When the entire abolition of slavery takes place, it will be an event which must be pleasing to every generous mind." †

"Mr. George Mason (of Virginia). Mr. Chairman, this is a fatal section, which has created more dangers than any other. The first clause allows the importation of slaves for twenty years. Under the royal government, this evil was looked upon as a great oppression, and many attempts were made to prevent it; but the interest of the African merchants prevented its prohibition. No sooner did the revolution take place, than it was thought of. It was one of the great causes of our separation from Great Britain. Its exclusion has been a principal object of this state, and most of the states of the Union. The augmentation of slaves weakens the states;

† Iredell, in North Carolina Ratifying Convention.
and such a trade is diabolical in itself, and disgraceful to mankind; yet, by this Constitution, it is continued for twenty years. As much as I value a union of all the states, I would not admit the Southern States into the Union unless they agree to the discontinuance of this disgraceful trade, because it would bring weakness, and not strength to the Union. And, though this infamous traffic be continued, we have no security for the property of that kind which we have already. There is no clause in this Constitution to secure it; for they may lay such a tax as will amount to manumission. And should the government be amended, still this detestable kind of commerce cannot be discontinued till after the expiration of twenty years; for the 5th article, which provides for amendments, expressly excepts this clause. I have ever looked upon this as a most disgraceful thing to America. I cannot express my detestation of it. Yet they have not secured us the property of the slaves we have already. So that 'they have done what they ought not to have done, and have left undone what they ought to have done.'” *

“This government does not intend our domestic safety. It authorizes the importation of slaves for twenty odd years, and thus continues upon us that nefarious trade.” †

In the Federal Convention, August 22, 1787, Col. Mason was equally emphatic.

“This infernal traffic originated in the avarice of British merchants. The British government constantly checked the attempts of Virginia to put a stop to it . . . Maryland and Virginia had already prohibited the importation of slaves expressly. North Carolina had done the same in substance. . . . He lamented that some of our eastern brethren had, from a lust of gain, embarked in this nefarious traffic,” etc.

“Mr. Tyler warmly enlarged on the impolicy, iniquity, and disgracefulness of this wicked traffic. He thought the reasons urged by gentlemen in defence of it were inconclusive and ill founded. It was one cause of the complaints against Brit-

* Virginia Ratifying Convention.
† Mason, in Virginia Ratifying Convention.
ish tyranny, that this trade was permitted. The revolution had put a period to it; but now it was to be revived. He thought nothing could justify it. . . . His earnest desire was, that it should be handed down to posterity that he had opposed this wicked clause.” *

“Another thing will contribute to bring this event about. Slavery is detested. We feel its fatal effects—we deplore it with all the pity of humanity. Let all these considerations, at some future period, press with full force on the minds of Congress . . . May they not think that these call for the abolition of slavery? . . . As much as I deplore slavery, I see that prudence forbids its abolition. I deny that the general government ought to set them free, because a decided majority of the states have not the ties of sympathy and fellow-feeling for those whose interests would be affected by their emancipation. The majority of Congress is to the North, and the slaves are to the South . . . I repeat again, that it would rejoice my very soul that every one of my fellow-beings was emancipated . . . But is it practicable by any human means, to liberate them without producing the most dreadful . . . consequences?” †

“The honorable gentleman [Mr. Henry], and some others have insisted that the abolition of slavery will result from it, and at the same time have complained that it encourages its continuance . . . I hope there is none here who, considering the subject in the calm light of philosophy, will advance an objection dishonorable to Virginia—that, at the moment they are securing the rights of their citizens, an objection is started that there is a spark of hope that those unfortunate men now held in bondage may, by the operation of the general government, be made free. But if any gentleman be terrified by this apprehension, let him read the system . . . Where is the part that has a tendency to the abolition of slavery?” etc. ‡

* Virginia Ratifying Convention.
† Patrick Henry, in Virginia Ratifying Convention.
‡ Govr. Randolph, in Virginia Ratifying Convention.
"They tell us that they see a progressive danger of bringing about emancipation. The principle has begun since the revolution. Let us do what we will, it will come round. Slavery has been the foundation of that impiety and dissipation which have been so much disseminated among our countrymen. If it were totally abolished, it would do much good." *

"Means were used (by the British) to allure from their masters a species of property, which unfortunately constitutes the most valuable portion of the wealth of the southern states." †

"It was the policy of this country, sir, from an early period of colonization, down to the Revolution, to encourage an importation of slaves for the purposes which (if conjecture may be indulged) had been far better answered without their assistance. That this inhuman policy was a disgrace to the Colony, a dishonor to the Legislature, and a scandal to human nature, we need not at this enlightened period labor to prove.

"The generous mind, that has adequate ideas of the inherent rights of mankind and knows the value of them, must feel its indignation rise against the shameful traffic that introduces slavery into a country which seems to have been designed by providence as an asylum for those whom the arm of power had persecuted," etc. ‡

Mr. Jefferson's opinion, expressed in the first draft of the Declaration of Independence, and suppressed in order to avoid offence to certain of the States, both of the North and South, is well known. Ten years after, he writes as follows:

"I conjecture there are six hundred and fifty thousand negroes in the five southernmost States . . . The disposition to emancipate them is strongest in Virginia. Those who desire it, form, as yet, the minority of the whole State, but it bears a respectable portion to the whole in numbers and weight of character, and it is continually recruiting by the addition of

---

* Johnson, in Virginia Ratifying Convention.
‡ William Pinckney, Speech in Maryland Assembly, 1788.
nearly the whole of the young men as fast as they come into public life.” 20A2 *

“But, said Mr. Daniel, ... the words of the clause, ‘migration or importation,’ were, ... and he believed, if they were to seek the reason why this clause was inserted in the Constitution, they should find, that the Southern States insisted upon it, not only to secure their right of continuing the abominable slave trade, but that they might also have it in their power to encourage and effect the settlement of their back lands.” †

“Mr. Madison’s son is a member of the Assembly. ... This young man ... had the humanity and the courage ... to propose a general emancipation of the slaves, at the beginning of this year, 1786: Mr. Jefferson’s absence at Paris, and the situation of Mr. Wythe, as one of the judges of the State, which prevented them from lending their powerful support, occasioned it to miscarry for the moment, but there is every reason to suppose that the proposition will be successfully renewed. As it is, the assembly have passed a law declaring that there shall be no more slaves in the Republic but those existing the first day of the session of 1785-6, and the descendants of female slaves.” ‡

31 July, 1772. The Humble Address of the House of Burgesses of Virginia to George the Third: Praying for the removal of all restraints from Governors of the said Colony “which inhibit their assenting to such laws as might check so very pernicious a commerce as the slave trade.”


One of the first acts of the Virginia Convention which met August 1774, was a resolution to import “no more slaves, nor

* Answers to questions propounded by M. de Meusnier, January 24, 1786.
† Debates in House of Delegates of Virginia, December 19, 1798.
British goods, nor tea.” In 1778 a more formal act was passed, prohibiting importation of slaves from any quarter.*

Delegates from even the two Southern States which desired the continuation of the slave trade, uttered personal opinions against it.

"... Georgia was decided on this point [against meddling of the general government with slavery]. If left to herself, she may probably put a stop to the evil.” †

"If the Southern states were let alone, they will probably of themselves stop importations (of slaves). He would himself, as a citizen of South Carolina, vote for it.” ‡

Who, reading these words of the Virginians who took part in making the Constitution, can deny the truth of those of a Virginian of the sixties? §

Turning now to contemporary New England action and opinion: Mr. Gerry (of Massachusetts) “thought we had nothing to do with the conduct of the states as to slaves.” ¶

“If we ratify the Constitution, shall we do any thing by our act to hold the blacks in slavery? or shall we become the partakers of other men’s sins? I think, neither of them. Each state is sovereign and independent to a certain degree, and the states have a right, and they will regulate their own internal affairs as to themselves appears proper; and shall we refuse to eat, or to drink, or to be united, with those who do not think, or act, just as we do? Surely not. We are not in this case, partakers of other men’s sins,” etc.¶

Mr. Sherman (of Connecticut) “disapproved of the slave trade; yet, as the states were now possessed of the right to import slaves, as the public good did not require it to be taken

* See also the Resolutions of Virginia on Colonization, December 23, 1816, in Ames’s State Documents; and Cicero W. Harris, “The Sectional Struggle,” p. 198; Philadelphia, 1902.
† Mr. Baldwin (of Georgia) in Federal Convention, August 22, 1787.
‡ Charles Pinckney, in Federal Convention, August 22, 1787.
§ Vide Bagby, p. 111.
¶ Speech in Federal Convention, August 22, 1787.
† Genl. Heath, in Ratifying Convention of Massachusetts.
from them, and as it was as expedient to have as few objections as possible to the proposed scheme of government, he thought it best to leave the matter as we find it. He observed that the abolition of slavery seemed to be going on in the United States, and that the good sense of the several states would probably by degrees complete it. He urged on the Convention the necessity of despatching its business.” *

Mr. Ellsworth (of Connecticut) “was for leaving the clause as it stands. Let every state import what it pleases. The morality or wisdom of slavery are considerations belonging to the states themselves. What enriches a part enriches the whole, and the states are the best judges of their particular interest. The old Confederation had not meddled with this point; and he did not see any greater necessity for bringing it within the policy of the new one.” †

The motion to extend the period allowed for importation of slaves from 1800 to 1808, made by C. C. Pinckney, was seconded by Gorham (of Massachusetts), and was carried by the vote of Massachusetts, Connecticut, and New Hampshire (with Georgia and South Carolina).

When it is also remembered that the Revolution might, with a little paradox, be said to have arisen with the, so-called, “molasses act,” passed in 1733 to restrain New England’s activities in the slave trade in the interest of English merchants in that trade, who, reading these words of the New Englanders who took part in making the Constitution, in the light of their bargain with Georgia and South Carolina which fastened slavery and the tariff upon the United States, reading their later protests (not always made without avowedly political reasons)—when on the annexation of Texas, Massachusetts “Resolved, That the annexation of a large slaveholding territory . . . is . . . a deliberate assault upon the compromises of the Constitution.” ‡

When she

* In the Federal Convention, August 22, 1787.
† Ibid., August 21, 1787.
‡ March 26, 1845.
"Resolved, That our attention is directed anew to the 'wrong and enormity' of slavery ... and that we are impressed with the unalterable conviction, that a regard for the fair fame of our country, for the principles of morals, and for that righteousness which exalteth a nation, sanctions and requires all constitutional efforts for the destruction of the unjust influence of the slave power, and for the abolition of slavery within the limits of the United States."

*Massachusetts, on the Mexican War. Acts and Resolves of Massachusetts, 1846-1848.
†On the Missouri Constitution, November 16, 1829.

When Vermont

"Resolved, That this legislature views with alarm ... the attempt of ... Missouri to obtain admission into the Union ... under a constitution which ... contains provisions to prevent freemen of the United States from ... settling in Missouri, on account of their origin, colour, and features ... etc."

When New England generally passed "personal liberty" laws, when rifles were bought by her philosophers and "solid men" for John Brown's raid, etc., etc.; who, knowing these things and familiar with historical continuity, can avoid thinking of Mr. Webster's characterization of his fellow citizens, in his letter of October 14, 1826, to Mr. Haddock:

"In regard to the moral character generally of our ancestors, the settlers of New England, my opinion is that they possessed all the Christian virtues but charity; and they seem never to have doubted that they possessed that also. And nobody could accuse their system or their practice but of one vice, and that was religious hypocrisy, of which they had an infusion without ever being sensible of it.

"It necessarily resulted from that disposition which they cherished, of subjecting men's external conduct, in all particulars, to the influence and government of express rule and precept, either of church or state. That always makes hypocrites and formalists; it leads men to rely on mint and cummin."

*Massachusetts, on the Mexican War. Acts and Resolves of Massachusetts, 1846-1848.
†On the Missouri Constitution, November 16, 1829.
"Slaves as these unfortunate black people are, and dull as all men are from slavery, must they not a little suspect the offer of freedom from that very nation which has sold them to their present masters? From that nation, one of whose causes of quarrel with those masters, is their refusal to deal any more in that inhuman traffic? An offer of freedom from England, would come rather oddly, shipped to them in an African vessel, which is refused an entry into the ports of Virginia or Carolina, with a cargo of three hundred Angola negroes. It would be curious to see the Guinea captain attempting at the same instant to publish his proclamation of liberty, and to advertise his sale of slaves." *

*APPENDIX 20A3

(Page 317)

To the same purport is the testimony of the Marquis de Chastellux:

"Il faut aussi rendre cette justice aux Virginiens, c'est que plusieurs d'entre eux traitent leurs nègres avec beaucoup d'humanité. Il faut encore leur en rendre une autre, qui leur est plus honorable, c'est qu'en général ils paraissent affligés d'en avoir, et qu'ils parlent sans cesse d'abolir l'esclavage et de chercher un autre moyen de faire valoir leurs terres. Il est vrai que cette opinion, presqu'universellement établie, est inspirée par différents motifs. Les Philosophes, et les jeunes gens qui sont la plupart élevés dans les principes de la bonne philosophie, n'visagent que la justice et les droits de l'humanité. Les pères de famille et ceux qui sont occupés principalement de leurs intérêts, se plaignent que leurs nègres leur coûtent bien cher à entretenir; que le travail qu'on en exige,

*Burke's Speech on Conciliation of the Colonies.
n'est ni aussi fructueux ni à aussi bon marché que celui des journaliers ou des domestiques blancs; enfin que les épidemies, qui sont très communes, rendent leur propriété très précaire et leur revenu très incertain," etc.*

The entire passage is well worth reading, as showing the views of a humane and intelligent man who, perceiving the evil, was also able to perceive the very great difficulties to be overcome in its removal,—in brief, truly a philanthropist; neither a hypocrite nor fanatic.

"The bill on the subject of slaves, was a mere digest of the existing laws respecting them, without any intimation of a plan for a future and general emancipation. It was thought better that this should be kept back, and attempted only by way of amendment, whenever the bill should be brought on. The principles of the amendment, however, were agreed on, that is to say, the freedom of all born after a certain day, and deportation at a proper age. But it was found that the public mind would not yet bear the proposition, nor will it bear it even at this day. Yet the day is not distant when it must bear and adopt it, or worse will follow. Nothing is more certainly written in the book of fate, than that these people are to be free; nor is it less certain that the two races, equally free, cannot live in the same government. Nature, habit, opinion have drawn indelible lines of distinction between them." †

APPENDIX 21

(Page 55)

It is not perhaps wholly insignificant that in the Declaration of Independence the "u" in "united" is uncapsulated: i. e., "the United States."

"May the United States be more and more united." ‡

“But still compelled to fight against the flesh and sin, to the Thirteen United States, who, notwithstanding they have acquired liberty and independence, are under the necessity of employing all their force to combat a formidable power . . .” *

The Declaration of Independence says:

“The unanimous Declaration of the thirteen united States of America . . . That these United Colonies are, and of Right ought to be, Free and Independent States.”

The preamble to the Ordinance for Government of Northwest Territory says: “the basis whereon these republics . . . are erected.”

“Whereas his Britannic majesty, in conjunction with the lords and commons of Great Britain, has, by a late act of parliament, excluded the inhabitants of these United Colonies from the protection of his crown . . . and it is necessary that the exercise of every kind of authority under the said crown, should be totally suppressed, and all the powers of government exerted, under the authority of the people of the colonies . . . therefore resolved,” etc. †

“Resolved, That it be recommended to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs hath been hitherto established, to adopt such government, as shall in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.” ‡

Here, prior to the Declaration, the term is used in a context unsusceptible of misconstruction to indicate the people of the colonies severally.

“Resolved, That in all continental commissions, and other instruments, where, heretofore, the words ‘United Colonies’

‡ Journals of Congress, May 10, 1776.
have been used, the stile be altered, for the future, to the ‘United States.’” *

“That the commander in chief of the forces of these states in the several departments, be directed to give positive orders,” etc. †

“I swear ... to be true to the United States of America, and to serve them honestly and faithfully against all their enemies.” ‡

“Brothers of the Six-Nations ... We, the delegates of the thirteen United States of America, are extremely pleased to see you.” §

“Whereas the war in which the United States are engaged with Great Britain, has not only been prolonged ... Resolved, That it be recommended to all the United States ... to appoint a day of ... fasting,” etc. ||

“Resolved, That general Washington shall be, and he is hereby, vested with ... powers to raise ... from any or all of these United States, 16 battalions,” etc. ¶

“Resolved, That none of the said articles ... be exported from any of these United States ... And it is ... recommended to the executive powers of the several United States, to see that this resolution be strictly complied with.” **

“Resolved, That a committee ... be appointed to prepare a circular letter to the several United States,” etc. ††

“Resolved, That the president write to the executive powers of each of the thirteen United States, requesting them,” etc. ‡‡

“The United States of America acknowledge themselves to be indebted.” §§

“Resolved, That the thanks of Congress in their own name, and in behalf of the inhabitants of the thirteen United States

---

* Journals of Congress, September 9, 1776.
† Ibid., September 19, 1776.
‡ Oath of Continental soldiers, Journals of Congress, Sept. 20, 1776.
§ Journals of Congress, December 7, 1776.
|| Ibid., December 11, 1776.
¶ Ibid., December 27, 1776.
** Ibid., December 27, 1776.
†† Ibid., December 28, 1776.
‡‡ Ibid., May 9, 1777.
§§ Form of bank note for prize in U. S. Lottery, Journals of Congress, May 14, 1777.
be presented to major-general Gates . . . and the main army . . . reduced to the necessity of surrendering themselves upon terms honourable and advantageous to these states . . .” *

“Resolved, That the commissioners at the courts of France and Spain, be directed to exert their utmost endeavours to obtain . . . a loan . . . on the faith of the thirteen United States,” etc. †

“That the charge made by lieut. Gen. Burgoyne, in his letter to major gen. Gates, of the 14th of Nov. of a breach of the public faith on the part of these states, is not warranted by the just construction of any article of the convention of Saratoga; that it is a strong indication of his intention, and affords just grounds of fear; that he will avail himself of such pretended breach of the convention, in order to disengage himself and the army under him, of the obligations they are under to these United States; and that the security which these states have had in his personal honor is hereby destroyed.” ‡

“It is essential to the liberties of the United States that due attention should be paid to the expenditure of their public monies, to enable them to support the war, and avoid that system of corruption . . . which prevails in the government of their unnatural enemies.” §

“And, further, the committee beg leave to report it as their opinion that these United States cannot, with propriety, hold any conference or treaty with any commissioners on the part of Great Britain, unless they shall, as a preliminary thereto, either withdraw their fleets and armies, or else, in positive and express terms, acknowledge the independence of the said states.” ||

“Whereas, Congress have received from their commissioners . . . copies of a treaty . . . between the crown of France and these United States, duly entered into and executed at Paris,” etc. ¶

* Journals of Congress, Nov. 4, 1777.
† Ibid., December 3, 1777.
‡ Ibid., January 8, 1778.
§ Ibid., February 5, 1778.
|| Ibid., April 22, 1778.
¶ Ibid., May 6, 1778.
"I am further directed to inform your excellence, that Congress are inclined to peace. They will therefore be ready to enter upon the consideration of a treaty of peace when the King of Great Britain shall demonstrate a sincere disposition for that purpose. The only solid proof of this disposition, will be an explicit acknowledgment of the independence of these states," etc. *

"Resolved, That Congress will, in a body, attend divine worship on Sunday, the 5th day of July next, to return thanks for the divine mercy in supporting the independence of these states." †

"The Congress or grand council of the states may," etc. ‡

"Whereas Congress ... did declare that they would be ready to enter upon the consideration of a treaty of peace ... when the King of Great Britain should demonstrate a sincere disposition for that purpose; and that the only solid proof of this disposition, would be an explicit acknowledgment of the independence of these states," etc. §

"By the Congress of the United States of America

A MANIFESTO

"The United States having been driven to hostilities by the oppressive ... measures of Great-Britain; having been compelled to commit the essential rights of man to the decision of arms; and having been at length forced to shake off a yoke which had grown too burthensome to bear; they declared themselves free and independent." ‖

"It having pleased Almighty God ... to bestow many great and manifold mercies on the people of these United States," etc. ‖

* Draught of a letter in answer to letter from Commissioner of the King. Journals of Congress, June 17, 1778.
† Journals of Congress, June 24, 1778.
‡ Amendment proposed to the Articles of Confederation by South Carolina. Journals of Congress, June 25, 1778.
§ Journals of Congress, July 18, 1778.
‖ Journals of Congress, October 30, 1778.
†† Journals of Congress, November 14, 1778.
“Articles of Confederation and perpetual Union, between the States of New Hampshire [others named]:

“Article 1. The stile of this Confederacy shall be ‘The United States of America.’

“Article 2. 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,” etc.

“Upon those weighty considerations Congress have agreed to the annexed resolutions, and recommend them to the immediate attention of the respective legislatures of the United States, to the end that laws may be enacted to give them the most speedy, decisive and effectual operation.” *

“That for preventing . . . be lodged by them under regulations in public offices . . . for the benefit of the inhabitants of the United States.” †

“Resolved, That the following letter be written to M. de Beaumarchais: SIR, The Congress of the United States of America, sensible of your exertions in their favour, present you with their thanks, and assure you of their regard.

“They lament the inconvenience you have suffered by the great advances made in support of these states,” etc. ‡

“The committee . . . appointed to prepare a recommendation to the several states to set apart a day of fasting . . . brought in a draught which was . . . agreed to as follows:

“Whereas in just punishment of our manifold transgressions, it hath pleased the supreme disposer of all events to visit these United States with a calamitous war . . .

“Resolved, That it be recommended to the several states,” etc. §

“On considering the resolution,

“That these United States be called upon . . . for their respective quotas of,” etc. ||

* Journals of Congress, Jan. 13, 1779.
† Ibid., January 14, 1779.
‡ Ibid., January 15, 1779.
§ Ibid., March 20, 1779.
|| Ibid., May 19, 1779.
"To the inhabitants of the United States of America.

"An alliance has been formed between his most Christian Majesty and these states... Fill up your battalions... place your several quotas in the Continental treasury... sink the emissions of your respective states." *

"Resolved, That Sunday the 4th day of July, being the anniversary of the declaration of independence of these United States," etc. †

"In short, whoever considers that these states are daily increasing in power; that their armies have become veteran; that their governments, founded in freedom, are established;" etc. ‡

"Resolved, That it be recommended to the several states, to appoint... the 9th of December... to be a day of... thanksgiving... and of prayer... that he would establish the independence of these United States upon the basis of religion and virtue..."

"Done in Congress the 25th of October, (1779) and in the 4th year of the United States of America." §

"The relations of commerce between the subjects of the King, my master, and the inhabitants of the thirteen United States," etc. ||

"... Whereas, effectually to remedy these evils, for which purpose the United States are now become competent, their independency being well assured, their civil governments established, and the spirit of their citizens ardent for exertion," etc. ¶

"The treaty, as it now stands, is as follows:

"The Congress of the United States of New Hampshire, [others named] by the grace of God sovereign, free and independent, to all who shall see these presents...

"... for the defence, protection and safety of... the

* Address to the Several States on the Present Situation of Affairs, Journals of Congress, May 26, 1779.
† Journals of Congress, June 24, 1779.
‡ Circular letter from the Congress of the U. S. of A. to their Constituents. Journals of Congress, September 13, 1779.
§ Journals of Congress.
|| Ibid., November 17, 1779.
¶ Ibid., March 18, 1780.
subjects of his most Christian majesty and the people of the United States . . . The most Christian King and the thirteen United States of North America, viz., New Hampshire, [others named] willing . . . and his most Christian majesty guarantees on his part to the United States, their liberty, sovereignty, and independence, absolute and unlimited, as well in matters of government as commerce,” etc.*

“... that they will prosecute the war . . . until . . . a peace shall be happily accomplished, by which the full and absolute sovereignty and independency of these United States having been duly assured,” etc. †

“A treaty . . . between . . . the States general of the United Netherlands, and the United States of America, to wit New Hampshire.” ‡

“Treaty . . . between . . . the King of Sweden and the United States of (North) America.

“The King of Sweeden . . . and the thirteen United States of (North) America, to wit: New Hampshire [others named] . . . Now be it known that we the said United States of America in Congress assembled . . . do . . . ratify and confirm the said treaty.” §

“By the United States in Congress assembled.

“A Proclamation—Whereas it hath pleased the Supreme Ruler . . . to put a period to the effusion of human blood . . . and these United States are not only . . . but their freedom, sovereignty and independence ultimately acknowledged. . . . the United States in Congress assembled, do recommend it to the several states; to set apart the second Thursday . . . that all the people may then assemble,” etc. ||

Charles Pinckney’s Draft of a Federal Government has:

“We the people of the States of New Hampshire, Massachusetts (etc.) do ordain (etc.)

“Art. I. The style of this government shall be the United States of America,” etc.

* Journals of Congress, July 11, 1780.
† Ibid., October 4, 1782.
‡ Ibid., January 23, 1783.
§ Ibid., July 29, 1783.
|| Ibid., October 18, 1783.
This was the style followed in the Report of the Committee of Detail, delivered to the Convention, August 6, by Mr. Rutledge, viz.:

"We the people of the states of New Hampshire, Massachusetts, Rhode Island [etc.] . . . do ordain, declare, and establish, the following Constitution for the government of ourselves and our posterity:—

"Article I.—The style of the government shall be, 'The United States of America.'"

As the list of enumerated States contains the names of entire thirteen, including Rhode Island and North Carolina, which did not ratify the Constitution, nor become members of the United States until some time after the government had been established, the reason for not retaining this style is sufficiently clear. It also shows that the two forms were accepted as identical.

The Proceedings of the Commissioners to remedy defects of the Federal Government, September 1786, runs:

"And to report such an act for that purpose to the United States in Congress assembled, as when agreed to by them," etc.

The act of Virginia, appointing deputies to the Federal Convention, October 16, 1786, says:

"And to render the United States as happy in peace as they have been glorious in war."

"The United States in Congress assembled, ordered this statue to be erected in . . . honor of George Washington, the illustrious commander in chief of the armies of the United States of America, during the war which vindicated and secured their liberty, sovereignty and independence." *

"Whereas it has been represented to this house by the hon. sieur Gerard . . . that 'it is pretended the United States have preserved the liberty of treating with Great Britain' . . . therefore

"Resolved unanimously, That as neither France or these

* Journals of Congress, August 7, 1788.
United States may of right, so these United States will not conclude," etc.

"That the faith of the thirteen United States be pledged for the redemption," etc.

"It is therefore recommended to the legislative or executive powers of these United States, to set apart Thursday . . . for solemn thanksgiving and praise; that . . . the good people may express the grateful feelings," etc.

The Treaty of Peace is published under the following title, by two separate publishers in Philadelphia, 1795:

"Treaty of amity . . . between his Britannic Majesty and the United States of America, by their President, with the advice and consent of their Senate. Conditionally ratified . . . June 24, 1795."

The reply of the President of Congress to Washington's resignation of the office of Commander-in-Chief, says:

"The United States in Congress assembled, receive with emotions too affecting for utterance, the solemn resignation of the authorities under which you have led their troops . . . You have persevered till these United States . . . have been enabled . . . to close the war in freedom, safety and independence. . . ."

Washington's first inaugural says:

"And, in the important revolution just accomplished, in the system of their united government, the tranquil deliberations and voluntary consent of so many distinct communities," etc.

"The proceedings have been reported to Congress, and will probably be published for the satisfaction of the good people of these United States." *

In the same way the following:

"I take the liberty of sending you a copy of the Constitu-

* Washington to Harrison, March 10, 1783. Note in this connection the plural, separative force of the previous "these," though the word "people" is used collectively.
tion, which the federal convention has submitted to the people of these States.”

“Genl. Washington is well known as the Commander in chief of the late American army. Having conducted these states to independence & peace . . .”

“The efforts of Great-Britain to reduce these United States being now almost brought to a period;” etc.”

George Mason’s endorsement on his Declaration of Rights, (of Virginia) says:

“This Declaration of Rights was the first in America, and was afterwards closely imitated by the other United States.”

“The eyes of the United States are turned upon this assembly, and their expectations raised to a very anxious degree.”

“It is not probable that the United States will in future be so ideal as to risk their happiness upon the unanimity of the whole,” etc. ||

Mr. Tench Coxe (?) in his “Examination of the Constitution for the United States of America,” Phila., 1788, says:

“Every person who desires to know the true situation of the United States of America, in regard to the freedom and powers of their governments,” etc.


“A Topographical description of the Western Territory of

* Washington to Patrick Henry, September 24, 1787.
† “Character Sketches of Delegates to the Federal Convention,” by William Pierce, Delegate from Georgia.
‡ Observations on the American Revolution, published according to a Resolution of Congress by their Committee; Phila., 1779.
§ George Mason to George Mason, Jr., June 1, 1787.

"It might not have been deemed proper, to submit the sovereignty of the United States, against their own will, to judicial cognizance." *

"This clause enables the judicial department to receive jurisdiction to the full extent of the constitution, laws, and treaties of the United States, when any question respecting them shall assume," etc. †

"Many expressions in the constitution prove that its name did not imply a national government, nor convey any power. Under such a construction, its whole tenor would be absurd, and all its limitations useless. 'The president shall, from time to time, give to Congress information as to the state of the union.' Why not as to the state of the nation? Because there was no nation, the state of which was subjected to the legislative power of Congress. . . .

"The terms of the guarantee in other views demolish the doctrines of a union between individuals constituting an American nation, and of recondite powers in the word constitution. 'The United States shall guarantee to every state in this union.' Thus it is positively asserted, that our union is a union of states, and not of individuals, and that it is a guarantee by states to states, and not of an American nation to states. The sovereignty of states is necessary, both to undertake and to require the fulfilment of the guarantee. Corporations could do neither. Had the attempt in the convention to establish a national government succeeded, the recognition contained in the mutual guarantee, that the union was a union of independent states, could not have been consistently introduced into the constitution.

"This guarantee ought to be considered in another very important light. Is the supreme court of the United States

† Gibbons vs. Ogden, in Judge Marshall's Opinions, Boston, 1839; Vide also Appendix 3, ante.
invested with a power of supervising and enforcing it? The question must be answered affirmatively, if this court can abridge or measure the rights of the states. A republican form of state government can only be constituted by rights. Are these rights guaranteed to the states by each other, or by the federal court? Had Mr. Madison and Mr. Hamilton adverted to this guarantee, when they were discussing the question, whether the court or Congress possessed the supremacy contended for, over the state governments, it would have furnished them with some lights towards its decision. As it is a guarantee by states to states, Mr. Madison must have proved that the court, and Mr. Hamilton that Congress, was the United States, to have invested either with a power of abridging (if a guarantee possesses this power), these republican rights. It seems to be a plain matter of fact, whether the court, or Congress, or the states themselves, are considered by the constitution as the guardian of state rights. It contains two positive stipulations for the preservation of state rights, or a republican form of government; their reservation, and a guarantee of this reservation. Neither Congress nor the federal judiciary is mentioned in either. Had the powers of either department embraced a right to regulate the division of power between the federal and state governments, this could not have happened. To counteract the ambition of usurpation, and the ingenuity of construction, the positive division of power is protected by the solemn compact of a mutual guarantee between the states themselves. This compact extends to all the rights, only to be secured by a republican form of government, and includes constructive alterations of the constitution, by which these rights may be abridged, without the concurrence of the parties to the guarantee. The federal judiciary does not contract with each state to preserve its republican form of government; and if it obtains a power to regulate those rights by which this form is constituted, it may destroy the republican forms of state governments, without violating an engagement. This consideration discloses the wide difference between the guarantee expressed, and the constructive guarantee usurped. The first does not comprise a
power of taking from the states their republican rights; the
other does. The federal court, by seizing upon the guarantee,
and transforming it from a duty to preserve the republican
rights of the states, into a power of abridging them, has
claimed a supremacy over this compact, without being even a
party to it. The supremacy claimed for Congress, is also ex-
tracted from the guarantee usurped by the court, by confound-
ing the words United States and Congress, as of the same
import. But the constitution plainly distinguishes between
them. The United States, and not Congress, are invested with
the powers of appointing the members of the three great de-
partments of the federal government, and of amending the
constitution. Specified powers are given to each federal de-
partment, repeatedly distinguishing between them all and the
United States, the donors. The members of Congress are to
be paid out of a treasury of the United States. Had this
treasury been a property and not a trust in Congress, there
would have been no occasion for adding this item to the other
demands, to which the property of the United States was sub-
jected, because it was not the property of Congress. The citi-
zens of each state shall be citizens in the several states, exclud-
ing the idea that Congress, as being the United States, might
grant this mutual citizenship; and acknowledging state sov-
er eignties by acknowledging state citizenship. A criminal flee-
ing from justice shall be removed to the state having jurisdic-
tion of the crime. If Congress or the court are to be consid-
ered as the United States, yet the exclusive jurisdiction of
each state is here acknowledged. Treason against the United
States is specified by the act of the states, and its punishment
only intrusted to Congress. Can Congress, as being the United
States, extend or abridge this crime? If not, it cannot extend
any other delegated power, or abridge any reserved power
upon the same ground. But a majority of the United States
themselves can do neither, and a majority of Congress, even
if it is the United States, can have no greater power than a
majority of the states. Neither of these majorities were in-
vested by the guarantee with a power of transforming our
federal system into a supreme consolidated government; and
no powers or duties assigned to the United States, were intended to have the effect of enabling either a majority of states or of Congress, to subvert the rights of the states, which the guarantee was intended to prevent." *

APPENDIX 22

(Page 56)

"The opinion that the constitution was formed by 'the people of the United States,' as contradistinguished from the people of the several States, that is, as contradistinguished from the States as such, is founded exclusively on the particular terms of the preamble. The language is, 'We, the people of the United States, do ordain and establish this Constitution for the United States of America.' 'The people do ordain and establish, not contract and stipulate with each other. The people of the United States, not the distinct people of a particular State with the people of the other States.' In thus relying on the language of the preamble, the author rejects the lights of history altogether. I will endeavour in the first place to meet him on his own ground.

"It is an admitted rule, that the preamble of a statute may be resorted to in the construction of it; and it may, of course, be used to the same extent in the construction of a constitution, which is a supreme law. But the only purpose for which it can be used is to aid in the discovery of the true object and intention of the law, where these would otherwise be doubtful. The preamble can in no case be allowed to contradict the law, or to vary the meaning of its plain language. Still less can it be used to change the true character of the law-making power. If the preamble of the Constitution had declared that it was made by the people of France or England, it might, indeed, have been received as evidence of that fact, in the absence of all proof to the contrary; but surely it would not be so re-

ceived against the plain testimony of the instrument itself, and
the authentic history of the transaction. If the convention
which formed the Constitution was not, in point of fact, a con-
vention of the people of the United States, it had no right to
give itself that title; nor had it any right to act in that char-
acter, if it was appointed by a different power. And if the
Constitution, when formed, was adopted by the several States,
acting through their separate conventions, it is historically
untrue that it was adopted by the aggregate people of the
United States. The preamble, therefore, is of no sort of value
in settling this question; and it is matter of just surprise that
it should be so often referred to, and so pertinaciously relied
on, for that purpose. History alone can settle all difficulties
upon this subject.

"The history of the preamble itself ought to have convinced
our author, that the inference which he draws from it could
not be allowed. On the 6th of August 1787, the committee ap-
pointed for that purpose reported the first draft of a consti-
tution. The preamble was in these words: 'We, the people
of the States of New Hampshire, Massachusetts, Rhode Island
and Providence Plantations, Connecticut, New York, New
Jersey, Pennsylvania, Delaware, Maryland, Virginia, North
Carolina, South Carolina and Georgia, do ordain, declare and
establish the following constitution, for the government of
ourselves and our posterity.' (J. Elliot's Debates, 255.) On
the very next day this preamble was unanimously adopted; and
the reader will at once perceive, that it carefully preserves the
distinct sovereignty of the States, and discountenances all idea
of consolidation. (Ib. 263.) The draft of the Constitution
thus submitted was discussed, and various alterations and
amendments adopted (but without any change in the pream-
bble), until the 8th of September, 1787, when the following res-
olution was passed: 'It was moved and seconded to appoint a
committee of five, to revise the style of, and arrange the ar-
ticles agreed to, by the house; which passed in the affirmative.'
(Ib. 324.) It is manifest that this committee had no power to
change the meaning of anything which had been adopted, but
were authorized merely 'to revise the style,' and arrange the
matter in proper order. On the 12th of the same month they made their report. The preamble, as they reported it, is in the following words: ‘We, the people of the United States, in order to form a more perfect union, to establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.’ (Ib. 326.) It does not appear that any attempt was made to alter this phraseology in any material point, or to reinstate the original. The presumption is, therefore, that the two were considered as substantially the same, particularly as the committee had no authority to make any change, except in the style. The difference in the mere phraseology of the two was certainly not overlooked; for on the 13th September, 1787, ‘it was moved and seconded to proceed to the comparing of the report from the committee of revision, with the articles which were agreed to by the house, and to them referred for arrangement; which passed in the affirmative. And the same was read by paragraphs, compared, and, in some places, corrected and amended.’ (Ib. 338.) In what particulars these corrections and amendments were made, we are not very distinctly informed.\(^{224}\) The only change which was made in the preamble, was by striking out the word ‘to,’ before the words ‘establish justice’; and the probability is, that no other change was made in any of the articles, except such as would make ‘the report of the committee of revision’ ‘correspond with the articles agreed to by the house.’ The inference, therefore, is irresistible, that the convention considered the preamble reported by the committee of revision, as substantially corresponding with the original draft, as unanimously ‘agreed to by the house.’

“There is however another and a perfectly conclusive reason for the change of phraseology, from the States by name, to the more general expression ‘the United States’; and this, too, without supposing that it was intended thereby to convey a different idea as to the parties to the constitution. The revised draft contained a proviso that the constitution should go into
operation when adopted and ratified by nine States. It was, of course, uncertain whether more than nine would adopt it, or not, and if they should not, it would be altogether improper to name them as parties to that instrument. As to one of them, Rhode Island, she was not even represented in the Convention, and, consequently, the others had no sort of right to insert her as a party. Hence it became necessary to adopt a form of expression which would apply to those who should ratify the constitution, and not to those who should refuse to do so. The expression actually adopted answers that purpose fully. It means simply, 'We, the people of those States who have united for that purpose, do ordain,' etc. This construction corresponds with the historical fact, and reconciles the language employed with the circumstances of the case. Indeed, similar language was not unusual through the whole course of the revolution. 'The people of his majesty's colonies,' 'the people of the united colonies,' 'the people of the United States,' are forms of expression which frequently occur, without intending to convey any other idea, than that of the people of the several colonies or states.'

The phrase was used not merely before the Confederation and the Revolution but even before the Declaration, when it will scarcely be contended that the unifying meaning can be deduced from it:

"Whereas, since the close of the last War, the British Parliament, claiming a power of Right, to bind the People of America," etc. †

"We therefore in the name of the people of these United Colonies . . . declare," etc. ‡

"Whereas his Britannic majesty, in conjunction with the lords and commons of Great Britain, has, by a late act of parliament, excluded the inhabitants of these United Colonies from the protection of his crown . . . and it is necessary that the exercise of every kind of authority under the said

* Upshur, "Review of Story."
† Journals of Congress, Declaration of Rights, October 14, 1774.
‡ Ibid., December 6, 1775.
crown, should be totally suppressed, and all the powers of
government exerted, under the authority of the people of the
colonies . . . therefore resolved," etc.*

"Resolved, That it be recommended to the respective as-
semlies and conventions of the United Colonies, where no
government sufficient to the exigencies of their affairs hath
been hitherto established, to adopt such government, as shall
in the opinion of the representatives of the people, best con-
duce to the happiness and safety of their constituents in par-
ticular, and America in general." †

Here, prior to the Declaration, the term is used in a context
unsusceptible of misconstruction to indicate the people of the
colonies severally.

"We therefore, the representatives of the United States
of America in General Congress assembled . . . do, in
the name, and by authority of the good people of these col-
onies solemnly publish and declare," etc. ‡

It is also used with an unmistakably disjunctive connotation
after the Declaration and Confederation, both commonly and
officially.

"Resolved that 'be published in the several gazettes, that the
good people of these United States may be informed,'" etc. §

"Resolved, That every officer who holds . . . a commis-
sion . . . from Congress shall take . . . the following
oath . . .

"I——— do acknowledge the United States of America to
be free, independent and sovereign states and declare that the
people thereof owe no allegiance," etc. ¶

"From all which it appears evident to your committee, that

* Journals of Congress, May 15, 1776. Preamble to resolution of the
10th inst.
† Ibid., May 10, 1776.
‡ Declaration of Independence.
§ Journals of Congress, July 19, 1776.
¶ Ibid., February 3, 1778.
the said bills are intended to operate upon the hopes and fears of the good people of these states, so as to create divisions among them and a defection from the common cause.” *

“Whereas . . . letters . . . lately received from England . . . are found to contain ideas insidiously calculated to divide and delude the good people of these states,” etc. †

“. . . and this slender security is still farther weakened, by the consideration that it was pledged to rebels (as they unjustly call the good people of these states) with whom they think they are not bound,” etc. ‡

“Whereas Congress have received intelligence, that the commissioners of the King of Great Britain are about to send . . . certain seditious papers . . . to stir up dissentions . . . among the good people of these states . . .” §

“The people of the Thirteen States are almost in the same state as 13 people who form a business agreement,” etc. ||

“It is therefore recommended to the several states to set apart the 13th day of December next, to be . . . observed as a day of thanksgiving . . . that all the people may assemble on that day,” etc. ¶

“What will be the result of their [the Delegates to the Convention] meeting I cannot with any certainty determine, but I hardly think much good can come of it; the people of America don’t appear to me to be ripe for any great innovation & it seems they are ultimately to ratify or reject; . . . The delegates from the Eastwd. are for a very strong government . . . but I don’t learn that the people are with them, on ye contrary in Massachusetts they think . . . in Connecticut they have . . . R. Island has refused to send members . . . New Hampshire has not . . . In New York . . . Jersey will . . . Pennsylvania will join provided . . . I shall

* Journals of Congress, April 22, 1778.
† Ibid., June 17, 1778.
¶¶ Journals of Congress, October 26, 1781.
make no observations on the Southern States, but I think they will,” etc.*

“That all power is originally vested in and consequently derived from the people . . . That the powers of government may be re-assumed by the people, whensoever it shall become necessary to their happiness; that every power, jurisdiction and right, which is not by the said constitution clearly delegated to the Congress of the United States, or the departments of the government thereof, remains to the people of the several states, or to their respective state governments, to whom they may have granted the same,” etc. †

“Judge Iredell, in delivering his opinion, goes much more fully into the examination of the powers of the revolutionary government . . . After proving that the several colonies were, to all intents and purposes, separate and distinct, and that they did not form ‘one people’ in any sense of the term, he says, ‘If congress, previous to the articles of confederation, possessed any authority, it was an authority, as I have shown, derived from the people of each province in the first instance. The authority was not possessed by congress, unless given by all the States.’ I conclude therefore, that every particle of authority, which originally resided either in Congress or in any branch of the State governments, was derived from the people who were permanent inhabitants of each province, in the first instance, and afterwards became citizens of each State; that this authority was conveyed by each body politic separately, and not by all the people in the several provinces or states jointly.” ‡

The opinion of no single individual should have more weight as regards Constitutional questions than that of the “Father of the Constitution.” Upon this point it is clear, and given,

* William Grayson, letter, May 29, 1787. That the locution of “the people” as here used refers to them separatively, by States, the context can leave no doubt.
† Ratification of New York, Journals of Congress; Vide also Appendix 19, for quotations by Washington bearing on the subject.
not under circumstances of his sometimes over-subtle ratiocination but incidentally and unpolemically.

"Mr. Madison . . . suggested also that, as far as the Articles of Union were to be considered as a treaty only, of a particular sort, among the governments of independent states, the doctrine might be set up that a breach of any one article, by any of the parties, absolved the other parties from the whole obligation. For these reasons . . . he thought it indispensable that the new Constitution should be ratified . . . by the supreme authority of the people themselves." *

In this "Suggestion" Madison was only carrying out a long-formed idea. He had already written, in a letter which also clearly shows who were "the people" he had in mind:

"I think myself that it will be expedient, in the first place, to lay the foundation of the new system in such a ratification by the people themselves of the several States as will render it clearly paramount to their Legislative authorities." †

"I think, at the same time that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient," he writes to Randolph, April 8, 1787; and again, in the same words, to Washington, April 16, 1787.

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

"It is clear, that if the meaning of the Constitution is to be sought out of itself, it is . . . in those State Conventions which gave it all the validity & authority it possesses." §

"The Convention consists now as it has generally done of

---

† Madison to Jefferson, March 19 (18), 1787.
‡ Madison to M. L. Hurlbert, May, 1830.
§ Madison to N. P. Trist, December, 1831.
eleven States . . . A Government will probably be submitted to the people of the States,” etc.*

“But it was not sufficient,” say the adversaries of the proposed Constitution, “for the convention to adhere to the republican form. They ought, with equal care, to have preserved the federal form, which regards the Union as a Confederacy of sovereign states; instead of which, they have framed a national government, which regards the Union as a consolidation of the States.” . . .

“In order to ascertain the real character of the government, it may be considered in relation to the foundation on which it is to be established . . .

“On examining the first relation, it appears, on one hand, that the Constitution is to be founded on the assent and ratification of the people of America, given by deputies elected for the special purpose; but, on the other, that this assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority in each State—the authority of the people themselves. The act, therefore, establishing the Constitution, will not be a national, but a federal act.” †

In “The Federalist,” No. 40, he says:

“Will it be said that the fundamental principles of the Confederation were not within the purview of the convention, and ought not to have been varied? I ask, What are these principles? Do they require that, in the establishment of the Constitution, the States should be regarded as distinct and independent sovereigns? They are so regarded by the Constitution proposed. . . . Instead of reporting a plan requiring the confirmation of the legislatures of all the States, they have reported a plan which is to be confirmed by the people, and may be carried into effect by nine States only . . . They [the delegates to the Convention] must have reflected that, in

* Madison to Jefferson, September 6, 1787.
all great changes of established governments, forms ought to give way to substance; that a rigid adherence in such cases to the former would render nominal and nugatory the transcendent and precious right of the people 'to abolish or alter their governments as to them shall seem most likely to effect their safety and happiness'. They must have recollected that it was by this irregular and assumed privilege of proposing to the people plans for their safety and happiness that conventions were elected in the several States for establishing the constitutions under which they are now governed. They must have borne in mind that, as the plan to be framed and proposed was to be submitted to the people themselves, the disapprobation of this supreme authority would destroy it forever; its approbation blot out antecedent errors and irregularities."

In one of his latest writings (Elliot, Vol. V, p. 120) he says:

"As a sketch on paper, the earliest, perhaps of a constitutional government for the Union (organized into regular departments, with physical means operating on individuals), to be sanctioned by the people of the states, acting in their original and sovereign character, was contained in the letters of James Madison to Thomas Jefferson, of the 19th of March; to Governor Randolph, of the 8th of April; and to General Washington, of the 16th of April, 1787,—for which see their respective dates."

Here he evidently claims the credit of having been the first to suggest the plan which, in his opinion, was afterwards adopted, "of a constitutional government for the Union... to be sanctioned by the people of the states acting in their original and sovereign character."

"As to the other branch of the subject, I deserted Colonel Hamilton, or rather Colonel H. deserted me; in a word, the divergence between us took place—from his wishing to administrate, or rather to administer the Government into what he thought it ought to be; while, on my part, I endeavored to make it conform to the Constitution as understood by the
Convention that produced and recommended it, and particularly by the State Conventions that adopted it." *

Hamilton, speaking to the New York State ratifying Convention, said:

"Will the people suffer themselves to be stripped of their privileges? Will they suffer their legislatures to be reduced to a shadow and a name?"

Here both the plural of legislature and the context of the passage which is to show that the States are indestructible by the Constitution, show positively that Mr. Hamilton in speaking of "the people," referred to the people of the several States.

Thus the locution itself was so commonly used to connote the people of the States severally before the Constitution, the Confederation, even before the Declaration, that it has no weight whatever as evidence to indicate a unified people of the United States. Such a meaning, while in absolute contradiction both to the political results of the Constitution and the history of its formation, is not even indicated by the phraseology. Not only, as has been shown, were the States (i. e., the people of the several States) throughout recognized as the parties thereto but the whole struggle concerning representation between the large and small States (which Mr. Madison said was the rock on which the Convention almost split) † with its correlated compromises (e. g., that the Senate should not be given power to originate money bills—to prevent the small from thus taxing the large States, etc.), would have been absolutely purposeless if it was the "people of the United States" as one people who were concerned therein.

"Against this concomitancy of interpretation, the consolidating school takes refuge under the word 'people,' and contends that it is susceptible of a meaning which inflicts upon many of its associates the character of nonsense, and deprives

† Vide, ante, Appendix 16, Letter to Van Buren.
them of their right to assist in the construction of the constitution. Let us therefore endeavour to defend it against the aspersion of hostility to its best friends, and to save it from the crime of self-murder. In all ages metaphysicians have been so skilful in splitting principles, as to puzzle mankind in their search after truth; and morality itself would be lost by the minuteness of their dissections, except for the resistance of common sense, and the dictates of unsophisticated conscience. But the achievement of losing twenty-four sovereign states by the acuteness of construction, and getting rid of a people in each, by means of the word necessary to describe them, was reserved for the refined politicians of the present day; and is equivalent to the ingenuity of a fisherman, who should lose a whale by a definition of his name, which would destroy his qualities.

"At the commencement of the revolutionary war, emergency dictated temporary expedients, and delayed the formal adoption of measures for constituting a people in each province. A Congress was therefore appointed by provincial legislatures, by one branch of these legislatures, or by districts in a province; but when disorder was exchanged for independence, it was appointed, and its powers were derived from the state governments, who were deemed sufficient to ratify the declaration of independence, because they represented a people circumscribed within each state territory. The same species of sanction was resorted to, for the ratification of both the union of 1777 and the union of 1787. The ratification of the first was to be made by 'the legislatures of all the United States,' and of the latter by 'the conventions of nine states.' The reference to their representatives in both cases, far from acknowledging that each state was without a people, acknowledged the contrary. The differences between the two modes of ratification, consisted in the distinction between the words 'legislatures and conventions,' and between the necessity for unanimity in one case, and the sufficiency of nine states in the other, to establish the proposed unions. In neither, could the object be effected by a majority of the people of the United States. Whatever may be the difference between the words
legislatures and conventions in other cases, there is none in this, because both were representatives of the same people. Why did the first union require a unanimity of states? Because a people of each state had been created by the declaration of independence, invested with sovereignty, and therefore entitled to unite or not. Why were the ratifying nine states only to be united by the second? For the same reason; demonstrating, that as to the ratification of both, no distinction was made between legislatures and conventions; and that a concurrence or rejection of either, was considered as a sovereign act of a state people by their representatives. This principle is confirmed beyond all doubt, by the different modes in which men act when framing a constitution for a consolidated people, or creating a federal union between distinct states. In the first case, neither the consent of every individual, nor of every county, is necessary, because no individual possesses sovereign power, and because no county comprises a people politically independent. If there are thirteen counties in a state, and the deputies of four dissent from a constitution, it is yet obligatory upon all, because all are subject to the sovereign power of one people. The constitution of the United States was only obligatory upon the ratifying states, because each state comprised a sovereign people, and no people existed, invested with a sovereignty over the thirteen states. This consent, whether expressed by state legislatures or state conventions, was the consent of distinct sovereignties, and therefore the consent of nine states could not bind four dissenting states, or even one. A majority of a state legislature or convention dictates to a minority, because it exercises the sovereignty of an associated people over individuals. If state nations had not existed, they could not have exercised this authority over minorities, and therefore it is necessary to admit their existence in order to bestow validity upon the federal constitution.

"The establishment of state governments, demonstrates the existence of state nations. No act can ascertain the existence of a sovereign and independent community more completely, than the creation of a government; nor any fact more com-
pletely prove that these communities were each constituted of a
distinct people, than that of their having established different
forms of government. If the art of construction shall acquire
the power both of dispensing with the meaning of words, and
also with the most conclusive current of facts by which these
words have been interpreted, it will be able, like the dispensing
power of kings, to subvert any principles, however necessary
to secure human happiness, and to break every ligament for
tying down power to its good behaviour." *

"To the reasons before urged to prove the fallacy of this
argument for introducing a national government, I shall sub-
join others, apparently new and strong. 'Treason against the
United States, shall consist only in levying war against them,
or in adhering to their enemies.' In this clause of the consti-
tution, the word 'people' is dropt, and the words 'United
States' used to define the nature of the government. I have
selected the case of treason to illustrate the argument, for
reasons which will appear as we proceed, but the reader will
be pleased to recollect, that throughout the constitution the
word people is never associated with the words United States,
except in the first line of the preamble. We have a Congress,
a president, and a judicial power of the United States, but no
such departments of the people of the United States. Even in
the preamble itself, the constitution is established, not for the
people of the United States, but 'for the United States of
America.' The reconciliation of these different phrases seems
to be easy. That used in the first line of the preamble refers
to the ratification of the constitution, and that used in the last
line, and throughout the constitution, to the character of the
government. The ratification was to be the act of the people
of the states, by conventions, but the government was to be a
confederation of United States, and not a consolidated or a
national government of the people inhabiting all these states.
The form, therefore, of the ratification, could not alter the
nature of the compact, nor reflect upon federal rulers the least
power or supremacy whatever. 'The president, and all the
civil officers of the United States, shall be removed from office

* John Taylor, of Caroline, "Views of the Constitution," p. 7-9; 1823.
by impeachment.' The article reaches representatives and senators. Both are contemplated as equally officers of a federal, and neither as officers of a national government, or officers of an aggregate nation. They are to be tried by a federal tribunal. Had any of them been national officers, they would have been tried by some national tribunal. The case of treason suggests several important observations. It is divided into two classes, high and petit. The first class comprises crimes against sovereignty, and their punishment is an appendage of sovereign power. State governments exercise the right of defining and punishing these crimes, because they represent state sovereignty, and corporations can do neither, because they are not sovereign. Indictments are drawn in the name of the commonwealth, or of the people of the state, and conclude 'against the peace and dignity of the commonwealth, or of the state associated people, or of the state, or against the peace, government, and dignity of the state,' for these varieties are used in state constitutions, expressing the social sovereignty, by which traitors and other criminals are brought to justice. Why was it necessary to invest the federal government with a power to punish only a species of treason defined by the constitution? Because it was not a national government, and therefore had no power to define or punish any crime whatsoever, committed against sovereign power. Why was it allowed to punish only a few specified crimes? Because they were injurious to the federal union of states, and the state sovereignties were competent to the punishment of all crimes against the peace and dignity of the state, or injurious to individuals." *

"Who made it? 'We, the people of the United States.' But who were they? The associated inhabitants of each state, or the unassociated inhabitants of all the states. This question is an exposition, either of the ignorance or the design of construction. If there is no difficulty in answering it, construction ought to be laughed at for playing the fool; but if it gives the wrong answer, as supposing it to furnish contrary inferences

to the right one, it ought to be suspected of playing the knave. At least an attempt to construe away a fact, known to everybody, is a very fine specimen of its character when aiming at an accession of power. It has been imagined, that by considering the union as the act of the people, in their natural, and not in their political associated capacity, some aspect of consolidation might be shed over the country, and that the federal government might thereby acquire more power. But I cannot discern that the construction of the constitution will be affected in the smallest degree, by deducing it from either source, provided a sound authority is allowed to the source selected. Every stipulation, sentence, word and letter; and every donation, reservation, division and restriction, will be exactly the same, whichever is preferred. A man, having two titles, may distinguish himself by which he pleases, in making a contract; and whichever he uses, he remains himself. So the people having two titles or capacities, one arising from an existing association, the other from the natural right of self-government, may enter into a compact under either, but are themselves still; and their acts are equally obligatory, whichever they may select. Politicians may therefore indulge their tastes in deducing the constitution of the union from either, but whichever they may fancy, no sound ground will thence result for their differing in the construction of it.

"Nevertheless, to take away the pretext, however unsubstantial, for a different construction of the constitution, on account of the capacity or title under which the people acted in its establishment, it is material to ascertain the meaning of the phrase 'we the people of the United States;' towards which, let us run over most of the state constitutions.

"New Hampshire. 'The people of this state have the sole and exclusive right of governing themselves as a free, sovereign and independent state. Every subject of this state. In the government of this state. The people inhabiting the territory formerly called the province of New Hampshire, do hereby solemnly and mutually agree with each other to form themselves into a free, sovereign and independent body politic or state. That the state may be equally represented. I
do swear that I will bear faith and true allegiance to the state of New Hampshire.'

"Massachusetts. 'The body politic is formed by voluntary association of individuals. The people of this commonwealth have the sole right of governing themselves as a free, sovereign and independent state. The people do hereby mutually agree with each other, to form themselves into a free, sovereign and independent body politic or state.'

"New York. 'This convention, in the name and by the authority of the good people of this state. The legislature of this state. No members of this state shall be disfranchised. Delegates to represent this state in the general congress of the United States. Be it enacted by the people of the state.'

"Pennsylvania. 'We the people of the commonwealth of Pennsylvania ordain. The legislature of a free state. All government originates from the people and is founded in compact only.'

"Delaware. 'The people of this state. The government shall be called the Delaware state. The legislature of this state. The general assembly of this state. There shall be no establishment of any one religious sect in this state.'

"Maryland. 'The people of this state ought to have the sole and exclusive right of regulating the internal government thereof. The legislature of this state. The delegates to congress from this state shall be chosen by joint ballot of both houses of assembly. I will be faithful and bear true allegiance to the state.'

"Virginia. 'All power is derived from the people. Magistrates are their trustees or servants. A well regulated militia is the proper defence of a free state.'

"North Carolina. 'The people of this state have the sole and exclusive right of regulating the internal government thereof. Monopolies are contrary to the genius of a free state. All commissions shall run in the name of the state of North Carolina. The legislature of this state. The constitution of this state.'

"South Carolina. 'The legislative authority of this state. The several election districts in this state shall elect. The style
of process shall be "The state of South Carolina, and concluded against the peace and dignity of the state." I swear to preserve the constitution of this state and of the United States."

"Georgia. 'Members of the legislature shall swear to promote the good of the state, to bear true allegiance to the same, and to observe the constitution. To make laws necessary for the good of the state. Citizens and inhabitants of this state.'

"Vermont. 'The people are the sole source of power. They have the exclusive right of internal government. All officers of government are their servants. Legislative and executive business of this state. The people have a right to exact from their legislators and magistrates the good government of the state. The legislature of a free and sovereign state. Shall be entitled to all the privileges of a freeman of this state. Every officer shall swear to be faithful to the state of Vermont, and to do nothing injurious to the constitution or government thereof.'

"Without further quotations, let us demonstrate the force of these, extracted from a majority of the state constitutions, to fix the meaning of the term 'state' according to the publick judgment, by substituting the word 'government' for it. They would then read as follows.

"'The people of this government have the sole and exclusive right of governing themselves as a free, sovereign and independent government.'

"'In the government of this government.'

"'That the government may be equally represented.'

"'The people of this government ought to have the sole and exclusive right of regulating the internal government thereof.'

"'The legislature of this government.'

"'I will be faithful and bear true allegiance to the government.'

"'The several election districts in this government shall elect.'

"'Members of the legislature shall swear to promote the good of the government and to make laws for the good of the government.'
"'Citizens and inhabitants of this government.'
"'The people have a right to exact from their legislators and magistrates the good government of the government.'
"'Commissions shall be in the name of the freemen of the government.'

"It would be an incivility to the reader, to subjoin to these quotations, many arguments, to prove, that the term 'state' is not in any one instance used in reference to all the people of the United States, either as composing a single state, or as being about to compose a single state. Used geographically, it refers to state territory; used politically, it refers to the inhabitants of this territory, united by mutual consent into a civil society. The sovereignty of this association, the allegiance due to it, and its right to internal government, are all positively asserted. The terms 'state and government' far from being synonymous, are used to convey different ideas; and the latter is never recognised as possessing any species of sovereignty.

"It next behooves us to consider whether the term 'states' has changed its meaning, by being transplanted from its original nursery, into the constitution of the United States; and is there used to designate all the inhabitants of the United States, as constituting one great state; or whether it is recognised in the same sense in which it had been previously used by most or all of the state constitutions.

"The plural 'states' rejects the idea, that the people of all the states considered themselves as one state. The word 'united' is an averment of pre-existing social compacts, called states; and these consisted of the people of each separate state. It admits the existence of political societies able to contract with each other, and who had previously contracted. And the words 'more perfect union' far from implying that the old parties to the old union were superseded by new parties, evidently mean, that these same old parties were about to amend their old union.

"But the parties, though recognised as being the same, were not strictly so. The authority of the people of each state is resorted to in the last union, in preference to that of the
government of each state, by which the old confederation was formed. This circumstance by no means weakens the force of the last observation, because the recognition of existing political parties able to contract, remains the same. The states, in referring to the old union, only admit themselves to have been bound by their governments, as they possessed the right of making treaties. But as the state governments were the parties to the first confederation, and as such, had a mutual right to destroy that treaty, this danger suggests another reason for the style and principles of the new union. Among its improvements, that by which it is chiefly made ‘more perfect,’ was the substitution of the authority of ‘the people of the United States’ for that of the governments of the United States; not with an intention of excluding from the new union the idea of a compact between the states, but of placing that compact upon better ground, than that upon which it previously rested.

“The term ‘union’ has never been applied to describe a government, established by the consent of individuals; nor do any of our state constitutions use it in that sense. They speak indeed of individuals ‘uniting’ to form a government, not to form a union; and I do not recollect that a single compact between individuals for the establishment of a government, has ever been called a union; though a multitude of cases, exist, in which that name has been given to agreements between independent states. If therefore this term comprised the whole evidence, to prove that our union was the act of distinct bodies politic, composed of the people within different geographical boundaries, and not of a number of people, encircled by one line, without any such discrimination, it would be sufficient.

“But the constitution itself furnishes the plainest correspondent evidence, in its origin, establishment and terms. The members of the convention which formed it, were chosen by states, and voted by states, without any regard to the number of people in each state. It was adopted by thirteen votes, without respecting the same principle. Now what was represented by these voters; the territory of each state, or the people of each state? The terms ‘United States’ must refer to one or the other. If to the former, then the territories of each state
entered into a compact ‘to form a more perfect union, establish justice, insure domestick tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.’ The posterity of territories. If to the latter, it was the people of each state, who by compact in their political capacity, by giving one vote each, formed the union. . . .

“The rights of a people are indivisible; and if a great people be compounded of several smaller nations, as it inherently possesses the right of self-government, it must absorb the same right of self-government in its component parts; just as the rights of individuals are absorbed by the communities into which they constitute themselves. Therefore had a people been constituted, by melting down the little nations into one great nation, those little nations must have lost the right of self government, because they would no longer have been a people. As it was never imagined, that the individuals inhabiting all the states had constituted themselves into one people, so there has never appeared from this imaginary body politic, the least attempt towards claiming or exercising the right of self-government; nor is the government of the union subjected to its control or modification. Not a single one of the United States would have consented to have dissolved its people, to have reunited them into one great people, and to have received state governments or unrestricted legislation from this great people, so ignorant of local circumstances, and so different in local habits. This reasoning would I think have been sufficient to ascertain the people by whom the constitution was made, had it contained no internal evidence of the sense in which it uses that term. But if the phrase ‘we the people of the United States’ refers to the people of each state, the argument is superfluous, and the decision of the constitution itself, decisive.

“The powers reserved are those ‘not delegated by the constitution.’ They could only be reserved by those who possessed them. They were not powers possessed by a consolidated people of all the states, but by a distinct people of each state; and as those who reserved were those who delegated, it fol-
lows, either that the reservation was to a consolidated people of all the states, or that the delegation of powers flowed from the people of the separate states.” *

APPENDIX 22A

(Page 338)

“But, my dear sir, what can a history of the Constitution avail towards interpreting its provisions. This must be done by comparing the plain import of the words, with the general tenor and object of the instrument. That instrument was written by the fingers which write this letter. Having rejected redundant and equivocal terms, I believed it to be as clear as our language would permit; excepting, nevertheless, a part of what relates to the Judiciary. On that subject, conflicting opinions had been maintained with so much professional astuteness, that it became necessary to select phrases, which expressing my own notions would not alarm others, nor shock their selflove, and to the best of my recollection, this was the only part which passed without cavil.” †

Mr. Morris’s testimony shows the criticism to which his draught was subjected; though his belief in the clarity of the instrument must seem doubtful, in view of the various tricks to incorporate in it views (which he knew, if recognized, would not pass unchallenged) in such a form that they might pass unnoticed, and afford standing ground for later powers by Congress unintended by the Convention or people, e. g.:

“I always thought that when we would acquire Canada & Louisiana it would be proper to govern them as provinces and allow them no voice in our councils. In wording the 3d section of the 4th article I went as far as circumstances would permit to establish the exclusion. Candor obliges me to add

† Gouverneur Morris to Timothy Pickering, December 22, 1814.
my belief that had it been more pointedly expressed, a strong opposition would have been made.” *

A practical admission that he had drafted this section in such a way that his desire thereby to hold the people of acquired territory as subjects should not be understood and defeated.

“The constitution as agreed at first was, that amendments might be proposed either by Congress or the Legislatures. A committee was appointed to digest and redraw. Gouverneur Morris and King were of the Committee. One morning Gouverneur Morris moved an instrument for certain alterations (not one-half the members yet come in). In a hurry and without understanding, it was agreed to. The committee reported so that Congress should have the exclusive power of proposing amendments. George Mason observed it on the report, and opposed it. King denied the construction. Mason demonstrated it, and asked the committee by what authority they had varied what had been agreed. Gouverneur Morris then imprudently got up, and said, by authority of the Convention, and produced the blind instructions before mentioned, which was unknown by one-half of the House, and not till then understood by the other. They then restored it as it originally stood.” †

“A little suspicion attaches to the work of Morris in preparing this last draft of the Constitution . . . . It is also due to stories that were whispered about in the years following the adoption of the new Constitution. One illustration of that is to be found in connection with the ‘general welfare’ clause just considered. In the report of the Committee on Style, this clause was separated from the preceding and following clauses by semicolons, thus making it an independent power of Congress. That was not the way in which it had been adopted by the convention, but it was more in accordance with Morris’s ideas. The change may or may not have been in-

*Gouverneur Morris, letter to Henry Livingston, with reference to purchase of Louisiana.
†Jefferson, “The Anas.”
tentional, but Albert Gallatin a few years later stated openly in Congress that 'he was well informed' that this modification was 'a trick' devised by 'one of the members who represented the State of Pennsylvania.' In the constitution as it was finally engrossed the clause was changed back to its original form, and the credit for this Gallatin gave to Sherman.” *

Study of the Convention records indeed leads to more than suspicion that Mr. Morris was not the only delegate willing to cog for government against freedom. Judge Marshall, a witness most favourable to that side, said:

“The framers of the constitution wished its adoption, and well knew that it would be endangered by its strength, not by its weakness. Had they been capable of using language which would convey to the eye one idea, and, after deep reflection, impress on the mind another, they would rather have disguised the grant of power than its limitation.” †

That Mr. Morris, at least, was “capable of using language which would convey to the eye one idea, and after deep reflection, impress on the mind another,” is evident.

And surely this statement of Judge Marshall and the evident bias of influential framers, afford strong reason for a strict construction of the Constitution.

"Mr. Madison and Mr. Hamilton, the champions of the national and monarchical systems, liberally yielded to the example established in the convention, and renewed the same conciliatory treaty. The publick indeed was not edified by the arguments used by one of these accomplished men, for reducing the states to corporations, and establishing a supreme national government; nor by the eulogies of a limited monarchy, expressed by the other; and with unexampled felicity both substituted for the consolidating and monarchical dialect, used in the convention, a federal one, ingeniously constructed to accommodate itself with publick opinion, and also with the

prepossessions of their respective partisans. Monarchy and consolidation disappeared from the question, conspicuous as they had been in the journal, and the term federal was adopted, because it would embrace the parties inclined to either, and also the party adverse to both, but friendly to a federal system. If this new dialect, so different from that used in the convention, was policy, the monarchical and consolidating parties will of course adhere to the same policy; if it was the consequence of an essential difference between a national and a federal government, a national dialect cannot be proper for construing the constitution, since a federal dialect was necessary to procure its ratification. If these gentlemen were sincere in the convention, the arguments they used in opposition to a federal system, cannot be applicable in defence of it; if they were ingenious in procuring the ratification of the constitution, the ingenuity consisted in copious solicitations of publick opinion by federal doctrines; mixed with tints transfused from the conclave, too faint to alarm the federal party, and yet sufficiently perceivable to obtain the concurrence of the consolidating and monarchical parties. The intimations that supremacy or sovereignty was lodged in Congress or the supreme federal court, enveloped in clouds of sound federal reasoning, was a profound or lucky piece of dexterity to effect both objects.”

APPENDIX 22B

(Page 339)

Exception to the term “the people” was taken in two, at least, of the Ratifying Conventions. But neither the grounds of exception, nor the answers thereto appear to indicate that the point now in question was prominent in the thought of the delegates.

In the Convention of North Carolina

“The preamble of the Constitution was then read.

“MR. CALDWELL. Mr. Chairman, if they mean, We, the

people,—the people at large,—I conceive the expression is improper. Were not they who framed this Constitution the representatives of the legislatures of the different states? In my opinion, they had no power, from the people at large, to use their name, or to act for them. They were not delegated for that purpose.

"MR. MACLAINE. The reverend gentleman has told us, that the expression, We, the people, is wrong, because the gentlemen who framed it were not the representatives of the people. I readily grant that they were delegated by states. But they did not think that they were the people, but intended it for the people, at a future day. The sanction of the state legislatures was in some degree necessary. It was to be submitted by the legislatures to the people; so that, when it is adopted, it is the act of the people. When it is the act of the people, their name is certainly proper. This is very obvious and plain to any capacity.

"MR. DAVIE. Mr. Chairman, the observation of the reverend gentleman is grounded, I suppose, on a supposition that the Federal Convention exceeded their powers. This objection has been industriously circulated; but I believe, on a candid examination, the prejudice on which this error is founded will be done away. As I had the honor, sir, to be a member of the Convention, it may be expected I would answer an objection personal in its nature, and which contains rather a reflection on our conduct, than an objection to the merits of the Constitution. After repeated and decisive proofs of the total inefficiency of our general government, the states deputed the members of the Convention to revise and strengthen it. And permit me to call to your consideration that, whatever form of confederate government they might devise, or whatever powers they might propose to give this new government, no part of it was binding until the whole Constitution had received the solemn assent of the people. What was the object of our mission? 'To decide upon the most effectual means of removing the defects of our federal union.' This is a general, discretionary authority to propose any alteration they thought proper or necessary. Were not the state legislatures after-
wards to review our proceedings? Is it not immediately through their recommendation that the plan of the Convention is submitted to the people? And this plan must still remain a dead letter, or receive its operation from the fiat of this Convention.

"Mr. Caldwell wished to know why the gentlemen who were delegated by the states, styled themselves, *We, the people.* He said that he only wished for information.

"Mr. Iredell answered, that it would be easy to satisfy the gentleman; that the style, *We, the people,* was not to be applied to the members themselves, but was to be the style of the Constitution, when it should be ratified in their respective states.

"Mr. Joseph Taylor. Mr. Chairman, the very wording of this Constitution seems to carry with it an assumed power. *We, the people,* is surely an assumed power. Have they said, *We,* the delegates of the people? It seems to me that, when they met in Convention, they assumed more power than was given them. Did the people give them the power of using their name? This power was in the people. They did not give it up to the members of the Convention. If, therefore, they had not this power, they assumed it. It is the interest of every man, who is a friend to liberty, to oppose the assumption of power as soon as possible. I see no reason why they assumed this power. Matters may be carried still farther. This is a consolidation of all the states. Had it said, *We, the states,* there would have been a federal intention in it. But, sir, it is clear that a consolidation is intended. Will any gentleman say that a consolidated government will answer this country? It is too large. The man who has a large estate cannot manage it with convenience. I conceive that, in the present case, a consolidated government can by no means suit the genius of the people. The gentleman from Halifax (Mr. Davie) mentioned reasons for such a government. They have their weight, no doubt; but at a more convenient time we can show their futility. We see plainly that men who come from New England are different from us. They are ignorant of our situation; they do not know the state of our country. They cannot
with safety legislate for us. I am astonished that the servants of the legislature of North Carolina should go to Philadelphia, and, instead of speaking of the state of North Carolina, should speak of the people. I wish to stop power as soon as possible; for they may carry their assumption of power to a more dangerous length. I wish to know where they found the power of saying We, the people, and of consolidating the states.

"Mr. Maclaine. Mr. Chairman, I confess myself astonished to hear objections to the preamble. They say that the delegates to the Federal Convention assumed powers which were not granted them; that they ought not to have used the words We, the people. That they were not the delegates of the people, is universally acknowledged. The Constitution is only a mere proposal. Had it been binding on us, there might be a reason for objecting. After they had finished the plan, they proposed that it should be recommended to the people by the several state legislatures. If the people approve of it, it becomes their act. Is not this merely a dispute about words, without any meaning whatever? Suppose any gentleman of this Convention had drawn up this government, and we thought it a good one; we might respect his intelligence and integrity, but it would not be binding upon us. We might adopt it if we thought it a proper system, and then it would be our act. Suppose it had been made by our enemies, or had dropped from the clouds; we might adopt it if we found it proper for our adoption. By whatever means we found it, it would be our act as soon as we adopted it. It is no more than a blank till it be adopted by the people. When that is done here, is it not the people of the state of North Carolina that do it, joined with the people of the other states who have adopted it? The expression is, then, right. But the gentleman has gone farther, and says that the people of New England are different from us. This goes against the Union altogether. They are not to legislate for us; we are to be represented as well as they. Such a futile objection strikes at all union. We know that without union we should not have been debating now. I hope to hear no more objections of this
trifling nature, but that we shall enter into the spirit of the subject at once.

"Mr. Caldwell observed, that he only wished to know why they had assumed the name of the people.

"Mr. James Galloway. Mr. Chairman, I trust we shall not take up more time on this point. I shall just make a few remarks on what has been said by the gentleman from Halifax. He has gone through our distresses, and those of the other states. As to the weakness of the Confederation, we all know it. A sense of this induced the different states to send delegates to Philadelphia. They had given them certain powers; we have seen them, they are now upon the table. The result of their deliberations is now upon the table also. As they have gone out of the line which the states pointed out to them, we, the people, are to take it up and consider it. The gentlemen who framed it have exceeded their powers, and very far. They will be able, perhaps, to give reasons for so doing. If they can show us any reasons, we will, no doubt, take notice of them. But, on the other hand, if our civil and religious liberties are not secured, and proper checks provided, we have the power in our own hands to do with it as we think proper. I hope gentlemen will permit us to proceed.

"The clerk then read the 1st section of the 1st article." *

It will be seen that Mr. Joseph Taylor is the only delegate in whose mind the question seems, somewhat formlessly, to have arisen, and it was apparently so little considered that it was not taken up even by the opponents of the clause. The point of contest in the phrase seems to lie in the opposition of the terms "people" and "States"; and "people" and "delegates."

In the Virginia convention, under the leadership of Mr. Henry, the point was pressed home.

"And here I would make this inquiry of those worthy characters who composed a part of the late federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated government, instead of a confedera-

tion. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen; but, sir, give me leave to demand, What right had they to say, We, the people? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, Who authorized them to speak the language of, We, the people, instead of, We, the states? States are the characteristics and the soul of a confederation. If the states be not the agents of this compact, it must be one great, consolidated, national government, of the people of all the states." *

The leaders of the fight for ratification answered:

"The gentleman then proceeds, and inquires why we assumed the language of 'We, the people.' I ask, Why not? The government is for the people; and the misfortune was, that the people had no agency in the government before. . . . What harm is there in consulting the people on the construction of a government by which they are to be bound? Is it unfair? Is it unjust? If the government is to be binding on the people, are not the people the proper persons to examine its merits or defects? I take this to be one of the least and most trivial objections that will be made to the Constitution; it carries the answer with itself." †

"But an objection is made to the form: the expression, We, the people, is thought improper. Permit me to ask the gentleman who made this objection, who but the people can delegate powers? Who but the people have a right to form government? The expression is a common one, and a favorite one with me. The representatives of the people, by their authority, is a mode wholly inessential. If the objection be, that the Union ought to be not of the people, but of the state governments, then I think the choice of the former very happy and proper. What have the state governments to do with it? Were they to determine, the people would not, in that case, be the judges upon what terms it was adopted." ‡

† Randolph.    " " "
‡ Pendleton.    " " "

"He then adverted to the style of government, and asked what authority they had to use the expression, 'We, the people,' and not 'We, the states.' This expression was introduced into that paper with great propriety. This system is submitted to the people for their consideration, because on them it is to operate, if adopted. It is not binding on the people until it becomes their act. It is now submitted to the people of Virginia. If we do not adopt it, it will be always null and void as to us. Suppose it was found proper for our adoption, and becoming the government of the people of Virginia; by what style should it be done? Ought we not to make use of the name of the people? No other style would be proper." *

Yet later (like Mr. Madison) Mr. Lee attached no importance to this, *e. g.*:

"General Lee then contended, that the ruling principle in the Resolutions was erroneous. They asserted as a fundamental position, that the existing Constitution was a compact of States. He denied this position: declaring the Constitution to be a compact among the people. The ancient confederation was a compact among the States: it was so in style, manner and power. But the Government under which we now live, was precisely the reverse. What is its style? 'We the people.' What is its manner? Executed by functionaries appointed mediately or immediately by the people. What is its power? That of the people: derived from them, and based upon them. How then could it be asserted that the present Constitution is a compact of States? And would the Committee sanction by their approbation, a declaration palpably wrong? It was true, there was to be drawn from the Constitution some faint support for this erroneous construction. The Senate, one branch of the Federal Government, was elected by the States, as States. This deviation from the general system could not be relied on to destroy the system itself. It was the result of our peculiar situation. The smaller States could not be induced to renounce their existing equality entirely. It was

*Lee.
necessary to compromise, in order to obtain the happy Constitution we possess.” *

Mr. Henry, replying to these gentlemen, said:

“I rose yesterday to ask a question which arose in my own mind. When I asked that question, I thought the meaning of my interrogation was obvious. The fate of this question and of America may depend on this. Have they said, We, the states? Have they made a proposal of a compact between states? If they had, this would be a confederacy. It is otherwise most clearly a consolidated government. The question turns, sir, on that poor little thing,—the expression, We, the people, instead of the states, of America. . . .

“The honorable gentleman’s observations, respecting the people’s right of being the agents in the formation of this government, are not accurate, in my humble conception. The distinction between a national government and a confederacy is not sufficiently discerned. Had the delegates, who were sent to Philadelphia, a power to propose a consolidated government instead of a confederacy? Were they not deputed by states, and not by the people? The assent of the people, in their collective capacity, is not necessary to the formation of a federal government. The people have no right to enter into leagues, alliances, or confederations; they are not the proper agents for this purpose. States and foreign powers are the only proper agents for this kind of government. Show me an instance where the people have exercised this business. Has it not always gone through the legislatures? I refer you to the treaties with France, Holland, and other nations. How were they made? Were they not made by the states? Are the people, therefore, in their aggregate capacity, the proper persons to form a confederacy? This, therefore, ought to depend on the consent of the legislatures, the people having never sent delegates to make any proposition for changing the government. Yet I must say, at the same time, that it was made on grounds the most pure; and perhaps I might have been brought

* Debates in House of Delegates, Virginia, Dec. 20, 1798.
I—24
to consent to it so far as to the change of government. But there is one thing in it which I never would acquiesce in. I mean, the changing it into a consolidated government, which is so abhorrent to my mind.” . . .

Mr. Madison said:

"Give me leave to say something of the nature of the government, and to show that it is safe and just to vest it with the power of taxation. There are a number of opinions; but the principal question is, whether it be a federal or consolidated government. In order to judge properly of the question before us, we must consider it minutely in its principal parts. I conceive myself that it is of a mixed nature; it is in a manner unprecedented; we cannot find one express example in the experience of the world. It stands by itself. In some respects it is a government of a federal nature; in others, it is of a consolidated nature. Even if we attend to the manner in which the Constitution is investigated, ratified, and made the act of the people of America, I can say, notwithstanding what the honorable gentleman has alleged, that this government is not completely consolidated, nor is it entirely federal. Who are parties to it? The people—but not the people as composing one great body; but the people as composing thirteen sovereignties. Were it, as the gentleman asserts, a consolidated government, the assent of a majority of the people would be sufficient for its establishment; and, as a majority have adopted it already, the remaining states would be bound by the act of the majority, even if they unanimously reproved it. Were it such a government as is suggested, it would be now binding on the people of this state, without having had the privilege of deliberating upon it. But, sir, no state is bound by it, as it is, without its own consent.” . . .

"But he objects to the expression, 'We, the people,' and demands the reason why they had not said, 'We, the United States of America.' In my opinion, the expression is highly proper: it is submitted to the people, because on them it is to operate: till adopted, it is but a dead letter, and not binding on any one; when adopted, it becomes binding on the people who
adopt it. It is proper on another account. We are under
great obligations to the federal Convention, for recurring to
the people, the source of all power. The gentleman’s argu-
ment militates against himself: he says that persons in power
never relinquish their powers willingly. If, then, the state
legislatures would not relinquish part of the powers they now
possess, to enable a general government to support the Union,
reference to the people is necessary.” *

“The introductory expression of ‘We, the people,’ has been
thought improper by the honorable gentleman. I expected no
such objection as this. Ought not the people, sir, to judge of
that government whereby they are to be ruled? We are, sir,
deliberating on a question of great consequence to the people
of America, and to the world in general.” †

It will be seen from these speeches that Mr. Madison was
the only one of his opponents who squarely took issue with
Mr. Henry.‡

Mr. Lee said later:

“But, sir, this is a consolidated government, he tells us; and
most feelingly does he dwell on the imaginary dangers of this
pretended consolidation. I did suppose that an honorable
gentleman, whom I do not now see (Mr. Madison), had placed
this in such a clear light that every man would have been sat-
sfied with it.

“If this were a consolidated government, ought it not to be
ratified by a majority of the people as individuals, and not as
states? Suppose Virginia, Connecticut, Massachusetts, and
Pennsylvania, had ratified it; these four states, being a ma-

ority of the people of America, would, by their adoption,
have made it binding on all the states, had this been a consoli-
dated government. But it is only the government of those
seven states who (sic) have adopted it. If the honorable gen-
tleman will attend to this, we shall hear no more of con-
solidation.”

* Wilson Nicholas.
† Corbin; Elliot’s “Debates,” Vol. III.
‡ Vide, Appendix 31D for Mr. Madison’s opinion in full.
APPENDIX 22B

(Page 367)

In this Mr. Henry was certainly mistaken. The Constitution itself declares, Article 7, that "The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the States so ratifying the same."

Also its authorization declares it to have been "Done in convention by the unanimous consent of the States present," etc.

APPENDIX 23

(Page 74)

"The case of slavery helps to illustrate the federal line, and to refute the doctrine of a national supremacy. A federal compact, and not an American nation, caused slaves to be counted in adjusting a federal representation. A national representation would not have been in any degree deduced from slaves. Independent of other circumstances, slavery demonstrated the necessity of a line between state and federal powers. An usurped federal supremacy could as easily get over it in this case, as in those of banks, lotteries, and an appellate jurisdiction; and there would be less difficulty in proving that slavery, abstracted from local circumstances, is prejudicial to the welfare of the United States, than that banks, lotteries, and the appellate jurisdiction, will advance it. The states ignorant of facts, might be enchanted with the theory of converting black slaves into good patriots, whilst the states experimentally qualified to judge, might know that the idea was visionary. Every other local interest to which a general sympathy does not extend, was provided for by the division of power, which provided for the case of slavery. All or none of the powers reserved to the states, must be embraced by the federal supremacy contended for. The English intro-
duced slavery to get money from the provinces, by their capacity for making tobacco; the capitalists use it also to get money from some states, by their incapacity to become manufacturers, which England had also in view from her monopoly through the pretext of commercial regulations. Both used it to extract an enormous tribute from a local misfortune. A federal division of power was designed to prevent such frauds of a concentrated supremacy, and not to fleece local incapacities to enrich superior industry.” *

“A Federal government is one, in whose organism States are factors, through which States as such, act with their united powers.

“In this sense I aver, that there is no act of any department of the government of the United States, and no function of the United States government, which is not mediately or immediately impelled by State authority.

“1. Congress.

“(a) Senate. As in this body, each State by its legislature elects two Senators, the equality of States, and their power as such, through their governments, is obvious. Colorado, with 40,000, is the equal of New York with her 4,300,000: or one man in Colorado is equal to 107 in New York! (I take census of 1870.)

“(b) House of Representatives. In this body, the equality of the States is at an end. The will of the State is expressed by its voting population. But this house is the representative of the States, and for the following reasons:

“The Constitution so declares in these quotations. It shall be ‘composed of members chosen every second year by the people of the several States.’ ‘Each State shall have at least one Representative,’ etc. Art. 1, § 2, cl. 3. ‘When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.’ Art. 1, § 2, cl. 4. The number of Electors in each State shall be ‘equal to the whole number of Senators and Representatives to which each State may be entitled in the

Congress.' Art. 2, § 1, cl. 2. In any vote for President, in the House of Representatives, 'the representation from each State having one vote.'

"Again. This appears by the fact that the representative must inhabit the State he represents and because he represents it; that each State, however small, has one representative, so that Colorado has one for her 40,000, though New York and other States have only one for every 137,000; or the representative of the 40,000, because they are the people of a State, has more than three times the weight of one from New York: and thus there is and can be no confusion of citizens of one State with those of another in representation. The citizens of each are distinct because in separate States.

"Again. The suffragans for representatives are prescribed by the State, and by the State alone. The voices, which speak through the representatives, are such as the State ordains. And if the State chooses to elect all her representatives by general vote, she may unify her State sentiment in proportion to her population; or if Congress, under the Constitution, makes the election by districts, the State may so district herself as to organize her power as she pleases.

"These facts demonstrate, that the votes of States are taken in the House of Representatives, though the number which each has depends on its population, so as that each shall have at least one.

"The States speak in the Senate through their legislatures; in the House of Representatives through their voters; the legislatures and the voters being established and ordained by the States.

"The effect of this obviously may be to defeat the will of the majority of the people of the United States, considered as a whole, for while in the lower House the States of Nevada, Colorado and Oregon together have only enough population for one representative, on the basis of apportionment, they have three votes as States; and in the Senate a majority of States (taking the smallest) have only nine millions, while the remainder have twenty-nine millions of people; and thus one-fourth of the whole people (38,000,000 by the census of 1870)
may defeat the will of three-fourths; and if the people of the States in the minority are unanimous in favor of a measure, and those in the majority are nearly divided, four and a half millions could obstruct the will of thirty-three millions, or one man in a small State obstruct the purpose of seven and a half in a large State. All this is the result of the fact, that States are the factors in legislation of Congress.

"2. Executive.

"The President is chosen by electors. Each State shall appoint, as its legislature may direct, electors equal in number to its Senators and Representatives. Const. U. S., art. 2, § 1, cl. 2.

"The electors meet, not in one body, but in their respective States. Id., cl. 3.

"By this mode Colorado has three electors for her 40,000, or one for every 13,000 people. New York thirty-five for her 4,300,000 of people, or one for every 120,000; or the potency of one Colorado citizen is equal to nine in New York.

"But if an election fails in the electoral colleges, the President is elected in the House of Representatives; where Colorado's one Representative has one vote, and New York's thirty-three Representatives have but one vote; or Colorado, with 40,000, is equal to New York with 4,300,000; or one man in Colorado weighs as much in choosing a President as one hundred and seven men in New York; and so, if there is no election of a Vice-President, the Senate elects and the inequality is the same.

"In both cases nine millions (in twenty States) may elect a President over twenty-nine millions (in nineteen States); or if the twenty States are nearly divided in sentiment, and the nineteen States are unanimous, four and a half millions of voters may elect a President and Vice-President over thirty-three and a half millions!

"All this results from the fact, that States are the factors in electing the executive.

"But as each State appoints, as its legislature directs, and the counting of the electoral votes, certified by State authority, only is left to the two Houses of Congress, it has come
to be decided in our day, that a fraudulent or illegal return by State officials may palm upon the whole country, by their act an executive, whom the country has not elected; and it is held that the whole Union has no organic power to defeat the fraud of the officials of the State of Colorado! and that thirty-eight millions cannot gainsay the fraudulent act of officers appointed by 40,000. Whether this be a right or wrong decision it shows the potentiality of a single State in making an executive for thirty-eight States—of 40,000 men to control 40,000,000! or of one to defeat the will of 1,000.

"That these results are not fanciful, the patent fact faces us to-day, that the present executive of the Union was elected by States, though he fell short by a quarter of a million of having a majority of the popular vote. However pleasant to some or unpleasant to others it may be, this is the consequence of having the election of an executive by States, rather than by popular vote. And in the choosing of electors, each State may consolidate its whole force as a State by a general election, and a majority of one vote for electors in New York, will give her solid State strength to her favorite.

"3. Judiciary. How is it constituted? Judges and all other officers are nominated by the President, and appointed by and with the advice and consent of the Senate.

"Nomination comes from the President, whose election depends on the senatorial factor in the electoral college, which represents State equality, as well as on the representative factor, which may not represent the popular strength of the State; or in the one event, may depend on the equal vote of the States in the House of Representatives.

"Confirmation of the nomination is made by the States with equal voice in the Senate.

"A like course of reasoning, as before adopted, will show that in many cases, a small popular minority in a majority of the States may appoint every judge and every officer of the United States against the will of an overwhelming popular majority; and this is due to the fact, that States are the factors in all official appointments.
"Let me now call attention to some of the great functions of government.

"Take the war power. No war can be declared but by the vote of Congress. If the House of Representatives agrees, it will result that the popular will in a large degree concurs. But if the Senate dissents, a necessary war may be prevented, by nine millions of people against twenty-nine millions.

"Take the militia. It may be organized, armed and disciplined under laws of Congress, but cannot be officered or trained but at the will of the States. Non-action by States would disband the militia. Const. U. S., art. 1, § 8, cl. 15.

"Take the treaty power. The President by and with the advice and consent of the Senate (two-thirds concurring), may make treaties. Two-thirds of the States (fourteen millions) may make a treaty, proposed by the President elected by a majority of States (nine millions) against the will of one-third of States (twenty-four millions); and one State more than one-third of the States (3,600,000) may defeat a necessary treaty advised by one State less than two-thirds of the States (thirty-five millions).

"The amendment power. A recent very able writer (Mr. George Ticknor Curtis) has said that 'the process of amending the Constitution seems scarcely reconcilable with the hypothesis that the Constitution is a compact between independent sovereign States.'

"Let me examine this question. On the threshold two things are obvious.

"First. That the insertion of the clause in the Constitution, whereby amendments may be made without the unanimous consent of the States, implies, that without that clause, the framers of the Constitution knew no amendment could be made without such unanimity, and that a stipulation by unanimous consent was needed to dispense with unanimity in the case of future amendments. This is a strong argument in support of the continuing entity and sovereign control over any changes in the Constitution by each and all the States.

"Second. The powers of the co-pactors to agree to the making amendments without the consent of all, was a soper-
eign power, which each could exercise without prejudice to itself in any other respect.

"But it will be seen that the guards against detriment to the rights of each were made very stringent, and were put into the hands of the States; while the lack of unanimity provided for was necessary to prevent factious obstruction by one State to needful changes in a permanent system of union between so many States.

"The proposal of amendments could be defeated by one State more than one-third of the States in the Senate, or by one more than one-third of the legislators of the several States. Const. U. S., art. 5.

"When proposed, the ratification of the amendment could be defeated by one more than one-fourth of the States.

"To state it numerically, ten States containing two millions of people could defeat an amendment ratified by twenty-eight States containing thirty-six millions of people; or three-fourths (eighteen millions) of States could ratify, though-one-fourth (twenty millions) of States rejected; but in this last case, for the protection of these populous States, two-thirds of the House of Representatives must have proposed it, where their voices could be prevalent over the smaller States.

"These guards were considered ample, because requiring an extraordinary combination of populous and small States to fasten any amendment on the Constitution.

"But there were certain fundamental questions, which were specially guarded, that no amendment as to the slave trade or taxation should be made prior to 1808 at all; and that the equal suffrage of States in the Senate should never be taken from a State, without its consent.

"This last provision, fixing irrevocably, unless with the consent of each State, its equi-pollency in the Senate, is clear evidence that no change in this respect can be made but by a new compact, to which each State, as a pactor, must be a party. It proves the continuing and perpetual independence of the State, continued for its own protection against the vox majoritatis, whether of population or of States. This provision proves more. If the State was not to be preserved as an equal
in sovereignty despite a difference in population; if its distinctive type of polity was not thus to be secured, there is no assignable reason for thus shielding its equality in the Senate against all action, but at its own will and by its own consent.

"This equality because of sovereignty is the only permanent and unchangeable principle in the whole Constitution. States can never be destroyed but by their own separate will.

"Taking the whole clause it shows that amendment must always be on State ratification, either by its separate legislature, or its convention (that representation of the civil body politic, which had originally ratified the Constitution).

"Thus Colorado, with its 40,000 people, is secured from being robbed of its equality of power in the Senate of the Republic by the voice of thirty-seven States and thirty-eight millions of people.

"States are, therefore, the factors in amending the compact.

"From this review is it not obvious that without the continuing existence of States and State governments, de jure and de facto, the Federal government would perish?

"Suppose the legislatures refuse to elect Senators, where would be laws, treaties, officers? Suppose the States should not provide for electors, where would be the executive? Suppose only one-half should refuse, the government would fall. If the States in their full autonomy, as such are pulled down, the Federal Samson would be destroyed amid the ruins.

"But another view may be presented which touches delicate ground—the States were designed to be guardians of the liberties of the people against the usurpations of the Federal Government.

"I quote from the language of one of the early writers upon our federal system.

"He argues, that if the representatives of the people in the general government betray their constituents, no resource would be left but in the existence of the original right of self-defense paramount to all forms of government—that this could be exerted better against the federal rulers, than those of a State. 'In a single State, if the persons intrusted with
the supreme power become usurpers' . . . the people in their counties and cities 'having no distinct governments in each can take no regular measures for defense. The citizens rush tumultuously to arms without concert, without system, without resource,' etc. 'But in a Confederacy, the people, without exaggeration, may be said to be entirely masters of their own fate. Power being almost always the rival of power, the general government will, at all times, stand ready to check the usurpations of the State governments: and these will have the same disposition toward the general government. . . . If their rights are invaded by either, they (the people) can make use of the other, as the instrument of redress.' . . . '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 the national authority. . . . The legislatures will have better means of information' (than the people), 'they can discover the 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. . . . If the federal army should be able to quell the resistance of one State, the distant States would have it in their power to make head with fresh forces.' And then after stating, that there would not be for a long time a large federal army, he adds: 'When will the time arrive, that the Federal Government can raise and maintain an army capable of erecting a despotism over the great body of the people of an immense empire, who are in a situation, through the medium of their State governments, to take measures for their own defense, with all the celerity, regularity and system of independent nations? The apprehension may be considered as a disease, for which there can be found no cure in the resources of argument and reasoning.'

'This powerful passage, written before the Constitution was ratified, and as an argument to a great State to do so;
calling the government of the Union a Federal Government, and the Union proposed a Confederacy—and with cogent persuasiveness showing how, under the proposed Constitution, the States, as independent nations, with all the organs of civil power and all the resources of the community at hand, could and should fight federal usurpers of popular liberties, is from the 28th number of the Federalist, and from the splendid pen of Alexander Hamilton to the people of New York.

"The same views are pressed by Mr. Madison in the 46th number of the Federalist. 'But ambitious encroachments of the Federal Government on the authority of the State governments would not excite the opposition of a single State or of a few States only; they would be signals of general alarm. Every government would espouse the common cause. Plans of resistance would be concerted. The same combination, in short, would result from an apprehension of the federal as was produced by the dread of a foreign yoke,' etc., etc." *

"There is yet another view of this subject. It results from the nature of all government, freely and voluntarily established, that there is no power to change, except the power which formed it. It will scarcely be denied by any one, that the Confederation was a government strictly of the States, formed by them as such, and deriving all its powers from their consent and agreement. What authority was there superior to the States, which could undo their work? What power was there, other than that of the States themselves, which was authorized to declare that their solemn league and agreement should be abrogated? Could a majority of the people of all the States have done it? If so whence did they derive that right? Certainly not from any agreement among the States, or the people of all the states; and it could not be legitimately derived from any other source. If, therefore, they had exercised such a power, it would have been a plain act of usurpation and violence. Besides, if we may judge from the apportionment of representatives as proposed in the Consti-

* John Randolph Tucker, "Relations of the U. S. to Each Other," pp. 54-65; 1877.
tution, a majority of the people of all the States were to be found in the four States of Massachusetts, New York, Pennsylvania and Virginia, so that upon this idea, the people of less than one-third of all the States could change the articles of Confederation, although those articles expressly provided that they should not be changed without the consent of all the States! There was then no power superior to the power of the States; and consequently there was no power which could alter or abolish the government which they had established. If the Constitution has superseded the Articles of Confederation it is because the parties to those articles have agreed that it should be so. If they have not so agreed, there is no such Constitution and the Articles of Confederation are still the only political tie among the States. We need not, however, look beyond the attestation of the Constitution itself for full evidence upon this point. It professes to have been 'done by the unanimous consent of the States present,' etc., and not in the name or by the authority of 'the people of the United States.' But it is not the mere framing of a constitution which gives it authority as such. It becomes obligatory only by its adoption and ratification; and surely that act, I speak of free and voluntary government, makes it the Constitution of those only who do adopt it. Let us ascertain then, from the authentic history of the time, by whom our own constitution was adopted and ratified.

"The resolution of Congress already quoted, contemplates a convention 'for the sole and express purpose of revising the articles of confederation,' and reporting suitable 'alterations and provisions therein.' The proceedings of the convention were to be reported to Congress and the several legislatures, and were to become obligatory only when 'agreed to in congress and confirmed by the states.' This is precisely the course of proceeding prescribed in the articles of confederation. Accordingly, the new constitution was submitted to Congress; was by them approved and agreed to, and was afterwards, in pursuance of the recommendation of the convention, laid before the conventions of the several States, and by them ratified and adopted. In this proceeding each State acted for itself,
without reference to any other State. They ratified at different periods; some of them unconditionally, and others with provisos and propositions for amendment. This was certainly state action in as distinct a form as can well be imagined. Indeed it may well be doubted whether any other form of ratification, than by the States themselves would have been valid. At all events none other was contemplated, since the Constitution itself provides that it shall become obligatory when ratified by 'nine states,' between the states ratifying the same. The 'people of the United States,' as an aggregate mass are nowhere appealed to for authority and sanction to that instrument." *

Mr. Madison wrote:

"Some exulting references have been drawn from the change noted in the Journal of the Convention, of the word National into 'United States.' The change may be accounted for by a desire to avoid the misconception of the former, the latter being preferred as a familiar caption. That the change could have no effect on the real character of the Govt. was & is obvious; this being necessarily deduced from the actual structure of the Govt. and the quantum of its powers.” †

It is not easy to conceive how even the lapse of years could have so erased Mr. Madison's recollections on this point, which was the pivot upon which hinged the disputes of the contending parties in the Federal Convention. Prior to that Convention, indeed, the word was so loosely used to denote matters in reference to the United States in contradistinction to the several States, that it had slight significance; e. g., it was used prior to the Confederation and throughout the Confederation in this sense without other political significance:

"... is at least so far probable from the embarrassments which characterize the present state of our national affairs." ‡

* Upshur, "Review of Story."
† Madison to N. P. Trist, December, 1831.
“Your commissioners decline an enumeration of those national circumstances.” *

Numerous examples might be given.
But when the Convention sat, the word was made the watchword and shibboleth of that party to which Mr. Madison belonged. Mr. Randolph who presented the Virginia Resolutions, said:

“The resolutions from Virginia must have been adopted on the supposition that a federal government was impracticable.” †

Mr. C. C. Pinckney said:

“. . . he supposes that the Convention have already determined virtually, that the federal government cannot be made efficient. A national government being therefore the object, this plan must be pursued.” ‡

Mr. Madison said:

“. . . It is evident if we do not radically depart from a federal plan, we shall share the fate of ancient and modern confederacies.” §

Mr. Madison indeed seeks to discredit Mr. Yates’s “Minutes.” There is, however, no good reason to doubt their substantial accuracy, supported as they are by Mr. Luther Martin’s statement and the Journals of the Convention. In fact, Mr. Madison in other places, makes much the same statement as here credited to him by Mr. Yates. Therefore while Mr. Madison is entirely correct in stating “That the change could have no effect on the real character of the Govt. was & is obvious; this being necessarily deduced from the actual structure of the Govt. and the quantum of its powers,” nevertheless the impression he seeks to produce is unwarranted. While the

* Ibid., ensuing paragraph.
† Elliot’s “Debates,” Vol. I, p. 415; Wash., 1836; Yates’s “Minutes.”
‡ Ibid.
§ Ibid.
change could have no effect on the real character of the gov-
ernment, the substitution of the words "federal" and "United
States," serves to indicate the conception of its character held
by the party who passed it, and is as such important. The
mere fact that the substitution was thought necessary, indi-
cates that it was not immaterial.

"It was moved and seconded to erase the word 'national'
and to substitute the words 'United States' in the 4th resolu-
tion; which passed in the affirmative." *

"Mr. Ellsworth, seconded by Mr. Gorham, moves to alter
it . . . This alteration, he said, would drop the word national,
and retain the proper title 'the United States.' . . .

"The motion of Mr. Ellsworth was acquiesced in, nem.
con." †

"The second resolution 'That the national legislature ought
to consist of two branches,' being taken up, the word 'national'
struck out, as of course." ‡

"At the threshold of the business, we clearly discern that
the convention was apprized of the meaning of words. One
resolution asserts that a government merely federal would not
answer, and that a supreme national government ought to be
established. The rival resolution rejects the words national
and supreme, as incompatible with a federal union. One avails
itself of the intimation from Congress in favour of a national
government, and rejects the intimations of the same Congress
in favour of a federal government; the other prefers the lat-
ter intimations, because they were legitimated by the states,
and rejects the former, because it was rejected by the states.
These adverse opinions were evidently dictated, one by the po-
itical opinion already invented, of a consolidated nation; the
other, by the actual existence of United States. The contrast
between the two preliminary resolutions in a very important
view, depends on a single word. One proposes 'a supreme
legislative, judiciary, and executive,' the other 'a legislative,
executive, and judiciary,' excluding the word supreme. This

‡ Ibid.
1—25
word was adopted as suitable for the proposed national government, and rejected, as inconsistent with the federal form of government, to which the states had confined their deputies. The adoption and rejection conspire to furnish us with a definition of this formidable word, both by the national and federal parties in the convention. The sense in which both of these parties understood it, caused its exclusion from the constitution, as inapplicable to a federal government. The advocates for a national government proposed to invest that form of government with a supreme power to 'construe the articles of the union.' The advocates for a federal government originally proposed to withhold supremacy from the legislative, judiciary, and executive, and though they at first failed, finally succeeded." *

"The original difference between the leaders of the federal and anti-federal parties was substantial. The federal leaders were in favor of a government founded upon the principle of a balance of power between the departments of one government; their opponents, of one founded upon its division between government and the people, and between two governments. The first party were inclined to endow the general government with greater powers to be taken from the people and the states, than the second; and to check these powers by balancing its departments; and the second, to control the general government, by trusting it only with powers affecting the general interest and reserving considerable powers to the people and to the states. The first party conceived that something like the English system of balancing power, supported by the principle of election, would secure a free government; the second was of opinion that this experiment had never succeeded; that election could not control power, when it bestowed too much; and that its division was a safer ally of election, than its balance.

"The constitution of the United States was founded chiefly upon the principle of a division of power, but the party which

* John Taylor, of Caroline, "New Views of the Constitution," pp. 21, 22; 1823. For a full summary on this point see the same work, pp. 13 et seq.
had lost the principle of the balance, became its administra-
tors.” *

“There is some similarity between a division and a balance
of power. The latter cannot exist without the former, but its
object is to make great masses of power equal, whereas the
object of the former is to prevent their existence. An essen-
tial principle of the balances, is a division of power between
kings, lords and commons; of our system, between the state
and general governments.” †

The popular apprehension corroborates the nature of the
compact.

“Not by command, or appointment, expressive of an author-
ity which is not vested in any man in the Union; but in com-
pliance with the pious recommendation of our Federal Head,
a language more congenial with our notion of liberty, we are
now assembled in the house of worship.

“The design of the President’s proclamation is, to unite the
hearts and voices of the millions in Federated America to
render a voluntary tribute of praise and gratitude to Al-
Mighty God, for his goodness to us as a people.” ‡

“But ‘constitutions of government, which unite, and by their
union establish liberty with order,’ are the basis of political
happiness, the palladium of national peace and security. Such
are the American constitutions. Formed by the collected wis-
dom of the respective states, examined by the jealous and
watchful eye of the sons of freedom, and established by the
free suffrages of the people, . . .” §

“And may anarchy never rear its hydra-head in United
America. May order, liberty and peace, union, harmony, and
love; long reign in this happy land. Here may free republi-
can governments, supported by the eternal pillars of truth and

* Letters by John Taylor, of Caroline, to Thomas Ritchie, Number II, Richmond, 1809.
† Ibid., Number III.
‡ Samuel Kendall, Sermon on the Day of National Thanksgiving, Feb. 19, 1795, p. 5.
§ Ibid., p. 18.
justice, mock the assaults of internal and external enemies, . . ."* 

APPENDIX 24

(Page 75)

The political effects of Mr. Morris's resolution were well understood, as shown in the Debate of the Virginia Ratifying Convention, by Mr. Henry's attack and its rebuttal by Messrs. Madison and Lee. †

APPENDIX 25

(Page 77)

"As a difference of meaning between 'a confederation and a constitution' has been contended for, it ought not to be overlooked, that the deputies at Annapolis, applied the term constitution to the confederation of 1777." ‡

APPENDIX 26

(Page 78)

"The honorable gentleman says compacts should be binding, and that the Confederation was a compact. It was so; but it was a compact that had been repeatedly broken by every state in the Union; and all the writers on the laws of nations agree that, when the parties to a treaty violate it, it is no longer binding." §

The American States had good reason to be familiar with this doctrine of the law of nations: it had lately been appealed

† Vide, Appendix 21B.
§ Charles C. Pinckney, in Ratification Debates of South Carolina.
to in bar of their claims against Great Britain's non-fulfilment of treaty stipulations.

"The engagements entered into by a treaty ought to be mutual, and equally binding on the respective contracting parties. It would therefore be the height of folly as well as injustice, to suppose one party alone obliged to a strict observance of the public faith, while the other might remain free to deviate from its own engagements as often as convenience might render such deviation necessary." *

"No principle is better established by the laws of nations, than, in case of existing treaties, if one party violates any one or more of the stipulations, the injured party has a right in consequence of such violation, to consider the whole void." †

Of course there are two sides to this principle so confidently announced. One may have an "inner light," a "higher law" than the law of nations (or any other law), a "New England," or, other special conscience; e. g., by the following extract one may learn that a right existing merely by compact or bargain is no right at all:

"The first amendment proposed, relates to the apportionment of Representatives among the slave holding States. This cannot be claimed as a right. Those States are entitled to the slave representation by a constitutional compact—It is therefore merely a subject of agreement." ‡

So Mr. Seward had his "higher law" than the Constitution. So Mr. Emerson had his "inner light."

"It is really of little importance what blunders in statement we make, so only that we make no wilful departure from the truth. . . . Why should I give up my thought, because I cannot answer an objection to it? . . . With consistency, a great

* Marquis of Carmarthen, 1785.
† Speech of Uriah Tracy in Senate of U. S., on bill to declare void the treaty between the U. S. and . . ." Connecticut Courant, August 27, 1796.
‡ Proceedings of a Convention of Delegates from Massachusetts, Connecticut and Rhode Island, &c., Convened at Hartford, 1814; Newburyport, 1815.
soul has simply nothing to do. . . . Speak what you think now in hard words, and to-morrow speak what to-morrow thinks in hard words again, though it contradict everything you said to-day. . . . I hope in these days we have heard the last of conformity and consistency. Let the words be . . . ridiculous henceforward.’ This is not meant for mere theory. We are told often that ‘Virtue is the spontaneity of the will. . . . Our spontaneous action is always the best. . . . The only right is what is after my own constitution, the only wrong what is against it.’

“The passages quoted in the last paragraph are of great importance; for they did more than any others to abolish slavery. Its defenders appealed to the Bible as confidently as to the national Constitution; but the Garrisonians declared with Emerson, that ‘The highest virtue is always against the law.’”

Mr. Chas. Francis Adams (et al.) is also of opinion that the binding powers of a compact may lapse [for one of the parties] when such party is firmly established in the benefits therefrom resulting; vide Appendix 40.

APPENDIX 27

(Page 78)

“The compound Govt. of the U. S. is without a model, and to be explained by itself, not by similitudes or analogies.”

“And having in no model the similitudes & analogies applicable to other systems of Govt. it must more than any other be its own interpreter, according to its text & the facts of the case.”

‡ Madison, Letter to Edward Everett, August 28, 1830.
APPENDIX 28

“Our political system is admitted to be a new creation—a real nondescript. Its character therefore must be sought within itself; not in precedents, because there are none.” *

APPENDIX 28

(Page 80)

Remembering Mr. Madison’s often repeated injunction that “it [the Constitution] must . . . be its own interpreter according to its text,” there is no point as to which it is clearer or more positive than in negation of a constitutional power of a majority of the people of the United States as one people. †

APPENDIX 29

(Page 81)

Repeated attempts to make coercion in some form a part of the pact were rejected by large majorities.

“Against this conclusion there can be raised but one objection, that the States have surrendered or transferred the right in question. If such be the fact, there ought to be no difficulty in establishing it. The grant of the powers delegated is contained in a written instrument, drawn up with great care, and adopted with the utmost deliberation. It provides that the powers not granted are reserved to the States or the people. If it be surrendered, let the grant be shown, and the controversy will be terminated; and, surely, it ought to be shown, plainly and clearly shown, before the States are asked to admit what, if true, would not only divest them of a right which, under all its forms, belongs to the principal over his agent, unless surrendered, but which cannot be surrendered without in effect, and for all practical purposes, reversing the relation

* Madison.
† Vide ante, Chapter IV, pp. 56-74; opinions of Judge Baldwin, etc.; also Appendices 22, 23.
between them; putting the agent in the place of the principal, and the principal in that of the agent; and which would degrade the States from the high and sovereign condition which they have ever held, under every form of their existence, to be mere subordinate and dependent corporations of the Government of its own creation. But, instead of showing any such grant, not a provision can be found in the Constitution authorizing the General Government to exercise any control whatever over a State by force, by veto, by judicial process, or in any other form—a most important omission, designed, and not accidental, and as will be shown in the course of these remarks,—omitted by the dictates of the profoundest wisdom.

"The journal and proceedings of the Convention which formed the Constitution afford abundant proof that there was in the body a powerful party, distinguished for talents and influence, intent on obtaining for the General Government a grant of the very power in question, and that they attempted to effect this object in all possible ways, but, fortunately, without success. The first project of a Constitution submitted to the Convention (Governor Randolph's) embraced a proposition to grant power 'to negative all laws contrary, in the opinion of the National Legislature, to the articles of the Union, or any treaty subsisting under the authority of the Union; and to call forth the force of the Union against any member of the Union failing to fulfil its duty under the articles thereof.' The next project submitted (Charles Pinckney's) contained a similar provision. It proposed, that the Legislature of the United States should have the power to revise the laws of the several States that may be supposed to infringe the powers exclusively delegated by this Constitution to Congress, and to negative and annul such as do. The next was submitted by Mr. Patterson, of New Jersey, which provided, 'if any State, or body of men in any State shall oppose or prevent the carrying into execution such acts or treaties' (of the Union), the Federal Executive shall be authorized to call forth the powers of the confederated States, or so much thereof as shall be necessary to enforce, or compel the obedience to such acts, or observance of such treaties." General
Hamilton’s next succeeded, which declared ‘all laws of the particular States contrary to the Constitution or laws of the United States, to be utterly void; and, the better to prevent such laws being passed, the Governor or President of each State shall be appointed by the General Government, and shall have a negative on the laws about to be passed in the State of which he is Governor or President.’

“At a subsequent period, a proposition was moved and referred to a committee, to provide that ‘the jurisdiction of the Supreme Court shall extend to all controversies between the United States and any individual State’; and, at a still later period, it was moved to grant power ‘to negative all laws passed by the several States interfering, in the opinion of the Legislature, with the general harmony and interest of the Union, provided that two thirds of the members of each House assent to the same,’ which, after an ineffectual attempt to commit, was withdrawn.

“I do not deem it necessary to trace through the journals of the Convention the fate of these various propositions. It is sufficient that they were moved and failed, to prove conclusively, in a manner never to be reversed, that the Convention which framed the Constitution, was opposed to granting the power to the General Government in any form, through any of its departments, legislative, executive, or, judicial, to coerce or control a State, though proposed in all conceivable modes, and sustained by the most talented and influential members of the body.” *

Randolph, who offered the 6th Resolution, “Resolved, That . . . the national legislature ought to be empowered . . . to call forth the force of the Union against any member of the Union failing to fulfil its duty under the articles thereof,” altered his opinion decisively. In view of the reception of his resolution, his doing so is not of much importance to the point.

“It was then moved and seconded to postpone the consider- ation of the last clause of the 6th resolution, namely,—

"To call forth the force of the Union against any member of the Union failing to fulfil its duty under the articles thereof.'

"On the question to postpone the consideration of the said clause, it passed in the affirmative."

"But although coercion is an indispensable ingredient, it ought not to be directed against a state as a state . . . Should we arm citizens against citizens, and habituate them to shed kindred blood?" etc.†

"Coercion he pronounced to be impracticable, expensive, cruel to individuals." ‡

Hamilton, both in the Federal and the New York State Conventions, spoke against any coercion of States.

"But how can this force [coercion] be exerted on the states collectively? It is impossible. It amounts to a war between the parties." §

"If you make requisitions, and they are not complied with, what is to be done? It has been observed, to coerce the states is one of the maddest projects that was ever devised. A failure of compliance will never be confined to a single state. This being the case, can we suppose it wise to hazard a civil war? Suppose Massachusetts, or any large state, should refuse, and Congress should attempt to compel them, would they not have influence to procure assistance, especially from those states which are in the same situation as themselves? What picture does this idea present to our view? A complying state at war with a non-complying state; Congress marching the troops of one state into the bosom of another; this state collecting auxiliaries, and forming, perhaps, a majority against its federal head. Here is a nation at war with itself. Can any reasonable man be well disposed towards a government which makes war and carnage the only means of supporting itself—a government that can exist only by the sword? Every

* Debates, May 31, 1787.
† Randolph, Letter to Speaker of House of Delegates of Virginia, October 10, 1787.
‡ Randolph, Debates in Federal Convention, June, 1787.
§ Hamilton, June 18, in Federal Convention.
such war must involve the innocent with the guilty. This single consideration should be sufficient to dispose every peaceable citizen against such a government.

"But can we believe that one state will ever suffer itself to be used as an instrument of coercion? The thing is a dream; it is impossible. Then we are brought to this dilemma—either a federal standing army is to enforce the requisitions, or the federal treasury is left without supplies, and the government without support. What, sir, is the cure for this great evil? Nothing, but to enable the national laws to operate on individuals, in the same manner as those of the states do. This is the true reasoning upon the subject, sir. The gentlemen appear to acknowledge its force; and yet, while they yield to the principle, they seem to fear its application to the government." *

"Hence we see how necessary for the Union is a coercive principle. No man pretends the contrary; we all see and feel this necessity. The only question is, Shall it be a coercion of law, or a coercion of arms? There is no other possible alternative. Where will those who oppose a coercion of law come out? Where will they end? A necessary consequence of their principle is a war of the states one against the other. I am for coercion by law—that coercion which acts only upon delinquent individuals. This Constitution does not attempt to coerce sovereign bodies, states in their political capacity. No coercion is applicable to such bodies, but that of an armed force. If we should attempt to execute the laws of the Union by sending an armed force against a delinquent state, it would involve the good and the bad, the criminal and guilty, in the same calamity." †

What Mr. Madison may have really wished is difficult to say. According to his letter of December 23, 1832, to N. P. Trist, we must suppose that he was personally in favour of the power of coercion:

* Hamilton, in New York Ratifying Convention, June 20, 1788.
† Oliver Ellsworth, in the Connecticut Convention, January 7, 1778.
"It is remarkable how closely the nullifiers who make the name of Mr. Jefferson the pedestal for their collossal heresy, shut their eyes and lips, whenever his authority is ever so clearly and emphatically against them. You have noticed what he says in his letters to Monroe & Carrington, Pages 43 & 203, vol. 2, with respect to the powers of the old Congress to coerce delinquent States, and his reasons for preferring for the purpose a naval to a military force; and moreover that it was not necessary to find a right to coerce in the Federal Articles, that being inherent in the nature of a compact."

But this was not his language in Convention.

"It was generally agreed that the objects of the Union could not be secured by any system founded on the principle of a confederation of sovereign states. A voluntary observation of the federal law by all the members could never be hoped for. A compulsive one could evidently never be reduced to practice, and if it could, involved equal calamities to the innocent and the guilty ... and in general, a scene resembling much more a civil war than the administration of a government.

"Hence ... the alternative of a government which instead of operating on the States, should operate on the individuals composing them." *

"The last clause of the sixth resolution, authorizing an exertion of the force of the whole against a delinquent state, came next into consideration.

"Mr. Madison observed, that the more he reflected on the use of force, the more he doubted the practicability, the justice, and the efficacy of it, when applied to people collectively, and not individually. A union of the states containing such an ingredient seemed to provide for its own destruction. The use of force against a state would look more like a declaration of war than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this recourse

* Madison to Jefferson, October 24, 1787.
unnecessary, and moved that the clause be postponed. This motion was agreed to, *nem. con.*

APPENDIX 30

(Page 81)

Mr. Madison's solution of the difficulty was a negative by the United States on State legislation. Even this was not granted.

"Mr. Pinckney moved 'That the national legislature should have authority to negative all laws which they should judge to be improper' . . .

"Mr. Madison seconded the motion. He could not but regard an indefinite power to negative legislative acts of the states as absolutely necessary to a perfect system. Experience had evinced a constant tendency in the states to encroach on the federal authority; to violate national treaties; to infringe the rights and interests of each other; to oppress the weaker party within their respective jurisdictions. A negative was the mildest expedient that could be devised for preventing these mischiefs. The existence of such a check would prevent attempts to commit them. Should no precaution be engrafted, the only remedy would be in an appeal to coercion. Was such a remedy eligible? Was it practicable? Could the national resources, if exerted to the utmost, enforce a national decree against Massachusetts, abetted, perhaps, by several of her neighbors? It would not be possible. A small proportion of the community, in a compact situation, acting on the defensive, and at one of its extremities, might at any time bid defiance to the national authority. Any government for the United States, formed on the supposed practicability of using force against the unconstitutional proceedings of the states, would prove as visionary and fallacious as the government of Congress."

The motion passed in the negative,—3 Ayes, 7 Noes.

*Debates in the Federal Convention, May 31, 1787.
†Ibid., June 8, 1787.*
Instead

“It was moved and seconded to agree to the following resolu-
tion, namely:—Resolved, That the legislative acts of the
United States, made by virtue and in pursuance of the articles
of union, and all treaties made and ratified under the author-
ity of the United States, shall be the supreme law of the re-
spective states, as far as those acts or treaties, shall relate to
the said states, or their citizens and inhabitants; and that the
judiciaries of the several states shall be bound thereby in their
decisions, any thing in the respective laws of the individual
states to the contrary notwithstanding.

“It passed unanimously in the affirmative.”

The difference in principle between this clause which passed
unanimously, and Mr. Pinckney’s motion (supported by Mr.
Madison), “that the national legislature should have authority
to negative all laws which it should judge to be improper,” for
which only three States voted, lies in two most important
points. First, that the States are bound, not by the judgment
of the national legislature as to what is proper, but by the
constitutional provisions; second, that, in case of a difference
of opinion between a State and the United States as to
whether or no a “legislative act of the United States” is “made
by virtue and in pursuance of the articles of union,” and
therefore whether it is or is not “the supreme law of the re-
spective states, by which the several states shall be bound,”
no authoritative arbiter is by this clause provided; it is no more
by it stated that such a final power of judgment lies in the
government of the United States than that it lies in the re-
spective State governments; the clause is in its effects merely
a declaratory one; it states the normal relation of the states
to the general government; it provides no remedy for a dis-
turbance of that relation, as—was desired by Mr. Madison.
No additional power of coercion is thereby yielded to the gen-
eral government over the respective states beyond that possessed by the Confederation. The states are morally bound to obey the provisions of the Constitution, but so were they those of the Confederation. But they were unwilling to leave the construction of those provisions to the general government they were creating. This power refused is certainly the most characteristic function of sovereignty: an additional proof, if such be needed, that they did not divest themselves of their original several sovereignty.*

"On the 29th of May, 1787, the convention was organized, and Mr. Randolph, of Virginia, offered sundry resolutions resuming the word national, though it had been rejected by all the states, and proposing 'that a national legislature shall have the right to legislate in all cases in which the harmony of the United States may be interrupted by the exercise of individual legislation, and to negative all laws passed by the several states, contravening, in the opinion of the national legislature, the articles of the union, or any treaty under the union.' The resolutions also proposed 'a national executive and a national judiciary; that the executive and a convenient number of the national judiciary ought to compose a council of revision, with authority to examine every act of the national legislature, before it shall operate, and every act of a particular legislature, before a negative thereon shall be final; and that the dissent of the said council shall amount to a rejection, unless the act of the national legislature be again passed, or that of a particular legislature be again negatived by of the members of each branch.'

"It is worthy of particular observation, that in this project, the constructive supremacy now claimed for the federal government 'over the articles of the union,' was proposed to be given to a national government; because the actual consideration of this identical power, and its absence from the constitution as it was finally adopted, seems to be irresistible evidence that it does not exist. Throughout Mr. Randolph's resolutions, fifteen in number, the word national is adopted,

and the word Congress rejected, except in reference to the Congress under the confederation of 1777, proving that the word was applicable to a federal union, but not to a national government.

"The proposed national form of government was ultimately renounced or rejected, but the negative power over state laws with which it was invested was much less objectionable than now constructively contended for on behalf of the federal government. The president was to be one of a council of revision, and the influence of the states in his election might have afforded to them some feeble security, a little better than could be expected from a council of revision composed of a few federal judges. Both the legislative branches which were to pronounce the first veto upon state laws, were also to be exposed to popular influence, and might feel all the responsibility of which a body of men are susceptible in extending its own power by its own vote. A judicial veto, as now contended for, is exposed to no responsibility whatever. The council of revision, with the president at its head, were only to be controlled by more than a majority of the national legislature. This was evidently a better security for the small states than a power in a majority of Congress to abrogate state laws. But all these alleviations of the power in a national form of government to negative state laws were unsuccessful, because the principle itself, however modified, was inconsistent with the federal form adopted. It can never be conceived that the principle of a negative over state laws, audibly proposed and rejected, had silently crept into the constitution. This was quite consistent with the national form of government proposed, but quite inconsistent with the federal form adopted. The project for a national form of government was deduced from the doctrine, as we shall hereafter see, that the declaration of independence had committed the gross blunder of making the states dependent corporations; that it was in fact a declaration of dependence. When this doctrine failed in the convention, the national negative over state laws died with it. Revived by construction, it assumes a far more formidable and consolidating aspect than as it was originally offered, because
the usurped negative over state laws, by a majority of a court 
or of Congress, would not have its malignity to the states 
alleviated by the checks to which the project itself resorted. 
Without these checks, even the advocates for a national form 
of government thought such a negative intolerable. The proj-
ect contemplated a mixed legislative, executive, and judicial 
supremacy over state laws, so that one department of this 
sovereignty, like that of the English, might check the other, 
in construing 'the articles of the union,' and did not venture 
even to propose that a government should be established, in 
which a single court was to be invested with a supreme power 
over these articles, or the constitution. The idea seems to be 
a political monster never seen in fable or in fact.

"On the same day, Mr. C. Pinckney offered a draft for a 
federal 'constitution.' It recognized the people of the several 
states; proposed 'that the style of the government should be 
the United States of America; that the legislative power 
should be vested in a Congress, to be chosen by the people of 
the several states; enumerated limited powers to be exercised 
by this Congress; proposed a president of the United States; 
and that the legislature of the United States should have power 
to revise the laws of the several states, that may be supposed to 
 infringe the powers exclusively delegated to Congress, and to 
 negative and annul such as do.'

"This project for a form of government being somewhat at 
enmity with the resolutions, hostilities between them forth-
with commenced, and the resolutions obtained successive vic-
tories over a nominal rival, during the greater portion of the 
time expended by the convention. The journal, however, is 
too obscure to supply us with a history of a controversy which 
related only to the form of a national government mutually 
advocated. We do not find in the constitution the negative 
over state laws proposed both in the resolutions and the draft. 
As it was distinctly proposed by both, it must have been ma-
turely considered and doubly rejected. The reasons of these 
rejections were, that though a supreme power of construction, 
was consistent with, and might have been intrusted to a gov-
ernment throughout responsible to one people or nation, it was
inconsistent with and could not therefore be intrusted to a federal form of government, or any of its departments. And hence when the federal form of government prevailed over the national form, the alteration of the federal articles was exclusively limited to the modes prescribed, and not extended to a supreme power of construction in the federal government or any of its departments. The constitution was not intended to be an alembick, fraught with heterogeneous principles, to condense the tortuosities of construction, and distil from taciturnity a supreme power of construction, and consequently a negative upon state legislation.

“May 30, Mr. Randolph, seconded by Mr. G. Morris, moved ‘that an union of states merely federal will not accomplish the objects proposed by the articles of confederation, namely, common defence, security of liberty, and general welfare;’ and by Mr. Butler, seconded by Mr. Randolph, ‘that a national government ought to be established, consisting of a supreme legislative, judiciary, and executive.’ In opposition to this resolution it was moved, ‘that in order to carry into execution the design of the states in forming this convention, and to accomplish the objects proposed by the confederation, a more effective government, consisting of a legislative, judiciary, and executive, ought to be established,’ excluding the words national and supreme. But it was resolved ‘that a national government ought to be established, consisting of a supreme legislative, judiciary, and executive.’ The collision between these resolutions, and consequently the debate, was produced by the words national and supreme. Massachusetts, Pennsylvania, Delaware, Virginia, North-Carolina, and South-Carolina, voted for this resolution, Connecticut against it, and New-York was divided; so that a convention of only eight states decided by a majority of six, that the states should be annihilated. It was late in the session before twelve states assembled; but whether an accession of votes, or the repentance usually attached to precipitancy, produced the ultimate discomfiture of the resolution to establish a supreme national government, can only be conjectured by computing the consequences likely to result from an excessive zeal for this con-
solidating policy, and from a refrigeration inculcated by an accession of votes or a firm opposition.

"However this may be, it is plain that some members of the convention came with preparatory impressions that the distinction of states ought to be destroyed, and availed themselves of a thin convention to obtain a footing for that opinion. On the first day of the session, two projects are offered, both founded upon the principle of a supreme national government, and on the second, the deputies of six states resolve to annihilate thirteen. The hastiness of this movement indicates a design to obtain a victory by surprise, ascertains the existence of a concert unfaithful to credentials, and displays a rooted hostility to the state governments. A blow so unexpected and violent was endeavoured to be suspended by succinctly urging in the adverse resolution, that it was the duty of the convention 'to carry into execution the design of the states,' but not a single day is allowed for consideration, and the treachery of sacrificing duty to prepossession is instantly perpetrated. The states and the duty are entombed together, by a resolution to establish a supreme national government.

"At the threshold of the business, we clearly discern that the convention was apprized of the meaning of words. One resolution asserts that a government merely federal would not answer, and that a supreme national government ought to be established. The rival resolution rejects the words national and supreme, as incompatible with a federal union. One avails itself of the intimation from Congress in favour of a national government, and rejects the intimations of the same Congress in favour of a federal government; the other prefers the latter intimations, because they were legitimated by the states, and rejects the former, because it was rejected by the states. These adverse opinions were evidently dictated, one by the political opinion already invented, of a consolidated nation; the other, by the actual existence of United States. The contrast between the two preliminary resolutions in a very important view, depends on a single word. One proposed 'a supreme legislative, judiciary, and executive,' the other 'a legislative, executive, and judiciary,' excluding the word su-
preme. This word was adopted as suitable for the proposed national government, and rejected, as inconsistent with the federal form of government, to which the states had confined their deputies. The adoption and rejection conspire to furnish us with a definition of this formidable word, both by the national and federal parties in the convention. The sense in which both of these parties understood it, caused its exclusion from the constitution, as inapplicable to a federal government. The advocates for a national government proposed to invest that form of government with a supreme power to 'construe the articles of the union.' The advocates for a federal government originally proposed to withhold supremacy from the legislative, judiciary, and executive, and though they at first failed, finally succeeded. As applied by the successful federal party to the supreme court, it evidently refers to inferior federal courts. Instead of a judiciary, invested with a supreme power to construe the articles of the union and to negative state laws, a limited judiciary is found in the constitution. To reject a supreme legislature and executive, and yet to retain a supreme judiciary, was never even suggested by either the national or federal party in the convention. As the project for a national form of government, bestowed the supremacy of construing the articles of the union and negative state laws, upon all its departments, by plain words; and the project in favour of a federal form entirely rejected this supremacy, it is doing the utmost violence to probability to imagine that the constitution by inference without plain words, and without its having been proposed in the convention, should have both deprived the federal legislature and executive of a power to settle the construction of our federal articles and to negative state laws, and also have bestowed this enormous power exclusively on one federal court.

"The word supreme is used twice in the constitution, once in reference to the superiority of the highest federal court over the inferior federal courts, and again in declaring that the constitution, and laws made in pursuance thereof, shall be the supreme law of the land, and the judges in every state shall be bound thereby." Did it mean to create two supremacies, one
in the court, and another in the constitution? Are they collateral, or is one superior to the other? Is the court supreme over the constitution, or the constitution supreme over the court? * Are 'the judges in every state' to obey the articles of the union, or the construction of these articles by the supreme federal court?"
