ORATION,

DELIVERED ON

THE FOURTH OF JULY, 1831,

BEFORE THE

CITIZENS OF CINCINNATI,

IN THE

METHODIST CHURCH, ON SIXTH STREET.

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CINCINNATI:

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ORATION.

In every discourse upon the present condition and future prospects of the human race, it is both pleasing and useful to contemplate its origin and progress; to estimate the stock of knowledge with which the first human being commenced life, and the advantages he possessed; to carry back our thoughts through the long tract of time, to that age when this populous and busy world was a profound, unbroken solitude, and the habitation of Adam the only lodge in the vast wilderness.

In the garden of Eden, surrounded with innumerable blessings, invested with sovereign command, and equal to angels in all things but knowledge, were placed the parents of mankind. Expelled the blissful seats of paradise, for their transgression of the sole command of the great Author of their being, and bountiful giver of the rich and varied blessings they enjoyed, "the world was all before them where to choose their place of rest, and Providence their guide."

From this exiled and solitary pair have sprung the countless hosts of intelligent beings, the subjects of our present contemplation. To the mind, glancing down the current of existence, from that remote period, how noble, how humiliating is the prospect. Though history be little else than a chronicle of the follies, excesses, and crimes of mankind, — though at every page tears of sorrow and of shame are extorted, by examples of atrocious vice, yet the generous heart sometimes exults in the recorded exertions of heroic virtue.

That mankind is in all ages the same, though asserted by a master of the human heart, as a general proposition, is untrue. It is contradicted by the different modifications of human character, under the influence of laws, religion, and the various institutions which have been devised for the comfort and security of associated man. What resemblance can be traced between the present and ancient people of Greece? How unlike both extremes, to that period when the politic monarch transferred the seat of his empire from the Tiber to the Bosphorus? By what mark can you recognize, in the enervated slave of modern Italy, the successor of the free and hardy Roman? Is the Spaniard what he was in the reign of Charles the 5th? On the borders of Scotland and England the sheriff's writ has superseded the claymore, and the posse comitatus the gathering of the clans. Turn your eyes to the southern coast of the Mediterranean, and see the metamorphosis in progress there, under the happy amelioration of French dominion. The hand of French refinement and civilization is tearing from the heart of the Musselman the prejudices entwined most closely around it;—the penetralia of the harem have been thrown open;—the cross surmounts the crescent; and amid the mosques of Algiers, the voices of a Christian people praise and adore the Christian's God!

And may we not hope, that it is in the providence of that gracious being, that the means, thus happily established in the north of Africa, shall co-operate with the benevolent purposes of our own plans of colonization, to requite that injured continent for the wrongs and outrages of the Christian world?

If the operation of these causes be thus powerful, in the direction of human conduct, and decisive of human character, the investigation of them becomes the duty, as to understand them is the interest, of every people aspiring to be free and happy. Indeed, I know not how I can better discharge the flattering duty with which I have been honored, than by an attempt to develope the great principles of our own govern-

ment, from a careful analysis of its powers and authority. It is refreshing to draw from that clear and exhaustless fount, whence all that is valuable in our institutions flow. There is something invigorating in this recurrence to first principles,—in renewing the half effaced impressions of a former, and I may add, a purer age, as the chisel of the wandering enthusiast piously re-touched the inscriptions on the tombs of the persecuted covenanters.

These happy and liberal institutions, and the constitution from which they spring, are the result of the closest investigation, by the strongest minds and clearest heads, of the principles and practices of the governments which had preceded them. They have their only force,—their sole guaranty and sanction, in the combined affection, intelligence, and virtue of the people. Their beautiful simplicity may be marred by the daring hand of unskilful innovation;—their symmetry may be mutilated by mistaken zeal to improve or preserve them;—the regularity of their movements may be interrupted by passion, prejudice, or design;—their foundation can only be sapped by the general depravity and corruption of the people. If they shall have fair play,—if they shall be administered in the same admirable spirit in which they were conceived, union, harmony, individual happiness, and national prosperity will be the rich and certain fruits.

The peace of 1763, (beyond which period we shall not carry our researches,) established the British dominion in North America, and led to those measures which eventuated in the separation of the two countries.

The first effort to produce concert of action and sentiment among the colonies, was a resolution of the House of Representatives of Massachusetts, that it was expedient that a Congress, composed of commissioners from all the Colonies, should assemble in New York, on the first Tuesday of October, 1765. This wise and salutary suggestion was not adopted without the most serious opposition. In the assem-

bly of South Carolina, the united powers of argument and ridicule were enlisted against it. Referring to the different employments and interest of the colonists, it was said with a sneer, "if you agree to the proposition of composing a Congress of deputies from the different British Colonies, what sort of a dish will you make? New-England will throw in fish and onions; the middle Colonies, flax-seed and flour; Maryland and Virginia will add tobacco; North Carolina, pitch, tar, and turpentine; South Carolina, rice and indigo; and Georgia will sprinkle the whole with saw-dust:—Such an absurd jumble will you make, if you attempt to form an union among such discordant materials as the thirteen British provinces." To this, a country member replied: "He would not choose the gentleman, who made the objection, for his cook; but, nevertheless, he would venture to assert, that if the Colonies proceeded judiciously in the appointment of delegates to a continental Congress, they would prepare a dish fit for any crowned head in Europe." Through the influence of Christopher Gadsden, and the eloquence of John Rutledge, a majority of the Assembly was obtained in favour of the proposition.

It is singular, that at a recent festivity in the city of Charleston, the spirits of these two celebrated men were invoked, by a very distinguished gentleman, to sanction measures, which, in our opinion, must lead to the dissolution of that union, which, while alive, they were so instrumental in producing. I, too, invoke the spirits of Christopher Gadsden and John Rutledge, of Henry Laurens and William Lowndes, to animate the councils of their native state,—to dissipate the delusions which darken the understandings of some of her ablest citizens.

The difficulty of harmonizing materials so discordant, and reconciling interests so opposite, was not magnified by our witty friend of the South Carolina Assembly. If then, indeed, these employments be so incompatible,—if these occu-

pations be so adverse,—if the attraction between the parts of this confederacy be so weak, and the tendency to separation so strong, we are solemnly impressed with the necessity of mutual moderation, concession, and forbearance. We must silence the suggestions of individual cupidity; suppress the workings of sectional feelings; calm the passions, and soothe the irritations of party strife. We must compromise in the very spirit of the constitution.

The next step towards consolidating the union of the Colonies, was the Congress assembled at Philadelphia, in 1774. One of the rules of this body is remarkable, as containing the germ of that system of representation, which afterwards expanded into full growth, and gave to the present constitution its peculiar compound character. It was resolved, "that as Congress were not then possessed of, or able to procure, proper materials for ascertaining the *importance* of each Colony, each Colony or province should have one vote, in determining questions."

Now, as the reason for giving this equal right to each Colony in this second Congress, was the want of materials to estimate their relative importance, it fairly follows, that if the means had been at hand to make such estimate, a different rule of representation would have obtained, and the number of votes would have been probably regulated as they now are, by the amount of population. Although the rule actually adopted, did not, in any degree, affect the sovereignty of the several Colonies, yet it very clearly suggests and shadows forth a plan of union, in which that sovereignty would, to some extent, be surrendered; for an unequal representation, in the conferences of nations, is absolutely incompatible with our ideas of sovereignty. All sovereigns are equally such, treat upon equal terms, and are equally represented.

This Congress passed a number of resolutions declaring the rights of the Colonies, with a detail of the grievances of

which they complained; and determined, as one measure of peaceable redress, to enter into a non-importation association, the only means of enforcing which, was *an appeal to public opinion.* Committees were to be appointed in every county, city, or town, to see that the agreement was observed; and the names of the violaters of it were to be published in the Gazettes, as the enemies of the rights of America; and, in that case, no dealings were to be had with them. This bill of rights and non-importation agreement were the only bond of union,—the only constitution and form of government of the Colonies, until the ratification, in 1788, of the articles of confederation.

It will be readily seen, that these limited and undefined powers were very inadequate to the efficient conduct of the war which ensued. Consequently, one of the earliest subjects occupying the attention of Congress, after the declaration of independence had been resolved, was the appointing a committee to draft a plan of confederation for the thirteen Colonies. After many delays and amendments, the report of the committee was adopted on the 15th of November, 1777, and ratified by the Colonies, during the following year.

The fifth of these articles provides, that "for the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the legislature of each State shall direct, to meet in Congress, on the first Monday of November, in every year, *with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.*"

The rule of equal votes in the States, adopted by the Congress of 1774, was transferred to this instrument. All the charges of war, and other expenses of the government, were to be defrayed out of a common treasury, to be supplied by the several States, in a fixed proportion. "The taxes for paying that proportion shall be laid and levied by the au-

thority and direction of the legislatures of the several States, within the time agreed upon by the United States, in Congress assembled."

Congress had the exclusive right of entering into treaties, &c., "provided that no treaty of commerce shall be made, whereby the legislative powers of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever."

The power of Congress extended to "appointing courts for the trial of piracies and felonies, committed on the high seas, and establishing courts for receiving and determining, finally, appeals in all cases of capture," &c.

In less than eight years, under this defective system, the country was brought to the very verge of destruction. As a nation, we were without money,—without credit,—without character. The glorious prospect of '83 was fearfully overcast. The union was on the point of dissolution.

At this eventful and decisive crisis, in May, 1787, the convention met at Philadelphia, which formed the present constitution,—the last hope of the patriot and philanthropist. The federal character of the union was greatly modified by this celebrated instrument. It was retained, in the equal representation of the States in the senate, though lost in the mode of voting in that body; and few traces of it are to be found in the organization of the house of representatives. The government became partly federal, partly national. The whole system of requisitions was destroyed, and the general government was made to operate on individuals, and not on States.

By this constitution, Congress is empowered to lay and collect taxes, duties, imposts, and excises; to regulate the foreign and domestic commerce of the country. The judicial power of the government is made co-extensive with its

legislative, "that there may be a constitutional method of giving efficacy to constitutional provisions." I shall content myself with this contrast between the powers conferred on Congress, by the articles of confederation, and the constitution, in relation to finance, commerce, and the judiciary; because from the different constructions of these provisions, arise the great questions which now agitate the country:—a protecting tariff, the system of internal improvements, and the restrictions attempted upon the jurisdiction of the federal courts, as auxiliary to the power of nullification. And this is the genealogy of nullification. A tariff for the encouragement and protection of our own labour, and appropriations for internal improvement, are denounced, in no measured terms, as gross, palpable, dangerous violations of the constitution. A majority of Congress thinking these laws both constitutional and expedient, refused to repeal them. Some expedient must, therefore, be devised to dispose of these obnoxious laws; and that expedient was the notable scheme of nullification. The anarch finds no advocates out of the heated atmosphere in which he was engendered. As a last resort, the authority is denied of the federal judiciary to construe and protect federal legislation. At the last session of Congress, a bill was introduced into the house of representatives, to repeal the twenty-fifth section of the judiciary act, which that body, by a very large majority, refused even to consider; and that was the knell of nullification.

Of that vexed question, the present tariff, I shall say nothing, but pass on to the equally important and agitating subject of internal improvements. In construing the constitution of the United States, we must constantly keep in view, that it was formed to correct the errors, and supply the defects, of the articles of confederation. The government of the United States consists of a number of agents, appointed by the people, whose capacities and powers are specifically defined and limited in the constitution. Congress is one of

these agents, and as such, has no authority which is not expressly given by the constitution, or deducible from it, by fair and legitimate implication. By this test, then, it must be decided, whether Congress is authorized by the people, in their behalf, to originate and prosecute a system of internal improvements, by which I understand the means of facilitating the domestic trade and intercourse of this extended and diversified empire.

The constitution provides, among other things, that Congress shall have power to regulate commerce with foreign nations, and among the several states. The controuling word in this paragraph is, *to regulate;* the meaning of which it is important to fix with the utmost precision. A very obvious consideration here, is, that all the authority of the country, over its foreign and domestic commerce, is vested in Congress. The government of the United States, though limited, within the limitation is sovereign. In all cases, therefore, where the people have conferred power upon any department of the government, without limitation, it is sovereign; possessing entire authority over the subject; restrained only by the great moral obligations of natural law. Upon Congress, also, are conferred all powers necessary and proper to carry into effect this power to regulate commerce among the several states. The people, then, having reserved no authority, in this matter, to themselves; and having expressly prohibited all interference with it, by the state legislatures, have entrusted to Congress all the authority upon this subject, which, as sovereign, they possessed. It follows, therefore,very clearly, that under the power to regulate commerce among the several states, Congress may do all such acts as of right appertain to a sovereign state. If this be true, and if the means of executing this power be referred to the discretion of Congress, and if to make a road or canal be an attribute of sovereignty, we might here safely rest the argument. For the sake of tender consciences we will go further.

"Congress shall have power to regulate commerce with foreign nations, and among the several states." In reading this paragraph the reflection at once occurs, that be this power what it may, Congress has the same authority in both cases,—over the foreign as over the domestic trade. What Congress may rightfully do in the one instance, it may rightfully do in the other. The same word, *regulate*, ascertains the authority in both. Now, under the power to regulate commerce with foreign nations, Congress has passed laws, and adopted measures, to give to it aid and protection. They have promoted navigation, by removing obstructions from the mouths of our rivers, and improving harbours for its accommodation and safety. Buoys have been placed to mark the shoals, whereon the hopes of the mariner may be wrecked; and light houses built to direct him in safety to the "haven where he would be." All this has been done with the approbation of those who deny to Congress the right to give equivalent facilities to the vastly more important commerce among the several states. It has been repeatedly urged, and with great force, that if Congress, under this authority, give to foreign commerce all the aid it requires, it may, under the same authority, afford the appropriate aid to the commerce among the several states. The analogy is complete,—the argument, I think, irrefutable. Upon this, however, I must remark, that I know not by what course of reasoning, the improvement of harbours, erection of light houses, &c., is referred to the power to regulate *foreign* commerce. They are equally necessary to the successful prosecution of both trades; equally benefit both; and, by every rule of fair reasoning, have their origin in the authority of Congress over the whole commerce of the country. From the opposite theory, if the foreign commerce were annihilated, it follows that none of these facilities could be given to the domestic trade. The cotton and rice of Carolina, and sugar of Louisiana, must grope their way though the dark into the port of New York.

There is one point of view, in which this matter may be placed, that I have not before met with, which strengthens the argument, by rendering the analogy unnecessary, showing that Congress has repeatedly done (and without objection, so far as I know,) the thing itself, for which we now contend. Commerce among the several states is carried on through the artificial channels of roads and canals, or the natural ones, rivers and the ocean. All that portion of this commerce which is made up of the interchange of commodoties between the states and cities on the sea board, is carried on by means of the ocean; and it has been fostered, encouraged, and protected, in every way its wants required. Beacons, buoys, breakwaters, light houses, and the various provisions of the coasting trade, are all for the benefit of this commerce; and some of them have no other foundation in the constitution, than the power to regulate commerce among the several states. I can find, in the constitution, no preference of one part of the domestic trade over another: every part of it is equally entitled to the protection of Congress. If the government may improve the natural capacities of water, why not, also, the natural capacities of land? May not all the elements be put in requisition, and made subservient to this great purpose?

There are some of our statesmen, who vote against all appropriations for internal improvements, on the express ground that Congress has no authority over the subject, who have in another shape yielded, as I think, the whole constitutional argument. In April, 1828, in the senate of the United States, upon the memorial of the Baltimore and Ohio Rail Road Company, the bill allowing the importation of iron and machinery, for the use of such road, *free of duty*, was passed by a vote of twenty-six to nineteen. Senators voted for this bill, who hold it unconstitutional to give any direct aid to that important undertaking. The bill provides, that "bond shall be given for the amount of duties, in the usual manner, sub-

ject to the condition, (to be expressed in the bond,) that on satisfactory proof being given to the Secretary of the Treasury, that such iron has been used in the construction of said rail roads, such bond shall be cancelled." The company sets forth, in its memorial, that not less than fifteen thousand tons of iron will be required for the use of the road. Upon this quantity of iron, the duties, under the present tariff, will be two hundred and seventy thousand dollars. In the progress of this business, the collector at Baltimore will have in his possession, for the use of the government, the bonds of this company, to the amount of two hundred and seventy thousand dollars; which bonds, upon the condition therein expressed, are to be cancelled. Common sense would call this a donation of so much money out of the public treasury. To a mind unclouded by metaphysical subtleties, seeing things in their true proportions and aspects, this remission of duties is an appropriation, for the use of the company, of so much cash as the bonds called for. What is the difference, in principle or fact, whether you give the company, from the treasury, the sum of two hundred and seventy thousand dollars, and afterwards require them to refund it, in the shape of duties, or allow them, in the first instance, to import the articles free of duty. The result of both operations is precisely the same. The treasury supplies, and the company receives, the amount of duties charged upon the importation.

In February, 1829, a bill authorizing the subscription of one hundred and fifty thousand dollars, to the stock of the Chesapeake and Delaware Canal, passed the senate, though opposed, from constitutional scruples, by some of those gentlemen who found no difficulty in relaxing the tariff on iron, in aid of the rail road. There is no authority (thus the argument runs,) to give money out of the treasury, to make, or aid in making, the road; but if we can lay our hands on it, before it gets there,—if we can stop it in transitu, we will, for that purpose, divert it from the treasury. The subscrip-

tion to the canal changed money into stock; the remission of the duties was a gratuity. You receive your annual dividends of the one; of the other, the dividends go into the pockets of the company.

A direct appropriation, in every point of view, appears equally constitutional; and is recommended by the further consideration, that it does not expose the revenue to the possible frauds which may be practised on it, in the other mode of giving relief. The authority of Congress to remit, can no more be questioned, than its authority to lay and collect duties: but neither can be done for the attainment of an object beyond the controul of Congress. How, then, is the assertion, of authority in Congress to remit duties in aid of a road, consistent with the denial of authority to lay and collect duties for the same purpose?

A very thin and pervious veil of sophistry has been thrown over this inconsistency. The law regulating the tariff is declared unconstitutional; and any mode of repeal is, therefore, not only justifiable, but absolutely enjoined in the oath of the representative. Appropriations in aid of a rail road, are also declared unconstitutional, by the same authority, and (as there are no degrees of constitutionality,) are as entirely beyond the proper sphere of congressional action, as a protecting tariff. The argument is no more than this: we will destroy the tariff, which we had no power thus to adjust, by constructing a road, which we have no power to construct. We will make a subsequent breach in one part of the constitution, in order to get materials to stop a prior breach in another. But the duty on iron is divisible into two parts: for protection, and for revenue. Suppose ~~the~~ half (nine dollars per ton,) for each. No body denies the authority of Congress to impose the nine dollars for revenue. To so much of the tariff, then, as is constitutional, this reasoning does not apply; and, according to their own view of the case, instead of ~~twenty-seven thousand~~, the direct, positive, gratuitous contri-

~~twenty-seven thousand~~ 76,000

bution from the public treasury, to the rail road company, was one hundred and thirty-eight thousand dollars.

Hence, we infer the constitutional authority of Congress to give pecuniary aid to the construction of roads and canals, with a view to regulate commerce among the several states. That, surely, is a legitimate regulation of commerce, which shall create channels for its accommodation; stimulate into profitable action the labour of our people, and by reducing the cost of transportation, lessen the price to the consumer, without diminishing the profits of the producer.

Against the exercise of this power by Congress, the tone of remonstrance is loud and menacing. To counteract it, the doctrine of nullification has been promulgated. I know, that in order to give some colour and support to this political heresy, it has been claimed as the same power asserted by the Virginia and Kentucky resolutions of '98 and '99. There is, however, no affinity,—no resemblance. The fair interpretation of these celebrated documents, is the assertion of the rights secured to the states, by the constitution, of procuring amendments to that instrument. On the application of the legislatures of two thirds of the several states, Congress shall call a convention for proposing amendments, &c.; and this is the "rightful remedy," prescribed by Mr. Jefferson, in the Kentucky resolutions. The recent doctrine claims the right of any one state to do more in this matter than the resolutions of Mr. Jefferson claimed for the joint act of three-fourths of the states. The one nullifies (if the term must be used,) within the constitution; the other, against the constitution.

At a "state rights celebration," in the city of Charleston, in 1830, the doctrine is thus laid down by a distinguished member of the United States senate. "Viewing the constitution as a compact prescribing limits to the federal government, the state of South Carolina, as one of the parties to that compact, in its sovereign capacity *claims the right* to

"judge of its infractions;" and that while she will, at all times, yield a ready and cheerful obedience to all laws made "in pursuance of the constitution," she *claims the right to hold* utterly null and void all such as clearly violate the reserved rights of the states." Very modest and unassuming, this pretension; and so reasonable, withal, that it should be at once conceded. South Carolina only *claims the right* to judge, exclusively, (for there can be no concurrent jurisdiction of the matter,) what laws of Congress "violate the reserved rights of the states; and the further right, to hold such laws 'utterly null and void.'"

Some of the most distinguished disciples of this heterodox creed, also believe that the state thus arresting the operation of the constitution, still maintains, under the constitution, all its present relations to the other members of the confederacy. Mr. Randolph, however, thought differently. For, "in a few words intended to have been said by him, on the passage of the Cumberland road bill, in 1829, (which, however, were not said, but published in the Telegraph,) he observes, "when these gates shall be erected within her territory, it will be the bounden duty of the commonwealth of Virginia to abate the nuisance. *This must bring her into direct collision with the* federal authority." And Mr. Randolph was right; as will be seen upon the first exercise of this schismatical power.

The constitution of the United States was not consigned, by the able and patriotic men who formed it, to the protection of state legislatures or state conventions. They were then smarting under the evils of such dependence, from which they rescued the degraded authority of the union,—suppressed the intervention of the states in the execution of its powers,—placed it upon a solid and sure foundation, and endowed it with the principle and means of self-preservation. "This constitution, and the laws of the United States, which shall be made in pursuance thereof; and the treaties made, or which shall be made, under the authority of the United

States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

Is it not manifest, that if there be a right reserved to the several states to nullify the constitution and laws, they are subordinate to the power which nullifies them? In the conflicts of antagonist principles, the supreme prevails,—the subordinate yields.

This subject has been so frequently, and so ably discussed, that I will content myself with one additional illustration of its practical effects; which, to minds not "wandering in extacy," I think conclusive of its absurdity.

Treaties are declared, by the constitution, the supreme law of the land. If, then, the doctrine of nullification be tenable, either of the states may declare the treaty void, and absolve its citizens from all obligations to perform its stipulations. The unatoned violation of a treaty is a just and very general cause of war. The injured power remonstrates;—with whom? With the nullifying state? No: with the government of the United States. The despatch, in which the Secretary of State admits the violation, but avoids the responsibility, by throwing it upon the power of nullification, would be a curiosity in the history of diplomacy.—This answer not proving altogether satisfactory to the adverse party, and being no compensation for the injuries inflicted by the nullification process, you are told there is no alternative between the execution of the treaty and war. But, if the state has the constitutional right to avoid the treaty, the United States has no right to enforce it. War is the consequence. The nullifying state is invaded. The strength of the country is necessarily called out, to repel the invasion; and thus the whole power of the constitution is put in requisition, to support a right destructive of all its provisions.

This anomolous power, besides loosening all the rivets of the union, actually overturns the power of the President and Senate to make treaties; or, at all events, renders it utterly worthless. What nation will treat with you, when it is known, that after the ratification of a treaty, in all the forms of the constitution, by the competent authority, there is reserved to twenty-four independent states the right to avoid it? The states are prohibited, by the constitution, from entering into any agreement or compact with any foreign power. The United States, then, can neither collectively nor individually negotiate and ratify any treaty with the other powers of the world; unless, perchance, some state should throw itself upon its sovereignty, so far as just to nullify the restriction upon its right to enter into compact with any foreign power, and commission its ambassador extraordinary to the court of St. Cloud or St. James.

Let not this view of the subject be considered extravagant. It is not an extreme case: It has happened; and if this monstrous absurdity find any countenance, it will happen again. The exertion of this same right was one of the evils of those articles, which constituted these states a confederacy of nullification. In 1785, Mr. Adams, the first minister from the United States to Great Britain, presented a memorial to the British Secretary of State, in which he complained of the detention of the western posts, contrary to the treaty of peace. Lord Carmarthen admitted the detention of the posts; but alleged a breach of the treaty, on the part of the United States, by interposing impediments to the collection of British debts in America. The treaty provided for the collection of these debts; and the impediments complained of, were the laws of the states. In order to remove these difficulties, in 1787, Congress unanimously declared "that all the acts, or parts of acts, existing in any of the states, repugnant to the treaty of peace, ought to be repealed; and they recommended to the states to make such re-

peal, by a general law." They, at the same time, unanimously resolved, "that the legislatures of the several states cannot, of right, pass any act or acts, for interpreting, explaining, or construing a national treaty, or any part or clause of it; nor for restraining, limiting, or in any manner impeding, retarding, or counteracting the operation and execution of the same; for that being constitutionally made, ratified, and published, they became, in virtue of the confederation, part of the law of the land; and are not only independent of the will and power of such legislatures, but also binding and obligatory on them." A circular letter, to the states, accompanied this declaration, in which Congress says: "We have deliberately and dispassionately examined and considered the several facts and matters urged by Great Britain, as infractions of the treaty of peace, on the part of America; and we regret, that in some of the states, too little attention has been paid to the public faith, pledged by that treaty."

In consequence of this recommendation, most of the states repealed the obnoxious laws. The operation of the law of Virginia, however, for this purpose, was suspended, until the governor of that state should issue a proclamation, giving notice that Great Britain had delivered up the western posts. Is it not evident, that the laws thus repealed, nullified the treaty of peace; and that Virginia, by suspending the operation of her law until Great Britain should surrender the posts, &c. took the execution of that treaty into her own hands, and made it, on the part of the United States, depend upon the proclamation of her governor?

In allusion to this matter, General Washington says: "America must appear in a very contemptible point of view to those with whom she was endeavouring to form commercial treaties, without possessing the 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. Who will treat with us on such terms?"

About the same time, General Washington received a letter from our good and abiding friend, Lafayette, who observes: "I wish the other sentiments I have had occasion to discover, with respect to America, were equally satisfactory with those that are personal to yourself. I need not say that the spirit, the firmness with which the revolution was conducted, has excited universal admiration. That every friend to the rights of mankind, is an enthusiast for the principles on which those constitutions are built; but I have often had the mortification to hear that the want of powers in Congress, of union among the states, of energy in their government, would make the confederation very insignificant."

The inherent defect in the articles of confederation, which produced all this disaster and disgrace, was the very principle of nullification; and if exercised now, that it would carry this government back to what it was then, we have the authority of General Washington. In a letter to Mr. Jay, he says: "Requisitions are a perfect nullity, (the very word,) where thirteen independent, disunited states are in the habit of discussing, and refusing, or complying with them, at their option. Requisitions are actually little better than a jest or by-word throughout the land. If you tell the legislatures they have violated the treaty of peace, and invaded the prerogatives of the confederacy, they will laugh in your face. What then is to be done?" The answer to this important question is the present constitution. That is what was done, and yet we are required to believe that it contains the very mischief, to guard against which, it was expressly formed. The letter, an extract of which I have just read, was written in the fall of '86; the convention met in May, and the constitution was signed in September, '87. In the interval, all the evils of the country were greatly aggravated. The insurrection of Massachusetts was not quelled, in reference to which the father of his country exclaimed: "What, gracious God, is man! that there should be such inconsistency and

perfidiousness in his conduct. It is but the other day, we were shedding our blood to obtain the constitutions under which we now live,—constitutions of our own choice and making,—and now we are unsheathing the sword to overturn them."

Under the pressure of these evils and excesses, perpetrated under the sanction of this very right of nullification, the convention met to provide a remedy. The remedy provided is the constitution: and yet we are told that the paralizing spirit of the confederation reigns unchecked in that constitution. The best evidence of the fallacy of this assertion is, that the country, under the invigorating influence of the constitution, immediately recovered from the atrophy of the confederation.

Among the fantastic schemes of the day, secession from the union, as a succedaneum for nullification, has some advocates. This is to be effected by the easiest process imaginable. All that is necessary is, that the states refuse to elect members of Congress, and bid their senators remain at home. This apparently easy operation, however, is attended with some difficulties. In the first place, you must prevail upon all the electors to absent themselves from the polls; for where a plurality of votes only are necessary to a choice, the smallest number may defeat the plan. For the sake of argument, however, we will suppose there is no election. Then there is a vacancy; in which event, the constitution of the United States provides that the executive of the state shall issue a writ of election to supply such vacancy. The injunction is imperative. But the executive of a seceded state is not bound by the constitution. So that you see, even in this mode, secession must be preceded by nullification; or, perhaps, it is more exact to say, they are different names for the same operation. But if the governor, regarding his oath, shall issue writs for a new election, the long sighted disunionists have anticipated that measure, and re-

pealed the law fixing the time, place, &c., of holding elections. All in vain. The constitution provides "the times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state, by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators." This salutary and comprehensive provision was intended, as we learn from the Federalist, to deprive the states of so obvious a mode of breaking up the union.

You will recollect, that under the confederation each state reserved the right to recall its delegates, at any time within the year for which they were elected. This reservation gave some countenance to the right of secession. But, as in the constitution no such reservation is found, the inference is irresistible, that no constitutional right of secession exists. It is impossible that it should. It is out of the question that the United States will ever suffer any one of its members to withdraw from the confederacy. To bring this matter home to us all, we will suppose Louisiana to have seceded. The first exercise of her unrestricted sovereignty is an act of her parliament, or the decree of her autocrat, to open the port of New Orleans to all the world except ourselves; and to exclude all our great staples, by probibitory duties. Think you such a state of things would be submitted to? No, not for a week. Her tariff would be nullified without delay. I appeal to those among you, who recollect the feelings excited,—the forces raised,—the measures intended, when Louisiana was a Spanish province, New Orleans a Spanish port. I appeal to the establishment of a military post at Fort Massac, by order of Gen. Washington. We will pursue this painful subject no further. Turn away from the agonizing scene. "A field of the dead rushes red on my sight."

The great improvement of the constitution, then, upon the articles of confederation, is the extension of the authority of

the general government; the power to execute its own laws, and to provide for its own preservation. One of the principal means of doing this, is the federal judiciary, without the efficient organization of which, the constitution would have been manifestly defective; its laws would still have been requisitions; its authority at the mercy of every legislature of the union. To crown the work,—to give efficacy to all its parts,—to restrain the states from encroaching upon the authority of the general government, and the general government from usurping the reserved rights of the states,—to preserve all the parts and powers of this great confederacy in their due degrees and subordination,—to keep all and each revolving in its proper orbit, as the gravitating principle of our system, the judicial power of our government was made co-extensive with its legislative.

The constitution and laws of the United States are supreme, and the judicial power shall extend to all cases arising under them. This assertion of supremacy would have been of no avail, unless the courts had been so organized as to reach any violations of the fundamental principles. With a view to this, in 1789, Congress passed an act to establish the courts of the United States, the twenty-fifth section of which has recently been the subject of much unmeaning clamor and abuse. It provides, "that a final judgment or decree, in any suit in the highest court of law or equity of a state, in which a decision could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, laws, or treaties of the United States, and the decision is in favour of such their validity; or where is drawn in question the construction of any clause in the constitution, or of a treaty or statute of, or commission held under the United States, and

the decision is against the title, right, privilege, or exemption specially set up or claimed by either party, under such clause of the said constitution, treaty, statute, or commission, may be re-examined and reversed or affirmed, by the supreme court of the United States," &c.

If the effort to repeal this section, at the last session of Congress, had succeeded, there would have been no mode by which the decision of a state court, against the validity of an act of Congress, could be re-examined by the supreme court of the union. And what is this, but judicial, instead of legislative or conventional nullification? How is the supremacy of the federal laws to be maintained, if the state courts may, in the last resort, avoid them?

The history of our country furnishes us with an illustration of the beneficent effects of this proscribed power, which, more strongly than any abstract reasoning, shows that it is important, nay, indispensable to the existence of this union. The legislature of the state of New York, passed several laws granting to Livingston and Fulton the exclusive right, for a term of years, to navigate all the waters within the jurisdiction of that state, with boats moved by steam, &c.— Aaron Ogden, as assignee of Livingston and Fulton, claimed the exclusive right to navigate, with steam boats, the waters between several parts of New Jersey and the city of New York. Thomas Gibbons was the owner of two steam boats, which he employed in running between Elizabethtown and the city of New York, in violation, as Ogden contended, of his exclusive privilege. The boats of Gibbon were duly enrolled and licensed to carry on the coasting trade, under the act of Congress. Here, then, are conflicting and irreconcilable claims set up, under the laws of the Union and of the state of New York. Gibbon claims the concurrent right to navigate the waters of New York, under his license from the general government. Ogden sets up the exclusive right to such navigation, under the laws of that state. Here, then,

is a case which must be decided either by the federal or state tribunals; and of the two governments, that is supreme whose courts shall have jurisdiction in the last resort. Upon a bill filed by Ogden, the chancellor of New York enjoined Gibbon from navigating the waters of that state, with any boat propelled by steam. The injunction was perpetuated, the chancellor being of opinion that the said acts were not repugnant to the constitution and laws of the United States, and were valid. This decree was affirmed in the court of errors, and taken, by appeal, to the supreme court of the United States.

Had this section been repealed then, the decree of the court of errors would have been final and conclusive. The law of New York was declared paramount to the law of Congress: That the right of Gibbon must yield to the right of Ogden. What then, let me ask, becomes of the supremacy of the constitution, and laws of the United States? Were they not both prostrated? Was not the unexceptionable exercise of the admitted power of Congress, to regulate commerce among the several states, indirectly but absolutely nullified by the state of New York? But, thank God, it was not then, nor is it now, nor can it ever be repealed while this constitution lasts. It is the depository of its great conservative principle. The supreme court of the United States re-examined and reversed the decree. The supremacy of the law was established,—the integrity of the constitution preserved.

Strong as is this view of the case, there is another in which this supervising authority of the federal judiciary, appears infinitely more important. Counteracting laws, to the legislation of New York, were passed by the states of New Jersey and Connecticut. This is their history. By the law of New York, no one can navigate any of the waters of that state, by steam vessels, without a license from the grantees of New York, under penalty of forfeiture of the vessel. By

the law of Connecticut, no one can enter her waters with a vessel having such license. By the laws of New Jersey, if any citizen of that state shall be restrained, under the New York law, from using steam boats in the waters of New York, he shall have an action for damages in New Jersey, with treble costs, against the party who thus restrains or impedes him, under the law of New York.

I envy not the man his firmness or his philosophy, who can contemplate, without shuddering, the possible result of these hostile measures. From writs and decrees, the transition is easy to swords and bayonets; and in defence of their independent rights, these states would probably have been involved in all the horrors of civil war. From so dreadful a catastrophe, they were alone saved by the existence and operation of this twenty-fifth section; under the authority of which, the supreme court of the United States, having the case before it, decreed: "That so much of the several laws of the state of New York as prohibits vessels, licensed according to the laws of the United States, from navigating the waters of the state of New York, by means of fire or steam, is repugnant to the said constitution and void." That great and patriotic state submitted to the decree. The retaliatory laws of those neighbouring states sleep in their statute books; and peace and harmony, increased, and profitable intercourse were the happy and immediate consequence.

Let it not be supposed, that the powers I have claimed for the general government, are of equal importance. The power to make roads and canals dwindles into insignificance in comparison with the arrogated reservations in the states, of the right of nullification, of cecession, and the annihilation of the federal judiciary. Fill up every canal, break up every road, discountenance every effort to increase the commerce among the states, but preserve, O! preserve the paramount authority of the federal constitution, the independence and integrity of the federal judiciary.

These heresies are preached and practised, in the name of state sovereignty, for the preservation of state rights. That sovereignty, and those rights, properly understood, defined by the limitations of the constitution, must and will be preserved in all their strength, by the forecast and vigilance of the people. They will find their surest guaranty in the sovereignty of the Union. It is an axiom in our politics, and should pass into the familiarity of a proverb, that the best security for state rights is the preservation of the federal constitution.

The governments of the states, and that of the union, have the same foundation—the will of the people. All the powers of each must have their full and vigorous operation; then, and then only, shall we realize all the great benefits they are calculated to bestow. The awakened nations of the world have their eyes upon us. They shape their course by our example,—guided by our light,—cheered by our success. Shall we, then, at this stirring crisis, dash from our lips the full cup of our enjoyment? Shall we throw away, from mere wantonness, the choicest gifts of heaven! Gifts, for which the nations of Europe are now commencing a fearful, a decisive struggle; a struggle which will terminate as that of '76, for the spirit of '76 has produced and animates it. And it will pervade and animate every part of the habitable globe—a mighty and rushing wind, it will sweep the face of the earth, and every people, and every nation shall feel its inspiration. Its irrepressible energies will scatter the combinations of the oppressor, and bury, in everlasting ruin, the dynasties of the despot. And then, in humble gratitude and adoration, shall the united voices of an emancipated world ascend, in one grand and magnificent chorus, to him who sitteth on the throne forever and ever.