

LIBERTY ADVOCATE.

WHEN POWERS ARE ASSUMED WHICH HAVE NOT BEEN DELEGATED, A NULLIFICATION OF THE ACT IS THE RIGHTFUL REMEDY.—Jefferson.

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POLITICAL.

From the Ohio State Journal.
TO THE YOUNG MEN OF OHIO.—No. V.
FELLOW-CITIZENS.—In my last number, was shown by quotations from Mr. Madison's speech, that at the time of its delivery, he not only held the opinion of the unconstitutionality of the United States Bank, but proved it by a train of sound and unsophistical reasoning.

I will now endeavor to prove, that his letter to Mr. Ingersoll, in 1831, leaves unanswered and unrefuted his arguments against the Bank in 1794; and if I fail in this, it will be for want of talents as a writer, and not for want of materials, as must be abundantly evident to any one who will read Mr. Madison's speech and letter.

Mr. Madison, in his letter to Mr. Ingersoll, says:—"The charge of inconsistency between my objection to the constitutionality of such a bank in 1794, and my assent in 1817, turns on the question how far legislative precedents, expounding the Constitution, ought to guide succeeding legislatures and to over-rule individual opinions."—Here it will be seen that "precedents" are the only arguments used to evade the charge of inconsistency. Mr. Madison truly says in this letter, that a "constitution is to be expounded and obeyed, not construed or varied by the subordinate authority of a legislature." Had this maxim been adhered to by a majority of the Federal Legislature, as it was in 1794 by Mr. Madison and those who acted with him, we would never have had the bad "precedent" which "over-ruled his individual opinion" in 1817.

Again, after reciting judicial precedents "in settling the meaning of a law," Mr. Madison asks, "Can it be of less importance that the meaning of a constitution should be fixed and known, than that the meaning of a law should be so?" Now it is freely admitted that the meaning of the Federal Constitution should be "fixed and known." But the only way to effect this desirable object is to "keep close to our chartered authorities," always recollecting that "the doctrine of implication is always a TENDER ONE," and liable, from its uncertainty, "to destroy the main characteristic of the Constitution." Mr. Madison says:—"But it is said that the legislator having sworn to support the Constitution, must support it in his own construction of it."—This is a sly hit at the veto message of President Jackson stating his reasons for refusing his assent to the recharter of the United States Bank. The doctrines of that message are in unison with Mr. Madison's former political opinions; and had Gen. Jackson continued true to the political principles of the democratic party, his election would have proved a blessing to the people of these States.

Mr. Madison, however, is forced to admit "that there may be extraordinary and peculiar circumstances controlling the rule" of precedents, in both cases it may be admitted; but with such exceptions, the rule will force itself upon the practical judgment of the most ardent theorist. On this point the letter should have been definite, and pointed out the "peculiar circumstances" alluded to. Now, if any one will carefully read Mr. Madison's speech and the opinion of Judge Rowan, of Kentucky, and then decide that the charter of the United States Bank does not come within the exception of "extraordinary and peculiar circumstances controlling the rule" of precedents, he will indeed, even with the aid of this letter, be puzzled to invent one; for Congress can no more exercise undelegated power in passing a harmless and expedient law, than one which involves the most fatal consequences. Both cases would be equally usurpations of the rights of others, though the consequences might not be equally pernicious, further than on the score of "precedents." This letter further asserts, that "men eager in pursuit of some favorite object, are not to be relied on as expounders of the Constitution." This assertion no doubt is too true. And I would ask if the advocates of the "Cod Fishery Bill, the Bank Bonus Bill, the U. States Bank, the Alien and Sedition, the Proclamation and the Force Bill," were not men "eager in the pursuit of some favorite objects," and for the same reasons not to be relied on as expounders of the Constitution; particularly when we reflect that every one of these were advocated on the principles of that very "implication" out of which Mr. Madison tells us in his bank speech, "a chain may be formed that will reach every object of legislation—every object within the whole compass of national economy."

In this letter we are further informed, that "it was in conformity with the view here taken, of the respect due to the deliberate and reiterated precedents, that the Bank of the United States, though on the original question held to be unconstitutional, received the executive sanction in 1817. It is clear, that if Congress in 1794 had no constitutional right to charter a bank, the usurpation of that power cannot be fairly pleaded as a good "precedent" in 1817 to continue the exercise of undelegated

power; for the persistence of Congress in error can never transmute wrong into right. Mr. Madison, in this letter, does not attempt to prove the constitutionality of the bank, or to disprove the arguments advanced in his speech in 1794.—This, he was well aware, would prove an over-match for his argumentative powers; hence he adopted the wiser plan, and gave in his adhesion on the score of "precedents."

After speaking of legislative recognitions of the Bank, and the length of time it had been in existence, he says:—"A veto from the Executive under these circumstances, with an admission of the expediency and almost necessity of the measure, would have been a defiance of all the obligations derived from a course of precedents amounting to the requisite evidence of the national judgment and intention."

By the last quotation, it will be seen, that though Mr. Madison admits the "expediency" of the Bank, yet he was forced to acknowledge that it was not a "necessary" measure.

To clear himself of the charge of inconsistency, it was then necessary for Mr. Madison to prove either, 1st, that the power to incorporate a Bank was a "necessary and proper" power to carry into effect some of the delegated powers.

This is perfectly consistent with the rule laid down by Mr. Madison in his speech in 1794, and no just conceptions can be taken against testing his "individual opinions" of a later date by it. In the last quotation, Mr. Madison could not think of bidding "defiance to all the obligations derived from a course of precedents amounting to the requisite evidence of the national judgment." How he could adopt the vague doctrine of construction and "bid defiance" to the reserved rights of the States, after the noble stand he had taken in defending them, is indeed a matter of surprise; and especially so when we reflect on the language used in his veto message returning the Bank Bonus Bill in 1817, from which the following extract is given:—"But seeing that such a power is not given expressly by the Constitution, and believing that it cannot be deduced from any part of it, I have no option but to withhold my signature from it; cherishing the hope that its beneficial objects may be obtained by a resort for the NECESSARY POWERS to the same wisdom that established the Constitution, and worked out a safe and practical mode of improving it as experience might suggest."

In the message from which this extract is taken, Mr. Madison took the true ground. He withheld his signature from the bill appropriating the Bonus of the United States Bank to works of internal improvement; and had he also taken the same course in regard to the Bank Charter, after an admission that the measure was not "necessary," it seems to me that his claim to consistency would have been much better established than it ever can be on the score of "precedents."

If the continued legislation of the majority on subjects "not expressly delegated, or necessary and proper to carry the delegated powers into effect," gives the right on the score of "precedents," it needs but little penetration to see that "a chain may be forged that will reach every object of legislation—every object within the whole compass of political economy."

I here leave my readers to decide whether or not Mr. Madison, on the Bank question, has preserved a character for consistency worthy of the praise and emulation of mankind.

PATRICK HENRY.

From the Ohio State Journal.

TO THE YOUNG MEN OF OHIO.—NO. VI.

FELLOW-CITIZENS.—In my former numbers it has been unquestionably proven that, on the Bank question, the late ex-President Madison has occupied the high ground he once occupied as the able advocate of a strict construction of the Federal Constitution, and adopted the "latitudinarian construction" which he had formerly asserted "destroyed its main characteristic."

Had he refuted his former arguments the charge of inconsistency might have been evaded; but as the matter now stands, his plea of "precedents" can be of no avail.

On the subject of the Virginia Resolutions, in his letter to the editor of the North American Review, he is equally unfortunate, and much more culpable, for he there professes to adhere to the doctrines of these resolutions while he evidently labors to explain away their meaning.

In this letter he asserts that the Constitution "being a compact between the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it cannot be altered or annulled at the will of the states individually as the Constitution of a State may be at its individual will." That a State cannot "alter the Federal Constitution" is conceded; but to assert that a State cannot "annul" it so far as she is concerned by seconding from the Union, is to deny that the

States are sovereign. If the position assumed in the above quotation is a correct one, the States are no longer free, sovereign, and independent communities.

The term State is not applicable to any association of people who are not possessed of sovereignty. If the States have lost that essential attribute of a free people, the right to determine what government will best secure the blessings of liberty to themselves and their posterity, it is time for politicians to quit calling them sovereign. Again, if this position be correct, the once sovereign States of North America have individually, by one voluntary, thoughtless, and irremediable act, (the ratification of the Federal Constitution) denied to themselves and the countless millions who are to succeed them, that best boon of heaven, the privilege to choose under what Government they would live, without incurring the penalty of dying as rebels, should they fail in an effort to regain, by force, their lost rights. The picture here drawn of the humiliating condition of the States is undeniably correct, if the new doctrine of Mr. Madison and General Jackson is true. How ridiculous then for those who adopt this doctrine to talk of the sovereignty of the States; and what a perfect farce for the Constitution of Ohio, in all the solemnity of a fundamental law, to declare that the people "have at all times a complete power to alter, reform, or abolish their government whenever they may deem it necessary!" But the fact is that the States are yet free, sovereign, and independent. And it is an every day occurrence to hear politicians of all parties indirectly assert it.

I wish the reader to bear in mind that, in the above quotation, Mr. Madison asserts that "the Constitution was ratified by the States in their highest sovereign capacity." This is an admission that the States were at that time sovereign. And Mr. Madison, to make out his case, should have proven that the States delegated their sovereignty in the Constitution, or that they have by some overt act forfeited it agreeably to its provision; for a prerogative so essential can never be taken from them by implication or by "precedents."

If then the States are still sovereign, a State can secede from the Union without being questioned as to her right; and for the best of all reasons, that sovereignty has no human superior. That the physical force of her former co-States might be able to reduce her into submission and vassalage, is no argument; against her rights, or in favor of their interference, unless we adopt the doctrine that "might gives right."

After taking a view of our institutions, the letter continues, "The Constitution, not relying on any of the preceding modifications for its safe and successful operation, has expressly declared on the one hand, 1st, That the Constitution and laws made in pursuance thereof, and all treaties made under the authority of the U. States, shall be the law of the land. 2nd, That the judges of every State shall be bound thereby, any thing in the constitution and laws of any State to the contrary notwithstanding. 3d, That the judicial power of the United States shall extend to all cases of law and equity arising under this Constitution, the laws of the United States and treaties made under their authority." Those laws and treaties not made in pursuance thereof, we have the authority of Judges Marshall, Tilghman, and others, for declaring void and of no force. "On the other hand," says the letter, "as a security of the rights and powers of the States against an undue preponderance of the powers granted to the General Government, the Constitution has relied on—1st, The responsibility of the Senators and Representatives in the Legislatures of the United States, to the Legislature and the people of the States. 2d, The responsibility of the President to the people of the United States; and 3d, The liability of the executive and judicial functionaries of the United States to impeachment by the Representatives of the States in one branch of the Legislature, and trial by the Senators in the other branch; the functionaries, legislative, judicial and executive, being at the same time in their appointment and responsibility independent of the authority of the United States."

From the above quotation it is clear that the only "interposition" to secure the reserved rights of the States, is the elective franchise and impeachment. Does this agree with the Virginia and Kentucky Resolutions? Is it the State interposition in any sense of the term? No such thing. It is merely the action of a majority of the people. And if that majority, by their Representatives in Congress, usurp the rights of the minority, unless that minority can, by some unheard of means, outvote the majority, the remedy is of no avail. In fact, this is not, and cannot be the "interposition" meant by Virginia and Kentucky in 1798. If it is, why, let me ask, did not Mr. Madison, in 1799, instead of his celebrated report, give in answer to the Federal States the arguments contained in his letter to the

editor of the North American Review? Was not such a course due to them? And was it not trifling with them to pursue any other?

That all the checks contained in this letter can be applied by the people under a consolidated government it is presumed none will deny. Then the confederated system under which we live has no advantages over that of a consolidated government. But what, let me ask, has the "independence of the State functionaries" to do with the matter, when they are only "lookers on in Venice?" Under the Democratic system of State interposition, that independence would be of some avail; but it is useless on Mr. Madison's plan of "responsibilities and impeachment."

After some remarks on the Federal Judiciary the letter proceeds: "Should the provisions of the Constitution, here reviewed, be found not to secure the rights of the States against usurpations and abuses on the part of the United States, the final resort lies in an amendment of the Constitution." On the last quotation I will remark: 1st, That it applies the same remedy for usurpations and abuses of power, while the Virginia Resolutions adopt "State interposition" only for usurpations of power, and those of Kentucky, written by Jefferson, assert, that "for an abuse of delegated power a change of officers is the right remedy; but where undelegated power has been usurped, that a nullification of the act is the rightful remedy! 2d, That it is sheer nonsense to talk of amending the Constitution to check an abuse of delegated power, when a change of agents is a sufficient and the only remedy that can be applied. Nor is it much more rational to talk of amending the Constitution to prevent the officers of the General Government from usurping the reserved rights of the States, when it already secures those rights so far as ink and paper securities can be of any avail.

The remedy for this great and growing evil lies, as Jefferson truly says, in a nullification by the States, of all unauthorized acts of the General Government.—This far the letter, relies on an amendment of the Constitution, should the system of "responsibility and impeachment" fail. Can any one find the same remedies laid down in the Virginia and Kentucky Resolutions? If so, let them be pointed out.

This letter next asserts, that "in the event of the failure of every constitutional resort, and an accumulation of usurpation and abuses, rendering passive obedience a greater evil than revolution, there can remain but one resort—an appeal from the cancelled obligations of the constitutional compact to the law of self-preservation. This is the *ultima ratio* under all governments."

From the above it is clear that Mr. Madison, in 1830, did not believe, that, in regard to securing the reserved rights of the States, a confederacy of States has any advantage over a consolidated government. What then was the use of the labored arguments contained in the Virginia Resolutions and Mr. Madison's Report, to prove that the Federal Government was bound to specific grants, which, if overstepped, the States might rightfully "interpose to arrest the progress of the evil, and to maintain in their respective limits the rights and liberties appertaining to them?"

Again, the language in the last quotation is an incentive to usurpation on the part of the General Government; for should the States fail in the "*ultima ratio*," the fate of rebels is their doom.

The General Government constitutionally possesses immense power and patronage, which enables it to exercise almost unlimited influence over the States. This influence, to use the language of the "Address to the people of Virginia in 1798," consists "in fiscal systems which keep a host of commercial and wealthy individuals embodied, and obedient to the mandates of the Treasury. In armies and navies, which will, on the one hand, enlist the tendency of man to pay homage to his fellow man, who can feed or honor him; and on the other to employ the principle of fear, by punishing imaginary insurrections under the pretext of preventive justice. In swarms of officers, civil and military, who can inculcate political tenets tending to consolidation and monarchy, both by indulgencies and severities, and can act as spies over the free exercise of reason. And that we may shorten the catalogue, in establishing, by successive precedents, such a mode of construing the Constitution as will rapidly remove every restraint upon Federal authority."

If the dangers here pictured by the Democrats of '96 were entitled to the weight attached to them, in that day, what are we to think of them now, when increased a hundred fold? Is there no cause of alarm at the present day? Are our present Federal agents more worthy of "confidence" than those of '98? Have they less "low cunning" and intrigue in their political manoeuvres? Does their *cant about the dear good people* remove all cause of jealousy on our part? If, follow

citizens, we can answer these questions in the affirmative, let us fold our arms and submit our dearest rights to their holy keeping. If, on the other hand, truth compels us to answer in the negative, let us gird on the rusty armor of our fathers—the original democrats, and rally in defence of the good old fashioned Jeffersonian democracy.

PATRICK HENRY.

FROM MAJOR DOWNING.

From the New York Express.

We present our readers with the "2nd Gun" of Major Downing's Address—and they who have ears to hear, let them hear. We commend it with all satisfaction and confidence.—We are happy to see that his next promises to contain the plan of floating the "Two Pollics."

We would respectfully call the attention to the operations of *Spanish Democracy*, and ask if the tendency of late in our own country is not too similar? Captain Jumper's Letter, too, shows the effect of the popular influence of the Hermitage Letters. We doubt not, the editor of the Saco Gazette approves the one, as the Globe does the other.

No. 2.

ROCKWAY, I. I. in sight of the wreck of the *Two Pollics*, Aug. 22, 1837.)
To the People of the United States in general, and the sound Democratic Family in particular.

FELLOW-CITIZENS:—In my last I told you there was no way of getting along out of our present troubles till we got rid of the cause that put us into trouble—and that was party management, I mean that kind of party management that, once gotten into power, continues, to keep power, by turning all kinds of public measures right into their own mill. When the water don't run clear, it is a pretty sure sign the old spring wants cleaning out, and I hope every man will look well to this pint, or else our work is good for nothing. I know it is a pritty tough job to upset a party that has got hold of the biggest end of the stick; but it must be done, or with them very sticks, "we the people" get them, they will crack our crowns. So there are no two ways about it—we must teach our public servants to be content with the wages and the honor of office, which we give 'em, and to execute the laws we have made for our own good—and we must teach 'em, too, that if we find any smokin' round, and planning to keep their places by using power for their own party purposes, which belongs alike to all parties and all classes, then they must expect trouble—they must change their plans, or change their places.

Will any man tell me that the country would be in the state it is in, if the folks in office for the last five or eight years, had gone according to law? I don't love a word on't, for I know to the bottom of my soul, for one, am willing to run the risk of going to the Devil, if it is according to law—but I won't go one step that way again the law; and I don't mean to let any man or any party drive us that way, unless he can show law for it. I am for the Constitution and the Laws—and if we can't go according to the rule—then I say, let every man up stakes and go to Turkey or China,—he will be better off there than here—for if we once get our Constitution and our Laws out of joint—the hull gossarn will go all to smash—and he who happens to have the strongest and longest arm will grab most.

When I was travelling round "solitary and alone," as Mr. Benton says—over that beautiful country called Spain, (for I have been pritty much all over that country) I used to stop sometimes on the top of a hill and look about and say to myself, "my consens," says I, "what a country this is."—there was wide and long ranges of beautiful meadow land all around—and little rivers and streams streakin' about—and some on 'em running head-long down the sides of the hills,—and there warnt a cow on them pastures—not a mill or a factory on them streams—not a road—or a canal, and not a house—all in a state of stark naked natur—and all in the finest climate in the world; jest sich a country, if you could put it into one of our States, any man who owned fifty acres on't would come plagy nigh havin' a town plot or a factory or mill site, or a canal or a rail road, on his farm—and every part on't would be alive with a happy and prosperous people.

Instead of this what do you see in that fine country? Any man who wants to know, let him go and look for himself—and the only advice I have to give him is, not to take any thing along with him worth stealing; and if he has an extra life like a cat, that will stand stabbing, let him take that along with him, for he will want it; they kill every thing there worth killing, and steal every thing worth stealin'—except Bank paper money, they won't steal that, for they don't know what it is, they go for hard currency entire. They go the General's doctrine about money matters, up to the hub; they keep bank matters and state matters entirely separate, and so wide apart, yo' can't see