Mecklenburg Jeffersonian.

JOS. W. HAMPTON, | *"We will cling to the pillars of the Constitution, and if it must fall, we'll perish amidst the ruins."* | Editor and Publisher.

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TERMS:

The "*Mecklenburg Jeffersonian*" is published weekly, at *Two Dollars and Fifty Cents*, if paid in advance; or *Three Dollars*, if not paid before the expiration of THREE MONTHS from the time of subscribing. Any person who will procure *six* subscribers and become responsible for their subscriptions, shall have a copy of the paper gratis;—or, a club of *ten* subscribers may have the paper one year for *Twenty Dollars* in advance.

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PROSPECTUS OF THE

Mecklenburg Jeffersonian

THE present is the first effort that has been made to establish an organ at the birth-place of American Independence, through which the doctrines of the Democratic Party could be freely promulgated and defended—in which the great principles of Liberty and Equality for which the ALEXANDERS, the POLKS, and their heroic compatriots perilled their all on the 20th May, 1775, could at all times find an unshrinking advocate. Its success rests chiefly with the Republican party of Mecklenburg—and to them, and the Republicans of the surrounding country the appeal is now made for support.

The Jeffersonian will assume as its political creed, those landmarks of the Republican Party, the doctrines set forth in the Kentucky and Virginia Resolutions of 1798—believing, as the undersigned does, that the authors of these papers, who bore a conspicuous part in framing our system of Government, were best qualified to hand down to posterity a correct exposition of its true spirit—the best judges of what powers were delegated by, and what reserved to, the States.

It will oppose, as dangerous to our free institutions, the spirit of *monopoly*, which has been stealthily, but steadily increasing in the country from the foundation of our Government. The most odious feature in this system is, that it robs the MANY, *imperceptibly*, to enrich the FEW;—It clothes a few wealthy individuals with power not only to control the wages of the laboring man, but also at their pleasure to inflate or depress the commerce and business of the whole country—exciting a spirit of extravagance, which it terminates in pecuniary ruin, and too often the moral degradation of its victims. This system must be *thoroughly reformed*, before we can hope to see settled prosperity smile alike upon all our citizens. To aid in producing this *reform*, will be one of the main objects of the Jeffersonian. It will war against *exclusive privileges*, or *partial legislation*, under whatever guise granted by our Legislatures: and, therefore, will oppose the chartering of a United States Bank, Internal Improvements by the Federal Government, a revival of the Tariff System, and the new federal scheme of the General Government assuming to pay to foreign money changers *two hundred millions of dollars*, borrowed by a few States for local purposes.

As a question of vital importance to the South, and one which, from various causes, is every day assuming a more momentous and awful aspect, the Jeffersonian will not fail to keep its readers regularly and accurately advised of the movements of the Northern Abolitionists. It must be evident to all candid observers, that a portion of the party press of the South have hitherto been too silent on this subject. We shall, therefore, without the fear of being denounced as an alarmist, lend our humble aid to assist in awakening the People of the South to due vigilance and a sense of their real danger.

While a portion of the columns of the Jeffersonian will be devoted to political discussion, the great interests of MORALS, LITERATURE, AGRICULTURE, and the MECHANIC ARTS, shall not be neglected. With the choicest selections on these subjects, and a due quantity of light reading, the Editor hopes to render his sheet agreeable and profitable to all classes in society.

Orders for the paper, *postage paid*, addressed to the "Editor of the Jeffersonian, Charlotte, N. C.," will be promptly complied with.

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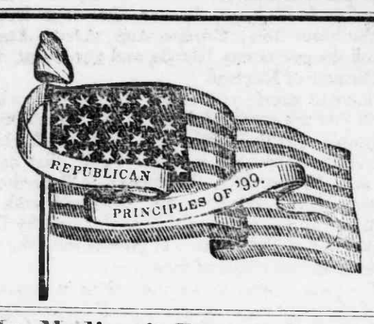
☞ The Terms of the paper will be found above.

JOS. W. HAMPTON.

Charlotte, March 5, 1841.



Mr. Madison's Report—CONTINUED.

One argument for the power of the General Government to remove aliens, would have been passed in silence, if it had appeared under any authority inferior to that of a report, made during the last session of Congress, to the House of Representatives by a committee, and approved by the House. The doctrine on which this argument is founded, is of so new and so extraordinary a character, and strikes so radically at the political system of America, that it is proper to state it in the very words of the report.

"The act (concerning aliens) is said to be unconstitutional, because to remove aliens, is a direct breach of the Constitution, which provides, by the 9th section of the 1st article, that the migration or importation of such persons as any of the States shall think proper to admit, shall not be prohibited by the Congress, prior to the year 1808."

Among the answers given to the objection to the constitutionality of the act, the following very remarkable one is extracted;

"Thirdly, that as the constitution has given to the States no power to remove aliens, during the period of the limitation under consideration, in the mean time, on the construction assumed, there would be no authority in the country, empowered to send away dangerous aliens, which cannot be admitted."

The reasoning here used, would not in any view be conclusive, because there are powers exercised by most other governments, which, in the United States are withheld by the people, both from the General Government and from the State Governments. Of this sort are many of the powers prohibited by the declarations of right prefixed to the Constitutions, or by the clauses in the Constitutions, in the nature of such declarations. Nay, so far is the political system of the United States distinguishable from that of other countries, by the caution with which powers are delegated and defined, that in one very important case, even of commercial regulation and revenue, the power is absolutely locked up against the hands of both Governments. A tax on exports can be laid by no constitutional authority whatever. Under a system thus peculiarly guarded, there could surely be no absurdity in supposing that alien friends, who if guilty of treasonable machinations may be punished, or if suspected on probable grounds, may be secured by pledges or imprisonment, in like manner with permanent citizens, were never meant to be subjected to banishment by an arbitrary and unusual process, either under the one government, or the other.

But, it is not the inconclusiveness of the general reasoning in the passage, which chiefly calls the attention to it. It is the principle assumed by it, that the powers held by the States, are given to them by the Constitution of the United States; and the inference from this principle, that the powers supposed to be necessary which are not so given to the State Governments, must reside in the Government of the United States.

The respect which is felt for every portion of the constituted authorities, forbids some of the reflections which this singular paragraph might excite; and they are the more readily suppressed, as it may be presumed, which justice perhaps, as well as candor, that inadvertence may have had its share in the error. It would be an unjustifiable delicacy, nevertheless, to pass by so portentous a claim, proceeding from so high an authority, without a monitory notice of the fatal tendencies with which it would be pregnant.

Lastly, it is said, that a law on the same subject with the alien act, passed by this State originally in 1785, and re-enacted in 1792, is a proof that a summary removal of suspected aliens, was not heretofore regarded by the Virginia Legislature as liable to the objections now urged against such a measure.

This charge against Virginia vanishes before the simple remark, that the law of Virginia relates to "suspicious persons, being the subject of any foreign power or state, who shall have *made a declaration of war*, or actually *commenced hostilities*, or, from whom the President shall apprehend hostile dangers; whereas the act of Congress relates to aliens, being the subjects of foreign powers and states, who have neither declared war nor commenced hostilities, nor from whom hostile dangers are apprehended.

II. It is next affirmed of the Alien act, that it unites legislative, judicial, and executive powers in the hands of the President.

However difficult it may be to mark, in every case, with clearness and certainty, the line which divides Legislative power from the other departments of power; all will agree, that the powers referred to these departments may be so general and undefined, as to be of a Legislative, not of an Executive or Judicial nature; and may for that reason be unconstitutional. Details to a certain degree, are essential to the nature and character of a law; and on criminal subjects, it is proper, that details should leave as little as possible to the discretion of those who are to apply and execute the law. If nothing more were required, in exercising a Legislative trust, than a general conveyance of authority, without laying down any precise rules, by which the authority conveyed, should be carried into effect, it would follow, that the whole power of legislation might be transferred by the Legislature from itself, proclamations might become substitutes for laws. A delegation of power in this latitude, would not be denied to be a union of the different powers.

To determine, then, whether the appropriate powers of the distinct departments are united by the act authorizing the Executive to remove aliens, it must be inquired whether it contains such details, definitions and rules, as appertain to the true character of a law; especially, a law by which personal liberty is invaded, property deprived of its value to the owner, and life itself indirectly exposed to danger.

The Alien act declares, "that it shall be lawful for the President to order all such aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable ground to suspect, are concerned in any treasonable, or secret machinations against the government thereof, to depart," &c.

Could a power be well given in terms less definite, less particular, and less precise? To be *dangerous to the public safety*; to be *suspected of secret machinations* against the Government, these can never be mistaken for legal rules or certain definitions. They leave every thing to the President.—His will is the law.

But, it is not a Legislative power only that is given to the President. He is to stand in the place of the Judicary also. His suspicion is the only evidence which is to convict: his order, the only judgment which is to be executed.

Thus, it is the President whose will is to designate the offensive conduct; it is his will that is to ascertain the individuals on whom it is charged; and it is his will that is to cause the sentence to be executed. It is rightly affirmed, therefore, that the act unites Legislative and Judicial powers to those of the Executive.

III. It is affirmed, that this union of power subverts the general principle of free government.

It has become an axiom in the science of government, that a separation of the Legislative, Executive, and Judicial departments, is necessary to the preservation of public liberty. Nowhere has this axiom been better understood in theory, or more carefully pursued in practice, than in the United States.

IV. It is affirmed that such a union of powers subverts the particular organization and positive provisions of the Federal Constitution.

According to the particular organization of the Constitution, its Legislative powers are vested in the Congress, its Executive powers in the President, and its Judicial powers in the supreme and inferior tribunals. The union of any two of these powers, and still more of all three, in any one of these departments, as has been shown to be done by the Alien Act, must consequently subvert the constitutional organization of them.

That positive provisions in the Constitution, securing to individuals the benefits of fair trial, are also violated by the union of powers in the Alien Act, necessarily results from the two facts, that the act relates to alien friends, and that alien friends being under the municipal law only, are entitled to its protection.

The *second* object against which the resolution protests, is the Sedition Act.

Of this act it is affirmed, 1. That it exercises in like manner a power not delegated by the Constitution. 2. That the power, on the contrary, is expressly and positively forbidden by one of the amendments of the Constitution. 3. That this is a power, which more than any other, ought to produce universal alarm, because it is levelled against that right of freely examining public charcters and mesures, and of free communication thereon, which has ever been justly deemed the only effectual guardian of every other right.

1. That it exercises a power not delegated by the Constitution.

Here again, it will be proper to recollect, that the Federal Government being composed of powers specifically granted with a reservation of all others to the States or to the People, the positive authority under which the Sedition Act could be passed must be produced by those who assert its consitutionality. In what part of the Constitution, then, is this authority to be found?

Several attempts have been made to answer this question, which will be examined in their order. The Committee will begin with one, which has filled them with equal astonishment and apprehension, and which they cannot but persuade themselves must have the same effect on all, who will consider it with coolness and impartiality, and with a reverence for our Constitution, in the true character in which it issued from the sovereign authority of the People. The Committee refer to the doctrine lately advanced as a sanction to the Sedition Act, "that the common or unwritten law," a law of vast extent and complexity, and embracing almost every subject of legislation, both civil and criminal, makes a part of the law of these States, in their united and national capacity.

The novelty, and in the judgment of the Committee, the extravagance of this pretension, would have consigned it to the silence, in which they have passed by other arguments, which an extravagant zeal for the act has drawn into the discussion. But, the auspices under which this innovation presents itself, have constrained the committee to bestow on it an attention, which other considerations might have forbidden.

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 inquire into the import of the articles of confederation, the first intrument 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.

In the State prior to the Revolution, it is certain that the common law, under different limitations, made a part of the colonial codes. But whether it be understood that the original colonists brought the law with them, or made it their law by adoption, it is equally certain, that it was the separate law of each colony within its respective limits, and was unknown to them, as a law pervading and operating through the whole, as one society.

It could not possibly be otherwise. The common law was not the same in any two of the colonies; in some, the modifications were materially and extensively different. There was no common Legislature, by which the common will could be expressed in the form of a law; nor any common magistracy, by which such a law could be carried into practice. The will of each colony, alone and separately, had its organs for these purposes.

This stage of our political history, furnishes no foothold for the patrons of this new doctrine.

Did then the principle or operation of the great event which made the colonies independent States imply or introduce the common law as a law of the Union?

The fundamental principle of the Revolution was, that the colonies were co-ordinate members with each other, and with Great Britain; of an empire, united by a common Executive sovereign, but not united by any common Legislative sovereign. The Legislative power was maintained to be as complete in each American Parliament, as in the British Parliament. And the royal prerogative was in force in each colony, by virtue of its acknowledging the King for its Executive Magistrate, as it was in Great Britain, by virtue of a like acknowledgment there. A denial of these principles by Great Britain, and the assertion of them by America produced the revolution.

There was a time indeed, when an exception to the Legislative separation to the several component and co-equal parts of the empire, obtained a degree of acquiescence. The British Parliament was allowed to regulate the trade with foreign nations, and between the different parts of the empire. This was, however, mere practice without right, and contrary to the true theory of the Constitution. The convenience of some regulations, in both those cases, was apparent; and as there was no Legislature with power over the whole, nor any constitutional pre-eminence among the Legislatures of the several parts, it was natural for the Legislature of that particular part which was the eldest and largest, to assume this function, and for the others to acquiesce in it. This tacit arrangement was the less criticised, as the regulations established by the British Parliament operated in favor of that part of the empire which seemed to bear the principal share of the public burdens, and were regarded as an indemnification of its advances for the other parts. As long as this regulating power was confined to the two objects of convenience and equity, it was not complained of, nor much enquired into. But, no sooner was it perverted to the selfish views of the party assuming it, than the injured parties began to feel and to reflect; and the moment the claim to a direct and indefinite power was ingrafted on the precedent of the regulating power, the whole charm was dissolved, and every eye opened to the usurpation. The assertion by Great Britain of a power to make laws for the other members of the empire *in all cases whatsoever*, ended in the discovery that she had a right to make laws for them *in no cases whatsoever*.

Such being the ground of our revolution, no support nor color can be drawn from it, for the doctrine that the common law is binding on these States as one society. The doctrine, on the contrary, is evidently repugnant to the fundamental principle of the revolution.

The articles of confederation, are the next source of information on this subject.

In the interval between the commencement of the revolution and the final ratification of these articles, the nature and extent of the Union was determined by the circumstances of the crisis, rather than by any accurate delineation of the general authority. It will not be alledged, that the "common law" could have had any legitimate birth as a law of the United States during that state of things. If it came as such into existence at all, the charter of confederation must have been its parent.

Here again, however, its pretensions are absolutely destitute of foundation. This instrument does not contain a sentence or syllable that can be tortured into a countenance of the idea, that the parties to it were, with respect to the objects of the common law, to form one community. No such law is named or implied, or alluded to, or being in force, or as brought into force by that compact. No provision is made by which such a law could be carried into operation; whilst, on the other hand, every such inference or pretext is absolutely precluded by article 2d, which declares, "that each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."

Thus far it appears, that not a vestige of this extraordinary doctrine can be found in the origin or progress of American institutions. The evidence against it has, on the contrary, grown stronger at every step, till it has amounted to a formal and positive exclusion, by written articles of compact among the parties concerned.

Is this exclusion revoked, and the common law introduced as a national law, by the present Constitution of the United States? This is the final question to be examined.

It is readily admitted, that particular parts of the common law may have a sanction from the Constitution, so far as they are necessarily comprehended in the technical phrases which express the powers delegated to the government; and so far also, as such other parts may be adopted by Congress as necessary and proper for carrying into execution the powers expressly delegated. But the question does not relate to either of these portions of the common law. It relates to the common law beyond these limitations.

The only part of the Constitution which seems to have been relied on in this case, is the 2d sect. of Art. III. "The judicial power shall extend to all cases, *in law and equity*, arising *under this Constitution*, the laws of the United States, and treaties made or which shall be made under their authority."

It has been asked what cases, distinct from those arising under the laws and treaties of the United States, can arise under the Constitution, other than those arising under the common law; and it is inferred, that the common law is accordingly adopted or recognized by the Constitution.

Never, perhaps, was so broad a construction applied to a text so clearly unsusceptible of it. If any color for the inference could be found, it must be in the impossibility of finding any other cases in law and equity, within the provision of the Constitution, to satisfy the expression; and rather than resort to a construction affecting so essentially the whole character of the government, it would perhaps be more rational to consider the expression as a mere pleonasm or inadvertance. But, it is not necessary to decide on such a dilemma. The expression is fully satisfied, and its accuracy justified, by two descriptions of cases, to which the Judicial authority is extended, and neither of which implies that the common law is the law of the U. States. One of these descriptions comprehends the cases growing out of the restrictions on the Legislative power of the States. For example, it is provided that "no State shall emit bills of credit," or "make any thing but gold and silver coin a tender in payment of debts." Should this prohibition be violated, and a suit *between citizens of the same State* be the consequence, this would be a case arising under the Constitution before the Judicial power of the United States. A second description comprehends suits between citizens and foreigners, or citizens of different States, to be decided according to the State or foreign laws; but submitted by the Constitution to the Judicial power of the United States; the Judicial power being, in several instances, extended beyond the Legislative power of the United States.

To this explanation of the text, the following observations may be added:

The expression "cases in law and equity," is manifestly confined to cases of a civil nature; and would exclude cases of criminal jurisdiction. Criminal cases in law and equity would be a language unknown to the law.

The succeeding paragraph of the same section is in harmony with this construction. It is in these words: "In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. *In all* the other cases [including cases in law and equity arising under the Constitution] the Supreme Court shall have *appellate* jurisdiction both as to law and *fact*; with such exceptions, and under such regulations, as Congress shall make."

This paragraph, by expressly giving an appellate jurisdiction, in cases of law and equity arising under the Constitution, to fact, as well as to law, clearly excludes criminal cases, where the trial by jury is secured; because the fact, in such cases, is not a subject of appeal. And, although the appeal is liable to such exceptations and regulations as Congress may adopt, yet it is not to be supposed that an exception of all criminal cases could be contemplated; as well because a discretion in Congress to make or omit the exception would be improper, as because it would have been unnecessay. The exception could as easily have been made by the Constitution itself, as referred to the Congress.

Once more; the amendment last added to the Constitution, deserves attention, as throwing light on this subject. "The Judicial power of the United States shall not be construed to extend to any suit *in law or equity*, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign power." As it will not be pretended that any criminal proceeding could take place against a state; the term *law* or *equity*, must be understood as appropriate to *civil*, in exclusion to *criminal* cases.

From these considerations, it is evident, that this part of the Constitution, even if it could be applied at all, to the purpose for which it had been cited, would not include any cases whatever of a criminal nature; and consequently, would not authorise the inference from it, that the Judicial authority extends to *offences* arising under the Constitution.

It is further to be considered, that even if this part of the Constitution could be strained into an application to every common law case, criminal as well as civil, it could have no effect in justifying the Sedition Act; which is an exercise of Legislative, and not of Judicial power: and it is the Judicial power only of which the extent is defined in this part of the Constitution.

There are two passages in the Constitution, in which a description of the laws of the U. States is found. The first is contained in Art. III. Sec. 2, in the words following: "This Constitution, the laws of the United States, and treaties made, or which shall be made under their authority." The second is contained in the 2d paragraph of Art. VI, as follows: "This Constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." The first of these descriptions was meant as a guide to the Judges of the United States; the second, as a guide to the Judges of the several States. Both of them consist of an enumeration, which was evidently meant to be precise and complete. If the common law had been understood to be a law of the United States, it is not possible to assign a satisfactory reason why it was not expressed in the enumeration.

In aid of these subjects, the difficulties and confusion inseparable from a constructive introduction of the common law, would afford powerful reasons against it.

Is it to be the common law with, or without the British Statutes?

If without the statutory amendments, the vices of the code would be insupportable.

If with these amendments, what period is to be fixed for limiting the British authority over our laws?

Is it to be the duty of the eldest or the youngest of the colonies?

Or are the dates to be thrown together, and a medium deduced?

Or is our independence to be taken for the date?

Is, again, regard to be had to the various changes in the common law made by the local codes of America?

Is regard to be had to such changes, subsequent, as well as prior, to the establishment of the Constitution?

Is regard to be had to future, as well as past changes?

Is the law to be different in every State, as differently modified by its code, or are the modifications of any particular State to be applied to all?

And on the latter supposition, which among the State codes form the standard?

Questions of this sort might be multiplied with as much ease as there would be difficulty in answering them.

The consequences flowing from the proposed construction, furnish other objections equally conclusive: unless the text were peremptory in its meaning, and consistent with other parts of the instrument.

These consequences may be in relation to the legislative authority of the United States; to the ex-