

# Western Carolinian.

It is even wiser to abstain from laws, which however wise and good in themselves, have the so-called advantage of inequality which find no response in the heart of the citizen, and which will be evaded with little remorse. Dr. Channing.

BY BURTON CRAIGE.)

SALISBURY, ROWAN COUNTY, N. C., MONDAY MAY 27, 1833.

[VOL. III NO. 677.]

## TERMS.

The WESTERN CAROLINIAN is published once a week at two dollars per annum, if paid within three months; or two dollars and fifty cents, if paid at any other time within the year. No Paper will be discontinued until all arrearages are paid, unless at the Editor's discretion. No subscription will be received for a less time than one year.

A failure to notify the Editor of a wish to discontinue, one month before the expiration of a year, will be considered as a new engagement.

Any person procuring six select subscribers to the Carolinian, shall have a fourth paper gratis.—Advertising at the usual rates.

All letters addressed to the Editor must be post paid or they will not be attended to. These terms will be strictly adhered to.

## POLITICAL.

FROM THE NORFOLK HERALD.

### PRESIDENT'S PROCLAMATION.

No. 9.

If the author of this Proclamation had intended, that the several States, by the Federal Constitution, had parted with much of their power, jurisdiction and authority, he would have asserted a fact, that no one ever has, or probably ever will deny; because, it is a truth obvious to all who read that instrument. The only question is, do the powers thereby transferred, comprehend Sovereignty? If they do, then the Government of the United States, as an aggregate of these powers, is a sovereign. But if they do not, that government is not a Sovereign; and as this Constitution does not profess to transfer any power, jurisdiction or authority to any other than the Government which it creates, the former possessors must still retain their Sovereignty, this Constitution no obstante.

This results from the very nature of this Constitution, that all that is a grant of enumerated powers; and which therefore, cannot convey what it does not enumerate. Even what lawyers would call implied powers, that is to say, such as are not granted in terms, but are necessary to give effect to others which are so granted, strictly speaking do not exist under this Constitution. Because, all such powers are given expressly, by the seventeenth paragraph of the eighth section of its first article; and otherwise are not implied powers. Nothing could better illustrate the excessive jealousy that dictated the instrument, than the simple fact, or proposition, considered in this part of it, concedes, to have been abided in the States, could not pass to the Government of the U. States, under this Constitution. Because, Sovereignty is no where therein granted in terms; and it cannot be believed, that when powers actually necessary and proper for carrying into execution, other powers granted expressly are not left to necessary implications, but are made the subjects of a positive grant, that Sovereignty, the greatest of all human powers, would be left to mere inference, and to inference too from the grant of a few only of its many incidents, and these not necessary to its existence. The shadow may follow the substance by which it is cast, but that shadow can never follow its own shadow, except when hurried on by the crazy brain of a madman.

But this is not all. Notwithstanding it was conceded on all hands, that the Federal Constitution was but a grant of enumerated powers, and of course would convey only what it enumerated; yet such was the jealousy felt by the States, that while adopting it, a number of the different Conventions, by whom it was ratified, to guard against the possible misconstruction and abuse of the powers therein granted, proposed various amendments to it. In consequence of this, the very first Congress was assembled under this Constitution, at its first session, acting under the authority given to them by the fifth article, proposing those amendments to the Legislatures of the several States, by whom they were ratified, in the mode pointed out in this article. These amendments, therefore, became "valid to all intents and purposes, as parts of this Constitution." Two of them, the ninth and the tenth, are in the following words.

Ninth.—The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the People.

Tenth.—The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People.

Many reflections are suggested by these amendments, which have such direct bearing upon the matter I am now examining, that I will briefly state them. The first is, that although these amendments appear to be the joint work of Congress and of the State Legislatures only, yet in truth and in fact, they proceed from the People of the several States. They were suggested by many of the Conventions of the People who adopted the Constitution, and in consequence of their suggestions, were proposed by the first Congress, to the Legislatures

of the several States, merely to satisfy the forms of the Constitution, and to give effect to the declared will of many of the States, in the most simple and expeditious mode possible.

Again, these amendments are not donations, but reservations; exceptions out of a grant already made, the power of which grant, if not accompanied by such exceptions, it was apprehended, might, by some possibility, influence the subjects reserved. The only effect, then, which such reservations can have, is to preserve to the former possessors, the things reserved, and in their former plight. Moreover, these reservations are exceptions out of a grant of political powers; for the object of this Constitution, is to transfer such powers only. But if so, the reservations must refer to political powers also; for it would be very absurd, to save and reserve any thing from the actions of others powers, in a grant that regards political powers alone. The reservations thus made by the States, in a grant of political power only, are exceptions out of such a grant made by them to a corporate body, created by each State and its co States, which body is styled in the grant itself, "the United States."

Even this is not all. In these two amendments, a marked distinction is drawn, between Rights and Powers. The former are reserved to "the People" only; the latter "to the States" respectively, or to the People. The reason of this is plain. In this country, the People have two characters. In the first, they are regarded as mere individuals and subjects, enjoying very many private rights, some of which, as men, they derive from their Creator, and as Citizens they derive others from the very nature of the society of which they claim to be members. In the second character, they are regarded as the Sovereign of those subjects. In this character, they constitute a body corporate and politic, all whose rights (if they may be called such) are corporate rights; and therefore, are nothing else than corporate powers, which when appertaining to any body, that is not only a body corporate but a body politic, it is not to become political powers.

The people as individuals, have no political power, although they have many sacred natural and civil rights. For people as a body politic or commonwealth, have no natural rights, although they have political powers, which they acquire either by their own force or by their own consent.—Right is not power; it is an emanation of the divine Will is Right. Political power is of human creation; it may be right or not, according to the source from which it proceeds, and by which it is acquired. If such power is derived from the strong hand of brute force, it is unrighteous, power is not right. If it is acquired by consent, although it is acquired of right, it is not right itself; because, the withdrawal of that consent, would make even such power cease to be right; and right being eternal, can never cease to be, though it may cease to be acknowledged by men, or to be used by them, or to be the basis of other rights which they impose. I will refer to these hereafter. My present purpose is merely, to show the distinction between Rights and political powers, which, although like sovereignty and governments sometimes co-existing and frequently confounded, are nevertheless separable and distinct; and in these very amendments are plainly set in contra distinction of each other.

Applying these several remarks to these amendments, any one may see at once, the object and supposed necessity of the first. The people of the several States, as mere individuals, enjoying many rights, none of which had the States who adopted this Constitution any thoughts of subjecting to the control of the political powers granted to the government they had thereby created. But as some of these rights had been specially enumerated in various parts of this instrument, and then saved expressly from the action of the powers thereby granted; and as the expression of one thing is often regarded as the exclusion of all others not expressed; therefore, to guard against such effects to the People, the ninth amendment provides, that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the People." Among these rights retained by the People, are the right to bear arms; the right peaceably to assemble and consult together; the right to petition for a redress of their grievances, whether real or imaginary only; and though last not least, the right to instruct their own Representatives, whose duty it is to observe such instructions, notwithstanding the authority of this Proclamation says, that they are not accountable to their particular constituents, for any act done by them although done in their mere Representative character.

Nor is the objects and supposed necessity of the second amendment less apparent than the first. Besides the rights which the People enjoyed as Individuals, the same people associated and bound together as members of different great bodies corporate and politic, enjoyed in that character, many political powers, of which they had as little thought. Therefore, they themselves respectively by their several ratifications of this Constitution, in this their

corporate character, as they had of course reserving all their private rights, to the exclusive action of the other political powers thereby created and assigned to the new government. But as the enumeration of some private rights, might possibly be considered as disparaging others not enumerated, so the enumeration of some political powers might possibly be considered as disparaging others not enumerated, especially as some of the enumerated political powers were of vast extent, such as the power of declaring war, of making treaties, and over all the necessary and proper means for carrying into execution these granted powers. Hence the tenth amendment provides, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People."

Here let me remark, that the idea of this amendment is obviously borrowed from the second of the old articles of Confederation, (to which I have formerly referred, the form of the expression being somewhat varied, in order to make it more appropriate to the new government of the United States. The Articles of Confederation, were adopted by the different Legislatures of the several States, who by this league parted with none of the political powers which they had previously possessed; therefore, their reservation was made to ensure them to their authors only, the States. The new Constitution however, was ratified by the People themselves, not by their delegates assembled in Conventions called for that special purpose; and by its provisions, it transferred many of the powers that the State governments had formerly enjoyed exclusively.—Hence, a different form of expression was necessary; and in that which I have quoted, words of such broad signification are employed, as are sufficient to cover all political power then existing ungranted to the United States, whether abiding with the State Governments, or with the People of the several States in their high corporate character.

There existed strong necessity, too for the employment of the very words used in this reservation, supposing its object to have been like that of the second article of the old Confederation, to except out of the grant all powers not conveyed by it, and this in favor of the respective possessors of such powers. Whoever will take the trouble to read the Constitution of the United States with attention, will find, that it uses the term State in many different senses. Sometimes it is used to signify the territory, as when the Constitution says, "the Citizens of each State, shall be entitled to all privileges and immunities of citizens in the several States."—Sometimes it is used to denote the governments existing in each territory, or when it says, "No State, shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts."—Sometimes it means the people of the territory assembled by their representatives, not for the general purposes of government, but for some different and special purpose only, as when it declares, that "the ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same."—And lastly, it is used to denote the assembled people of any territory called a State, in their high corporate sovereign character, which they choose to assume when they agree to form Conventions, to make or to alter government, or to do any other act surpassing the legitimate powers of ordinary human institutions. In this last sense it is used in the Constitution, wherever the instrument speaks of "the United States," meaning thereby the confederation of these distinct masses, who have mutually pledged their faith to each other, that they will severally uphold and support this Constitution, by all their means; moral and physical.

The term States being used in the Constitution itself in these various senses, it was not only proper, but necessary also, that the reservation should be co-extensive with the grant, and should employ its own words. But lest some doubts might arise as to the precise meaning of these amendments, the amendment adds others still more comprehensive in signification, and of more general use.—In this respect at least, the amendments differ from the Proclamation. They deal in no ambiguities or double entendres. They exhaust enumeration, and when they have done so, they comprehend any and every possible reservation by general words.—All the powers not delegated to the United States, by the Constitution, or prohibited by it to the States are reserved to the States, respectively or to the People. They could not define Sovereignty, for none can do so. It comprehends not only all political power that ever has been granted, but all that ever can be granted. I certainly mean no irreverence, when speaking of human Sovereignty I say, it is the one "I am," which in this sublime announcement of its own existence, assumes to itself every possible political power, and every possible political attribute, which belongs to human omnipotence, whether the same has ever been called into action or not.

Vain would be all reservations, if the grant conveyed any power like this, since

it would authorize the grantee, to annul the reservation, the moment it was adopted. No man it is believed, can suppose, that the Constitution ever designed to transfer any such authority as this, to the government it creates, which, therefore cannot be a Sovereign. Nor can the "Nation" whose existence is imagined in the Proclamation, claim any thing under this grant; for it is neither made to or by this Nation, and if it had been, provided the name of this Nation is "the United States," it is from their grasp, the last amendment expressly declares the ungranted powers to be reserved.

Then tell me ye assistants of any School, if you can what is there to which this reservation of political power can apply, but Sovereignty, including as that necessarily does, freedom and independence? Tell me, likewise, if you can to whose favor this reservation exists, if not in favor of the people of the several States in their high character of a body corporate and politic, who possessed this Sovereignty when this Constitution was adopted by them in that character? You cannot say, that it applies to an enumerated right; for all these are reserved by the preceding amendment.—You cannot say that it applies to any other political power ungranted by this Constitution, and which had been previously granted to the State governments; for all such, if not prohibited to these governments by this Constitution, and so cancelled and annulled, are the subjects of the former part of the reservation itself. And if you say, that it applies to the political powers neither granted to the Federal or State Governments, you describe sovereignty itself, the living source of all political power, from whence it all emanates, and with which, when ungranted, it always abides.—Then, if sovereignty, and sovereignty only, is the subject of this reservation, in whose favor does the reservation act? It cannot act in favor of the Federal Government; for it is reserved out of the very grant of powers made to it. It cannot act in favor of the United States as a supposed nation or body politic; for its very words declare it to be made as an exception out of any powers delegated "to the United States." The State Governments never had it, and therefore it could not be reserved to them. It must then abide with its former possessors, the States or Commonwealths themselves, unless it is so ambiguous, and once put their sovereignty to abeyance, and States are no more.

I have now, I trust, defended successfully by the Sovereignty of the States, against all the attacks made upon it by the author of this Proclamation, whether his approach were made in secret mines or in open trenches. I have proved, at least I think I have, that the States were independent in fact, before they declared themselves so in their Declaration of Independence, which instrument was intended for others, and not for themselves. That the necessity of the country after their Independence was declared, which had induced their previous association and union, invited, nay compelled, the adoption of a general Government of very limited powers which was established by the Articles of Confederation, by which Articles the States expressly retained their Sovereignty. That the defects of this Government, (which were probably ascribable to other causes than its own inherent vice) afterwards induced the adoption of the present Constitution of the United States, which so far from creating a Government with the powers of Sovereignty, recognized in various ways, the pre-existing and continuing Sovereignty of the several States, its sole creators and sole preservers. I have repelled with honest, though perhaps in discreet indignation, the attempt made to temper with the faith and truth of the state and its citizens, in the rash assertion that their allegiance was transferred to another. I have denied the doctrine that Representatives were not bound by the instructions of their Constituents, and that every Government must be sovereign which possesses the power to punish treason. By all these means, and by others, I have sought to establish the continuous freedom and independence of these States, who, therefore, although bound by a holy bond of Union, which none ought to violate, are nevertheless Sovereigns.

What may be the effects of this Sovereignty, in regard to the Constitution of the United States, I will next examine. But here let me warn my readers, that if any still believe, that they owe no allegiance to their State, that their representatives are not accountable to them, that every government which possesses the power to punish Treason is a Sovereign, or that by these or any other means the several Sovereign States have become "a single Nation," they will but waste time in pursuing what I may hereafter write, since it will all proceed upon the assumption of the negative of all these propositions.

## A VIRGINIAN.

Heretofore no man could get an appointment from the President, who was not devoted to Mr. Van Buren—but if the Pennsylvaniaian tells the truth, the best plan hereafter will be, to be opposed to him. Other hunters look to it—you see your game.

## CONVENTION.

### HOUSE OF COMMONS.

JANUARY, 14th 1833.

The House being in Committee of the Whole, Mr. W. H. HAYWOOD in the Chair, the Preamble and Resolutions, which had been introduced by Mr. WHITAKER, from the county of Macon, were read; which were as follows:

WHEREAS, many of the good people of North Carolina entertain the opinion that the Constitution of the State is defective in some of its fundamental provisions, and requires amendment; more especially in the present mode of Representation, which instead of being on the just and equitable basis of taxation and population, is according to counties, unequal in size and greatly disproportionate in wealth and numbers;

AND WHEREAS, local jealousies and divisions, growing out of the state of things, have for many years existed among the people, distracting the councils of the State, and obstructing liberal and wholesome legislation—a condition of things which the character and prosperity of the State loudly require should be removed from among us, that we may become one people, possessing common rights, and influenced by a common principle.

AND WHEREAS, many of the good people of this State entertain the opinion, that the Seat of Government should be removed to some place uniting more advantages than the city of Raleigh; Therefore, for the purpose of removing these defects, on principles of mutual concession and compromise, and with a view of restoring good feeling among our citizens, and harmony in the councils of the General Assembly;

Be it Resolved, by the General Assembly of the State, and it is hereby resolved by the authority of the same, that it is expedient to call a convention of the freemen of North Carolina, for the purpose of considering the propriety of amending the Constitution of the State, and also of removing the seat of Government.

Resolved further, that it shall be the duty of the Sheriffs of the several counties in this State, on the day of next, after twenty days notice, to open polls at the places where elections are usually held in their respective counties, under the same rules and regulations, as elections for members of the General Assembly are now held; and all free white men over the age of 21 years, having been citizens of the State twelve months immediately preceding the day of elections, are requested to attend said polls, and vote for Delegates to a Convention.

And be it further Resolved, that the Delegates so chosen, shall be distributed among the several counties as follows, the same being on the basis of Federal numbers, that is to say:—the counties of Ashe, Bladen, Brunswick, Columbus, Currituck, Currituck, Chowan, Camden, Gates, Greene, Hertford, Hyde, Haywood, Jones, Lenoir, Macon, Martin, Nash, Onslow, Pasquotank, Perquimans, Robeson, Tyrrell, and Washington, each one Delegate—the counties of Anson, Bertie, Beaufort, Cabarrus, Chatham, Cumberland, Caswell, Craven, Duplin, Davidson, Edgecombe, Franklin, Halifax, Johnston, Moore, Montgomery, Northampton, New-Hanover, Person, Pitt, Randolph, Rockingham, Richmond, Sampson, Surry, Wilkes, Warren and Wayne, each two Delegates—the counties of Burke, Buncombe, Guilford, Granville, Iredell, Mecklenburg, Rutherford, Stokes and Wake, each, three Delegates—the counties of Lenoir, Orange and Rowan, each, four Delegates.

Be it further Resolved, that the Delegates so chosen, shall meet in Convention, on the — day of — next, and when duly organized shall proceed to consider the propriety of adopting the following articles as a part of the Constitution of the State: and said Convention shall be restricted and limited to the propriety of adopting or rejecting these articles; or any or either of them, and no other.

ARTICLE I. The Senate shall be composed of Members, biennially chosen, one from each County in the State; Senators and Electors shall both possess the same qualifications as are now required of each, respectively, by the Constitution.

ART. II. The House of Commons shall be composed of Members, biennially chosen by the free white men of the State, in the same manner as herein after prescribed; and the Members and their Electors shall possess respectively, the same qualifications as are now required by the Constitution.

ART. III. Representation in the House of Commons shall be equal and uniform, and shall be regulated and ascertained by the General Assembly once in every ten years, on the basis of federal numbers, that is, three fifths of the black population added to the whole of the white population. The ratio on which the Representatives shall be distributed among the several counties, at the period of every ten years, shall be so fixed by law, as not to give fewer than twenty, nor more than one hundred members to the House of Commons, and above the Representatives of the towns, if the Borough System should be retained. When a county may not contain

a sufficient number of federal numbers to entitle it to a member, and when the fractions of the adjacent counties added thereto, are still less than the ratio, then two or more counties may be joined together for the purpose of sending one member or more, according to what they may be entitled to send by the settled ratio. When there are two or more counties, adjacent to each other, having fractions over and above the ratio fixed on, if such fractions when added together, will amount to the ratio, then one member shall be added to the county having the largest fraction. The first arrangement on the principle of the amendment, shall be made by the General Assembly, in the year 1841, and until then, the House of Commons shall be composed of members from the several counties as follows, to wit: [The Ratio is at present in blank as to the arrangement.]

ART. IV. The General Assembly shall meet once in every two years, but should the public interest require it, the Governor, in the interim, may call an extra session.

ART. V. The Governor, Public Treasurer and Secretary of State, shall be biennially chosen by joint ballot of the two Houses. No person shall be eligible to the office of Governor longer than four years, in eight successive years.

ART. VI. Whenever any town in this State, not now entitled to representation, shall possess a population of — souls, such town shall become entitled to send one member to the House of Commons; and when any town, now represented, hereafter to be represented, shall cease to possess a population of — souls then such town shall forfeit the right of representation.

ART. VII. No higher taxes shall be imposed on the Slave, than on the White poll, and shall not be taxed at an earlier age than twelve years, nor at a later age than fifty years.

ART. VIII. The Convention shall determine on the expediency of removing the Seat of Government, and if they determine on removing it, then they shall fix the place of removal, which shall become the permanent Seat of Government until removed by the people in Convention assembled.

Mr. FISHER, from the town of Salisbury arose to address the committee, and commenced by observing, that in the course of what he had to say, he would endeavor to avoid all remarks that might have a tendency to arouse sectional prejudices, which unfortunately already existed to too great an extent in this Legislature, and in the State at large. Nor was it his purpose to deliver to the House a stilted speech, made up of flowery declamation, and finely turned periods. A few plain arguments, based on facts, and figures, will compose all I have to say. Even if I were disposed to go further, the state of my lungs will not permit me to do so.

First, a word or two, as to the Resolutions before us. Some regrets have been expressed that the West were not united among themselves on these resolutions. Mr. F. said he was fully aware of the cause of these divisions, but considered it a matter of no importance. The object we have in view is to discuss the subject of Convention, without any hope of passing the resolutions. This was expected I am by the West and by the East, and we ought not to dampen the expectations. Although his agency in bringing forward the resolutions was known, he would have occasion to say they were not in all respects, what he would prefer, that they were presented on the principle of compromise, and a compromise always implies that each party should give up something in order to meet on middle ground. It was well aware that on a subject of this nature where prejudices were so strong, it was almost as difficult to meet on middle ground as to carry the whole question; neither party were disposed to yield. This subject of Convention was like an unskilful man, he had one road of — this man had one good, and one defective eye. His son-in-law arises to paint his likeness: one happened to be his friend, the other his enemy. When his friend pointed him, he selected the side of his face having the good eye, when his enemy set to work he chose the other side, and represented the defective eye. So it was with poor Convention: the friends of the measure saw nothing but evil; but certainly there is a middle view of this subject, and moderate men of both sides ought to take it.

Mr. F. said, gentlemen were too much in the habit when discussing the subject, to place it on the grounds of east and west. The true question was between large and small counties. He went on to state the cause and origin of this Eastern and Western feeling, and asserted that it grew all together out of the circumstances under which the Seat of Government was located at Raleigh. It was an unfortunate division of parties, one that had greatly retarded the State in every kind of improvement, and would continue to do so as long as it existed—and it would exist until a Convention could be obtained, and the Constitution amended.

But, said Mr. F. let us approach the question, and see on what grounds we wish a convention. Some say, all we