NORTH CAROLINA SENTINEL.

UNION OUR WATCHWORD...TRUTH OUR GUIDE.

VOL. XII. NEWBERN, SATURDAY, JUNE 13, 1829. NO. 583.

PUBLISHED EVERY SATURDAY, BY
THOMAS WATSON.

Terms.—Three Dollars per annum, payable in advance. No subscription will be received for a less period than one year; and no paper will be discontinued, until all arrearages are paid, unless at the option of the publisher.

SOUTH CAROLINA EXPOSITION.

House of Representatives, Dec. 19, 1828.

(Concluded.)

Mr. H. thus clearly affirms the control of the states over the general government, which he traces to the division of the sovereign power under our political system, and by comparing this control to the veto, which the several departments in most of our constitutions respectively exercised over the acts of each other, clearly indicates it as his opinion, that the control between the state and general government is of the same character. Mr. Madison is still more explicit; in his report alluded to he says: "The resolution having taken this view of the federal compact, proceeds to infer, 'that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states, who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights, and liberties appertaining to them.' It appears to your committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges in the last resort, whether the bargain made has been pursued or violated. The constitution of the United States was formed by the sanction of the states, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the constitution, that it rests on this legitimate and solid foundation. The states then being parties to the constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority to decide in the last resort, whether the compact made by them be violated, and, consequently, that, as the parties to it, they must themselves decide in the last resort, such questions as may be of sufficient magnitude to regain their interposition." To these the no less explicit opinion of Mr. Jefferson may be added, who in the Kentucky resolutions on the same subject states, that "the government created by this compact was not made the exclusive, or final judge of the extent of the powers delegated to itself, since that would have made its discretion and not the constitution the measure of its powers; but that is in all other cases of compact among parties, having no common judge, each party has one equal right to judge for itself, as well of infractions as of the mode and measure of redress."

Time and experience confirmed his opinion on this all important point. The illustrious citizen, nearly a quarter of a century afterwards, in the year 1821, expressed himself in this emphatic manner. "It is a fatal heresy," he says, "to suppose that either our state governments are superior to the federal or the federal to the state; neither is authorised, literally, to decide what belongs to itself, or its copartner in government:" "in cases of differences of opinion between their different sets of public servants, the appeal is to neither, but to their employers, peaceably assembled by their representatives in convention." If to these authorities, which so explicitly affirm the right of the states in their sovereign capacity, to decide both on the infraction of their rights, and their remedy, there be added the solemn decisions of the legislatures of two leading states, Virginia and Kentucky, and the implied sanction of a majority of the states in the important political revolution which shortly followed, and brought Mr. Jefferson into power on this very ground, it will be scarcely possible to add to the weight of authority, by which this fundamental principle in our system is sustained.

The committee having thus established the constitutional right of the states to interpose in order to protect their powers, it cannot be necessary to bestow much time, in order to meet possible objections; particularly as they must be raised, not against the soundness of the argument by which the position is sustained, which they deem unanswerable, but against apprehended consequences, which, even if true, would not be so much an objection to the conclusion of the committee, as to the constitution itself, but which, they are persuaded, will be found, on investigation, destitute of solidity. Under these impressions the committee propose to discuss the objections with all possible brevity.

It is objected, in the first place, that the right of the states to interpose, rests on mere inference, without any express provision in the constitution, and that it is not to be supposed, if the constitution contemplated the exercise of a power of such high importance, that it would have been left to inference alone. In answer, the committee would ask those who raise the objection, is the power of the supreme court to declare a law unconstitutional, is not among the very highest and most important that can be exercised by any department of the government, and where they can find any express provision to justify its exercise? Like the power in question, it also rests on mere inference, but in inference so clear, that no express provision could render it more certain. The simple facts that the judges must decide according to law, and that the constitution is paramount to the law, imposes a necessity on the court to declare the latter void, whenever it comes into conflict with the former; so from the fact, that the sovereign power is divided, and that the states hold their portion in the same sovereign capacity with the general government, by like necessity, than is the right of judging of the infraction of their sovereignty, as well as of the remedy. The deduction in the one case is no clearer than the other; but if we refer to the nature of our constitution, the right of the state stands on stronger grounds than that of the court.

In the distribution of powers between the general and state governments, the constitution professes to enumerate those assigned to the former, in whatever department they may be vested; while the powers of the latter are reserved in general terms, without an attempt at enumeration. It therefore raises a presumption against the powers of the court to declare a law unconstitutional, that the power is not enumerated among those belonging to the judiciary. While the omission to enumerate amongst the powers of the states that to interfere and protect their rights, being strictly in accord with the principles on which the framers formed the constitution, raises not the slightest presumption against its existence.

It is next objected to the power that it places the minority over the majority, in opposition to the whole theory of our government, and that its consequences must be feebleness, anarchy, and finally disunion.

It is impossible to impose any limitation on sovereign power, without encountering from its supporters this very objection; and we accordingly find that the history of every country which has attempted to establish free institutions, proves, that on this point the opposing parties, the advocates of power and of freedom, have ever separated. It constitutes the essence of the controversy between the patricians and plebeians of the Roman republic; of the tories and whigs in England; of the ultras and liberals in France; and finally of the federalists and republicans in our own country, as illustrated by Mr. Madison's Report; and if it were proposed to give to Russia or Austria a representation of the people, it would form the point of controversy between the imperial and popular parties. It is in fact not at all surprising, that to a people unacquainted with the nature of liberty, and inexperienced in its blessings, all limitation on the supreme power should appear incompatible with its nature, and as tending to feebleness and anarchy.

Nature has not permitted us to doubt the necessity of supreme power in every community. All see and feel it, and are instinctively impelled to its support; but it requires some effort of reason to perceive, that, if not controlled, such power must necessarily lead to abuse; and still higher efforts to understand that it may be checked without destroying its supremacy. With us however who know, from our own experience and that of other free nations, the truth of both these positions; and also that power can be rendered useful and secure by being properly checked, it is indeed strange that any intelligent citizen should consider limitation in sovereignty, as incompatible with its nature; or should fear danger from any check properly lodged, which may be necessary to secure any distinct and important interest. That there are such interests represented by the states, and that on principle the states alone can protect them, has been proved; and it only remains, in order to meet the objection, to prove, that for this purpose the states may be safely entrusted the power. If the committee do not greatly mistake, it never has in any country, or under any institutions, been lodged, where it was less liable to abuse. The great number by whom it must be exercised, a majority of the people of one of the states, the solemnity of the mode, the delay, the deliberation, are all calculated to allay the excitement, to impress on the people of the state a deep and solemn tone, highly favorable to calm investigation. Under such circumstances, it would be impossible for a party to preserve a majority in the state, unless the violation of its right be "palpable, deliberate and dangerous." The attitude in which the state would be placed, in relation to a majority of the states; the force of public opinion which would be brought to bear on her, the deep reverence for the general government, the strong influence of that portion of her citizens, who aspire to office or distinction in the Union, and above all the local parties which must ever exist in the states, and which in this case must ever throw the powerful influence of the minority in the state on the side of the general government, and would stand ready to take advantage of an error in the side of the majority. So powerful are these causes, that nothing but the *truth*, and a *deep sense of oppression* on the part of the people of the state, will ever authorize the exercise of the power; and if it should be attempted under other circumstances, those in power would be speedily replaced by others, who would make a merit of closing the controversy, by yielding the point in dispute. But in order to understand more fully what its operation would be, we must take into the estimate, the effect which a recognition of the power would have on the administration both of the general and state governments. On the former, it would necessarily produce, in the exercise of doubtful power, the most marked moderation. On the latter a feeling of conscious security would effectually prevent jealousy, animosity and hatred, and thus give scope to the natural attachment to our institutions. But withhold this protective power from the state, and the reverse of all these happy consequences must follow, which however the committee will not undertake to describe, as the living example of discord, hatred, and jealousy, threatening anarchy and dissolution, must impress on every beholder a more vivid picture, than what they could possibly draw. The continuance of this unhappy state must end in the loss of all affection, leaving the government to be sustained by force instead of patriotism. In fact, to him who will duly reflect, it must be apparent, that where there are important separate interests to preserve, there is no alternative but a veto or military force. If these deductions be correct, as cannot be doubted, then under that state of moderation and security, followed by mutual kindness, which must accompany the acknowledgment of the right, the necessity of exercising a veto would rarely exist; and the possibility of abuse, on the part of the state, would almost be wholly removed. Its acknowledged existence would thus supersede its exercise. But suppose in this the committee to be mistaken, still there exists a sufficient remedy for the disease. As high as is the power of the states in their individual sovereign capacity, it is not the highest power known to our system. There is a still higher power, placed above all, by the express consent of all, the creating and preserving power, deposited in the hands of three fourths of the United States, which, under the character of the amending power, can modify the whole system at pleasure, and to the final decision of which it would be political heresy to object. Give then the veto to the states and admit its liability to abuse by them; and what is the effect, but to create the presumption against the constitutionality of the disputed powers exercised by the general government, which if the presumption be well founded must compel them to abandon it; but if not the general government may remove it by invoking this high power to decide the question in the form of an amendment to the constitution. If the decision be favourable to the general government, a disputed constructive power will be converted into a certain and express grant. On the other hand, if it be adverse, the refusing to grant will be tantamount to inhibiting its exercise: and thus in either case the controversy will be peaceably determined. Such is the sum of its effects. And ought not a sovereign state, in protecting the minor and local interests of the country, to have a power to compel a decision? Without it, can the system itself exist? Let us examine the case. To compel the state to appeal against the acts of the general government, by proposing an amendment to the constitution, would be perfectly idle. The very complaint is that a majority of the states, through the general government, by force of construction, urge powers not delegated, and by their exercise increase their wealth and power at the expense of a minority. How absurd then to compel one of the injured states to attempt a remedy, by proposing an amendment to be ratified by three fourths of the states, when there is by supposition a majority opposed to it. Nor would it be less absurd to expect the general government to propose an amendment, in order to settle the point disputed, unless compelled to that course by the state. On their part there can be no inducement. They have a more summary mode of assuming the power by construction. The consequence is clear. Neither would appeal to the amending power; the one because it would be useless; and the other because it could effect its object without it. Under the operation of this supreme controlling power, to whose interposition no one can object, all controversy between the states and general government would be thus adjusted; and the constitution would gradually acquire by its constant interposition in important cases, all the perfection of which the work of men is susceptible. It is thus that the creative will become the preserving power; and we may rest assured that it is no less true in politics than in divinity, that the power which creates can alone preserve, and that preservation is perpetual creation. Such will be the operation of the veto of the state.

If indeed it had the effect of placing the state over the general government, the objection would be fatal. For if the majority cannot be trusted with the supreme power, neither can the minority; and to transfer it from the former to the latter, would be but the repetition of the old error of taking shelter under a monarchy or aristocracy, against the more oppressive tyranny of a majority in all constructed republics. But it is not the consequence of proper checks to change places between the majority and the minority. It leaves the power controlled still supreme as is exemplified in our political institutions, by the operation of acknowledged checks. The power of the judiciary to declare an act of congress, or of a state legislature, unconstitutional, is a powerful, and for its appropriate purpose an efficient one; but who, acquainted with the nature of our government, ever supposed it really vested (when confined to its proper object) a supreme power in the court over congress or the state legislatures? Such could be neither the intention nor its proper effect. The check was given to the judiciary to protect the supremacy of the constitution over the acts of legislation, and not to set up a supreme power in the courts. The constitution has provided another check, which will still further illustrate the nature of its operation. Among the various interests which exist under our complex system, that of large and small states are among the most prominent and among the most carefully guarded in the organization of our government. To settle the relative weight of the states in the system; and to secure to each the means of maintaining its proper political consequence in its operation, were amongst the most difficult duties in framing the constitution. No one subject occupied greater space in the proceedings of the convention. In its final adjustment, the large states had assigned to them a preponderating influence in the house of representatives, by having there a weight proportioned to their numbers; but to compensate which, and to secure their political rights against this preponderance, the small states had an equality assigned them in the senate, while in the constitution of the executive branch the two were blended. To secure the consequence allotted to each, as well as to insure due deliberation in legislation, a veto is allowed to each in the passage of bills; but it would be absurd to suppose that this veto placed either above the other; or was incompatible with the portion of the sovereign power allotted to the house, the senate, or the president.

It is thus that our system has provided appropriate checks, with a veto to ensure the supremacy of the constitution over the laws; and to preserve the due importance of the states, considered in reference to large and small, without creating discord or weakening the beneficent energy of the government; and so in the division of sovereign authority between the general and state governments, and in granting an efficient power to the latter, to protect by a veto the minor against the major interests community, the framers of the constitution acted in strict conformity with the principle which invariably prevails throughout the whole system, whenever separate interests exist. They were in truth no ordinary men. They were wise and practical men, enlightened by history and their own enlarged experience, and felt [illegible] our country through a most important revolution; and understood profoundly the nature of man and of government. They saw and felt that there existed in our nature the necessity of a government, which to effect the object of government must have adequate powers. They saw the selfish predominate over the social feelings, and that without a government with such powers, universal conflict and anarchy must prevail among the component parts of society; but they also clearly saw, that our nature remaining unchanged by change of condition, that unchecked power from this very predominance of the selfish over the social feeling, which rendered government necessary, would of necessity lead to corruption and oppression on the part of those invested with its exercise. Thus the necessity of government and of checks originate in the same great principle of our nature, through which the very selfishness, which would impel those who have power to desire more than their own, will also, with great energy, impel those on whom power may operate to demand their own; and in the balance of these opposing tendencies from different conditions, but originating in the same principle of action, the one impelling to excess, the other restraining within bounds of moderation and justice, liberty and happiness must for ever depend. This great principle guided the framers of the constitution in constructing our political system. There is not an opposing interest, throughout the whole, that is not counterpoised. Have the rulers a separate interest from the people? To check its abuse, the relation of representative and constituent is created between them; through periodical elections, by which the fidelity of rulers to their trusts is secured. Have the states, as members of the Union, distinct political interests in reference to their magnitude? Their relative weight is carefully settled, and each class has its appropriate means, with a veto to protect its political consequence. May there be a conflict between the constitution and the laws, whereby the rights of citizens may be affected? To preserve the ascendency or the constitution, a power is vested in the supreme court to declare the law unconstitutional in such cases. Is there in a geographical point of view separate interests? To meet this a peculiar organization is provided in the division of the sovereign power between the state and general governments. Is there danger growing out of this division, that the state may encroach on the general powers through the acts of their legislature? To the supreme court is also assigned adequate power to check such encroachment. May the general government on the other hand encroach on the rights reserved to the states? To the states in their sovereign capacity is reserved the power to arrest such encroachment. And finally, may this power be abused by the states in interfering improperly with the powers delegated to the general government? There remains still higher power created supreme over all, invested with the ultimate power over all interests, to enlarge to modify or rescind at pleasure, whose interposition the majority may invoke; and to oppose whose decision would be rebellion. On this the whole system rests.

That there exists a case which would justify the interposition of this state, and thereby compel the general government to abandon an unconstitutional power, or to make an appeal to the amending power, to confer it by express grant, the committee does not in the least doubt; and they are equally clear in the existence of a necessity to justify its exercise, if the general government should continue to persist in its improper assumption of powers, belonging to the state; which brings them to the last point which they propose to consider. When would it be proper to exercise this high power? If they were to judge only by the magnitude of interest and urgency of the case, they would without hesitation recommend the exercise of this power without delay. But they deeply feel the obligation of respect for the other members of the confederacy, and of great moderation and forbearance in the exercise, even of the most unquestionable right, between parties who stand connected between the closest and most sacred political union. With these sentiments, they deem it advisable, after presenting the views of the legislature in this solemn manner, to allow time for further consideration and reflection, in the hope that a returning sense of justice on the part of the majority, when they come to reflect on the wrongs, which this and other staple states have suffered, and are suffering, may repeal the obnoxious and unconstitutional acts, and thereby prevent the necessity of interposing the sovereign power of this state.

The committee is further induced at this time to take this course, under the hope that the great political revolution which will displace from power on the 4th of March next, those who acquired authority by setting the will of the people at defiance; and which will bring in an eminent citizen, distinguished for his services to his country and his justice and patriotism, may be followed up under his influence with a complete restoration of the pure principles of our government.

But in thus recommending delay, the committee wish it to be distinctly understood, that neither doubts of the power of the states, nor apprehension of consequences, constitute the smallest part of their motives. They would be unworthy of the name of freemen, of Americans, of Carolinians, if danger, however great, could cause them to shrink from the maintenance of their constitutional rights; but they deem it preposterous to anticipate danger, under a system of laws, where a sovereign party to the compact, which formed the government exercises a power, which, after the fullest investigation, she conscientiously believes belongs to her, under the guarantee of the constitution itself, and which is essential to the preservation of her sovereignty.

The committee deem it not only the right of the state, but the duty of her representatives, under the solemn sanction of an oath, to interpose, if no other remedy be applied. They interpret the oath to the constitution, not simply to impose an obligation to abstain from violation, but if possible to prevent it in others. In their opinion he is as guilty of violating that sacred instrument, who permits an infraction, when in his power to prevent it, as he who is actually guilty of the infraction. One may be bolder, and the other more timid, but the sense of duty must be equally weak on both.

With these views the committee are solemnly of impression, if the system be persevered in, after due forbearance on the part of the state, that it will be her sacred duty to interpose her veto; a duty to herself, to the Union, to present and to future generations, and to the cause of liberty over the world, to arrest the progress of a power, which, if not arrested, must, in its consequence, corrupt the public morals, and destroy the liberty of the country.

To avert these calamities, to restore the constitution to its original purity, and to allay the differences which have been unhappily produced between various states, and between the state and general government, we solemnly appeal to the justice and good feeling of those states heretofore opposed to us; and earnestly invoke the council and co-operation of those states similarly situated with our own. Not doubting their good will and support; and sustained by a deep sense of the righteousness of its cause—the committee trust that, under Divine Providence, the exertions of the state will be crowned with success.