crease the power and influence of the large states. I shall not pretend, sir, that the parties to this constitutional compact, cannot alter its original and essential principles; and that such alterations may not be effected, under the name of amendment; but, let a proposal of that kind come forward in its own proper and undisguised shape, let it be fairly stated to Congress, to the state legislatures, to the people at large, that the intention is to change an important federative feature in the constitution, which change in itself and all its consequences, will tend to a consolidation of this union, into a simple republic; let it be fairly stated, that the small states have too much agency in the important article of electing a chief magistrate; and that the great states claim the choice; and we shall then have a fair decision. If the Senators of the small states, and if their state legislatures will then quietly part with the right they have, no person can reasonably complain.

Nothing can be more obvious, than the intention of the plan adopted by our constitution for choosing a President. The electors are to nominate two persons, of whom they cannot know which will be President; this circumstance not only induces them to select both from the best men: but gives a direct advantage into the hands of the small states even in the electoral choice. For they can always select from the two candidates set up by the electors of large states, by throwing their votes upon their favorite, and of course giving him a majority, or, if the electors of the large states should, to prevent this effect, scatter their votes, for one candidate, then the electors of the small states would have it in their power to elect a Vice President. So that in any event the small states will have a considerable agency in the election. But if the discriminating or designating principle is carried, as contained in this resolution, the whole, or nearly the whole right and agency of the small states, in the electoral choice of chief magistrate is destroyed, and their chance of obtaining a federative choice by states, if not destroyed, is very much diminished.

For this identical purpose is the principle of electoral discrimination and designation, introduced into the resolution before you, for the same purpose is the number of candidates reduced from five to three, from whom the house of representatives may elect, in case of electoral failure of choice; that is to destroy, or diminish the agency of the small states, in the choice of President.

For what purpose else, are we perpetually told, and from all parts of the Senate, that the *public will* is opposed, by the present mode, and the *public will* cannot be gratified, without the introduction of the discriminating principle?

By the *public will*, thus mentioned, the gentlemen mean, the will of a popular majority, or, the will of the great states, which, in this case, I repeat it, are the same. How is it possible for the gentlemen to increase the chances of gratifying this description of the *public will*, without decreasing the agency of the small states?

The whole power of election, is now vested in the two parties; numbers and states, or great and small states, and it is demonstration itself, that if you increase the power of the one, in just such proportion, you diminish that of the other. Do the gentlemen suppose that the *public will*, when constitutionally expressed by a majority of states, in pursuance of the federative principle of our government, is of less validity, or less binding upon the community at large, than the *public will* expressed by a popular majority? The framers of your constitution, the people who adopted it, meant, that the *public will* in the choice of a President, should be expressed by electors, if they could agree, and if not, that the *public will* should be expressed by a majority of the states, acting in their federative capacity, and that in both cases the expression of the *public will* should be equally binding.

Is it pretended that the *public will* can never properly or constitutionally be expressed, but by a majority of numbers, of the people, or of the house of representatives? This may be a pleasing doctrine enough to great states; but it is certainly incorrect. Our constitution has given the expression of the public will, in a variety of instances, other than that of the choice of president, into very different hands from either the house of representatives or the people at large. The President and Senate, and in many cases the President alone, can express the *public will*, in appointments of high trust and responsibility, and it cannot be forgotten that the President sometimes expresses the *public will* by removals. Treaties, highly important expressions of the public will, are made by the President and Senate; and they are the supreme law of the land. In the several states, many great offices are filled and even the chief magistracy, by various modes of election. The public will is sometimes expressed by pluralties, instead of majorities, sometimes by both branches of the legislatures, and sometimes by one, and in certain contingencies, elections are settled by lot. The people have adopted constitutions containing such regulations, and experience has proved that they are well calculated to preserve their liberties and promote their happiness. From what good, or even pardonable motive then can it be urged, that the present mode of electing our President, has a tendency to counteract the public will? Do gentlemen intend to destroy every federal feature in this constitution?

And is this resolution a precursor to a complete consolidation of the union, and to the establishment of a simple republic? Or will it suffice to break down every federative feature which secures to one portion of the union, to the small states, their rights.

I am not without my fears Mr. President, that this is but the beginning of evils, and that this constitution, the bulwark of the feeble members of the confederacy; the protection of the weak against the strong; the security of the small against the great; the last, best hope of man, with a view to stability in a free government, and to the preservation of liberty in a republic; is destined to undergo changes, and suffer innovations, till there shall be no residue worth preserving, and nothing left, which ambition will condescend to overturn.

Time will not permit me to dwell any longer on this part of my argument. But I am deceived, sir, if the view I have now taken of the constitution does not show most obviously, that in its formation there was a struggle between the great and small states, with respect to many of its principles and leading features. And that the participation of the small states in the election of a chief magistrate, clearly secured to them by the constitution, will perceive a deadly blow by the adoption of the proposed amendment.

It can be no contradiction to my ideas upon the subject if we have heard nothing of state conflicts, in the administration of this government. The great states have never, till now, directly attempted to violate the sanctuary of the small, and despoil them of their rights; had this been earlier attempted, we should have heard and seen the same jealousy awakened, and the same opposition exerted.

The conflict could happen in no other way than by an attack from the large states. We had neither the desire nor ability to injure them, and we now ask no favors, but their permission to enjoy, in peace and safety, the rights conceded to us by themselves, and secured by a solemn constitutional compact.

We have been told, by a gentleman from Virginia, that it would be impolitic in us to route the great states. I shall, at present, take no further notice of this warning, given to us, no doubt, in the full exercise of benevolence; but to request the small states to preserve it, in constant recollection. It may induce them not hastily to part with constitutional security.

There are some other points of light, in which I wish to place the subject before us.

The constitution is of recent date; it was formed by the mutual concessions of conflicting parties, and balanced with a view to the security of all. Experience alone can test its futility, and time and practice discovers its faults. It is a sound position, that you should never attempt an alteration in an instrument so complicated, and calculated to serve so many various and opposite interests, without being able by the test of experiment, to discern clearly the necessity of alteration, and without a moral certainty, that the change shall not only remove an existing evil, but that it shall not produce any itself.—The article in the constitution establishing the mode of electing a chief magistrate; and which is now proposed to be altered was undoubtedly one of the most difficult parts of the whole, at its formation. I am convinced, Sir, that the publick mind is not sufficiently impressed with the difficulty of adopting, not only an unexceptionable, but even a tolerable and practicable, mode of electing a chief magistrate, possessing such important and extensive powers, as are constitutionally vested in the president of the United States. An attempt to detail the number & magnitude of his powers, to this Senate, would be impertinent: But it must and will be acknowledged by all, that the President is vested with powers vastly extensive and important, & that he will bring with him into the government more or less of state politicks and state prejudices, and these facts, to which may be added the probability that he will be taken from a large state, must have increased the difficulties of the convention, in fixing on a mode of choice.

How often have contests, wars and bloodshed the destruction of confederacies, of liberty, and of vast portions of the human race, arisen from the election of chief magistrates? When we consider that the powers vested in a President of this union, are sufficiently important to excite the avarice & ambition of the human heart, its two most active principles, to gain possession of the office; when we consider the difference of sentiment, habit and interest in this country; state pride and state jealousy, which could never be laid asleep; the difficulties of fixing upon a proper mode of election, must be almost infinitely multipled. And yet this article is now selected for alteration. All the amendments which have been hitherto adopted, went to some general explanation, upon very general principles, not changing, but rather grounding the constitution.

This, as I have before said, is taking up the most difficult and the most important article in the constitution, both in relation to rights and principles. But it is said that experience has shown us the necessity of an alteration in this article; that an evil has been found in practice to grow out of the constitutional provision, which calls imperiously for a remedy.

At the last election of President, two persons had an equal number of votes, and that number was a majority of the votes of all the electors appointed, which circumstance gave the house of representatives a constitutional right to select one of them for President. In exercising this constitutional right, they voted by states, and there was at first a division, no choice being made until the sixth day; when an election was effected, of the very man whom the great states; and the advocates of this resolution, wished.

It ought to be noted here, that although they voted by states, yet it happened, in this division, that a majority, in point of numbers, voted for the person as President, who eventually became Vice President. As to intrigue, by either of the candidates, or by their friends, I know of none; the sentiments and conduct of the Vice President, as published, were perfectly fair and honourable, containing a declaration of his wishes not to stand in the way of the other candidate.

After the view of the constitution which we have taken, and comparing this fact, or set of facts, with the provisions for electing a President, we shall really be at a loss to find out the mighty evil, which the experience of this election has discovered, and which is said to call so imperiously for a remedy. But the advocates of this resolution have had the goodness to put their finger on the spot. They say, that in the certificates of the electors, Mr. Jefferson's name stood first; this is called a sort of record testimony, and in addition, some, if not all the electors, said they meant to elect Mr. Jefferson President, and Mr. Burr Vice President; and this is declared to be the *publick will*, expressed by the constitutional organ, the electors. Notwithstanding this expression of the *publick will*, say the gentlemen, a large portion of the house of representatives withstood and opposed the publick will, for the space of six days, and wilfully voted for the man to be President who, they knew by the evidence just mentioned, was meant to be Vice President only. One gentleman, (Mr. Wright) has said, that if he had been then a member of that house, possessing such sentiments upon the subject, as he now does; such voting would in him have amounted to the crime of perjury, or words to the same effect. I mean to quote his ideas, as expressed, and believe I have given nearly his very words,

And it is added, that thus there was imminent danger of a person being imposed upon the United States as chief magistrate, who was not originally intended for that high office, & that *civil war must have been the consequence.* And, as is common in such cases, the picture is filled, in the back ground, with brother raising his murderous hand against brother, father against son, and with an afflicting groups of accessories: and to avoid a repetition of this *tremendous crisis*, as it is called, the present resolution it is said, must pass.

Let this statement of facts be kept in view, while we examine the duties assigned by the constitution to the several agents concerned. The duty of the electors is precisely defined. They are each to bring forward two candidates fully qualified for President, because they cannot know at the time of giving their ballots, upon which the choice will fall. The circumstance of two having a majority, and both being equal in number of votes, is an expression of the publick will, through the only constitutional organ, by which, in this case, the public will can be expressed, that both had the requisite qualifications. The publick will, then, was in this instance clearly and unequivocally expressed, by a constitutional and a numerical majority, that both candidates were worthy of the office: but here the expression of the publick will ceased, and which of these two should be the President, was now to be decided by another constitutional organ, that is, by the house of representatives voting by states.

The framers of the constitution so intended, and the people who adopted it have so ordained, that *their will* in this case should be expressed by a majority of the states, acting by their representation in the house of representatives. This right of selection, is a right complete in itself, to be exercised by these second electors; uninfluenced by any extraneous consideration, and governed only by their own sense of propriety and rectitude. The opinion of the people had been expressed, by the electors, but it only reached a certain point, and then was totally silent as to which of the two should be President, and their sense upon this point could only be collected through their constitutional organ, the house of representatives, voting by states. Any interference of the first electors, or of an individual or individuals, must be informal and improper. The advice of sensible & candid men, as in every other case, might be useful; but could have no binding force whatever. The first electors had no right to choose a Vice President. To claim it was overstepping their duty, and arrogating to themselves a power, not given, nor meant to be given to them by the constitution.

If there is any thing in this whole transaction, which has the most distant appearance of a breach of duty, it was in the electors, by attempting to designate, and by exercising the important office of an elector, under the influence of improper motives; that is, by officiously attempting to decide the question, which of the two persons was proper for Vice President, which they were constitutionally incompetent to decide. By this conduct they attempted to break down an important guard provided by the constitution, and improperly to release themselves from its obligations, which made it their duty to select two men qualified to be President. But if there can be a shadow of reason in this claim of the electors, to designate under the present constitutional regulations, of which, to doubt, seems to be so heinous, what necessity can there be for this amendment? The object of the amendment, or certainly its chief object is to establish the designating principle; but why this, if it can already be effected by the simple mode of placing one name first on the ballot, which is so easy to be done, that it can scarcely be avoided? And if done, by the doctrine of gentlemen, it is so far binding on the house of representatives that if they even doubt, they are damned?

The fact certainly was, that at the last election, the great states brought forward the two candidates; they were both of the same political sentiments: this, they had a constitutional right to do; but it now seems that their language to the small states was; "because you will not give up your constitutional rights to us, and let us go on and designate, we will stir up a civil war, and lay the blame to you. And of this improper conduct of ours we will take the advantage, and obtain an alteration of the constitution, which will hereafter gratify us in every respect." A gentleman from Maryland, (Mr. Smith,) has said, that he heard though he could not prove it, that the federal majority at the time of the last election, contemplated making a law, authorising or appointing some person to act as President, in case no choice had been made by the house of representatives. I was then, sir, a member of the government, and not knowing of such a project: it might have been so, but supposing it was, what then? Why; says the gentleman, the person thus appointed could not have kept his head on his shoulders 24 hours; and this would have made a civil war. If the majority now should contemplate a measure which the constitution does not authorize, as it clearly did not authorize the measure suspected by the gentleman, though he cannot prove it; the best thing in the world for them to do, would be to give it up, without any attempt to effect it, as it seems the federal majority did. But what argument all this can afford in favour of the amendment, or why it was mentioned, in *this* debate, is beyond my comprehension. In the result of the last election, the great states and the ruling political party, were certainly gratified, and there does not appear the least reasonable ground of complaint against the small states, in the use of their constitutional rights on the occasion. All support therefore to the amendment, drawn from that transaction, must fail. [*Concluded in our next.*]

Congress.

SENATE OF THE U. STATES.

On the 30th ult. Mr. Breckinridge reported from the committee appointed on the subject, the following bill, erecting Louisiana into two territories, & providing for the temporary government thereof, which was read, & passed to the second reading.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of country ceded by France to the United States, under the name of Louisiana, which lies south of the Mississippi territory, and of an east and west line pasing from the Mississippi river, ten miles north of the town of Natchitoches, to the western boundary of the said cession, shall constitute a territory of the United States, under the name of the territory of Orleans; the government whereof shall be organized and administered as follows:

Sec. 2. The executive power shall be vested in a governour, who shall reside in the said territory, and hold his office during the term of three years, unless sooner removed by the President of the United States. He shall be commander in chief of the militia of the said territory; shall have power to grant pardons for offences against the said territory, and reprieves for those against the United States, until the decision of the President of the United States thereon, shall be made known; and to appoint and commission all officers, civil and of the militia, whose appointments are not herein otherwise provided for, and which shall be established by law. He shall take care that the laws be faithfully executed.

Sec. 3. A secretary of the territory shall also be appointed, who shall hold his office during the term of four years, unless sooner removed by the President of the United States, whose duty it shall be, under the direction of the governour, to record and preserve all the papers and proceedings of the executive, and all the acts of the governour and legislative council, and transmit authentic copies of the proceedings of the governour in his executive department, every six months, to the President of the U. States. In case of the vacancy of the office of governour, the government of the said territory shall devolve on the secretary.

Sec. 4. The legislative powers shall be vested in the governour, and in twenty-four of the most fit and discreet persons of the territory, to be called the legislative council, who shall be selected annually by the governour, from among those holding real estate therein, & who shall have resided one year, at least, in the said territory, and hold no office of profit under the territory, of the United States. The governour, by and with the advice and consent of the said legislative council, or of a majority of them, shall have power to alter, modify, or repeal the laws which may be in force at the commencement of this act. Their legislative powers shall also extend to all the rightful subjects of legislation; but no law shall be valid which is inconsistent with the constitution of the United States with the laws of congress or which shall lay any person under restraint, burthen, or disability, on account of his religious opinions, declarations, or worship; in all which he shall be free to maintain his own, and not be burthened for those of another. The governour shall publish throughout the said territory, all the laws which shall be made, and shall from time to time, report the same to the President of the United States, to be laid before Congress; which if disapproved of by Congress, shall thenceforth be of no force. The governour or legislative council shall have no power over the primary