

# Rough Draft of What is Called the South Carolina Exposition

December 19, 1828

The committee have bestowed on the subjects referred to them the deliberate attention which their importance demands; and the result, on full investigation, is a unanimous opinion that the act of Congress of the last session, with the whole system of legislation imposing duties on imports—not for revenue, but the protection of one branch of industry at the expense of others—is unconstitutional, unequal, and oppressive, and calculated to corrupt the public virtue and destroy the liberty of the country; which propositions they propose to consider in the order stated, and then to conclude their report with the consideration of the important question of the remedy.

The committee do not propose to enter into an elaborate or refined argument on the question of the constitutionality of the Tariff system. The General Government is one of specific powers, and it can rightfully exercise only the powers expressly granted, and those that may be necessary and proper to carry them into effect, all others being reserved expressly to the States or the people. It results, necessarily, that those who claim to exercise power under the Constitution, are bound to show that it is expressly granted, or that it is necessary and proper as a means to some of the granted powers. The advocates of the Tariff have offered no such proof. It is true that the third section of the first article of the Constitution authorizes Congress to lay and collect an impost duty, but it is granted as a tax power for the sole purpose of revenue—a power in its nature essentially different from that of imposing protective or prohibitory duties. Their objects are incompatible. The prohibitory system must end in destroying the revenue from imports. It has been said that the system is a violation of the spirit, and not the letter of the Constitution. The distinction is not material. The Constitution may be as grossly violated by acting against its meaning as against its letter; but it may be proper to dwell a moment on the point in order to understand more fully the real character of the acts under which the interest of this, and other States similarly situated, has been sacrificed. The facts are few and simple. The Constitution grants to Congress the power of imposing a duty on imports for revenue, which power is abused by being converted into an instrument of rearing up the industry of one section of the country on the ruins of another. The violation, then, consists in using a power granted for one object to

advance another, and that by the sacrifice of the original object. It is, in a word, a violation by perversion—the most dangerous of all, because the most insidious, and difficult to resist. Others cannot be perpetrated without the aid of the judiciary—this may be by the Executive and Legislative departments alone. The courts cannot look into the motives of legislators. They are obliged to take acts by their titles and professed objects, and if these be constitutional, they cannot interpose their power, however grossly the acts may, in reality, violate the Constitution. The proceedings of the last session sufficiently prove that the House of Representatives are aware of the distinction, and determined to avail themselves of its advantage.

In the absence of arguments, drawn from the Constitution itself, the advocates of the power have attempted to call in the aid of precedent. The committee will not waste their time in examining the instances quoted. If they were strictly in point, they would be entitled to little weight. Ours is not a Government of precedents, nor can they be admitted, except to a very limited extent, and with great caution, in the interpretation of the Constitution, without changing, in time, the entire character of the instrument. The only safe rule is the Constitution itself—or, if that be doubtful, the history of the times. In this case, if doubts existed, the journals of the Convention itself would remove them. It was moved in that body to confer on Congress the very power in question to encourage manufactures, but it was deliberately withheld, except to the extent of granting patent rights for new and useful inventions. Instead of granting the power, permission was given to the States to impose duties, with the consent of Congress, to encourage their own manufactures; and thus, in the true spirit of justice, imposing the burden on those who were to be benefited. But, giving the precedents every weight that may be claimed for them, the committee feel confident that, in this case, there are none in point previous to the adoption of the present Tariff system. Every instance which has been quoted, may fairly be referred to the legitimate power of Congress, to impose duties on imports for revenue. It is a necessary incident of such duties to act as an encouragement to manufactures, whenever imposed on articles which may be manufactured in our country. In this incidental manner, Congress has the power of encouraging manufactures; and the committee readily concede that, in the passage of an impost bill, that body may, in modifying the details, so arrange the provisions of the bill, as far as it may be done consistently with its proper object, as to aid manufactures. To this extent Congress may constitutionally go, and has gone from the commencement of the Government, which will fully explain the precedents cited from the early stages of its operation. Beyond this they never

proceeded till the commencement of the present system, the inequality and oppression of which they will next proceed to consider.

On entering on this branch of the subject, the committee feel the painful character of the duty which they must perform. They would desire never to speak of our country, as far as the action of the General Government is concerned, but as one great whole, having a common interest, which all the parts ought zealously to promote. Previously to the adoption of the Tariff system, such was the unanimous feeling of this State; but in speaking of its operation, it will be impossible to avoid the discussion of sectional interest, and the use of sectional language. On its authors, and not on us, who are compelled to adopt this course in self-defence, by injustice and oppression, be the censure.

So partial are the effects of the system, that its burdens are exclusively on one side and its benefits on the other. It imposes on the agricultural interest of the South, including the South-west, and that portion of the country particularly engaged in commerce and navigation, the burden not only of sustaining the system itself, but that also of the Government. In stating the case thus strongly, it is not the intention of the committee to exaggerate. If exaggeration were not unworthy of the gravity of the subject, the reality is such as to make it unnecessary.

That the manufacturing States, even in their own opinion, bear no share of the burden of the Tariff in reality, we may infer with the greatest certainty from their conduct. The fact that they urgently demand an increase, and consider every addition as a blessing, and a failure to obtain one as a curse, is the strongest confession that, whatever burden it imposes, in reality falls, not on them, but on others. Men ask not for burdens, but benefits. The tax paid by the duties on imports, by which, with the exception of the receipts from the sale of the public lands, and a few incidental items, the Government is wholly supported, and which, in its gross amount, annually equals about \$23,000,000, is then, in truth, no tax on them. Whatever portion of it they advance as consumers of the articles on which it is imposed, returns to them with usurious interest through an artfully contrived system. That such are the facts, the committee will proceed to demonstrate by other arguments besides the confession of the parties interested in these acts, as conclusive as that ought to be considered. If the duties were imposed on the exports instead of the imports, no one would doubt their partial operation, or that the duties, in that form, would fall on those engaged in producing articles for the foreign market; and as rice, tobacco, and cotton, constitute the great mass of our exports, such duties would, of necessity, mainly fall on the

Southern States, where they are exclusively cultivated. To prove, then, that the burden of the Tariff falls also on them almost exclusively, it is only necessary to show that, as far as their interest is concerned, there is little or no difference between an export and an import duty. We export to import. The object is an exchange of the fruits of our labor for those of other countries. We have, from soil and climate, a facility in rearing certain great agricultural staples, while other and older countries, with dense population and capital greatly accumulated, have equal facility in manufacturing various articles suited to our use; and thus a foundation is laid for an exchange of the products of labor mutually advantageous. A duty, whether it be on the imports or exports, must fall on this exchange; and, however laid, must, in reality, be paid by the producer of the articles exchanged. Such must be the operation of all taxes on sales or exchanges. The producer, in reality, pays it, whether laid on the vendor or purchaser. It matters not in the sale of a tract of land, or any other article, if a tax be imposed, whether it be paid by him who sells or him who buys. The amount must, in both cases, be deducted from the price. Nor can it alter, in this particular, the operation of such a tax, by being imposed on the exchanges of different countries. Such exchanges are but the aggregate of sales of the individuals of the respective countries; and must, if taxed, be governed by the same rules. Nor is it material whether the exchange be barter or sale, direct or circuitous. In any case it must fall on the producer. To the growers of cotton, rice, and tobacco, it is the same, whether the Government takes one-third of what they raise, for the liberty of sending the other two-thirds abroad, or one-third of the iron, salt, sugar, coffee, cloth, and other articles they may need in exchange, for the liberty of bringing them home. In both cases he gets a third less than he ought. A third of his labor is taken; yet the one is an import duty, and the other an export. It is true that a tax on the imports, by raising the price of the articles imported, may in time produce the supply at home, and thus give a new direction to the exchanges of the country; but it is also true that a tax on the exports, by diminishing at home the price of the same material, may have the same effect, and with no greater burden to the grower. Whether the situation of the South will be materially benefited by this new direction given to its exchanges, will be considered hereafter; but whatever portion of her foreign exchanges may, in fact, remain, in any stage of this process of changing her market, must be governed by the rule laid down. Whatever duty may be imposed to bring it about, must fall on the foreign trade which remains, and be paid by the South almost exclusively—as much so, as an equal amount of duty on their exports.

Let us now trace the operation of the system in some of its prominent details, in order to understand, with greater precision, the extent of the burden it imposes on us, and the benefits which it confers, at our expense, on the manufacturing States. The committee, in the discussion of this point, will not aim at minute accuracy. They have neither the means nor the time requisite for that purpose, nor do they deem it necessary, if they had, to estimate the fractions of loss or gain on either side on subjects of such great magnitude.

The exports of domestic produce, in round numbers, may be estimated as averaging \$53,000,000 annually; of which the States growing cotton, rice, and tobacco, produce about \$37,000,000. In the last four years the average amount of the export of cotton, rice, and tobacco, exceeded \$35,500,000; to which, if we add flour, corn, lumber, and other articles exported from the States producing the former, their exports cannot be estimated at a less sum than that stated. Taking it at that sum, the exports of the Southern or staple States, and other States, will stand as \$37,000,000 to \$16,000,000—or considerably more than the proportion of two to one; while their population, estimated in federal numbers, is the reverse; the former sending to the House of Representatives but 76 members, and the latter 137. It follows that about one-third of the Union exports more than two-thirds of the domestic products. Such, then, is the amount of labor which our country annually exchanges with the rest of the world—and such our proportion. The Government is supported almost exclusively by a tax on this exchange, in the shape of an impost duty, and which amounts annually to about \$23,000,000, as has already been stated. Previous to the passage of the act of the last session, this tax averaged about 37½ per cent on the value of imports. What addition that has made, it is difficult, with the present data, to estimate with precision; but it may be assumed, on a very moderate calculation, to be 7½ per cent—thus making the present duty to average at least 45 per cent, which, on \$37,000,000, the amount of our share of the exports, will give the sum of \$16,650,000, as our share of the contribution to the general Treasury.

Let us take another, and perhaps more simple and striking view of this important point. Exports and imports, allowing for the profit and loss of trade, must be equal in a series of years. This is a principle universally conceded. Let it then be supposed, for the purpose of illustration, that the United States were organized into two separate and distinct custom-house establishments—one for the staple States, and the other for the rest of the Union; and that all commercial intercourse between the two sections were taxed in the same manner and to the same

extent with the commerce of the rest of the world. The foreign commerce, under such circumstances, would be carried on from each section, direct with the rest of the world; and the imports of the Southern Custom-House, on the principle that exports and imports must be equal, would amount annually to \$37,000,000; on which 45 per cent, the average amount of the impost duty, would give an annual revenue of \$16,650,000, without increasing the burden already imposed on the people of those States one cent. This would be the amount of revenue on the exchanges of that portion of their products which go abroad; but if we take into the estimate the duty which would accrue on the exchange of their products with the manufacturing States, which now, in reality, is paid by the Southern States in the shape of increased prices, as a bounty to manufactures, but which, on the supposition, would constitute a part of their revenue, many millions more would have to be added.

But, it is contended, that the consumers really pay the impost—and that, as the manufacturing States consume a full share, in proportion to their population, of the articles imported, they must also contribute their full share to the Treasury of the Union. The committee will not deny the position that their consumption is in proportion to their population—nor that the consumers pay, provided they be mere consumers, without the means, through the Tariff, of indemnifying themselves in some other character. Without the qualification, no proposition can be more fallacious than that the consumers pay. That the manufacturing States do, in fact, indemnify themselves, and more than indemnify themselves for the increased price they pay on the articles they consume, we have, as has already been stated, their confession in a form which cannot deceive—we mean their own acts. Nor is it difficult to trace the operation by which this is effected. The very acts of Congress, imposing the burdens on them, as consumers, give them the means, through the monopoly which it affords their manufactures in the home market, not only of indemnifying themselves for the increased price on the imported articles which they may consume, but, in a great measure, to command the industry of the rest of the Union. The argument urged by them for the adoption of the system (and with so much success), that the price of property and products in those States must be thereby increased, clearly proves that the facts are as stated by your committee. It is by this very increased price, which must be paid by their fellow-citizens of the South, that their industry is affected, and the fruits of our toil and labor, which, on any principle of justice, ought to belong to ourselves, are transferred from us to them. The maxim, that the consumers pay, strictly applies to us. We are mere consumers, and destitute

of all means of transferring the burden from ours to the shoulders of others. We may be assured that the large amount paid into the Treasury under the duties on imports, is really derived from the labor of some portion of our citizens. The Government has no mines. Someone must bear the burden of its support. This unequal lot is ours. We are the serfs of the system—out of whose labor is raised, not only the money paid into the Treasury, but the funds out of which are drawn the rich rewards of the manufacturer and his associates in interest. Their encouragement is our discouragement. The duty on imports, which is mainly paid out of our labor, gives them the means of selling to us at a higher price; while we cannot, to compensate the loss, dispose of our products at the least advance. It is then, indeed, not a subject of wonder, when understood, that our section of the country, though helped by a kind Providence with a genial sun and prolific soil, from which spring the richest products, should languish in poverty and sink into decay, while the rest of the Union, though less fortunate in natural advantages, are flourishing in unexampled prosperity.

The assertion, that the encouragement of the industry of the manufacturing States is, in fact, discouragement to ours, was not made without due deliberation. It is susceptible of the clearest proof. We cultivate certain great staples for the supply of the general market of the world: They manufacture almost exclusively for the home market. Their object in the Tariff is to keep down foreign competition, in order to obtain a monopoly of the domestic market. The effect on us is, to compel us to purchase at a higher price, both what we obtain from them and from others, without receiving a correspondent increase in the price of what we sell. The price at which we can afford to cultivate must depend on the price at which we receive our supplies. The lower the latter, the lower we may dispose of our products with profit—and the same degree our capacity of meeting competition is increased; and, on the contrary, the higher the price of our supplies, the less the profit, and the less, consequently, the capacity for meeting competition. If, for instance, cotton can be cultivated at 10 cents the pound, under an increase price of forty-five per cent on what we purchase, in return, it is clear, if the prices of what we consume were reduced forty-five per cent (the amount of the duty), we could, under such reduced prices, afford to raise the article at 5½ cents per pound, with a profit, as great as what we now obtain at 10 cents; and that our capacity of meeting the competition of foreigners in the general market of the world, would be increased in the same proportion. If we can now, with the increased price from the Tariff, contend with success, under a reduction of 45 per cent in the prices of our products,

we could drive out all competition; and thus add annually to the consumption of our cotton, three or four hundred thousand bales, with a corresponding increase of profit. The case, then, fairly stated between us and the manufacturing States is, that the Tariff gives them a protection against foreign competition in our own market, by diminishing, in the same proportion, our capacity to compete with our rivals, in the general market of the world. They who say that they cannot compete with foreigners at their own doors, without an advantage of 45 per cent, expect us to meet them abroad under disadvantage equal to their encouragement.

But this oppression, as great as it is, will not stop at this point. The trade between us and Europe has, heretofore, been a mutual exchange of products. Under the existing duties, the consumption of European fabrics must, in a great measure, cease in our country; and the trade must become, on their part, a cash transaction. He must be ignorant of the principles of commerce, and the policy of Europe, particularly England, who does not see that it is impossible to carry on a trade of such vast extent on any other basis than barter; and that, if it were not so carried on, it would not long be tolerated. We already see indications of the commencement of a commercial warfare, the termination of which no one can conjecture—though our fate may easily be. The last remains of our great and once flourishing agriculture must be annihilated in the conflict. In the first instance, we will be thrown on the home market, which cannot consume a fourth of our products; and instead of supplying the world, as we would with a free trade, we would be compelled to abandon the cultivation of three-fourths of what we now raise, and receive for the residue, whatever the manufacturers, who would then have their policy consummated by the entire possession of our market, might choose to give. Forced to abandon our ancient and favorite pursuit, to which our soil, climate, habits, and peculiar labor are adapted, at an immense sacrifice of property, we would be compelled, without capital, experience, or skill, and with a population untried in such pursuits, to attempt to become the rivals, instead of the customers of the manufacturing States. The result is not doubtful. If they, by superior capital and skill, should keep down successful competition on our part, we would be doomed to toil at our unprofitable agriculture—selling at the prices which a single and very limited market might give. But, on the contrary, if our necessity should triumph over their capital and skill—if, instead of raw cotton, we should ship to the manufacturing States cotton yarn and cotton goods, the thoughtful must see that it would inevitably bring about a state of things which could not long continue. Those who now make war on our gains, would then make it on our labor. They would

not tolerate, that those, who now cultivate our plantations, and furnish them with the material, and the market for the products of their arts, should, by becoming their rivals, take bread out of the mouths of their wives and children. The committee will not pursue this painful subject; but, as they clearly see that the system, if not arrested, must bring the country to this hazardous extremity, neither prudence nor patriotism would permit them to pass it by without raising a warning voice against a danger of such menacing character.

It was conceded, in the course of the discussion, that the consumption of the manufacturing States, in proportion to population, was as great as ours. How they, with their limited means of payment, if estimated by the exports of their own products, could consume as much as we do with our ample exports, has been partially explained; but it demands a fuller consideration. Their population, in round numbers, may be estimated at about eight, and ours at four millions; while the value of their products exported, compared with ours, is as sixteen to thirty-seven millions of dollars. If to the aggregate of these sums be added the profits of our foreign trade and navigation, it will give the amount of the fund out of which is annually paid the price of foreign articles consumed in our country. This profit, at least so far as it constitutes a portion of the fund out of which the price of the foreign articles is paid, is represented by the difference between the value of the exports and imports—that of both being estimated at our own ports—and which, taking the average of the last five years, amount to about \$4,000,000—and which, as the foreign trade of the country is principally in the hands of the manufacturing States, we will add to their means of consumption; which will raise theirs to \$20,000,000, and will place the relative means of the consumption of the two sections, as twenty to thirty-seven millions of dollars; while, on the supposition of equal consumption in proportion to population, their consumption would amount to thirty-eight millions of dollars, and ours to nineteen millions. Their consumption would thus exceed their capacity to consume, if judged by the value of their exports, and the profits of their foreign commerce, by eighteen millions; while ours, judged the same way, would fall short by the same sum. The inquiry which naturally presents itself is, how is this great change in the relative condition of the parties, to our disadvantage, affected?—which the committee will now proceed to explain.

It obviously grows out of our connections. If we were entirely separated, without political or commercial connection, it is manifest that the consumption of the manufacturing States, of foreign articles, could not exceed twenty-two millions—the sum at which the value of their

exports and profit of their foreign trade is estimated. It would, in fact, be much less; as the profits of foreign navigation and trade, which have been added to their means, depend almost exclusively on the great staples of the South, and would have to be deducted, if no connection existed, as supposed. On the contrary, it is equally manifest, that the means of the South to consume the products of other countries, would not be so materially affected in the state supposed. Let us, then, examine what are the causes growing out of this connection, by which so great a change is effected. They may be comprehended under three heads—the Custom-House, the appropriations, and the monopoly of the manufacturers; all of which are so intimately blended as to constitute one system, which its advocates, by a perversion of all that is associated with the name, call the “ American System. ” The Tariff is the soul of this system.

It has already been proved that our contribution, through the Custom-House, to the Treasury of the Union, amounts annually to \$16,650,000, which leads to the inquiry—What becomes of so large an amount of the products of our labor, placed, by the operation of the system, at the disposal of Congress? One point is certain—a very small share returns to us, out of whose labor it is extracted. It would require much investigation to state, with precision, the proportion of the public revenue disbursed annually in the Southern, and other States respectively; but the committee feel a thorough conviction, on examination of the annual appropriation acts, that a sum much less than two millions of dollars falls to our share of the disbursements; and that it would be a moderate estimate to place our contribution, above what we receive back, through all of the appropriations, at \$15,000,000; constituting, to that great amount, an annual, continued, and uncompensated draft on the industry of the Southern States, through the Custom-House alone. This sum, deducted from the \$37,000,000—the amount of our products annually exported, and added to the \$20,000,000, the amount of the exports of the other States, with the profits of foreign trade and navigation, would reduce our means of consumption to \$22,000,000, and raise theirs to \$35,000,000—still leaving \$3,000,000 to be accounted for; and which may be readily explained, through the operation of the remaining branch of the system—the monopoly which it affords the manufacturers in our market; and which empowers them to force their goods on us at a price equal to the foreign article of the same description, with the addition of the duty—thus receiving, in exchange, our products, to be shipped, on their account—and thereby increasing their means, and diminishing ours in the same proportion. But this constitutes a part only of our loss under this branch. In addition to the thirty-five millions of

our products which are shipped to foreign countries, a very large amount is annually sent to the other States, for their own use and consumption. The article of cotton alone, is estimated at 150,000 bales—which, valued at thirty dollars the bale, would amount to \$4,500,000, and constitutes a part of this forced exchange.

Such is the process, and the amount, in part, of the transfer of our property annually to other sections of the country, estimated on the supposition that each section consumes of imported articles, an amount equal in proportion to its population. But the committee are aware that they have rated our share of the consumption far higher than the advocates of the system place it. Some of them rate it as low as five millions of dollars annually; not perceiving that, by thus reducing ours, and raising that of the manufacturing States, in the same proportion, they demonstratively prove how oppressive the system is to us, and how gainful to them; instead of showing, as they suppose, how little we are affected by its operation. Our complaint is, that we are not permitted to consume the fruits of our labor; but that, through an artful and complex system, in violation of every principle of justice, they are transferred from us to others. It is, indeed, wonderful that those who profit by our loss, blinded as they are by self-interest, when reducing our consumption as low as they have, never thought to inquire what became of the immense amount of the products of our industry, which are annually sent out in exchange with the rest of the world; and if we did not consume its proceeds, who did—and by what means. If, in the ardent pursuit of gain, such a thought had occurred, it would seem impossible, that all the sophistry of self-interest, deceiving as it is, could have disguised from their view our deep oppression, under the operation of the system.

Your committee do not intend to represent, that the commercial connection between us and the manufacturing States is wholly sustained by the Tariff system. A great, natural, and profitable commercial communication would exist between us, without the aid of monopoly on their part; which, with mutual advantage, would transfer a large amount of their products to us, and an equal amount of ours to them, as the means of carrying on their commercial operations with other countries. But even this legitimate commerce is greatly affected, to our disadvantage, through the Tariff system; the very object of which is, to raise the price of labor, and the profits of capital, in the manufacturing States—which, from the nature of things, cannot be done, without raising, correspondingly, the price of all products, in the same quarter, as well those protected, as those not protected. That such would be the effect, we know has been urged in

argument mainly to reconcile all classes in those States to the system; and with such success, as to leave us no room to doubt its correctness; and yet, such are the strange contradictions, in which the advocates of an unjust cause must ever involve themselves, when they attempt to sustain it, that the very persons, who urge the adoption of the system in one quarter, by holding out the temptation of high prices for all they make, turn round and gravely inform us, that its tendency is to depress, and not to advance prices. The capitalist, the farmer, the wool-grower, the merchant and laborer, in the manufacturing States, are all to receive higher rates of wages and profits—while we, who consume, are to pay less for the products of their labor and capital. As contradictory and absurd as are their arguments, they, at least, conclusively establish the important fact, that those who advance them are conscious that the proof of the partial and oppressive operation of the system, is unanswerable if it be conceded that we, in consequence, pay higher prices for what we consume. Were it possible to meet this conclusion on other grounds, it could not be, that men of sense would venture to encounter such palpable contradictions. So long as the wages of labor, and the profits of capital, constitute the principal elements of price, as they ever must, the one or the other argument—that addressed to us, or that to the manufacturing States—must be false. But, in order to have a clear conception of this important point, the committee propose to consider more fully the assertion, that it is the tendency of high duties, by affording protection, to reduce, instead of to increase prices; and if they are not greatly mistaken, it will prove, on examination, to be utterly erroneous.

Before entering on the discussion, and in order to avoid misapprehension, the committee will admit, that there is a single exception. When a country is fully prepared to manufacture, that is, when wages and interest are as low, and natural advantages as great, as in the countries from which it draws its supplies, it may happen, that high duties, by starting manufactories, under such circumstances, may be followed by a permanent reduction in prices; and which, if the Government had the power, and the people possessed sufficient guarantees against abuse, might render it wise and just, in reference to the general interest, in many instances to afford protection to infant manufacturing establishments. But, where permanent support is required—which must ever be the case when a country is not ripe—such duties must ever be followed by increased prices. The temporary effect may be different, from various causes. Against this position, it is urged, that the price depends on the proportion between the supply and demand—that protection, by converting mere consumers into rival manufacturers, must increase the supply without raising

the demand—and, consequently, must tend to reduce prices. If it were necessary, it might be conclusively shown, that this tendency must be more than countervailed, by subtracting, as must ever be the case when the system is forced, capital and labor from more profitable, and turning them to less profitable pursuit, by an expensive bounty, paid out of the labor of the country. But, admitting the argument to be true, the reduction of price must be in proportion to the addition made to the general supply of the commercial world, which is so great that, if we were to suppose our share of the demand to be wholly withdrawn, its tendency to reduce the general price would be small compared to the tendency to high prices, in consequence of the high duties. But the argument rests on an assumption wholly false. It proceeds on the supposition that, without the Tariff, the manufacturing States would not have become such—than which nothing can be more erroneous. They had no alternative, but to emigrate, or to manufacture. How could they otherwise obtain clothing or other articles necessary for their supply? How could they pay for them? To Europe they could ship almost nothing. Their agricultural products are nearly the same with those of that portion of the globe; and the only two articles, grain and lumber, in the production of which they have advantages, are, in that quarter, either prohibited, or subject to high duties. From us, who are purely an agricultural people, they could draw nothing but the products of the soil. The question, then, is not, whether those States should or should not manufacture—for necessity, and the policy of other nations had decided that question—but whether they should, with or without a bounty. It was our interest that they should without. It would compel them to contend with the rest of the world in our market, in free and open competition; the effects of which would have been, a reduction of prices to the lowest point; thereby enabling us to exchange the products of our labor most advantageously—giving little, and receiving much; while, on the other hand, in order to meet European competition, they would have been compelled to work at the lowest wages and profits. To avoid this, it was their interest to manufacture with a bounty; by which our situation was completely reversed. They were relieved by our depression. Thus, through our political connection, by a perversion of the powers of the Constitution, which was intended to protect the States of the Union in the enjoyment of their natural advantages, they have stripped us of the blessings bestowed by nature, and converted them to their own advantage. Restore our advantages, by giving us free trade with the world, and we would become, what they now are by our means, the most flourishing people

on the globe. But these are withheld from us under the fear that, with their restoration, they would become, what we are by their loss, among the most depressed.

Having answered the argument in the abstract, the committee will not swell their report by considering the various instances which have been quoted, to show that prices have not advanced since the commencement of the system. We know that they would instantly fall nearly fifty per cent, if its burdens were removed; and that is sufficient for us to know. Many and conclusive reasons might be urged, to show why, from other causes, prices have declined since that period. The fall in the price of raw materials—the effects of the return of peace—the immense reduction in the amount of the circulating medium of the world, by the withdrawal from circulation of a vast amount of paper, both in this country and in Europe—the important improvements in the mechanical and chemical arts—and, finally, the still progressive depression arising from the great improvements which preceded that period a short time, particularly in the use of steam and the art of spinning and weaving—have all contributed to this result. The final reduction of prices, which must take place in the articles whose production is affected by such improvements, cannot be suddenly realized. Another generation will probably pass away, before they will reach that point of depression which must follow their universal introduction.

We are told, by those who pretend to understand our interest better than we do, that the excess of production, and not the Tariff, is the evil which afflicts us; and that our true remedy is, a reduction of the quantity of cotton, rice, and tobacco, which we raise, and not a repeal of the Tariff. They assert, that low prices are the necessary consequence of excess of supply, and that the only proper correction is in diminishing the quantity. We would feel more disposed to respect the spirit in which the advice is offered, if those from whom it comes accompanied it with the weight of their example. They also, occasionally, complain of low prices; but instead of diminishing the supply, as a remedy for the evil, demand an enlargement of the market, by the exclusion of all competition. Our market is the world; and as we cannot imitate their example by enlarging it for our products, through the exclusion of others, we must decline their advice—which, instead of alleviating, would increase our embarrassments. We have no monopoly in the supply of our products; one-half of the globe may produce them. Should we reduce our production, others stand ready, by increasing theirs, to take our place; and, instead of raising prices, we would only diminish our share of the supply. We are thus compelled to produce, on the penalty of losing our hold on the general market. Once lost, it may be lost forever—and lose

it we must, if we continue to be constrained, as we now are, on the one hand, by the general competition of the world, to sell low; and, on the other, by the Tariff to buy high. We cannot withstand this double action. Our ruin must follow. In fact, our only permanent and safe remedy is, not from the rise in the price of what we sell, in which we can receive but little aid from our Government, but a reduction in the price of what we buy; which is prevented by the interference of the Government. Give us a free and open competition in our own market, and we fear not to encounter like competition in the general market of the world. If, under all our discouragement by the acts of our Government, we are still able to contend there against the world, can it be doubted, if this impediment were removed, we would force out all competition; and thus, also enlarge our market—not by the oppression of our fellow-citizens of other States, but by our industry, enterprise, and natural advantages. But while the system prevents this great enlargement of our foreign market, and endangers what remains to us, its advocates attempt to console us by the growth of the home market for our products, which, according to their calculation, is to compensate us amply for all our losses; though, in the leading article of our products, cotton, the home market now consumes but a sixth; and if the prohibitory system as to cotton goods were perfected by the exclusion of all importations, the entire consumption of cotton goods would not raise the home consumption of cotton above a fifth of what we raise.

In the other articles, rice and tobacco, it is much less. But brilliant prospects are held out, of our immense export trade in cotton goods, which is to consume an immense amount of the raw material—without reflecting to what countries they are to be shipped. Not to Europe, for there we will meet prohibition for prohibition—not to the Southern portions of this continent, for already they have been taught to imitate our prohibitory policy. The most sanguine will not expect extensive or profitable markets in the other portions of the globe. But, admitting that no other impediment existed, the system itself is an effectual barrier against extensive exports. The very means which secures the domestic market must lose the foreign. High wages and profits are an effectual stimulus when enforced by monopoly, as in our market, but they must be fatal to competition in the open and free market of the world. Besides, when manufactured articles are exported, they must follow the same law to which the products of the soil are subject when exported. They will be sent out in order to be exchanged for the products of other countries; and if these products be taxed on their introduction, as a back return, it has been demonstrated that, like all other taxes on exchange, it must be paid by the producer of the articles. The nature of the

operation will be seen, if it be supposed, in their exchange with us, instead of receiving our products free of duty, the manufacturer had to pay forty-five per cent in the back return, on the cotton and other products which they may receive from us in exchange. If to these insuperable impediments to a large export trade it be added, that our country rears the products of almost every soil and climate, and that scarcely an article can be imported, but what may come in competition with some of the products of our arts or our soil, and consequently ought to be excluded on the principles of the system, it must be apparent, when perfected, the system itself must essentially exclude exports; unless we should charitably export for the supply of the wants of others, without expecting a return trade. The loss of the exports, and with it the imports also, must, in truth, be the end of the system. If we export, we must import; and if we exclude all imported products which come in competition with ours, unless we can invent new articles of exchange, or enlarge, tenfold, the consumption of the few which we cannot produce, with the ceasing of importation, exportation must also cease. If it did not, then neither would importation cease; and the continuance of imports must be followed, as stated, by that of exports—and this again would require—in order to complete the system by excluding competition in our own markets—new duties; and thus, an incessant and unlimited increase of duties would be the result of the competition, of which the manufacturing States complain. The evil is in the exports—and the most simple and efficient system to secure the home market, would, in fact, be, to prohibit exports; and as the Constitution only prohibits duties on exports, and as duties are not prohibitions, we may yet witness this addition to the system—the same construction of the instrument which justifies the system itself, would equally justify this, as a necessary means to perfect it.

The committee deemed it more satisfactory to present the operation of the system on the staple States generally, than its peculiar operation on this. In fact, they had not the data, had they felt the inclination, to distinguish the oppression under which this State labors, from that of the other staple States. The fate of the one must be that of the others. It may, however, be truly said, that we are among the greatest sufferers. No portion of the world, in proportion to population and wealth, ever exchanged with other countries a greater amount of its products. With the proceeds of the sales of a few great staples we purchase almost all our supplies; and that system must, indeed, act with the desolation of a famine on such a people, where the Government exacts a tax

of nearly fifty per cent on so large a proportion of their exchanges, in order that a portion of their fellow citizens might, in effect, lay one as high on the residue.

The committee have, thus far, considered the question in its relative effects on the staple and manufacturing States—comprehending, under the latter, all those that support the Tariff system. It is not for them to determine whether all those States have an equal interest in its continuance. It is manifest that their situation, in respect to its operation, is very different. While, in some, the manufacturing interest wholly prevails—in others, the commercial and navigating interests—and in a third, the agricultural interest greatly predominates—as is the case in all the Western States. It is difficult to conceive what real interest the last can have in the system. They manufacture but little, and must consequently draw their supplies, principally, either from abroad, or from the real manufacturing States; and, in either case, must pay the increased price in consequence of the high duties, which, at the same time, must diminish their means with ours, from whom they are principally derived, through an extensive interior commercial intercourse. From the nature of our commercial connections, our loss must precede theirs; but theirs will with certainty follow, unless compensation for the loss of our trade can be found somewhere in the system. Its authors have informed us that it consists of two parts—of which protection is the essence of one, and appropriation of the other. In both capacities it impoverishes us—and in both it enriches the real manufacturing States. The agricultural States of the West are differently affected. As a protective system, they lose in common with us—and it will remain with them to determine, whether an adequate compensation can be found, in appropriations for internal improvements, or any other purpose, for the steady and rich returns which a free exchange of the produce of their fertile soil with the staple States must give, provided the latter be left in full possession of their natural advantages.

The question, in what manner the loss and gain of the system distribute themselves among the several classes of society, is intimately connected with that of their distribution among the several sections. Few subjects present more important points for consideration; but as it is not possible for the committee to enter fully into the discussion of them, without swelling their report beyond all reasonable bounds, they will pass them over with a few brief and general remarks.

The system has not been sufficiently long in operation with us, to display its real character in reference to the point now under discussion. To understand its ultimate tendency, in

distributing the wealth of society among the several classes, we must turn our eyes to Europe, where it has been in action for centuries—and operated as one among the efficient causes of that great inequality of property which prevails in most European countries. No system can be more efficient to rear up a moneyed aristocracy. Its tendency is, to make the poor poorer, and the rich richer. Heretofore, in our country, this tendency has displayed itself principally in its effects, as regards the different sections—but the time will come when it will produce the same results between the several classes in the manufacturing States. After we are exhausted, the contest will be between the capitalists and operatives; for into these two classes it must, ultimately, divide society. The issue of the struggle here must be the same as it has been in Europe. Under the operation of the system, wages must sink more rapidly than the prices of the necessaries of life, till the operatives will be reduced to the lowest point—when the portion of the products of their labor left to them, will be barely sufficient to preserve existence. For the present, the pressure of the system is on our section. Its effects on the staple States produce almost universal suffering. In the mean time, an opposite state of things exists in the manufacturing States. For the present, every interest among them—except that of foreign trade and navigation, flourishes. Such must be the effect of a monopoly of so rich and extensive a market as that of the Southern States, till it is impoverished—as ours rapidly must be, by the operation of the system, when its natural tendencies, and effects on the several classes of the community, will unfold themselves, as has been described by the committee.

It remains to be considered, in tracing the effects of the system, whether the gain of one section of the country be equal to the loss of the other. If such were the fact—if all we lose be gained by the citizens of the other sections, we would, at least, have the satisfaction of thinking that, however unjust and oppressive, it was but a transfer of property, without diminishing the wealth of the community. Such, however, is not the fact; and to its other mischievous consequences we must add, that it destroys much more than it transfers. Industry cannot be forced out of its natural channel without loss; and this, with the injustice, constitutes the objection to the improper intermeddling of the Government with the private pursuits of individuals, who must understand their own interests better than the Government. The exact loss from such intermeddling, it may be difficult to ascertain, but it is not, therefore, the less certain. The committee will not undertake to estimate the millions, which are annually lost to our country, under the existing system; but some idea may be formed of its magnitude, by stating,

that it is, at least, equal to the difference between the profits of our manufacturers, and the duties imposed for their protection, where these are not prohibitory. The lower the profit, and the higher the duty (if not, as stated, prohibitory)—the greater the loss. If, with these certain data, the evidence reported by the Committee on Manufactures at the last session of Congress, be examined, a pretty correct opinion may be formed of the extent of the loss of the country—provided the manufacturers have fairly stated their case. With a duty of about forty per cent on the leading articles of consumption (if we are to credit the testimony reported), the manufacturers did not realize, generally, a profit equal to the legal rate of interest; which would give a loss of largely upwards of thirty per cent to the country on its products. It is different with the foreign articles of the same description. On them, the country, at least, loses nothing. There, the duty passes into the Treasury—lost, indeed, to the Southern States, out of whose labor, directly or indirectly, it must, for the most part, be paid—but transferred, through appropriations in a hundred forms, to the pockets of others. It is thus the system is cherished by appropriators; and well may its advocates affirm, that they constitute an essential portion of the American System. Let this conduit, through which it is so profusely supplied, be closed, and we feel confident that scarcely a State, except a real manufacturing one, would tolerate its burden. A total prohibition of importations, by cutting off the revenue, and thereby the means of making appropriations, would, in a short period, destroy it. But the excess of its loss over its gains, leads to the consoling reflection, that its abolition would relieve us, much more than it would embarrass the manufacturing States. We have suffered too much to desire to see others afflicted, even for our relief, when it can be possibly avoided. We would rejoice to see our manufactures flourish on any constitutional principle, consistent with justice and the public liberty. It is not against them, but the means by which they have been forced, to our ruin, that we object. As far as a moderate system, founded on imposts for revenue, goes, we are willing to afford protection, though we clearly see that, even under such a system, the national revenue would be based on our labor, and be paid by our industry. With such constitutional and moderate protection, the manufacturer ought to be satisfied. His loss would not be so great as might be supposed. If low duties would be followed by low prices, they would also diminish the costs of manufacturing; and thus the reduction of profit would be less in proportion than the reduction of the prices of the manufactured article. Be this, however, as it may, the General Government cannot proceed beyond this point of protection, consistently with its powers, and justice to the whole. If the

manufacturing States deem further protection necessary, it is in their power to afford it to their citizens, within their own limits, against foreign competition, to any extent they may judge expedient. The Constitution authorizes them to lay an impost duty, with the assent of Congress, which, doubtless, would be given; and if that be not sufficient, they have the additional and efficient power of giving a direct bounty for their encouragement—which the ablest writers on the subject concede to be the least burdensome and most effectual mode of encouragement. Thus, they who are to be benefited, will bear the burden, as they ought; and those who believe it is wise and just to protect manufactures, may have the satisfaction of doing it at their expense, and not at that of their fellow-citizens of the other States, who entertain precisely the opposite opinion.

The committee having presented its views on the partial and oppressive operation of the system, will proceed to discuss the next position which they proposed—its tendency to corrupt the Government, and to destroy the liberty of the country.

If there be a political proposition universally true—one which springs directly from the nature of man, and is independent of circumstances—it is, that irresponsible power is inconsistent with liberty, and must corrupt those who exercise it. On this great principle our political system rests. We consider all powers as delegated by the people, and to be controlled by them, who are interested in their just and proper exercise; and our Governments, both State and General, are but a system of judicious contrivances to bring this fundamental principle into fair, practical operation. Among the most prominent of these is, the responsibility of representatives to their constituents, through frequent periodical elections, in order to enforce a faithful performance of their delegated trust. Without such a check on their powers, however clearly they may be defined, and distinctly prescribed, our liberty would be but a mockery. The Government, instead of being directed to the general good, would speedily become but the instrument to aggrandize those who might be intrusted with its administration. On the other hand, if laws were uniform in their operation—if that which imposed a burden on one, imposed it likewise on all—or that which acted beneficially for one, acted also, in the same manner, for all—the responsibility of representatives to their constituents would alone be sufficient to guard against abuse and tyranny—provided the people be sufficiently intelligent to understand their interest, and the motives and conduct of their public agents. But, if it be supposed that, from diversity of interests in the several classes and sections of the country, the laws act differently, so that the

same law, though couched in general terms and apparently fair, shall, in reality, transfer the power and property of one class or section to another—in such case, responsibility to constituents, which is but the means of enforcing fidelity of representatives to them, must prove wholly insufficient to preserve the purity of public agents, or the liberty of the country. It would, in fact, fall short of the evil. The disease would be in the community itself—in the constituents, and not their representatives. The opposing interests of the community would engender, necessarily, opposing, hostile parties—organized on this very diversity of interests—the stronger of which, if the Government provided no efficient check, would exercise unlimited and unrestrained power over the weaker. The relation of equality between the parts of the community, established by the Constitution, would be destroyed, and in its place there would be substituted the relation of sovereign and subject, between the stronger and weaker interests, in its most odious and oppressive form. That this is a possible state of society, even where the representative system prevails, we have high authority. Mr. Hamilton, in the 51st number of the *Federalist*, says, “It is of the greatest importance in a republic, not only to guard society against the oppression of its rulers, but to guard one part of society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.” Again— “In a society, under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may be said as truly to reign, as in a state of nature, where the weaker individual is not secured against the violence of the stronger.” We have still higher authority—the unhappy existing example, of which we are the victims. The committee has labored to little purpose, if they have not demonstrated that the very case, which Mr. Hamilton so forcibly describes, does not now exist in our country, under the name of the American System—and which, if not timely arrested, must be followed by all the consequences which never fail to spring from the exercise of irresponsible power. On the great and vital point, the industry of the country—which comprehends almost every interest, the interest of the two great sections is opposed. We want free trade—they restrictions; we want moderate taxes, frugality in the Government, economy, accountability, and a rigid application of the public money to the payment of the debt, and to the objects authorized by the Constitution. In all these particulars, if we may judge by experience, their views of their interest are precisely the opposite. They feel and act, on all questions connected with the American System, as sovereigns—as men invariably do who impose burdens on others for their

own benefit; and we, on the other hand, like those on whom such burdens are imposed. In a word, to the extent stated, the country is divided and organized into two great parties—the one sovereign and the other subject—bearing towards each other all the attributes which must ever accompany that relation, under whatever form it may exist. That our industry is controlled by many, instead of one—by a majority in Congress, elected by a majority in the community having an opposing interest, instead of by hereditary rulers—forms not the slightest mitigation of the evil. In fact, instead of mitigating, it aggravates. In our case, one opposing branch of industry cannot prevail without associating others; and thus, instead of a single act of oppression, we must bear many. The history of the Woollens Bill will illustrate the truth of this position. The woollen manufacturers found they were too feeble to enforce their exactions alone, and, of necessity, resorted to the expedient, which will ever be adopted in such cases, of associating other interests, till a majority be formed—and the result of which, in this case, was, that instead of increased duties on woollens alone—which would have been the fact if that interest alone governed, we have to bear equally increased duties on more than a dozen other of the leading articles of consumption. It would be weakness to attempt to disguise the fact—on a full knowledge of which, and of the danger it threatens, the hope of devising some means of security depends—that different and opposing interests do, and must ever exist in all societies, against the evil of which representation opposes not the slightest resistance. Laws, so far from being uniform in their operation, are scarcely ever so. It requires the greatest wisdom and moderation to extend over any country a system of equal laws; and it is this very diversity of interests, which is found in all associations of men for common purposes, be they private or public, that constitutes the main difficulty in forming and administering free and just governments. It is the door through which despotic power has, heretofore, ever entered, and must ever continue to enter, till some effectual barrier be provided. Without some such, it would be folly to hope for the duration of liberty—as much so as to expect it without representation itself—and for the same reason. The essence of liberty comprehends the idea of responsible power—that those who make and execute the laws should be controlled by those on whom they operate—that the governed should govern. To prevent rulers from abusing their trusts, constituents must control them through elections; and to prevent the major from oppressing the minor interests of society, the Constitution must provide (as the committee hope to prove it does) a check, founded on the same principle and equally efficacious. In fact, the abuse of delegated power, and the tyranny of the stronger over the

weaker interests, are the two dangers, and the only two to be guarded against; and if this be done effectually, liberty must be eternal. Of the two, the latter is the greater and most difficult to resist. It is less perceptible. Every circumstance of life teaches us the liability of delegated power to abuse. We cannot appoint an agent without being admonished of the fact; and, therefore, it has become well understood, and is effectually guarded against in our political institutions. Not so as to the other and greater danger. Though it in fact exists in all associations, yet the law, the courts, and the Government itself, act as a check to its extreme abuse in most cases of private and subordinate companies, which prevents the full display of its real tendency. But let it be supposed that there was no paramount authority—no court, no government to control, what sober individual, who expected himself to act honestly, would place his property in joint-stock with any number of individuals, however respectable, to be disposed of by the unchecked will of the majority, whether acting in a body as stockholders, or through representation, by a direction? Who does not see that a major and a minor interest would, sooner or later, spring up, and that the result would be that, after the stronger had divested the feebler of all interest in the concern, they would, in turn, divide until the whole would centre in a single interest? It is the principle which must ever govern such associations; and what is government itself, but a great joint-stock company, which comprehends every interest, and which, as there can be no higher power to restrain its natural operation, must, if not checked within itself, follow the same law? The actual condition of our race in every country, at this and all preceding periods, attests the truth of the remark. No government, based on the naked principle that the majority ought to govern, however true the maxim in its proper sense, and under proper restrictions, can preserve its liberty even for a single generation. The history of all has been the same—violence, injustice, and anarchy—succeeded by the government of one, or a few, under which the people seek refuge from the more oppressive despotism of the many. Those governments only which provide checks—which limit and restrain within proper bounds the power of the majority, have had a prolonged existence, and been distinguished for virtue, patriotism, power, and happiness; and, what is strikingly true, they have been thus distinguished almost in exact proportion to the number and efficacy of their checks. If arranged in relation to these, we would place them in the order of the Roman, English, Spartan, the United Provinces, the Athenian, and several of the small confederacies of antiquity; and if arranged according to the higher attributes which have been enumerated, they would stand almost precisely in the same order. That this coincidence is not

accidental, we may be fully assured. The latest and most profound investigator of the Roman History and Constitution (Niebuhr) has conclusively shown that, after the expulsion of the kings, this great commonwealth continued to decline in power, and was the victim of the most violent domestic struggles, which tainted both public and private morals, till the passage of the Licinian law, which gave to the people an efficient veto through their tribunes, as a check on the predominant power of the Patricians. From that period she began to rise superior to all other States in virtue, patriotism, and power. May we profit by the example, and restore the almost lost virtue and patriotism of the Republic, by giving due efficiency, in practice, to the check which our Constitution has provided against a danger so threatening—and which constitutes the only efficient remedy against that unconstitutional and dangerous system which the committee have been considering—as they will now proceed to show.

The committee has demonstrated that the present disordered state of our political system originated in the diversity of interests which exists in the country—a diversity recognized by the Constitution itself, and to which it owes one of its most distinguished and peculiar features—the division of the delegated powers between the State and General Governments. Our short experience, before the formation of the present Government, had conclusively shown that, while there were powers which in their nature were local and peculiar, and which could not be exercised by all, without oppression to some of the parts—so, also, there were those which, in their operation, necessarily affected the whole, and could not, therefore, be exercised by any of the parts, without affecting injuriously the others. On this different character, by which powers are distinguished in their geographical operation, our political system was constructed. Viewed in relation to them, to a certain extent we have a community of interests, which can only be justly and fairly supervised by concentrating the will and authority of the several States in the General Government; while, at the same time, the States have distinct and separate interests, over which no supervision can be exercised by the general power without injustice and oppression. Hence the division in the exercise of sovereign powers. In drawing the line between the powers of the two—the General and State Governments—the great difficulty consisted in determining correctly to which of the two the various political powers ought to belong. This difficult task was, however, performed with so much success that, to this day, there is an almost entire acquiescence in the correctness with which the line was drawn. It would be extraordinary if a system, thus resting with such profound wisdom on the diversity of geographical interests among

the States, should make no provision against the dangers to which its very basis might be exposed. The framers of our Constitution have not exposed themselves to the imputation of such weakness. When their work is fairly examined, it will be found that they have provided, with admirable skill, the most effective remedy; and that, if it has not prevented the danger with which the system is now threatened, the fault is not theirs, but ours, in neglecting to make its proper application. In the primary division of the sovereign powers, and in their exact and just classification, as stated, are to be found the first provisions or checks against the abuse of authority on the part of the absolute majority. The powers of the General Government are particularly enumerated and specifically delegated; and all powers not expressly delegated, or which are not necessary and proper to carry into effect those that are so granted, are reserved expressly to the States or the people. The Government is thus positively restricted to the exercise of those general powers that were supposed to act uniformly on all the parts—leaving the residue to the people of the States, by whom alone, from the very nature of these powers, they can be justly and fairly exercised, as has been stated.

Our system, then, consists of two distinct and independent Governments. The general powers, expressly delegated to the General Government, are subject to its sole and separate control; and the States cannot, without violating the constitutional compact, interpose their authority to check, or in any manner to counteract its movements, so long as they are confined to the proper sphere. So, also, the peculiar and local powers reserved to the States are subject to their exclusive control; nor can the General Government interfere, in any manner, with them, without violating the Constitution.

In order to have a full and clear conception of our institutions, it will be proper to remark that there is, in our system, a striking distinction between Government and Sovereignty. The separate governments of the several States are vested in their Legislative, Executive, and Judicial Departments; while the sovereignty resides in the people of the States respectively. The powers of the General Government are also vested in its Legislative, Executive, and Judicial Departments, while the sovereignty resides in the people of the several States who created it. But, by an express provision of the Constitution, it may be amended or changed by three-fourths of the States; and thus each State, by assenting to the Constitution with this provision, has modified its original right as a sovereign, of making its individual consent necessary to any change in its political condition; and, by becoming a member of the Union, has placed this

important power in the hands of three-fourths of the States—in whom the highest power known to the Constitution actually resides. Not the least portion of this high sovereign authority resides in Congress, or any of the departments of the General Government. They are but the creatures of the Constitution, and are appointed but to execute its provisions; and, therefore, any attempt by all, or any of these departments, to exercise any power which, in its consequences, may alter the nature of the instrument, or change the condition of the parties to it, would be an act of usurpation.

It is thus that our political system, resting on the great principle involved in the recognized diversity of geographical interests in the community, has, in theory, with admirable sagacity, provided the most efficient check against their dangers. Looking to facts, the Constitution has formed the States into a community only to the extent of their common interests; leaving them distinct and independent communities as to all other interests, and drawing the line of separation with consummate skill, as before stated. It is manifest that, so long as this beautiful theory is adhered to in practice, the system, like the atmosphere, will press equally on all the parts. But reason and experience teach us that theory of itself, however excellent, is nugatory, unless there be means of efficiently enforcing it in practice—which brings under consideration the highly important question—What means are provided by the system for enforcing this fundamental provision?

If we look to the history and practical operation of the system, we shall find, on the side of the States, no means resorted to in order to protect their reserved rights against the encroachments of the General Government; while the latter has, from the beginning, adopted the most efficient to prevent the States from encroaching on those delegated to them. The 25th section of the Judiciary Act, passed in 1789—immediately after the Constitution went into operation—provides for an appeal from the State courts to the Supreme Court of the United States in all cases, in the decision of which, the construction of the Constitution—the laws of Congress, or treaties of the United States may be involved; thus giving to that high tribunal the right of final interpretation, and the power, in reality, of nullifying the acts of the State Legislatures whenever, in their opinion, they may conflict with the powers delegated to the General Government. A more ample and complete protection against the encroachments of the governments of the several States cannot be imagined; and to this extent the power may be considered as indispensable and constitutional. But, by a strange misconception of the nature of

our system—and, in fact, of the nature of government—it has been regarded as the ultimate power, not only of protecting the General Government against the encroachments of the governments of the States, but also of the encroachments of the former on the latter—and as being, in fact, the only means provided by the Constitution of confining all the powers of the system to their proper constitutional spheres; and, consequently, of determining the limits assigned to each. Such a construction of its powers would, in fact, raise one of the departments of the General Government above the parties who created the constitutional compact, and virtually invest it with the authority to alter, at its pleasure, the relative powers of the General and State Governments, on the distribution of which, as established by the Constitution, our whole system rests—and which, by an express provision of the instrument, can only be altered by three-fourths of the States, as has already been shown. It would go farther. Fairly considered, it would, in effect, divest the people of the States of the sovereign authority, and clothe that department with the robe of supreme power. A position more false and fatal cannot be conceived. Fortunately, it has been so ably refuted by Mr. Madison, in his Report to the Virginia Legislature in 1800, on the Alien and Sedition Acts, as to supersede the necessity of further comments on the part of the committee. Speaking of the right of the State to interpret the Constitution for itself, in the last resort, he remarks: “It has been objected that the Judicial Authority is to be regarded as the sole expositor of the Constitution. On this objection, it might be observed— first —that there may be instances of usurped power” (the case of the Tariff is a striking illustration of the truth), “which the forms of the Constitution could never draw within the control of the Judicial Department— secondly —that if the decision of the Judiciary be raised above the authority of the sovereign parties to the Constitution, the decision of the other departments, not carried by the forms of the Constitution before the Judiciary, must be equally authoritative and final with the decision of that department. But the proper answer to the objection is, that the resolution of the General Assembly relates to those great and extraordinary cases in which the forms of the Constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers not delegated, may not only be usurped and exercised by the other departments, but that the Judicial Department also may exercise or sanction dangerous powers beyond the grant of the Constitution; and consequently, that the ultimate right of the parties to the Constitution to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another; by the Judiciary as

well as by the Executive or the Legislative. However true, therefore, it may be that the Judicial Department is, in all questions submitted to it by the forms of the Constitution, to decide in the last resort, this resort must necessarily be considered the last in relation to the authorities of the other departments of the Government; not in relation to the rights of the parties to the constitutional compact, from which the Judicial and all other departments hold their delegated trusts. On any other hypothesis the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with others in usurped powers might subvert for ever, and beyond the possible reach of any rightful remedy, the very Constitution which all were instituted to preserve.”

As a substitute for the rightful remedy, in the last resort, against the encroachments of the General Government on the reserved powers, resort has been had to a rigid construction of the Constitution. A system like ours, of divided powers, must necessarily give great importance to a proper system of construction; but it is perfectly clear that no rule of construction, however perfect, can, in fact, prescribe bounds to the operation of power. All such rules constitute, in fact, but an appeal from the minority to the justice and reason of the majority; and if such appeals were sufficient of themselves to restrain the avarice or ambition of those vested with power, then may a system of technical construction be sufficient to protect against the encroachment of power; but, on such supposition, reason and justice might alone be relied on, without the aid of any constitutional or artificial restraint whatever. Universal experience, in all ages and countries, however, teaches that power can only be restrained by power, and not by reason and justice; and that all restrictions on authority, unsustained by an equal antagonist power, must forever prove wholly inefficient in practice. Such, also, has been the decisive proof of our own short experience. From the beginning, a great and powerful minority gave every force of which it was susceptible to construction, as a means of restraining the majority of Congress to the exercise of its proper powers; and though that original minority, through the force of circumstances, has had the advantage of becoming a majority, and to possess, in consequence, the administration of the General Government during the greater portion of its existence, yet we this day witness, under these most favorable circumstances, such an extension of its powers as to leave to the States scarcely a right worth the possessing. In fact, the power of construction, on which its advocates relied to preserve the rights of the States, has been wielded, as it ever must be, if not checked, to destroy those rights. If the minority has a right to prescribe its rule of construction, a majority, on

its part, will exercise a similar right; but with this striking difference—that the right of the former will be a mere nullity against that of the latter. But that protection, which the minor interests must ever fail to find in any technical system of construction, may be found in the reserved rights of the States themselves, if they be properly called into action; and there only will they ever be found of sufficient efficacy. The right of protecting their powers results, necessarily, by the most simple and demonstrative arguments, from the very nature of the relation subsisting between the States and General Government.

If it be conceded, as it must be by every one who is the least conversant with our institutions, that the sovereign powers delegated are divided between the General and State Governments, and that the latter hold their portion by the same tenure as the former, it would seem impossible to deny to the States the right of deciding on the infractions of their powers, and the proper remedy to be applied for their correction. The right of judging, in such cases, is an essential attribute of sovereignty—of which the States cannot be divested without losing their sovereignty itself—and being reduced to a subordinate corporate condition. In fact, to divide power, and to give to one of the parties the exclusive right of judging of the portion allotted to each, is, in reality, not to divide it at all; and to reserve such exclusive right to the General Government (it matters not by what department to be exercised), is to convert it, in fact, into a great consolidated government, with unlimited powers, and to divest the States, in reality, of all their rights. It is impossible to understand the force of terms, and to deny so plain a conclusion. The opposite opinion can be embraced only on hasty and imperfect views of the relation existing between the States and the General Government. But the existence of the right of judging of their powers, so clearly established from the sovereignty of States, as clearly implies a veto or control, within its limits, on the action of the General Government, on contested points of authority; and this very control is the remedy which the Constitution has provided to prevent the encroachments of the General Government on the reserved rights of the States; and by which the distribution of power, between the General and State Governments, may be preserved forever inviolable, on the basis established by the Constitution. It is thus effectual protection is afforded to the minority, against the oppression of the majority. Nor does this important conclusion stand on the deduction of reason alone. It is sustained by the highest contemporary authority. Mr. Hamilton, in the number of the *Federalist* already cited, remarks that, “in a single republic, all the power surrendered by the people is submitted to the administration of a single government; and

usurpations are guarded against, by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other; at the same time that each will be controlled by itself.” He thus clearly affirms the control of the States over the General Government, which he traces to the division in the exercise of the sovereign powers under our political system; and by comparing this control to the veto, which the departments in most of our constitutions respectively exercise over the acts of each other, clearly indicates it as his opinion, that the control between the General and State Governments is of the same character. Mr. Madison is still more explicit. In his report, already alluded to, in speaking on this subject, he remarks: “The resolutions, having taken this view of the Federal compact, proceed to infer that, in cases 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 to arrest 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 rights 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 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, as parties to it, they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition.” To these, the no less explicit opinions of Mr. Jefferson may be added; who, in the Kentucky resolutions on the same subject, which have always been attributed to him,<sup>1</sup> 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, as in all other cases of compact between parties having no common

judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.”

To these authorities, which so explicitly affirm the right of the States, in their sovereign capacity, to decide, in the last resort, on the infraction of their rights and the remedy, there may be added the solemn decisions of the Legislatures of two leading States—Virginia and Kentucky—that the power in question rightfully belongs to the States—and the implied sanction which a majority of the States gave, in the important political revolution which shortly followed, and brought Mr. Jefferson into power. It is scarcely possible to add to the weight of authority by which this fundamental principle in our system is sustained.

The committee have thus arrived, by what they deem conclusive reasoning, and the highest authority, at the constitutional and appropriate remedy against the unconstitutional oppression under which this, in common with the other staple States, labors—and the menacing danger which now hangs over the liberty and happiness of our country—and this brings them to the inquiry—How is the remedy to be applied by the States? In this inquiry a question may be made—whether a State can interpose its sovereignty through the ordinary Legislature, but which the committee do not deem it necessary to investigate. It is sufficient that plausible reasons may be assigned against this mode of action, if there be one (and there is one) free from all objections. Whatever doubts may be raised as to the question—whether the respective Legislatures fully represent the sovereignty of the States for this high purpose, there can be none as to the fact that a Convention fully represents them for all purposes whatever. Its authority, therefore, must remove every objection as to form, and leave the question on the single point of the right of the States to interpose at all. When convened, it will belong to the Convention itself to determine, authoritatively, whether the acts of which we complain be unconstitutional; and, if so, whether they constitute a violation so deliberate, palpable, and dangerous, as to justify the interposition of the State to protect its rights. If this question be decided in the affirmative, the Convention will then determine in what manner they ought to be declared null and void within the limits of the State; which solemn declaration, based on her rights as a member of the Union, would be obligatory, not only on her own citizens, but on the General Government itself; and thus place the violated rights of the State under the shield of the Constitution.

The committee, having thus established the constitutional right of the States to interpose, in order to protect their reserved powers, it cannot be necessary to bestow much time or

attention, in order to meet possible objections—particularly as they must be raised, not against the soundness of the arguments, by which the position is sustained, and which they deem unanswerable—but against apprehended consequences, which, even if well founded, would be an objection, not so much to the conclusions of the committee, as to the Constitution itself. They are persuaded that, whatever objection may be suggested, it will be found, on investigation, to be destitute of solidity. Under these impressions, the committee propose to discuss such as they suppose may be urged, with all possible brevity.

It may be objected, then—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 powers of such high importance—that it would have been left to inference alone. In answer, the committee would ask, whether 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 if any express provision can be found to justify its exercise? Like the power in question, it also rests on mere inference—but an inference so clear, that no express provision could render it more certain. The simple fact, that the Judges must decide according to law, and that the Constitution is paramount to the acts of Congress, imposes a necessity on the court to declare the latter void whenever, in its opinion, they come in conflict, in any particular case, with the former. So, also, in the question under consideration. The right of the States—even supposing it to rest on inference, stands on clearer and 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 attempt at enumeration. It may, therefore, constitute a presumption against the former—that the Court has no right to declare a law unconstitutional, because the power is not enumerated among those belonging to the Judiciary—while the omission to enumerate the power of the States to interpose in order to protect their rights—being strictly in accord with the principles on which its framers formed the Constitution, raises not the slightest presumption against its existence. Like all other reserved rights, it is to be inferred from the simple fact that it is not delegated—as is clearly the case in this instance.

Again—it may be objected to the power, that it is inconsistent with the necessary authority of the General Government—and, in its consequences, must lead to feebleness, anarchy, and finally disunion.

It is impossible to propose any limitation on the authority of governments, without encountering, from the supporters of power, this very objection of feebleness and anarchy: 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 constituted the essence of the controversy between the Patricians and Plebeians in the Roman Republic—the Tories and Whigs in England—the Ultras and Liberals in France—and, finally, 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 limitations on 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 a paramount power in all institutions. All see and feel it; 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 efficiency. With us, however, who know from our own experience, and that of other free nations, the truth of these positions, and that power can only be rendered useful and secure by being properly checked—it is, indeed, strange that any intelligent citizen should consider limitations on the authority of government incompatible with its nature—or should fear danger from any check properly lodged, which may be necessary to guard against usurpation or abuse, and protect the great and distinct interests of the country. That there are such interests represented by the States, and that the States are the only competent powers to protect them, has been sufficiently established; and it only remains, in order to meet the objection, to prove that, for this purpose, the States may be safely vested with the right of interposition.

If the committee do not greatly mistake, the checking or veto power 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, of the people of a State—the solemnity of the mode—a Convention specially called for the purpose, and representing the State in her highest capacity—

the delay—the deliberation—are all calculated to allay excitement—to impress on the people a deep and solemn tone, highly favorable to calm investigation and decision. Under such circumstances, it would be impossible for a mere party to maintain itself in the State, unless the violation of its rights be palpable, deliberate, and dangerous. The attitude in which the State would be placed in relation to the other 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 all public men who aspire to office or distinction in the Union—and, above all, the local parties which must ever exist in the State, and which, in this case, must ever throw the powerful influence of the minority on the side of the General Government—constitute impediments to the exercise of this high protective right of the State, which must render it safe. So powerful, in fact, are these difficulties, that nothing but truth and a deep sense of oppression on the part of the people of the State, will ever sustain the exercise of the power—and if it should be attempted under other circumstances, it must speedily terminate in the expulsion of those in power, to be 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 really would be in practice, we must take into the estimate the effect which a recognition of the power would have on the tone of feeling, both of the General and State Governments. On the part of the former, it would necessarily produce, in the exercise of doubtful powers, the most marked moderation. In the discussion of measures involving such powers, the argument would be felt with decisive weight, that the State, also, had the right of judging of the constitutionality of the power; which would cause an abandonment of the measure—or, at least, lead to such modifications as would make it acceptable. On the part of the State, a feeling of conscious security, depending on herself—with the effect of moderation and kindness on the part of the General Government, would effectually put down jealousy, hatred, and animosity—and thus give scope to the natural attachment to our institutions, to expand and grow into the full maturity of patriotism. But withhold this protective power from the State, and the reverse of all these happy consequences must follow—which 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 any they could possibly draw. The continuance of this unhappy state must lead to the loss of all affection—when the Government must 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, there is no alternative but a veto to protect them, or the military to enforce the claims of the majority interests.

If these deductions be correct—as can scarcely be doubted—under that state of moderation and security, followed by mutual kindness, which must accompany the acknowledgment of the right, the necessity of exercising the veto would rarely exist, and the possibility of its abuse, on the part of the State, would be almost wholly removed. Its acknowledged existence would thus supersede its exercise. But suppose in this the committee should be mistaken—still there exists a sufficient security. As high as this right of interposition on the part of a State may be regarded in relation to the General Government, the constitutional compact provides a remedy against its abuse. There is a higher power—placed above all by the consent of all—the creating and preserving power of the system—to be exercised by three-fourths of the States—and which, under the character of the amending power, can modify the whole system at pleasure—and to the acts of which none can object. Admit, then, the power in question to belong to the States—and admit its liability to abuse—and what are the utmost consequences, but to create a presumption against the constitutionality of the power exercised by the General Government—which, if it be well founded, must compel them to abandon it—or, if not, to remove the difficulty by obtaining the contested power in the form of an amendment to the Constitution. If, on an appeal for this purpose, the decision be favorable to the General Government, a disputed power will be converted into an expressly granted power—but, on the other hand, if it be adverse, the refusal to grant will be tantamount to an inhibition of its exercise: and thus, in either case, the controversy will be determined. And ought not a sovereign State, as a party to the constitutional compact, and as the guardian of her citizens and her peculiar interests, to have the power in question? Without it, the amending power must become obsolete, and the Constitution, through the exercise of construction, in the end utterly subverted. Let us examine the case. The disease is, that a majority of the States, through the General Government, by construction, usurp powers not delegated, and by their exercise, increase their wealth and authority at the expense of the minority. How absurd, then, to expect the injured States to attempt a remedy by proposing an amendment to be ratified by three-fourths of the States, when, by supposition, there is a majority opposed to them? Nor would it be less absurd to expect the General Government to propose amendments, unless compelled to that course by the acts of a

State. The Government can have no inducement. It has a more summary mode—the assumption of power by construction. The consequence is clear—neither would resort to the amending power—the one, because it would be useless—and the other, because it could effect its purpose without it—and thus the highest power known to the Constitution—on the salutary influence of which, on the operations of our political institutions, so much was calculated, would become, in practice, obsolete, as stated; and in lieu of it, the will of the majority, under the agency of construction, would be substituted, with unlimited and supreme power. On the contrary, giving the right to a State to compel the General Government to abandon its pretensions to a constructive power, or to obtain a positive grant of it, by an amendment to the Constitution, would call efficiently into action, on all important disputed questions, this highest power of the system—to whose controlling authority no one can object, and under whose operation all controversies between the States and General Government would be adjusted, and the Constitution gradually acquire all the perfection of which it is susceptible. It is thus that the creating becomes the preserving power; and we may rest assured it is no less true in politics than in theology, that the power which creates can alone preserve—and that preservation is perpetual creation. Such will be the operation and effect of State interposition.

But it may be objected, that the exercise of the power would have the effect of placing the majority under the control of the minority. If the objection were well founded, it would be fatal. If the majority cannot be trusted, neither can the minority: and to transfer power from the former to the latter, would be but the repetition of the old error, in taking shelter under monarchy or aristocracy, against the more oppressive tyranny of an illy constructed republic. But it is not the consequence of proper checks to change places between the majority and minority. It leaves the power controlled still independent; 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, for its appropriate purpose, a most efficient check; but who that is acquainted with the nature of our Government ever supposed that it ever really vested (when confined to its proper object) a supreme power in the Court over Congress or the State Legislatures? Such was neither the intention, nor is it the effect.

The Constitution has provided another check, which will still further illustrate the nature of their operation. Among the various interests which exist under our complex system, that of large and small States is, perhaps, 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, formed one of 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 therein 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 legislating, 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 intrusted to the House, the Senate, or the President.

It is thus that our system has provided appropriate checks between the Departments—a veto to guard 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, also, in the division of the sovereign authority between the General and State Governments—by leaving to the States an efficient power to protect, by a veto, the minor against the major interests of the community, the framers of the Constitution acted in strict conformity with the principle which invariably prevails throughout the whole system, where separate interests exist. They were, in truth, no ordinary men. They were wise and practical statesmen, enlightened by history and their own enlarged experience, acquired in conducting 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 government, and government of adequate powers—that the selfish predominate over the social feelings; and that, without a government of 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, unchecked power, from this very predominance of the selfish over the social feelings, which rendered government necessary, would, of necessity, lead to corruption and oppression on the part of those vested with its exercise. Thus the necessity of government and of checks originates in the same great principle of our nature; and thus the very selfishness which impels those who have power to desire more,

will also, with equal force, impel those on whom power operates to resist aggression; and on the balance of these opposing tendencies, liberty and happiness must forever depend. This great principle guided in the formation of every part of our political system. There is not one 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 the representative to the constituent 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 has its appropriate agent, with a veto on each other, to protect its political consequence. May there be a conflict between the Constitution and the laws, whereby the rights of citizens may be affected? A remedy may be found in the power of the courts to declare the law unconstitutional in such cases as may be brought before them. Are there, among the several States, separate and peculiar geographical interests? To meet this, a particular organization is provided in the division of the sovereign powers between the State and General Governments. Is there danger, growing out of this division, that the State Legislatures may encroach on the powers of the General Government? The authority of the Supreme Court is adequate to check such encroachments. May the General Government, on the other hand, encroach on the rights reserved to the States respectively? To the States respectively—each in its sovereign capacity—is reserved the power, by its veto, or right of interposition, to arrest the encroachment. And, finally, may this power be abused by a State, so as to interfere improperly with the powers delegated to the General Government? There is provided a power, even over the Constitution itself, vested in three-fourths of the States, which Congress has the authority to invoke, and may terminate all controversies in reference to the subject, by granting or withholding the right in contest. Its authority is acknowledged by all; and to deny or resist it, would be, on the part of the State, a violation of the constitutional compact, and a dissolution of the political association, as far as it is concerned. This is the ultimate and highest power—and the basis on which the whole system rests.

That there exists a case which would justify the interposition of this State, in order to compel the General Government to abandon an unconstitutional power, or to appeal to this high authority to confer it by express grant, the committee do not in the least doubt; and they are equally clear in the necessity of 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 they propose to consider—viz.: When would it be proper to exercise this high power?

If the committee were to judge only by the magnitude of the interests at stake, they would, without hesitation, recommend the call of a Convention without delay. But they deeply feel the obligation of respect for the other members of the confederacy, and the necessity of great moderation and forbearance in the exercise even of the most unquestionable right, between parties who stand connected by the closest and most sacred political compact. With these sentiments, they deem it advisable, after presenting the views of the Legislature in this solemn manner (if the body concur with the committee), 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 the other staple States have suffered, and are suffering, may repeal the obnoxious and unconstitutional acts—and thereby prevent the necessity of interposing the veto of the State.

The committee are further induced, at this time, to recommend this course, under the hope that the great political revolution, which will displace from power, on the 4th of March next, those who have 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 rightful power of the State, 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 to belong 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 her duty, under the solemn sanction of an oath, to interpose, if no other remedy be applied. They interpret the oath to defend the Constitution, not simply as imposing an obligation to abstain from violation, but to prevent it on the part of others. In their opinion, he is as guilty of violating that sacred instrument, who permits an infraction, when it is in his power to prevent it, as he who

actually perpetrates the violation. The one may be bolder, and the other more timid—but the sense of duty must be weak in both.

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

## PROTEST

The Senate and House of Representatives of South Carolina, now met and sitting in General Assembly, through the Hon. William Smith and the Hon. Robert Y. Hayne, their Representatives in the Senate of the United States, do, in the name and on behalf of the good people of the said Commonwealth, solemnly protest against the system of protecting duties, lately adopted by the Federal Government, for the following reasons:

1st. Because the good people of this commonwealth believe, that the powers of Congress were delegated to it, in trust for the accomplishment of certain specified objects which limit and control them, and that every exercise of them, for any other purposes, is a violation of the Constitution as unwarrantable as the undisguised assumption of substantive, independent powers not granted, or expressly withheld.

2d. Because the power to lay duties on imports is, and in its very nature can be, only a means of effecting objects specified by the Constitution; since no free government, and least of all a government of enumerated powers, can, of right, impose any tax, any more than a penalty, which is not at once justified by public necessity and clearly within the scope and purview of the social compact; and since the right of confining appropriations of the public money to such legitimate and constitutional objects is as essential to the liberties of the people, as their unquestionable privilege to be taxed only by their own consent.

3d. Because they believe that the Tariff Law passed by Congress at its last session, and all other acts of which the principal object is the protection of manufactures, or any other branch of domestic industry, if they be considered as the exercise of a supposed power in Congress to tax the people at its own good will and pleasure, and to apply the money raised to objects not specified in the Constitution, is a violation of these fundamental principles, a breach of a well-defined trust, and a perversion of the high powers vested in the Federal Government for federal purposes only.

4th. Because such acts, considered in the light of a regulation of commerce, are equally liable to objection—since, although the power to regulate commerce, may like other powers be exercised so as to protect domestic manufactures, yet it is clearly distinguishable from a power to do so, *eo nomine*, both in the nature of the thing and in the common acceptance of the terms; and because the confounding of them would lead to the most extravagant results, since the encouragement of domestic industry implies an absolute control over all the interests, resources, and pursuits of a people, and is inconsistent with the idea of any other than a simple, consolidated government.

5th. Because, from the contemporaneous exposition of the Constitution in the numbers of the *Federalist* (which is cited only because the Supreme Court has recognized its authority), it is clear that the power to regulate commerce was considered by the Convention as only incidentally connected with the encouragement of agriculture and manufactures; and because the power of laying imposts and duties on imports, was not understood to justify, in any case, a prohibition of foreign commodities, except as a means of extending commerce, by coercing foreign nations to a fair reciprocity in their intercourse with us, or for some other *bona fide* commercial purpose.

6th. Because, whilst the power to protect manufactures is nowhere expressly granted to Congress, nor can be considered as necessary and proper to carry into effect any specified power, it seems to be expressly reserved to the States, by the tenth section of the first article of the Constitution.

7th. Because, even admitting Congress to have a constitutional right to protect manufactures by the imposition of duties or by regulations of commerce, designed principally for that purpose, yet a Tariff, of which the operation is grossly unequal and oppressive, is such an abuse of power, as is incompatible with the principles of a free government and the great ends of civil society—justice, and equality of rights and protection.

8th. Finally, because South Carolina, from her climate, situation, and peculiar institutions, is, and must ever continue to be, wholly dependent upon agriculture and commerce, not only for her prosperity, but for her very existence as a State—because the valuable products of her soil—the blessings by which Divine Providence seems to have designed to compensate for the great disadvantages under which she suffers in other respects—are among the very few that can be cultivated with any profit by slave labor—and if, by the loss of her foreign commerce, these products should be confined to an inadequate market, the fate of this fertile State would be poverty and utter desolation; her citizens, in despair, would emigrate to more fortunate regions, and the whole frame and constitution of her civil polity, be impaired and deranged, if not dissolved entirely.

Deeply impressed with these considerations, the representatives of the good people of this commonwealth, anxiously desiring to live in peace with their fellow-citizens and to do all that in them lies to preserve and perpetuate the union of the States and the liberties of which it is the surest pledge—but feeling it to be their bounden duty to expose and resist all encroachments upon the true spirit of the Constitution, lest an apparent acquiescence in the system of protecting duties should be drawn into precedent—do, in the name of the commonwealth of South Carolina, claim to enter upon the journals of the Senate, their protest against it as unconstitutional, oppressive, and unjust.

Which Exposition and Protest are respectfully submitted.

J. Gregg, Chairman.