

## JUDGE CLAYTON'S REVIEW

*Of the Report of the Committee of Ways and Means, to whom was referred so much of the Message of the President, as relates to the Bank of the United States, which report was, in the House of Representatives of the U. States, read and laid on the table, April 13, 1830.*

### No. I.

There is nothing so attractive as a masterly effort of the mind; and, whether exerted in the strength of argument, or the lustre of oratory, it alike claims our homage or commands our admiration. Error is often consecrated by genius, and, as in the natural, so in the moral world, the beams of intellectual light may be too intense for the purposes of vision, and that object is as effectually obscured while in a flood of dazzling light, as it would be in the gloom of midnight darkness. Without intending a fulsome compliment to the committee, such we conceive to be the nature of their Report. Upon it have been exhausted all the subtleties of ingenuity, allied to the no less winning grace of moderation; and, affecting to be animated by the ardent spirit of patriotism, it has kindled around it an *ignis fatuus* that diverts the mind from the naked truths it proposes to discuss, to the splendor of the drapery with which it is adorned. Looking away from our own strength and alone to the ability of the debate, we feel our courage shrinking from the contest and almost disposed to yield the question. This should not, nay, must not be.

Never, again, perhaps, will the States have in their power to put down doctrines, the exercise of which has spread wider and deeper into their veins than any which have lighted their counsels since the foundation of the government, every friend to the constitution, and every lover of State prosperity, groaning by the slavish bondage to which they have been subjected by the worst of despotisms, a mounted foundation, should exultingly rejoice in the prospect of a long-looked-for deliverance from such a senseless tyrant. And if now, by an artful and sordid policy, on the part of the Bank, aided by the crafty and menacing flourishes of its friends, they should be driven from the firm purpose of self redress, away with all future complaints, and let the States be prepared to receive and endure the deep degradation they so richly in merit. But if fired with a just sense of their wrongs and fixed in the firmer resolution to be free, they feel disposed to rise in their strength; "now's the day and now's the hour," to stake for liberty.— That portion of the Press, not bound in golden fetters, and which is to battle for the States, should wake up and sound the cry to arms! The Bank is already in the field, headed by a State paper of no puny arm, clothed in Legislative armour, bidding defiance to the States with the President's Message in their front. If there is firmness and virtue in any degree proportioned to the intelligence of the country, and the suffering experience of its people, the contest will be neither difficult nor doubtful.

It is proposed to review some of the principles and opinions advocated by the Report, and it is intended to evince no departure from that decorum due to so able an argument.

The Report presents the question under three aspects.

1st. The Constitutional power to charter the Bank.

2d. Its expediency, and

3d. The expediency of establishing "a National Bank" founded upon the credit of the government alone.

It is not designed to say any thing on this last head, because we believe it has nothing to do with the other question, and the discussion of it in connection with that subject, is only intended to profit the former, by the contrast, which an exhibition of its pretended weakness is calculated to produce. Let the United States Bank stand or fall upon its own strength.

Upon the 1st point, the Report commences with that argument, never failed to be used by all ill gotten power, the force of precedent, which as it fully supports the Alien and Sedition law as it does that of the Bank. The odious law I have mentioned, in the language of the report, had the "concurrence of all the departments of the government," and though it had not the sanction of "President Washington's" approval, it had that of another revolutionary patriot, who stood next to him in the confidence of the nation, not only in the great struggle that ended in our independence, but in the first office of the government after it had passed from the former. Nay more, "a this imposing array of authorities" there was added "the solemn decision of the Supreme Court," as the cases of the much injured Callender and Cooper will "distinctly" attest. And yet will any one contend that all this can or ought to change fundamental principles?—The committee do not believe it, and so they afterwards express themselves. Why then do they employ such an argument? Because, presuming much upon the weakness of the people, and more upon the weight of great names, they plot its influence upon their minds and it is for them to get rid of it, if they can. Their qualification of the argument is only intended to save their own reputation, and while it enables them to pass the centinels, the intelligent of the community, it most insidiously disquits the common strength of all contending powers. After first mentioning the precious fact that "most of the distinguished members of the Federal convention were either in the Executive or Legislative councils, and that President Washington had then recently presided over the deliberations of the convention," the report proceeds to state that "no persons can be more competent to give a just construction to the constitution, than those who had a principle given in framing it." Will the committee consent that this kind of reasoning shall be valid? We strike hands with them, at once, and are perfectly willing to have the question decided upon this sort of evidence, the authority of contemporaneous construction. Perhaps they are not aware of their predicament, and while they so safely rely upon the testimony of MEN, we have the opposing and more stubborn sanction of RECORDS. We have always believed, and to us it is matter of astonishment, that it has been so much neglected, that the best test of the intention of the convention is its JOURNAL, and why it has not been so used, as authority, can not be accounted for upon any of the usual principles of human conduct.— While the sayings and votes of great men, the letters and essays of that day, have been greedily seized as expressive of the motives of a great political body, the cautious, well considered and better expressed acts of that same body, as deliberately recorded in their daily register, have been totally rejected and ranked in the grade of weakest evidence explanatory of the views of the convention.— But we have now a right, we think, to array in against the uncertain testimony of human recollection, imbued, as it always is, with the agitating emotions of party, or the still stronger passion of interest. Before however we proceed to the employment of this, as we consider, most fearful weapon, we would wish to avail ourselves of all the force its use is calculated to impart, and if we can show that it has been wielded by "President Washington" himself, on a similar occasion, we have a right to expect, if it do not exact immediate deference, it will command, at least, no mean respect.

In the memorable debate of Congress, in which the House of Representatives claimed the right of deliberating on the expediency of carrying treaties into effect, where appropriations were to be made, they called upon the President to transmit the papers in relation to the British treaty to that house, but that distinguished officer promptly refused compliance, and among other reasons for his course replied "if other proofs than those necessary to ascertain the point under consideration, they may be found in the JOURNAL of the convention. It will there appear, that a proposition was made 'that no treaty should be binding on the United States which was not ratified by a law,' and that the proposition was explicitly rejected."

We will not stop to contend for the entire

reasonableness of the principle that a discharging as a constitutional danger

can never after be received among the plain and acknowledged stipulations of their agreement, as finally consummated. It is too plain for argument. Now how stands the facts in relation to the power contended for by the Report? On the 18th day of August, 1787, about a month before the adoption of the constitution the following additional powers were proposed to be vested in the Legislature of the United States.

To grant charters of incorporation.

To grant charters of incorporation, in cases where the public good may require them, and the authority of a single State, may be incompetent.

To establish a UNIVERSITY.

To incorporate, by proper premiums and provisions, the advancement of useful knowledge and discoveries.

To establish Seminaries for the promotion of literature and the arts and sciences.

To establish public institutions, rewards and immunities for the promotion of Agriculture, Commerce, Trades and Manufactures." vid. Journal Federal Constitution, 259 60. 61.

These amendments were all proposed at once, and that too after they had been previously and separately tried in the progress of the work. We quote them all, as well for our present purpose, as for another, in relation to assumed powers, which at some more convenient season may be discussed. Now where are any of these powers to be found in the Constitution? And if in the language of "President Washington" these propositions were "explicitly rejected," what entitles them to a place in the Constitution? If the British Constitution rests in the Omnipotence of Parliament, in what does it differ from ours if dependent upon the discretion of Congress, and if too they can act upon as many powers out of the Constitution as are to be found in it, especially after these very powers, by name, have been distinctly denied? Will any one point out the difference between omnipotence and discretion, and will they not lead precisely to the same result, to spread the Constitution, in process of time, through a thousand volumes of laws, exactly where the English Constitution is to be found? They once had their written instruments, their Magna Charter, their Bill of rights; but where are they now? Swallowed up in the discretion of Parliament. And our written Constitution is hastening with the same malady, to the same untimely grave.

But, to return, this is not all. On the 14th of September, only three days before the final adoption of the Constitution, when it was reported by the Committee of revision, with, as they supposed, its last finish, another day's struggle was made to force into it these long sought and warmly urged powers: "The report as corrected and amended yesterday being taken up and read—Question, to grant letters of incorporation for Canals, &c. A clause proposed to be added to the 8th Section of the first Article—Passed in the negative. Question: To establish a University. An additional clause proposed to the 8th Section of the first Article—Passed in the negative. (Jour 375. 6.)

What more is wanting, and who yet lingers over this question in doubt? If any, let him listen to the following proposition—to assist the President in conducting the public affairs, there shall be a Council of State of the following officers, (among others) the Secretary of domestic affairs. It shall be his duty to attend to matters of general police, the State of Agriculture and Manufactures, the opening of Roads and Navigations, and the FACILITATING COMMUNICATIONS THROUGH THE UNITED STATES; and he shall from time to time, recommend such measures and ESTABLISHMENTS as may tend to PROMOTE those objects." Jour. 265. 6.

What establishment to facilitate communications through the United States is here meant? Did it relate to Military matters? This had already been specially granted and would, of course, belong to the War Department. Did it refer to letters and papers? The power of establishing Post Offices and Post roads had also been provided and these would necessarily fall to the head of that Department. What other possible communications of a public nature, can occur to the mind of man but the transmission of the public funds through the United States, and as the Secretary of the Treasury was mentioned in this same clause, to whom this matter would appropriately belong, if a bank, or any other establishment, was necessary for that purpose, where is the name of every thing that is reasonable, could a better opportunity have happened, for its provisions, than when this proposition was under reflection? Had the convention never been of a Bank? Did none of those great men, composing that wonderful body, the very extract of the talents of the Union, foresee the advantages, now discovered to be so immensely important, that the government cannot do without it, of an establishment to "facilitate the communications of the public funds.— impossible!

But let us refer again to the powers first quoted, proposed as amendments to the Constitution, and it will be found that the power to grant charters of incorporation, was repeated therein in the same list, first generally and then specially, to wit, "to grant charters of incorporation" and then "to grant charters of incorporation, in cases where the public good may require them, and the authority of a single State may be incompetent." Now what is to be inferred from all this? We beg the serious attention of the reader to this part of the subject. In the first place can anything so totally exclude the power as the manner in which it was proposed and rejected? It would have settled the question to have refused the right generally, because the major always contains the minor, but here it shall not be exercised in any way, though the "public good" require it and the "authority" of a single State be incompetent. Could no one think of a Bank corporation, when the very subject of corporations was proposed and discussed and when the "public good" was not only considered, in connection with that subject, but actually mentioned? Does any one believe, and the question is put to honest men, for an honest answer is not expected from any other, that the Bank of England, that political monster that has been surfeiting upon the bowels of its own government for ages, never once crossed the minds of our great men of the convention? Does any one believe the South Sea Company, that other vulture, which has been so long hanging upon the remaining vitals of its country, and now nearly gorged to suffocation, entirely escaped their recollection? No; if the truth were known, these cormorants, with hearts as cold and with-

ing as death, haunted them like spectres and constantly beckoned them away from the dangerous subject of CORPORATIONS.