ments, muſt reſide in the government of the United States.

The reſpect which is felt for every portion of the conſtituted authorities, forbids ſome of the reflections which this ſingular paragraph might excite; and they are the more readily ſuppreſſed, as it may be preſumed, with juſtice perhaps, as well as candour, that inadvertence may have had its ſhare in the error. It would be an unjuſtifiable delicacy nevertheleſs, to paſs by ſo portentous a claim, proceeding from ſo high an authority, without a monitory notice of the fatal tendencies with which it would be pregnant.

II. It is next affirmed of the alien act, that it unites legiſlative, judicial and executive powers in the hands of the preſident.

However difficult it may be to mark, in every caſe, with clearneſs and certainty, the line which divides legiſlative power, from the other deparments of power; all will agree, that the powers referred to theſe departments may be ſo general and undefined, as to be of a legiſlative, not of an executive or judicial nature; and may for that reaſon be unconſtitutional. *Details, to a certain degree, are eſſential to the nature and character of a law*; and on criminal ſubjects, it is proper that details ſhould leave as little as poſſible to the diſcretion of thoſe who are to apply and to execute the law. If nothing more were required, in exerciſing a legiſlative truſt, than a general conveyance of authority, without laying down any preciſe rules, by which the authority conveyed ſhould be carried into effect; it would follow, that the whole power of legiſlation might be transferred by the legiſlature from itſelf, and proclamations might become ſubſtitutes for laws. A delegation of power in this latitude, would not be denied to be a union of the different powers.

To determine then, whether the appropriate powers of the diſtinct departments are united by the act authoriſing the executive to remove aliens, it muſt be inquired, whether it contains ſuch details, definitions and rules, as appertain to the true character of a law; eſpecially a law by which perſonal liberty is invaded, property deprived of its value to the owner, and life itſelf indirectly expoſed to danger.

The alien act declares, "that it ſhall be lawful for the preſident to order all ſuch aliens as he ſhall judge *dangerous* to the peace and ſafety of the United States, or ſhall have reaſonable ground to *ſuſpect*, are concerned in any treaſonable, *or ſecret machinations*, againſt the government thereof, to depart, &c."

Could a power be well given in terms leſs definite, leſs particular, and leſs preciſe? To be *dangerous to the public ſafety*; to be *ſuſpected of ſecret machinations* againſt the government: theſe can never be miſtaken for legal rules or certain definitions. They leave every thing to the preſident. His will is the law.

But it is not a legiſlative power only that is given to the preſident. He is to ſtand in the place of the judiciary alſo. His ſuſpicion is the only evidence which is to convict: his order the only judgment which is to be executed.

Thus it is the preſident whoſe will is to deſignate the offenſive conduct; it is his will that is to aſcertain the individuals on whom it is charged; and it is his will, that is to cauſe the ſentence to be executed. It is rightly affirmed therefore, that the act unites legiſlative and judicial powers to thoſe of the executive.

III. It is affirmed that this union of powers ſubverts the general principles of free government.

It has become an axiom in the ſcience of government, that a ſeparation of the legiſlative, executive and judicial departments, is neceſſary to the preſervation of public liberty. No where has this axiom been better underſtood in theory, or more carefully purſued in practice, than in the United States.

IV. It is affirmed that ſuch a union of powers ſubverts the particular organization and poſitive proviſions of the federal conſtitution.

According to the particular organization of the conſtitution, its legiſlative powers are veſted in the congreſs; its executive power in the preſident, and its judical powers, in the ſupreme and inferior tribunals. The union of any two of theſe powers, and ſtill more of all three, in any one of theſe departments, as has been ſhewn to be done by the alien act, muſt conſequently ſubvert the conſtitutional organization of them.

That poſitive proviſions in the conſtitution, ſecuring to individuals the benefits of fair trial, are alſo violated by the union of powers in the alien act, neceſſarily reſults from the two facts, that the act relates to alien friends, and that alien friends, being under the municipal law only, are entitled to its protection.

Of the ſedition act it is affirmed 1. That it exerciſes in like manner a power not delegated by the conſtitution. 2. That the power, on the contrary, is expreſsly and poſitively forbidden by one of the amendments to the conſtitution. 3. That this is a power, which more than any other ought to produce univerſal alarm; becauſe it is levelled againſt that right of freely examining public characters and meaſures, and of free communication thereon; which has ever been juſtly deemed the only effectual guardian of every other right.

I. That it exerciſes a power not delegated to the conſtitution.

Here, again it will be proper to recollect, that the federal government, being compoſed of powers ſpecifically granted, with a reſervation of all other powers to the ſtates or to the people, the poſitive authority under which the ſedition act could be paſſed, muſt be produced by thoſe who aſſert its conſtitutionality. *In what part of the conſtitution then is this authority to be found?*

Several attempts have been made to anſwer this queſtion, which will be examined in their order. We will begin with one, which has filled us with equal aſtoniſhment and apprehenſion; and which, we cannot but perſuade ourſelves muſt have the ſame effect on all, who will conſider it with coolneſs and impartiality, and with a reverence for our conſtitution, in the true character in which it iſſued from the ſovereign authority of the people. We refer to the doctrine lately advanced as a ſanction to the ſedition act: "that the common or unwritten law," a law of vaſt extent and complexity,—and embracing almoſt every poſſible ſubject of legiſlation, both civil and criminal, makes a part of the law of theſe ſtates; in their united and national capacity.

The novelty and the extravagance of this pretenſion, ſhould conſign it to ſilence with other arguments, which an extraordinary zeal for the act has drawn into the diſcuſſion. But the auſpices, under which this innovation preſents itſelf, makes it neceſſary to beſtow on it an attention, which other conſiderations might have forbidden.

In executing the taſk, it may be of uſe, to look back to the colonial ſtate of this country, prior to the revolution; to trace the effect of the revolution which converted the colonies into independent ſtates; to inquire into the import of the articles of confederation, the firſt inſtrument by which the union of the ſtates was regularly eſtabliſhed; and finally to conſult the conſtitution of 1788, which is the oracle that muſt decide the important queſtion.

In the ſtate prior to the revolution, it is certain that the common law, under different limitations, made a part of the colonial codes. But whether it be underſtood that the original coloniſts brought the law with them, or made it their law by adoption; it is equally certain that it was the ſeparate law of each colony within its reſpective limits, and was unknown to them, as a law pervading and operating through the whole, as one ſociety.

It could not poſſibly be otherwiſe. The common law was not the ſame in any two of the colonies; in ſome, the modifications were materially and extenſively different. There was no common legiſlature, by which a common will could be expreſſed in the form of a law; nor any common magiſtracy by which ſuch a law could be carried into practice. The will of each colony alone and ſeparately, had its organs for theſe purpoſes.

This ſtage of our political hiſtory furniſhes no foothold for the patrons of this new doctrine.

Did then, the principle or operation of the great event which made the colonies independent ſtates, imply or introduce the common law, as the law of the union?

The fundamental principle of the revolution was, that the colonies were co-ordinate members with each other, and with Great-Britain; of an empire, united by a common executive ſovereign, but not united by any common legiſlative ſovereign. The legiſlative power was maintained to be as complete in each American parliament, as in the Britiſh parliament. And the royal prerogative was in force in each colony, by virtue of its acknowledging the king for its executive magiſtrate, as it was in Great-Britain, by virtue of a like acknowledgment there. A denial of theſe principles by Great-Britain, and the aſſertion of them by America, produced the revolution.

There was a time indeed, when an exception to the legiſlative ſeparation of the ſeveral component and coequal parts of the empire, obtained a degree of acquieſcence. The Britiſh parliament was allowed to regulate the trade with foreign nations, and between the different parts of the empire. This was however mere practice without right, and contrary to the true theory of the conſtitution. The conveniency of ſome regulations in both thoſe caſes, was apparent; and as there was no legiſlature with power over the whole, nor any conſtitutional pre-eminence among the legiſlatures of the ſeveral parts; it was natural for the legiſlature of that particular part, which was the eldeſt and the largeſt, to aſſume this function, and for the others to acquieſce in it. This tacit arrangement was the leſs criticiſed, as the regulations eſtabliſhed by the Britiſh parliament, operated in favour of that part of the empire, which ſeemed to bear the principal ſhare of the public burdens, and were regarded as an indemnification of its advances for the other parts. As long as this regulating power was confined to the two objects of conveniency and equity, it was not complained of, nor much inquired into. But no ſooner was it perverted to the ſelfiſh views of the party aſſuming it, than the injured parties began to feel and to reflect; and the moment the claim to a direct and indefinite power was ingrafted on the precedent of the regulating power, the whole charm was diſſolved, and every eye opened to the uſurpation. The aſſertion by Great-Britain of a power to make laws for the other members of the empire *in all caſes whatever*, ended in the diſcovery, that ſhe had a right to make laws for them *in no caſes whatſoever*.

Such being the ground of our revolution, no ſupport nor colour can be drawn from it, for the doctrine that the common law is binding on theſe ſtates as one ſociety. *The doctrine*, on the contrary, is evidently repugnant to the fundamental principle of the revolution.

The articles of confederation, are the next ſource of information on this ſubject.

In the interval between the commencement of the revolution, and the final ratification of theſe articles, the nature and extent of the union was determined by the circumſtances of the criſis, rather than by any accurate delineation of the general authority. It will not be alleged that the "common law," could have had *any legitimate birth as a law of the United States*, during that ſtate of things. If it came as ſuch, into exiſtence at all, the charter of confederation muſt have been its parent.

Here again, however, its pretenſions are abſolutely deſtitute of foundation. This inſtrument does not contain a ſentence or ſyllable, that can be tortured into a countenance of the idea that the parties to it were, with reſpect to the objects of the common law, to form one community. No ſuch law is named or implied, or alluded to, as being in force, or as brought into force, by that compact.'

After urging many other irreſiſtible arguments on this ſubject, he proceeds to obſerve——

'In aid of theſe objections, the difficulties and confuſion inſeparable from a conſtructive introduction of the common law, would afford powerful reaſons againſt it.

Is it to be the common law with, or without the Britiſh ſtatutes?

If without the ſtatutory amendments, the vices of the code would be inſupportable!

If with theſe amendments, what period is to be fixt for limitting the Britiſh authority over our laws?

Is it to be the date of the eldeſt or the youngeſt of the colonies?

Or are the dates to be thrown together, and a medium deduced?

Or is our independence to be taken for the date?

Is, again, regard to be had to the various changes in the common law made by the local codes of America?

Is regard to be had to ſuch changes, ſubſequent as well as prior, to the eſtabliſhment of the conſtitution?

Is regard to be had to future, as well as paſt changes?

Is the law to be different in every ſtate, as differently modified by its code; or are the modifications of any particular ſtate to be applied to all?

And on the latter ſuppoſition, which among the ſtate codes could form the ſtandard?

Queſtions of this ſort might be multiplied with as much eaſe, as there would be difficulty in anſwering them.

The conſequences flowing from the propoſed conſtruction, furniſh other objections equally concluſive, unleſs the text were peremptory in its meaning, and conſiſtent with other parts of the inſtrument.

Theſe conſequences may be in relation; to the legiſlative authority of the United States; to the executive authority; and to the governments of the ſeveral ſtates.

If it be underſtood that the common law is eſtabliſhed by the conſtitution, it follows that no part of the law can be altered by the legiſlature; ſuch of the ſtatutes already paſſed as may be repugnant thereto would be nullified, particularly the "ſedition act" itſelf, which boaſts of being a melioration of the common law; and the whole code, with all its incongruities, barbariſms and bloody maxims, would be inviolably ſaddled on the good people of the United States.'

G. DUVALL.

[*To be continued.*]

MILAN, April 7.

General Melas has advanced into the Genoeſe with 60,000 men. The whole force of the Auſtrians in Italy is 117,000 men. It is expected that 15,000 French, who have thrown themſelves into Genoa, are cut off by general Melas from any communication with France, will ſoon be obliged to ſurrender priſoners. The Auſtrian troops have taken with them bread for ſix days.

PAVIA, April 9 *(twelve at night)*

The brave Auſtrians on the 7th carried by ſtorm Monte Notte, Monte Negro and Monte Ajuto; and afterwards entered Savona, where they made 300 French priſoners General Maſſena has retreated precipitately to Genoa, where he is ſhut in by the Auſtrians. His army has partly thrown itſelf into Genoa, and has partly retreated by Finale and Nice. General Hohenzollern has taken poſſeſſion of the Bochetta, and general Ott is under the walls of Genoa. The peaſants of Fontana-Buona have joined the latter, and are commanded by a Genoeſe general who has deſerted to them.

SAVONA, April 9.

For theſe three days we have been engaged with the French, and with great ſucceſs. we have made 1,500 priſoners, and taken 16 pieces of cannon and 8 ſtandards. To-day our head quarters are here. Vado and St. Steffano are likewiſe in our poſſeſſion. The battle ſtill continues at ſeveral points. Maſſena is ſhut up in Genoa, and muſt either fight or ſurrender.

HAMBURG, April 25.

Extract of a letter.

"At length the campaign in Italy has been opened by general Melas. He has penetrated with his army into the eaſtern territories of Genoa, and made himſelf maſter of Savona, Vado and other places, and has cut off the French army. One diviſion of it retreated to the county of Nice, the other, with Maſſena, towards Genoa. This general is now wholly ſeparated from France. He has with him about fifteen thouſand men, with whom he muſt either ſurrender or fight. The event cannot long remain doubtful, for general Melas is in full march againſt Genoa, where famine prevails. It is already reported that the French have evacuated the Bochetta; but this news requires confirmation.

"I encloſe you Mr. Wickham's official letter from Louiſburg, on this ſubject."

"*Louiſburg, April* 18.

"Intelligence has been received at head quarters, that the campaign in Italy opened on the 7th inſtant, in the courſe of which day, the enemy's intrenchments on the Appenine Mountains, covering the river of Genoa at Ajuto, Monte Notte, Monte Regino and