

tion of all limited written constitutions. It would be better to give to the constituted authorities general powers in *all cases whatever*, and trust to the rebellion or insurrection of the people, for a remedy in case of violent abuse. If these doctrines are, as we believe, indisputable, congress derives all its power to call upon the militia in *any case*, wholly from the constitution, and that constitution having given them that power only in three specified cases, they are restrained as much as they would have been by prohibitory words, from ordering them out in *any other cases*.

*Secondly*—I would ask, in what cases did the people authorize congress to call out the militia?

The whole power given upon this subject, is contained in the following short sentence, clear, strong, and well defined:

Congress shall have power "to provide for calling forth the militia, to execute the laws of the union, suppress insurrections, and *repel invasions*."

They can call them out in *no other cases* whatsoever; and if they should exercise the power in any other cases, it would be like any other illegal assumption of power, void—and the remedy would be the same as if they were to *separate* a state without its consent—pass a *bill of attainder* against the citizens of a particular state, or exercise any other powers which are expressly *prohibited to them by the constitution*.

I take it, throughout this argument, for granted, that there are no men base enough to contend, that congress may, from the necessity of the case, the common plea of tyrants, exercise a power *expressly prohibited* to them; yet, from some recent instances, I should be led to fear, that there may be some sycophants, who, even in such a case, would preach up the duty of *obedience to our own government*, and *volunteer* their arms in defence of its *avowed violation of our rights*.

*Thirdly*—Can congress order out the militia in any other than the *three cases* pointed out in the constitution?

Most assuredly not, according to the argument under the *first question*.—The argument *ex absurdo* can hardly ever be more strong.—Of what use was it to authorize congress to order out the militia in *three* specified cases, if they would have the power to order them out in all cases, or at pleasure without that provision? We repeat, that a *specific* grant by *one having authority*, to one who before had *none*, is tantamount to a *limitation* to the exact extent of the grant.

But we come to the most important question,

*Fourthly*. In whom, from the very nature of the limitation, reposes the ultimate right to judge whether either of the three cases provided for by the constitution does exist?

We answer, generally, in the constituent, not the delegate; in the master, not the servant—*ultimately* in the people, *principally* from the necessity of the case in the commanders in chief of the militia of the several states.

The very idea of *limitation* excludes the possibility that the *delegate* should be the judge—if he were, his powers would be limit-