

NO. XIV.

THE OBLIGATION OF THE CITIZEN TO DO MILITARY DUTY IN ALL WARS, AT THE PLEASURE OF THE PRESIDENT, OR THE CLAIM TO CONVERT THE MILITIA INTO A STANDING ARMY, CONSIDERED.

Firstly—We inquire, by what authority do the President or congress assume the power to order out the militia in *any case*?

On the revolt of the American colonies from Great-Britain, the absolute sovereignty was transferred from the king and parliament to the *people*. Neither the state governments nor the national government possess any rights which have not been *expressly delegated* to them. As against the *federal* government, this proposition (obvious enough in itself) is made indisputable by the XIIth article of the first amendments to the constitution, in which "all powers *not expressly* given, are declared to be reserved to the states respectively, or to the people."

The federal government cannot claim the power of *ordering out the militia* as successors to the old confederation, for the old confederation possessed no such powers.—*They* could do nothing with the militia, nor could they even raise troops, without the intervention of the several states. We went through one war successfully, with the whole power of the militia resting in the states.

The federal government cannot claim this power, as being necessarily *incident* to any other power given to them, such as the power and duty of providing for the *common defence*, because, first, there are other and ample means given to them for this purpose, such as the powers of laying taxes, and of raising and maintaining armies and navies ;—it cannot be called, therefore, a necessary incident.

But, secondly, no rule of fair construction will permit a *limited sovereign* to claim, by way of *incidental and implied powers*, the extension of any powers or authority which are the subject of *express provision* in the instrument defining the authority to be delegated. A grant of a *limited power* over a particular subject, *excludes* any further constructive or incidental power over the same subject, as effectually as any words of negation or prohibition could possibly do. Thus, for example, if the constitution had provided, that, "Congress shall have power to raise and maintain a standing army of ten thousand men, or to levy taxes to the amount of two millions of dollars," they would be as much restrained from raising *more*, as if there had been an *express negative*, or prohibitory words in the constitution. They could not have raised more men or money, without the *assent of the several states*, let the emergency have been ever so great, or even if it had been *absolutely necessary* to carry into effect their undoubted powers. They must apply to the states or people for further authority or aid. To suppose the contrary of these propositions, would be to maintain that the delegate may be above his constituent—the creature above his creator. It would go to the destruc-