

the question of the constitutionality of the law may be raised by the prosecuted party. But opposition might not stop with individuals. States might contest the right of the federal government thus to possess and to manage all the great roads and canals within their limits; and then a collision would be brought on between two governments, each claiming to be sovereign and independent in its actions over the subject in dispute.

Thus did Mr. Monroe state the question in its practical bearings, traced to their legitimate results, and the various assumptions of power, and difficulties with States or individuals which they involved; and the bare statement which he made—the bare presentation of the practical working of the system, constituted a complete argument against it, as an invasion of State rights, and therefore unconstitutional, and, he might have added, as complex and unmanageable by the federal government, and therefore inexpedient. But, after stating the question, he examined it under every head of constitutional derivation under which its advocates claimed the power, and found it to be granted by no one of them, and virtually prohibited by some of them. These were, *first*, the right to establish post-offices and post-roads; *second*, to declare war; *third*, to regulate commerce among the States; *fourth*, the power to pay the debts and provide for the common defence and general welfare of the United States; *fifth*, to make all laws necessary and proper to carry into effect the granted (enumerated) powers; *sixth*, from the power to dispose of, and make all needful rules and regulations respecting the territory or other property of the United States. Upon this long enumeration of these claimed sources of power, Mr. Monroe well remarked that their very multiplicity was an argument against them, and that each one was repudiated by some of the advocates for each of the others: that these advocates could not agree among themselves upon any one single source of the power; and that it was sought for from place to place, with an assiduity which proclaimed its non-existence any where. Still he examined each head of derivation in its order, and effectually disposed of each in its turn.

1. The post-office and post-road grant. The word "establish" was the ruling term: roads and offices were the subjects on which it was to act. And how? Ask any number of enlight-

ened citizens, who had no connection with public affairs, and whose minds were unprejudiced, what was the meaning of the word "establish," and the extent of the grant it controls, and there would not be a difference of opinion among them. They would answer that it was a power given to Congress to legalize existing roads as post routes, and existing places as post-offices—to fix on the towns, court-houses, and other places throughout the Union, at which there should be post-offices; the routes by which the mails should be carried; to fix the postages to be paid; and to protect the post-offices and mails from robbery, by punishing those who commit the offence. The idea of a right to lay off roads to take the soil from the proprietor against his will; to establish turnpikes and tolls; to establish a criminal code for the punishment of injuries to the road; to do what the protection and repair of a road requires: these are things which would never enter into his head. The use of the existing road would be all that would be thought of; the jurisdiction and soil remaining in the State, or in those authorized by its legislature to change the road at pleasure.

2. The war power. Mr. Monroe shows the object of this grant of power to the federal government—the terms of the grant itself—its incidents as enumerated in the constitution—the exclusion of constructive incidents—and the pervading interference with the soil and jurisdiction of the States which the assumption of the internal improvement power by Congress would carry along with it. He recites the grant of the power to make war, as given to Congress, and prohibited to the States, and enumerates the incidents granted along with it, and necessary to carrying on war: which are, to raise money by taxes, duties, excises, and by loans; to raise and support armies and a navy; to provide for calling out, arming, disciplining, and governing the militia, when in the service of the United States; establishing fortifications, and to exercise exclusive jurisdiction over the places granted by the State legislatures for the sites of forts, magazines, arsenals, dock-yards, and other needful buildings. And having shown this enumeration of incidents, he very naturally concludes that it is an exclusion of constructive incidents, and especially of one so great in itself, and so much interfering with the soil and jurisdiction of the States, as the federal exercise of the road-making power would