constitution or laws, but in derogation of both." It is therefore due to the occasion that a condensed summary of the views of the Executive in respect to them, should be here exhibited.

By the Constitution, "the Executive power is invested in a President of the United States." Among the duties imposed upon him, and which he is sworn to perform, is that of taking care that the laws be faithfully executed." Being thus made responsible for the entire action of the Executive Department, it was but reasonable that the power of appointing, overseeing and controlling those who execute the laws—a power in its nature executive—should remain in his hands. It is, therefore, not only his right, but the constitution makes it his duty, to "nominate, and by and with the advice and consent of the Senate appoint," all "officers of the United States whose appointments are not in the constitution otherwise provided for," with a proviso that the appointment of inferior officers may be vested in the President alone, in the Courts of Justice, or in the Heads of Departments.

The Executive power vested in the Senate, is neither that of "nominating" nor "appointing." It is merely a check upon the Executive power of appointment. If individuals are proposed for appointment by the President, by them deemed incompetent or unworthy, they may withhold their consent, and the appointment cannot be made. They check the action of the Executive, but cannot, in relation to those very subjects, act themselves, nor direct him. Selections are still made by the president, and the negative given to the Senate, without diminishing his responsibility, furnishes an additional guarantee to the country that the subordinate executive, as well as the judicial offices, shall be filled with worthy and competent men.

The whole Executive power being vested in the President, who is responsible for its exercise, it is a necessary consequence, that he should have a right to employ agents of his own choice to aid him in the performance of his duties, and to discharge them when he is no longer willing to be responsible for their acts. In strict accordance with this principle, the power of removal, which, like that of appointment, is an original Executive power, is left unchecked by the constitution in relation to all executive officers, for whose conduct the President is responsible, while it is taken from him in relation to judicial officers, for whose acts he is not responsible. In the Government from which many of the fundamental principles of our system are derived, the Head of the Executive Department originally had power to appoint and remove at will all officers, Executive and Judicial. It was to take the Judges out of this general power of removal, and thus make them independent of the Executive, that the tenure of their offices was changed to good behaviour. Nor is it conceivable, why they are placed, in our constitution, upon a tenure different from that of all other officers appointed by the Executive, unless it be for the same purpose.

But if there were any just ground for doubt on the face of the constitution, whether all executive officers are removeable at the will of the President, it is obviated by the contemporaneous construction of the instrument, and the uniform practice under it.

The power of removal was a topic of solemn debate in the Congress of 1789, while organizing the administrative departments of the Government, and it was finally decided, that the President derived from the constitution, the power of removal, so far as it regards that department for whose acts he is responsible. Although the debate covered the whole ground, embracing the Treasury as well as all the other Executive Departments, it arose on a motion to strike out the bill to establish a Department of Foreign Affairs, since called the Department of State, a clause declaring the Secretary "to be removable from office by the President of the United States." After that motion had been decided in the negative it was perceived that these words did not convey the sense of the House of Representatives, in relation to the true source of the power of removal.—With the avowed object of preventing any future inference, that this power was exercised by the President in virtue of a grant from Congress, when in fact that body considered it as derived from the constitution, the words which had been the subject of debate were struck out, and in lieu thereof a clause was inserted in a provision concerning the Chief Clerk of the Department, which declared that "whenever the said principal officer shall be *removed* from office by the President of the United States, or in any other case of vacancy," the Chief Clerk should, during such vacancy, have charge of the papers of the office. This change having been made for the express purpose of declaring the sense of Congress, that the president derived the power of removal from the constitution, the act as it passed has always been considered as a full expression of the sense of the Legislature on this important part of the American constitution.

Here then we have the concurrent authority of President Washington, of the Senate, and the House of Representatives, numbers of whom had taken an active part in the convention which framed the constitution, and in the State conventions, which adopted it, that the President derived an unqualified power of removal from that instrument itself, which is 'beyond the reach of Legislative authority.' Upon this principle the Government has now been steadily administered for about forty-five years, during which there have been numerous removals made by the President or by his direction, embracing every grade of Executive officers, from the Heads of Departments to the messengers of Bureaus.

The Treasury Department, in the discussions of 1789, was considered on the same footing as the other Executive Departments, and in the act establishing it, the precise words were incorporated indicative of the sense of Congress, that the President derives his power to remove the Secretary from the constitution, which appear in the act establishing the Department of Foreign Affairs. An assistant Secretary of the Treasury was created, and it was provided that he should take charge of the books and papers of the Department "whenever the Secretary shall be *removed* from office by the President of the United States." The Secretary of the Treasury being appointed by the President, and being considered as constitutionally removable by him, it appears never to have occurred to any one in the Congress of 1789, or since, until very recently, that he was other than an executive officer, the mere instrument of the Chief Magistrate in the execution of the laws, subject, like all other Heads of Departments, to his supervision and control. No such idea as an officer of the Congress can be found in the constitution, or appears to have suggested itself to those who organised the Government. There are officers of each House, the appointment of which is authorised by the constitution; but all officers referred to in that instrument, as coming within the appointing power of the President, whether established thereby or created by law, are "Officers of the United States." No joint power of appointment is given to the two Houses of Congress, nor is there any accountability to them as one body, but as soon as any office is created by law, of whatever name or character, the appointment of the person or persons to fill it, devolves by the constitution upon the President, with the advice and consent of the Senate, unless it be an inferior office, and the appointment be vested by law itself "in the President alone, in the courts of law, or in the Heads of Departments."

But at the time of the organization of the Treasury Department, an instance occurred which distinctly evinces the unanimous concurrence of the first Congress in the principle that the Treasury Department is wholly Executive in its character and responsibilities. A motion was made to strike out the provisions of the bill making it the duty of the Secretary "to digest and report plans for the improvement and management of the revenue, and for the support of public credit," on the ground that it would give the Executive Department of the Government too much influence and power in Congress. The motion was not opposed on the ground that the Secretary was the officer of Congress and responsible to that body, which would have been conclusive if admitted, but on other grounds which conceded his Executive character throughout. The whole discussion evinces an unanimous concurrence in the principle, that the Secretary of the Treasury is wholly an Executive officer, and the struggle of the minority was to restrict his power as such.

From that time down to the present, the Secretary of the Treasury, the Treasurer, Register, Comptrollers, Auditors, and Clerks, who fill the offices of that Department, have in the practice of the Government, been considered and treated as on the same footing with corresponding grades of officers in all the other Executive Departments.

The custody of the public property, under such regulations as may be prescribed by legislative authority, has always been considered an appropriate function of the Executive Department in this and all other Governments. In accordance with this principle, every species of property belonging to the United States, (excepting that which is in the use of the several co-ordinate departments of the Government, as means to aid them in performing their appropriate functions,) is in charge of officers appointed by the President, whether it be lands, or buildings or merchandise, or provisions, or clothing or arms and munitions of war. The superintendents and keepers of the whole are appointed by the President, responsible to him, and removable at his will.

Public money is but a species of public property. It cannot be raised by taxation or customs, nor brought into the treasury in any other way, except by law: but whenever or howsoever obtained, its custody always has been, and always must be, unless the constitution be changed, intrusted to the Executive Department. No officer can be created by Congress for the purpose of taking charge of it, whose appointment would not, by the constitution, at once devolve on the President, and who would not be responsible to him for the faithful performance of his duties. The legislative power may undoubtedly bind him and the President, by any laws they may think proper to enact; they may prescribe in what place particular portions of the public money shall be kept, and for what reason it shall be removed, and direct that supplies for the army or navy shall be kept in particular stores; and it will be the duty of the President to see that the law is faithfully executed—yet will the custody remain in the Executive Department of the Government. Were the Congress to assume, with or without a legislative act, the power of appointing officers independently of the President, to take charge and custody of the public property contained in the military and naval arsenals, magazines and storehouses, it is believed that such an act would be regarded by all as a palpable usurpation of Executive power, subversive of the form as well as the fundamental principles of our Government. But where is the difference in principle whether the public property be in the form of arms, munitions of war, and supplies, or in gold and silver, or bank notes? None can be perceived—none is believed to exist. Congress cannot, therefore, take out of the hands of the Executive Department, the custody of the public property or money, without an assumption of Executive power, and a subversion of the first principles of the constitution.

The Congress of the United States have never passed an act imperatively directing that the public moneys shall be kept in any particular place or places. From the origin of the Government to the year 1816, the statute book was wholly silent on the subject. In 1789 a Treasurer was created, subordinate to the Secretary of the Treasury, and through him to the President. He was required to give bond, safely to keep, and faithfully to disburse the public moneys, without any direction as to the manner or places in which they should be kept. By reference to the practice of the Government, it is found, that from its organization, the Secretary of the Treasury, acting under the supervision of the President, designated the places in which the public moneys should be kept, and specially directed all transfers from place to place. This practice was continued with the silent acquiescence of Congress, from 1789, down to 1816; and although many banks were selected and discharged, and although a portion of the moneys were first placed in the State Banks, and then in the former Bank of the United States, and upon the dissolution of that, were again transferred to the State Banks, no legislation was thought necessary by Congress, and all the operations were originated and perfected by executive authority. The Secretary of the Treasury, responsible to the President, and with his approbation, made contracts and arrangements in relation to the whole subject matter, which was thus entirely committed to the direction of the President, under his responsibilities to the American People, and to those who were authorised to impeach and punish him for any breach of this important trust.

The act of 1816, establishing the Bank of the United States, directed the deposites of public revenue to be made in that bank and its branches, in places in which the said bank and branches thereof may be established, "unless the Secretary of the Treasury should otherwise order and direct," in which event he was required to give his reasons to Congress. This was but a continuation of his pre-existing powers as the Head of an Executive Department, to direct where the deposites should be made, with the superadded obligation of giving his reasons to Congress for making them elsewhere than in the Bank of the United States and its branches. It is not to be considered that this provision in any degree altered the relation between the Secretary of the Treasury and the President, as the responsible Head of the Executive Department, or released the latter from his constitutional obligation to take care that the laws be faithfully executed. On the contrary, it increased his responsibilities, by adding another to the long list of laws, which it was his duty to carry into effect.

It would be an extraordinary result, if, because the person charged by law with a public duty, is one of the Secretaries, it were less the duty of the President to see that law faithfully executed, than other laws enjoining duties upon subordinate officers or private citizens. If there be any difference, it would seem that the obligation is the stronger, in relation to the former, because the neglect is in his presence, and the remedy at hand.

It cannot be doubted that it was the legal duty of the Secretary of the Treasury to order and direct the deposites of the public money to be made elsewhere than in the Bank of the United States, *whenever sufficient reasons existed for making the change.*" If in such a case, he neglected or refused to act, he would neglect or refuse to execute the law.

What would then be the sworn duty of the President? Could he say that the constitution did not bind him to see the law faithfully executed, because it was one of his Secretaries, and not himself, upon whom the service was specially imposed? Might he not be asked whether there was any such limitation to his obligations prescribed in the constitution? Whether he is not equally bound to take care that the laws be faithfully executed, whether they impose duties on the highest officer of State, or the lowest subordinate in any of the Departments?—Might he not be told, that it was for the sole purpose of causing all executive officers, from the highest to the lowest, faithfully to perform the services required of them by law—that the people of the United States have made him their Chief Magistrate, and the constitution has clothed him with the entire executive power of this Government? The principles implied in these questions appear too plain too need elucidation.

But here, also, we have a cotemporaneous construction of the act, which shows that it was not understood as in any way changing the relations between the President and the Secretary of the Treasury, or as placing the latter out of executive control, even in relation to the deposites of the public money. Nor on this point are we left to any equivocal testimony. The documents of the Treasury Department show that the Secretary of the Treasury did apply to the President, and obtain his approbation and sanction to the original transfer of the public deposites to the present bank of the United States, and did carry the measure into effect in obedience to his decision. They also show that transfers of the public deposites from branches of the Bank of the United States to State Banks at Chilicothe, Cincinnati and Louisville, in 1819, were made with the approbation of the President, and by his authority. They show, that, upon all important questions appertaining to his Department, whether they related to the public deposites or other matters, it was the constant practice of the Secretary of the Treasury to obtain for his acts the approval and sanction of the President. These acts, and the principles on which they were founded, were known to all the departments of the Government, to Congress, and the country, and, until very recently, appear never to have been called in question.

Thus it was settled by the constitution, the laws, and the whole practice of the Government, that the entire executive power is vested in the President of the United States; that as incident to that power, the right of appointing and removing those officers who are to aid him in the execution of the laws, with such restrictions only as the constitution prescribes, is vested in the President; that the Secretary of the Treasury is one of those officers; that the custody of the public property and money is an executive function, which, in relation to the money, has always been exercised through the Secretary of the Treasury and his subordinates; that in the performance of these duties, he is subject to the supervision and control of the President, and in all important measures having relation to them, consults the Chief Magistrate, and obtains his approval and sanction; that the law establishing the Bank, did not, as it could not, change the relation between the President and the Secretary: did not release the former from his obligation to see the law faithfully executed, nor the latter from the President's supervision and control; that afterwards, and before, the Secretary did in fact consult, and obtain the sanction of the President, to transfers and removals of the public deposites, and that all departments of the Government, and the nation itself, approved or acquiesced in these acts and principles, as in strict conformity with our constitution and laws.

During the last year, the approaching termination, according to the provisions of its charter, and the solemn decision of the American people, of the Bank of the United States, made it expedient, and its exposed abuses and corruptions, made it, in my opinion, the duty of the Secretary of the Treasury, to place the moneys of the United States in other depositories. The Secretary did not concur in that opinion, and declined giving the necessary order and direction. So glaring were the abuses and corruptions of the Bank, so evident its fixed purpose to persevere in them, and so palpable its design, by its money and power, to control the Government and change its character, that I deemed it the imperative duty of the Executive authority, by the exertion of every power confided to it by the constitution and laws, to check its career, and lessen its ability to do mischief, even in the painful alternative of dismissing the Head of one of the Departments. At the time the removal was made, other causes sufficient to justify it existed; but if they had not, the Secretary would have been dismissed for this cause only.

His place supplied by one whose opinions were well known to me, and whose frank expression of them, in another situation, and whose generous sacrifices of interest and feeling, when unexpectedly called to the station he now occupies, ought forever to have shielded his motives from suspicion, and his character from reproach. In accordance with the opinions long before expressed by him, he proceeded, with my sanction, to make arrangements for depositing the moneys of the United States in other safe institutions.

The resolution of the Senate, as originally framed and as passed, if it refers to these acts, presupposes a right in that body to interfere with the exercise of Executive power. If the principle be once admitted, it is not difficult to perceive where it may end. If, by a mere denunciation like this resolution, the President should ever be induced to act, in a matter of official duty, contrary to the honest convictions of his own mind, in compliance with the wishes of the Senate, the constitutional independence of the Executive Department would be as effectually destroyed, and its power as effectually transferred to the Senate, as if that end had been accomplished by an amendment of the constitution.

But if the Senate have a right to interfere with the Executive power, they have also the right to make that interference effective; and if the assertion of the power implied in the resolution be silently acquiesced in, we may reasonably apprehend that it will be followed, at some future day, by an attempt at actual enforcement. The Senate may refuse, except on the condition that he will surrender his opinion to theirs and obey their will, to perform their own constitutional functions, to pass the necessary laws, to sanction appropriations proposed by the House of Representatives, and to confirm proper nominations made by the President. It has already been maintained (and it is not conceivable that the resolution of the Senate can be based on any other principle) that the Secretary of the Treasury is the officer of Congress, and independent of the President; that the President has no right to control him, and consequently none to remove him. With the same propriety, and on similar grounds, may the Secretary of State, the Secretaries of War and Navy, and the Postmaster General, each in succession, be declared independent of the President, the subordinates of Congress, and removable only with the concurrence of the Senate. Followed to its consequences, this principle will be found effectually to destroy one co-ordinate Department of the Government, to concentrate in the hands of the Senate the whole Executive power, and to leave the President as powerless as he would be useless—the shadow of authority, after the substance had departed.

The time and the occasion which have called forth the resolution of the Senate, seem to impose upon me an additional obligation not to pass it over in silence. Nearly forty-five years had the President exercised, without a question as to his rightful authority, those powers for the recent assumption of which he is now denounced. The vicissitudes of peace and war had attended our Government; violent parties, watchful to take advantage of any seeming usurpation on the part of the Executive, had distracted our councils; frequent removals, or forced resignations, in every sense tantamount to removals, had been made of the Secretary and other officers of the Treasury; and yet, in no one instance, is it known that any man, whether patriot or partizan, had raised his voice against it as a violation of the constitution. The expediency and justice of such changes, in reference to public officers of all grades, have frequently been the topics of discussion; but the constitutional right of the President to appoint, control and remove the Head of the Treasury, as well as all other Departments, seems to have been universally conceded. And what is the occasion upon which other principles have been first officially asserted? The Bank of the United States, a great moneyed monopoly, had attempted to obtain a renewal of its charter, by controlling the elections of the people and the action of the Government. The use of its corporate funds and power in that attempt, was fully disclosed; and it was made known to the President that the corporation was putting in train the same course of measures, with the view of making another vigorous effort, through an interference with the elections of the people, to control public opinion and force the Government to yield to its demands.

This, with its corruption of the press, its violation of its charter, its exclusion of the Government Directors from its proceedings, its neglect of duty, and arrogant pretensions, made it, in the opinion of the President, incompatible with the public interest and the safety of our institutions, that it should be longer employed as the fiscal agent of the Treasury. A Secretary of the Treasury, appointed in the recess of the Senate, who had not been confirmed by that body, and whom the President might or might not at his pleasure nominate to them, refused to do what his superior in the Executive Department considered the most imperative of his duties, and became in fact, however innocent his motives, the protector of the Bank. And on this occasion it is discovered, for the first time, that those who framed the constitution misunderstood it; that the first Congress and all its successors have been under a delusion; that the practice of near forty-five years is but a continued usurpation; that the Secretary of the Treasury is not responsible to the President; and that to remove him is a violation of the constitution and laws, for which the President deserves to stand forever dishonored on the journals of the Senate.

There are also some other circumstances connected with the discussion and passage of the resolution, to which I feel it to be not only my right, but my duty to refer. It appears by the journal of the Senate, that, among the twenty-six Senators who voted for the resolution on its final passage, and who had supported it in debate, in its original form, were one of the Senators from the State of Maine, the two Senators from New Jersey, and one of the Senators from Ohio. It also appears by the same journal, and by the files of the Senate, that the Legislatures of these States had severally expressed their opinions in respect to the Executive proceedings drawn in question before the Senate.

The two branches of the Legislature of the State of Maine, on the 25th of January, 1834, passed a preamble and series of resolutions in the following words:

"Whereas, at an early period after the election of Andrew Jackson to the presidency, in accordance with the sentiments which he had uniformly expressed, the attention of Congress was called to the constitutionality and expediency of the renewal of the charter of the United States Bank: And whereas, the Bank has transcended its chartered limits in the management of its business transactions, and has abandoned the object of its creation, by engaging in political controversies, by wielding its power and influence to embarrass the administration of the General Government, and by bringing insolvency and distress upon the commercial community: And whereas, the public security from such an institution consists less in its present pecuniary capacity to discharge its liabilities than in the fidelity with which the trusts reposed in it have been executed: And whereas, the abuse and misapplication of the powers conferred, have destroyed the confidence of the public in the officers of the Bank, and demonstrated that such powers endanger the stability of republican institutions: Therefore,

"*Resolved*, That in the removal of the public deposites from the Bank of the United States, as well as in the manner of their removal, we recognize in the administration an adherence to constitutional rights, and the performance of a public duty.

"*Resolved*, That this Legislature entertain the same opinion as heretofore expressed by preceding Legislatures of this State, that the Bank of the United States ought not to be rechartered.

"*Resolved*, That the Senators of this State in the Congress of the United States be instructed, and the Representatives be requested, to oppose the restoration of the deposites and the renewal of the charter of the United States Bank."

On the 11th of January, 1834, the House of Assembly and Council composing the Legislature of the State of New Jersey, passed a preamble and a series of resolutions in the following words:

"Whereas the present crisis in our public affairs calls for a decided expression of the voice of the people of this State: and whereas we consider it the undoubted right of the Legislature of the several States to instruct those who represent their interests in the council of the nation, in all matters which intimately concern the public weal, and may affect the happiness or well being of the people: Therefore

"1. *Be it resolved by the Council and General Assembly of this State*, That while we acknowledge with feelings of devout gratitude our obligations to the great Ruler of nations for his mercies to us as a people, that we have been preserved alike from foreign war, from the evils of internal commotions, and the machinations of designating and ambitious men who would prostrate the fair fabric of our Union; that we ought, nevertheless, to humble ourselves in His presence and implore His aid for the purpetuation of our Republican institutions, and for a continuance of that unexampled prosperity which our country has hitherto enjoyed.

"2. *Resolved*, That we have undiminished confidence in the integrity and firmness of the venerable patriot who now holds the distinguished post of Chief Magistrate of this nation, and whose purity of purpose and elevated motives have so often received the unqualified approbation of a large majority of his fellow citizens.

"3. *Resolved*, That we view with agitation and alarm the existence of a great moneyed incorporation, which threatens to embarrass the operations of the Government, and by means of its unbounded influence upon the currency of the country, to scatter distress and ruin throughout the community; and, that we, therefore, solemnly believe the present Bank of the United States ought not to be rechartered.

"4. *Resolved*, That our Senators in Congress be instructed, and our members of the House of Representatives be requested to sustain, by their votes and influence, the course adopted by the Secretary of the Treasury, Mr. Taney, in relation to the Bank of the United States and the Deposites of the Government moneys, believing as we do the course of the Secretary to have been constitutional, and that the public good required its adoption.

"5. *Resolved*, That the Governor be requested to forward a copy of the above resolutions to each of our Senators and Representatives from this State in the Congress of the United States."

On the 21st day of February last, the Legislature of the same State, reiterated the opinions and instructions before given by joint resolutions, in the following words:

"*Resolved by the Council and General Assembly of the State of New Jersey*, That they do adhere to the resolutions passed by them on the 11th day of January last, relative to the President of the United States, the Bank of the United States, and the course of Mr. Taney in removing the Government deposites."

"*Resolved*, That the Legislature of New Jersey have not seen any reason to depart from such resolutions since the passage thereof; and it is their wish that they should receive from our Senators and Representatives of this State in the Congress of the United States, that attention and obedience which are due to the opinion of a sovereign State, openly expressed in its Legialative capacity."

On the 2d of January, 1834, the Senate and House of Representatives composing the Legislature of Ohio, passed a preamble and resolutions in the following words:

"Whereas there is reason to believe that the Bank of the United States will attempt to obtain a renewal of its charter at the present session of Congress: And whereas it is abundantly evident that said Bank has exercised powers derogatory to the spirit of our free institution and dangerous to the liberties of these United States: And whereas, there is just reason to doubt the constitutional power of Congress to grant acts of incorporation for banking purposes out of the district of Columbia: And whereas, we believe the proper disposal of the public lands to be of the utmost importance to the People of these United States, and that honor and good faith require their equitable distribution: Therefore

"*Resolved by the General Assembly of the State of Ohio*, That we consider the removal of the public deposites from the Bank of the United States as required by the best interests of our country, and that a proper sense of public duty imperiously demanded that that institution should be no longer used as a depository of the public funds.