

AN
ORATION,
PRONOUNCED AT THE
MEETING-HOUSE IN THE FIRST PRECINCT
IN
ROCHESTER;
ON THE
FOURTH DAY OF JULY,
1801.

BY ABRAHAM HOLMES, Esq.

“Jacobinism doth not consist in believing that the Legislature sometimes doth improper acts; but in holding that individuals and associations have a right to influence them, and to decide on the constitutionality of their proceedings. The name is new, but the principle is old: it was introduced into the first civil society on earth by a foreigner, who had address enough to make them believe that they were competent judges of the constitutionality of the mandates of Heaven; and that the edict prohibiting the use of a certain tree was unconstitutional, and of consequence not binding on them—they believed it—they conducted accordingly—the consequences are well known.”

ANON. M. S.



NEW-BEDFORD:
PRINTED BY ABRAHAM SHEARMAN, JUN.

1801.

*At a Meeting of the Officers of the Militia, in Rochester,
on the 4th of July, 1861.*

RESOLVED UNANIMOUSLY,

THAT Lieut. BENJAMIN PICKENS, Ensigns LEVENTON PARKER and JOSEPH KENDRICK be, and they are hereby appointed a Committee, to wait on ABRAHAM HOLMES, Esq. and present him with the thanks of the Officers for the Oration by him this day pronounced, and request of him a copy for the Press.

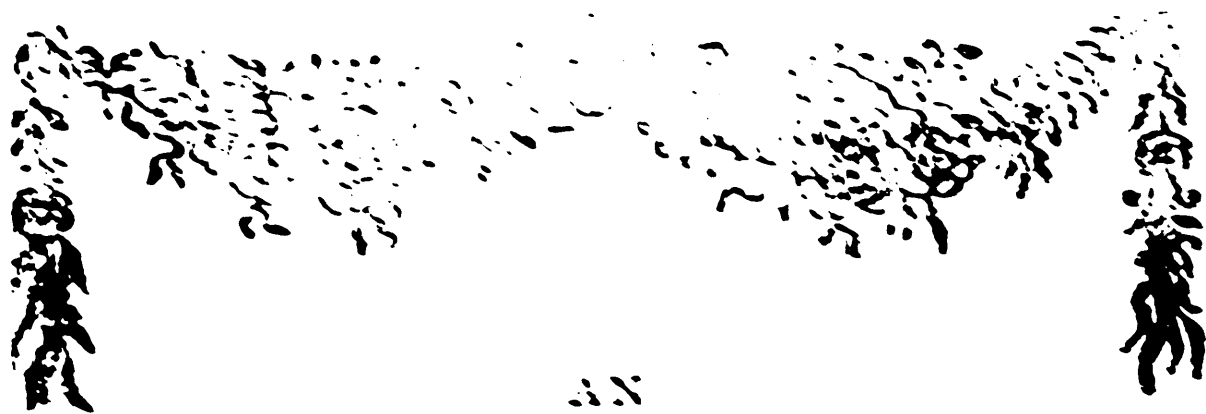
LEMUEL WINSLOW, *Major.*

GENTLEMEN,

THE respectability of the body which you represent, with the polite manner in which you have acquainted me with their request, have induced me to lay aside my own determination, and to deliver you a copy of that spontaneous production of a moment on which you are pleased to compliment me, whose thirtness is its greatest if not its only recommendation.

ABRAHAM HOLMES.

THE GENTLEMEN OF THE COMMITTEE.



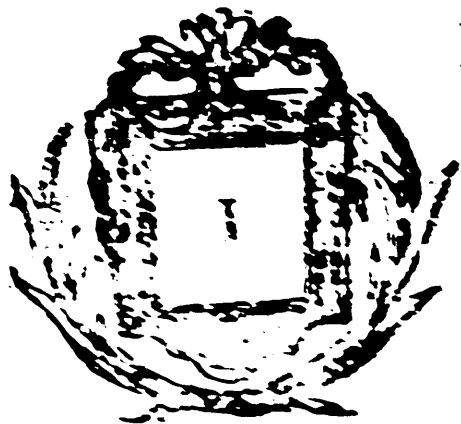
AN

ORATION.



“WHAT if the foot ordain'd the dust to tread,
Or hand to toil, aspir'd to be the head—
Just as absurd for any part to claim
To be another in the gen'ral frame.”

Pope.



In order to preserve the rights and liberties of any community, a frequent recurrence should be had to the principles of its constitution ; for no longer can any community retain its liberties than those principles remain unviolated : for as soon as those principles cease to be considered as sacred, the people cease to live under a government of Laws, and are completely under a government of Man ; which is the very essence of tyranny : and their situation has but one conse-

lation attached to it, viz. that there is but little danger of their being in worse situation.

It is the highest interest, it is the indispensable duty of every member of a community, to make himself acquainted with the principles of the constitution thereof; for unless the constitution is understood, it cannot be supported; and unless it is supported, it cannot exist; and if it does not exist, tyranny or anarchy overwhelm the community of course.

THE constitution of this country is a social compact; a voluntary association; in which the whole community contracts with each individual, and each individual with the whole community: and this contract has all the force, virtue and validity which is in the most sacred contract between party and party: and no one can refrain from doing *that* which the constitution makes it his duty to do, or do that which the constitution prohibits, without being guilty of a violation of this sacred contract: and every such violation has a direct tendency to weaken the ties of the social compact, to sap the principles of the constitution, and to introduce all the horrors of anarchy and confusion.

By our constitution the powers of making laws, adjudicating thereon, and of carrying them into execution, are wisely separated, and lodged in different hands: the safety of the people requir-

ing that the persons who exercise the *one*, should not exercise the *other*.

ALL legislative power is *exclusively* lodged in certain hands, (for whose appointment the constitution has made explicit provision,) whose power is limited only by the constitution itself, which is the supreme law of the land, and is paramount to any act of legislation : and while the legislature keeps within the limits of the constitution, and their acts are not inconsistent therewith, they are not amenable to any tribunal but to that of God and their own consciences. The only remedy of the people in case of improper legislation is, to fill the legislature in future with men of more abilities, or more integrity.

BUT supposing the legislature not only act imprudently but also unconstitutionally ; that it makes laws which are not only improper but which are also inconsistent with the constitution : what is to be done in such case ? In answering this question it is of the first consequence to enquire WHO is to determine whether a legislative act is unconstitutional or not ; for a misunderstanding in this point has been productive of mischiefs too enormous for me to undertake to describe.

As the power of making laws is exclusively lodged in the legislature, so by the social compact the right and power of adjudication is ex-

clusively vested in the constituted judiciary department. No individual, or number or association of individuals possess any judiciary authority, or power of judging on laws, any more than they do of making laws or carrying them into execution. In the judiciary department there is no kind of discretionary power ; it is never to take into consideration any consequences (agreeable or disagreeable) which *may* result from its decision : the only question is, *what is the law ?* when *that* is determined it may in no case be deviated from. The constituted judiciary authority is no judge of the propriety or impropriety of a law ; their authority being confined solely to what *is* law, they have nothing to do with the consequences.

THE social compact, the constitution, being the supreme law of the land, the legislature can make no law inconsistent therewith ; for though an instrument purporting itself to be a *law*, receive the sanction of all branches of the legislature ; yet if such instrument be inconsistent with the constitution, it is of no force, it is no law, but a perfect nullity. But yet it rests wholly and *exclusively* with the constituted judiciary authority to *determine* whether such instrument is inconsistent with the constitution, or not.

To suppose this power vested any where else than in the constituted judiciary department,

would introduce every species of confusion which the ingenuity of man is capable of devising : for if one man, or any number of men, or association of men, have this power of deciding ; every man and every association has an equal right. One man has a strong conviction that a certain act of the legislature is unconstitutional, and therefore determines to oppose it ; another has as firm a persuasion that it is constitutional, and he therefore determines to support it. Here is the commencement of a certain civil war ; and the extent of the bloody consequences can only be conjectured from the success each one has in gaining proselytes. The same dreadful consequences will attend the idea of this power's being lodged in the hand of any number or description of men not instituted by the constitution, and vested with *exclusive* judicial power ; the power must in the nature of things be *exclusive* ; for the idea of two supreme judiciary powers must be a solecism too enormous to admit a parallel.

NEITHER is there any danger in placing this supreme power of adjudication in the hands of a single body of men ; for they are responsible for every departure from law. The constitution has wisely made provision that for every breach of their important trust they are amenable to the high court of *impeachment*, who under the solemn

obligation of an oath are to decide on their official conduct according to the principles of the original social compact : and to suppose there will be a coalition between the different departments of government to screen the violators of the law from justice, is striking at the fundamental principles of all government ; it is a *jealousy* which is inconsistent not only with every principle of government, but also with that of SOCIETY itself.

IN a government like ours, founded on a social compact, *confidence* must be placed somewhere ; and where with so much safety or propriety as in the constituted authorities ; where every department is filled either mediately or immediately by ourselves ? surely the ingenuity of man can not devise a system of government capable of being any ways beneficial to the community, where the powers of government are so well ballanced ; and the constituted authorities under such influential checks.

THIS fundamental principle of government is universally understood, and admitted in the common affairs of life. Whenever there is a controversy concerning property between party and party, and they appeal to the laws of the land ; the decision of the supreme judicial authority is acquiesced in and submitted to as a matter of right ; however such decision may differ from

the ideas of either of the parties, or from that of people in general. In such case no one thinks that any individual or any association has a right to take up the matter *de novo*, rejudge it, reverse it, or prevent the decision from being carried into effect ; yet people who can *see*—people who can *feel* the propriety of all this, are yet capable of imagining that every individual—that every association, have an indisputable right to determine and decide on the constitutionality of the acts of the legislature ; the decisions of the supreme judiciary, and the doings of the executive department.

BUT whenever the principles of the constitution are attended to and understood, it will appear that the constitutional authorities are controulable *by*, and amenable only *to* the laws of the land : that by the constitution they are placed above, and are not amenable to, or controulable by, any individuals, or number or association of individuals whatever ; and that this is the case (equally so) whether those constituted authorities have at their head a WASHINGTON, an ADAMS, or a JEFFERSON. It makes no difference in this case in what hands the community have reposed their confidence ; whether those important departments are filled with men who are the objects of my choice, or not, their rights,

their powers, their duties and their responsibility are the same.

But that principle which denies to the constituted authorities the right of exercising jurisdiction, lays the axe to the root of all legitimate government; has a direct tendency to dissolve the social compact: to introduce discord, intestine ravages, incrimsoned fields, conflagrated towns and all the horrors of national convulsions. It is justly characterized by nothing but a deraiged fanatic, whose hands are employed in pulling out his own eyes, whose feet are kicking out his own brains, whose teeth are devouring his own flesh, and whose fingers are dislodging his own vitæ.

Whatever ideas such persons may confusedly have of their being great friends to republicanism, and the only defenders of the "Rights of Man;" yet in reality they are the most fatal enemies to republicanism that exist. Their wild excesses cannot fail of exciting in the minds of the cool and dispassionate the strongest and most invincible prejudices against that form of government under which such extravagances exist: they will couple the idea of confusion and all the horrors of civil tumult with that of republicanism; and in proportion as they dread the one, they will detest the other; they will make their escape from it as they would from a nest of

vipers or a fountain of infection : they will dread its approach as that of a black cloud fraught with the combustibles of nature and the dread artillery of heaven.

It is not in the power of all the despots which heaven in dreadful anger suffers to afflict a guilty world, to injure so materially the republican cause, as those illegitimate defenders of the "*Rights of Man*," who are nurtured in the cradle of fanaticism and nourished with the cordials of anarchy : for though it is admitted that the most of them are actuated by a genuine desire of advancing what they conceive to be the best interest of their country, yet the certain effects of their principles and practice are no less fatal than if their real design was the total ruin of their country.

It is the *conduct* and not the *designs* of people which proves *beneficial* or *injurious* to others. Of what consequence was it to the unfortunate wife and children of the infatuated *Baillie* (who were murdered by him) that in that wicked affair he was actuated by the strongest love and affection towards them ; and that by spilling their vital blood he meant to do them the greatest possible kindness !

DREADFUL indeed have been the effects of this principle in a neighbouring nation, where individuals and associations, unknown to the confi-

tion, have undertaken to superintend and act as public Censors of the *royal and national* Revolution on revolution, universal convulsions—the dissolution of every first principle of law—the annihilation of every species of personal security—unparalleled scenes of barbarity, ravage and rapine, in a nation naturally generous and brave; and a total subversion (at least for a long time) of one of the best of causes, have been among the many mischievous genuine effects of this dreadful principle of false patriotism.

VERY few (if any) of those acts of enormity which have disgraced the blood-stained pages of the French revolution, took place until after individuals and self-created associations took on themselves the superintendence of public affairs, and obtained an ascendancy not only over the public councils and constituted authorities, but also over the body of the people at large. From that fatal period the genuine principles of freedom, all ideas of subordination (for which that nation had been so justly famed) became extinct; ambition was the only stimulus in some, fear, or hope, *that* of others, and enormities and crimes of every size and symptom, and the most unparalleled scenes of devastation overwhelmed that unfortunate nation (who but just before had the brightest prospect of having a permanent government, consistent with national

freedom) and her history is a melancholy standing monument of this eternal truth, that neither GOVERNMENT OF LIBERTY CAN EXIST IN A NATION where the CONSTITUTED AUTHORITIES ARE OVER-POWERED BY AMBITIOUS DEMAGOGUES OF A DISOR- GANIZING POPULACE.



[To fill a vacant page, the following **TOASTS** (drank at the House of **ELISHA RUGGLES, Esq.** after the delivering of the foregoing Oration,) are published in this place.]

1. *The United States*—May they prove to the world that a republican Government can exist uncontaminated by despotism, or anarchy.
2. *The memory of the late General Washington*—May Americans have the virtue to preserve inviolate those blessings which by his counsels and exertions he procured for them.
3. *John Adams, late President*—May a double portion of his spirit rest on his successor.
4. *The President*—May his administration insure every blessing which has been anticipated, and may no evil which has been feared be realized.
5. *The National Legislature*—May they have wisdom to know the interest of their country and integrity to support it.
6. *The Governour of this Commonwealth*—May his health be as firm as his virtues, and his support as extensive as his patriotism.
7. *The Fourth of July*—May a suitable celebration of this anniversary be one mean of perpetuating the blessings which result from Independence.
8. *The Militia*—May their skill, their firmness and their support, be such as to render a standing army forever unnecessary.
9. *The Clergy*—May their Divinity never give place to, or be contaminated with Politics.
10. *The Commonwealth of Massachusetts*—As she was the foremost in asserting the rights of America, may her firm-

States by following her example, avoid the rocks of tyranny and the vortex of anarchy.

11. *The Constitutional Authorities of our Government*—May no individual or association attempt to divert them of their constitutional powers.

12. *Our Foreign Ministers*—May rectitude guide their measures and success crown their endeavours.

13. *Our Navy*—May it ever be sufficient to guard our Commerce from the ravages of freebooters, and to support the dignity of the Nation.

14. *The Arts and Sciences*—May they always flourish in our land and qualify our citizens for the due performance of every laudable undertaking.

15. *The dark and unlighted corners of the world*—May the beams of science pervade their dark recesses, and their inhabitants enjoy all the blessings of civilization.

16. *The Nations of Europe*—May a speedy and an equitable peace restore to them those invaluable blessings of which they have long been destitute.

