each one will bind himself not to do any act as a public agent, while any one is held in, or threatened with, durance vile.

Our respective governments, I trust, will sanction such a measure, and give orders to their consuls accordingly.

Notwithstanding all I have stated, it is *possible* that the Dey may not proceed to extremities towards me, or commit hostilities on our commerce and citizens, until I hear from my government on the subject. But I have thought it my duty to guard as much as possible against the evil, by giving notice to our vessels which may be in this sea, as well as those in the Atlantic; for at present there is nothing to prevent their cruizers from passing the Straits.

The camp is expected to march in a few days against Tunis, and their cruizers are said to be intended for that quarter; but there is no doubt but some of them will cruize in every part of this sea, and probably go into the Atlantic.

With sentiments of the highest respect and most sincere attachment,

I have the honor to be, sir, your most faithful and obedient servant,

TOBIAS LEAR.

The Honorable JAMES MADISON, *Secretary of State of the U. States of America, Washington.*

(Triplicate.) *Algiers, March* 31, 1808.

SIR—A copy of what I had the honor of writing to you, on the 28th inst. with its enclosures, accompanies this. The vessel which took the aforesaid letter, did not sail until the 29th.

Yesterday I sent my drogerman to the palace, to know of the Dey what were his ultimate intentions, (if he chose to declare them) respecting the business mentioned in my last; and to request that I might be allowed three months to receive the orders of my government. The answer brought was, that if I paid the money in the course of the day, we should stand as we were before; but if I did not, he should pursue his own measures. As I was yet uncertain, whether his threats would be put in execution against me personally, or against our commerce, I remained fixed in my first resolution. This morning the two frigates, which had been preparing for some days past, made the signal for sailing; and a formal message was sent to inform me, that they had orders to capture American vessels, (the threats of personal violence to me having had no effect.) I thought it a duty which I owed to my government, & to my country, to prevent, if possible, the calamity which might fall on our citizens and their property; I therefore sent to inform the Dey, that if he should recal his orders from these vessels, before they sailed, and make no renewal of them to these or others, I would pay the money; but that I considered it as a measure forced upon me, and as such should represent it to my government. The order was recalled, after the frigates had got under way; and the money is to be paid to-morrow, which I shall obtain by bills on John Gavino, Esq. our consul in Gibraltar, to whom I shall give bills on the Secretary of State of the U. S. to meet the same. The frigates have gone out, and the other cruisers will be got ready for sea immediately. A vessel is expected to sail in a few days for Alicant, by which I shall write to our consul, contravening the positive advices for our vessels not to leave the ports in which they may be; but, at the same time, directing them to be strictly on their guard.

I have, this day, had an opportunity of writing to Tripoli, (the first which has occurred for more than three months) which I have improved; and by the same route to Tunis, giving information of what has passed.

Painful as has been my situation in this affair, I feel conscious of having discharged my duty to my country in the best, and, indeed only, manner in my power. While I could believe that the consequence of refusing to make this unjust payment would fall upon me personally, I was ready to meet it; but when I was convinced that my country would suffer in the persons and property of its citizens, I was obliged to yield.

My letters, which accompany this, contain all I have to say on our affairs here, and I shall only add the assurances of high respect and sincere attachment with which

I have the honor to be, sir,

Your most faithful & ob'dt. serv't.

TOBIAS LEAR.

The hon. JAMES MADISON, Sec. of State of the U. S. of America Washington.

November 17th, 1808.

On Wednesday the 16th November inst. at the Navy Yard Market, a quarter of BEEF was offered for sale, the KIDNEY of which, taken out in the usual way, weighed 67lb.—The Steer was fed by William Stenbergen of Shenandoah county, state of Virginia.

Thomas O. Howard, Ck. of the market,
Christian Funt,
John Cannon.

I hereby certify that I bought a quarter of Beef in the Navy Yard Market, weighed 143lb. and the Kidney has been taken out, and weighed 67lb.

M. LOWE.

November 16, 1808.

CONGRESS.

HOUSE OF REPRESENTATIVES.

FRIDAY, NOV. 18.

Mr. Holmes, from the committee of claims, made reports favorable to the petitions of sundry inhabitants of Knox county, Kentucky, and of Daniel Cotton, which were referred to a committee of the whole.

Mr. Morrow presented the petition of sundry inhabitants of the state of Ohio, stating that in consequence of not being able to make payment of the purchase money due for public lands, their purchases are liable to forfeiture.

[The petition contains the following sentence:

"Notwithstanding your petitioners find their means of payment suspended, and sincerely regret the causes which have produced the scarcity of circulating medium, and the loss of a market, yet we are decidedly of opinion, that the measures pursued by the general government were those, and those only, that saved our country from the evils and distresses of WAR, and which measures we are willing to support with our lives, as well as our property."]

The petition was referred to the committee of public lands.

Mr. Quincy moved that it be printed for the use of the members.—Negatived, Ayes 20.

Mr. Lewis presented the petition of sundry inhabitants of the town of Alexandria in the district of Columbia, praying to be authorised to raise by way of lottery a sum of money for building a church. Referred to the committee on the district of Columbia.

The *Speaker* laid before the House several memorials from the legislative council, and House of Representatives and inhabitants of Indiana territory, praying that the power of choosing the legislative council and delegate from the territory may be vested in the people; and also a remonstrance against the admission of slaves into the territory. In consequence of the absence of the territorial delegate they were ordered to lie on the table.

Mr. Rhea reported a bill pursuant to a resolution offered on Wednesday by Mr. Randolph, to authorise the conveyance of certain documents and papers by mail free of postage.—Twice read and ordered to be engrossed for a third reading.

TERRITORIAL GOVERNMENTS.

On motion of Mr. *Poindexter*, the House resolved itself into a committee of the whole, Mr. HELMS in the Chair, on the bill concerning territorial governments.

The bill having been read—

Mr. Bibb said, that if the House were now called upon, for the first time, to pass an ordinance for the government of the territories of the U. States, he should attach very little importance to the decision of the present question. But he considered it not now as an abstract question of expediency, but as one of great moment, from the circumstances with which it was connected. He denied the right of the House to pass the bill; and if they had not the right, it was surely unnecessary to argue the question on the ground of policy. It would be recollected that the Mississippi territory was formerly the property of the state of Georgia, and ceded by that state to the U. States on certain conditions, one of which was that the ordinance for the government of the territory north west of the Ohio, should be the basis of the government of the Mississippi territory. If this (said he) be one of the conditions of a compact between the United States and Georgia, surely the United States have no right to infringe it without the consent of Georgia; and I as one of her representatives formally protest against the passage of this bill. It may be said that Georgia is very little interested in the abstract question whether the governor should or should not have the power of prorogation; but if a right exists to alter one part of the ordinance without the consent of Georgia, it certainly implies a power to alter it in every part.

Mr. Troup moved that the committee rise and report progress.

Mr. *Poindexter* enquired of the gentleman what was his object in making this motion?

Mr. *Troup* said his object was that the committee should rise and report progress, and give him an opportunity of making a motion that the further consideration be indefinitely postponed; and he made the motion for the best of all possible reasons—that the committee had no reason before it to induce it to act otherwise.

Mr. *Poindexter* said he would state the reasons for which he had introduced the bill, and which would he hoped insure it the sanction of the committee. I will in the first place, said Mr. P. advert to that part of the ordinance which is proposed to be amended by the bill under consideration. In the ordinance for the government of the N. Western Territory will be found this article: "The governor shall have power to convene, prorogue and dissolve the general assembly, when, in his opinion, it shall be expedient." The bill proposes to take away this power as being arbitrary, and oppressive in the extreme, and incompatible with the constitution of the United States. This ordinance was passed previous to the adoption of the Federal constitution; and if it had been the subject of consideration subsequent to its adoption, this provision had never been inserted, giving to governors of territories a power paramount to any power possessed by the President of the United States. Take away this power and a governor will still have left the power of negativing all acts, so that none can pass without his assent; and being the agent of the general government, he would give consent to no law incompatible with the interests of the United States.

It has been said that the ordinance cannot be altered without the common consent of the parties to it, and that the state of Georgia must be called upon to give its assent before the Congress can alter it. There are two parts of this ordinance; the first contains the form of government, and the second several articles of compact which are declared unalterable but with common consent. After reciting the form of government, the ordinance says, "the following articles shall be considered as articles of compact between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit:" Here follow six articles. The ordinance declares that which follows the declaration to be unalterable but by common consent; it follows of consequence that that which precedes the declaration, is alterable. Independent of this reasoning which cannot be refuted, at every session since we have been a territory, there have been laws passed altering the ordinance in some shape or other. For example the ordinance requires two judges to hold a court; by a subsequent law it is declared that one judge shall be competent; and in a variety of instances Congress has legislated with respect to the form of government of the territory. I had supposed that the articles of agreement between the United States and Georgia had become obsolete, with respect to the imagined necessity of the consent of Georgia to legislation on the subject of the territory. It was urged at the last session with all the eloquence of which the gentlemen from Georgia are in so great a degree possessed, and disregarded; for it was decided by both Houses that the U. States had a right to rule the territory without the consent of Georgia.

The constitution of the U. States says that Congress shall "have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Can an agreement arising from the exercise of this power supercede the right of exercising the power expressly delegated by the constitution itself? Certainly not.

On the ground of policy I presume that there is no gentleman who will contend that the power of which I wish to deprive the governors ought to be retained. The gentleman from Georgia himself says that if he were about to frame an original ordinance, he would not think of such a power. As the opinion of Judge Tucker has been referred to on one subject, I will refer to it on the subject of prerogative. Let it be recollected that the power to prorogue and dissolve is one of the highest prerogatives of the king of England; that it crept into the governments of his colonies, and thence into this ordinance previous to the adoption of the constitution. It now remains for the U. S. to say whether they will copy after Great Britain, and because it is a high prerogative, give the governors of the territories of the U. S. the same powers as she gives to her territorial governors. I trust it will be expunged. "The title *prerogative* it is presumed was annihilated in America with the kingly government." "This definition (of prerogative) is enough to make a citizen of the U. S. shudder at the recollection that he was born under a government in which such doctrines are received as catholic, &c." This is the opinion of Judge Tucker. Is this not sufficient to induce us to take away from governors this prerogative? Is not this feature modelled after a similar feature in the government of England? Certainly; and that it is transferred from her colonial government I can shew by the present ordinance for the government of Canada. [To which Mr. P. referred] It is the same principle, and we have copied it.

I will not object to retain this power if any gentleman can shew any advantage to be gained by it. I will suppose an extreme case; that any of the territories designed to commit treason, and the Legislature were to pass an act giving it their sanction, act (and they have shewn less treasonable disposition than some of the elder states, if we may judge from occurrences of a few years past)—could not the governor put his negative on this law? There could be no such law without his consent. It is therefore entirely unnecessary in any possible case to give the governor the arbitrary power of dissolving the legislature.

There is a special reason which has operated upon my mind as forcibly as the general reason in favor of the bill on the table. In the territory which I have the honor to represent, we have been nearly 12 months without any legislature. The governor thought proper to dissolve the assembly without any reason given; for the ordinance does not bind him to assign reasons for his acts. Within a few days a new council has been chosen, which may again be dissolved as soon as it meets, and the territory again left without a legislature, and no reason assigned for the procedure. Is it possible that this government will sanction such arbitrary practices? If it does it will be the first case since the revolution in which such procedure has been sanctioned. I beg leave to refer gentlemen to the glorious year 1776—I beg them to revert to that instrument in which all the sins of our political father George the 3d were delineated, and they will find that one of the charges against him was that he permitted his governors to dissolve the legislatures from time to time. Are we prepared to engraft these arbitrary principles into our constitution, and cherish them when practised in so arbitrary a manner? Instead of this ordinance being passed, with deliberation, it must have passed originally *sub silentio*, and been adopted for all the new territories without any discussion at all; for if the principle had been investigated it would never have been enacted into a law. In the declaration of independence it is stated that "he (George III.) has dissolved representative houses repeatedly for opposing, with manly firmness, his invasions on the rights of the people." Here we see that at that day we complained of the arbitrary exercise of power, and I hope that at this day we shall give it a death-blow. If any gentleman wishes to retain it, let him shew a single possible case in which it can properly be exercised: never, but to gratify the ambition or caprice of an individual. The people elect representatives and send them to legislate. If they do not please the governor, he can say, "gentlemen, go to your homes; I dissolve you." Can there be any necessity for this? But I will not detain the House longer, except to express a hope that the committee will not rise, unless it be to report the bill.

Mr. TROUP said he would state in as few words as he could his objections to the passage of the bill. It was only the day before yesterday that this bill had been introduced into the House, proposing to alter *one* part of the ordinance. To-day a petition came from another territory to alter *another* part of it. Before they adjourned, it was ten thousand to one that not a remnant of the ordinance would be left with their good will.

I have before stated it as my opinion (said he) that the articles of the ordinance are a compact between the people of the states and of the territories unalterable but with the consent of both parties. With the permission of the House I will read the opinion of Judge Tucker on this subject:—"Congress, under the former confederation, passed an ordinance July 13, 1787, for the government of the territory of the U. S. north-west of the Ohio, which contained among other things, six articles, which were to be considered as articles of compact between the original states, and the people and states of said territory, and to remain unalterable, except by common consent. These articles appear to have been confirmed by the sixth article of the constitution, which declares that all debts contracted and engagements entered into before the adoption of the constitution, shall be as valid against the U. S. under the constitution as under the confederation."

In this case there are not only two but three parties to the articles—the *U. States*, the *state of Georgia*, and the *people of the territories*. You will recollect, as my colleague properly stated to you, that the right of soil and jurisdiction of this territory was originally in the people of Georgia. Of course Georgia had power to prescribe for the territory what form of government she pleased, provided it was republican. By the articles of cession the right of soil and jurisdiction was ceded to the people of the U. S. on the express condition that the articles of the ordinance should form the government of the Mississippi territory, and that they should not be governed otherwise. The inference inevitably is that the state of Georgia would not have ceded but upon the express condition; and this inference is the more inevitable, inasmuch as in this clause Georgia has made an express exception to a particular article in the ordinance—from which I say that Georgia intended that no other alteration should be made.

What was the policy of the ordinance and what the object of its framers? Why, assuredly, to render the governments of the territories dependant on the government of the United States. And how was it to be effected? By making the territorial legislature in a great degree dependant on the governor, and him absolutely dependant on the Federal Executive. The moment we make the legislature of a territory independent of its Executive, we make it independent of the Federal government.

And again, as my colleague has correctly told you, if you have a right to repeal one part of the ordinance, you have a right to repeal another part, and to overturn the whole system at a blow. If so, what will be the effect on the articles of cession and agreement between you and Georgia? I will tell you. By the articles of cession you reserve to yourself the right of disposing of the territory; you also agree to pay Georgia 1,250,000 dollars out of the product of the first sales of the land. Suppose you transferred to the independent legislature of the Mississippi territory the right to dispose of this territory, what security has Georgia for the payment of her 1,250,000 dollars? Moreover, I feel every disposition to treat with respect the people of the Mississippi territory, and particularly as I perceive that they approve of that course of our government in which I most heartily concur—yet I must say that a large majority of the people have a landed interest distinct from that of the government of the United States. Take away from the governor his power to prorogue and dissolve, leave him the veto; and there will soon be collision. The legislature passes an act; the governor puts his veto on it. The legislature stands out, and the governor will not yield; and eventually you may perhaps have to decide the question of territorial property by the sword. Recollect that upwards of SIX THOUSAND people have gone over in the present year, with every apparent intention to force a settlement against your interest and that of Georgia. I am very glad that the military have received orders to disperse them. I trust that they will be dispersed, and that every man who stands forth in resistance, will be put to the sword.

But the gentleman from Mississippi Territory is certainly mistaken as to one point. He seems to consider the constitution of the U. States as giving to the people of the territories the same rights as to the people of the states. It is a mistaken idea, neither warranted by the letter or spirit of the constitution. For although the constitution has declared that the people of one state are entitled to all the rights and privileges of another, yet it has not declared that the people of the territories have the same rights as the people of the states. In another part of the constitution it is indeed expressly declared that Congress shall make all laws for the disposal of the territories; but there is a salvo that all acts done and compacts made previous to the adoption of the constitution, shall be as binding as if done afterwards. The articles of ordinance were enacted previously and are consequently binding, under the constitution. It cannot be controverted that they were wisely adopted, and have been salutary in their operation. They were framed by the Congress of '87, composed of men whose integrity was incorruptible and judgment almost infallible. These articles from that time to this have remained unaltered, and carried the territories through difficulties almost insuperable to prosperity. And now for the first or second time an alteration is proposed, the consequence of which cannot be foreseen, without any evidence that it is either necessary or expedient.

The population of every new country must necessarily be composed of a heterogeneous mixture of various tempers, characters and interests. In a population thus composed it would be highly ridiculous to expect, that love of order and obedience to law would always predominate. Therefore the old Congress wisely reserved to itself the right to control them; to give the governor power, when a legislature became disorderly, to dissolve them—and for the exercise of this power he is accountable to the general government.

The gentleman from Mississippi wishes us not to treat the territories as children, whose wild extravagancies may require correcting by the indulgent hand of their parents, but as the equals of the states, without any other reason than that which he states to be the situation of the people of his territory. They will next wish us to admit them into the union before their population will authorise it; telling that that territory does not grow fast enough, and we must demolish the system for their convenience.

Mr. T. adverted to the representation made by Mr. Poindexter of the state of things now in the Mississippi territory. If such were the situation of the territory, and Mr. T. said he sincerely regretted it, he could put the gentleman in a way of settling the dispute in a regular and constitutional way, and which would be the most prudent and advisable. Certainly, in this dispute one of the parties must be right and the other wrong. They had nothing to do but prefer their complaints before the proper authority, and if they were there substantiated, they would obtain redress of their wrongs. If, on the contrary, the people were wrong and the governor right, the wisdom of this part