

MARYLAND GAZETTE.

T H U R S D A Y , A P R I L 1 9 , 1 7 8 7 .

To the PEOPLE of MARYLAND.

I AM told, that the *thinking* part of mankind have condemned me for publicly affirming and maintaining, that, until the ends of government shall be perverted, or liberty manifestly endangered, you ought not to interfere with the deliberations of the senate. They acknowledge the truth of the position, but they apprehend danger from bringing the question into controversy. To me this course seems not to have originated from deep thinking. The addresses of your delegates had asserted the rights of instructions in the fullest extent and in the most positive unequivocal terms. Both enemies and friends of the paper system had offered their draughts for subscription. It is probable that a majority of the people will be found opposed to an emission. But, had not the right of binding the senate by instructions been denied, the proceedings on this occasion, might hereafter be cited as a precedent. The silence of the senate on this point is truly to be commended; because *their* denial of the right would have afforded a pretext of charging them with an immoderate thirst of power. They had already been accused of contemning the rights, wants, and sentiments of the people, and of being actuated by an overbearing aristocratic spirit. Whether or not they possessed powers for the general good, was a question which they thought improper at this season for themselves to discuss. On these several accounts, it was my duty, as a guardian of the constitution, and not particularly interested in the question, to protest against what I thought a most dangerous innovation.

A second class of political reviewers have passed on me a more severe sentence. They have declared, that disputes about the right are perfectly immaterial; that, let the meaning of the constitution be what it may, the senate is bound to respect the opinions of the people; that the people, not being able to legislate advantageously for themselves, ought in most cases to leave both branches entirely free; that after every thing that can be said or determined, whenever the great body of the people shall think proper to exercise their power, the rights will be out of the question. To all these positions, except the first, I readily agree. I cannot admit, that it is necessary to settle the question, whether, agreeable to the constitution, the people may oblige either branch to pass a particular bill. So long as the people shall be impressed with an idea that they can, at any time, constitutionally control and direct the legislature, they may think it their duty to do so; and they will be applied to for that purpose, whenever men of popular talents shall be disappointed in their favourite scheme. Those circumstances therefore will be more likely to take place, which might end in a dissolution of the government—I mean an attempt to bind the senate by instructions, and the senate's refusing to act against their own judgments. But, let the people be thoroughly convinced, that they cannot control the legislature without a suspension or dissolution of that government, which almost every man has sworn to maintain, and he that applies to the people, except on occasions of the last importance, will be deemed no better than a promoter of sedition, or what St. Paul calls "a pestilent fellow."

The doctrine of the binding force of instructions has been adopted upon a mistaken idea, that it is connected with the principles of the English and American revolutions. In England there was supposed to be a stipulation between the governing and governed, which was broken by one of their kings. On that occasion, the people, without essentially changing their forms, transferred the supreme executive power to other hands. In America, even the forms of government have been changed, and the revolution, in every respect is complete.—We resisted the attempt against our freedom, we threw off the fetters of dependence, and we adopted such modes of government, as we thought most suitable to our circumstances.

In Maryland, as in her sister states, there is that which has been much talked of by speculative writers, and has never before existed, unless in a few doubtful instances quoted by Mr. Locke. We have a real compact, entered into on behalf of the people by their genuine representatives, chosen for that express purpose. The whole power of legislation is committed to two distinct bodies of men, without the *assent of both* which, no proposition can be passed into a law. There is however a special reservation, that whenever they should become unmindful of their trust, or pervert the ends of their appointment, or in other words, shall violate their contract, the people may either set aside, or reform the constitution. It is an avowal of the true principles of indepen-

dence; and it is intended for your direction, if at any future disastrous period an attempt shall be made to enslave you, or to take away any of your constitutional rights; *provided always, that you have no other means of redress.* By express stipulation therefore, is vested in the people that right which they inherit from nature, and which they might vindicate without the stipulation.

The right of the people to bind their representatives, chosen under this compact, is quite a different thing. If it exists at all, it must, as well as that, be founded on the constitution, or be inherent. It is mere sophistry to allege, that a lesser right is involved in the greater; because that greater right cannot be exercised without a suspension, or a dissolution of the government, and this lesser right is to be exercised, whilst the constitution remains in full force and vigour.

No man has been yet hardy enough to construe any part of the declaration or the form of government into a positive recognition of this right. But, although in making ample provision for the appointment of representatives, the constitution has not said a word about it, there are some men, who have supposed it involved in the right of suffrage.—

In the beginning, it was enough for me to shew, that even admitting a right of binding your immediate representatives, it would be incompatible with the institution of two distinct branches for you to have the same right of binding the senate. On this head, I can make no additional remark, except this very striking one. No law can be passed by the legislature, until a bill be proposed by one to be other. Now if the people can direct both branches when, in consequence of your instructions, a bill is originated and proposed by one, the other's right of dissent is taken away. The doctrine therefore so materially countenances private opinion, that the framers would have at least made an exception in its favour, had they intended or conceived that the people should possess it.

It may seem extraordinary that a man, writing on so important a subject, should have had no recourse to authority. The truth is, I conceived my arguments too powerful to need the unfair aid of mighty names. It does not indeed occur to my memory, that any writer before myself has examined the case of a legislature, consisting of two distinct bodies of men, deriving their authority immediately, or ultimately, from the act of the people. My proposition has been stigmatized with the epithet of new-fangled. It may indeed be called so, because it is a simple denial of an affirmative proposition, never advanced until the late unlucky disagreement.

The writer of a short essay in Mr. Goddard's paper of March the 2d, has examined the right of instructions generally. He has done it in a manner so simple, concise and masterly, that no man who reads it with a sincere desire of attaining the truth, can withhold his assent from any thing it contains. Being inserted as a fugitive piece, containing nothing but plain good sense, and the author being unknown, it may probably, by this time, be almost forgotten. I would recommend a perusal of it to every man who entertains a doubt respecting the subject.

I did not, at first, take notice of an essay under the signature of Publicola; but I understand that the author's confident assertions, and the great names he has mentioned for authorities, have even staggered men in the right faith. He has informed you, as I men in the right faith. He has informed you, as I collect from the whole of his piece, that Mr. Locke, lord Moleworth, and Mr. Treachard, have maintained with their pens the right of binding by instructions; that Mr. Hambden and lord John Russell have maintained it with their blood, and that Mr. Algernon Sydney has maintained it with both. In a popular harangue, this assertion might not sur- prise. Committed to writing, published to the world, and open for examination, there is no excuse or palliation for it, except that which Publicola would disdain to offer.

In Mr. Locke's two celebrated treatises of government, I can find nothing to countenance the opinion, that in a government by representation the people have a right to prescribe a particular law. He con- sideres the natural unalienable right of interfering, when the ends of government are perverted or liberty manifestly endangered, in the same light as I have done, except that he does not go quite so far with respect to the legislature's gratifying the wishes and sentiments of the people. Would any man, after reading Publicola, conceive, that Mr. Locke con- cludes his book with the following words?

"When the society hath placed the legislative in any assembly of men to continue in them, and their successors, with direction and authority for providing subsequent laws, the legislative can never

revert to the people, whilst that government lasts; because having provided a legislative with power to continue for ever, they have given up their political power to the legislature, and cannot resume it. But if they have set limits to the duration of their legislative, and made this supreme power in any person or assembly, only temporary; or else, when by the miscarriages of those in authority, it is forfeited; upon the forfeiture, or at the determination of the time set, it reverts to the society; and the people have a right to act as supreme, and continue the legislative in themselves; or erect a new form; or, under the old form, place it in new hands as they think good."

I demand whether this be not a most pointed authority against Publicola's doctrine.

I have most diligently examined Mr. Algernon Sydney's discourses on government; I find in one of those the following words:

"We always may, and often do, give instructions to our delegates; but the less we fetter them, the more we manifest our own rights, for those, who have only a limited power, must limit that which they give; but he that can give an unlimited power, must necessarily have it in himself." P. 453.

In his page 451, is the following more remarkable and more intelligible passage.

"Every country does not make a distinct body, having in itself a sovereign power; but it is a member of that great body, which comprehends the whole nation. It is not therefore for Kent or Suffolk, Lewis or Maidstone, but for the whole nation, that the members chosen in those places are sent to serve in parliament. And though it be fit for them, as friends and neighbours to take as may be to hearken to the opinion of electors for the im- pression of their judgments, and to the end that what they shall say shall be of more weight, when every one is known not to speak his own thoughts only, but those of a greater number of men, yet they are not strictly and properly oblig- ed to give account of their actions to any, unless the whole body of the nation, for which they are sent, and who are equally concerned in their resolutions, could be assembled. This being im- practicable, the whole punishment, to which they are subject, if they betray their trust, is scorn, infamy, hatred, and an assurance of being reject- ed, when they shall again seek the same honour. Although this may seem a small matter to those who fear to do ill, only from a sense of the pains inflicted, yet it is very terrible to men of ingenu- ous spirits, as they are supposed to be who are ac- counted fit to be intrusted with great powers."

These are the only material passages in Mr. Sydney relative to the subject, and these do not fulfil Publicola's purpose. Mr. Sydney's plain meaning is this: "Constituents may indeed instruct, or communicate their opinions, or give advice, which their representatives may follow, or otherwise, as they shall think proper, taking care to consult the general good, and incurring certain disgrace if they shall not act right."

To say, that this extraordinary man fell a martyr in support of the right contended for by the dele- gates, would betray either ignorance, or an opinion that ones adversaries are ignorant, and that the rest of the world are also ignorant, or will not choose to con- tradict a man endowed with superior powers.—The assertion, or rather the intimation, conveyed from the whole of Publicola's piece, respecting the great Mr. Hambden and lord Russell, is no better grounded.—Of Mr. Treachard and lord Moleworth, I know very little; but I will venture to say, that neither has maintained the right of constituents to direct ab- solutely their representatives.

If the memory of the unfortunate Sydney be dear to all true patriots, and if all such, who are men of erudition, are acquainted with his writings, how comes it, that the distinguished writer in the Anna- polis paper, of February 22d, can find no authority, except judge Blackstone, who has denied, that a member of parliament owes implicit obedience to the directions of his constituents. From this writer's very quotations, he must have been sensible, that other eminent men had long since denied it. Per- haps he will take "sustent" under the distinction between author and speaker. He quotes Sir John Barnard and Sir William Wyndham; but does not say on what occasion was uttered, or in what book may be found, that furious indecent proposition, "that the freedom of representatives is not only a new and wicked doctrine, but the most monstrous and most slavish doctrine, that was ever heard, and such a doctrine, as no man will dare to support within these walls." Neither of these two gentlemen