

That I may not again innocently be charged with would fabricating assertions for Publicola, take his own words.

"The right of the people to instruct their delegates had always appeared to me an essential safeguard of public liberty. I not only read of it, as a speculative opinion of individuals in their closets, but history told me of its being actually exercised in all governments, and all countries, where the people had a share in legislation by delegates or representatives."

If his meaning be, that in all governments, the legislature of which consists either wholly, or in part, of representatives, laws have been passed agreeably to the commands of the people at large, precluding the deliberations of the legislature, I demand a few instances. Can he give any instances whatever, where, in matters of ordinary legislation the people have interfered by positive commands? Is there any instance in history, where the right of the people to lay their commands has been recognized by the legislature? I have before called on my opponents for any known book on the English constitution, or law, or even a resolve of the commons, giving to instructions of the people the force of absolute commands. I repeat my challenge; and I challenge them to produce any approved book, asserting, that, in a government by representation, where there is an express compact delegating the powers of legislation, without an express reservation in the people, the legislature is notwithstanding bound by the instructions or commands of the people.

The sentiments of writers respecting other governments. Aristides has indeed always thought perfectly immaterial, in the construction of our own solemn compact, or constitution. For, after all that has been written, there never was a question more simple than the following: *Can the people of Maryland rightfully interfere in matters of ordinary legislation, and oblige each, or either branch, to pass a law contrary to their own judgments?* This question, in the outset I maintained to be determinable, only by the declaration of rights, and the form of government. These two instruments, taken together, constitute the great original compact, whereby the whole society has solemnly agreed, and interchangeably pledged their faith, to be governed agreeably to its provisions. In this compact, nothing at all is said of instructions; but a good deal about *freedom of speech, liberty of the press, and right of petitioning*. Publicola does not assert, that it is impossible for the people, by any compact whatever, to delegate the whole power of legislation. He at last resorts to that shift, which I looked for in the beginning. It is (*so far as I understand*) to support his doctrine by a strained construction of the 4th article of the declaration.

"That all persons invested with the legislative or executive powers of government are the trustees of the public, and, as such, accountable for their conduct. Wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government."

The doctrine contained in this article, is evidently borrowed from Mr. Locke, who considers it as an express or implied article of all original compacts; whereas subsequent writers have more justly considered, that, for such infractions of the compact, by the government, the people are no longer bound; but may immediately exercise their power, in making a new compact. But, whether the right of interference, on the grand occasions mentioned in the article be founded on, or be superior to the compact, no writer of established reputation has ever construed it into a right of prescribing to the legislature; or considered the disobedience of the legislature to the mandate of the people as a perversion of the ends of government.

In support of my doctrines, I again refer you to Mr. Locke, whom Publicola has the modesty to tell me, I do not understand—

"When the society hath placed the legislative in any assembly of men, to continue in them, or their successors, with direction and authority for providing such successors: 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 legislative, 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 will now explicitly lay down the doctrine, from which I have never swerved, and which, I am persuaded, you will think resting on too solid foundations, to be shaken by the efforts of a man, who

** By matters of ordinary legislation are meant laws, providing for the support of government, the administration of justice, the correction of manners, protection of property, regulation of commerce and finance; in short all laws respecting domestic concerns, which the constitution authorizes.*

being bound even by the government which they have chosen themselves.

1. When an actual original compact of government has been entered into by the people of any country, by themselves, or their representatives, chosen for that express purpose, that compact is binding, not only on the original framers, but on all persons, who shall thereafter become citizens of the state; every citizen has a right to have that compact inviolably preserved; and on all occasions, the true construction of it is to govern. All power indeed flows from the people; but the doctrine, that the power actually at all times resides in the people, is subversive of all government and law.

2. In Maryland, exists an original compact, containing a complete system of government, except where alterations have taken place, agreeably to the regulations and principles, therein contained. This compact defines the rights of the people, and ascertains with precision, the powers delegated to the three several departments of government. Wherefore during the existence of the said compact, there can be rightfully exercised no powers whatever, except those therein mentioned and defined.

3. By this compact, the whole power of legislation, restricted by certain regulations, is committed to two distinct bodies of men, chosen at frequent stated periods. Without the consent of both these, no law can be framed; and either may reject that, which is proposed by the other.

4. The happiness of the whole, being the declared end of this compact; and the power of legislation being delegated to promote the general good; the legislature is bound, on all occasions, to respect the sentiments of the people; and so far as in wisdom they can, to gratify their wishes. But, on no occasion is the legislature precluded from deliberation, with respect to their own acts; or bound to pass laws contrary to its own judgment.

5. There is an express article of this compact, (and without it the right of the people would have been the same) that when the ends of government are perverted, and other means of redress are ineffectual, the people may either dissolve the present government, or suspend, and reform it. It was impracticable to enumerate cases, where the interference of the people will be proper. Of this the people are to judge. But, as such interference amounts to a dissolution, or suspension of the compact, it is not intended by the compact to take place, unless the ends of government be really perverted, their liberty really endangered, and all other means of redress really ineffectual. The people, nevertheless, or any part of them, may, at any time, disclose to the legislature their wants, wishes, and sentiments. That every miscarriage of the legislature, will authorize the interference of the people; was never intended, because most mistakes may be corrected by the successors of the legislature; but any measure that puts the liberties of the people to an immediate hazard, is a proper reason for interference.

6. The legislature being chosen by the people at stated periods, its whole proceedings are published, to the end, that the people may determine whether their trustees have merited a continuance in office.

7. Upon the whole therefore, when a matter, proposed by one branch, is rejected by the other, there is no express or implied provision, that upon an appeal by the proposing branch, the people may oblige the other branch to adopt the proposition. Such a provision would have been repugnant to the institution of two distinct branches, independent of each other, and acting as mutual checks. In a government by representation, where the powers of legislation are delegated, without any express reservation of the people, the legislative possesses the only power of making laws; and no law can be made by the people, without a suspension, or dissolution of the compact.

The essential difference between Aristides and Publicola is, therefore, only with respect to the weight of instructions. The former considers them merely on the footing of information, remonstrance, or advice; the latter as commands from a principal to his agent, or a master to his servant. Again Publicola not only considers them as positive commands; but thinks, in case of disobedience, the people, consistently with the true meaning of the 4th article of rights, may dissolve the compact. Aristides is of opinion, that, so long as the legislature keeps within the bounds of the constitution, the people ought not to dissolve the compact; and that no disobedience of the legislature can justify a dissolution of the government; unless such refusal shall manifestly spring from the corruption of their trustees, and manifestly endanger liberty, and circumstances will not admit the adoption of other means of redress. All these things must concur; otherwise, the dissolution of the government is a violation of the rights of every individual, not consenting to the measure. I will just put a single case, where an immediate suspension or dissolution would be proper—a certain prospect of a powerful invasion, and the legislature's declining all means of placing the state in a posture of defence.

Aristides conceives likewise, that a practice of frequent interference would totally destroy all energy in the government, and all spirit of obedience in the people; and that, in a little time, we should be in such a state of anarchy and confusion, as would be most favourable to insidious designs on our liberties. For these reasons, he has called the doctrine

of his opponents, wicked, slavish, and absurd. The narrow limits of a news-paper will not permit him to go over the ground already trodden. He therefore refers to his former publications.

Publicola's supposition that the case of the United Netherlands, or of Switzerland, is in point, is truly admirable.

Aristides has again got hold of a passage in Mr. Sydney, to which he solicits your attention.

"I believe, that the powers of every county, city, and borough of England are regulated by the general law, to which they have all consented, and by which they are all made members of one political body. This obliges them to proceed with their delegates, in a manner, different from that which is used in the Netherlands, or in Switzerland. Amongst these, every province, city or canton, making a distinct body, independent from any other, and exercising the sovereign power within itself, looks upon the rest as allies, to whom they are bound only by such acts, as they themselves have made, and when any new thing, not comprehended in them, happens to arise, they oblige their delegates to give them an account of it, and retain the power of determining those matters in themselves."

Mr. Sydney's plain meaning in this, and the former recited passage, which are conjoined in the original, is this. "A single state in the United Netherlands, or in Switzerland, being an entire distinct body, may bind its deputies, at a general meeting of the states. But a county in England cannot bind its representatives in parliament; because they are at the same time the representatives of the whole kingdom. Nor can these representatives be bound by the whole body of the people; because the whole body of the people cannot be assembled to do any act under the known law or constitution."

Mr. Sydney might have added the following consideration, which from him might possibly have opened Publicola's eyes.—When a single state in the United Netherlands instructs its deputies, the instructions are given by the government of that state, to which these deputies are indeed strictly agents. If Publicola can shew any thing plausible with respect to the states, it must be, that in the domestic legislation of a single state, the people may bind their delegates by instructions. But if he could even shew this, I would then ask him. Do not the people exercise the right, by virtue of a particular law, or by an express article in the form of their government? At any rate, this simple distinction may be made. The deputies of the United States in the Netherlands are bound by the instructions of their respective governments, because such is their particular constitution or uniform custom. The legislature of Maryland, is not bound by instructions of the people, because the constitution does not authorize them; nor has the thing been ever yet practised.

Mr. Sydney, in the warmth of controversy, has dropt some general expressions, which Publicola has gathered as the most precious pearls. Mr. Sydney was contending against Sir Robert Filmer, a man wicked enough to assert, that things have a divine right, that the people must always submit, and that government is, in no case answerable to the people. Mr. Sydney contends, like a true patriot that all government springs from the people, and is instituted for the general good. What! (says he in effect) shall the whole people be considered as the property of one man, or set of men, and made for their use? Say rather, that they are the servants of the people. I take what servant I please, &c. &c. &c.

The whole doctrine which I have all along endeavoured to inculcate, is reducible to this single proposition. In every free government, founded on a real compact, neither the governing nor the governed, are to be considered on the footing of either master or slave; they both are possessed of certain rights, which ought to be held inviolable; and the true spirit of the compact must, on all occasions, be considered the law of the land.

Would to Heaven, my beloved countrymen, it had fallen to the lot of a man, more independent in his circumstances, to become the marked object of a base revenge, for inculcating principles essential to the happiness of society. Deserted by the men, from whom I reasonably expected support, I sincerely wish, that no future occasions may require similar exertions. The sense of duty must indeed ever impel me to act the part of a zealous and watchful guardian;—but the small services, I have hitherto been able to perform, have been attended with sacrifices greater than, under all circumstances, my duty demanded.

A R I S T I D E S.

Annapolis, June 9, 1787.

[To be continued.]

To DAN. of ST. THO. JENIFER, Esquire.

SIR,

WITH your usual prostituted effrontery you have asserted, that you neither saw, or ever heard of the sales lodged in the auditor's office, and referred to by him, if they be different from those referred to by you. This assertion you make in the most public manner, as if you were determined to substantiate your own corruption and duplicity. To prove the falsity of it, I need only refer to my former publications in this Gazette,* where this same original sale

* 4th January, and 12th April, last.

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June 11, 1787.

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