

MARYLAND GAZETTE.

T H U R S D A Y, J U N E 28, 1787.

TO ARISTIDES.

WHEN assertion, you say, is substituted for sound argument and pointed authority; when that assertion is mingled with invective, and slander is vented in general terms; when at one moment Publicola maintains almost the doctrine of Aristides, and at the next changes his ground; when he uses words suited to mislead, and then taxes Aristides with indecency and falsehood for not conceiving him aright; the labour of pursuing him appears almost endless.—What shall I reply, or how defend myself against such a catalogue of charges? Shall I content myself with pleading not guilty? or shall I ask Aristides where it is he finds, that to depart from all truth and decorum, is one of the privileges of a judge of the general court?—I have not, Sir, changed my ground; if you knew the subject, and had capacity to handle it, you would not say so; nor have I abused or slandered you, nor sought words to mislead you, nor taxed you with falsehood for not conceiving me aright. I have borne your vain and extravagant effusions with an exemplary patience. But is there no indecency or indelicacy in charging Publicola's defence of the right of instructing as a *sedition and pestilent doctrine*? Is there no calumny, Aristides, no personal reflection, no slander in making observations in a news-paper, addressed to the people of Maryland, and calculated to brand the advocates for the right of instructing as *promoters of sedition and pestilent fellows*? After such freedoms and liberties of speech, what right have you to complain of any animadversions that border upon severity? Do not be mistaken; when a judge shall forget his duty, dignity and station, and become a pert, petulant *parasite*, to attack the rights of his fellow-citizens, there shall be one, at least, who will detect and expose his mischievous principles, and repel the assault.

You charge your enemies with devoting you and your house to destruction. To construe a contradiction of your political opinions into a personal enmity and opposition, we can readily comprehend as a ridiculous attempt to excite pity and compassion. But what you meant by your *house*, I own I was among the number who for a long time were extremely puzzled to understand. I had heard of mercantile *houses*, and thought at first you had been one of a commercial company, and meant to charge me with devoting your company to destruction. But this it seems was not the case. I had heard too of legislatures, consisting of different branches, being distinguished by *houses*, and recollected the *house* of lords, the *house* of commons, the upper *house*, and lower *house* of assembly. But neither of these could be your *house*. I was then told that the nobility in Europe distinguished their families by *houses*, and I was reminded of the *house* of York, and of the *house* of Lancaster, &c. But I presumed neither of these could be your *house*. In the further prosecution of my inquiries, I recollected to have heard, that during the old government, the upper *house* originated a bill to confer titles of nobility; it passed in that *house*, but on being sent down to the lower *house*, it was there rejected. This bill proposed to confer a variety of titles; there was to be the *Duke of Chesapeake*, the *Duke of Susquehanna*, the *Duke of Patowmack*, &c. The *Earl of Sassafras*, the *Earl of Chop-tank*, the *Earl of Pocomoke*, &c. *Lord Patuxent*, *Lord Severn*, *Lord Patapsco*, *Lord Gunpowder*, *Lord Maguhy*, &c. Had this bill passed into a law, the noble distinction by *houses*, would have been familiar to our ears; we should have had enough of *houses*. Every day would have told us perhaps of the *house* of Chesapeake, the *house* of Pocomoke, the *house* of Maguhy, &c. But as this bill did not pass, and we have no such things as dukes, earls or lords, it is a mighty foolish vanity, Aristides, to assume their noble distinctions; and I appeal to your own judgement, whether such affected pomposity is not much more characteristic of the folly of a *prig*, than of the wisdom of a *judge*.

You have obliged us with a law of Athens, as a justification for your late *extra-judicial* opinions and judgments in the news-papers; which law it seems considers every man as a *traitor* who remains inactive during *civil commotions* or *treasonable combinations*. And so, Aristides, the adjournment of the house of delegates, to take the sense of their constituents, was a *civil commotion* or *traiterous combination* and they who advocated the measure, and the right of instructing, are *domestic enemies*. And hence, I suppose, your animated exertions in news-papers! But, Sir, is there no *slander* in this quotation and application of the law of Athens?

I would ask, what *active part* the governor and council took in the late *civil commotion* as you are pleased to call it? I know of none; therefore, by your application of the law of Athens, they are *traitors*. And what *active part* did the chief justice, the chancellor, and the judges of the court of appeals take in the affair? I know of none. They too then are *traitors*. Good Lord! what would have become of the government of this country had it not been for the wisdom and patriotism of Aristides! what a pity the general assembly, in consideration of his services, would not accept of his offer, and elect him a deputy to the convention at Philadelphia.

But if your pen did not contradict your heart, if you really considered the late adjournment as a *civil commotion*, and the right of instructing a *sedition, pestilent doctrine*, how comes it that you never exercised the powers of your office? You were armed with competent authority, and you were bound by oath to execute it. But instead of acting with the resolution of a judge against *domestic enemies*, you pusillanimously shrink from your duty and elevated station, and with wonderful composure and facility sink down into a contemptible *guardian to protest in news papers*; and there whine and blubber that you are *deserted*, and become a marked object for a *base revenge*.

Having condemned my defence of the right to instruct as a pestilent doctrine, and marked me for a promoter of sedition and your enemy, I ought, perhaps, to thank you for proceeding to charge me in as delicate a manner as possible, with being a *Cate-line* or a *Catbegan*. And pray, Aristides, what are you? A patriot no doubt; for you tell the people you are their *zealous and watchful guardian*; and then you address them so often, and publish doctrines so essential, you say, to their happiness! and then you tell them you make such sacrifices for their good! and then you are so affectionate! and you tell them you *love* them! and you call them your *beloved*—*my beloved countrymen*—*my beloved countrymen*!—When Judas Iscariot combined to destroy his lord and master, he covered his wicked design with an affected display of the tenderest affection, and in the moment of executing his horrid treachery, he hailed him master, and embraced and kissed him. When you, Aristides, conspire to break down one of the best guards which your fellow-citizens possess for their rights and liberties, you assume the same disguise, and wear the same mask, and while you plunge the dagger, you smile in their faces, and hail them *beloved countrymen, my beloved countrymen*!

You never, you say, till after my publication, perused the essays on government of either Sydney or Locke. I really thought so; and this accounts for your understanding neither of them; and I believe you are the only judge in the United States who never read Sydney and Locke on government.

But when you stooped at last to consult these authorities, you were utterly astonished to find them both pointedly in your favour; and then you again published to detect misrepresentation, and to turn against Publicola the authors he had cited.

And so Sydney is pointedly in your favour; unfortunate Sydney! judge Jeffries butchered and murdered his person; you Aristides, butcher and murder his fame, his doctrines and his principles. But how do you turn Sydney against me? Why by again citing his passage respecting the force of instructions from a particular county, and then telling the people that all that Sydney says in the passages I cited on the *national right* to instruct, when the people associate as a body, is the mere warmth of *controversy*!

This indeed is a turning of Sydney, and topsy turvey too; but it is a turning of himself against himself, and not against me. And now Aristides, suppose I was to adopt your principle of *turning*, and turn Sydney upon you: But how you may ask? Why by telling you, that what he says in the passage you cite respecting the force of instructions from a particular county, he meant for a *joke*!—

But it seems the question in England about instructions is a *frivolous* one. And who says so, Aristides? I beg pardon, you cite Mr. Hume. God help us! and is Mr. Hume and such writers the sources from whence a judge of Maryland should draw his *political creed*? How different from Hume is the language of Sydney. He speaks of the right as *essential and sacred*; to deprive a people of it, he says, is to act upon the principles of *piracy and robbery*, and to violate the laws of God and nature.

To give the right of instructing the force of a *command*, you allege, will be productive of the following consequences: either disobedience will produce convulsions, or by the instrumentality of the people,

a single man of great popular talents, or a small combination of such men, may carry measures against the united wisdom of the legislature.

You consider, Sir, only one side of the question. Admit for a moment, that the people are deprived of this right. What then will be the consequence? Both branches may turn, when they please, their backs upon the complaints and grievances of the people; and the people, to obtain redress, must hazard a *revolution* and the *halter*.—Besides, being thus above the reach and control of the people during the periods for which they are respectively chosen, either or both branches might become despotical, or by the instrumentality of the one, or both, a single man, of great popular talents, or a small combination of such men, might destroy the government, establish a tyranny, and make the people slaves.

The right of instructing, you say, leads to licentiousness; the taking it away from the people, I say, leads to despotism and tyranny. And as there is less probability of the peoples destroying themselves by licentiousness, than of rulers, delegates, and senators, becoming despots and tyrants; the right of instructing ought to be sacredly and inviolably preserved. And hence in all governments where the people participate in legislation, this right has ever existed, and been maintained by every patriot as an essential safe-guard of public liberty, and never was questioned but by tools, sycophants, and the partisans of power, till you, Aristides, commenced your opposition.

But you challenge me to produce instances of governments in which this right of instructing is acknowledged. I refer you to the English government; the British government; the United Netherlands; and, on the authority of Mr. Sydney, I refer you to all the governments he mentions upon this subject, and which at that time admitted a representation of the people by delegates, viz. France, Spain, the states of Languedoc and Brittany, the Diets of Germany, Denmark, Sweden, Poland and Bohemia; and I refer you to the governments of the colonies before the revolution; particularly the government of Maryland; and I refer you to a pointed decision during our *conventions* in the case of the delegates of Anne-Arundel county, who receiving instructions touching the government to be established, and disapproving the same, resigned their seats, and were afterwards re-elected, with different powers. In all these governments, while they existed, the right of instructing was invariably maintained and exercised.

But you say, you have also turned Mr. Locke against me, and as effectually I admit as you have done Sydney. In all your publications you affect to consider the *right of instructing* on the footing of the *right of legislating*. And then you cite Locke to prove that the powers of legislation can never revert to the people but on a dissolution of the government. Wherefore, you conclude, the *right to instruct* cannot exist while the government is in force.

When Mr. Locke says that the powers of legislation can never revert to the people but upon a dissolution of government, it is clear he means those powers which the people possessed *individually*, and exercised *independently* and *exclusively* of each other, in a state of nature, before they established a civil government. But the right of instructing is founded on the *national and collected* voice of the people.

Now, Aristides, exert yourself, and prove if you can, that for a people to exercise the right of instructing in their *collective and national* capacity, is to resume *individually* the powers of legislation, and to exercise them *independently* and *exclusively* of each other, as in a state of nature, before the establishment of civil government. But this is impossible, and yet Locke is quoted to maintain it. I hope, Sir, you are now satisfied that you do not understand either Sydney or Locke.

The right *occasionally* to instruct a legislature, is not compatible with *civil* government, as the right *periodically* to elect a legislature. But to exercise *individually* the powers of legislation, and *exclusively* and *independently*, as in a state of nature, is totally incompatible with every form and principle of a civil government. Well therefore may Locke say, that such powers can never revert but on a dissolution of government.

The simple question you say is this, can the people of Maryland interfere in matters of *ordinary* legislation, and oblige either or both branches to pass a law contrary to their own judgments? But why, Aristides, limit the question to matters of *ordinary* legislation? One would think you admitted the right in matters of *extraordinary* legislation. To the right I answer and say, that if the people find either or both branches *abusing* their powers, or