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MARYLAND GAZETTE.

THURSDAY, AUGUST 9, 1787.

ARISTIDES to PUBLICOLA.

SO far as I can discover, the "new-fangled doctrine" of *national instructions* binding the whole legislature has never yet been broached in England. In the hundreds and thousands of books, annually issuing from the press, there may be something of the kind; but I have never had the fortune to stumble on it. Indeed, were this doctrine established in England, in how short a time might we not hear of a *national* bankruptcy, followed by a revolution in their government? Borne down as the people are by the enormous taxes, laid for the purpose of discharging only the interest of their national debt, there can be little doubt that, with activity and perseverance, a majority of the electors might be induced to subscribe an instruction to the parliament, for abolishing a great part of those taxes, "*imposing burthens on the whole for the emolument of a few.*"

But although this doctrine of national instructions is unknown to the English, much has been said and written, amongst them, about instructions given by the electors in a single county, or in a single borough, to its own representatives. Mr. Hume has incurred your displeasure, it seems, for saying that the dispute about that kind of instructions is frivolous. Mr. Hume, however, was well skilled in the history and politics of that country; and was perfectly acquainted with the state of parties. He states the admissions of the disputants respecting instructions. One side acknowledges, that a representative ought not to disregard the opinions of his electors. The other side admits, that he is not absolutely bound by their instructions. Now if Mr. Hume be not guilty of a gross misrepresentation, is there any person that can say, the general question concerning the operation of instructions is not frivolous?

The question between Publicola and Aristides is, simply and precisely, whether or not the direction of a majority of the people or of the voters in Maryland, be so far the foundation of a law, as to bind both branches of the legislature to frame a bill agreeably to that direction. In maintaining the negative Aristides has called upon all those, who maintain the affirmative, to produce from history the case of any government in the world, (whether founded on express compact or not) in which the direction of the people at large has laid the foundation of a law, to which the regular established legislature was bound to give all the sanctions of its authority. He further called upon them to produce even the opinion of any approved writer, that such a direction, in a free government, should preclude the deliberations of the legislature, and oblige it to pass the law. In answer to this, as it seems, you gave the following reference: "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 on this subject, and which, at that time, admitted a representation of the people by delegates, viz. France, Spain, the states of Languedoc and Brittanny, 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." You preface this reference by saying, I had challenged you to produce instances of governments, in which the right of instructions was acknowledged. You there seem disposed conveniently to confound national and particular instructions; to consider me as having denied, that the practice of giving any kind of instruction ever prevailed; and to claim the victory, in virtue of this reference. Now Aristides never denied, that the practice of giving particular instructions prevailed in England, and in the English colonies. But he maintained, that instructions given by a particular county or borough, could operate, only as an opinion, a remonstrance, or advice. And this position he has fully established by Sydney and Hume; to say nothing of judge Blackstone, Sir Edward Coke, and several others, whom the in course of the controversy he has quoted. I now call upon you to produce the opinion of any writer, good, bad, or indifferent, that a representative in England, should vote contrary to the instructions of his county or borough, his vote ought not to be received; or, that if a bill should be passed, contrary to the instructions of a majority of counties and boroughs, by the house of commons, and receive the assent of the peers, and of the king, it ought not to be considered as a law.

Mr. Sydney informs you, that the deputies of the several states in the United Netherlands are subject to the instructions of their respective governments; and I have before told you, that the case of the United Netherlands is nothing to your purpose of establishing the doctrine of "*national instructions*" given by the people at large. Let us examine whether there is any thing relative to the other countries, mentioned in your reference, that will better answer your purpose.

France, ever since the dissolution of the Roman empire, has been under a king. It formerly consisted of twelve provinces, each of which had a parliament, composed of peers and landholders, whose consent was necessary to the passing of laws and the levying of money. It is now divided into many more provinces, whose parliaments still claim a kind of negative to the kings edicts, which always have been the law of the land. Will you be pleased to explain how the circumstances of France can make for your purpose? Languedoc and Brittany are provinces of France. Is either of them governed by laws dictated by the people at large? Has either of them a legislative body, which is bound to obey the instructions of the people at large?

The *cortez*, or courts of Spain are, in point of form, somewhat similar to a British parliament. They consist of the nobility, the clergy, and the representatives of commons. But whatever their former privileges have been, these cortez now meet, only to confirm and record the decrees of the court. It is not impossible, that the representatives of commons were formerly somewhat on a footing with the English house of commons.

In Denmark, although it has always had a king, the legislative power was once in the nobility, the clergy, and the representatives of citizens and farmers. Ever since the year 1661, the king has been absolute, from the solemn act of the several orders, passed at that time. History does not inform us, that any one of those orders, on that momentous occasion, pursued the directions of the people. With respect to particular instructions from particular districts, it is probable enough, that such might have been formerly given, by way of communicating the opinion of the particular citizens and farmers.

In Sweden, Poland and Bohemia, the people have a share in the legislature, by representation. Whether or not the people in particular districts make a practice of instructing their respective representatives, or how far their representatives would hold themselves bound, I cannot positively say. But it is incumbent upon you to show (if your reference is to answer any purpose) not only that representatives are there bound by the instructions of their electors; but that the whole legislature, or at least the whole representative body in the legislature, receive and invariably hold themselves bound to obey directions, given by a majority of the people. It would throw much light upon the subject, if you could shew likewise, in what manner the sense of the people, or the "*national sense*," in those countries, is collected. I take it for granted, that the people, in those countries, were never more tenacious of their liberties and rights, than the people of England, whose rights Mr. Sydney asserts to be unimpaired. Now, admitting, that in all those countries, and even in England, the representatives of the people are considered as passive instruments without any right of deliberating in those cases, where their constituents choose to determine for themselves, you have not shewn, nor can it be shewn, that the people in those countries ever thought themselves entitled to dictate to the other branches of the legislature.

The diet of Germany consists of the emperor, of a vast number of princes and great lords, who are absolute in their own estates, and of the deputies of free cities. This diet is the supreme power which takes care of the interests of an immense confederacy. The princes and great lords speak for themselves. The deputies of cities pursue the instructions of the respective governments which they represent. For each of these cities has an internal government of its own. The diet then of Germany is nothing to your purpose; because in this diet there is no representation of the people at large.

But you refer me to all these governments, on the authority of Mr. Sydney. *Unfortunate Sydney! how hast thou been misrepresented and abused. But I trust that thou wilt look down with complacency on him, who vindicates thy fame.* If Publicola will be pleased to examine attentively, he will find that, when Sydney speaks of deputies obliged to pursue the orders of those, who send them, he means the deputies of the states of the United Netherlands, or of the cantons in Switzerland, or of the free towns in Germany. It is true, he says the deputies of Castile, in the cortez held at Madrid, in the time of Charles the fifth, did excuse themselves from giving supplies, as Charles desired; because they had received no orders from the towns, which sent them. Sydney says likewise, that no grants of importance were ever made, without consulting their principals. He says too, that so long as the general assemblies of estates in France continued, the deputies acted in the same manner; and, when these general assemblies were laid aside, the same custom was used, in the assemblies of lesser estates in Languedoc and Brittanny. Now, Publicola, consider how far this authority operates in your favour. It amounts to no more than that certain deputies did not choose to grant the money of their constituents, before they were certain, it would be agreable to them. Is there any thing in Sydney, to prove the custom in Spain and France, of the peoples dictating laws even to their own representatives? Why, Sir, these very representatives seldom did more than consider the propositions, that came from the court. It would puzzle you, with all your reading, to discover one single instance, where a majority of the people at large, in either France or Spain determined, that this, or that law, should be passed, and so gave order to the whole representative body, that this body might propose it to the assembly of nobles, &c. and to the court. But, could you even do that, it would be insufficient, unless you could shew likewise, that the people dictated to all the branches.

That the question between us is determinable only upon a fair construction of our compact, is a position, I shall make a point of always repeating. I have however examined the question on every ground, and in every point of view. To a slight thinker, after all, the question may appear not very material. I shall ever contend, as strenuously as Publicola, that all rightful government originates from the people; that in every free government, there is a sacred compact, either express or implied; and that society and government were instituted solely for the good of the whole. I admit too, that whenever the legislature shall be possessed of the peoples sentiments and wishes they must in most cases, and indeed, in all cases, without some weighty reason to the contrary, do as the people would have them. Publicola seems to admit, that the people ought not to dictate, except on occasions of importance. Where then is the mighty difference between the doctrines of Publicola and Aristides? Why is not their contest about instructions as frivolous, as the contest in England? The difference consists in this. According to Publicola, if a majority of the people, or of the voters, shall at any time be prevailed on to subscribe instructions the business is as good as done. The legislature must pass a bill, agreeably to that direction. But Aristides maintains, that the legislature are at liberty to examine, whether these instructions, although signed by a majority really contain the general sense, and whether that general sense be right. There may be a variety of circumstances to render improper that measure, which appears salutary to the people, from the narrow view each individual has of the subject. It may be requisite too, in many cases, for the legislature immediately to adopt measures, contrary to instructions. According to Publicola, I should suppose, the utmost which the legislature could do, in such cases, after receiving "*national instructions*," would be to adjourn, and address the people, *to prevail on them to rescind those instructions.*

If Aristides be right, there will be little encouragement for a party at any time, to make a pretext of obtaining the peoples sense, in order to force upon the legislature, or upon a dissenting branch, a measure, which they have rejected, upon the maturest deliberation. If the thing had not actually occurred, it would hardly be believed, that any man of character could have the presumption to call another inimical to liberty, and ignorant of the peoples rights, merely for contending, that each branch of the legislature may exercise its own judgment, in passing, or rejecting bills.

On a dispassionate, and disinterested view, it is impossible to conceive, that the peoples having a right to dictate measures to the legislature, and to preclude its deliberation thereon, can operate as a security to liberty, or advance the true interests of the people. That the frequent exercise of such a right must tend to render of no avail the salutary institution of two distinct branches, and indeed to confer all power on a few men, can hardly be doubted. *Your* position is, that, if the right exists not, both branches "may turn their backs upon the complaints and grievances of the people; and, to obtain redress, the people must hazard a revolution and the halter." I have before, more than once sollicited your attention to the securities we enjoy against such deplorable corruption in our trustees. Should they *really* prove false to their trust, would not their influence think you be exerted, to prevent instructions, or to defeat them, after they were given? *Where are the*