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From the AMERICAN.

BY REQUEST.

Messrs. Pechin and Frailey,

TO purſue the *ignes fatui* of anonymous publications may poſſibly lead into the filth and mire, where thoſe noxious vapours emit a glow-worm light, only to miſlead and diſappear: ſtill where explanations have once commenced, the malevolence of the times might conſtrue unfavourably; ſilence on ſubſequent charges—however contemptible their ſource or exceptionable their form. This obſervation can alone juſtify a reply to a publication in your paper of the 14th inſtant, under the ſignature of Republicanus: which is a motley aſſemblage of wilful miſquotation from our conſtitution; concluſions from real paſſages made in contempt of the rules of reaſon, and malignant fabrications calculated to impeach the motives of the governor of the ſtate.

As much of this matter has already been anticipated and fully replied to, in the different publications of the Civil Officer; unneceſſary repetitions will be here avoided. In fact the conſtitutional argument of this writer, is little more than a copious diſſertation againſt the *excluſive right of the governor to nominate* to office. In reply to this unmeaning harrago it might be ſimply aſked, whether one word has ever been ſaid by the governor or the Civil Officer, reſpecting ſuch excluſive right of nomination? In the letter addreſſed by the council to the legiſlature, it was thought proper to raiſe this phantom in order to combat it: Republicanus improving the hint, has carried it through all the evolutions of modern polemical taſtics: But the artifice of exciting a clamour, in order to withdraw the public attention from the real queſtion, has become too trite to be longer ſucceſsful. The conſtitution of Maryland, it muſt be repeated, expreſsly veſts the appointment of officers in the governor, to be made by and with the advice and conſent of the council. But it ſays not one word about *nomination*—it neither creates nor recognizes any ſuch power—it is a term not only unknown to *our* conſtitution and laws—but, it is believed, that no ſuch authority as a *diſtinct power*, will be found in the conſtitutions of any of thoſe ſtates, that firſt formed the confederation, nor in any of their laws during their colonial government. As Mr. Jay has juſtly obſerved in his addreſs on a ſimilar ſubject, to the legiſlature of New-York, —"A governor cannot appoint without nominating—the veſting him therefore with the right to appoint, muſt neceſſarily convey the ſubordinate or incidental power of nominating; without which, the right of appointing could not poſſibly be exerciſed." It appears from the ſame document, that under a ſimilar formulary of *appointing by and with the advice and conſent* of the council; the governor of that ſtate had ſolely nominated to office, without a doubt of its propriety; for about twenty years, and until a majority of the legiſlature became of a different political complexion from their chief magiſtrate; who is there elected by the people—then the right was queſtioned—The governor addreſſed the legiſlature on the ſubject; and the legiſlature called a convention—who now veſted, as they had an undoubted right to do, what is called a *concurrent right of nomination*, in each member of the council of appointment. But there was ſtill theſe evident diſtinctions (independent of party motives) between the two caſes and the conſtitutions of the two ſtates. The governor of New-York, is by his election, independent of the legiſlature; he has no permanent council—the council alluded to, is expreſsly a council for the appointment of officers only—compoſed of the governor and a certain number of ſenators, annually elected by the legiſlature. The governor has no other authority over appointments but what he derives from that article which conſtitutes him preſident of the council—but which ſeems to be evidently calculated in all its other proviſions but one, to ſhare the power of appointment, *jointly*, and not *concurrently*, between the executive and legiſlative departments By the conſtitution of Maryland, the power of the governor to appoint, and all his other powers, are derived from other parts of the conſtitution; and not from that article which conſtitutes him preſident of the council; with whoſe *concurrence* expreſsly he is to act, and not *jointly*; and his powers would equally exiſt if he was not preſident of the council, or if there was no ſuch article at all.

The right of nomination, as has been ſhewn, and as will be ſtill farther elucidated, is no diſtinct and independent power; it is from its nature only one of the incidental means of carrying into execution the power of appointment; and it has really nothing to do with the conſtruction of the conſtitution of Maryland, to which it is unknown. The merits of the queſtion between the governor and council here, will be found ſolely to reſt, on the true import and meaning of that advice and conſent to the appointments of the governor, which the council are authoriſed to give: the queſtion on the particular caſe which has occurred between them, naturally divides itſelf into two points—firſt, is that advice and conſent, imperative and obligatory, ſo that he muſt appoint whomever they adviſe, whether he approves or not? If ſo, he is a mere machine and inſtrument in their hands—and the *conſent* of the council to ſuch an appointment of the governor is not only abſurd, but a mockery. Second, does the right to adviſe and conſent to the appointment of the governor, veſt an authority in the council to appoint of themſelves, without the governor being preſent or having any agency in the appointment? If ſo the governor is perfectly uſeleſs and unneceſſary, even as an inſtrument; and both the words *advice and conſent* become abſolutely ludicrous. *In fact the council then adviſe themſelves, and convene to their own acts.* And this was preciſely the caſe of the appointment by the council of the Suſquehanna commiſſioners. Such folly, abſurdity and miſuſe, may render the interpoſition of a nomination neceſſary hereafter; but as, it had never happened during the provincial government, under the ſame words, ſo they could not have been foreſeen by the convention who formed the conſtitution of Maryland.

It is admitted that doubts early exiſted, after our independence, as to the true import and meaning of the terms advice and conſent, of council—theſe did not originate in New-York. More than twenty years ago, two young gentlemen of great talents and enterpriſe, then members of the council in Virginia, ſuggeſted their right to give advice to the governor, when he did not aſk it; but it was never underſtood by the Civil Officer, that they contended that he was obliged to take their advice, whether he approved of it or not. He then and always ſince has conſidered their conſtruction, to extend no farther, than to claim a right to offer any advice they thought proper, inſtead of being confined to confirming or negativing the governor's propoſitions; and to have their advice ſo given, entered on the Journals, to juſtify themſelves, or criminate him to their conſtituents, whenever they differed in opinion.

In order to avoid ſuch doubts and their conſequences; in thoſe conſtitutions which have been lately formed in theſe ſtates, and where the chief executive magiſtrate is ſtill to act *by and with the conſent of others* in making appointments; expreſs words have been introduced authoriſing him to nominate as well as to appoint. If he alone nominates, ſtill thoſe with whom he muſt concur to effectuate an appointment, retain the ſame control over him, that he has over them; they may refuſe their aſſent until he makes a nomination that pleaſes them, and nothing prevents their explaining to him, who would pleaſe them: where then is this ſatrap power, this Perſian deſpotiſm contended for by the governor? He only aſks that equal independent authority, which he has ever been willing to concede to the council But permit the council to complete an appointment *without his aſſent as they have done* and the governor is inſtantly reduced to a cypher.—Were his oath and the conſtitution out of the queſtion, no man of independent mind could ſubmit to ſo degraded and humiliating a ſituation; but under thoſe ſacred obligations, voluntary acquieſcence is forbid by the imperative voice of duty.

To divert the public mind from a diſpaſſionate view of ſuch glaring abſurdity and flagrant violation of the conſtitution; this writer has heated his own imagination and attempts to excite the ſympathy of his readers, by a rhapſodical diſplay of the ſubverſion of ſociety, and converſion of government into the moſt hideous of curſes; *if the governor ſhould be permitted to exercise the ſole right of nominating, and the council to retain only the mere duty of putting a negative on his nomination.* How unfortunate that the United States and the ſtate of Maſſachuſetts could not have availed themſelves of the political ſagacity of Republicanus, when they ſo imprudently and expreſsly confined the right of nominating, to their chief magiſtrates and only permitted the ſenate and council (whoſe advice and conſent they ſtill rendered neceſſary in appointments) to exerciſe the mere duty of confirming or negativing their nominations! Although theſe governments ſtill continue bleſſings to the people, muſt we yet dread that the curſes predicted by Republicanus, are accumulating with intereſt in the chancery of Heaven? With theſe examples ſtaring him in the face, how could he hazard ſuch nonſenſe? But into what abſurdities will not the zeal of partizans betray them? When men ſacrifice principle on the altar of prejudice, they are not only blind themſelves, but they really appear to believe that no one elſe can ſee! The fact is, that in all repreſentative governments, where the public will is generally declared by a *concurrent* and not a *joint* act of different branches, of either the legiſlative or executive departments, great injury may reſult from the perverſe obſtinacy of any one branch of either. No free conſtitution can be formed—at leaſt none has been formed, which the public functionaries may not perhaps totally deſtroy; if they are treacherous; the only ſecurity yet ſuggeſted by the wiſdom of man; is, after taking wiſe precautions to elect ſafe and proper characters; to render them reſponſible to their conſtituents for their conduct Such precautions and reſponſibility have hitherto preſerved and we truſt in God will long preſerve the United States and the ſtate of Maſſachuſetts, from all the horrors painted by Republicanus, although the right of nomination is confined by the expreſs words of their conſtitutions, to their chief magiſtrates: and they have heretofore protected the ſtate of New-York from injury and inconvenience, although the governor exerciſed that right, without the word nomination being uſed in their conſtitution at all

From theſe conſtitutions we are authoriſed to conclude that a right of nomination expreſsly confined to the chief magiſtrate, is perfectly conſiſtent with the right of the ſenate and council to adviſe and conſent to his appointment; and that the word *nominate* has been introduced *ex abundanti cautela* to avoid ſuch diſputes as had recently ariſen, will be evident when we examine the conſtruction of that part of the conſtitution of the United States, which authoriſes the preſident, *by and with the advice and conſent of two thirds of the ſenate* to make treaties: under this proviſion, although no previous right of propoſal is expreſly veſted in the preſident, yet he only ſubmits the treaties, after they are negotiated, to the ſenate for their approbation or rejection. How different is this from the conſtruction or effect of thoſe words, now contended for by the council and Republicanus? The words *advice and conſent* muſt certainly authoriſe two thirds of the ſenate to perfect a treaty without ever conſulting the preſident, if they authoriſe the council to appoint officers without conſulting the governor.

According to this ſagacious writer, if the governor has a veto on the appointment of the council, he would alſo have a veto in the appointment of a regiſter of wills made by the legiſlature: the language being in the one caſe he *ſhall* and in the other he *may* commiſſion; can this unpopular term veto uſed for ſuch execrable purpoſes in France be introduced here with ſimilar deſigns? Or is it only another *ſound*, intended to vary the charges already runs on the word nomination? In fact the whole poſition has aſſumed as granted the *only* point in queſtion: The governor has conſtantly denied that the council have any right to *appoint at all* except in one inſtance: having ſhewn that the general right is expreſsly veſted in him; he has only aſked, where is it even *impliedly* granted to the council? Inſtead of any part of the conſtitution directing *that the governor may or ſhall commiſſion any perſon appointed by the council*; there is not a ſhadow of authority given to them, to appoint any officer except their clerk; who is never commiſſioned at all: the abſurdity of their being expreſsly authoriſed to appoint him, when empowered by the ſame inſtrument to appoint every officer in the ſtate has been already remarked, but the ordinary rules of conſtruction, that a grant of a particular excludes a general power of the ſame nature, ſeems to have ſhared the fate, of all other rules of common ſenſe, with Republicanus. By a ſeparate article, ſec. 57; all commiſſions (military excepted) are to be ſigned by the governor and atteſted by the chancellor; this like his ſignature of the laws, is merely a formal and not a diſcretionary act; nothing can juſtify the governor more than the chancellor in withholding a commiſſion, unleſs when claimed by a perſon, who to his knowledge has not been conſtitutionally appointed. But ſurely a mind of ordinary conſtruction would draw an inference from the 41ſt ſect. reſpecting the appointment of regiſter of wills, directly the reverſe of this writer's; by that clauſe the governor's ſole duty is ſimply to commiſſion whomever the legiſlature recommend, he has nothing to do with the *appointment* unleſs in caſe of vacancy during the receſs of the legiſlature; then he is expreſsly authoriſed, *by and with the advice and conſent of the council, to appoint* as well as commiſſion until the meeting of the general aſſembly. Surely Republicanus has cited this clauſe under the immediate preſſure of lunar influence.

In fact this right as it is called of nomination, where diſtinct authorities (call them by what names we pleaſe) are brought to act together, and muſt concur in making appointments, is in reality a nugatory thing, unleſs to fix the reſponſibility where no appointments ſhall be made at all: men ſo circumſtanced muſt freely bring into view and diſcuſs different characters until they can mutually agree in a choice. But where a preſident never perſonally meets a ſenate, *by whoſe advice and conſent he muſt appoint*, nomination becomes ſubſtance inſtead of form, and is invariably eſſential; different from this is the ſituation of a governor who acts as preſident of a council whoſe advice and conſent are neceſſary to enable him to appoint; perſonal conference ſupercedes in a great meaſure the neceſſity of formal nomination; which therefore appears to be a right or a term unknown and unnoticed by our conſtitution and our laws.

Theſe obſervations calculated to ſhew that the power of appointment muſt neceſſarily include the incidental right of nomination under our conſtitution; would of themſelves be concluſive as to this writer's remarks on that part of article 38, where certain powers are enumerated which the governor is to exerciſe alone; and alſo his illuſtrative obſervation that the power of *nomination* not being one of thoſe enumerated, he cannot exerciſe it alone, but it muſt belong equally to the council. Republicanus cannot certainly be *the Friend to Candour*, or having that article under his view, he muſt have proceeded to ſtate, that if *nomination is an executive power at all, it muſt be exercised by the governor ſolely*, for this very article expreſsly declares that he the governor may *alone* exerciſe all *other* the executive powers of government, where the *concurrence* of council is not required by the laws; no law requiring the concurrence of council in making merely a nomination does exiſt; or can exiſt—ſuch a law being in its nature a palpable abſurdity

So much in reply to this conſtitutional medley of Republicanus; and here this addreſs would cloſe but for the baſe ſuggeſtion that the governor has been influenced by unworthy and diſhonourable motives in this difference with the council on a point of conſtruction—a difference which it has been ſhewn actually commenced with their earlieſt official intercourſe. The imputation will not be treated with ſilent contempt. His life we hope is unſtained by duplicity or intrigue, and he has ever avowed a readineſs to ſubmit his moſt confidential diſcloſures to the ſevereſt public ſcrutiny; if what concerns an individual can be thought any way intereſting to a ſtate. He is charged with having acted on this occaſion from a perſonal reſentment againſt Mr. Montgomery, after a vain attempt to corrupt by allurements the inflexible integrity of that gentleman to vote for him as a ſenator of the United States againſt general Smith.—The governor we truſt will never ſuffer any provocation to convert a public queſtion into a private diſpute It is firmly believed that he never felt a ſentiment towards Mr. M but what was ſincerely friendly, and that he never allowed himſelf to ſpeak of him unleſs he could do ſo with commendation and reſpect, until informed of very intemperate and diſreſpectful language uſed towards himſelf, and we believe that he ſtill feels a confidence that Mr. M. is incapable of having countenanced this infamous aſperſion; as we are authoriſed to ſay that he had both before and during the ſeſſion declared to this gentleman *perſonally, that he had no deſire whatever to be elected, the ſenator; that the ſituation was incompatible with his moſt intereſting object in life—the education of his children:* and during the ſeſſion he had poſitively told him that if *then* elected he certainly could not accept the appointment: in ſaying this he had taken occaſion ſtrongly to expreſs his high ſenſe of the pretenſions of general Smith to any favours his country ſhould beſtow on him: and in return he certainly received from Mr. M. an aſſurance which was conſidered as authoriſed, that if he really deſired the appointment, the preſent ſenator would not allow his name to be uſed againſt him: It is true that after the previous diſqualifying declaration of the governor, ſuch complimentary language could mean but little: it was regarded as one of thoſe decencies of intercourſe between public men; which tending to ſoften the aſperities that may ariſe from political rivalſhip, is an honourable oblation at the ſhrine of private feeling. But it muſt ſatisfactorily proxe how utterly groundleſs this calumny has been.

Equally malignant and untrue is the other inſinuation of private motives having influenced the conduct of the governor reſpecting the canal company—that he recommended the propoſals of the company to the legiſlature is as certainly true, as the aſſertion of Republicanus that they were rejected by a majority of the delegates is untrue; they were withdrawn to make way for different ſubſtitutes, againſt the laſt of which the company themſelves entered a proteſt.—The governor never had the remoteſt private intereſt in this canal; he is intimate with but few of its proprietors, the bulk of whom he has conſidered as rather unfriendly to him from a difference of political ſentiment; but theſe inferior motives of the man were loſt in the duty of a public officer; who conſiders the internal improvements of our domeſtic intercourſe, as the firſt of national objects; Canals particularly have always engaged his warm but diſintereſted ſupport; the partial hand of nature has overſpread our country with navigable ſtreams far ſurpaſſing thoſe of any other diſtrict of the globe and requiring but moderate efforts of art to free them from their natural obſtructions; among our great watercourſes the Suſquehanna takes the lead, from the number and extent of its own navigable branches above