N GAZETTE.

onducted, is the Great Engine by which all Popular States must ultimately be supportedor overthrown."
lity refines the Manners—Agriculture makes us rich—and Politics provides for the enjoyment of all.

RYLAND) SATURDAY EVENING, JANUARY 1, 1825. NO. 3.

ccording to the conviction of my mind, to subject our citizens 'to a jurisdiction foreign to our constitution' and unknown to our laws,' and therefore 'dangerous to the rights and liberties of a free people,' and f quietly submitted to by the people may become the means whereby the 'ends of government' may be abused, perverted and destroyed. Entertaining as I do, for the legislature of Maryland the highest respect, nd feeling for many of its members the incerest personal friendship, I have held it ut respectful to them, and due to the people whose servant I am, thus concisely to xpress my views and opinions of this legislative procedure of our native state. I ave furthermore deemed it my duty to make his exposition, because I have apprehended he whole procedure to be susceptible of many equivocal constructions and dubious ignifications—and because, if necessary, I ave held myself ready solemnly to protest gainst any interference by the legislature f Maryland with the rights of my constituents, as an usurpation alike disrespectful o them and to me as their representative. have though too much respect for the patriotism and intelligence of that honourable nd enlightened body, to make this last nd painful resort at all necessary or proper. But I have determined to give to the preamble and resolution above mentioned that construction only by which, alone, according to the conceptions of my understanding, the legislature can be justified or excused to the people, viz: *as the simple expression of the opinions and feelings of certain individuals of the legislature of Maryland* possessing under the bill of rights, the constitution and laws of the state, no greater privileges than one common to me and every other citizen, *and nothing more.*

With great respect, I am
WILLIAM HAYWARD, Jr.
Washington, Jan. 8, 1824.

From the Easton Gazette of Jan. 24.

TO THE FREEMEN OF MARYLAND.

The subject of a congressional Caucus for the selection of a President of the United States is the predominant topic of the day. This question has given rise to a correspondence, through the Executive of Maryland, between the General Assembly of the State and its Senators and Representatives in Congress, in which an entire difference of opinion is exhibited between them. It will be well to examine this question deliberately and see which is right.

The General Assembly, anticipating that an attempt would be made by the members of Congress, whilst officially engaged in their public duties at the seat of Government, to hold a caucus for the purpose of selecting and recommending and thus instrumentally employing themselves in a choice of a President of the United States, thought proper "to request the Senators and representatives in Congress from Maryland to use their exertions to prevent such caucus"—and this was done as well because the General Assembly thought that such a caucus was a direct violation of a special injunction of the Federal Constitution, as because they considered it to be of bad tendency.

To this request a Senator and a Representative have replied at length, denying the constitutional right of the General Assembly to trammel them with any such requests. The Senator offers some very high party reasons in favor of the caucus, and *claims for himself the privilege common to every citizen of the state to take part in the election of a President.*

The Representative calls the request a censorship over the members of Congress —he says he expounds it by means of his respect for the General Assembly, not from the contents of the request—he is unwilling to believe that the General Assembly would forget all the obligations of duty and disregard the injunctions of the constitution, and attempt to usurp rights that belong to the constituent—that it is the duty of the Representative to guard the right of instruction from all attempts which *bodies of men of delegated purposes and limited duties* may offer in violation of its authority—*That the powers of the Legislature of Maryland are, by the constitution, defined, limited, and expressed, &c.*

The fierce spirit which breathes throughout these two communications has nothing to do with the argument or illustration of the question, and therefore nothing, of course, will be said upon that point.

There is between the powers of Congress and those of the General Assembly of Maryland this important difference, viz: that the former are all enumerated, limited and prescribed—whilst the latter are unrestrained except in certain specifications. Congress can do nothing but what *is* expressed or defined, or what is necessary to give effect to what is *expressed or defined* —but the legislature of Maryland can do, if not specifically *prohibited* whatever it considers salutary for the welfare of the state—The one is a body acting under specified powers, the other is a body acting under general powers except in certain enumerated cases—The Congress look into the federal constitution to see *what they may do.*—the General Assembly of Maryland look into the constitution of the state to see *what they may not do.*

All interference on the part of a State Legislature with the Federal Legislature to hinder it in the constitutional exercise of its powers, is inadmissible—But should congress usurp powers, or act in violation of those given to it, a state legislature has not only the right to express its opinion as the Representatives of the People and the State against such measures, but they would be faithless to their duty if they did not do it—For if a state Legislature are the 'Guardians of the rights and privileges and welfare of the people' they are not only to make laws for the government of the state, but they are to act as Centinels to apprise the people of approaching danger, and in their behalf to use every exertion in their power, not invading the defined rights of others, to ward off and prevent such dangers. A contemporaneous exposition of a public charter must always be revered, and a course of proceeding that began with the adoption of a constitution and has been steadily persevered in through a series of years down to the present time, is not now to be questioned as illegitimate or usurpatory after it has been fortified by time and sanctioned by universal acquiescence.

The right of state legislatures to express their approbation or disapprobation of the proceedings and policy of the federal government has been claimed, exercised and conceded as often and as long as the revolution of years from the establishment of the federal government to the present day, and the Republicans of these times would be lost to all orthodoxy in political faith not even to go further and to admit the right of state legislatures to pass resolutions, not only to controul the measures of the federal government, but to work a revolution in the men who are called to discharge its various duties—To support which they would cite Mr. Madison's famous resolutions in the Legislature of Virginia, which were principally instrumental to the overthrow of the federal party in this country.

If state rights are dear and worthy to be maintained—if State legislatures are the immediate Representatives of the People —and Senators and Representatives in Congress are also Representatives of the State and People in the National Legislature, can there be, under the view just taken, any wrong inflicted or any usurpation discovered in the Representatives in a state legislature, who from their situation have at first more full and extended view of things than the people themselves, expressing their sense, in behalf of the people of the State, on national measures? or even of requesting, in a frank and respectful manner, that their Representatives in Congress would promote or impede a particular measure? Has not this been universally the course adopted in every state? and is it not a course of things necessarily growing out of representative government, embracing independent state sovereignties and a confederated Union of the whole? But if this has been the established usage, the universal practice among all the states, founded upon state sovereignty, representative duty, and state concern in all that regards the confederated welfare, surely when a state thinks she sees a measure about to be adopted which lays waste an important precautionary provision in the constitution of the country, she may claim and exercise the right of respectful interposition, by means of her friendly council and advice, to save the charter of the federal compact from injury. Without touching the threadbare question of instructions, the comity which ought to exist between state legislatures and the federal legislature would countenance and approve of such an interchange of views, and whatever may be the lofty pretensions of personal independence, the sense of a large majority of a state legislature presents an imposing aspect in the state of things, which merits something more of kindness than contumely and denunciations of usurpation.

But let us see upon what grounds the General Assembly of Maryland could stand in regarding a congressional caucus for the nomination of a President as an unconstitutional proceeding.

The Federal Constitution says "no Senator or Representative in Congress, or person holding an office of trust or profit under the United States, shall be an elector of the President"—Why prohibit a Senator or Representative in Congress from being an elector of President? Every commentator and expounder of the federal constitution from Alexander Hamilton, James Madison and John Jay, down to the present time have said, *because the situation of members of Congress in relation to the President is such, that the purity of the public councils and the avoidance of all probability of intrigue or corruption forbid it.* Besides this, in case of no election of President by the people, the Representatives in Congress are called on in the last resort to make the election—and if they are the constitutional tribunal of last appeal, they ought to be unpolluted by prejudices or partialities, they ought not to have prejudged the case, and to that end they should be kept entirely free from any previous agency or concern in the election in the first instance when it is intended to be placed exclusively in the hands of the people.

But the senator and representative before alluded to *claim a right which they say is common to them with every citizen of the country of taking part in the election of a President of the United States*—Can any claim be founded upon more mistaken grounds? Can a pretension to a right be more directly in hostility with an express and cautious exclusion by the constitution? By forbidding a Senator or Representative in Congress from being an Elector, the Constitution intended to prevent them from being the active agents or from being known at all to be the instruments in any degree to promote the election of a President in the first instance—in truth it intended to exclude them altogether, in the first instance, from any participation in the choice—this exclusion also extends to office holders under the United States, but to no other citizens. How then can the Senator or Representative set up an equal right with all other citizens to take part in the election of a President? To be known to be instrumental to the elevation of a chief magistrate is the direct means to become the object of his patronage —for this reason the Constitution forbade members of Congress from being electors of a President, yet for this reason we are to be bewildered with every species of sophistry to authorise that *indirectly* which is *directly* prohibited. Is it to be less known or to be less instrumental in the election of a President, to be of a caucus that shall select the man that party influence is to elect than to be a candidate for an elector? They say, *that after the caucus selects, the election still rests with the people*—but if the intention and the effect of the caucus is not to give an adventitious influence to the man selected by them, to force him down by the dint of party adhesion, of what avail would the caucus be? or would there be any caucus at all? To this it is replied, that they do not act in caucus in their official capacity, but in the character of private citizens—neither would they act in their official capacity, as electors, yet they are prohibited from being electors. The idea that a senator or representative in Congress, during the session, can throw off his official character at will, by which he is as well cloathed with certain immunities as divested of certain rights, is a pretence too flimsy for serious men to give ear to—Such a position would lead to this, that notwithstanding the constitution exempts a senator or representative in Congress from arrests during their attendance in Congress, yet in caucus they might be liable to arrest, inasmuch as they were not then in their official character which alone granted them the exemption—But would not a man be scorned who should put forth seriously such an opinion as this? yet it is not more absurd than the other pretence set up.

The doctrine is neither novel nor to be doubted that official station draws after it disabilities as well as confers honors, privileges, and emoluments, and gentlemen who accept such stations do deprive themselves of many of the rights of citizens on account of their honors, emoluments, and immunities. Thus according to our Bill of Rights in Maryland, no chancellor or judge can hold any other office civil or military, or receive fees of any kind—the holding of one office creates a disability to hold another—and what is meant by disabling a man from serving in a particular office, but the preventing him from interfering in any way in its purposes and objects? By the Constitution of this state no Senator, delegate or member of the council can hold any office of profit—No Governor can hold any office of profit—no person holding any place of profit, or receiving profits from any agency—and no Minister of the Gospel, can have a seat in the General Assembly or Council—Here we see are numerous disabilities created in consequence of official station, or on account of the incompatibility between certain offices—yet private citizens do not labour under these disabilities, they are confined exclusively to men in official station.

So in the Federal Government we find, that no Senator or Representative can be appointed to any office created during his time, or the emoluments of which were increased in that time—no person holding office under the United States can be a member of Congress—no person holding office of trust or profit can receive a present, emolument &c. from a foreign Prince or state, without the consent of Congress, but a private citizen can do all these things —no Senator or Representative or person holding an office of trust or profit can be elector of President.

With these examples no position can be clearer than that official stations place men who hold them under certain disabilities which private citizens are wholy free from, and men in such stations neither have nor can they lay claim to a community of rights with private freemen. The constitution designed this for wise and wholesome purposes, and the People and the "Trustees of the People" should take care that these useful inhibitions are not circumvented by sophistical pretences or made of little account in competition with party views. If the rewards of official station are honors, profits, and privileges, they are enjoyed at the surrender of certain rights which are common to all other citizens, the exercise of which by those in such stations would be wholy inconsistent with the public welfare and incompatible with a faithful discharge of official duties.

CURTIUS.

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