J. Caterup

EASTON GAZETTE.

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MR. MADISON'S LETTER.

On the Constitutionality of the Bank of the United States.

MONTPELIER, June 25, 1831.

Dear Sir—I have received your friendly letter of the 18th instant. The few lines which answered your former one of the 21st of January last, were written in haste and in bad health; but they expressed, though without the attention in some respects due to the occasion, a dissent from the views of the president, as to a bank of the United States and a substitute for it; to which I cannot but adhere. The objections to the latter have appeared to me to preponderate greatly over the advantages expected from it, and the constitutionality of the former I still regard as sustained by the considerations to which I yielded in giving my assent to the existing bank.

The charge of consistency between my objection to the constitutionality of such a bank in 1817, turns on the question, how far legislative precedents, expounding the constitution, ought to guide succeeding legislatures, and to overrule individual opinions.

Some obscurity has been thrown over the question, by confounding it with the respect due from one legislature to laws passed by preceding legislatures. But the two cases are essentially different. A constitution being derived from a superior authority, is to be expounded and obeyed, not controled or varied, by the subordinate authority of a legislature. A law on the other hand, resting on no higher authority than that possessed by every successive legislature, its expediency as well as its meaning is within the scope of the latter.

The case in question has its true analogy in the obligation arising from judicial exposition of the law on succeeding judges; the constitution being a law to the legislator as the law is a rule of decision to the judge

And why are judicial precedents, when formed on due discussion and consideration, and deliberately sanctioned by reviews and repetitions, regarded as of binding influence, or rather of authoritative force, in settling the meaning of a law? It must be answered, 1st because it is a reasonable and established axiom, that the good of society requires that the rules of conduct of its members should be certain and known, which would not be the case if any judge, disregarding the decisions of his predecessors, should vary the rule of law according to his individual interpretation of it. Misera est servitus ubi jus est aut vagum aut incognitum. 2d. Because an exposition of the law publicly made, and repeatedly confirmed by the constituted authorities, carries with it, by fair inference, the sanction of those who having made the law through their legislative organ, appear under such circumstances to have determined its meaning through their judiciary organ.

Can it be of less consequence that the meaning of a constitution should be fixed and known, that the meaning of the law should be so? Can indeed a law be fixed in its meaning and operation, unless the constitution be so? On the contrary, if a particular legislature differing in the construction of the constitution, from a series of preceding constructions, proceed to act on that difference, they not only introduce uncertainty and instability in the constitution, but in the laws themselves; inasmuch as all laws preceding the new construction and inconsistent with it, are not only annulled for the future, but virtually pronounced nullities from the beginning.

But it is said that the legislator having sworn to support the constitution, must support in his own construction of it, however different from that put on it by his predecessors, or whatever be the consequences of the construction. And is not the judge under the same oath to support the law? Yet has it ever been supposed that he was required, or at liberty to disregard all precedents, however solemnly repeated and regularly observed; and by giving effect to his own abstract and individual opinions, to disturb the established course of practice in the business of the community? Has the wisest and most conscientious judge ever scrupled to acquiesce in decisions in which he has been overruled by the mature opinions of the majority of his colleagues and subsequently to conform himself thereto, as to authoritative expositions of the law? And is it not reasonable that the same view of the official oath should be taken by a legislator, acting under the constitution, which is his guide, as is taken by a judge acting under the law, which is his?

There is in fact and in common understanding a necessity of regarding a course of practice, as above characterised in the light of a legal rule of interpreting a law, and there is a like necessity of considering it a constitutional rule of interpreting a constitution.

That there may be extraordinary and peculiar circumstances controlling the rule in both cases, may be admitted: but with such exceptions, the rule will force itself on the practical judgment of the most ardent theorist. He will find it impossible to adhere to, and act officially upon, solitary opinions as to the meaning of the law or constitution, in opposition to a construction reduced to practice, during a reasonable period of time; more especially where no prospect existed of a change of construction by the public or its agents. And if a reasonable period of time, marked with the usual sanctions, would not bar the individual prerogative, there could be no limitation to its exercise, although the danger of error must increase with the interesting oblivion of explanatory circumstances, and with the continual changes in the import of words and phrases.

Let it then be left to the decision of every intelligent and candid judge, which on the whole, is most to be relied on for the true and safe construction of a constitution, that which has the uniform sanction of successive legislative bodies thro' a period of years, and under the varied ascendancy of parties; or that which depends upon the opinions of every legislature, heated as it may be by the spirit of party, eager in the pursuit of some favorite object, or led astray by the eloquence and address of popular statesmen, themselves, perhaps, under the influence of the same misleading causes.

It was in conformity with the view here taken, of the respect due to deliberate and reiterated precedents, that the bank of the United States, though on the original question, held to be unconstitutional, received the executive signature in the year 1817. The act originally establishing a bank had undergone ample discussion in its passage through the several branches of the government. It had been carried into execution throughout a period of twenty years with annual legislative recognitions; in one instance, indeed, with a positive ramification of it into a new state; and with entire acquiescence of all the local authorities, as well as of the nation at large, to all of which may be added, a decreasing prospect of any change in the public opinion adverse to the constitutionality of such an institution. *A veto from the executive under these circumstances, with an admission of the expediency and almost necessity of the measure, would have been a defiance of all the obligations derived from a course of Precedents amounting to the requisite evidence of the national judgment and intention.*

It has been contended that the authority of precedents was in that case invalidated by the consideration that they proved only a respect for the stipulated duration of the bank, with a toleration of it until the law should expire, and by the casting vote given in the senate by the vice president in the year 1811, against a bill for establishing a national bank, the vote being expressly given on the ground of unconstitutionality. But if the law itself was unconstitutional, the stipulation was void, and could not be constitutionally fulfilled or tolerated.—And as to the negative of the senate by the casting vote of the presiding officer, it is a fact well understood at the time, that it resulted not from an equality of opinions in that assembly on the power of congress to establish a bank, but from a junction of those who admitted the power, but disapproved the plan with those who denied the power. On a simple question of constitutionality, there was a decided majority in favor of it.

Mrs. Madison joins me in hoping that you will not fail to make the intended visit to Virginia, which promises us the pleasure of welcoming you to our domicil, and in a sincere return of all the good wishes you kindly express for us.

JAMES MADISON.

MR. INGERSOLL.

ST. AUBIN FARM.

To be rented for a term of years, the highly cultivated Farm of the late Dr. Nicholas Hammond, commonly called *St. Aubin*, situate near Easton.

The Farm is well enclosed, and all the Buildings are in excellent order and repair. It produces fine crops of every kind of grain and may be considered among the best grazing Farms in the county.

For terms apply to the Subscriber.

JOHN GOLDSBOROUGH.

Easton, July 28 1832.

P. S. The Subscriber has a good dwelling house at Easton Point, several other Houses in and about Easton to be let. J. G.

From the Frederick Herald.

CHOLERA IN PHILADELPHIA.

Mr. Niles:—The following letter from my friend Dr. Chapman, was received a few days ago. In requesting a place for it in your paper, I may be giving to it a publicity as unexpected, as it certainly is unauthorised by the author.

Whatever offence may be commmitted in this way, will I trust, be amply atoned for by reason of the character of the communication—its admirable adaptation to the end of tranquilizing public anxiety on some points, and of leading medical practitioners in a course of inquiry and practice commensurate with the fearful nature of the pestilence of which it treats.

Most respectfully,
Your obedient servant,
WM. BRADLEY TYLER.
Frederick City, August 2[illegible]th. 1832.

—

My Dear Sir:—I have delayed to answer your letter, till I had formed some decision as to the nature and treatment of the pestilential Cholera which is now prevailing. These are points on which so much difference of opinion existed, that I found it impossible to make up my mind as to them, without the lights of actual observation and experience. I have now seen the disease sufficiently to enable me to arrive at satisfactory, and I trust, just conclusions on the subject. But I can present in the narrow compass of a letter, only a very concise and imperfect exhibition of my views, and indeed, such are my incessant occupations, that I have scarcely leisure to execute even this slight sketch.

The disease, *wholly independent of contagion*, is caused by an epidemic agency, of which we know nothing with certainty. It is not improbable, however, that it is owing to an uniform poison which acting through the medium of the stomach on the gangionic nerves, so impairs that system, that its functions are in a greater or less degree suspended.—As always happens, when sensorial or nervous influence is withheld, there is in this case, a recession of blood from the periphery, and correspondent accumulations of it in the deep seated vessels, subversive of the proper distribution of it in the circulation, attended by a vitiation or suppression of the secretions. This, in a word, is my theory of the disease, the truth of which, I think is sustained by the symptoms, the phenomena on dissection, and the mode of cure.

It is generally held here, that Cholera is pretty uniformly preceded by considerable disturbances of the alimentary canal, by nausea or purging, or the two united. That affections of this sort, are very common in the city and elsewhere cannot be denied. But whether they constitute the preliminary stage of the disease is very doubtful. It seems to me, they ought rather to be considered as a condition, arising from distinct sources of irritation predisposing to the disease. Can it be credited, that a cause immediately operating so powerful as that of Cholera, should endure for three or four or five days, merely teazing in this slight manner, the stomach or bowels?—The transition from these mild and lingering affections, to the explosion of Cholera in its fullest force is far too sudden and violent, to suppose that they are one and the same disease, varied only by stages. I know not the analogies by which the hypothesis can be supported. Nor is this preclusive indisposition mentioned by any of the writers on Asiatic Cholera whom I have consulted. It is scarcely to be presumed, that so prominent and important a fact, had it an existence, could have possibly escaped the attention of these very able and experienced historians of the disease. Being attached to armies, and more particularly from their position in Hospitals, they enjoyed the best, and peculiar advantages for accurate and discriminating observations. It was first noticed, and promulgated by some one of the British publications, though not sanctioned by all, and from a similar coincidence of gastric and entiretic derangement with epidemic in this country, the notion has been espoused by us. Be it as it may, such disorders should at once be removed, as they are apt at all events, to invite an attack of Cholera. They do not differ from the ordinary complaints of the season, and require no peculiar management.

Genuine Cholera, for the most part comes on with little or no premonition. The earliest symptoms are complaints of load, and oppression, and anxiety about the prœcordia, with an internal sense of heat, referrible to the stomach or bowels with great thirst and a whitish tongue, and at the same time, the head is confused, the expression of countenance haggard, accompanied by slight nervous tremors, muscular weakness, cool skin, and either a quick and somewhat feeble, or a full and struggling pulse. Copious evacuations upwards and downwards, of fluid resembling dirty or turbid rice water, with flucculi mixed in it, soon occur followed by cramps or spasms of the muscles of the extremities and abdomen. These are seldom so violent as has been represented, and never extend to the alimentary canal. An aggravation of the preceding symptoms rapidly takes place, and in half an hour or more, the tongue becomes icy cold, the skin more chilled and sodden, though feeling hot to the patient, covered with a dewy viscid perspiration, the hands shrivelled or wilted, as if mascerated, the nails of the fingers blue the pulse scarcely or not at all perceptible, the face sunken, especially the eyes, around which is a dark circle.—This colour gradually diffuses itself over the entire surface, partaking of the various shades of lividness, from a saturnine to a bluish or blackish hue. During this period, the thirst is intense, the heat of the stomach in some instances is increased to a burning sensation the respiration greatly embarrassed, they are respired cold, the voice low, or whispering and plaintive, the diaphragm convulsed, and there is a total suppression of the urinary and other secretions.—Discharges from the alimentary canal, and the spasms likewise cease or are much diminished. Death ultimately takes place in a sort of tranquil stupor, or with indescribable jactitation and distress, the latter state being by far the most common.

As I have briefly described the disease such is the tenor of its character and progress, though occasionally diversified in some respects. Thus I have seen its accession as sudden as the electric shock and have met with cases without spasms or vomiting or purging. Many other anomalies might be mentioned could I indulge in such details. The disease may be properly divided in most instances, into two stages,—that of aggression, and collapse.

Called at the commencement of an attack, unless there is extreme depression, I bleed very freely from the arm, and uniformly cup the epigastrium, and give calomel largely, combined or not with opium, according to the severity of the spasms. The case will almost invariably yield to these remedies, and we have no further trouble concerning it. But where the attack is confirmed, or in other words, the state of collapse exists, the difficulties of management are vastly increased, and the practice is somewhat different. The first step, under such circumstances, is to puke actively with tepid salt and water, a tumbler full at a time. This usually settles the stomach, allays thirst, produces some degree of reaction, a stronger pulse, increased warmth of surface, and a resolution of the spasms. Co-operating in the same design of arousing the vital forces, and exciting the skin particularly, the body and extremities may be rubbed with warm flannels. Let a vein be then opened, and if the blood flows freely, take a large quantity, and especially should the pulse rise and the blood become florid. But when the reverse happens, or you have slowly to coax out the blood, or the pulse is sensibly weakened by the loss of it, stop the operation, and apply twenty or thirty cups to the abdomen, including the epigastrium, which, though they may not draw much blood, are eminently serviceable as revellents. The cups are to be succeeded by a blister to the same parts. Calomel is next to be given in the dose of five, ten or twenty grains, frequently repeated, till the aggregate amounts to about a drachm, and then worked off with a table spoonful of castor oil. As the result of these means, there are commonly bilious evacuations, discharges of urine, and other proofs of the restoration of secretory power. Little more is demanded than what has been mentioned. I have, however, sometimes known tho' rarely, that at this point of the case, irritability of the stomach to return, with the appearance of approaching exhaustation in which event, stimuli are to be resorted to; the best of which are, a strong infusion of cayenne pepper, or clove tea, or the spirits of camphor, or the aromatic spirits of ammonia, or mint julep. But they are cautiously to be administered, and in small portions, or they are instantly rejected, or they overwhelm the energies of life, or more slowly induce typhoid prostration.

Drink is sometimes vehemently solicited, particularly in height of the attack, and the instinctive desire for cold water or even for ice, may be gratified in moderation. The proper nourishment in convalescense, the only time when any is wanted or to be allowed, is chicken water or beef tea, rendered agreeably pungent with cayenne pepper. Thus I have hastily laid before you an outline of my mode of managing this terrible disease. It may be observed that, with scarcely an exception, it is depletory or evacuent. Deluded by false appearances of debility in the disease, and still more by the weight of authority, I adopted when it first broke out among us, in common with my medical friends, a course of practice in conformity with such an impression; and most disastrous was the issue. Nearly every patient, amounting to five or six, died. The prominent indications seemed to call for heat to the surface, and the internal exhibition of the diffusible excitants. Every variety of bath, hot water, vapour, heated air and topical applications of hot sand, or oats, or salt, &c. were used, and also frictions with the spirits of turpentine alone or united with camphorated mercurial ointment, and other articles. Brandy, ether, camphor, volatilli, &c. &c. were in succession tried, and the whole of these means with no other effect, than an inconceivable exasperation. The suffering indeed, induced, was as great as I have ever witnessed from the application of any remedial process. No practical lesson is more important than that in the cure of this disease, all such appliances and medicines are mischievous, till evacuations are premised, and then to be most discreetly directed.

It were easy to acquaint you with divers other methods of treating this epidemic, or to enumerate a number of special remedies that have been proposed. Dismayed, as it were, by the fearful character of the disease, practitioners have been too prone in its treatment, to abandon their principles and well tried remedies, in analogous cases, to seek a resource in specifics and nostrums.

I do not mean to vaunt of my success, but on a fair comparison of all I have seen attempted, I am led to an unqualified preference of my own plan. It cannot be charged with being tentative or empirical—is deduced from established views of pathology and therapeutics, and is sanctioned in most of its features by the lengthened and concurrent experience of the distinguished and authoritative writers on the disease in India. Many may be cured by it, and some will sink under the force of the attack in despite of your efforts. The case not being too far advanced, a triumph over the disease is pretty certain. Cholera is, on the whole more tractable than yellow fever, or the winter pestilence, which devastated our country during the late war.

Ever, my dear sir,
Yours most truly,
N CHAPMAN.

Philadelphia, Aug. 18, 1832.
To *Dr Wm. Bradley Tyler, Fred'k. Md.*

—

The following excellent burlesque on the recent law enacted by the authorities of Boston to prevent vegetables being carried to that market, unless stript of their shells, husks, &c. will excite the risibilities of our readers. Now-a-days, that which will provoke a laugh, is better than five drops of spirits of camphor.

From the Boston Courier.

Right of Search.—Extract from the log book of a market cart. Left Cambridge at 3 A. M.—weather very thick and raining—at 4, 15 min. made Craigie's bridge. Hearing the city cutters meant to search, bade my man Eli stow away the beets & carrots under the false deck. Says Eli, "Alderman Squab's a going to gie me nine pence extry for a peck o' marrifats the old way; he says its all tarnal nonsense to have 'em shelled by a pack o' women that have just been a clouting babies, for all he knows; so I's tied my trowsers at the bottom, and got him a good peck inside my breeches." "Well, Eli," says I, 'that's your private venture; nobody knows what they'll do next; if they should *divest you of your useless parts* you'd cut a queer flash.' 'There they are,' says Eli, 'by jings.' So I looks over the starboard bow, and sure enough, there was a low, long pokerish craft, edging up. Saw two of my neighbors carts following in my wake, made the private signal No. 44, an *onion* on a pole *union* down; the two carts hauled their wind, and stood through the short channel for the State's Prison. City cutter within pistol shot. Told Eli to do the talking. 'Hollo that *are* cart,' says the cutter. 'Hollo it is,' says Eli; 'but it an't an *air* cart nor a water cart by a darn'd sight.'

"Bring too" says he, "We have brought two, master and me," says Eli. "Hold your sauce," says he. "Aye, aye," says Eli, holding on to his breeches, and running his tongue into his cheek with such a roll of the eyes, as made me almost fall off my seat. The hailing officer began to make crooked faces, so I thought as how I would bring to: hauld up the fore pony, and lay to under an old umbrella. "Now, what's the word," says Eli, "are ye going to rob us on the high way?" "What have you got in that cart?" says he. "What do you please to have?" says Eli, "here's long sauce and round sauce." "I have got the Mayor's orders to search that cart," says he. "The Mare's orders," says Eli, "she carries a high dock now-a-days, don't she?"—

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