From the AMERICAN.

Messrs. Pechin & Frailey,

TO pursue the *ignes fatui* of anonymous publications, may possibly lead into the filth and mire, where those noxious vapors emit a glow-worm light, only to mislead and disappear; still where explanations have once commenced, the malevolence of the times might construe unfavorably, 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 farrago, 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 tactics: But the artifice of exciting a clamor 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 such 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 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 were 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 this 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 denied 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 has been 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. 2d. 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 consent to their own acts. And this was precisely the case of the appointment by the council of the Susquehannah commissioners. Such folly, absurdity and abuse may render the interposition of a nomination necessary hereafter; but as they 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 occurred, 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 enterprize, 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 rapsodical 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 these 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 once 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 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, altho' no previous right of proposal is expressly vested in the president, yet he only submits the treaties, after they are negociated, 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 charges already rung 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 expresly 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 expresly authorized to appoint him, when empowered by the same instrument to appoint every officer in the state has been already remarked, but the ordinary will of construction, that a grant of a particular excludes a general power of the same nature, seems to have shared the same fate, of all other rules of common sense, with Republicanus. By a separate article, section 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 section, respecting the appointment of register of wills, directly the reverse of this writer; 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 expresly authorized, *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 bro't to act together, & must concur in making appointments, is in reality a nugatory thing, unless to fix the responsibility where no appointment 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 noticed by our constitution and our laws.

These observations calculated to shew that the power of appointment must necessarily include the incidential 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 candor*, 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 expresly 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 medly of Republicanus, and here this address would close but for the base suggestion that the governor has been influenced by unworthy and dishonorable 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 favors his country should bestow on him: and in return he certainly received from Mr. Montgomery 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 complementary 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 honorable oblation at the shrine of private feeling. But it must satisfactorily prove 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 has 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 properties, 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 effects of art to free them from their natural obstructions; among our great water courses the Susquehannah takes the lead, from the number and extent of its own navigable branches above tide water; exclusive of which it is perhaps the only rival the U. States can successfully oppose to the St. Lawrence in all that water communication through the lakes; of which daily discoveries are opening unbounded prospects. Under such impressions and none other, when an act of the legislature of Pennsylvania denying the right of the state of Maryland to grant an half toll on the bed of the river directed a correspondence on the subject to be opened with him as governor of Maryland, he was unavoidably compelled to maintain the right of the state to the full jurisdiction over the river within her limits; a right which Pennsylvania will hereafter discover to be essential even to *her* best interests; situated as the Susquehannah is in one corner of the state, the representatives of Maryland will sparingly, it is presumed, employ the public treasure in improving its navigation; it is to be apprehended that this river must itself pay for all the improvements it will ever obtain; this can only be effected by tolls established under the authority of Maryland. It must be obvious then that to abandon the right of the state over the bed of the river, would be to close up forever one of the fairest sources of public prosperity; but from the unpopularity which had attended the exercise of this right, in both states, the danger seemed evident that the right itself might be involved in the same fate with the exercise; from this motive at the meeting at Susquehannah he recommended to the company to compromise their claim and relinquish the grant, the company having complied, honor as well as duty, dictated the decent terms in which he recommended their proposals to the attention of the legislature, at the moment of handing to them the letter of governor M'Kean; believing as he does that the morality and happiness of the people must forever depend on the examples of good faith and justice which are set by their rulers, he will never scruple we are assured to recommend, when within the line of his duty, a religious compliance with a public contract, or the substitution of a fair equivalent by voluntary compromise; but we again assert that he is no otherwise interested in or connected with this particular measure, than as a responsible officer and a citizen of the state.

A CIVIL OFFICER OF MARYLAND.

Notice.

THE members of the "Baltimore Equitable Society, for the insuring of houses from loss by fire," are hereby informed, that a general meeting of the said society will be held at James Bryden's Inn, on the 4th day of next month, at 3 o'clock in the afternoon, for the purpose of electing twelve directors and a treasurer for the ensuing year—and to take into consideration such other subjects as may then be brought before them.

By order,

JOSEPH TOWNSEND, Sec'y.

March 28. dt3Ap

RATISBON, January 14.

The following is the convention concluded at Paris, relative to the indemnities of the grand duke of Tuscany.

CONVENTION.

His majesty the emperor, king of Hungary and Bohemia, having signified that he could not consider the 5th article of the treaty of Luneville, as far as it relates to his royal highness the Archduke Ferdinand, grand duke of Tuscany, as sufficiently fulfilled by the plan of indemnities agreed to by the deputation of the empire; and as the first consul of the French republic, on his part, has nothing more at heart than to contribute to the entire and perfect fulfilment of that treaty, it has been resolved, with the consent of his majesty the emperor of all the Russias, to agree on certain modifications to be introduced into the plan accepted by the deputation of the empire, to render it conformable to the principles of the treaty of Luneville, and such as may receive the ratifications of the emperor and the empire. For this purpose, the high contracting powers have appointed their respective plenipotentaries, namely, his majesty the emperor, king of Hungary and Bohemia, the Sieur John Philip Count Cobentzel; and the first consul of the French republic, Citizen Joseph Bonaparte; who having exchanged their full powers, have agreed on the following articles:

Art. I. To enlarge the indemnities stipulated in favor of his highness the duke of Modena and his heirs, his imperial majesty cedes the district or province Ortenau, with all its dependencies, to be united to the Brisgau, and his highness and his heirs shall possess these two provinces, without any exception or limitation, according to the 4th article of the treaty of Luneville, which with respect to the duke, is to be understood as well of the Ortenau as of the Brisgau.

Art. II. To indemnify his Imperial majesty for his cession of the Ortenau, the two bishoprics, Trent and Brixen, shall be secularized, and his majesty shall receive possession of the same, and all their property, rights and revenues, only under the condition that he shall provide for the maintenance for life of the two prince bishops and their chapters, as shall be agreed on, and for the future dotation of the clergy, which in these dioceses shall be placed on the same footing as in the other provinces of the Austrian monarchy.

Art. III. To complete the indemnities of his royal highness the archduke, grand duke (of Tuscany), the bishopric of Eichstadt shall be added to what has already been assigned to his royal highness by the general conclusum or recess of the 2d Frimaire (Nov. 23), to be possessed by his royal highness and his heirs, in full sovereignty and independence, with all the property, revenues, rights and prerogatives connected therewith, as possessed by the prince bishop himself at the time of the signing the treaty of Luneville; only with the exception of the districts of Sandsee, Wernsels, Spalt, Oberberg, Hornberg and Warburg, with all the dependencies of the bishopric of Eichstadt, contained in the territories of Anspach and Bayreuth, which shall remain to his electoral Palatine highness of Bavaria, and shall be recompensed to his royal highness the archduke, grand duke, by a suitable equivalent from the domains of his electoral highness of Bavaria in Bohemia, and in case there should not be sufficient, from other revenues of his electoral highness.

Art. IV. For the confirmation of the said stipulations, and the property and other rights which his imperial majesty, as sovereign of the Austrian hereditary states, and head of the empire, has agreed on and ceded for the completion of the plan of indemnities, his majesty engages to employ his influence that the general plan of indemnities, as modified by the present convention, shall be ratified by the empire, and that it shall, without delay, receive the imperial ratification.

Art. V. It is expressly understood, that after the exchange of the present act, the territories mentioned in the preceding articles shall be taken possession of, both in the civil manner, by the princes to whom they are allotted, or in their names; also that the city of Passau, and the suburbs of Instadt and Illdadt, shall be immediately evacuated by the troops of his imperial majesty, and given up to his electoral Palatinate highness of Bavaria, but under condition that the fortifications of the city shall not be enlarged or strengthened, but only maintained in their present state; and that no new fortifications shall be erected in the suburbs of Instadt and Illstadt. Also in the territory of the bishopric of Eichstadt, no new fortifications shall be erected by his royal highness the archduke Ferdinand or his heirs.

Art. VI. The first consul of the French republic will unite with his Imperial majesty of all the Russias to procure the electoral dignity for his royal highness the archduke Ferdinand.

Art. VII. The high contracting parties gurantee reciprocally the fulfilment of every thing contained in the preceding articles, and the minister plenipotentiary of his Imperial majesty of all the Russias shall be invited to accede to the present convention for and in the name of his Imperial majesty, as a contracting principal.

The present convention shall be ratified within twenty days from the present time or sooner if possible.

Done at Paris, the 5th of Nivose, of the year 11, (December 26, 1802.)

(Signed)

PHILIP COBENTZEL.
JOSEPH BONAPARTE.
COUNT MARKOFF,
In the name of his majesty the emperor of the Russias.