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# Gazette of the United States.

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[Whole No. 451.]

FOR THE GAZETTE.

TO THE PEOPLE.

HAVE the Americans a right to go a privateering against any nation, while America is at peace with all the world? That they have no such right is declared by the President; and the Judges of the Supreme Court are doubtless of the same opinion. But there is party in some of the States who support an opposite opinion. They contend that an American citizen may when he pleases enter on board a foreign privateer while the United States are at peace. When we consider the conduct of this party in Philadelphia during the late trial of a privateer's man, the proofs of joy they afterwards exhibited, and the late publications that seem to have been made by some of them, indecent beyond their usual efforts; when we consider also that the head of that party seems to have appealed to the people in opposition to the sense of the executive, with the hope, as we must suppose, of causing insurrections and overturning the government, it must be high time for every citizen to consider the subject fully and say whether he is for war or peace.

Be not deluded by fellow-citizens by the idle parade of wordy lawyers or frothy politicians, there is but one question before us.—It is the question of War or Peace—and the true object of all the privateer's-men is a general War, whatever they may pretend to the contrary, for their measures tend to inevitable war. You will be pleased to think on this subject and give your opinions.

The argument used by the party in opposition to government, I do not know whether they are actually called for the sake of distinction, privateer's-men or Geneteens, is that a citizen of America, living in America, may when he pleases change his allegiance, that he may this minute be an American, and on the next minute, without change of place, he may, by a kind of hocus pocus or leger de main, be a French, an English, or a Dutch man. That being thus transfigured he may slip himself on board the armed ship of his adopted foreign nation, he may go to sea and plunder or take the ships of people with whom the Americans are at peace, may bring those ships into American ports and sell them as good prizes. Let us trace the natural conclusions from this argument.—French privateers they say may be fitted in American ports and American citizens may become Frenchmen in our towns. If part of the crew of a French privateer may be Americans, nick-named French, certainly the whole crew may be of the same class. If one man may purchase and fit out a vessel for cruising against the trade of a nation with whom we are at peace, every other man may do the same thing. Our ship-owners may be transmuted into Frenchmen as well as our seamen. In this case there may soon be fifty or an hundred privateers at sea, cruising against the trade of Spain, Holland, England and Germany, making descents on their islands or their European dominions, and plundering their subjects. All the prizes or plunder must come into the United States for the accommodation of the captors when they shall think fit again to call themselves Americans. It might happen that not a single man of all this privateering armada had ever been in France—all of them born in America and retaining the privileges of American citizens; but the people of the United States are all this time supposed to be inoffensive and peaceable! Suppose any of the injured nations should complain that Americans had taken their vessels and should demand reparation, our subtle politicians are prepared with an answer;—we are to reply that those Americans had changed their country, while they were cruising, and we disowned them? Would this, do you think, be a satisfactory answer? Old Indians make treaties of peace with us and young Indians kill our fellow-citizens; when we complain of the breach of peace, the blame is constantly laid, not upon people who ceased to be Indians, but upon disorderly young people; the nation do not make themselves answerable. The policy of our privateer's-men is an improvement on savage perfidy; their outrages will not be committed by disorderly people of the United States, but by Frenchmen who had been Americans before they went on board and will be Americans when they come on shore.

Suppose we should declare war to-morrow against England, Spain and Holland, what is to be done; it is generally supposed that our whole exertions must be confined to privateering against their commerce, but this is the very thing our politicians would effect by their new fashioned system of neutrality.—There would be no difference in substance, some difference there might be in shadow.—In one case we should cruise with a striped cockade, in the other case with a black one. In one case we should cruise under a false name, in the other case with our proper name. Such a distinction may be good for children at play, for sober men or for nations it is too contemptible to be mentioned.

It is really a pity that the property, the

happiness and peace of four millions of people should be endangered by a few privateer's men; by a class of men who being too lazy to work are desirous of robbing on the high seas. We have been told that gratitude to France will justify some little departure from the direct line of neutrality, but these very men are going to cruise against the Dutch, and we know that the Dutch suffered more on our account during the late war than the French; why does gratitude sleep when the Hollander puts in his claim? Such reasonings may be conclusive to the man who wishes for an excuse to seize property that is not his own; by injured nations they must be regarded as insult added to injury. They will not fail to discover that they have been struck by Americans.

In a word my fellow-citizens, we have no alternative; we must firmly set our shoulders against this trade of privateering, we must prevent this manufacture of American French or else we must go to war with Spain, England and Holland. If you prefer peace you will act accordingly. NESTOR.

FOR THE GAZETTE.

MR. FENNO.

Please to give a place in your Gazette to the following observations. The Printers who may have republished the pieces, signed PACIFICUS, are requested to re-publish these, and will no doubt be candid enough to do so.

NUMBER I.

SEVERAL pieces with the signature of PACIFICUS were lately published, which have been read with singular pleasure and applause, by the foreigners and degenerate citizens among us, who hate our republican government, and the French revolution; whilst the publication seems to have been too little regarded, or too much despised by the steady friends to both.

Had the doctrines inculcated by the writer, with the natural consequences from them, been nakedly presented to the public, this treatment might have been proper. Their true character would then have struck every eye, and been rejected by the feelings of every heart. But they offer themselves to the reader in the dress of an elaborate dissertation; they are mingled with a few truths that may serve them as a passport to credulity; and they are introduced with professions of anxiety for the preservation of peace, for the welfare of the government, and for the respect due to the present head of the executive, that may prove a snare to patriotism.

In these disguises they have appeared to claim the attention I propose to bestow on them; with a view to shew, from the publication itself, that under colour of vindicating an important public act, of a chief magistrate, who enjoys the confidence and love of his country, principles are advanced which strike at the vitals of its constitution, as well as at its honor and true interest.

As it is not improbable that attempts may be made to apply insinuations which are seldom spared when particular purposes are to be answered, to the author of the ensuing observations, it may not be improper to premise, that he is a friend to the constitution, that he wishes for the preservation of peace, and that the present chief magistrate has not a fellow-citizen, who is penetrated with deeper respect for his merits, or feels a purer solicitude for his glory.

This declaration is made with no view of courting a more favorable ear to what may be said than it deserves. The sole purpose of it is, to obviate imputations which might weaken the impressions of truth; and which are the more likely to be resorted to, in proportion as solid and fair arguments may be wanting.

The substance of the first piece, sifted from its inconsistencies and its vague expressions, may be thrown into the following propositions:

That the powers of declaring war and making treaties are, in their nature, executive powers:

That being particularly vested by the constitution in other departments, they are to be considered as exceptions out of the general grant to the executive department:

That being, as exceptions, to be construed strictly, the powers not strictly within them, remain with the executive:

That the executive consequently, as the organ of intercourse with foreign nations, and the interpreter and executor of treaties, and the law of nations, is authorized, to expound all articles of treaties, those involving questions of war and peace, as well as others;—to judge of the obligations of the United States to make war or not, under any casus federis or eventual operation of the contract, relating to war;—and, to pronounce the state of things resulting from the obligations of the United States, as understood by the executive:

That in particular the executive had authority to judge whether in the case of the

mutual guaranty between the United States and France, the former were bound by it to engage in the war:

That the executive has, in pursuance of that authority, decided that the United States are not bound:—And,

That its proclamation of the 22d of April last, is to be taken as the effect and expression of that decision.

The basis of the reasoning is, we perceive, the extraordinary doctrine, that the powers of making war and treaties, are in their nature executive; and therefore comprehended in the general grant of executive power, where not specially and strictly excepted out of the grant.

Let us examine this doctrine; and that we may avoid the possibility of mistating the writer, it shall be laid down in his own words: a precaution the more necessary, as scarce any thing else could, outweigh the improbability, that so extravagant a tenet should be hazarded, at so early a day, in the face of the public.

His words are—"Two of these [exceptions and qualifications to the executive powers] have been already noticed—the participation of the Senate in the appointment of officers, and the making of treaties. A third remains to be mentioned—the right of the legislature to declare war, and grant letters of marque and reprisal."

Again—"It deserves to be remarked, that as the participation of the Senate in the making treaties, and the power of the legislature to declare war, are exceptions out of the general executive power, vested in the President, they are to be construed strictly, and ought to be extended no farther than is essential to their execution."

If there be any countenance to these positions, it must be found either 1st, in the writers, of authority, on public law; or 2d, in the quality and operation of the powers to make war and treaties; or 3d, in the constitution of the United States.

It would be of little use to enter far into the first source of information, not only because our own reason and our own constitution, are the best guides; but because a just analysis and discrimination of the powers of government, according to their executive, legislative and judiciary qualities are not to be expected in the works of the most received jurists, who wrote before a critical attention was paid to those objects, and with their eyes too much on monarchical governments, where all powers are confounded in the sovereignty of the prince. It will be found however, I believe, that all of them, particularly Wolfius, Burlamaqui and Vattel, speak of the powers to declare war, to conclude peace, and to form alliances, as among the highest acts of the sovereignty; of which the legislative power must at least be an integral and pre-eminent part.

Writers, such as Locke and Montesquieu, who have discussed more particularly the principles of liberty and the structure of government, lie under the same disadvantage, of having written before these subjects were illuminated by the events and discussions which distinguished a very recent period. Both of them too are evidently warped by a regard to the particular government of England, to which one of them owed allegiance; and the other professed an admiration bordering on idolatry. Montesquieu, however, has rather distinguished himself by enforcing the reasons and the importance of avoiding a confusion of the several powers of government, than by enumerating and defining the powers which belong to each particular class. And Locke, notwithstanding the early date of his work on civil government, and the example of his own government before his eyes, admits that the particular powers in question, which, after some of the writers on public law he calls *federative*, are really distinct from the executive, though almost always united with it, and hardly to be separated into distinct hands. Had he not lived under a monarchy, in which these powers were united; or had he written by the lamp which truth now presents to law-givers, the last observation would probably never have dropt from his pen. But let us quit a field of research which is more likely to perplex than to decide, and bring the question to other tests of which it will be more easy to judge.

2. If we consult for a moment, the nature and operation of the two powers to declare war and make treaties, it will be impossible not to see that they can never fall within a proper definition of executive powers. The natural province of the executive magistrate is to execute laws, as that of the legislature is to make laws. All his acts therefore, properly executive, must pre-suppose the existence of the laws to be executed. A treaty is not an execution of laws: it does not pre-suppose the existence of laws. It is, on the contrary, to have itself the force of a law, and to be carried into execution, like all other

\* The chapter on prerogative, shews how much the reason of the philosopher was clouded by the royalty of the Englishman.

law, by the executive magistrate. To say then that the power of making treaties which are confessedly laws, belongs naturally to the department which is to execute laws, is to say, that the executive department naturally includes a legislative power. In theory, this is an absurdity—in practice a tyranny.

The power to declare war is subject to similar reasoning. A declaration that there shall be war, is not an execution of laws: it does not suppose pre-existing laws to be executed: it is not in any respect, an act merely executive. It is, on the contrary, one of the most deliberative acts that can be performed; and when performed, has the effect of repealing all the laws operating in a state of peace, so far as they are inconsistent with a state of war: and of enacting as a rule for the executive, a new code adapted to the relation between the society and its foreign enemy. In like manner a conclusion of peace annuls all the laws peculiar to a state of war, and revives the general laws incident to a state of peace.

These remarks will be strengthened by adding that treaties, particularly treaties of peace, have sometimes the effect of changing not only the external laws of the society, but operate also on the internal code, which is purely municipal, and to which the legislative authority of the country is of itself competent and complete.

From this view of the subject it must be evident, that although the executive may be a convenient organ of preliminary communications with foreign governments, on the subjects of treaty or war; and the proper agent for carrying into execution the final determinations of the competent authority; yet it can have no pretensions from the nature of the powers in question compared with the nature of the executive trust, to that essential agency which gives validity to such determinations.

It must be further evident that, if these powers be not in their nature purely legislative, they partake so much more of that, than of any other quality, that under a constitution leaving them to their most natural department, the legislature would be without a rival in its claim.

[The residue of this number will appear in our next.]

FOR THE GAZETTE.

MR. FENNO.

I HAVE observed with some pleasure the gradual deterioration of certain terms formerly in use amongst us, *invidiously* calculated to distinguish some men, possessing uncommon merit in public stations, or eminently virtuous in private life, from others, in whom those qualities are not so conspicuous, and having a dangerous tendency to destroy that equality without which we cannot be said to be altogether free.

In the room of these disparaging epithets, we have happily introduced other phrases so congenial to the spirit of freedom, that having at the best no meaning at all, they may be moulded by a temporizing incendiary to the purposes, first of misleading his followers, and, when his party becomes strong enough, of bearing down his opponents.

It is not without satisfaction that I find the term President becoming so very offensive to some citizens, though I must confess, that my joy is considerably abated on this occasion, by the mortifying reflection that few or none of the true citizens of the United States have adopted this odium, or include in it, the person of our chief magistrate—the rape of modern liberty having not, as yet, entirely destroyed that reverence for eminent talents and virtue which have heretofore been deemed necessary in our rulers.

I have unfortunately made use of the word *magistrate*, and indeed, as matters are yet circumstanced—I could not well get over it—it has an ugly sound, and a more *destructive* meaning than President, which signifies no more in this country, even in the mouths of modern reformers than one man unanimously chosen by his fellow-citizens to preside over a government rationally free and framed by themselves—by which his power and duty is unequivocally prescribed.—Whereas the other being applicable under various modifications to all governments, gives us a general idea of order, and the shameful necessity of submitting to it.—An alarming idea! which strikes at the very root of "the plant we have laboured to rear"—our darling mongrel exotic, Liberty and Equality.

But fear not my fellow-reformers—behold Aristocrat and Democrat coming to your aid—these unmeaning giants shall work wonders for you.—The magical sounds of Aristocrat and Democrat, in the mouth of any juggler, shall turn your chaff into wheat, transform an honest man into a knave and a pimp into a patriot.

I have moreover remarked with much delight, the advancement of our cause and the augmentation of our forces from the judicious management of the words *Englishmen* and *Frenchmen*.—If a virtuous American, and consequently a lover of Peace and Liberty, should speak in general terms of the fatal calamities