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## ARTICLES UPON FRENCH INFLUENCE. No. IV.

TO THE PEOPLE OF THE UNITED STATES.

Having established the point that the president of the United States has no constitutional right to issue an injunction of secrecy upon the two houses of congress, or either of them, in any matter, it is now proper to enquire into the propriety of those houses to lay such an injunction upon their own members.

The only power vested in the two branches of the national legislature, by the constitution, which upon this subject, is contained in the third and fourth sections of the first article of the constitution, which article establishes and defines the legislative functions. "Each house shall keep a journal of its proceedings: and, from time to time, publish the same, excepting such parts as in their judgment require secrecy; and the yeas and nays of the members of either house, on any question, shall at the desire of one fifth of the present be entered on the journal." This provision is naturally connected with that which precedes it. "Each house may determine the rules of its proceedings; and with the concurrence of two thirds expel a member." The provision in the present constitution respecting a secret journal appears to have been in some measure derived from the 7th section of the ninth article of the confederation of the states. "The congress of the United States shall have power to adjourn at any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of three months, and shall publish the journal of its proceedings monthly, except such parts as in their judgment require secrecy; and yeas and nays of the delegates of each state on any question shall be entered on the journal, if it is desired by any delegate; and the yeas and nays of a state, or any of them, at his or their request shall be furnished with a transcript of the journal, except such parts as are above excepted, before the legislatures of the several states."

The old congress possessed the power of peace and war, with only a mere shadow of legislative powers generally, and the power of making treaties, now vested in the president and senators exclusively, the provision which has just been quoted from the articles of confederation, appears to have been adopted with a view to the exercise of those powers upon the subjects of peace, alliances and military operations," and no other subjects. As it was the object of the "People," in establishing the new constitution, to form a more perfect union, by the operation of a more energetic system of government, power was given to each house to withhold publication such parts of their proceedings as they should deem proper. But when we consider that the powers in reference to the exercise of which, under the confederation, secrecy was allowed, were divided in the new constitution, the power of making treaties and alliances being vested in the senate (together with the president) and the power of making war and providing for military operations in both houses conjointly, it is presumable that the framers of the constitution did not contemplate secret proceedings in either cases. And in what other cases can secrecy be necessary, or consistent with the principles of our institutions? Our political system is essentially a system of publicity. The genius of our government is with the course so commonly pursued by monarchies and despotic governments. So our congress have departed from this original principle of our system, they are justly liable to censure involved in Lord Chatham's speech in the senate for the dissolution of parliament in 1769. "For a public assembly to be afraid of their deliberations published, is monstrous and unwarrantable. No mortal can construe a secret to their advantage. It, and the locking the doors, are sufficient to open the eyes of the blind; they must see that all is well within." If this be good doctrine in a republic, how much more so in a republic!

The question is not however, what ought to be the powers of congress, in this respect, but what the constitution affords no security to the people. Let us hope that this opinion is founded. It is dangerous to adopt conclusions of the spirit of the constitution. It is not to adhere to the letter. If this be generally done, and the constitution be at once corrupted and intelligible in expression, how otherwise than that it should secure our liberties and privileges? Could a *LEX NON SCRIPTA*, or a *LEX NON SCRIPTA* of legislative, executive and judicial opinions and decisions, accumulated gradually in the progress of ages, seem better than this *LEX SCRIPTA*, this recorded law, to which all can recur, and all can comprehend?

The house of congress, then, has power to conceal from the people such a portion of its proceedings as it deems improper for promulgation—power can only be exercised by first excluding another, that of "determining the rules of its proceedings," unless, indeed, the house think it more proper and take the trouble every day, of taking a distinct vote on every article of the journal which it means to keep secret. No such thing exists in practice.

The house of representatives has established particular rules upon the subject. It is provided that when a member shall announce to the house that he has a motion to make, the proceedings upon which, in his opinion, ought to be kept secret, the yeas shall be closed, and the house shall determine by a vote, whether those proceedings shall be secret or not. The house sometimes immediately determines that the proceedings shall not be kept secret, as in the case of a motion which was made for the sequestration of debts due by the citizens of the United States to British subjects. But no instance is recollected in which the house literally pursued its own rule, and determined by a formal vote, that proceedings upon a motion made with closed doors should be kept secret. The house, therefore does not, in the cases mentioned, pursue the letter of the constitution and of its own rule which is intended to carry that provision of the constitution into effect. How far, then, is the rule obligatory upon the members?

Another rule provides that when a confidential message is received from the president, the proceedings upon such message shall be secret, until the house shall otherwise determine. But nothing is said respecting documents which may be communicated with the message. These forms, in fact, no part of the "proceedings" of the house, being merely matter of information to bear upon those proceedings. They are never recorded in the "journal of its proceedings," and it is only "such parts" of the "journal of its proceedings" as "may in their judgment require secrecy," that they have a right to conceal. This will lead us to the investigation of a "question."

In a late paper we noticed that a certain person by the name of Gardner, had been brought forward as a candidate for a judge of one of the courts of Common Pleas in the state of Rhode Island. The notice we took of him stated that he had been whipped and pilloried for an infamous crime, nevertheless he was supported by some of the first men in that state, and by a considerable number of the democratic members of the legislature.

We promised some of our friends a further account of this man, which promise we now comply with by giving the following extract from the proceedings of the legislature of Rhode Island, copied from the *Newport Mercury* of the 2d of May last. *Norfolk Ledger*.

"In the choice of judges of the court of common pleas for the county of Kent, a democratic member nominated a man by the name of Gardner, in opposition to the present judge Nichols. A member from that county begged that this nomination might be abandoned: which being refused, he stated in his place, that Samuel Gardner, the candidate, had been convicted before the supreme court of an infamous crime, for which he was sentenced to stand in the pillory, and be whipped at the cart's tail, which sentence he (the member) had himself seen duly executed. This declaration produced no surprise: the fact was before notorious, and the only effect it had was to sharpen the zeal of the culprit's friends. One member complained that this charge had already been three times brought up against Gardner in the general assembly, forgetting that the disgrace was theirs, who by their support of such a man, rendered the exposure of his crime necessary. Another member said, that many of Gardner's neighbors thought his conviction and punishment unmerited and that at any rate, it was an old story, and ought no longer to be remembered, for that he had been several years a member of the general assembly, and likewise had been a judge before. His excellency the governor then informed the committee, that he had heard the late judge Bourn (who it appeared had been counsel for the criminal) say, that he did not believe Gardner was guilty of the crime for which he was punished, and that in his opinion he was convicted by mistake. The speaker also summed up and urged all the arguments in favor of the criminal's pretensions to become an honorable judge: particularly insisting upon his having been before a judge and a member of the general assembly. To these recommendations it was answered, that every member advocating the criminal had confessed the fact of his having been convicted of an infamous crime and publicly whipped. That no man pretended to be possessed of any knowledge or evidence by which the conviction could be proved erroneous. On the contrary, in opposition to the verdicts of the grand and petit juries, (who had all the evidence before them, and were under oath to decide according to that evidence,) in opposition to these verdicts and the judgment of the supreme court, nothing was alleged but the mere surmise or opinion of some of the culprit's neighbors and friends that he was not guilty. Were the verdicts of juries and the judgments of courts to be so estimated and valued even by the legislature of the state, and that too for the purpose of raising a convict to a post of honor? It was further remarked, that the man himself had manifested his consciousness of the justness of his punishment, by never having applied for a new trial. The nomination of this man however was still persisted in, and he received the votes of 34 democratic members, failing of his judgeship only by 4 votes.

"In consequence of the high favor in which this man appeared to stand with so many members of the general assembly, we have taken some pains to enquire into the transaction above alluded to, and have ascertained from correct sources, that Gardner was one of the Gang of Tories, during the revolution, who made it their business to destroy as much of the property of their enemies the

Whigs (or rebels as they called them) as they could with impunity. That on this occasion having burnt the barn and hay of Mr. Othiel Gorton, killed some of his stock and committed other outrages; Gardner and five or six others were brought to trial, convicted and punished. We are also informed, that while this man was standing on the pillory, and before he was whipped, his father offered to save him from the whipping by paying his fine of 100l. and deducting it out of the portion he meant to leave him: but that Gardner preferred the whipping to losing the 100l."

The following correspondence is from the National Intelligencer of Friday last. We republish the famous, or rather infamous, communication from the Duc de Cadore, because there has been some dispute among the democrats relative to the authenticity of the letter. The following is the official copy transmitted to our government from Mr. Armstrong.—Our readers will be apt to consider this as a bitter dose for the government of a FREE and INDEPENDENT nation.—N. Y. E. vening Post.

From the National Intelligencer May 25.  
TRIPPLICATE.  
Extract of a letter from General Armstrong, to the Secretary of state, dated Paris, 17th February, 1810.

"The note from Mr. Champagny, a copy of which is enclosed, was received yesterday."  
"This goes by the way of England, and may not be much later in reaching you than my dispatch of the 28th ult. which took the same road."

NOIE.  
The undersigned has rendered an account to his Majesty the Emperor and King, of the conversation he has had with Mr. Armstrong, Minister Plenipotentiary of the United States of America. His Majesty authorises him to give the following answer:  
His Majesty should consider his decrees of Berlin and of Milan, as violating the principles of eternal justice: if they were not the compelled consequence of the British orders in council, and above all, of those of November, 1807. When England has proclaimed her sovereignty universal, by the pretension of subjecting the universe to a tax on navigation, and by extending the jurisdiction of her Parliament over the industry of the world, His Majesty thought that it was the duty of all independent nations to defend their sovereignty and to declare as denationalised (denationalises) those vessels which should range themselves under the domination of England, by recognizing the sovereignty which she arrogated over them.

His Majesty distinguishes the search (la visite) from the recognition (reconnaissance) of the vessel. The recognition has no other end than to ascertain the reality of the flag. The search is an interior inquest held, although the verity of the flag be ascertained, and of which the result is either the impressment of individuals, or the confiscation of merchandize, or the application of arbitrary laws or regulations.

His Majesty could place no reliance on the proceedings of the United States, who having no ground of complaint against France, comprised her in their acts of exclusion, and since the month of May, have forbidden the entrance of their ports to French vessels, under the penalty of confiscation. As soon as his Majesty was informed of this measure he considered himself bound to order reprisals on American vessels, not only in his territory, but likewise in the countries which are under his influence. In the ports of Holland, of Spain, of Italy and of Naples, American vessels have been seized, because the Americans have seized French vessels. The Americans cannot hesitate as to the part which they are to take; they ought either to tear to pieces the act of their independence, and to become again as before the revolution, the subjects of England, or to take such measures as that their commerce and their industry should not be tarified (tarified) by the English, which renders them more dependant than Jamaica, which at least has its assembly of representatives and its privileges. Men without just political views, without honor, without energy, may allege that payment of the tribute imposed by England may be submitted to, because it is light; but why do they not perceive that the English will no sooner have obtained the admission of the principle than they will raise the tariff, in such way that the burden at first light becoming insupportable, it will be necessary to fight for interest, after having refused to fight for honor.

The undersigned avows with frankness that France has every thing to gain from receiving well the Americans in her ports. Her commercial relations with neutrals are advantageous to her. She is no way jealous of their prosperity. Great, powerful and rich, she is satisfied when by her own commerce or by that of neutrals, her exportations give to her agriculture and her fabrics the proper development.

It is now thirty years since the United States of America founded, in the bosom of the new world an independent country, at the price of the blood of so many immortal men, who perished on the field of battle, to throw off the leaden yoke of the English monarch. These generous men were far from supposing when they thus sacrificed their blood for the independence of America, that there would so soon be a question whether there should be imposed upon it a yoke more heavy than that which they had thrown off, by subjecting its industry to a tariff of British legislation and to the orders in council of 1807.

If then the minister of America can enter into an engagement, that the American vessels will not submit to the orders in council of England, of November 1807, nor to any decree of blockade, unless this blockade, should be real, the undersigned is authorized to conclude every species of convention tending to renew the treaty of commerce with America, and in which all the measures proper to consolidate the commerce and the prosperity of the Americans, shall be provided for.

The undersigned has considered it his duty to answer the verbal overtures of the American minister by a written note, that the President of the United States may the better know the friendly intentions of France towards the United States, and her favorable dispositions to American commerce.

The undersigned prays Mr. Armstrong to accept the assurance of his high consideration.

(Signed)  
CHAMPAGNY DUC DE CADORE.  
PARIS, 14th February, 1810.  
His Excellency the Minister Plenipotentiary of the United States of America.

From the London Courier of April 21.

Lord Collingwood.—By the death of Cuthbert Lord Collingwood, England has lost the great abilities of a man, whose whole existence was sacrificed to her naval service, and whose every thought was devoted to her naval name. Unlike too many, ambitious only of commands which are suited only to their private views, he fled wherever his country sent him, and has said "Never in his life had he declined a call."—It will give encouragement to every young aspirant in the navy, whose professional preference may be tardy, to be told that he was a Midshipman nearly 15 years, while it will give this animating lesson, that perseverance like his insures success. His lordship, once a Lieutenant, was soon made, and soon posted; his brilliant career and subsequent exertions in the West Indies, on the 1st June, at Cape St. Vincent, and at Trafalgar, are too well known to require an eulogy, for they could not be exceeded in valour and extent. He was born at Newcastle, was of a family ancient and respectable, but perhaps, until latterly, declining, and was educated at the school there, a cotemporary of Lord Eldon and Sir W. Scott of whose concurrent good fortunes in life, he frequently spoke with great satisfaction and delight.—He married the daughter of Ald. Blacket, by whom he has two daughters of a marriageable age, having previously lost a brother in the service, who fell a sacrifice to the climate in the W. Indies.—His Lordship was of a middle stature, but extremely thin, and temperate in his general habits, ate always with an appetite, drank moderately after dinner, but never indulged afterwards in spirits or in wine; while his personal attention to the lowest guest at his table was always universally observed. It was his general rule in tempestuous weather, and upon any hostile emergency that occurred, to sleep upon his sofa in a flannel gown taking off only his capletted coat. The writer of this just delineation has seen him upon deck without his hat, and his grey hair floating to the wind, whilst torrents of rain poured down through the shrouds, and his eye, like the eagle's, on the watch. Personal exposure, colds, rheumatism, ague all—nothing seemed to him when his duty called. In the memorable autumn of 1805, when he with difficulty got the *Dracoon* in the stream of the Gut of Gibraltar, he stood upon the poop, smiling at 35 sail of the enemy, with only five ships under his command; and when they wore back, he wore himself in their face, and actually blockaded the Bay of Cadiz, they within.—His Lordship's judgment was sound and firm, his mind acute and penetrating; his wit so very lively, it led him constantly to pun; and though general punsters must be frequently insipid, he seldom failed to produce the playful equivocal, he wished. To his religious duties he constantly attended; his religion, like himself, was without terror, pure without levity. The latin he had learned at school he had never forgotten, and though he knew but sufficient French to maintain a general correspondence on the coast, and could scarcely manage Spanish at all, he was notwithstanding a good scholar, but a scholar of the old school. He was always perfectly dignified in his deportment, without that execrable pride which we often see assumed as a cloak to conceal a want of worth. With him, its assumption was unnecessary. Unprejudiced he was not; one prejudice he had, which was singular as his mind was liberal. He deemed it the bounden duty of every Englishman, to hate a Frenchman as his natural foe; and no man ever hated the nation more cordially than he.—As he sometimes expressed a respectful pity for the Spaniards, and as the love of his country was the leading feature of his noble soul, this probably arose from a concealed opinion he entertained "that universal dominion would be the fate of France."—Lord Collingwood had not seen any of his relatives for a considerable period before his death. When serving on the Channel, he generally kept at sea from the fear of losing a general action, and when in port, he stood but a few days, attending on board to the minutiae of his ship, and sleeping only on shore whilst his cabin was being caulked. Still no man was more alive to domestic feelings; his heart rebounded with joy at a packet from his family, and in a letter written but a few months ago he says—