

MINERVA; or, ANTI-JACOBIN.

C. A. D. Murphy

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TO THE
Editors of the FEDERAL GAZETTE.

Gentlemen,

As soon as there appeared reason for believing, that the house of representatives intended to adjourn, without preferring articles before the senate, in support of the impeachment voted against me, the inclosed memorial was prepared and transmitted (on Saturday last) to a member, with a request that he would present it, if such an intention should be ascertained to exist. On last Monday, the morning of the day previously fixed for adjournment, by a joint resolution of both houses, articles of impeachment were reported by the committee; but it was clearly impossible for the house to act upon them; nor does the time until which they were kept back, leave the least room for supposing, that the committee, who made the report, intended that they should be acted upon before adjournment.

But whatever may have been the intention with which they were reported, at such a time, the effect undoubtedly will be, that they will pass into the public prints, under the sanction of a committee of congress, & even under the apparent sanction of the house itself; and that as they contain the most aggravated and infamous construction, which it was possible for passion and party spirit to put on the ex-parte evidence, whereon the vote of impeachment was founded, they will become a very powerful engine in the hands of calumniators and party zealots, for heightening to the utmost the prejudices and odium, which all the former proceedings in this case are so well calculated to excite.

The report of these articles prevented the memorial from being presented; the member to whom it was sent having been of opinion, that the case, in which it was my wish to have it presented, did no longer exist. But as these articles have not been adopted by the house, or even considered; as they must be taken up at next session, & may then be rejected or wholly varied; as the charges which I am to answer, and against which I ought to have been placed in a situation to prepare for defending myself, are thus left in the same state of uncertainty as before the report; and as this report, far from accomplishing the object which the memorial seeks, can have no other effect than to increase and aggravate the injuries whereof it complains; I deem it proper now to make it public, as an appeal to my country, to the world, and to posterity, against the injustice and illegality of the proceedings in this case, and as a solemn protest against the principles on which they are founded. I therefore request that you will please to insert it, with this letter, in your useful and respectable paper.

That it may be seen that my impression of the articles reported by the committee is not erroneous, I enclose a copy of them, & request that you will insert them after the memorial. It is proper to state that four (I believe) of the five members of the committee, who reported the articles, were the same members who collected and reported the testimony; and that fourteen days elapsed between the time when this committee was ordered to report articles, and the time when the report was actually made.—This fact will assist in forming a judgment, as to the view, with which it was kept back until the last of the session. Had the report been made sooner, as it might easily have been rejected by the house; or might at least have been deprived, by amendments, of part of their wanton venom and abuse.

I am, gentlemen,

Your obedient servant,

SAMUEL CHASE.

Baltimore, March 29th, 1804.

To the honorable the House of Representatives
of the United States.

The memorial of Samuel Chase, one of the associate
justices of the supreme court of the United States.

With the respect due to a branch of the government of his country; but with the frankness which conscious and injured innocence has a right to assume, and which an early, zealous, and constant supporter of American liberty ought to use; your memorialist approaches your honorable body, to lay his complaint at your feet, and to call on your justice for redress.

He has delayed this step until so late a period of the session, because he still indulged the hope, that your honorable body would not adjourn, without reducing the charges against him to some specific form; so that he might be enabled to know of what

he is accused, and to direct his attention immediately to the means necessary for proving his innocence, and vindicating his character. But finding, at last, that an adjournment is about to take place, without any thing of this kind being done; that a vote of impeachment, resting on no precise or specific charges or facts, and supported only by ex-parte testimony, is about to be left hanging, for a whole year, over his head; and that the publication of this testimony is permitted, in such a way as to render it most injurious to his reputation, without leaving to him the possibility of combating it by counterproof: his duty to that character, which he has supported unimpeached during a period of forty years, thro' all the troubles, difficulties, and dangers of the American revolution; to his family, whose happiness, respectability, and establishment in life, are materially implicated in whatever concerns his good name; to his country, which has honored him with many high and important trusts; to his office, which requires a reputation not only unspotted, but unsuspected; and to himself, forbids him to remain longer in silence.

He therefore respectfully solicits and intreats, that your honorable body will not suffer an adjournment to take place, until articles of impeachment shall have been preferred against him. Thus, although an immediate trial, which his feelings would lead him to prefer, may not be possible at this protracted period of the session, still he will be enabled, knowing the precise charges against him, to make vigorous, speedy and effectual preparations for his defence, to repel the malignant calumnies by which he is industriously and unceasingly assailed, and fully to vindicate that innocence, for which he solemnly appeals to the Almighty Searcher of hearts, to the testimony of his own conscience, to his country, and to an impartial posterity. He is far from arrogating to himself an exemption from the usual portion of human frailty. But from the purity of his intentions, for the uprightness of his conduct, and for the faithful and conscientious discharge of his official duties, on all occasions, according to the best lights of his understanding, he confidently appeals to that dread Tribunal where he and his accusers must one day appear, where the inmost recesses of all hearts shall be laid open, the most hidden motives of conduct shall be revealed, and calumny, malice, and party, shall forever be put to silence.

He is the more strongly induced to urge this request, and to express his earnest hope that it will not be refused, by those reflections which it has not been in his power to avoid making, on the course hitherto pursued in this prosecution.

That charges so weighty as to render a judge of the supreme court a fit object of impeachment for high crimes and misdemeanors, should have been suffered to rest in oblivion for four years; although they are founded on facts perfectly notorious in their nature, and perfectly well known to the persons who, after so great a lapse of time, have at length made them the ground of a prosecution the most solemn known to our laws; that this prosecution, so long delayed, should be commenced precisely at the moment when a political change supposed by many, tho' he hopes unjustly, to be favourable to its success, had taken place; are circumstances but little calculated to impart confidence to the heart of innocence, or to quiet those alarms which she may feel when opposed to uncontrolled power.

Nor is the manner of commencing this prosecution, more consoling than the time. A formal enquiry into the official conduct of a judge, must always be to him a matter of very serious moment. It must always expose him to very great uneasiness, and may render him obnoxious to the most unjust and injurious suspicions. It is wholly inconsistent with the humane and just principles of our laws, to subject a citizen to evils of this kind, without some specific accusation, resting on facts precisely stated, and supported by such proof on oath, as renders their existence at least probable.—No man, however mean his condition, or however infamous his character, can be bound over to undergo the enquiry of a grand jury, without such an accusation, and such proof. A grand jury cannot listen to any accusation against a man, nor enquire into his conduct, much less put him upon his trial by finding a presentment against him, unless such an accusation so supported be first adduced; and the person maliciously instigating the enquiry is liable, in case

it should be rejected, to a suit for reparation by the accused party. All these just & humane provisions are established by our laws, for the protection of innocence, not merely from punishment, but also from unfounded and vexatious enquiry. Every principle of reason, of justice, and of law, and every precedent, that deserves or has received the weight of authority, concur in requiring the full application of these provisions to the case of impeachment.

And yet in this prosecution all these provisions have been completely disregarded. An enquiry has been instituted of the most serious import to the party accused, on the mere suggestion of a member in his place, unsupported by oath, or by any specific statement of facts, which if supported by oath would have justified an enquiry. This enquiry was instituted in a manner the most unprecedented and alarming, far from being confined to any specific charge or fact, is extended to the whole official conduct of a judge who has been above eight years in office, and authorises the most minute inquiry of his most unguarded and most inconsiderable words and actions, throughout the whole period. It cannot escape your honorable body, how formidable an engine of oppression, such an enquiry must be, in the hands of persons disposed to abuse it. Your memorialist is far from insinuating that such has been the case in the present instance. This insinuation he could not make, or even suspect to be well founded, without derogating from the respect which ought to be inspired by so elevated a body; but the soundness of principles is in no manner so well tested as by the consequences to which they lead. And although it cannot be suspected that this honorable body is under the influence of party spirit, party views, or individual malice, yet it is a melancholy truth that free governments are liable to the influence of party spirit, & when this fatal passion takes full possession of the mind, it completely stifles the sentiment of justice and humanity, and regard for law and right. Should the day ever arrive, which God avert! when a party of congress, inflamed by party spirit, shall desire to criminate a judge, in order to heap odium on the party with which he is connected; when a president, at the head of this majority and guiding its passions, shall desire, from motives of private resentment, the ruin of any judge; when the schemes of the dominant party, or of its leaders, may require the removal of all firm, upright and independent judges, and the substitution of others more complying or more timid; when the necessities of a favorite partizan may require the removal of a judge, in order to create a vacancy in office; should such a disastrous period ever arrive, as the history of other free governments informs us it may, in what manner will the devoted victim, however innocent, be able to shield himself against the thrusts of such a weapon, as this species of enquiry, instituted in such a manner and on such principles, cannot fail to furnish? Your memorialist trembles for the honor of his country, and for the success of republican government in this her last and fairest experiment, much more than for his own safety, when he reflects on the excesses that under such a cloak may be committed.

Does the manner in which this enquiry has been conducted, present any considerations calculated to remove or diminish the alarm excited by its commencement? Far otherwise! A great mass of testimony has been taken which though calculated to affect your memorialist in the most material manner, he has had no opportunity of confronting, cross-examining or explaining.—This testimony, in the taking of which some individuals were allowed to indulge themselves in the most rancorous invectives against your memorialist, and to cloath with the formalities and sanction of an oath, the malicious effusions of their unprovoked & implacable resentment; this testimony, thus tarnished with the deep stain of partiality, hatred and revenge, was printed piece meal, in the progress of the enquiry, and though not immediately published, was placed in a condition to be extensively circulated, and thus to be employed as a mean of deeply wounding the reputation of your memorialist, of exciting universal odium against him, and of preparing the way for a certain condemnation, when a clamour shall have been excited, strong enough to drown the voice of reason, truth and justice.

Your memorialist by no means wishes to be understood as insinuating that such

was the intention wherewith this step was taken, his respect for the body by which it was authorised, forbids him to harbour such a suspicion. But such may be the effect & such it must be, in his apprehension, unless your hon. body, by preferring specific charges against him immediately, shall enable him to prepare speedily and efficaciously for justifying his conduct and defending his character, against the unjust and wanton aspersions with which this testimony abounds.

The recent publication of this testimony, in a Gazette understood to be the official organ of the government, and thence communicating an official character & sanction to whatever of this nature appears in it, is a circumstance calculated to increase, in a very great degree, the mischievous effects of the testimony itself, and renders still more important the measure which your memorialist so earnestly solicits. From this Gazette, the publication will pass into others; and thus the most virulent misrepresentations of his conduct, and slanders on his character, sanctioned too, in some degree, by the vote of impeachment, will be spread throughout the United States; and will even extend to foreign countries; while the opportunity of refuting them, must, of necessity, be delayed for a considerable time, & if articles of impeachment are not immediately exhibited, may be postponed to a very distant period.

He is still more strongly impressed with the necessity of demanding, as a sacred right, this immediate exhibition of articles, when he reflects on the manner in which the impeachment was voted. It is in vain that he has looked, in this vote and in the report of the committee on which it is founded, for a statement or even a hint of the offences with which he stands charged. He is impeached of "high crimes and misdemeanors;" but in what these high crimes and misdemeanors consist, when, how and where they were committed, is no where declared.—The testimony collected by the committee, does indeed state a variety of facts, which may constitute the grounds of accusation. The principles of justice and law, and the uniform course of practice, united in requiring, that each of these facts, or each that it is intended to rely on, should be put by the committee into the form of a specific charge and made the subject of a distinct resolution. The sense of the house would then have been expressed on every charge, separately, and each would have been supported or rejected, according to the opinion entertained by the majority, respecting its truth and its sufficiency. Your memorialist would then have known, even without articles, what it is, of which he stands accused, and to what points to direct his preparations for defence. His family, his friends, his country, & the world, would have known what it is that has been called, "high crimes and misdemeanors;" and would have been enabled to judge how far the accusation is supported by the facts, and the facts by the proof.

There is another point of view in which your memorialist deems it his sacred duty, a duty to his country more than to himself, a duty which no consideration shall prevent him from performing, to enter his most solemn protest against this part of the proceeding. His protest may not now be heard. The passions and prejudices of the moment may drown his voice. But it will one day be heard and seriously listened to. The American people will hear it, posterity will hear it—and the lovers of liberty, in every age and country, will unite in asserting the justice of his complaint.

He complains that by the method pursued in voting this impeachment, a majority has been obtained in favour of the general vote, while it is possible and even probable that there is not a majority in favour of any one of the separate charges on which the vote is founded. The accusation against him, so far as can be collected from the testimony and from the speeches of members, are very various. Let it be supposed that four charges are chiefly relied on, viz. the trial of Fries, the trial of Callender, the proceeding at New-Castle, and the charge to the grand jury in Baltimore. It is perfectly manifest these charges are wholly distinct, and cannot support or strengthen each other. Each is a misdemeanor in itself, or it is not. Therefore there ought to be a majority in favour of each separately, before it can be made the ground of impeachment.

Let it then be supposed, which is not only possible but highly probable, that thirty members and no more considered the conduct of your memorialist in the trial of Fries,