

Communication.

For the Raleigh Register.

No. VI.

THE RIGHT OF INSTRUCTION.

In the Act of the Legislature of Kentucky alluded to in my last, that body exercised a power not delegated by the People or the Constitution of the United States; it was the usurpation of right and a vital stab at the federal constitution. Were this precedent to prevail, the article of the Constitution regulating the election of President, had better be expunged from that instrument, and not stand as the evidence of its violation. It would be in the power of the State Legislatures completely to control the election in the House of Representatives, and render abortive that part of the Constitution which provides, in case of a failure to elect by the people, that "then from the persons having the highest number, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President." It never could have been conceived by the framers of the Constitution, that in delegating this power to the House of Representatives, that they were to be a mere automaton in the hands of the State Legislatures.

The people failing to elect by the electoral colleges, have not the right to control the election by any new or intermediate power unknown to the constitution. The Representatives in the National Legislature are elected in the manner provided in the first article of the constitution, for purposes therein distinctly and specifically pointed out; among which, is not to be found the election of President. At the time of their election, it is not known, and it is impossible should be, under the present system, whether the election of President will go to the House of Representatives; and were it known, the people have no constitutional right to control the Representative. In that event, he is the representative of the constitution, so made by a special article in that instrument, clothed with a distinct and special power to do that which the people fail to do themselves. Whenever the people fail to elect by the electoral colleges, the constitution stops their further control, and there is a limitation put to the power of the House of Representatives also. In the same article of the Constitution, it is provided, "and if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President."

We see here, that the constitution, so far from recognizing the right of the people to choose a President, in every contingency, has, in the first place, in case of a failure, taken it from them & given it to the House of Representatives; and in the next, makes the President itself; and further, elevates to that station one whom the people have never voted for, for that appointment. If the State Legislatures can interfere in one case, they can in the other, and by extending this usurped power a degree further, overturn and control this provision of the Constitution, under the specious, but sophistical plea, of guarding the rights of the people. Agreeably to the new-fangled and unconstitutional doctrine of the Legislature of Kentucky, and the friends of military rule, the people, failing to make a choice through their State Legislatures, by instructing and controlling the House of Representatives. This attempt to create a power to gratify party violence at the sacrifice of the Constitution, under the popular plea of "the right of instruction," was met by Mr. Clay with a manly and patriotic firmness, that has given one "circumstance" to the charge of corruption, and has been bruited from one end of the continent to the other by the friends of General Jackson, with all that gratification which malevolence lends to ignorance. What is the meaning of the Constitution, when it says, "and if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them?" if it does not mean, in fact, in as plain and explicit terms as the English language can convey to the understanding, that all further interference with, or control over the election by the people, has ceased, and agreeably to the Constitution the right of choice has devolved upon the House of Representatives, as a consequence? Who can believe that the framers of the Constitution were so ignorant of the meaning of their own language, as to say, that the right of choice was in the House of Representatives, and at the same time intend to give nothing more than a nominal right, a useless and unnecessary power, over which the people still had supreme control? Another object which the framers of the Constitution had in view, after the failure by the people, in throwing the choice into the House of Representatives was, to ensure a speedy termination of the contest, and to preserve as far as possible at the same time, the democratic features of the Constitution. This choice is to be made from among the three highest voted for by the people; but admit the right of instruction, and this object is defeated, and the only Aristocratical feature in the Constitution is brought into full operation, the Constitution making the Vice-President, President, whom the People had not voted for as such.

I will illustrate this position. There are three candidates for the Presidency: Maine, New-Hampshire, Massachusetts, Rhode-Island, Connecticut, Vermont, New-York and New-Jersey, give their 95 electoral votes to A. Pennsylvania, Delaware, Maryland, Virginia, N. Carolina, S. Carolina, Georgia and Kentucky, give their 115 to B. Tennessee, Ohio, Louisiana, Mississippi, Indiana, Illinois, Alabama and Missouri, give their 51 to C. As no one has a majority, there is no Election by the people, and the

choice devolves upon the House of Representatives, and if the principle is to obtain that the Representatives in Congress are bound to vote in accordance with the States they represent, there can be no election by the House of Representatives, as each candidate must receive eight votes, and consequently the Vice President, is President. It will not do for those who contend for this doctrine to say, that the Representatives of those States giving but 51 electoral votes, should bend to circumstances and forego the express wish of the States they represent. This would be a virtual relinquishment of the principle, and a violation by the representative of the voice and right of his constituents. If the principle can be broken in one instance with impunity, it is not good in any; it cannot be right and wrong at the same time. No man understood the Constitution better, or the rights guaranteed to the people by that instrument, than Alexander Hamilton, who was an efficient member of the Convention that formed it. I quote his opinion on this subject from the 68th number of the Federalist. "But as a majority of the votes might not always happen to center in one man, and as it might be unsafe to permit less than a majority to be conclusive, it is provided that in such a contingency, the House of Representatives shall select out of the candidates who shall have the five [three] highest numbers of votes, the man who, in their opinion, may be best qualified for the office."

If the opinion of the people, as expressed by the electoral colleges, is to govern the House of Representatives in their choice, and thereby secure the office of President to the highest on the list of the three returned, why the necessity of resorting to that body? A plurality would have elected as well before the people as Congress, or why the folly of declaring that the right of choice shall devolve upon them? The fact is, the Constitution says, "a majority of the whole number of the electors appointed" shall be necessary to a choice; but the believers in "the right of instruction" say, that a plurality is sufficient; for instance, General Jackson received ninety-nine electoral votes—to constitute a majority would require one hundred and thirty-one, yet say they, the House of Representatives should have disregarded the injunctions of the Constitution and elected him. That they had the right to elect him, no one will dispute; that they were bound to do so by any declaration of the Constitution, expressed or implied, none but those actuated by sinister motives will contend.

In the second Article of the Constitution, it is provided, that in case of death, resignation, removal or inability of the President or Vice-President, "The Congress has power to supply the vacancies." Here is another contingency in which the will of the people is not consulted in the choice of President, and in which the House of Representatives are not the representatives of the people, but of the Constitution. True, the Constitution is the work of the people, and therefore indirectly the representatives of the Constitution are the representatives of the people, but if they have in their acknowledgment of this instrument as their rule of government, surrendered the right to elect the Chief Magistrate, in all cases save one, and upon all contingencies, and have found by experience that it is subversive of their political interest, let them alter it in the only constitutional way, and not by endeavours, sly and insidious, to suit particular occasions, or to gratify the ambitious views of some Caesar, Cromwell or Bonaparte, violently destroy this only charter of the rights of man.

But suppose the Constitution were to be so amended as to give to the people the power to elect the President in all cases and upon all contingencies—After a failure of the first trial, what would be the ultimatum of such an event? They would rush to the contest with redoubled energy, moral feeling and patriotic views would be lost in the tempest of the passions. Every species of violence would be resorted to by the contending parties to obtain success. The press would know no bounds to its falsehoods and recriminations. Physical force would be substituted for the force of reason. At length some despot, more fortunate in the strength of his adherents than his rivals, would establish his Throne upon the ruins of the Government torn and mangled by that very power which should have protected it.

Human passions, feelings and propensities, have not changed since the days of Grecian glory or Grecian degeneracy. That spirit which actuated the larger States in the Amphictyonic Confederacy to trample upon the rights of the lesser, would find among the larger States of this Republic a ready home and kindred feeling. "Every government ought to contain in itself the means of its own preservation." To secure this desideratum to the Government of this Confederacy, and prevent as far as human foresight could do, the unhappy result I have depicted, the fathers of the Constitution have guarded against a superiority either physical or moral of one State over another in an election so important as that of President, to individual ambition, or sectional pride, by placing it in the last resort in the National Legislature, where each State is reduced to an equality, by having but one vote. But were the Legislatures of the States to have the control over this vote, the guards of the Constitution would be broken, and the Government would carry in itself the seeds of its own destruction.

I recollect, a few years ago, I think in 1812, the Legislature of North Carolina abolished the district system of choosing Electors by the people, and took the power into their own hands. The people rose in arms against this assumption of power. Some of the very men who are now loudest in asserting the right of the Legislature of Kentucky to control the election of the

President in the House of Representatives, and are over liberal in their anathemas against Mr. Clay for not submitting to this dictation, knew no bounds to their denunciations against the authors of this innovation of an established custom, though warranted and authorised by the Constitution.

These, my fellow citizens, are some of my crude opinions upon that popular theme "the right of instruction," as it embraces the election of President of the United States. In all the duties that devolve upon the representative as a legislator, I have no doubt of the right of the constituent to instruct; but when he, by a pre-existing authority of the Constitution, drops his legislative character, and becomes the creature instead of the creator of the law, he is only to look to the exercise of his best judgment in the faithful discharge of a duty butted and bounded by the Constitution.

In the election of President the members of the House of Representatives perform only a ministerial duty. They do not act by which the law of the land is extended or abridged, or the right of the people diminished or enlarged. I hold it to be a truth incontrovertible, that the wishes of a majority of the people can never be ascertained when the election devolves upon the House of Representatives; for the very want of this knowledge, throws it into the House; the evidence of a plurality is not the evidence the Constitution requires to constitute an election.

Is it not worse than idle to impute to Mr. Clay a dereliction of duty, and a disregard of the wish of the people, because he did not vote for Gen. Jackson? If a majority of the people wished his election, why did they render it at least uncertain by sending him to the House of Representatives? Am I not warranted in saying, a majority did not wish it? And yet, Gen. Jackson tells them that their rights have been violated in his discomfiture. I should like to see something in the shape of argument from the pen of Gen. Jackson, yes & his friend and biographer, the ready and pliant voucher of his assertions, Gen. Eaton, may assist him to prove it.

History in all ages and all countries proclaims the fact, that he who wishes to tyrannize over the will of the people, is the first to acknowledge its power. No person is so sure to succeed with the uniformed, as he who flatters them with his opinion of their wisdom. In the language of Alexander Hamilton, "a dangerous ambition more often lurks behind a specious mark of zeal for the rights of the people, than under the forbidding appearances of zeal for the firmness & efficiency of government." History will teach us that the former has been found a much more certain road to the introduction of despotism, than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people—commencing demagogues and ending tyrants. What is it that now heaves this union from one extreme to the other like the "tempest-tost billows of the ocean," but the efforts of Gen. Jackson and his friends to court the people to his interest—to play upon their credulity and triumph in their ignorance! The laurels of victory are to be changed to the crown of empire, and the deficiencies of the civilian lost in the splendor of military services.

Oct. 20, 1827.

FROM THE NATIONAL INTELLIGENCER.

THOUGHTS ON THE PRESIDENCY.

No. 3.

The consequences which would follow the election of a Military President.

"I confess that a certain degree of political jealousy is highly necessary to the preservation of Liberty."—ED. RANDOLPH

In considering the consequences which would follow the election of Gen. Jackson it is not my intention to indulge in conjecture, unsupported by substantial reason and authentic fact. I shall, therefore, refrain from agitating the perplexing question, What would be the policy of an Administration formed under his auspices, in relation to the due protection of Domestic Industry, and the facilities which should be given by Roads and Canals, to military transportation and commerce among the States? Some of his supporters have alleged that he is friendly to these objects; others however consider him as decidedly hostile; or at least, hostile to the liberal policy adopted by the present and the preceding Administration. On points of so much importance our minds may still be fluctuating; and while studiously desirous of presenting to all parties, however adverse in sentiment, every thing to hope, he gives them in reality, every thing to fear: for nothing can be more certain, than that the system which he would finally adopt, would conflict with the opinions of some of those who, though at variance in every thing else, are so strangely united in his support.

But, on one part of his policy, no doubt can be entertained; since it will depend upon his own act, arise from predilections which he has taken no pains to conceal, and be consistent with his uniform conduct.—All most foresee, that, in his appointments to civil office, his selections will be confined as far as practicable to military men.

This feature in his policy would be nothing more than an extension of the principle which would be sanctioned by his own election; it would be nourished by the sympathy always existing among the members of the military profession; and would conform to the strongest impulses of his nature.

If military qualifications, exhibited in action constitute, as asserted by a prominent advocate of Gen. Jackson, the only test of superiority of intellect, and afford the highest recommendation for the Chief Magis-

tracy of the Union, may not the same reason be urged by every one, as a candidate for military office? With what consistency will a Chief Magistrate, elected himself for military service, resist the claims of officers who will plead similar service with equal force? Will he be unwilling to recognise the correctness of a principle to which he will have owed his own election? Will he be unjust to those who have cheered him in his progress, sustained him in battles and considered his advancement as the prelude to their own? Or will he take delight in overwhelming the most devoted of his followers in the bitterness of disappointment?

But, perhaps it may be thought that the military gentlemen will be content with their fame or emoluments, and confine their views to the path they have selected. This suggestion might be entitled to some weight were it not opposed by the admonitions of experience. Examples are sufficiently numerous, in addition to the precedent afforded by Gen. Jackson, to show that military men have not been backward in asserting their superior fitness for civil office; and can it be expected that they will be less aspiring, or more modest should the principle of preference be established by public approval? If the partizans of Gen. Jackson now affect to despise all literary attainment; if Mr. McDuffie, his zealous advocate, has ventured openly to declare that military action is the only test of superior intellect; who will believe that Gen. Jackson will manifest more regard for the ignoble qualifications in which it is evident he has made no great proficiency.

Not only would Gen. Jackson be moved to give his preference to the military profession by a consistent regard for the principle on which he predicts his own pretensions; sanctioned as it would be by his own election, but by all the feelings and sympathies of his nature.—Military men have been invariably united by the strongest ties. Separated from the pursuits of other citizens, and having few interests in common with them, they view each other as members of one family; devoted to the same objects by which they are impelled by similarity of tastes, they become united by identity of interest, as well as feeling; accustomed to consider themselves as embarked in the most honorable of all professions, and supported in his opinion by the theory of intellect proposed by Mr. McDuffie, they are united together by motives of pride; placed in situations where mutual benefits may be conferred, and the excellencies of character developed, they are strongly connected by the ties of friendship; exposed to dangers and privations peculiar to their profession, they are bound together by the force of sympathy. And as if these motives were not sufficiently powerful, it is a leading principle in military ethics, to instil into every officer and soldier, from the moment of entering the Army that the existence of their community depends upon combined action; that to produce combined action the chain of dependence must be complete; that no soldier who has a superior must think for himself; that separate interests must be dissolved, and that the claims of one must be supported by the efforts of all. Thus sameness of pursuit, identity of interests, similarity of taste, motives of pride, the ties of friendship, the force of sympathy, and the honorable obligations of a soldier have created in the military profession an esprit du corps, the strongest of all principles of union, because the most extensive in its effects, and invariably hostile to civil liberty.

Although differences among officers are not uncommon, produced by the infirmity of our nature, yet in one thing they rarely differ.—They uphold the honor of their profession, and support the claims of brother officers, when conflicting with the pretensions of any other class of the community. All history attests, that, however sensitive to an injury received by a member of their own body, they are far from being equally sensitive to an injury committed upon the body politic. The brutal lust of Appius would never have been avenged by the destruction of the Decemviri, and the restoration of Roman liberty, had not Virginia been a soldier.—Among all the elections by the Roman legions, soldiers, not citizens were raised to the Purple. So irresistible indeed is this principle of action, that we often see it triumph over the feelings of the man, & hence frequent instances are to be found of an Army moved as if by one impulse, eager to gratify the ambition of their leader by the destruction of their own liberties, and the liberties of their country. It was this principle this esprit du corps, that impelled the Republican army of Cromwell, to disregard their oaths, subvert the cause in which they had embarked, expel the Parliament by whom they were commissioned, and elevate to uncontrolled authority, an ambitious military Chieftain, not less able, bold and warlike, than any exhibited in modern times, but whose shining qualities were tarnished by dissimulation, cunning, suspicion, and revenge. It was this principle that enabled Sylla, and Marius to crimson Italy with her best blood, and assume the office of Dictators. It was by means of the same principle that Caesar & Bonaparte were empowered to trample on the forms of Government, and proclaim their will as the only law. It was an address on this principle by the author of the Newburg letters, that would have involved America in civil war, and greatly endangered her newly acquired liberty, had not the virtue of Washington been superior to that of any other man, in ancient or in modern times.

The operation of this principle may be seen in the support which Gen. Jackson receives, almost to a man, from the existing army, and from those who formerly held military commissions in the service of their country. Habit co-operating with this principle, insensibly coerces them to

allow, in peace, the military officer—
I were accustomed to follow and imitate. Hence, the honorable members of both houses of Congress, who formerly served in a military capacity, very naturally range themselves under the standard of Gen. Jackson, and hence given the official co-operation given by Col. Benton in the hero, who in open day made an assault upon his life, pronounced by himself "a most horrible outrage" "the most outrageous affair ever witnessed in a civilized country;" a co-operation which has served as an enigma to the morrist and politicians throughout our land, appears perfectly consistent with the honorable obligation which impels one soldier to support the pretensions of another, and never in extremities to desert a comrade.

Nor has Gen. Jackson been exempt from the operation of this principle. Who are to be found among his chosen favorites? Is there a citizen who requires to be informed that they have belonged to the military profession? Upon whom has he been most disposed to lavish his patronage, and recommend to preferment? His military associates. Scarcely a single citizen will be found among the number. His practice seems to have been the ground-work of the theory first announced by Mr. McDuffie, that intellects of the "brightest order" can only be exhibited in military action. Thus, the ingenious disciple, receiving the actions of his master as the essence of Truth, forms his theory upon the basis of authority; and the soundness of the one will be equal to the correctness of the other. But, unfortunately for Mr. McDuffie, his standard of excellence has led him into error; and the predominant passion of his Chate for the military profession has already, like his own, outstripped his prudence.—Who but General Jackson would have been recommended to Mr. Monroe, when forming his Cabinet, in 1816, to appoint as a Secretary of one of the Departments, a Colonel in the Army, unknown to the nation, and whose talents, whatever they may be, had never been tested in the public Councils? Who but General Jackson would have urged the claims of Col. Croghan to a civil appointment, not in Tennessee, of which General Jackson was a citizen, but in Louisiana, whose Representatives might not have been solicitous of his interference? Who but General Jackson would have supported his recommendation solely on the ground of his military service, as if that were the only qualification to civil office? Who but General Jackson would have ventured the assertion that Fairair Skipwith, the friend and contemporary of Jefferson, who had filled with dignity the office of speaker of the Senate, & whose conduct had been honored by the approval of his State, was unworthy of the appointment of Postmaster of New-Orleans, because he had shown some regard for the Laws and Constitution of Louisiana, and declined obeying the military mandate requiring him to dissolve or prorogue the Legislative body over which it was his duty only to preside?—Who would have believed that even General Jackson, not content with volunteering an urgent recommendation in favor of a military applicant for a civil office, becoming vacant in a State different from his own, would have permitted his feelings, as a soldier, so far to overcome those of the citizen or the man, as to indulge in harsh and unmerited expressions against an old and respected individual, whom he considered the principal opponent of his military protege? Can the bent of General Jackson's inclination in favor of the military profession be more strongly exhibited?

Can any one believe, that civil qualifications, or civil services, will ever be the passport to his favor? There is nothing, most assuredly, in his character or conduct, that can justify so rash a supposition; and if ever elected the President of these United States, virtue, the principal element of public happiness, modest and retiring, trusting to its intrinsic loveliness for favor, seldom coming forward to assert its claims, and too often unable to compete with the address, artifice, and falsehood with which she is assailed, will be thrown into the shade of obscurity and private life; and military officers will be advanced to every civil trust within Executive control, the emoluments of which will be worth pursuit. WYTHE.

FOR SALE.

A valuable Plantation in Wake. WHAT valuable Farm, lately known by the name of West-Hill, lying on both sides of Swift & Williams's Creeks, adjoining the Plantation of Governor Branch, about nine miles from Raleigh, on the Road to Haywood, settled originally by Joseph Lane, the Grandfather of the late occupant of that name, at a time when the land had choice of the best lands in the county. The whole Tract of land contains Two Thousand Two Hundred and Twenty acres—of which is prime land—a considerable portion of it fine low grounds. The residue well-timbered long leaved Pine Land, and is adapted to afford the best range for cattle and hogs in the country. The farm under cultivation is between 3 and 400 acres, on which there is a tolerably good Dwelling-House, and other substantial buildings, on as handsome and healthy a site as can be found in the county, or perhaps in the State. There is a small Grist-Mill, which is convenient for family and neighborhood purposes. The farm is in good order, and that who has land may viewed, on application to Mr. Thomas Howell, on the premises, and the terms of sale, which will be accommodating. It was made known on application to J. Gates. Raleigh, June 21, 1827. 59-17

CITY HOTEL RALEIGH, N.C.

MRS. S. M. JETER, grateful for the patronage she has heretofore received, begs leave to inform her friends and the public generally, that she has engaged with Mr. A. J. SMITH to attend to her business, and that she now keeps a Stage House for the Northern, Southern & Western line of Stages. She has also procured a central and convenient comfortable fire or six-story building, which will be immediately completed, and will enable her to accommodate a large number of the ensuing Legislature. Her Bar shall be constantly supplied with the choicest of Liquors, her tables well provided with Corn, Potatoes, Oats, and attentive to the September 11th, 1827. 59-18