NATIONAL INTELLIGENCER,

AND

WASHINGTON ADVERTISER.

Vol. II. WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. *No. CCLXXXIV.*

Five Dolls. per ann. MONDAY, SEPTEMBER 6th, 1802. *Paid In Advance.*

Federal Misrepresentation.

No. XXI.

Accuſtomed, as we have been to the groſs and numerous diſtortions with which certain prints teem, we cannot repreſs our aſtoniſhment at the enormity of the following fabrication. To thoſe who know the quarter from which it proceeds, it will appear in no other light but as the impotent effuſion of party, perhaps perſonal rancour. But it will be remarked that it is ſent forth into the world as a real *bona fide* ſpeech of Red Jacket, the organ of the principal chiefs of the Seneca, Onondaga and Cayuga Indians.—It was intended, no doubt, to ſeize the unſuſpicious moments of the reader, and make him the victim of its falſehoods.—But, like all other untruths, it will recoil upon its fabricators, by furniſhing a monument of the unbluſhing audacity of vice.

From the Ontario Gazette of Aug. 18.

At a Council, held at the Court House, in Canandaigua, the 2*d day of Aug.* 1802.

Preſent—The principal Chiefs and Sachems of the Seneca, Onondaga and Cayuga Indians; and a number of the principal inhabitants of the town of Canandaigua.

Red Jacket, The principal ſpeaker of the Seneca Nation, ſpoke as follows:

Brothers,

OPEN your ears and give your attention. This day is appointed by the Great Spirit to meet our friends at this place. During the many years we have lived together in this country, good will and harmony have ſubſiſted among us.

Brothers—We have now come forward upon an unhappy occaſion;—We cannot find words to expreſs our feelings upon it. One of our people has murdered one of your people: So it has been ordered by the Great Spirit, who controls all events. This has been done; we cannot now help it. At firſt view it would ſeem to have the effect of putting an end to our friendſhip; but let us reflect, and put our minds together. Can't we point out meaſures whereby our peace and harmony may ſtill be preſerved? We have come forward to this place, where we have always had a Superintendant and Friend to receive us, and to make known to him ſuch grievances as lay upon our minds; but now we have no Guardian—no Protector—no one is now authorized to receive us.

Brothers—We therefore now call upon you to take our ſpeech in writing, and forward our ideas to the Preſident of the United States.

Brothers—Let us look back to our former ſituation.—While you were under the government of Great-Britain, Sir William Johnſton was our Superintendant appointed by the King. He had power to ſettle offences of this kind among all the Indian Nations, without adverting to the laws. But under the Britiſh government you were uneaſy—you wanted to change it for a better—General Washington went forward as your leader. From his exertions you gained your Independence. Immediately afterwards, a Treaty was made between the United States and the Six Nations, whereby a method was pointed out of redreſſing ſuch an accident as the preſent. Several ſuch accidents did happen wherein we were ſufferers. We now crave the ſame privilege in making reſtitution to you that you adopted towards us in a ſimilar ſituation.

Brothers—At the cloſe of our Treaty at Philadelphia, General Washington told us that we had formed a chain of friendſhip which was bright; he hoped it would continue ſo on our part; That the United States would be equally willing to brighten it, if ruſted by any means. A number of murders have been committed on our people—We ſhall only mention the laſt of them. About two years ago, a few of our warriors were amuſing themſelves in the woods, to the weſtward of Fort Pitt; Two white men coolly and deliberately, took their rifles, travelled nearly three miles, to our encampment, fired upon the Indians, killed two men and wounded two children.—We then were the party injured. What did we do? We flew to the Treaty, and thereby obtained redreſs, perfectly ſatisfactory to us, and we hope agreeable to you. This was done a ſhort time before President Adams went out of office: complete peace and harmony was reſtored. We now want the ſame method of redreſs to be purſued.

Brothers—How did the preſent accident take place? Did our Warriors go from home cool and ſober, and commit murder on you? No, Our brother was in liquor, and a quarrel enſued, in which the unhappy accident happened. We would not excuſe him on account of his being in liquor; but ſuch a thing was far from his intention in his ſober moments. We are all extremely grieved at it, and are willing to come forward and have it ſettled, as crimes of the ſame nature have been heretofore done.

Brothers—Since this accident has taken place we have been informed, that by the laws of this ſtate if a murder is committed within it, the murderer muſt be tried by the laws of the ſtate, and puniſhed with death.

Brothers—When were ſuch laws explained to us? Did we ever make a treaty with the ſtate of New-York, and agree to conform to its laws? No. We are independent of the ſtate of New-York.—It was the will of the Great Spirit to create us different in colour: We have different laws, habits and cuſtoms from the white people. We will never conſent that the government of this ſtate ſhall try our brother. We appeal to the government of the United States.

Brothers—Under the cuſtoms and habits of our forefathers, we were a happy people; we had laws of our own, they were dear to us. The whites came among us and introduced their cuſtoms; they were dear to us. The whites came among us and introduced their cuſtoms; they introduced liquor among us, which our forefathers always told us would prove our ruin.

Brothers—In conſequence of the introduction of liquor among us, numbers of our people have been killed. A council was held to conſider of a remedy, at which it was agreed by us, that no private revenge ſhould take place for any ſuch murder—that it was decreed by the Great Spirit, and that a council ſhould be called to conſider of redreſs to the friends of the deceaſed.

Brothers—The Preſident of the United States is called a Great Man, poſſeſſing great power—he may do what he pleaſes—he may turn men out of office—men who held their offices long before he held his. If he can do theſe things, can he not even controul the laws of this ſtate? Can he not appoint a commiſſioner to come forward to our country and ſettle the preſent difference, as we, on our part, have heretofore done to him, upon a ſimilar occaſion?

We now call upon you, *Brothers*, to repreſent theſe things to the Preſident, and we truſt that he will not refuſe our requeſt, of ſending a commiſſioner to us, with powers to ſettle the preſent differences. The conſequences of a refuſal may be ſerious. We are determined that our Brother ſhall not be tried by the laws of the ſtate of New-York. Their laws make no difference between a crime committed in liquor, and one committed coolly and deliberately. Our laws are different as we have before ſtated. If tried here, our Brother muſt be hanged. We cannot ſubmit to that—Has a murder been committed on our people, when it was puniſhed with death?

Brothers—We have now finiſhed what we had to ſay upon the ſubject of the murder. We wiſh to addreſs you upon another, and to have our ideas communicated to the Preſident upon it alſo.

Brothers—It was underſtood at the treaty concluded by Col. Pickering, that our ſuperintendant ſhould reſide in the town of Canandaigua, and for very good reaſons: That ſituation is the moſt central to the Six Nations; and by ſubſequent treaties between the ſtate of New-York and the Indians, there are ſtill ſtronger reaſons why he ſhould reſide here, principally on account of the annuities being ſtipulated to be paid to our ſuperintendant at this place.—Theſe treaties are ſacred. If their ſuperintendant reſides elſewhere, the ſtate may object to ſending their money to him at a greater diſtance. We would therefore wiſh our ſuperintendant to reſide here at all events.

Brothers—With regard to the appointment of our preſent ſuperintendant, we look upon ourſelves as much neglected and injured. When general Chapin and captain Chapin were appointed, our wiſhes were conſulted upon the occaſion, and we moſt cordially agreed to the appointment. Captain Chapin has been turned out, however, within theſe few days. We are told it is becauſe he differs from the Preſident in his ſentiments on government matters. He has always been perfectly ſatisfactory to us; and had we known of the intention, we ſhould moſt cordially have united in a petition to the Preſident to continue him in office. We feel ourſelves injured—we have nobody to look to—nobody to liſten to our complaints—none to reconcile any differences among us. We are like a young family without a father.

Brothers—We underſtand that the Preſident has appointed a ſuperintendant who is altogether unknown to us, and who is unacquainted with our affairs, we might have named ſome one reſiding in this country who was well known to us. Perhaps we might have agreed upon Mr. Oliver Phelps, whoſe politics, coinciding with thoſe of the Preſident, might have recommended him to the office.

Brothers—We cannot conclude without again urging you to make known all theſe our ſentiments to the Preſident.

Since the above ſpeech was delivered, there have been two other meetings between the inhabitants of this place and the Indians, principally for the purpoſe of inducing them peaceably to deliver up the offender to goal, until the event of the application to the Preſident ſhall be known—although with great reluctance, they at leaſt conſented to give him up.

At theſe ſubſequent meetings, they ſtill continued to inſiſt, in long ſpeeches, upon their entire independence of the ſtate of New-York, and declared their intention of going immediately to Albany to have a conference with the Governor, as well upon that ſubject, as relative to the ſale of their lands on Niagara river, about which they have been in negociation for ſome time paſt.

It is their intention to remain in Albany until a communication, which they have requeſted the Preſident to make the Governor upon the ſubject, ſhall be received there; that their minds, which at preſent are much agitated, may be ſet at reſt as ſpeedily as poſſible.

From the Washington Federalist.

TO THE EDITORS OF THE WASHINGTON FEDERALIST.

In your gazette of the twenty ſeventh of Auguſt, a ſtatement is given of the reprieve of James M' Girk. It is accompanied with ſome reflections on the caſe of this unhappy man, which, though intended for another purpoſe, may have the effect of exciting the prejudices of the public againſt him and of cloſing the narrow opening which the humanity of the executive has left for the preſervation of his life. I am concerned ſo much in the fate of the unfortunate ſufferer, that I do not entertain a doubt, I ſhall obtain your indulgence for a few obſervations in his behalf.

The attention of humane and enlightened men has, for a conſiderable time paſt, been directed to an enquiry, both theoretical and practical, whether the condition of the human race, and the morals of ſociety, may not be greatly ameliorated by the introduction of a penal code, milder and leſs ſanguinary than had previouſly been thought prudent by governments. The firſt experiment was made in a country which did not promiſe the moſt ready renunciation of eſtabliſhed tenets or the earlieſt relaxation of ancient maxims. In Tuſcany, the government, influenced by the noble production of Beccaria, in an edict dated at Piſa, the thirtieth of November 1786, reſcinded all the exiſting laws on the ſubject of crimes and puniſhments; and introduced a new code, ſo remarkable as to furniſh a diſtinct epoch in the hiſtory of legiſlation, ſo far as it regards this ſubject. This grand and noble experiment was attended with the moſt ſatisfactory and complete ſucceſs. It was ſoon imitated in other countries. Ruſſia, into which, if the detractors of human nature were believed, not a ray of enlightened legiſlation, of liberal and humane policy, could have penetrated, adopted a ſimilar meaſure. It was not to be expected that while in theſe countries ſuch laudable experiments were making, the governments of this continent would ſtand cool ſpectators, and not imbibe a ſpark of the ſame ſpirit. Pennſylvania had the honor of leading in the laudable career. That ſtate claims as her citizen the illuſtrious and benevolent Ruſh. On the ninth of March 1787, was exhibited to the ſociety for promoting political enquiries, convened at the houſe of Franklin, in Philadelphia, his eſſay, entitled "an enquiry into the effects of public puniſhments upon criminals, and upon ſociety." This able production was followed by another, under the title of "an enquiry into the conſiſtency of the puniſhment of murder by death, with reaſon and revelation." Such maſterly and judicious performances could not fail to pave a certain tho' gradual operation on public opinion. The legiſlature of Pennſylvania, a body which has always contended for the foremoſt rank where the cauſe of humanity was concerned, aboliſhed the pre-exiſting laws on the ſubject of crimes and puniſhments; and ſubſtituted an entirely new code. The law of that ſtate, and the eſtabliſhments made under it, became the admiration both of citizens and foreigners; and have ſerved as a model for other ſtates in the union. The ſtate of New-York was not ſlow to follow the honorable example. Her inſtitutions are an improvement on thoſe of Pennſylvania. Of late, the ſtate of Virginia, which has always been hard to move in objects of enterprize, but in which public opinion is both independent and benevolent, felt the duty too ſtrong to be reſiſted or delayed. There is little doubt that the reſpective governments of this country, when their leiſure and reſources will permit them to beſtow their attention on this ſubject, will invariably adopt a ſimilar policy.

In the midſt of the general advances it is a doubt what is to be the fate of the territory of Columbia. The central government ſhe might naturally be expected, unfettered, to ſet a model for the imitation of others, rather than ſlowly and reluctantly to be compelled to the adoption of their improvements.—Political characters were not aware of the danger of the meaſure, when they aſſumed a juriſdiction over this territory and left it to the direction of a legiſlative body who would not act on its concerns. The conſequence has been that its progreſs has been rather retrograde, than either advancing or ſtationary. The hopes of the humane and benevolent characters in ſociety have certainly been diſappointed, ſo far as they have related to the adminiſtration of penal juſtice.—Juſtice here, has already aſſumed a ſtern and ferocious aſpect. She is ſurrounded with her brands, her rods, and her halters. A cruel and barbarous puniſhment, which ten centuries of civilization have not been ſufficient to aboliſh in G. Britain, and which is ſtill retained in ſome parts of America, has polluted the chambers of the capitol. The *ſmoke of human fleſh*, an incenſe fragrant only to tyrants, has regaled judges who ſit under the canopy of liberty. To complete the melancholy apparatus, the gallows was about to be erected, and the ſight of a public infliction of death exhibited in the eyes of a people, yet merciful and uncorrupted. And for what purpoſe? A purpoſe, which if it had been carried into execution, which, if it ever ſhall be carried into execution, I ſhall not ceaſe to think itſelf a judicial murder.

I deny, and I may challenge the enemies of this perſecuted man, who pant the moſt for his blood, to contradict it, that there was exhibited a particle of evidence to prove *an intention to take away life*. On the contrary, there was teſtimony, that when the caſe of the deceaſed was found to be dangerous, he procured phyſicians to aſſiſt her, and a female attendant to wait on her. Some old Engliſh caſes, which, before a jury bound by the common law might have been entitled to authority, deem that a murder, where death has been *undeſignedly* produced, if it were the effect of malignity and barbarity. This may be agreeable to the common law of England; but certainly it is not agreeable to common reaſon. There is a chaſm which never can be filled up between *depriving of life with a deliberate intention to do ſo*; and *depriving of life without an intention to do ſo*, however cruel the conduct may otherwiſe have been. To puniſh both alike is to inſult the underſtanding, and to level the diſtinctions among crimes. This diſtinction was even recognized in the Moſaic code, and it would be ſtrange indeed that at this day, and in this country, a diſtinction ſo ancient, ſo natural and ſo juſt, ſhould be totally diſcarded, merely becauſe it happens to be at variance, with the common law of England.

With the utmoſt deference to the opinions of thoſe who think it an aſcertained fact, that the death of the deceaſed was occaſioned by the cruelty of her huſband, I may ſtill be at liberty to entertain my own opinion. The phyſicians who examined the body for the expreſs purpoſe, could not ſay it manifeſted any marks of that violence which could have produced death. The inference therefore muſt be, that it was the exerciſe of this cruelty at the ſtage of pregnancy with twins, added to the hardſhips of her ſituation, which occaſioned death. She was ſaid to be a blooming and handſome woman. It is well known however, that this bloom and beauty often attends a delicate conſtitution, when it would not have been the accompaniment of a robuſt one. How often is a delicate conſtitution deſtroyed by a degree of violence or hardſhip, which a more vigorous one would have ſuſtained without any impreſſion! There is evidently room for the intervention of many caſualties. Perhaps if ſhe had been *of a more robuſt conſtitution* the cruelty uſed towards her would not have injured her. Perhaps if ſhe had not been *in a ſtate of pregnancy* the ſame degree of cruelty would not have affected her. Perhaps if ſhe had not been *pregnant with twins* ſhe would ſtill have borne it with ſafety. Perhaps, if under all the exiſting circumſtances, ſhe had been in a ſituation of *leſs hardſhip*, ſupplied with more of the *comforts* and *accommodations* of life, ſhe might ſtill have ſurvived. Among ſo many contingencies, not infringing the right of others to form their judgment, I claim a right to my own opinion, that after all the prejudice which has been excited againſt the man, it is ſtill poſſible that his wife died a natural death. Admitting however, that ſhe would have ſurvived every circumſtance of her ſituation, if the cruelty of her huſband had been alone abſtracted, ſtill as the intention to deſtroy life was abſent, it forms with me a criterion in favor of his life, which nothing can deſtroy.

There is a circumſtance of ſubordinate conſideration, which it is proper to remember. Even the Engliſh law is fond to multiply the chances of life to guilty offenders. The laws of Maryland are ſtrict on the ſubject of the jury in criminal caſes being citizens of the United States. The jury which convicted M'Girk, were not all citizens of the United States. The circumſtance was not noticed until after ſentence; and after judgment it is preſumed no new trial can be had. This fact alone, with humane and conſiderate men, who would never wiſh to behold an illegal infliction of death, will be a concluſive argument in favor of the interpoſition of executive mercy.

There is alſo a natural ſentiment in favor of firſt offenders, and againſt premature ſeverity. Will this be the firſt inſtance of the infliction of death under the authority, and ſubject to the control, of the Preſident of the United States? If not, it will be the firſt inſtance which has occurred in this territory, and the firſt inſtance which has occurred under the preſent Preſident. Painful as it muſt be to have the power to ſave life, to return to ſociety a culpable but perhaps reformed member, and to be compelled to withhold that power; let it not be denied to the firſt inſtance in which the depoſitory of this power is called to exerciſe it! Let it not be denied in a ſociety, not yet diſtinguiſhed for ſuperior vice, and which would grieve to ſee its early annals ſtained with an execution, which if this occaſion is paſſed may not, under a more regular government, be neceſſary for a long courſe of years! Above all, let it not be denied to the executive on this delicate occaſion, to exerciſe a diſcretion unembittered by the malevolence of party ſpirit!

It is urged as an argument againſt a reprieve that the jail is inſecure, and that in the interval of two months he may eſcape. I ſhall not pretend to ſay that this will, or will not, be the caſe. But certainly it is unjuſt to charge the defects of our police to this miſerable offender; and to make them an argument for precipitancy in depriving him of his exiſtence. It is true that the priſon has been inſecure, that a chance has exiſted for his eſcape, and that the priſoner was under ſtrong temptation to recur to that reſource. Owing however to very ſerious advice, perhaps indiſcreet, he was prevailed on not to avail himſelf of it. The priſon is now in a better ſtate, and from this circumſtance added to the fidelity of the officers, that event need ſcarcely be apprehended.

I am not afraid that the Preſident of the United States will be deterred from doing what he may conceive to be his duty by any cenſure or invective which thoſe of a contrary opinion may be inclined to apply to him for the independent exerciſe of his judgment. I ſhould be ſorry however if any attempts to influence the public mind on the conduct of the Preſident, which are in themſelves harmleſs, ſhould have the *collateral* but *pernicious* effect of influencing the popular prejudice againſt M'Girk. I hope thoſe characters who favor the ſentiments I have advocated will regard it as their duty, before the day of execution arrives, to manifeſt them by an open and manly application in his behalf. It would not be deſirable that ſuch an offender ſhould eſcape puniſhment. But has he not been puniſhed, and that with conſiderable ſeverity? It would be even deſirable that he ſhould receive a further puniſhment than can legally be admitted, if his life is ſpared. But it is the leaſt of two conflicting difficulties that a culpable man ſhould receive *ſomething leſs* than he merits, than that he ſhould receive *conſiderably more*.

AUGUSTUS B. WOODWARD.

Waſhington, Aug. 28th, 1802.