

THE
R I G H T S
OF THE

British Colonies

Afferted and proved.

By JAMES OTIS, Esq;

*Hæc omnis regio & celsi plaga pinea montis
Cedat amicitia Teucrorum : & foederis æquas
Dicamus leges, sociosque in regna vocemus.
Considant, si tantus amor, & mœnia condant.*

VIRG.

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THE
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INTRODUCTION.

Of the Origin of Government.

THE origin of *government* has in all ages no less perplexed the heads of lawyers and politicians, than the origin of *evil* has embarrassed divines and philosophers: and 'tis probable the world may receive a satisfactory solution on *both* those points of enquiry at the *same* time.

The various opinions on the origin of *government* have been reduced to four. 1. That dominion is founded in *Grace*. 2. On *force* or meer *power*. 3. On *compact*. 4. On *property*.

The first of these opinions is so absurd, and the world has paid so very dear for embracing it, especially under the administration of the *Roman pontiffs*, that mankind seem at this day to be in a great measure cured of their madness in this particular; and the notion is pretty generally exploded, and hissed off the stage.

To those who lay the foundation of government in *force* and meer *brutal power*, it is objected; that, their system destroys all distinction between right and wrong; that it overturns all morality, and leaves it to every man

to do what is right in his own eyes ; that it leads directly to *scepticism*, and ends in *atheism*. When a man's will and pleasure is his only rule and guide, what safety can there be either for him or against him, but in the point of a sword ?

On the other hand the gentlemen in favour of the *original compact* have been often told that *their* system is chimerical and unsupported by reason or experience. Questions like the following have been frequently asked them, and may be again.

“ When and where was the original compact for introducing government into any society, or for creating a society, made ? Who were present and parties to such compact ? Who acted for infants and women, or who appointed guardians for them ? Had these guardians power to bind both infants and women during life, and their posterity after them ? Is it in nature or reason that a guardian should by his own act perpetuate his power over his ward, and bind him and his posterity in chains ? Is not every man born as free by nature as his father ? Has he not the same natural right to think and act and contract for himself ? Is it possible for a man to have a natural right to make a slave of himself or of his posterity ? Can a father supersede the laws of nature ? What man is or ever was born free, if every man is not ? What will there be to distinguish the next generation of men from their forefathers, that they should not have the
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the same right to make original compacts as their ancestors had? If every man has such right, may there not be as many original compacts as there are men and women born or to be born? Are not women born as free as men? Would it not be infamous to assert that the ladies are all slaves by nature? If every man and woman born or to be born has, and will have, a right to be consulted, and must accede to the original compact before they can with any kind of justice be said to be bound by it, will not the compact be ever forming and never finished, ever making but never done? Can it with propriety be called a compact original or derivative, that is ever in treaty but never concluded?"

When it has been said that each man is bound as soon as he accedes, and that the consent may be either express or tacit, it has been asked, "What is a *tacit* consent or compact? Does it not appear plain that those who refuse their assent cannot be bound? If one is at liberty to accede or not, is he not at liberty to *recede* on the discovery of some intolerable fraud and abuse that has been palmed upon him by the rest of the high-contracting parties? Will not natural equity in several special cases rescind the original compacts of great men, as effectually as those of little men are rendered null and void in the ordinary course of a court of chancery?"

There are other questions which have been started, and a resolution of them demanded, which

which may perhaps be deemed indecent by those who hold the prerogatives of an earthly monarch, and even the power of a plantation government, so sacred as to think it little less than blasphemy to enquire into their origin and foundation: while the government of the supreme *ruler* of the universe is every day discussed with less ceremony and decency than the administration of a petty German prince. I hope the reader will consider that I am at present only mentioning such questions as have been put by high-flyers and others in church and state, who would exclude all compact between a sovereign and his people, without offering my own sentiments upon them; this however I presume I may be allowed hereafter to do without offence. Those who want a full answer to them may consult Mr. Locke's discourses on government, M. De Vattel's law of nature and nations, and their own consciences.

“ What state were Great-Britain, Ireland, and the Plantations left in by the abdication of James II? Was it a state of nature or of civil government? If a state of civil government, where were the supreme legislative and executive powers from the abdication to the election of *William* and *Mary*? Could the Lords and Commons be called a compleat parliament or supreme power without a King to head them? Did any law of the land or any original compact previous to the abdication provide, that on such an event, the supreme
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power should devolve on the two houses? Were not both houses so manifestly puzzled with the novelty and strangeness of the event, and so far from finding any act of parliament, book-case, or precedent to help them, that they disputed in solemn conference by what name to call the action, and at last gave it one, as new in our language and in that of parliament as the thing itself was in fact*?"

If on this memorable and very happy event the three kingdoms and the dominions fell back into a state of *nature*, it will be asked, "Whether every man and woman were not then equal? If so, had not every one of them a natural and equitable right to be consulted in the choice of a new king, or in the formation of a new original compact or government, if any new form had been made? Might not the nation at that time have rightfully changed the monarchy into a republic or any form, that might seem best? Could any change from a state of nature take place without universal consent, or at least without the consent of the *majority* of the individuals? Upon the principles of the original compact as commonly

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* On King James's leaving the kingdom and *abdication* the government, the lords would have the word *desertion* made use of, but the commons thought it was not comprehensive enough, for that the King might then have liberty of returning. The Scots rightly called it a forfeiture of the crown, and this in plain English is the sense of the term *abdication*: as by the convention and every parliament since applied. See the history and debates of the convention, and the acts then made.

explained and understood, could a few hundred men, who before the dissolution of the government had been called, and in fact were, lords, knights, and gentlemen, have lawfully made that glorious deliverer and defender *W. III.* rightful king? Such an one he certainly was, and such have been all his illustrious successors to the present happy times; when we have the joy to see the sceptre swayed in justice, wisdom and mercy, by our lawful Sovereign George the Third; a prince who glories in being a Briton born, and whom may God long preserve and prosper.

“If upon the abdication all were reduced to a state of nature, had not apple-women and orange-girls as good a right to give their respective suffrages for a new king as the philosopher, courtier, petit maitre, and politician? Were these and ten millions of others such ever more consulted on that occasion, than the multitude now are in the adjustment of that real modern farce, an election of a king of the Romans; which serves as a contrast to the grandeur of the antient republics, and shews the littleness of the modern German and some other Gothic constitutions in their present degenerate state?”

“In the election of *W. III.* were the votes of Ireland and the Plantations ever called for or once thought of till the affair was settled? Did the lords and commons who happened to be then in and about Westminster represent, and act, for the individuals, not only of the three

three kingdoms, but for all the *free-born and as yet unconquered possessors and proprietors of their own money-purchased, blood-purchased plantations, which, till lately, have been defended with little or no assistance from Great-Britain?* Were not those who did not vote in or for the new model at liberty upon the principles of the compact to remain in what some call the delectable state of nature, to which by the hypothesis they were reduced, or to join themselves to any other state, whose solemn league and covenant they could subscribe? Is it not a first principle of the original compact, that all who are bound should bind *themselves*? Will not common sense without much learning or study dictate obvious answers to all the above questions?—and, say the opposers of the original compact and of the natural equality and liberty of mankind, will not those answers infallibly shew that the doctrine is a piece of *metaphysical* jargon and *systematical* nonsense?" Perhaps not.

With regard to the fourth opinion, that *dominion is founded in property*, what is it but playing with words? Dominion in one sense of the term is synonymous with property, so one cannot be called the foundation of the other, but as one *name* may appear to be the foundation or cause of another.

Property cannot be the foundation of dominion as synonymous with government; for on the supposition that property has a precarious

ous existence antecedent to government, and though it is also admitted that the security of property is one end of government, but that of little estimation even in the view of a *miser* when life and liberty of locomotion and further accumulation are placed in competition, it must be a very absurd way of speaking to assert that *one* end of government is the foundation of government. If the ends of government are to be considered as its foundation, it cannot with truth or propriety be said that government is founded on any *one* of those ends; and therefore government is not founded on property or its security *alone*, but at least on something else in conjunction. It is however true in fact and *experience*, as the great, the incomparable *Harrington* has most abundantly demonstrated in his *Oceana*, and other divine writings, that Empire follows the balance of *property*: it is also certain that *property* in fact generally *confers* power, though the possessor of it may not have much more wit than a mole or a musquash: and this is too often the cause, that riches are sought after, without the least concern about the right application of them. But is the fault in the riches, or the general law of nature, or the unworthy possessor? It will never follow from all this, that government is *rightfully* founded on *property*, alone. What shall we say then? Is not government founded on *grace*? No. Nor on *force*? No. Nor on *compact*? Nor *property*? Not altogether on either.

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Has it *any* solid foundation ? any chief corner stone, but what accident, chance or confusion may lay one moment and destroy the next ? I think it has an everlasting foundation in the *unchangeable will of GOD*, the author of nature, whose laws never vary. The same omniscient, omnipotent, infinitely good and gracious Creator of the universe, who has been pleased to make it necessary that what we call matter should *gravitate*, for the celestial bodies to roll round their axes, dance their orbits and perform their various revolutions in that beautiful order and concert, which we all admire, has made it *equally* necessary that from *Adam and Eve* to these degenerate days, the different sexes should sweetly *attract* each other, form societies of *single* families, of which *larger* bodies and communities are as naturally, mechanically, and necessarily combined, as the dew of Heaven and the soft distilling rain is collected by the all-enlivening heat of the sun. *Government* is therefore most evidently founded *on the necessities of our nature*. It is by no means an *arbitrary* thing, depending merely on *compact* or *human will* for its existence.

We come into the world forlorn and helpless ; and if left alone and to ourselves at any one period of our lives, we should soon die in want, despair or distraction. So kind is that hand, though little known or regarded, which feeds the rich and the poor, the blind and the naked ; and provides for the safety of infants

by the principle of parental love, and for that of men by Government! We have a King, who neither slumbers nor sleeps, but eternally watches for our good; whose rain falls on the just and on the unjust: yet while they live, move, and have their being in him, and cannot account for either, or for any thing else, so stupid and wicked are some men, as to deny his existence, blaspheme his most evident government, and disgrace their nature.

Let no Man think I am about to commence advocate for *despotism*, because I affirm that government is founded on the necessity of our natures; and that an original supreme Sovereign, absolute, and uncontrollable, *earthly* power *must* exist in and preside over every society; from whose final decisions there can be no appeal but directly to Heaven. It is therefore *originally* and *ultimately* in the people. I say this supreme absolute power is *originally* and *ultimately* in the people; and they never did in fact *freely*, nor can they *rightfully* make an absolute, unlimited renunciation of this divine right*. It is ever in the nature of the thing given in *trust*, and on a condition, the performance of which no mortal can dispence with; namely, that the person or persons on

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* The power of God Almighty is the only power that can properly and strictly be called supreme and absolute. In the order of nature immediately under him, comes the power of a simple *democracy*, or the power of the whole over the whole. Subsequent to both these, are all other political powers, from that of the French Monarque, to a petty constable.

whom the sovereignty is conferred by the people, shall *incessantly* consult *their* good. Tyranny of all kinds is to be abhorred, whether it be in the hands of one, or of the few, or of the many.—And though “in the last age a generation of men sprung up that would flatter Princes with an opinion that *they* have a *divine right* to absolute power;” yet “flavery is so vile and miserable an estate of man, and so directly opposite to the generous temper and courage of our nation, that it is hard to be conceived that an *Englishman*, much less a *gentleman*, should plead for it* :” Especially at a time when the finest writers of the most polite nations on the continent of *Europe*, are enraptured with the beauties of the civil constitution of *Great-Britain*; and envy her, no less for the *freedom* of her sons, than for her immense *wealth* and *military* glory.

But let the *origin* of government be placed where it may, the *end* of it is manifestly the good of *the whole*. *Salus populi suprema lex esto*, is of the law of nature, and part of that grand charter given the human race (though too many of them are afraid to assert it) by the only monarch in the universe, who has a clear and indisputable right to *absolute* power; because he is the *only ONE* who is *omniscient* as well as *omnipotent*.

It is evidently contrary to the first principles of reason, that supreme *unlimited* power should be in the hands of *one* man. It is the greatest
“ *idolatry*”

* Mr. Locke.

“ idolatry, begotten by *flattery*, on the body of *pride*,” that could induce one to think that a *single mortal* should be able to hold so great a power, if ever so well inclined. Hence the origin of *deifying* princes: it was from the trick of gulling the vulgar into a belief that their tyrants were *omniscient*; and that it was therefore right, that they should be considered as *omnipotent*. Hence the *Dii majorum & minorum gentium*; the great, the monarchical, the little, Provincial subordinate and subaltern gods, demi-gods, and semidemi-gods, ancient and modern. Thus deities of all kinds were multiplied and increased in *abundance*; for every devil incarnate, who could enslave a people, acquired a title to *divinity*; and thus the “rabble of the skies” was made up of locusts and caterpillars; lions, tygers, and harpies; and other devourers translated from plaguing the earth*!

The *end* of government being the *good* of mankind, points out its great duties: it is above all things to provide for the security, the quiet, and happy enjoyment of life, liberty, and property. There is no one act which a government can have a *right* to make, that does not tend to the advancement of the security, tranquility and prosperity of the people. If life, liberty and property could be enjoyed

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* Kingcraft and Priestcraft have fell out so often, that it is a wonder this grand and ancient alliance is not broken off for ever. Happy for mankind will it be, when such a separation shall take place.

in as great perfection in *solitude*, as in *society*, there would be no need of government. But the experience of ages has proved that such is the nature of man, a weak, imperfect being; that the valuable ends of life cannot be obtained, without the union and assistance of many. Hence it is clear that men cannot live apart or independent of each other: in solitude men would perish; and yet they cannot live together without contests. These contests require some arbitrator to determine them. The necessity of a common, indifferent and impartial judge, makes all men seek one; though few find him in the *sovereign power*, of their respective states or any where else in *subordination* to it.

Government is founded *immediately* on the necessities of human nature, and *ultimately* on the will of God, the author of nature; who has not left it to men in general to chuse, whether they will be members of society or not, but at the hazard of their senses if not of their lives. Yet it is left to every man as he comes of age to chuse *what society* he will continue to belong to. Nay, if one has a mind to turn *hermit*, and after he has been born, nursed, and brought up in the arms of society, and acquired the habits and passions of social life, is willing to run the risque of starving alone, which is generally most unavoidable in a state of hermitage, who shall hinder him? I know of no human law, founded on the law of *nature*, to restrain him
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from separating himself from all the species, if he can find it in his heart to leave them; unless it should be said, it is against the great law of *self-preservation*: But of this every man will think himself *his own judge*.

The few *hermits* and *Misanthropes* that ever existed, shew that those states are unnatural. If we were to take out from them, those who have made great *worldly* gain of their *godly* hermitage, and those who have been under the madness of *enthusiasm*, or *disappointed* hopes in their *ambitious* projects, for the detriment of mankind, perhaps there might not be left ten from *Adam* to this day.

The form of government is by *nature* and by *right* so far left to the *individuals* of each society, that they may alter it from a simple democracy, or government of all over all, to any other form they please. Such alteration may and ought to be made by express compact: But how seldom this right has been asserted, history will abundantly shew. For once that it has been fairly settled by compact; *fraud*, *force* or *accident* have determined it an hundred times. As the people have gained upon tyrants, these have been obliged to relax, *only* till a fairer opportunity has put it in their power to encroach again.

But if every prince since *Nimrod* had been a tyrant, it would not prove a *right* to tyrannize. There can be no prescription old enough to supersede the law of nature, and the grant of God Almighty; who has given

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to all men a natural right to be *free*, and they have it ordinarily in their power to make themselves so, if they please.

Government having been proved to be necessary by the law of nature, it makes no difference in the thing to call it from a certain period, *civil*. This term can only relate to form, to additions to, or deviations from, the substance of government: This being founded in nature, the superstructures and the whole administration should be conformed to the law of universal reason. A supreme legislative and a supreme executive power, must be placed *somewhere* in every commonwealth: Where there is no other positive provision or compact to the contrary, those powers remain in the *whole body of the people*. It is also evident there can be but *one* best way of depositing those powers; but what that way is, mankind have been disputing in peace and in war more than five thousand years. If we could suppose the individuals of a community met to deliberate, whether it were best to keep those powers in *their own* hands, or dispose of them in *trust*, the following questions would occur——Whether those two great powers of *Legislation* and *Execution* should remain united? If so, whether in the hands of the many, or jointly or severally in the hands of a few, or jointly in some one individual? If both those powers are retained in the hands of the many, where nature seems to have

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placed them originally, the government is a simple *democracy*, or a government of all over all. This can be administered, only by establishing it as a first principle, that the votes of the majority shall be taken as the voice of the whole. If those powers are lodged in the hands of a few, the government is *Aristocracy* or *Oligarchy**. Here too the first principles of a practicable administration is, that the majority rules the whole. If those great powers are both lodged in the hands of one man, the government is a *simple Monarchy*, commonly, though falsely called *absolute*, if by that term is meant a right to do as one pleases.—*Sic volo, sic jubeo, slet pro ratione voluntas*, belongs not of right to any mortal man.

The same law of nature and of reason is equally obligatory on a *democracy*, an *aristocracy*, and a *monarchy*: Whenever the administrators, in any of those forms, deviate from truth, justice and equity, they verge towards tyranny, and are to be opposed; and if they prove incorrigible, they will be deposed by the people, if the people are not rendered too abject. Deposing the administrators of a *simple democracy* may sound oddly, but it is done every day, and in almost every vote. A, B, and C for example, make a *democracy*; to day A and B are for so vile a measure as a stand-

* For the sake of the unlettered reader it is noted, that Monarchy means the power of one great man; Aristocracy and Oligarchy that of a few; and Democracy that of all men.

standing army ; to morrow B and C vote it out. This is as really deposing the former administrators, as setting up and making a new king is deposing the old one. *Democracy* in the one case, and *monarchy* in the other, still remain ; all that is done is to change the administration.

The first principle and great end of government being to provide for the best good of all the people, this can be done only by a supreme legislative and executive ultimately in the people, or whole community, where God has placed it ; but the inconveniencies, not to say impossibility, attending the consultations and operations of a large body of people, have made it necessary to transfer the power of the whole to a *few* : This necessity gave rise to deputation, proxy or a right of representation.

A Power of legislation, without a power of execution in the same or other hands, would be futile and vain : On the other hand, a power of execution, supreme or subordinate, without an *independent* legislature, would be perfect despotism.

The difficulties attending an universal congress, especially when society became large, have brought men to consent to a delegation of the power of all ; The weak and the wicked have too often been found in the same interest ; and in most nations have not only brought these powers *jointly* into the hands of one, or some few, of their number ; but

made them *hereditary*, in the families of despotic nobles and princes.

The wiser and more virtuous states, have always provided that the representation of the people should be *numerous*. Nothing but life and liberty are *naturally* hereditary: This has never been considered by those, who have *tamely* given up both into the hands of a tyrannical Oligarchy or despotic Monarchy.

The analogy between the natural, or material, as it is called, and the moral world, is very obvious; God himself appears to us at some times to cause the intervention or combination of a *number* of simple principles, though never when *one* will answer the end; gravitation and attraction have place in the revolution of the planets, because the one would fix them to a centre, and the other would carry them off indefinitely; so in the moral world, the first simple principle is *equality* and the power of the whole. This will answer in small numbers; so will a tolerably virtuous *Oligarchy* or a *Monarchy*. But when the society grows in bulk, none of them will answer well *singly*, and none worse than absolute monarchy. It becomes necessary therefore as numbers increase, to have those several powers properly combined; so as from the whole to produce that harmony of government so often talked of and wished for, but too seldom found in ancient or modern states. The grand political problem in all ages has been to invent the best combination or distribution

bution of the supreme powers of legislation and execution. Those states have ever made the greatest figure, and have been most durable, in which those powers have not only been separated from each other, but placed each in more hands than one, or a few. The *Romans* are the most shining example; but they never had a balance between the senate and the people; and the want of this, is generally agreed by the few who know any thing of the matter, to have been the cause of their fall. The *British* constitution in theory and in the present administration of it, in general comes nearest the idea of perfection, of any that has been reduced to practice; and if the principles of it are adhered to, it will, according to the infallible prediction of *Harrington*, always keep the *Britons* uppermost in *Europe*, 'till their *only* rival nation shall either embrace that perfect model of a commonwealth given us by that author, or come as near it as *Great-Britain* is. Then indeed, and not till then, will that rival and our nation either be eternal confederates, or contend in greater earnest than they have ever yet done, till one of them shall sink under the power of the other, and rise no more.

Great-Britain has at present, most evidently the advantage, and such opportunities of honest wealth and grandeur, as perhaps no state ever had before, at least not since the days of *Julius Cæsar*, the destroyer of the Roman glory and grandeur, at a time when
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but for him and his adherents both might have been rendered immortal.

We have said that the form and mode of government is to be settled by *compact*, as it was rightfully done by the convention after the abdication of *James II.* and assented to by the first representative of the nation chosen afterwards, and by every parliament, and by almost every man ever since, but the bigots to the indefeasible power of tyrants civil and ecclesiastic. There was neither time for, nor occasion to call the whole people together: if they had not liked the proceedings it was in their power to controul them; as it would be should the supreme legislative or executive powers ever again attempt to enslave them. The people will bear a great deal, before they will even murmur against their rulers: but when once they are thoroughly roused, and in earnest, against those who would be glad to enslave them, their power is *irresistible* *.

At the abdication of King *James*, every step was taken that natural justice and equity could require; and all was done that was possible, at least in the wretched state in which he left the nation. Those very noble and worthy patriots, the lords spiritual and temporal of that day, and the principal persons of the commons, advised the prince, who in consequence thereof caused letters to be "written to the lords spiritual and temporal, being protestants, and other letters to the several coun-

* See Mr. Locke on the Dissolution of Government.

counties, cities, universities, boroughs and cinque-ports, for the chusing such persons to represent them as were of right to be sent to parliament, to meet at Westminster upon the 22d of January 1688, in order to such an establishment, as that their religion, laws and liberties might not again be in danger of being subverted." See *W. & M. sess. 1. C. 1.*

Upon this elections were made, and thereupon the said lords (spiritual and temporal and commons met, and proceeded to assert their rights and liberties, and to the election of the Prince and Princess of Orange to be King and Queen of England, France and Ireland, and the dominions thereto belonging. The kingdom of Scotland agreed in the same choice: These proceedings were drawn into the form of acts of parliament, and are the basis of the acts of union and succession since made, and which all together are the sure foundation of that indisputable right which his present Majesty has to the Crown of *Great Britain* and the dominions thereto belonging; which right it is the greatest folly to doubt of, as well as the blackest treason to deny. The present establishment founded on the law of God, and of nature, was began by the convention, with a professed and real view, in all parts of the *British* empire, to put the liberties of the people out of the reach of arbitrary power in all times to come.

But the grandeur, as well as justice, equity and goodness of the proceedings of the nation

on that memorable occasion, never have been nor can be so well represented as in the words of those great men who composed the convention; for which reason partly, but principally because they shew the rights of all British subjects, both at home and abroad, and should therefore be in as many hands as possible; I have transcribed the following clauses.

1 *W. & M.* sess. 1. chap. 1. preamble and sec. 1. entitled—

“ An act for removing and preventing all questions and disputes concerning the assembling and sitting of this present parliament.

For preventing all doubts and scruples which may in any wise arise concerning the meeting, sitting and proceeding of this present parliament; be it declared and enacted by the King's and Queen's most excellent Majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, now assembled, and by authority of the same.

It is enacted, That the lords spiritual and temporal, and commons, convened at Westminster, the two and twentieth day of January A. D. 1688, and there sitting the 13th of February following, are the two houses of parliament, and so shall be and are hereby declared, enacted and adjudged to be, to all intents, constructions, and purposes whatsoever, notwithstanding any want of writ or writs of summons, or any other defect of form or default whatsoever, as if they had been summoned according to the usual form.

1 of *W. & M.* sess. 2. chap. 2. sec. 3, 4, 5, 6, 11, 12.

An act declaring the rights and liberties of the subject, and settling the succession of the Crown.

Whereas the lords spiritual and temporal, and commons, assembled at Westminster, lawfully, fully and freely representing all the estates of the people of this realm, did upon the 13th of February A. D. 1688, present unto their Majesties, then called and known by the names and stile of *William* and *Mary*, Prince and Princess of Orange, being present in their proper persons, a certain declaration in writing, made by the said lords and commons in the words following, *viz.*

Whereas the late King James the second, by the assistance of divers evil counsellors, judges, and ministers employed by him, did endeavour to subvert and extirpate the protestant religion, and the laws and liberties of this kingdom.

1. By assuming and exercising a power of dispensing with and suspending of laws, and the execution of laws, without consent of parliament.

2. By committing and prosecuting divers worthy prelates, for humbly petitioning to be excused from concurring to the said assumed power.

3. By issuing and causing to be executed a commission under the great seal for erecting a

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court, called, The court of commissioners for ecclesiastical causes.

4. For levying money for and to the use of the crown, by pretence of prerogative, for other time, and in other manner, than the same was granted by parliament.

5. By raising and keeping a standing army within this kingdom in time of peace, without consent of parliament, and quartering soldiers contrary to law.

6. By causing several good subjects, being protestants, to be disarmed, at the same time when papists were both armed and employed, contrary to law.

7. By violating the freedom of election of members to serve in parliament.

8. By prosecutions in the court of King's Bench, for matters and causes cognizable only in parliament; and by divers other arbitrary and illegal courses.

9. And whereas of late years, partial, corrupt and unqualified persons, have been returned and served on juries in trials, and particularly divers jurors in trials for high treason, which were not freeholders.

10. And excessive bail hath been required of persons committed in criminal cases, to exclude the benefit of the laws made for the liberty of the subjects.

11. And excessive fines have been imposed; and illegal and cruel punishments inflicted.

12. And several grants and promises made of fines and forfeitures, before any conviction

or

or judgment against the persons, upon whom the same were to be levied.

All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm——

And whereas the said late King James the second having abdicated the Government, and the throne being thereby vacant, his highness the prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from popery and arbitrary power) did (by the advice of the Lords spiritual and temporal, and divers principal persons of the commons) cause letters to be written to the lords spiritual and temporal, being protestants, and other letters to the several counties, cities, universities, boroughs, and cinque - ports, for the chusing of such persons to represent them, as were of right to be sent to parliament, to meet and sit at Westminster upon the two and twentieth of January in this year 1688, in order to such an establishment, as that their religion, laws, and liberties might not again be in danger of being subverted. Upon which letters, elections having been accordingly made :

And thereupon the said lords spiritual and temporal and commons, pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, taking into their most serious consideration the best means for attaining the ends aforesaid ; do in the first place (as their ances-

tors in like case have usually done) for the vindicating and asserting their antient rights and liberties, declare,

1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal.

3. That the commission for creating the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious.

4. That levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner, than the same is or shall be granted, is illegal.

5. That it is the right of the subjects to petition the King; and all commitments and prosecutions for such petitioning are illegal.

6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law.

7. That the subjects which are protestants, may have arms for their defence, suitable to their conditions, and as allowed by law.

8. That election of members of parliament ought to be free,

9. That the freedom of speech, and debates; or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament.

10. That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted.

11. That jurors ought to be duly impannelled and returned; and jurors which pass upon mens trials for high treason, ought to be freeholders.

12. That all grants and promises of fines and forfeitures of particular persons before conviction, are illegal and void.

13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties; and that no declarations, judgments, doings, or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example:

To which demand of their rights they are particularly encouraged by the declaration of his Highness the Prince of Orange, as being the only means for obtaining a full redress and remedy therein——

Having therefore an entire confidence, that his said Highness the Prince of Orange, will perfect the deliverance so far advanced by him,
and

and will still preserve them from the violation of their rights, which they have here asserted, and from all other attempts upon their religion, rights and liberties.

II. The said Lords spiritual and temporal, and commons assembled at Westminster, do resolve that *William* and *Mary* Prince and Princess of Orange be, and be declared, King and Queen of England, France and Ireland, and the dominions thereunto belonging, to hold the crown and royal dignity of the said kingdoms and dominions to them the said Prince and Princess, during their lives, and the life of the survivor of them; and that the sole and full exercise of the regal power be only in, and executed by the said Prince of Orange, in the names of the said Prince and Princess, during their joint lives; and after their deceases, the said crown and royal dignity of the said kingdoms and dominions to be to the heirs of the body of the said Princess; and for default of such issue, to the Princess Anne of Denmark, and the heirs of her body; and for default of such issue, to the heirs of the body of the said Prince of Orange. And the Lords spiritual and temporal, and commons, do pray the said Prince and Princess to accept the same accordingly.

IV. Upon which their said Majesties did accept the crown and royal dignity of the kingdom of England, France and Ireland, and the dominions thereunto belonging, according to the resolutions and desire of the said lords

lords and commons, contained in the said declaration.

V. And thereupon their Majesties were pleased, that the said lords spiritual and temporal, and commons, being the two houses of Parliament, should continue to sit, and with their Majesties royal concurrence, make effectual provision for the settlement of the religion, laws and liberties of this Kingdom; so that the same for the future might not be in danger again of being subverted; to which the said lords spiritual and temporal, and commons did agree and proceed to act accordingly.

VI. Now in pursuance of the premises, the said lords spiritual and temporal and commons, in parliament assembled, for the ratifying, confirming and establishing the said declaration, and the articles, clauses, matters and things therein contained, by the force of a law made in due form by authority of parliament, do pray that it may be declared and enacted, That all and singular the rights and liberties asserted and claimed in the said declaration, are the true, ancient and indubitable rights and liberties of the People of this kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be; and that all and every the particulars aforesaid, shall be firmly and strictly holden and observed, as they are expressed in the said declaration; and all officers and ministers whatsoever shall serve their Majesties and their
suc-

successors according to the same in all times to come.

XI. All which their Majesties are contented and pleased shall be declared, enacted, and established by authority of this present parliament, and shall stand, remain, and be the law of this realm for ever; and the same are by their said Majesties, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the authority of the same, declared, enacted, and established accordingly.

XII. And be it further declared and enacted by the authority aforesaid, that from and after this present session of parliament, no dispensation by *non obstante* of or to any statute or any part thereof, shall be allowed; but that the same shall be held void and of no effect, except a dispensation be allowed in such statutes, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of parliament.

12 & 13 of *William III.* chap. 2. sec. 3 & 4.

“ Whereas it is necessary that further provision be made for securing our religion, laws and liberties, after the death of his Majesty and the Princess Anne of Denmark, and in default of issue of the body of the said Princess, and of his Majesty respectively; it is enacted,

That after the said limitation shall take effect, judges commissions be made *quamdiu*

diu se bene gesserint, and their salaries ascertained and established; but upon the address of both houses of parliament, it may be lawful to remove them;

That no pardon under the great seal of England be pleaded to an impeachment by the commons in parliament.

Whereas the laws of England are the birth-right of the people thereof, and all the Kings and Queens, who shall ascend the throne of this realm, ought to administer the government of the same according to the said laws, and all their officers and ministers ought to serve them according to the same; all the laws and statutes of this realm for securing the established religion, and the rights and liberties of the people, and all other laws and statutes now in force, are by his Majesty, with the advice and consent of the lords spiritual and temporal, and commons, ratified and confirmed."

I shall close this introduction with a passage from Mr. Locke.

" Though, says he, in a constituted common wealth, standing upon its own basis, and acting according to its own nature, that is, acting for the preservation of the community, there can be but one supreme power which is the legislative, to which all the rest are and must be subordinate; yet the legislative being only a fiduciary power, to act for certain ends, there remains still, "*in the people, a supreme power to remove, or alter, the legislative when*

they find the legislative act contrary to the trust reposed in them." For all power given, with trust for the attaining an end, being limited by that end, whenever that end is manifestly neglected, or opposed, the trust must necessarily be forfeited, and the power devolve into the hands of those who gave it, who may place it anew where they shall think best, for their safety and security. And thus the *community* perpetually retains a supreme power of saving themselves from the attempts and designs of any body, even of their legislators whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the liberties and properties of the subject. For no man, or society of men, having a power to deliver up their preservation, or consequently the means of it, to the absolute will and arbitrary dominion of another; whenever any one shall go about to bring them into such a slavish condition, they will always have a right to preserve what they have not a power to part with; and to *rid* themselves of *those* who invade this fundamental, sacred and unalterable law of self-preservation, for which they entered into society.

And thus the community may be said in this respect to be always the supreme power, but not as considered under any form of government, because this power of the people, can never take place, till the government be dissolved." Locke on Government, B. II. C. 13.

This

This he says may be done, “ from without by conquest ; from within, 1st. When the legislative is altered. Which is often by the prince, but sometimes by the whole legislative. As by invading the *property* of the subject, and making themselves arbitrary disposers of the lives, liberties and fortunes of the people ; reducing them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any further obedience, and are left to the common refuge which God hath provided for all men, against force and violence. Whensoever therefore, the legislative shall transgress this fundamental rule of society ; and either by ambition, fear, folly or corruption, endeavour to gain themselves, or put into the hands of any other an absolute power over the lives, liberties and estates of the people, by this breach of trust, they forfeit the power the *people* had put into their hands for quite contrary ends, and it devolves to the *people*, who have a right to *resume* their original liberty, and by the establishment of a *new* legislative (such as they shall think fit) provide for their own safety and security, which is the end for which they are in society.”

Idem Chap. 9.

Of Colonies in general.

THIS subject has never been very clearly and fully handled by any modern writer,

writer, that I have had the good fortune to meet with; and to do it justice, would require much greater abilities than I pretend to, and more leisure than I ever expect will fall to my share. Even the *English* writers and lawyers, have either intirely waved any consideration of the nature of *Colonies*, or very lightly touched upon it, for the people of England never discovered much concern for the prosperity of the *Colonies*, till the revolution; and even now some of their great men and writers, by their discourses of, and conduct towards them, consider them all rather as a parcel of *little insignificant conquered islands*, than as a very extensive settlement on the continent. Even their law-books and very dictionaries of law, in editions so late as 1750, speak of the *British* plantations abroad as consisting chiefly of islands; and they are reckoned up in some of them in this order—*Jamaica, Barbadoes, Virginia, Maryland, New-England, New-York, Carolina, Bermudas*. At the head of all these *Islands* (for there is no distinction made) stands *Jamaica*, in truth a *conquered* island; and as such, this and all the other little West-India islands deserve to be treated, for the conduct of their inhabitants and proprietors with regard to the Northern Colonies: divers of these colonies are larger than all those islands together; and are well settled, not as the common people of *England* foolishly imagine, with a compound mongrel mixture of *English, Indian* and *Negro*, but with freeborn *British*
white

white subjects, whose loyalty has never yet been suspected.

There is a man now living, or but lately dead, who once was a secretary of state ; during whose *wonderful* conduct of national affairs, without knowing whether *Jamaica* lay in the Mediterranean, the Baltic, or in the Moon, letters were often received, directed to the Governor of the *island* of New-England. Which *island* of New-England is a part of the *continent* of North-America, comprehending two provinces and two colonies ; and according to the *undoubted* bounds of their charters, containing more land than there is in the three kingdoms. But I must confine myself to matters of more importance than detecting the geographical blunders, or refuting the errors of dead, superannuated or otherwise stupified secretaries of state, who are now all out of place.

If I were to define the *modern* Colonists, I should say, *they are the noble discoverers and settlers of a new world* ; from whence, as from an endless source, *wealth*, and *plenty*, the means of *power*, *grandeur* and *glory*, in a degree unknown to the hungry chiefs of former ages, have been pouring into *Europe* for 300 years past : In return for which, those Colonists have received from the several states of *Europe*, except from *Great-Britain*, only since the revolution, nothing but ill-usage, slavery and chains, as fast as the riches of *their own* earning, could furnish the means of forging them.

A plantation or colony, is a settlement of subjects in a territory *disjointed* or *remote* from the mother country, and may be made by private adventurers or the public; but in both cases the Colonists are intitled to as *ample* rights, liberties and privileges as the subjects of the mother country are, and in some respects *to more*.

Of the natural Rights of Colonists.

THOSE who expect to find any thing very satisfactory on this subject in particular, or with regard to the law of nature in general, in the writings of such authors as *Grotius* and *Pufendorf*, will find themselves much mistaken. It is their constant practice to establish the matter of right on the matter of *fact*: This the celebrated *Rousseau* expressly says of *Grotius*, and with the same reason he might have added an hundred others. “The learned researches into the laws of nature and nations are often nothing more than the history of ancient abuses, so that it is a ridiculous infatuation to be too fond of studying them.*” “This was exactly the case with *Grotius*.†” The sentiments on this subject have therefore been chiefly drawn from the purer fountains of one or two of our *English* writers, particularly from Mr. *Locke*, to whom might be added a *few* of other nations; for I have seen but a few of any country, and of all I have seen, there

* Marquis D'A.

† Rousseau.

there are not ten worth reading. *Grotius*, B. 3. C. 1. sec. 21. discoursing of confederates on unequal terms, according to his manner, says, " to the inequality in question may be referred some of those rights which are now called right of protection, right of patronage, and a right termed *mundiburgium* ; as also that which mother cities had over their colonies among the Grecians. For as *Thucydides* says, those colonies enjoyed the same rights of liberty with the other cities, but they owed a reverence to the city whence they derived their origin, and were obliged to render her respect and certain expressions of honour, *so long as the colony was well treated.*"

Grotius de jure belli, &c. B. 1. C. 3. 21.

" Hitherto also (says he) may be referred that separation which is made when people *by one consent*, go to form colonies. *For this is the original of a new and independent state. They are not content to be slaves, but to enjoy equal privileges and freedom, says Thucydides.* And King *Tullius*, in *Dion. Hali.* says, *we look upon it to be neither truth nor justice, that mother cities ought of necessity and by the law of nature to rule over their colonies.*"

B. 2. C. 9. sec. 10.

" Colonies, says *Pufendorf*, are settled in different methods. For either the colony continues a part of the common-wealth it was sent out from, or else is obliged to pay a dutiful respect to the mother common-wealth, and to be in readiness to defend and vindicate

its

its honour, and so is united to it by a sort of unequal confederacy ; or lastly, is erected into a separate common-wealth, and assumes the same rights with the state it is descended from."—Pufend. B. 8. C. 11. 6.

“ Different common-wealths may be formed out of one by common consent, by sending out colonies in the manner usual in old Greece. For the Romans afterwards, when they sent a colony abroad, continued it under the jurisdiction of the mother common-wealth, or greater country. But the colonies planted by the Greeks, and after their method, constituted particular common-wealths, which were obliged only to pay a kind of deference and dutiful submission to the mother common-wealth.”— Pufend. B. 8. C. 12. sec. 5.

From which passages it is manifest that these two great men only state facts, and the opinions of others, without giving their own upon the subject : And all that can be collected from those facts or opinions, is, that Greece was more generous, and a better mother to her colonies than Rome. The conduct of Rome towards her colonies, and the corruptions and oppressions tolerated in her provincial officers of all denominations, was one great cause of the downfall of that proud republic.

Dr. Strahan says, “ there is a great affinity between the British colonies and those of the Spaniards and other nations, who have made settlements among the Indians in those parts :

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For the grants made by our Kings of tracts of lands in that country, for the planting of colonies, and making settlements therein, appear to have been made in imitation of grants made by the Kings of Spain to the proprietors of lands in the Spanish colonies, upon the very same conditions, and in consideration of the same services to be performed by the grantees. So that the *government* of the Spanish colonies and the rights of the proprietors of lands therein, depending chiefly on the rules of civil and feudal law, as may be seen by the learned treatise of Solorzanus, *de indiarum jure*, the knowledge of the said laws must be of service likewise for determining any controversy that may arise touching the duties or forfeitures of the proprietors of lands in our English colonies.——Pref. to transl. of Domat.

With submission to so great an authority as Dr. Strahan, it is humbly hoped that the British colonists do not hold their lands as well as liberties by so slippery a tenure as do the Spaniards and French. The will of the Prince is the only tenure by which *they* hold; and the government of the Spanish and French settlements is in every respect despotic.

It is well known that the first American grants were by the Bulls of the Popes. The Roman Pontiffs had for ages usurped the most abominable power over princes: They granted away the kingdoms of the earth with as little ceremony as a man would lease a sheep-cot. Now according to Dr. Strahan's logic, it may be inferred, that the canon law and the Popes

Bulls, must be of *service likewise, for determining any controversy that may arise, touching the duties or forfeitures of the proprietors of lands in the British colonies.* And indeed it must be owned, if we were to judge of some late proceedings * by this rule, we must allow that they favor more of modern Rome and the Inquisition, than of the common law of England and the constitution of Great-Britain.

In order to form an idea of the natural rights of the Colonists, I presume it will be granted that they are men, the common children of the same Creator with their brethren of Great-Britain. Nature has placed all such in a state of equality and perfect freedom, to act within the bounds of the laws of nature and reason, without consulting the will or regarding the humour, the passions or whims of any other man, unless they are formed into a society or body politic. This it must be confessed is rather an abstract way of considering men than agreeable to the real and general course of nature. The truth is, as has been shewn, men came into the world and into society at the same instant. But this hinders not but that the natural and original rights of each individual may be illustrated and explained in this way better than in any other. We see here by the way a probability, that this abstract consideration of men, which has its use in reasoning on the principles of government, has insensibly led some of the greatest men

* Of some American Courts of Admiralty, if the Reader pleases.

men to imagine, some real general state of nature, agreeable to this abstract conception, antecedent to and independent of society. This is certainly not the case in general, for most men become members of society from their birth, though separate independent states are really in the condition of perfect freedom and equality with regard to each other; and so are any number of individuals who separate themselves from a society of which they have formerly been members, for ill treatment, or other good cause, with express design to found another. If in such case, there is a real interval, between the separation and the new conjunction, during such interval, the individuals are as much detached, and under the law of nature only, as would be two men who should chance to meet on a desolate island.

The Colonists are by the law of nature free born, as indeed all men are, white or black. No better reasons can be given, for enslaving those of any colour, than such as baron Montesquieu has humourously given, as the foundation of that cruel slavery exercised over the poor Ethiopians; which threatens one day to reduce both Europe and America to the ignorance and barbarity of the darkest ages. Does it follow that it is right to enslave a man because he is black? Will short curled hair, like wool, instead of Christian hair, as it is called by those whose hearts are as hard as the nether millstone, help the argument? Can any logical inference in favour of slavery, be drawn from a flat nose, a long or a short face? No-

thing better can be said in favour of a trade, that is the most shocking violation of the law of nature, has a direct tendency to diminish the idea of the inestimable value of liberty, and makes every dealer in it a tyrant, from the director of an African company to the petty chapman in needles and pins on the unhappy coast. It is a clear truth, that those who every day barter away other mens liberty, will soon care little for their own. To this cause must be imputed that ferocity, cruelty, and brutal barbarity that has long marked the general character of the sugar-planters. They can in general form no idea of government but that which in person, or by an overseer, the joint and several proper representative of a Creole*, and of the D—l, is exercised over ten thousands of their fellow men, born with the same right to freedom, and the sweet enjoyments of liberty and life, as their unrelenting task-masters, the overseers and planters.

Is it to be wondered at, if, when people of the stamp of a Creolian planter get into power, they will not stick for a little present gain, at making their own posterity, white as well as black, worse slaves if possible than those already mentioned.

There is nothing more evident, says Mr. Locke, than “ that creatures of the same species

* Those in England who borrow the terms of the Spaniards, as well as their notions of government, apply this term to all Americans of European Extract ; but the Northern colonists apply it only to the Islanders and others of such extract, under the Torrid Zone.

cies and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one among another, without subordination and subjection, unless the master of them all should by any manifest declaration of his will set one above another, and confer on him, by an evident and clear appointment, an undoubted right to dominion and sovereignty." "The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but only to have the law of nature for his rule". This is the liberty of independent states; this is the liberty of every man out of society, and who has a mind to live so; which liberty is only abridged in certain instances, not lost to those who are born in or voluntarily enter into society; this gift of God cannot be annihilated.

The Colonists being men, have a right to be considered as equally entitled to all the rights of nature with the Europeans, and they are not to be restrained, in the exercise of any of these rights, but for the evident good of the whole community.

By being or becoming members of society, they have not renounced their natural liberty in any greater degree than other good citizens, and if it is taken from them without their consent, they are so far enslaved.

They have an undoubted right to expect, that their best good will ever be consulted by their rulers, supreme and subordinate, without any partial views confined to the particular

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interest of one island or another. Neither the riches of Jamaica, nor the luxury of a metropolis, should ever have weight enough to break the balance of truth and justice. Truth and faith belong to men as men, from men, and if they are disappointed in their just expectations of them in one society, they will at least wish for them in another. If the love of truth and justice, the only spring of sound policy in any state, is not strong enough to prevent certain causes from taking place, the arts of fraud and force will not prevent the most fatal effects.

In the long run, those who fall on arbitrary measures, will meet with their deserved fate. The law of nature, was not of man's making, nor is it in his power to mend it, or alter its course. He can only perform and keep, or disobey and break it. The last is never done with impunity, even in this life, if it is any punishment for a man to feel himself deprived; to find himself degraded by his own folly and wickedness from the rank of a virtuous and good *man*, to that of a brute; or to be transformed from the friend, perhaps father of his country, to a devouring Lion or Tyger.

The unhappy revolutions which for ages have distressed the human race, have been all owing to the want of a little wisdom, common sense and integrity, in the administration of those, whom by their stations, God had in kindness to the world, rendered able to do a great deal, for the benefit of mankind, with
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the exertion of a small portion of private and public virtue.

Of the Political and Civil Rights of the British Colonists.

HERE indeed opens to view a large field; but I must study brevity—Few people have extended their enquiry after the foundation of any of their rights, beyond a charter from the crown. There are others who think when they have got back to old *Magna Charta*, that they are at the beginning of all things. They imagine themselves on the borders of Chaos (and so indeed in some respects they are) and see creation rising out of the unformed mass, or from nothing. Hence, say they, spring all the rights of men and of citizens.—But liberty was better understood, and more fully enjoyed by our ancestors, before the coming in of the first Norman Tyrants, than ever after, till it was found necessary, for the salvation of the kingdom, to combat the arbitrary and wicked proceedings of the Stuarts.

The present happy and most righteous establishment is justly built on the ruins, which those Princes brought on their family; and two of them on their own heads—The last of the name sacrificed three of the finest kingdoms in Europe, to the councils of bigotted old women, priests, and more weak and wicked ministers of state: he afterward went a grazing in the fields of St. Germain's, and there died in disgrace and poverty, a terrible example

example of God's vengeance on arbitrary princes !

The deliverance under God wrought by the prince of Orange, afterwards deservedly made King Wm. III. was as joyful an event to the colonies as to Great-Britain : in some of them, steps were taken in his favour as soon as in England.

They all immediately acknowledged King William and Queen Mary as their lawful Sovereign. And such has been the zeal and loyalty of the colonies ever since for that establishment, and for the protestant succession in his present Majesty's illustrious family, that I believe there is not one man in an hundred (except in Canada) who does not think himself under the best national civil constitution in the world.

Their loyalty has been abundantly proved, especially in the late war. Their affection and reverence for their mother country is unquestionable. They yield the most chearful and ready obedience to her laws, particularly to the power of that august body the parliament of Great-Britain; the supreme legislative of the kingdom and its dominions. These I declare are my own sentiments of duty and loyalty. I also hold it clear that the act of Queen Anne, which makes it high treason to deny " that the King with and by the authority of parliament, is able to make laws and statutes of sufficient force and validity to *limit* and *bind* the crown, and the descent, limitation, inheritance and *government* thereof" is
founded

founded on the principles of liberty and the British constitution : and he that would palm the doctrine of unlimited passive obedience and non resistance upon mankind, and thereby or by any other means serve the cause of the Pretender, is not only a fool and a knave, but a rebel against common sense, as well as the laws of God, of Nature, and his Country.

I also lay it down as one of the first principles from whence I intend to deduce the civil rights of the British colonies, that all of them are subject to, and dependent on Great-Britain ; and that therefore as over subordinate governments, the parliament of Great-Britain has an undoubted power and lawful authority, to make acts for the general good, that by naming them, shall and ought to be equally binding, as upon the subjects of Great-Britain within the realm. This principle, I presume will be readily granted on the other side the atlantic. It has been practiced upon for twenty years to my knowledge, in the province of the *Massachusetts-Bay* ; and I have ever received it, that it has been so from the beginning, in this and the sister provinces, through the continent*.

I am aware, some will think it is time for me to retreat, after having expressed the power of the British parliament in quite so strong terms. But it is from and under this very power and

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* This however was formally declared as to Ireland, but so lately as the reign of G. I. Upon the old principles of conquest the Irish could not have so much to say for an exemption, as the unconquered Colonists.

its acts, and from the common law, that the political and civil rights of the Colonists are derived : and upon those grand pillars of liberty shall my defence be rested. At present therefore the reader may suppose, that there is not one provincial charter on the continent ; he may, if he pleases, imagine all taken away, without fault, without forfeiture, without trial or notice. All this really happened to some of them in the last century. I would have the reader carry his imagination still further, and suppose a time may come when instead of a process at common law, the parliament shall give a decisive blow to every charter in America, and declare them all void. Nay it shall also be granted, that it is barely possible, th^t time may come, when the real interest of the whole may require an act of parliament to annihilate all those charters. What could follow from all this, that would shake one of the essential, natural, civil or religious rights of the Colonists ? Nothing. They would be men, citizens and British subjects after all. No act of parliament can deprive them of the liberties of such, unless any will contend that an act of parliament can make slaves not only of one, but of two millions of the commonwealth. And if so, why not of the whole ? I freely own, that I can find nothing in the laws of my country, that would justify the parliament in making one slave, nor did they ever professedly undertake to make one.

Two or three innocent colony charters have been threatened with destruction an hundred
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and forty years past. I wish the present enemies of those harmless charters would reflect a moment, and be convinced that an act of parliament that should demolish those bugbears to the foes of liberty, would not reduce the Colonists to a state of absolute slavery. The worst enemies of the charter governments are by no means to be found in England. It is a piece of justice due to Great-Britain to own, they are and have ever been natives of or residents in the colonies. A set of men in America, without honour or love to their country, have been long grasping at powers, which they think unattainable while these charters stand in the way. But they will meet with insurmountable obstacles to their project for enslaving the British colonies, should those, arising from provincial charters be removed. It would indeed seem very hard and severe, for those of the colonists, who have charters, with peculiar privileges to lose them. They were given to their ancestors, in consideration of their sufferings and merit, in discovering and settling America. Our fore-fathers were soon worn away in the toils of hard labour on their little plantations, and in war with the Savages. They thought they were earning a sure inheritance for their posterity. Could they imagine it would ever be thought just to deprive them or theirs of their charter privileges! Should this ever be the case, there are, thank God, natural, inherent and inseparable rights as men, and as citizens, that would remain after the so much wished for catastrophe, and

which, whatever became of charters, can never be abolished *de jure*, if *de facto*, till the general conflagration*. Our rights as men and freeborn British subjects, give all the colonists enough to make them very happy in comparison with the subjects of any other prince in the world.

Every British Subject born on the continent of America, or in any other of the British dominions, is by the law of God and nature, by the common law, and by act of parliament, (exclusive of all charters from the crown) entitled to all the natural, essential, inherent and inseparable rights of our fellow subjects in Great-Britain. Among these rights are the following, which it is humbly conceived no man or body of men, not excepting the parliament, justly, equitably and consistently with their own rights and the constitution, can take away.

1st. *That the supreme and subordinate powers of legislation should be free and sacred in the hands where the community have once rightfully placed them.*

2dly. *The supreme national legislative cannot be altered justly till the commonwealth is dissolved, nor a subordinate legislative taken away without forfeiture or other good cause. Nor then can the subjects in the subordinate government*

* The fine defence of the provincial charters by *Jeremy Dummer*, Esq; the late very able and learned agent for the province of the *Massachusetts-Bay*, makes it needless to go into a particular consideration of charter privileges. That piece is unanswerable, but by power and might, and other arguments of that kind.

ment be reduced to a state of slavery, and subject to the despotic rule of others. A state has no right to make slaves of the conquered. Even when the subordinate right of legislature is forfeited, and so declared, this cannot effect the natural persons either of those who were invested with it, or the inhabitants*, so far as to deprive them of the rights of subjects and of men.—The colonists will have an equitable right, notwithstanding any such forfeiture of charter, to be represented in parliament, or to have some new subordinate legislature among themselves. It would be best if they had both. Deprived, however, of their common rights as subjects, they cannot lawfully be, while they remain such. A representation in Parliament from the several colonies, since they are become so large and numerous, as to be called on not only to maintain provincial government, civil and military, among themselves, for this they have cheerfully done, but to contribute towards the support of a national standing army, by reason of the heavy national debt, when they themselves owe a large one, contracted in the common cause, cannot be thought an unreasonable thing, nor if asked, could it be called an immodest request. *Qui sentit commodum sentire debet et onus*, has been thought a maxim of equity. But that a man should bear a burthen for other people, as well as himself, without a return, never long found a place in any law-book or decrees, but those
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* See Magna Charta, the Bill of Rights. 3 Mod. 152.
2 Salkeld 411. Vaughan 300.

of the most despotic princes. Besides the equity of an American representation in parliament, a thousand advantages would result from it. It would be the most effectual means of giving those of both countries a thorough knowledge of each others interests ; as well as that of the whole, which are inseparable.

Were this representation allowed ; instead of the scandalous memorials and depositions that have been sometimes, in days of old, privately cooked up in an inquisitorial manner, by persons of bad minds and wicked views, and sent from America to the several boards, persons of the first reputation among their countrymen, might be on the spot, from the several colonies, truly to represent them. Future ministers need not, like some of their predecessors, have recourse for information in American affairs, to every vagabond stroller, that has run or rid post through America, from his creditors, or to people of no kind of reputation from the colonies ; some of whom, at the time of administering their sage advice, have been as ignorant of the state of this country, as of the regions in Jupiter and Saturn.

No representation of the colonies in parliament alone, would, however, be equivalent to a subordinate legislative among themselves ; nor so well answer the ends of increasing their prosperity and the commerce of Great-Britain. It would be impossible for the parliament to judge so well of their abilities to bear taxes, impositions on trade, and other duties and
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burthens, or of the local laws that might be really needful, as a legislative here.

3dly. *No legislative, supreme or subordinate, has a right to make itself arbitrary.*

It would be a most manifest contradiction, for a free legislative, like that of Great-Britain, to make itself arbitrary.

4thly. *The supreme legislative cannot justly assume a power of ruling by extempore arbitrary decrees, but is bound to dispense justice by known settled rules, and by duly authorized independent judges.*

5thly. *The supreme power cannot take from any man any part of his property, without his consent in person or by representation.*

6thly. *The legislative cannot transfer the power of making laws to any other hands.*

These are their bounds, which by God and nature are fixed, hitherto have they a right to come, and no further.

1. *To govern by stated laws.*

2. *Those laws should have no other end ultimately, but the good of the people.*

3. *Taxes are not to be laid on the people, but by their consent in person, or by deputation.*

4. *Their whole power is not transferable*.*

These are the first principles of law and justice, and the great barriers of a free state, and of the British constitution in particular. I ask, I want no more—Now let it be shewn how it is reconcileable with these principles, or to many other fundamental maxims of the British constitution, as well as the natural and civil

* See Locke on Government. B. H. C. xi.

vil rights, which by the laws of their country, all British subjects are entitled to, as their best inheritance and birth-right; that all the northern colonies, who are without one representative in the house of Commons, should be taxed by the British parliament.

That the colonists, black and white, born here, are free born British subjects, and entitled to all the essential civil rights of such, is a truth not only manifest from the provincial charters, from the principles of the common law, and acts of parliament; but from the British constitution which was re-established at the revolution, with a professed design to secure the liberties of all the subjects to all generations*.

In the 12 and 13 of Wm. cited above, the liberties of the subject are spoken of as their best birth-rights—No one ever dreamed, surely, that these liberties were confined to the realm. At that rate, no British subjects in the dominions could, without a manifest contradiction, be declared entitled to all the privileges of subjects born within the realm, to all intents and purposes, which are rightly given foreigners, by parliament, after residing seven years. These expressions of parliament, as well as of the charters, must be vain and empty sounds, unless we are allowed the essential rights of our fellow-subjects in Great-Britain.

Now can there be any liberty, where property is taken away without consent? Can it
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* See the convention, and acts confirming it.

with any colour of truth, justice or equity, be affirmed, that the northern colonies are represented in parliament? Has this whole continent, of near three thousand miles in length, and in which, and his other American dominions, his Majesty has, or very soon will have, some millions of as good, loyal and useful subjects, white and black, as any in the three kingdoms, the election of one member of the house of commons?

Is there the least difference, as to the consent of the Colonists, whether taxes and impositions are laid on their trade, and other property, by the crown alone, or by the parliament? As it is agreed on all hands, the Crown alone cannot impose them, we should be justifiable in refusing to pay them, but must and ought to yield obedience to an act of parliament, though erroneous, till repealed.

I can see no reason to doubt, but that the imposition of taxes, whether on trade, or on land, or houses, or ships, on real or personal, fixed or floating property, in the colonies, is absolutely irreconcilable with the rights of the Colonists, as British subjects, and as men. I say men, for in a state of nature, no man can take my property from me, without my consent: If he does, he deprives me of my liberty, and makes me a slave. If such a proceeding is a breach of the law of nature, no law of society can make it just.—The very act of taxing, exercised over those who are not represented, appears to me to be depriving them of one of their most essential rights, as

freemen ; and if continued, seems to be in effect an entire disfranchisement of every civil right. For what one civil right is worth a rush, after a man's property is subject to be taken from him at pleasure, without his consent ? If a man is not his *own assessor* in person, or by deputy, his liberty is gone, or lays intirely at the mercy of others.

I think I have heard it said, that when the Dutch are asked why they enslave their colonies, their answer is, that the liberty of Dutchmen is confined to Holland ; and that it was never intended for Provincials in America, or any where else. A sentiment this, very worthy of modern Dutchmen ; but if their brave and worthy ancestors had entertained such narrow ideas of liberty, seven poor and distressed provinces would never have asserted their rights against the whole Spanish monarchy, of which the present is but a shadow. It is to be hoped, none of our fellow subjects of Britain, great or small, have borrowed this Dutch maxim of plantation politics ; if they have, they had better return it from whence it came ; indeed they had. Modern Dutch or French maxims of state, never will suit with a British constitution. It is a maxim, that the King can do no wrong ; and every good subject is bound to believe his King is not inclined to do any. We are blessed with a prince who has given abundant demonstrations, that in all his actions, he studies the good of his people, and the true glory of his crown, which are inseparable. It would therefore be the highest de-

degree of impudence and disloyalty to imagine that the King, at the head of his parliament, could have any, but the most pure and perfect intentions of justice, goodness and truth, that human nature is capable of. All this I say and believe of the King and parliament, in all their acts; even in that which so nearly affects the interest of the colonists; and that a most perfect and ready obedience is to be yielded to it, while it remains in force. I will go further, and really admit, that the intention of the ministry was not only to promote the public good, by this act, but that Mr. Chancellor of the Exchequer had therein a particular view to the "ease, the quiet, and the good will of the Colonies," he having made this declaration more than once. Yet I hold that it is possible he may have erred in his kind intentions towards the Colonies, and taken away our fish, and given us a stone. With regard to the parliament, as infalibility belongs not to mortals, it is possible *they* may have been misinformed and deceived. The power of parliament is uncontrollable, but by themselves, and we must obey. They only can repeal their own acts. There would be an end of all government, if one or a number of subjects or subordinate provinces should take upon them so far to judge of the justice of an act of parliament, as to refuse obedience to it. If there was nothing else to restrain such a step, prudence ought to do it, for forcibly resisting the parliament and the King's laws, is high treason. Therefore let the parliament lay

what burthens they please on us, we must, it is our duty to submit and patiently bear them, till they will be pleased to relieve us. And it is to be presumed, the wisdom and justice of that august assembly, always will afford us relief by repealing such acts, as through mistake, or other human infirmities, have been suffered to pass, if they can be convinced that their proceedings are not constitutional, or not for the common good.

The parliament may be deceived, they may have been misinformed of facts, and the colonies may in many respects be misrepresented to the King, his parliament, and his ministry. In some instances, I am well assured the colonies have been very strangely misrepresented in England. I have now before me a pamphlet, called "The Administration of the Colonies," said to be written by a gentleman who formerly commanded in chief in one of them. I suppose this book was designed for public information and use. There are in it many good regulations proposed, which no power can enforce but the parliament. From all which I infer, that if our hands are tied by the passing of an act of parliament, our mouths are not stopped, provided we speak of that transcendent body with decency, as I have endeavoured always to do; and should any thing have escaped me, or hereafter fall from my pen, that bears the least aspect but that of obedience, duty and loyalty to the King and parliament, and the highest respect for the ministry, the candid will impute it to the

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the agony of my heart, rather than to the pravity of my will. If I have one ambitious wish, it is to see Great-Britain at the head of the world, and to see my King, under God, the father of mankind. I pretend neither to the spirit of prophecy, nor any uncommon skill in predicting a Crisis, much less to tell when it begins to be "*nascent*" or is fairly midwiv'd into the world. But if I were to fix a meaning to the two first paragraphs of the *Administration of the Colonies*, though I do not collect it from them, I should say the world was at the eve of the highest scene of earthly power and grandeur that has been ever yet displayed to the view of mankind. The cards are shuffling fast through all Europe. Who will win the prize is with God. This however I know, *detur digniori*. The next universal monarchy will be favourable to the human race, for it must be founded on the principles of equity, moderation and justice. No country has been more distinguished for these principles than Great-Britain, since the revolution. I take it, every subject has a right to give his sentiments to the public, of the utility or inutility of any act whatsoever, even after it is passed, as well as while it is pending.—The equity and justice of a bill may be questioned, with perfect submission to the legislature. Reasons may be given, why an act ought to be repealed, and yet obedience must be yielded to it till that repeal takes place. If the reasons that can be given against an act, are such as plainly demonstrate that it is against *natural* equity, the
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executive courts will adjudge such acts void. It may be questioned by some, though I make no doubt of it, whether they are not obliged by their oaths to adjudge such acts void. If there is not a right of private judgment to be exercised, so far at least as to petition for a repeal, or to determine the expediency of risking a trial at law, the parliament might make itself arbitrary, which it is conceived it cannot by the constitution.—I think every man has a right to examine as freely into the origin, spring and foundation of every power and measure in a commonwealth, as into a piece of curious machinery, or a remarkable phenomenon in nature; and that it ought to give no more offence to say, the parliament have erred, or are mistaken, in a matter of fact, or of right, than to say it of a private man, if it is true of both. If the assertion can be proved with regard to either, it is a kindness done them to shew them the truth. With regard to the public, it is the duty of every good citizen to point out what he thinks erroneous in the commonwealth.

I have waited years in hopes to see some one friend of the colonies pleading in public for them. I have waited in vain. One privilege is taken away after another, and where we shall be landed, God knows, and I trust will protect and provide for us even should we be driven and persecuted into a more western wilderness, on the score of liberty, civil and religious, as many of our ancestors were, to these once inhospitable shores of America. I had

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had formed great expectations from a gentleman, who published his first volume in quarto on the rights of the colonies two years since; but, as he foresaw, the state of his health and affairs have prevented his further progress. The misfortune is, gentlemen in America, the best qualified in every respect to state the rights of the colonists, have reasons that prevent them from engaging: some of them have good ones. There are many infinitely better able to serve this cause than I pretend to be; but from indolence, from timidity, or by unnecessary engagements, they are prevented. There has been a most profound, and I think shameful silence, till it seems almost too late to assert our indisputable rights as men and as citizens. What must posterity think of us. The trade of the whole continent taxed by parliament, stamps and other internal duties and taxes as they are called, talked of, and not one petition to the King and Parliament for relief.

I cannot but observe here, that if the parliament have an equitable right to tax our trade, it is indisputable that they have as good an one to tax the lands, and every thing else. The taxing trade furnishes one reason why the other should not be taxed, or else the burdens of the province will be unequally born, upon a supposition that a tax on trade is not a tax on the whole. But take it either way, there is no foundation for the distinction some make in England between an internal and external tax on the colonies. By the first is meant a tax on
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trade, by the latter a tax on land, and the things on it. A tax on trade is either a tax of every man in the province, or it is not. If it is not a tax on the whole, it is unequal and unjust, that a heavy burden should be laid on the trade of the colonies, to maintain an army of soldiers, custom-house officers, and fleets of guard-ships; all which, the incomes of both trade and lands would not furnish means to support so lately as the last war, when all was at stake, and the colonies were reimbursed in part by parliament. How can it be supposed that all of a sudden the trade of the colonies alone can bear all this terrible burden. The late acquisitions in America, as glorious as they have been, and as beneficial as they are to Great-Britain, are only a security to these colonies against the ravages of the French and Indians. Our trade upon the whole is not, I believe, benefited by them one groat. All the time the French Islands were in our hands, the fine sugars, &c. were all shipped home. None as I have been informed were allowed to be brought to the colonies. They were too delicious a morsel for a North American palate. If it be said that a tax on the trade of the colonies is an equal and just tax on the whole of the inhabitants: What then becomes of the notable distinction between external and internal taxes? Why may not the parliament lay stamps, land taxes, establish tythes to the church of England, and so indefinitely. I know of no bounds. I do not mention the tythes out of any disrespect to the church of
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England, which I esteem by far the best *national* church, and to have had as ornaments of it many of the greatest and best men in the world. But to those colonies who in general dissent from a principle of conscience, it would seem a little hard to pay towards the support of a worship, whose modes they cannot conform to.

If an army must be kept up in America, at the expence of the colonies, it would not seem quite so hard if after the parliament had determined the sum to be raised, and apportioned it, to have allowed each colony to assess its quota, and raise it as easily to themselves as might be. But to have the whole levied and collected without our consent is extraordinary: It is allowed even to *tributaries*, and those laid under *military* contribution, to assess and collect the sums demanded. The case of the provinces is certainly likely to be the hardest that can be instanced in story. Will it not equal any thing but down right military execution? Was there ever a tribute imposed even on the conquered? A fleet, an army of soldiers, and another of tax-gatherers kept up, and not a single office either for securing or collecting the duty in the gift of the tributary state.

I am aware it will be objected, that the parliament of *England*, and of Great-Britain, since the union, have from early days to this time, made acts to bind if not to tax Ireland: I answer, Ireland is a *conquered* country. I do not, however, lay so much stress on this; for

it is my opinion, that a *conquered* country has, upon submission and good behaviour, the same right to be free, under a conqueror, as the rest of his subjects. But the old notion of the *right of conquest*, has been, in most nations, the cause of many severities and heinous breaches of the law of nature: If any such have taken place with regard to *Ireland*, they should form no precedent for the colonies. The subordination and dependency of *Ireland* to Great-Britain, is expressly declared by act of parliament, in the reign of G. I. The subordination of the *Colonies* to Great-Britain, never was doubted, by a lawyer, if at all; unless perhaps by the author of the *Administration of the colonies*: He indeed seems to make a moot point of it, whether the colony legislative power is as independent "as the legislative Great-Britain holds by its constitution, and under the great charter."—The *people* hold under the great charter, as it is vulgarly expressed from our law-books: But that the King and parliament should be said to hold under *Magna Charta*, is as new to me, as it is to question whether the colonies are *subordinate* to Great-Britain. The provincial legislative is unquestionably subordinate to that of Great-Britain. I shall endeavour more fully to explain the nature of that subordination, which has puzzled so many in their enquiries. It is often very difficult for great lovers of power, and great lovers of liberty, neither of whom may have been used to the study of law in any of its branches, to see the difference
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between subordination, absolute slavery and subjection on one side, and liberty, independence and licentiousness on the other. We should endeavour to find the middle road, and confine ourselves to it. The laws, the proceedings of parliament, and the decisions of the judges, relating to *Ireland*, will reflect light on this subject, rendered intricate only by *art*.

“ *Ireland* being of itself a distinct dominion, and no part of the kingdom of England (as it directly appeareth by many authorities in Calvin’s case) was to have PARLIAMENTS holden there as in England.” 4 Inst. 349.

Why should not the colonies have, why are they not entitled to their assemblies, or parliaments, at least, as well as a conquered dominion?

“ *Wales*, after the conquest of it by Edward the First, was annexed to England, *jure proprietatis*, 12 Ed. I. by the statute of Rutland only, and after, more really by 27 H. 8. and 34. but at first received laws from England, as *Ireland* did; but writs proceeded not out of the English chancery, but they had a chancery of their own, as *Ireland* hath; was not bound by the laws of England, unnamed till 27 H. 8. no more than *Ireland* is.

Ireland in nothing differs from it, but having a parliament *gratia Regis* (i. e. upon the old notion of conquest) subject (truly however) to the parliament of England. None doubts *Ireland* as much conquered as it; and as much

subject to the parliament of England, if it please."

Vaughan. 300.

A very strong argument arises from this authority, in favour of the *unconquered* plantations. If since Wales was annexed to England, they have had a representation in parliament, as they have to this day; and if the parliament of England does not tax *Ireland*, can it be right they should tax *us*, who have never been *conquered*, but came from England to *colonize*, and have always remained *good subjects* to this day?

I cannot find any instance of a tax laid by the English parliament on *Ireland*. "Sometimes the King of England called his Nobles of Ireland, to come to his parliament of England, &c. and by special words, the parliament of England may bind the subjects of Ireland."—3 *Inst.* 350.—

The following makes it clear to me, the parliament of Great-Britain do not tax *Ireland*. "The parliament of Ireland having been prorogued to the month of August next, before they had provided for the maintenance of the government in that kingdom, a project was set on foot here to supply that defect, by retrenching the drawbacks upon goods exported thither from England. According to this scheme, the 22d, the house in a grand committee, considered the present laws with respect to drawbacks upon tobaccos, muslins, and East India silks, carried to Ireland; and came to two resolutions, which were reported the next day, and, with an amendment to one of them, agreed

agreed to by the house, as follows, *viz.* 1. That three pence *per* pound, part of the drawback on tobacco to be exported from Great-Britain for Ireland, be taken off.

2. That the said diminution of the drawback do take effect upon all tobacco exported for Ireland, after the 24th of March 1713, and continue until the additional duty of three pence halfpenny *per* pound upon tobacco in Ireland, expiring on the said 24th of March, be *regranted*: and ordered a bill to be brought in, upon the said resolutions."

Proceedings of House of Com. Vol. 5. 72.

This was constitutional; there is an infinite difference between taking off British drawbacks, and imposing Irish or other Provincial duties.

"Ireland is considered as a provincial government, subordinate to, but no part of the Realm of England," Mich. 11. G. 2. in case of Otway and Ramsay—"Acts of parliaments made here (*i. e.* in England) extend not to Ireland, unless particularly named; much less judgments obtained in the courts here; nor is it possible they should, because we have no officers to carry them into execution there." *ib.*

The first part seems to be applicable to the plantations in general, the latter is not; for by reason of charter reservations and particular acts of parliament, some judgments in England may be executed here, as final judgments, before his Majesty in council on a plantation appeal, and so from the admiralty.

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It seems to have been disputed in Ireland, so lately as the 6 Geo. 1. Whether any act of the British parliament bound Ireland; or at least it was apprehended, that the undoubted right of the British parliament to bind Ireland, was in danger of being shaken: this, I presume, occasioned the act of that year, which declares, that “the kingdom of Ireland ought to be subordinate unto and dependent upon the Imperial Crown of Great-Britain, as being inseparably united thereto. And the King’s Majesty, with the consent of the lords and commons of Great-Britain in parliament, hath power to make laws to bind the people of Ireland.”—This parliamentary power must have some bounds, even as to *Ireland*, as well as the colonies, who are admitted to be subordinate *ab initio* to Great-Britain; not as *conquered*, but as *emigrant* subjects. If this act should be said to be a declaration not only of the general, but of the universal power of parliament, and that they may tax Ireland, I ask, Why it has never been done? If it had been done a thousand times, it would be a contradiction to the principles of a free government; and what is worse, destroy all subordination consistent with *freedom*, and reduce the people to *slavery*.

To say the parliament is absolute and arbitrary, is a contradiction. The parliament cannot make 2 and 2, 5: Omnipotency cannot do it. The supreme power in a state, is *ius dicere* only:—*ius dare*, strictly speaking, belongs alone to God. Parliaments are in all

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cases to *declare* what is for the good of the whole ; but it is not the *declaration* of parliament that makes it so : There must be in every instance, a higher authority, *viz.* GOD. Should an act of parliament be against any of *his* natural laws, which are *immutably* true, *their* declaration would be contrary to eternal truth, equity and justice, and consequently void : and so it would be adjudged by the parliament itself, when convinced of their mistake. Upon this great principle, parliaments repeal such act, as soon as they find they have been mistaken, in having declared them to be for the public good, when in fact they were not so. When such mistake is evident and palpable, as in the instances in the appendix, the judges of the executive courts have declared the act " of a whole parliament void." See here the grandeur of the British constitution ! See the wisdom of our ancestors ! The supreme *legislative*, and the supreme *executive*, are a perpetual check and balance to each other. If the supreme executive errs, it is informed by the supreme legislative in parliament : if the supreme legislative errs, it is informed by the supreme executive in the King's courts of law. Here, the King appears, as represented by his judges, in the highest lustre and majesty, as supreme executor of the commonwealth ; and he never shines brighter, but on his throne, at the head of the supreme legislative. This is government ! This, is a constitution ! to preterve which, either from foreign or domestic foes, has cost oceans of blood and treasure in every

every age ; and the blood and the treasure have upon the whole been well spent. British America, hath been bleeding in this cause from its settlement : we have spent all we could raise, and more ; for notwithstanding the parliamentary reimbursements of part, we still remain much in debt. The province of the *Massachusetts*, I believe, has expended more men and money in war since the year 1620, when a few families first landed at Plymouth, in proportion to their ability, than the three Kingdoms together. The same, I believe, may be truly affirmed, of many of the other colonies ; though the *Massachusetts* has undoubtedly had the heaviest burthen. This may be thought incredible : but materials are collecting ; and though some are lost, enough may remain, to demonstrate it to the world. I have reason to hope at least, that the public will soon see such proofs exhibited, as will shew, that I do not speak quite at random.

Why then is it thought so heinous by the author of the administration of the colonies, and others, that the colonists should aspire after “ a one whole legislative power ” not independent of, but subordinate to the laws and parliament of Great-Britain ?—It is a mistake in this author, to bring so heavy a charge as *high treason* against some of the colonists, which he does in effect in this place*, by representing them as “ claiming in fact or indeed, the same full free independent unrestrained power and legislative will, in their several

* Page 39 of the administration.

veral corporations, and under the King's commission, and their respective charters, as the government and legislature of Great-Britain holds by its constitution and under the great charter." No such claim was ever thought of by any of the colonists. They are all better men and better subjects; and many of them too well versed in the laws of nature and nations, and the law and constitution of Great-Britain, to think they have a right to more than a *provincial subordinate legislative*. All power is of GOD. Next and only subordinate to him in the present state of the well-formed, beautifully constructed British monarchy, standing where I hope it ever will stand, for the pillars are fixed in judgment, righteousness and truth, is the King and Parliament. Under these, it seems easy to conceive subordinate powers in gradation, till we descend to the legislative of a town council, or even a private social club. These have each "a one whole legislative" subordinate, which, when it does not counteract the laws of any of its superiors, is to be indulged. Even when the laws of subordination are transgressed, the superior does not destroy the subordinate, but will negative its acts, as it may in all cases when disapproved. This right of negative is essential, and may be enforced: but in no case are the essential rights of the subjects, inhabiting the subordinate dominions, to be destroyed. This would put it in the power of the superior to reduce the inferior to a state of slavery; which cannot be rightfully done,

even with *conquered* enemies and *rebels*. After satisfaction and security is obtained of the former, and examples are made of so many of the latter, as the ends of government require, the rest are to be restored to all the essential rights of men and citizens. This is the great law of nature; and agreeable to this law, is the constant practice of all good and mild governments. This lenity and humanity has nowhere been carried farther than in Great-Britain. The Colonies have been so remarkable for loyalty, that there never has been any instance of rebellion or treason in them. This loyalty is, in very handsome terms, acknowledged by the author of the *administration of the colonies*. “ It has been often suggested, that care should be taken in the administration of the plantations, lest, in some future time, these colonies should become independent of the mother country.” But perhaps it may be proper on this occasion, nay, it is justice to say it, that if, by becoming independent, is meant a revolt, nothing is farther from their nature, their interests, their thoughts. If a defection from the *alliance* of the mother country be suggested, it ought to be, and can be truly said, that their spirit abhors the sense of such; their attachment to the protestant succession in the house of Hanover, will ever stand unshaken; and nothing can eradicate from their hearts, their natural and almost mechanical affection to Great-Britain, which they conceive under no other sense, nor call it by any other name than that of *home*. Any such
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suggestion, therefore, is a false and unjust as-
 persion on their principles and affections; and
 can arise from nothing but an intire ignorance
 of their circumstances*." After all this loyalty,
 it is a little hard to be charged with aiming,
 and represented as aspiring after, independ-
 ency. The inconsistency of this I leave. We
 have said that the loyalty of the colonies has
 never been suspected; this must be restricted
 to a just suspicion. For it seems there have
 long been groundless suspicions of us in the
 minds of individuals. And there have always
 been those who have endeavoured to magnify
 these chimerical fears. I find Mr. Dummer
 complaining of this many years since. "There
 is, says he, one thing more I have heard often
 urged against the charter colonies, and indeed
 it is what one meets with from people of all
 conditions and qualities; though, with due
 respect to their better judgments, I can see
 neither reason nor colour for it. It is said that
 their increasing numbers and wealth, joined
 to their great distance from Britain, will give
 them an opportunity, in the course of some
 years, to throw off their dependence on the
 nation, and declare themselves a free state, if
 not curbed in time, by being made *entirely*
subject to the crown†."

This jealousy has been so long talked of,
 that many seem to believe it well grounded.
 Not that there is any danger of "a revolt",
 even in the opinion of the *author of the admin-
 istration*, but that the colonists will by fraud or

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* Administration, p. 25, 26. † Defence, 69.

force, avail themselves, in "fact or in deed", of an independent legislature. This, I think, would be a revolting with a vengeance. What higher revolt can there be, than for a province to assume the right of an independent legislative, or state? I must therefore think this a greater aspersion on the Colonists, than to charge them with a design to revolt, in the sense in which the Gentleman allows they have been abused: It is a more artful and dangerous way of attacking our liberties, than to charge us with being in open rebellion. That could be confuted instantly: but this seeming indirect way of charging the colonies, with a desire of throwing off their dependency, requires more pains to confute it than the other, therefore it has been recurred to. The truth is, Gentlemen have had departments in America, the functions of which they have not been fortunate in executing. The people have by these means been rendered uneasy, at bad Provincial Measures. They have been represented as factious, seditious, and inclined to democracy, whenever they have refused passive obedience to provincial mandates, as arbitrary as those of a Turkish Bashaw: I say, Provincial mandates; for to the King and Parliament they have been ever submissive and obedient.

These representations of us, many of the good people of England swallow with as much ease, as they would a bottle-bubble, or any other story of a cock and a bull; and the worst of it is, among some of the most credulous, have been found Stars and Garters. However,

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they may all rest assured, the Colonists, who do not pretend to understand themselves so well as the people of England; though the author of the Administration makes them the fine compliment, to say, they "know their business much better," yet, will never think of independency. Were they inclined to it, they know the blood and the treasure it would cost, if ever effected; and when done, it would be a thousand to one if their liberties did not fall a sacrifice to the victor.

We all think ourselves happy under Great-Britain. We love, esteem and reverence our mother country, and adore our King. And could the choice of independency be offered the colonies, or subjection to Great-Britain upon any terms above absolute slavery, I am convinced they would accept the latter. The ministry, in all future generations, may rely on it, that British America will never prove undutiful, till driven to it, as the last fatal resort against ministerial oppression, which will make the wisest mad, and the weakest strong.

These colonies are and always have been, "entirely subject to the crown," in the legal sense of the terms. But if any politician of "tampering activity, of wrong-headed experience, misled to be meddling," means, by "curbing the colonies in time," and by "being made entirely subject to the crown;" that this subjection should be absolute, and confined to the crown, he had better have suppressed his wishes. This never will nor can be done,
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without making the colonists vassals of the crown. Subjects they are ; their lands they hold of the crown, by common soccage, the freest feudal tenure, by which any hold their lands in England, or any where else. Would this gentleman carry us back to the state of the Goths and Vandals, and revive all the military tenures and bondage which our forefathers could not bear ? It may be worth noting here, that few, if any instances can be given, where colonies have been disposed to forsake or disobey a tender mother : But history is full of examples, that armies stationed as guards over provinces, have seized the prey for their general, and given him a crown at the expence of his master. Are all ambitious generals dead ? Will no more rise up hereafter ? The danger of a standing army in remote provinces is much greater to the metropolis, than at home. Rome found the truth of this assertion, in her Sylla's, her Pompey's and Cæsars ; but she found it too late : Eighteen hundred years have rolled away since her ruin. A continuation of the same liberties that have been enjoyed by the colonists since the revolution, and the same moderation of government exercised towards them, will bind them in perpetual lawful and willing subjection, obedience and love to Great-Britain : She and her colonies will both prosper and flourish : The monarchy will remain in sound health and full vigour at that blessed period, when the proud arbitrary tyrants of the continent shall either unite in the deliverance of the human

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man race, or resign their crowns. Rescued, human nature must and will be, from the general slavery that has so long triumphed over the species. Great-Britain has done much towards it: What a glory will it be for her to complete the work throughout the world!

The author of the Administration (page 54) "describes" the defects of "provincial courts," by a "very description," the first trait of which is, "The ignorance of the judges." Whether the description, or the description of the description, are *verily* true, either as applied by Lord Hale, or the administrator, is left to the reader. I only ask, who makes the judges in the provinces? I know of but two colonies, *viz.* Connecticut and Rhode-Island, where they are chosen by the people. In all other colonies, they are immediately appointed by the crown, or by his Majesty's governor, with the advice of what the Administrator calls, the "governor's council of state." And if they are in general such ignorant creatures, as the Administrator describes them, it is the misfortune, not the fault, of the people, in the colonies. However, I believe, justice in general, is as well administered in the colonies, as it will be when every thing is devolved upon a court of admiralty, general or provincial. The following is very remarkable: "In those popular governments, and where every executive officer is under a dependence for a temporary, wretched, and I had almost said arbitrary support, on the deputies of the people*." Why

* Administ. 56.

Why is the temporary support found fault with? Would it be wise to give a governor a salary for a longer time than his political life? As this is quite as uncertain as his natural life, it has been granted annually. So every governor has the chance of one year's salary after he is dead. All the King's officers are not even in the charter provinces "dependent on the people" for support. The judges of the admiralty, those mirrors of justice, to be trusted, when none of the common law courts are, have all their commissions from home. These, besides other fees, have so much *per cent.* on all they condemn, be it right or wrong; and *this by act of parliament.* Yet so great is their integrity, that it never was suspected that 50 *per cent.* if allowed, would have any influence on their decrees.

Custom-house officers universally, and Naval-officers, in all but two or three of the colonies, are, I believe appointed directly from home, or by instruction to the Governor: and take just what they please, for any restraint they are under by the provincial acts. But on whom should a Governor depend for his honourable support, but the people? Is not the King fed from the field, and from the labour of his people? Does not his Majesty himself receive his aids from the free grant of his parliament? Do not all these originate in the house of commons? Did the house of Lords ever originate a grant? Do not our law books inform us that the Lords only assent or dissent, but never so much as propose an amendment

ment, on a money bill? The King can take no more than the parliament will give him, and yet some of his Governors have thought it an insufferable hardship, that they could not take what they pleased. To take leave of the Administrator, there are in his book some good hints, but a multiplicity of mistakes in fact, and errors in matters of right, which I have not time to mention particularly.

Ireland is a conquered kingdom; and yet have thought they received very hard measure in some of the prohibitions and restrictions of their trade. But were the colonies ever conquered? Have they not been subject and obedient, and loyal from their settlement? Were not the settlements made under the British laws and constitution? But if the colonies were all to be considered as conquered, they are entitled to the essential rights of men and citizens. And therefore admitting the right of prohibition, in its utmost extent and latitude; a right of taxation can never be inferred from that. It may be for the good of the whole, that a certain commodity should be prohibited: but this power should be exercised, with great *moderation* and impartiality, over dominions, which are not *represented*, in the national parliament. I had however rather see this carried with a high hand, to the utmost rigour, than have a tax of one shilling taken from me without my consent. A people may be very happy, free and easy among themselves, without a particular branch of foreign trade: I am sure these colonies have the

natural means of every manufacture in *Europe*, and some that are out of their power to make or produce. It will scarcely be believed a hundred years hence, that the American manufactures could have been brought to such perfection, as they will then probably be in, if the present measures are pushed. One single act of parliament, we find has set people a thinking, in six months, more than they had done in their whole lives before. It should be remembered, that the most famous and flourishing manufactures, of wool, in *France*, were begun by *Lewis XIV.* not an hundred years ago; and they now bid fair to rival the *English*, in every port abroad. All the manufactures that Great-Britain could make, would be consumed in America, and in her own plantations, if put on a right footing; for which a greater profit in return would be made, than she will ever see again for woollen sent to any part of Europe.

But though it be allowed, that liberty may be enjoyed in a comfortable measure, where *prohibitions* are laid on the trade of a kingdom or province; yet if *taxes* are laid on either, *without* consent, they cannot be said to be free. This barrier of liberty being once broken down, all is lost. If a shilling in the pound may be taken from me against my will, why may not twenty shillings? and if so, why not my liberty or my life? Merchants were always *particularly* favoured by the common law—"All merchants, except enemies, may safely come into *England*, with their goods
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and merchandize"— 2 Inst. 28.—And why not as well to the *plantations*? Are they not entitled to all the British privileges? No, they must be confined in their imports and exports, to the good of the metropolis. Very well, we have submitted to this. The act of navigation is a good act, so are all that exclude foreign manufactures from the plantations, and every honest man will readily subscribe to them. Moreover, " Merchant strangers, are also to come into the realm and depart at pleasure; and they are to be friendly entertained." 2 Ri. C. 1. But to promote the manufactures of *England*, it is thought best to shut up the *colonies* in a manner from all the world. Right as to Europe: but for GOD's sake, must we have no trade with other colonies? In some cases the trade between *British* colony and colony is prohibited, as in wool, &c. Granting all this to be right, is it not enough? No, duties and taxes must be paid without any *consent* or *representation* in parliament. The common law, that inestimable privilege of a jury, is also taken away in all trials in the colonies, relating to the revenue, if the informers have a mind to go to the admiralty; as they have ever done, and ever will do, for very obvious reasons. " It has ever been boasted, says Mr. Dummer in his defence of the charters, as the peculiar privilege of an Englishman, and the security of his property, to be tried by his country, and the laws of the land: whereas this admiralty method deprives him of both, as it puts his estate in the dis-

posal of a single person, and makes the civil law the rule of judgment; which though it may not properly be called foreign, being the law of nations, yet it is what he has not consented to himself, nor his representative for him. A jurisdiction therefore so founded, ought not to extend beyond what *necessity* requires." — "If some bounds are not set to the jurisdiction of the admiralty, beyond which it shall not pass, it may in time, like the element to which it ought to be confined, grow outrageous, and overflow the banks of all the other courts of justice." I believe it has never been doubted by one sound, common lawyer of England, whether a court of admiralty ever answered many good ends; "the court of King's bench has a power to restrain the court of admiralty in England; and the reasons for such restraining power are as strong in New-England as in Great-Britain," and in some respects more so: yet Mr. Dummer mentions, a clamour that was raised at home by a judge of the admiralty for New-England, who complained "that the common law courts by granting prohibitions, weaken, and in a manner suppress the authority of this court, and all the good ends for which it was constituted." Thus we see, that the court of admiralty long ago discovered, no very friendly disposition towards the common law courts here; and the records of the house of Representatives afford us a notable instance of one, who was expelled the house, of which he had been an unworthy member

members, for the abusive misrepresentations of the province, by him secretly made.

Trade and traffic, says lord Coke, " is the livelihood of a merchant, the life of the commonwealth, wherein the King and every subject hath interest; for the merchant is the good Bailiff of the realm, to export and vent the native commodities of the realm, and to import and bring in, the necessary commodities for the defence and benefit of the Realm — 2 Inst. 28. reading on Magna Charta, C. 15— And are not the merchants of British America entitied to a livelihood also? Are they not British subjects? Are not an infinity of commodities carried from hence for *the benefit of the realm*, for which in return come an infinity of *trifles*, which we could do without? Manufactures we must go into if our trade is cut off; our country is too cold to go naked in, and we shall soon be unable to make returns to England even for necessaries.

" When any law or custom of parliament is broken, and the crown possessed of a precedent, how difficult a thing is it to restore the subject again to his former freedom and safety?" 2 Inst. *on the confirmation of the great charter* — which provides in these words: " And for so much as divers people of our realm, are in fear, that the aids and tasks which they have given to us before time, towards our wars, and other business of their own grant and good will (howsoever they were made) might *turn to a bondage* to them and their heirs, because they might be at another
time

time found in the rolls, and likewise for the prices taken throughout the realm by our ministers : we have granted for us and our heirs, that we shall not draw such aids, tasks nor prices *into a custom*, for any thing that hath been done heretofore, be it by roll, or any other precedent that may be founden."

By the first chapter of this act, the great charter is declared to be the common law. I would ask, whether we have not reason to fear, that the great aids, freely given by these provinces in the late war, will in like manner turn *to our bondage*, if they are to be kept on and *increased* during a *peace*, for the maintaining of a *standing army* here?—If it is said those aids were given for *our own* immediate defence, and that England spent millions in the same cause, I answer, The names of his present Majesty, and his royal Grandfather, will be ever dear to every loyal British American, for the protection they afforded us, and the salvation, under God, effected by their arms; but with regard to our fellow-subjects of Britain, we never were a whit behind hand with them. The New-England Colonies in particular, were not only settled without the least expence to the mother country, but they have all along defended themselves against the frequent incursions of the most inhuman Savages, perhaps on the face of the whole earth, at *their own* cost : Those more than brutal *men*, spirited and directed by the most inveterate, as well as most powerful enemy of Great-Britain, have been constantly annoying our in-

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fant settlements for more than a century ; spreading terror and desolation, and sometimes depopulating whole villages in a night : yet amidst the fatigues of labour, and the horrors of war and bloodshed, Heaven vouchsafed its smiles. Behold, an extensive territory, settled, defended, and secured to his Majesty, I repeat it, *without the least expence to the mother country*, till within twenty years past !—When *Louisbourg* was reduced to his late Majesty, by the valour of his *New-England* subjects, the parliament, it must be owned, saw meet to refund *part* of the charges : And every one knows the importance of *Louisbourg*, in the consultations of *Aix la Chapelle* ; but for the loss of our young men, the riches and strength of a country, not indeed slain by the enemy, but overborn by the uncommon hardships of the siege, and their confinement in garrison afterwards, there could be no recompence made.—In the late war, the *northern colonies* not only raised their full quota of men, but they went even beyond their ability ; they are still deeply in debt, notwithstanding the parliamentary grants annually made them, *in part* of their expences, in the common, *national, cause* : Had it not been for those grants, they had all been bankrupt long ago ; while the *sugar colonies* have born little or no share in it : They indeed sent a company or two of *Negroes* and *Molattoes*, if this be worth mentioning, to the sieges of *Guadaloupe*, *Martinico* and the *Havanna* : I do not recollect any thing else that they have
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done ; while the flower of *our* youth were annually pressed by ten thousands into the service, and there treated but little better, as we have been told, than hewers of wood and drawers of water. Provincial acts for impressing were obtained, only by letters of requisition from a secretary of state to a Governor ; requiring him to use his influence to raise men ; and sometimes, more than were asked for or wanted, were pressed, to give a figure to the Governor, and shew his influence ; a remarkable instance of which might be mentioned. I would farther observe, that Great-Britain was as immediately interested in the late war in America, as the colonies were. Was she not threatened with an invasion at the same time we were ? Has she not an immense trade to the colonies ? The British writers say, more than half her profitable trade is to *America* : All the profits of our trade center there, and is little enough to pay for the goods we import. A prodigious revenue arises to the Crown on American exports to Great-Britain, which in general is not murmured at : No manufacture of Europe besides British, can be lawfully brought here ; and no honest man desires they ever should, if the laws were put in execution upon all. With regard to a few Dutch imports that have made such a noise, the truth is, very little has been or could be run, before the apparatus of guardships ; for the officers of some ports did their duty, while others may have made a monopoly of smuggling, for a few of their friends, who probably paid
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them large contributions; for it has been observed, that a very small office in the customs in America has raised a man a fortune sooner than a government. The truth is, the acts of trade have been too often evaded; but by whom? Not by the American merchants in general, but by some former custom-house officers, their friends and partizans. I name no man, not being about to turn informer: But it has been a notorious grievance, that when the King himself cannot dispense with an act of parliament, there have been custom-house officers who have practised it for years together, in favour of those towards whom they were graciously disposed.

But to return to the subject of taxation: I find that "the lords and commons cannot be charged with any thing for the defence of the realm, for the safe-guard of the sea, &c. unless by their *will* in parliament."

Ld. Coke, on Magna Charta, Cap. 30.

"Impositions neither in time of war, or other the greatest necessity or occasion that may be, much less in the time of peace, neither upon foreign or inland commodities, of what nature soever, be they never so superfluous or unnecessary, neither upon merchants, strangers, nor denizens, may be laid by the King's absolute power, without assent of parliament, be it never for so short a time."

Viner Prerogative of the King.

Ea. 1. cites 2 Molloy. 320 Cap. 12. sec. 1.

"In the reign of Edward III. the Black Prince of Wales having *Aquitain* granted to
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him, did lay an imposition of fuage or focage *a foco*, upon his subjects of that dukedom, *viz.* a shilling for every fire, called hearth silver, which was of so great discontentment and odious to them, that it made them revolt. And nothing since this time has been imposed by pretext of any prerogative, upon merchandizes, imported into or exported out of this realm, until Queen Mary's time." 2 Inst. 61.

Nor has any thing of that kind taken place since the revolution. King Charles I. his ship-money every one has heard of.

It may be said that these authorities will not serve the colonists, because the duties laid on them are by parliament. I acknowledge the difference of fact; but cannot see the great difference in equity, while the colonists are not represented in the house of commons: And therefore with all humble deference I apprehend, that till the colonists are so represented, the spirit of all these authorities will argue strongly in their favour. When the parliament shall think fit to allow the colonists a representation in the house of commons, the equity of their taxing the colonies will be as clear as their power is at present of doing it without, if they please. When Mr. Dummer wrote his defence of the charters, there was a talk of taking them away, by act of parliament. This defence is dedicated to the right honourable the Lord Carteret, then one of his Majesty's principal secretaries of state, since Earl of Granville. His third proposition is, that "it is not for the interest of the crown

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to resume the charters, if forfeited." This he proves; as also that it would be more for the interest of Great-Britain to enlarge, rather than diminish, the privilege of all the colonists. His last proposition is, that it "seems inconsistent with justice to disfranchise the charter colonies by an act of parliament."

"It seems therefore, says he, a severity without a precedent, that a people, who have the misfortune of being a thousand leagues distant from their sovereign, a misfortune great enough in itself, should, unsummoned, unheard, in one day, be deprived of their valuable privileges, which they and their fathers have enjoyed for near a hundred years." It is true, as he observes, "the legislative power is absolute and unaccountable, and King, lords and commons, may do what they please; but the question here is not about *power*, but *right*" (or rather equity) "and shall not the supreme judicature of all the nation do right?" "One may say, that what the parliament cannot do justly, they cannot do at all. *In maximis minima est licentia*. The higher the power is, the greater caution is to be used in the execution of it; because the sufferer is helpless and without resort." I never heard that this reasoning gave any offence. Why should it? Is it not exactly agreeable to the decisions of parliament and the determinations of the highest executive courts? (See the Appendix.) But if it was thought hard that charter privileges should be taken away by act of parliament, is it not much harder to be in part, or

in whole, disfranchised of rights, that have been always thought inherent to a British subject, namely, to be free from all taxes, but what he consents to in person, or by his representative? This right, if it could be traced no higher than Magna Charta, is part of the common law, part of a British subjects birth-right, and as inherent and perpetual, as the duty of allegiance; both which have been brought to these colonies, and have been hitherto held sacred and inviolable, and I hope and trust ever will. It is humbly conceived, that the British colonists (except only the conquered, if any) are, by Magna Charta, as well entitled to have a voice in their taxes, as the subjects within the realm. Are we not as really deprived of that right, by the parliament assessing us before we are represented in the house of commons, as if the King should do it by his prerogative? Can it be said with any colour of truth or justice, that we are represented in parliament?

As to the colonists being represented by the provincial agents, I know of no power ever given them, but to appear before his Majesty, and his ministry. Sometimes they have been directed to petition the parliament: But they none of them have, and I hope never will have, a power given them, by the colonists, to act as representatives, and to consent to taxes; and if they should make any concessions to the ministry, especially without order, the provinces could not by that be considered as represented in parliament.

Hibernia habet Parliamenta & faciunt leges et nostra statuta non ligant eos, quia non mittant milites ad Parliamentum, sed personæ eorum sunt subiecti Regis, sicut inhabitantes Calixæ Gasconniæ & Guienæ.

12 Rep. 111. cites R. 3. 12—

“ Ireland hath parliaments, and make laws, and our statutes do not bind them, *because they send no knights to parliament*; but their persons are subjects of the King, as the inhabitants of Guiene, Gascony, &c.”

Yet, if specially named, or by general words included as within any of the King's dominions, Ireland, says *Ld. Coke*, might be bound.

4 Inst. 351.

From all which, it seems plain, that the reason why Ireland and the plantations are not bound, unless named by an act of parliament, is, because they are *not represented* in the British parliament. Yet, in special cases, the British parliament has an undoubted right, as well as power, to bind both by their acts. But whether this can be extended to an indefinite taxation of both, is the great question. I conceive the spirit of the British constitution must make an exception of all taxes, until it is thought fit to unite a dominion to the realm. Such taxation must be considered either as uniting the dominions to the realm, or disfranchising them. If they are united, they will be intitled to a representation, as well as Wales; if they are so taxed without a union, or representation, they are so far disfranchised.

I do not find any thing that looks like a duty on the colonies before the 25th of C. II. c. 7. imposing a duty on innumeraed commodities. The liberty of the subject was little attended to in that reign. If the nation could not fully assert their rights till the revolution, the colonies could not expect to be heard. I look upon this act rather as a precedent of power, than of right and equity; if it is such, it will not affect my argument. The act appointing a tax on all mariners, of a certain sum *per* month, to be deducted out of their wages is not to be compared with this. Mariners are not inhabitants of any part of the dominions: the sea is their element, till they are decripit, and then the hospital is open for all marines who are British subjects without exception. The general post-office established through the dominions, is for the convenience of trade and commerce: it is not laying any burthen upon it; for besides that it is upon the whole cheaper to correspond in this way than any other, every one is at liberty to send his own letters by a friend. The act of the 6th of his late Majesty, though it imposes a *duty* in terms, has been said to be designed for a *prohibition*; which is probable from the sums imposed; and it is pity it had not been so expressed, as there is not the least doubt of the just and equitable right of the parliament to lay prohibitions through the dominions, when they think the good of the whole requires it. But as has been said, there is an infinite difference between that and the exercise

cise of unlimited power of ' taxation, over the dominions, without allowing them a representation : ' — It is said that the duties imposed by the new act will amount to a prohibition : Time only can ascertain this. The utility of this act is so fully examined in the appendix, that I shall add nothing on that head here. It may be said that the colonies ought to bear their proportion of the national burdens : It is just they should, and I think I have proved they have always done it freely and cheerfully, and I know no reason to doubt but they ever will.

Sometimes we have been considered only as the corporations in England : And it may be urged that it is no harder upon us to be taxed by parliament for the general cause than for them, who besides are at the expence of their corporate subordinate government*. I answer, 1. Those corporations are *represented* in parliament. 2. The colonies are and have been at a great expence in raising men, building forts, and supporting the King's civil government here. Now I read of no governors and other officers of his Majesty's nomination, that the city of London taxes its inhabitants to support ; I know of no forts and garrisons that the city of London has lately built at its own expence, or of any annual levies that they have raised for the King's service and the common cause. These are things very fitting and proper to be done by a subordinate dominion, and it is their duty to do all they are able ; but it
seems

* See Administration of the Colonies.

seems but equal they should be allowed to assess the charges of it themselves. The rules of equity and the principles of the constitution seem to require this. Those who judge of the reciprocal rights that subsist between a supreme and subordinate state or dominion, by no higher rules than are applied to a corporation of button-makers, will never have a very comprehensive view of them. Yet, sorry am I to say it, many elaborate writers on the *administration of the colonies*, seem to me never to rise higher in their notions, than what might be expected from his secretary to one of the *quorum*. If I should be ranked among this number, I shall have this consolation, that I have fallen into what is called very good company, and among some who have seen very high life below stairs. I agree with the Administrator, that of whatever revenues raised in the colonies, if they must be raised without our consent; “*the first and special appropriation of them ought to be to the paying the Governors, and all the other Crown officers;*” for it would be hard for the Colonists to be obliged to pay them after this. It was on this principle that at the last assembly of this province, I moved to stop every grant to the officers of the Crown; more especially as I know some who have built very much upon the fine salaries they shall receive from the plantation branch of the revenue. Nor can I think it “injustice to the frame of human nature*,” to suppose, if I did not know it, that with similar

* Adm. p. 57.

milar views several officers of the Crown in some of the colonies have been pushing for such an act for many years. They have obtained their wish, and much good it will do them: but I would not give much for all that will center neat in the Exchequer, after deducting the costs attending the execution of it, and the appropriations to the several officers proposed by the Administrator. What will be the unavoidable consequence of all this, suppose another war should happen, and it should be necessary to employ as many provincials in America as in the last? Would it be possible for the colonies, after being burthened in their trade, perhaps after it is ruined, to raise men? Is it probable that they would have spirit enough to exert themselves? If it is said the French will never try for America, or if they should, regular troops are only to be employed. I grant our regular troops are the best in the world, and that the experience of the present officers shews that they are capable of every species of American service; yet we should guard against the worst. If another trial for Canada should take place, which from the known temper of France, we may judge she will bring on the first fair opportunity, it might require 30 or 40,000 regulars to secure his Majesty's just rights. If it should be said, that other American duties must then be levied, besides the impossibility of our being able to pay them, the danger recurs of a large standing army so remote from home. Whereas a good provincial militia, with such
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occasional succours from the mother country, as exigencies may require, never was, and never will be attended with hazard. The experience of past times will shew, that an army of 20 or 30,000 veterans, half 3000 miles from *Rome*, were very apt to proclaim *Cæsars*. The first of the name, the assassins of his country owed his false glory, to stealing the affections of an army from a commonwealth. I hope these hints will not be taken amiss; they seem to occur from the nature of the subject I am upon: they are delivered in pure affection to my King and country, and amount to no reflection on any man. The best army, and the best men, we may hereafter have, may be led into temptation; all I think, is, that a prevention of evil is much easier than a deliverance from it.

The sum of my argument is, That civil government is of God: that the administrators of it were originally the whole people: that they might have devolved it on whom they pleased: that this devolution is fiduciary, for the good of the whole: that by the British constitution, this devolution is on the King, lords and commons, the supreme, sacred and uncontrollable legislative power, not only in the realm, but through the dominions: that by the abdication, the original compact was broken to pieces: that by the revolution, it was renewed, and more firmly established, and the rights and liberties of the subject in all parts of the dominions, more fully explained and confirmed: that in consequence of this
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establishment and the acts of succession and union, his Majesty GEORGE III. is rightful king and sovereign, and with his parliament, the supreme legislative of Great-Britain, France and Ireland, and the dominions thereunto belonging: that this constitution is the most free one, and by far the best, now existing on earth: that by this constitution, every man in the dominions is a free man: that no parts of his Majesty's dominions can be taxed without their consent: that every part has a right to be represented in the supreme or some subordinate legislature: that the refusal of this, would seem to be a contradiction in practice to the theory of the constitution: that the colonies are subordinate dominions, and are now in such a state, as to make it best for the good of the whole, that they should not only be continued in the enjoyment of subordinate legislation, but be also represented in some proportion to their number and estates in the grand legislation of the nation: that this would firmly unite all parts of the British empire, in the greatest peace and prosperity; and render it invulnerable and perpetual.

A P P E N D I X.

The City of *Boston*, at their Annual Meeting in *May*, 1764, made Choice of *Richard Dana*, *Joseph Green*, *Nathaniel Bethune*, *John Ruddock*, Esqrs; and Mr. *Samuel Adams*, to prepare INSTRUCTIONS for their REPRESENTATIVES.

The following Instructions were reported by said Committee, and unanimously Voted.

To *Royal Tyler**, *James Otis*, *Thomas Cushing*, and *Oxenbridge Thacher*, Esqrs.

GENTLEMEN,

YOUR being chosen by the freeholders and inhabitants of the town of *Boston*, to represent them in the General Assembly the ensuing year, affords you the strongest testimony of that confidence which they place in your integrity and capacity. By this choice they have

* Now of the honourable Board; in whose room was returned Mr. *Thomas Gray*, Merchant.

have delegated to you the power of acting in their public concerns in general, as your own Prudence shall direct you ; always reserving to themselves the constitutional right of expressing their mind, and giving you such instruction upon particular matters, as they at any time shall judge proper.

We therefore, your constituents, take this opportunity to declare our just expectations from you,

That you will constantly use your power and influence in maintaining the invaluable rights and privileges of the province, of which this town is so great a part : As well those rights which are derived to us by the royal charter, as those which being prior to and independent on it, we hold essentially as free-born subjects of Great-Britain ;

That you will endeavour, as far as you shall be able, to preserve that independence in the house of representatives, which characterises a free people ; and the want of which may in a great measure prevent the happy effects of a free government : Cultivating as you shall have opportunity, that harmony and union there, which is ever desirable to good men, when founded on principles of virtue and public spirit ; and guarding against any undue weight which may tend to disadjust that critical balance upon which our happy constitution, and the blessings of it do depend. And for this purpose, we particularly recommend it to you to use your endeavours to have a law passed, whereby the seats of such gentlemen

as shall accept of posts of profit from the Crown, or the Governor, while they are members of the house, shall be vacated, agreeable to an act of the British parliament, till their constituents shall have the opportunity of re-electing them, if they please, or of returning others in their room.

Being members of the legislative body, you will have a special regard to the morals of this people, which are the basis of public happiness; and endeavour to have such laws made, if any are still wanting, as shall be best adapted to secure them: And we particularly desire you carefully to look into the laws of excise, that if the virtue of the people is endangered by the multiplicity of oaths therein enjoined, or their trade and business is unreasonably impeded or embarrassed thereby, the grievance may be redressed.

As the preservation of morals, as well as property and right, so much depends upon the impartial distribution of justice, agreeable to good and wholesome law: And as the judges of the land do depend upon the free grants of the general assembly for support; it is incumbent upon you at all times to give your voice for their honourable maintenance, so long as they, having in their minds an indifference to all other affairs, shall devote themselves wholly to the duties of their own department, and the farther study of the law, by which their customs, precedents, proceedings and determinations are adjusted and limited.

You will remember that this province hath
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been at a very great expence in carrying on the war; and that it still lies under a very grievous burden of debt: You will therefore use your utmost endeavour to promote public frugality as one means to lessen the public debt.

You will join in any proposals which may be made for the better cultivating the lands, and improving the husbandry of the province: and as you represent a town which lives by its trade, we expect in a very particular manner, that you make it the object of your attention, to support our commerce in all its just rights, to vindicate it from all unreasonable impositions, and promote its prosperity. — Our trade has for a long time laboured under great discouragements; and it is with the deepest concern that we see such farther difficulties coming upon it, as will reduce it to the lowest ebb, if not totally obstruct and ruin it. We cannot help expressing our surprize that when so early notice was given by the agent, of the intentions of the ministry, to burthen us with new taxes, so little regard was had to this most interesting matter, that the court was not even called together to consult about it till the latter end of the year; the consequence of which was, that instructions could not be sent to the agent, though solicited by him, till the evil had got beyond an easy remedy.

There is now no room for farther delay: We therefore expect that you will use your earliest endeavours in the General Assembly, that such methods may be taken as will effectually

tually prevent these proceedings against us. By a proper representation, we apprehend it may easily be made to appear that such severities will prove detrimental to Great-Britain itself; upon which account we have reason to hope that an application, even for a repeal of the act, should it be already passed, will be successful. It is the trade of the colonies that renders them beneficial to the mother country: Our trade, as it is now, and always has been conducted, centers in Great-Britain, and in return for her manufactures, affords her more ready cash, beyond any comparison, than can possibly be expected by the most sanguine promoters of these extraordinary methods. We are in short ultimately yielding large supplies to the revenues of the mother country, while we are labouring for a very moderate subsistence for ourselves. But if our trade is to be curtailed in its most profitable branches, and burdens beyond all possible bearing laid upon that which is suffered to remain, we shall be so far from being able to take off the manufactures of Great-Britain, that it will be scarce possible for us to earn our bread.—

But what still heightens our apprehensions is, that these unexpected proceedings may be preparatory to new taxations upon us: For if our trade may be taxed, why not our lands? Why not the produce of our lands, and every thing we possess or make use of? This we apprehend annihilates our charter right to govern and tax ourselves—It strikes at our British privileges, which as we have never forfeited

feited them, we hold in common with our fellow-subjects who are natives of Britain : If taxes are laid upon us in any shape without our having a legal representation where they are laid, are we not reduced from the character of free subjects to the miserable state of tributary slaves ?

We therefore earnestly recommend it to you to use your utmost endeavours, to obtain in the general assembly, all necessary instruction and advice to our agent at this most critical juncture ; that while he is setting forth the unshaken loyalty of this province and this town—its unrivaled exertion in supporting his Majesty's government and rights in this part of his dominions—its acknowledged dependence upon and subordination to Great-Britain ; and the ready submission of its merchants to all just and necessary regulations of trade ; he may be able in the most humble and pressing manner to remonstrate for us all those rights and privileges which justly belong to us either by charter or birth.

As his Majesty's other northern American colonies are embarked with us in this most important bottom, we farther desire you to use your endeavours, that their weight may be added to that of this province : that by the united application of all who are aggrieved, All may happily obtain redress.

Substance of a Memorial presented the House, in pursuance of the above Instructions; and by them voted to be transmitted to JASPER MAUDUIT, Esq; Agent for this Province; to be improved as he may judge proper.*

THE public transactions from William I. to the revolution, may be considered as one continued struggle between the prince and the people, all tending to that happy establishment, which Great-Britain has since enjoyed.

The absolute rights of Englishmen, as frequently declared in parliament, from Magna Charta to this time, are the rights of *personal security, personal liberty, and of private property.*

The allegiance of British subjects being natural, perpetual and inseparable from their persons, let them be in what country they may; their rights are also natural, inherent and perpetual.

By the laws of nature and of nations, the voice of universal reason, and of God, when a nation takes possession of a desert, uncultivated and uninhabited country, or purchases of Savages, as was the case with far the greatest part of the British settlements; the colonists transplanting themselves, and their posterity, though separated from the principal establishment, or mother country, naturally become part of the state with its ancient possessions, and

* Only as a State drawn up by one of the House.

and intitled to all the essential rights of the mother country. This is not only confirmed by the practice of the antients, but by the moderns ever since the discovery of America. Frenchmen, Spaniards and Portuguese are no greater slaves abroad than at home; and hitherto Britons have been as free on one side of the Atlantic as on the other: And it is humbly hoped that his Majesty and the Parliament, will in their wisdom be graciously pleased to continue the colonists in this happy state.

It is presumed, that upon these principles, the colonists have been by their several charters declared natural subjects, and entrusted with the power of making *their own local laws*, not repugnant to the laws of England, and with *the power of taxing themselves*.

This legislative power is subject by the same charter to the King's negative, as in Ireland. This effectually secures the *dependence* of the colonies on Great-Britain.—By the *thirteenth* of *George the second, chapter the ninth*, even foreigners having lived seven years in any of the colonies, are deemed natives on taking the oaths of allegiance, &c. and are declared by the said act to be his Majesty's natural born subjects of the kingdom of Great-Britain, to all intents, constructions and purposes, as if any of them had been born within the kingdom. The reasons given for this naturalization in the preamble of the act are, “ that the increase of the people is the means of advancing the wealth and strength of any nation or country; and that many foreigners and stran-

gers, from the lenity of our government, the purity of our religion, the benefit of our laws, the advantages of our trade, and the security of our *property*, might be induced to come and settle in some of his Majesty's colonies in America; if they were partakers of the advantages and privileges, which the natural born subjects there enjoy*."

The several acts of parliament and charters declaratory of the rights and liberties of the colonies, are but in affirmance of the common law, and law of nature in this point. There are, says my Lord Coke, regularly three incidents to subjects born. (1.) Parents under the actual obedience of the King. (2.) That the place of his birth be within the King's dominions. (3.) The time of his birth to be chiefly considered: For he cannot be a subject born of one kingdom, that was born under the allegiance of the King of another kingdom; albeit afterwards the kingdom descends to the King of the other kingdom. See Calvin's case, and the several acts of parliament and decisions on naturalization, from Edward the Third to this day. The common law is received and practised upon here, and in the rest of the colonies; and all antient and modern acts of parliament that can be considered as part of, or in amendment of the common law, together with all such acts of parliament as expressly name the plantations; so that the power of the British parliament is held as sacred and as uncontrollable in the colonies

* 13 G. 2. C. 7.

colonies as in England. The question is not upon the general power or right of the parliament, but whether it is not circumscribed within some equitable and reasonable bounds? It is hoped it will not be considered as a new doctrine, that even the authority of the parliament of *Great-Britain* is circumscribed by certain bounds, which if exceeded, their acts become those of meer *power* without *right*, and consequently void. The judges of England have declared in favour of these sentiments, when they expressly declare, that *acts of parliament against natural equity are void*. That *acts against the fundamental principles of the British constitution are void**. This doctrine

* " A very important question here presents itself. It essentially belongs to the society to make laws both in relation to the manner in which it desires to be governed, and to the conduct of the citizens: this is called the *Legislative Power*. The nation may entrust the exercise of it to the Prince, or to an assembly; or to the assembly and the Prince jointly; who have then a right of making new, and abrogating old laws. It is here demanded whether, if their power extends so far as to the fundamental laws, they may change the constitution of the state? The principles we have laid down lead us to decide this point with certainty; that the authority of these legislators does not extend so far, and that they ought to consider the fundamental laws as sacred, if the nation has not in very express terms given them the power to change them. For the constitution of the state ought to be fixed; and since that was first established by the nation, which afterwards trusted certain persons with the legislative power, the fundamental laws are excepted from their commission. It appears that the society had only resolved to make provision for the state's being always furnished with laws suited to particular conjunctures, and gave the legislature for that purpose, the power of abrogating the antient civil and political laws, that were not fundamental, and of making new ones: but nothing leads us to think that it was willing to submit the constitution itself to their pleasure.

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trine is agreeable to the law of nature and nations, and to the divine dictates of natural and revealed religion. It is contrary to reason that the supreme power should have right to alter the constitution. This would imply, that those who are intrusted with Sovereignty by the

When a nation takes possession of a distant country, and settles a colony there, that country though separated from the principal establishment, or mother country, naturally becomes a part of the state, equally with its antient possessions. Whenever the political laws, or treaties, make no distinction between them, every thing said of the territory of a nation, ought also to extend to its colonies." D' Vattel.

"An act of parliament made against natural equity, as to make a man judge in his own cause, would be void: for *jura naturæ sunt immutabilia*, Hob. 87. Trin. 12. Jac Day v. Savage S. C. and P. cited Arg 10. Mod. 115. Hill. 11 Ann. C. B. in the case of Thornby and Fleetwood, "but says, that this must be a clear case, and judges will strain hard rather than interpret an act void, ab initio." *This is granted, but still their authority is not boundless, if subject to the controul of the judges in any case.*

"Holt, Chief justice, thought what Lord Coke says in Doctor Bonham's case a very reasonable and true saying, that if an act of parliament should ordain that the same person should be both party and judge in his own cause, it would be a void act of parliament, and an act of parliament can do no wrong, though it may do several things that look pretty odd; for it may discharge one from the allegiance he lives under, and restore to the state of nature; but it cannot make one that lives under a government both judge and party, *per Holt*. C. J. 12 Mod. 687, 688. Hill. 13. W. 3. B. R. in the case of the city of London v. Wood—It appears in our books, that in several cases the common law shall controul acts of parliament, and sometimes adjudge them to be utterly void; for when an act of parliament is against common *right* and *reason*, or repugnant or impossible to be performed, the common law shall controul it, and adjudge it to be void, and therefore 8 E. 3. 30 Thomas Tregor's case upon the statute of W. 2. Cap. 38. and Art. Sup. Chart. 9. Herle said that sometimes statutes made contrary to law and right, which the makers of them perceiving will not put them in execution, 8 Rep. 118 Hill. 7. J. Dr. Bonham's case.

the people, have a right to do as they please. In other words, that those who are invested with power to protect the people, and support their rights and liberties, have a right to make slaves of them. This is not very remote from a flat contradiction. Should the parliament of Great-Britain follow the example of some other foreign states*, and vote the King absolute and despotic; would such an act of parliament make him so? Would any minister in his senses advise a Prince to accept of such an offer of power? It would be unsafe to accept of such a donation, because the parliament or donors would grant more than was ever in their power lawfully to give. The law of nature never invested them with a power of surrendering their own liberty; and the people certainly never intrusted any body of men with a power to surrender theirs in exchange for slavery†.

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* Sweden, Denmark, France, &c.

† “ But if the whole state be conquered, if the nation be subdued, in what manner can the victor treat it without transgressing the bounds of justice? What are his rights over the conquest? Some have dared to advance this monstrous principle, that the conqueror is absolute master of his conquest; that he may dispose of it as his property, treat it as he pleases, according to the common expression of *treating a state as a conquered country*; and hence they derive one of the sources of despotic government: but enough of those that reduce men to the state of transferable goods, or use them like beasts of burthen, who deliver them up as the property or patrimony of another man. Let us argue on principles countenanced by reason and becoming humanity. The whole right of the conqueror proceeds from the just defence of himself, which contains the support and pro-

It is now near three hundred years since the continent of North-America was first discovered, and that by British subjects.* Ten generations have passed away through infinite toils and bloody conflicts in settling this country. None of those ever dreamed but that they were intitled, at least, to equal privileges with those of the same rank born within the realm.

British America has been hitherto distinguished from the slavish colonies around about it,

prosecution of his rights. Thus when he has totally subdued a nation with whom he had been at war, he may without dispute cause justice to be done him, with regard to what gave rise to the war, and require payment for the expence and damage he has sustained; he may according to the exigency of the case impose penalties on it as an example, he may, should prudence so dictate, disable it from undertaking any pernicious designs for the future. But in securing all these views the mildest means are to be preferred. We are always to remember, that the law of nature permits no injury to be done to an enemy, unless in taking measures necessary for a just defence, and a reasonable security. Some princes have only imposed a tribute on it; others have been satisfied of stripping it of some privileges, dismembering a province, or keeping it in awe by fortresses; others as their quarrel was only with the sovereign in person, have left a nation in the full enjoyment of all its rights, only setting a sovereign over it. But if the conqueror thinks proper to retain the sovereignty of the vanquished state, and has such a right; the manner in which he is to treat the state still flows from the same principles. If the sovereign be only the just object of his complaint, reason declares that by his conquest he acquires only such rights as actually belonged to the dethroned sovereign, and on the submission of his people he is to govern it according to the laws of the state. If the people do not voluntarily submit, the state of war subsists." "When a sovereign as pretending to have the absolute disposal of a people whom he has conquered, is for enslaving them, he causes the state of war to subsist between this people and him."

Mr. D' Vattel, B. 3. C. 10. sec. 201.

* The Cabots discovered the Continent before the Spaniards.

it, as the fortunate Britons have been from most of their neighbours on the continent of Europe. It is for the interest of Great-Britain that her colonies should be ever thus distinguished. Every man must wilfully blind himself that don't see the immense value of our acquisitions in the late war ; and that though we did not retain all at the conclusion of the peace that we obtained by the sword ; yet our gracious Sovereign, at the same time that he has given a divine lesson of equitable moderation to the princes of the earth, has retained sufficient to make the British arms the dread of the universe, and his name dear to all posterity.

To the freedom of the British constitution, and to their increase of commerce, it is owing that our colonies have flourished without diminishing the inhabitants of the mother country ; quite contrary to the effects of plantations made by most other nations, which have suffered at home, in order to aggrandize themselves abroad. This is remarkably the case with Spain. The subjects of a free and happy constitution of government, have a thousand advantages to colonize above those who live under despotic princes. We see how the British colonies on the continent, have out-grown those of the French, notwithstanding they have ever engaged the Savages to keep us back. Their advantages over us in the West-Indies are, among other causes perhaps, partly owing to these, 1. A capital neglect in former reigns, in suffering them to have a firm possession of so many valuable islands, that we had a better title to than they. 2. The French unable to push their

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settlements effectually on the continent, have bent their views to the islands, and poured vast numbers into them, 3. The climate and business of these islands is by nature much better adapted to Frenchmen and to Negroes, than to Britons. 4. The labour of slaves, black or white, will be ever cheaper than that of freemen, because that of the individuals among the former, will never be worth so much as with the latter ; but this difference is more than supplied ; by numbers under the advantages abovementioned. The French will ever be able to sell their West-India produce cheaper than our own islanders : and yet while our own islanders can have such a price for theirs, as to grow much richer than the French, or any other of the King's subjects in America, as is the case, and what the northern colonies take from the French, and other foreign islands, centers finally in returns to Great-Britain for her manufactures, to an immense value, and with a vast profit to her : it is contrary to the first principles of policy to clog such a trade with duties, much more to prohibit it to the risque if not certain destruction of the fishery. It is allowed by the most accurate British writers on commerce, Mr. Postlethwait in particular, who seems to favour the cause of the sugar islands, that one half of the immense commerce of Great-Britain is with her colonies. It is very certain that without the fishery seven-eighths of this commerce would cease. The fishery is the center of motion, upon which the wheel of all the British commerce in America turns. Without the American trade, would Britain, as a commercial
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state, make any great figure at this day in Europe? Her trade in woollen and other manufactures, is said to be lessening in all parts of the world, but America, where it is increasing, and capable of infinite increase, from a concurrence of every circumstance in its favour. Here is an extensive territory of different climates, which in time will consume, and be able to pay for as many manufactures as Great-Britain and Ireland can make, if true maxims are pursued. The French, for reasons already mentioned, can underwork, and consequently undersell the English manufactures of Great-Britain in every market in Europe. But they can send none of their manufactures here; and it is the wish of every honest British American that they never may; it is best they never should; we can do better without the manufactures of Europe, save those of Great-Britain, than with them: But without the French West-India produce we cannot; without it our fishery must infallibly be ruined. When that is gone, our own islands will very poorly subsist. No British manufactures can be paid for by the colonists. What will follow? One of these two things, both of which it is the interest of Great-Britain to prevent. 1. The northern colonists must be content to go naked, and turn Savages; or, 2. Become manufacturers of linen and woollen, to clothe themselves; which, if they cannot carry to the perfection of Europe, will be very destructive to the interests of Great-Britain. The computation has been made, and that within bounds, and it can be demonstrated, that if North-America is only

driven to the fatal necessity of manufacturing a suit of the most ordinary linen or woollen for each inhabitant annually, which may be soon done, when necessity, the mother of invention, shall operate, Great-Britain and Ireland will lose two millions *per annum*, besides a diminution of the revenue to nearly the same amount. This may appear paradoxical, but a few years experience of the execution of the sugar act, will sufficiently convince the parliament not only of the inutility, but destructive tendency of it, while calculations may be little attended to. That the trade with the colonies has been of surprizing advantage to Great-Britain, notwithstanding the want of a good regulation is past all doubt. Great-Britain is well known to have increased prodigiously both in numbers and in wealth since she began to colonize. To the growth of the plantations Britain is in a great measure indebted for her present riches and strength. As the wild wastes of America have been turned into pleasant habitations, and flourishing trading towns; so many of the little villages and obscure boroughs in Great-Britain have put on a new face, and suddenly started up, and become fair markets, and manufacturing towns, and opulent cities. London itself, which bids fair to be the metropolis of the world, is five times more populous than it was in the days of Queen Elizabeth. Such are the fruits of the spirit of commerce and liberty. Hence it is manifest how much we all owe to that beautiful form of civil government, under which we have the happiness to live.

It is evidently the interest, and ought to be
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the care of all those intrusted with the administration of government, to see that every part of the British empire enjoys to the full the rights they are intitled to by the laws, and the advantages which result from their being maintained with impartiality and vigour. This we have seen reduced to practice in the present and preceding reigns ; and have the highest reason, from the paternal care and goodness, that his Majesty, and the British parliament, have hitherto been graciously pleased to discover to all his Majesty's dutiful and loyal subjects, and to the colonists in particular, to rest satisfied, that our privileges will remain sacred and inviolate. The connection between Great-Britain and her colonies is so natural and strong, as to make their mutual happiness depend upon their mutual support. Nothing can tend more to the destruction of both, and to forward the measures of their enemies, than sowing the seeds of jealousy, animosity and dissention between the mother country and the colonies.

A conviction of the truth and importance of these principles, induced Great-Britain during the late war, to carry on so many glorious enterprizes for the defence of the colonies ; and those on their part to exert themselves beyond their ability to pay, as is evident from the parliamentary reimbursements.

If the spirit of commerce was attended to, perhaps, duties would be every where decreased, if not annihilated, and prohibitions multiplied. Every branch of trade that hurts a community, should be prohibited, for the same reason that a private gentleman would break off commerce with a sharper or an extor-
 sive

torfive ufurer. It is to no purpose to higgie
 with fuch people, you are fure to lofe by them.
 It is exactly fo with a nation, if the balance
 is againft them, and they can poffibly fubfift
 without the commodity, as they generally can
 in fuch cafes, a prohibition is the only remedy;
 for a duty in fuch cafe, is like a compofition
 with a thief, that for five fhillings in the pound
 returned, he fhall rob you at pleasure; when
 if the thing is examined to the bottom, you
 are at five fhillings expence in travelling to
 get back your five fhillings, and he is at the
 fame expence in coming to pay it, fo he robs
 you of but ten fhillings in the pound, that you
 thus wifely compound for. To apply this to
 trade, I believe every duty that was ever im-
 pofed on commerce, or in the nature of things
 can be, will be found to be divided between
 the ftate impofing the duty, and the country
 exported from. This, if between the feveral
 parts of the fame kingdom or dominions of the
 fame Prince, can only tend to embarrafs trade,
 and raife the price of labour above other ftates,
 which is of very pernicious confequence to the
 husbandman, manufacturer, mariner and mer-
 chant, the four tribes that fupport the whole
 hive. If your duty is upon a commodity of a
 foreign ftate, it is either upon the whole ufe-
 ful and gainful, and therefore neceffary for
 the husbandman, manufacturer, mariner or
 merchant, as finally bringing a profit to the
 ftate by a balance in her favour; or the im-
 portation will work a balance againft your
 ftate. There is no medium that we know of.
 If the commodity is of the former kind, it
 fhould be prohibited; but if the latter, im-
 ported

ported duty free ; unless you would raise the price of labour by a duty on necessaries, or make the above wise composition for the importation of commodities you are sure to lose by. The only test of a useful commodity is the gain upon the whole to the state ; such should be free ; the only test of a pernicious trade is the loss upon the whole, or to the community ; this should be prohibited. If therefore it can be demonstrated that the sugar and molasses trade from the northern colonies to the foreign plantations is upon the *whole* a loss to the *community*, by which term is here meant the three kingdoms and the British dominions taken collectively, then, and not till then, should this trade be prohibited. This never has been proved, nor can be ; the contrary being certain, to wit, that the nation upon the whole hath been a vast gainer by this trade, in the vend of and pay for its manufactures ; and a great loss by a duty upon this trade will finally fall on the British husbandman, manufacturer, mariner and merchant, and consequently the trade of the nation be wounded, and in constant danger of being eat out by those who can undersell her.

The art of underselling, or rather of finding means to undersell, is the grand secret of thrift among commercial states, as well as among individuals of the same state. Should the British sugar islands ever be able to supply Great-Britain and her northern colonies with those articles, it will be time enough to think of a total prohibition ; but until that time, both prohibition and duty will be found to be diametrically opposite to the first principles of policy.

policy. Such the extent of this continent, and the increase of its inhabitants; that if every inch of the British sugar islands was as well cultivated as any part of Jamaica or Barbadoes, they would not now be able to supply Great-Britain, and the colonies on this continent. But before such farther improvements can be supposed to take place in our islands, the demands will be proportionably increased by the increase of the inhabitants on the continent. Hence the reason is plain why the British sugar planters are growing rich, and ever will, because the demand for their produce has, and ever will be greater than they can possibly supply, so long as the English hold this continent, and are unrivalled in the fishery.

We have every thing good and great to hope from our gracious Sovereign, his Ministry and his Parliament; and trust that when the services and sufferings of the British American colonies are fully known to the mother country, and the nature and importance of the plantation trade more perfectly understood at home, that the most effectual measures will be taken for perpetuating the British empire in all parts of the world. An empire built upon the principles of justice, moderation and equity, the only principles that can make a state flourishing, and enable it to elude the machinations of its secret and inveterate enemies.

P. S. By antient and modern gods, *P. 10.* I mean, all idols, from those of Old Egypt, to the canonized monsters of modern Rome; and by king-craft and priest-craft, civil and ecclesiastic polity, as administered in general till the revolution. I now recollect that I have been credibly informed that the British Sugar colonists are humane towards their slaves, in comparison with the others. Therefore in page 29, let it be read, foreign Sugar-Islanders and foreign Creoles.

F I N I S.