FOUNDATIONS OF AMERICAN CONSTITUTIONALISM LSHS-520

James Madison Memorial Fellowship Foundation
Georgetown University

June 19 -- July 15, 2016

Dr. Jeffry Morrison (Ph.D., Georgetown), Director
Dr. Daniel Dreisbach (D.Phil., Oxford; J.D., Virginia)
Dr. Terri Halperin (Ph.D., Virginia)
Dr. Kevin Hardwick (Ph.D., Maryland)

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COURSE DESCRIPTION:

Foundations of American Constitutionalism is an intensive, month-long, six-credit graduate course dealing with the political, constitutional, and legal history of the framing and ratification of the Constitution of the United States. It has been administered by the federal government's James Madison Foundation (www.jamesmadison.gov) since 1993, and has been held at Georgetown University, which grants its credit, each summer since 1997. It comprises the Summer Institute on the Constitution referred to in the Foundation's enabling legislation and regulations. Based mainly on primary documentary sources, the course's focus is on fundamental issues and questions concerning the history and nature of early American constitutionalism, the American political tradition, and the rule of law, in keeping with the mission of the Foundation. Congress created the Foundation, whose bipartisan board of trustees is appointed by the president of the United States, in 1986 as part of the commemoration of the bicentennial of the Constitution and for the express purpose of improving teaching about the Constitution in secondary schools. Thus all course students ("Fellows") are present or future middle school and high school teachers enrolled in graduate programs in their home states. The Foundation provides an academically rigorous course based on the highest standards of scholarship and conducted in a spirit of intellectual objectivity, openness, and civility.

Schedule Overview:

The course meets daily from 8:00 AM to approximately 2:00 PM. Daily academic sessions include: lecture from 8:00 AM to 10:00 AM; discussion sections from 10:30 AM to 11:30 AM; lunch with Fellows and professors from 11:30 AM to 12:30 PM; and some afternoon lectures from 1:00 PM to 2:00 PM. (Fellows and faculty lunch together at the University dining hall and use these occasions for collegial discussion of readings, assignments, and vocational matters.) Several mandatory field trips, optional tours, afternoon pedagogical sessions, and events also take place during the month. These include day-long excursions to Monticello/Montpelier and Mount Vernon/Gunston Hall, to Capitol Hill for the annual Board of Trustees meeting, to the Supreme Court, to the White House and White House Historical Association, and afternoon tours in and around Washington, D.C.

Assessment:

The course grade will be determined by three essays (85% total) on assigned topics based on the assigned readings and lectures, plus discussion section participation (15%). The essays will consist of the following: a first, short essay submitted electronically just prior to the Summer Institute (worth 15% of the course grade); and two longer analytical essays (worth 35% each). The first essay will be based solely on Gordon Wood's *American Revolution*. The first essay assignment will be distributed electronically in Spring 2016. The second and third analytical essays will be based on the primary material in the assigned readings, and those essay assignments will be selected by the faculty and distributed during the Institute. Faculty work closely with Fellows and are available for individual conferences informally and by appointment during the Summer Institute.

Discussion sections will rotate weekly so that each Fellow will have one week with each faculty member as discussion section leader. Faculty will submit a letter grade at the end of each week to the Director, who will tally them at the end of the Institute. Faculty will take both quantity and quality of discussion into account when grading.

Thus, the grade calculus will be:

15% First essay
35% Second essay
35% Third essay
15% Discussion section participation

100%

FACULTY:

Jeffry H. Morrison, Ph.D., Director. Dr. Morrison is Director of Academics at the James Madison Foundation and Professor of Government at Regent University. He earned his Ph.D. (with distinction) from Georgetown University, where he was Bradley Research Fellow and Lecturer in the Department of Government. He has also taught at the U. S. Air Force Academy, and at Princeton University. He is the author or co-editor of five books, including *The Political Philosophy of George Washington* (Johns Hopkins University Press, 2009), and numerous chapters and articles on American constitutionalism. He has taught for the Foundation since 2002.

Daniel L. Dreisbach, J.D., D.Phil. Dr. Dreisbach is Professor in the School of Public Affairs at American University. He completed a Doctor of Philosophy degree at Oxford University, where he

studied as a Rhodes Scholar, and a Juris Doctor degree at the University of Virginia School of Law. He has authored or edited eight books, including *Thomas Jefferson and the Wall of Separation between Church and State* (2002). He has published numerous book chapters, reviews, and articles in scholarly journals, including *American Journal of Legal History*, *Constitutional Commentary*, *Journal of Church and State*, *Politics and Religion*, and *William and Mary Quarterly*. Professor Dreisbach is a past recipient of American University's highest faculty award, "Scholar/Teacher of the Year."

Terri D. Halperin, Ph.D. Dr. Halperin is a member of the history faculty at the University of Richmond, where she has taught since 2000. A graduate (B.A., with honors) of Wesleyan University, she subsequently earned an M.A. and Ph.D. in American history from the University of Virginia, with an emphasis on the history of the Early Republic. During graduate school she also worked as a project archivist at the Virginia Historical Society. Her book *The Alien and Sedition Acts of 1798: Testing the Constitution,* was published by the Johns Hopkins University Press in 2016. Prior to her academic career, Dr. Halperin served in the offices of two U.S. Representatives in Washington, DC, including two years as legislative assistant.

Kevin R. Hardwick, Ph.D. Dr. Hardwick is Associate Professor of History at James Madison University. He earned his B.A. from Swarthmore College and his M.A. and Ph.D. in history from the University of Maryland at College Park. He directs the Summer Institute for Teachers at Stratford Hall, serves on the Board of Directors of Preservation Virginia, and has consulted for historic sites throughout Virginia. He is the author of books and essays on 17th and 18th century Virginia history, and was a co-editor of *Classics of American Political and Constitutional Thought* (2007). Dr. Hardwick was the Margaret Henry Dabney Penick Scholar in Residence, Smithsonian Libraries, in 2011, where he began work on a book-length study of the Virginia Ratifying Convention of 1788.

COURSE TEXTS:

Jack P. Greene, ed., *Colonies to Nation 1763-1789* (W. W. Norton, 1975).
A. Hamilton, J. Jay, and J. Madison, *The Federalist*, ed. Carey and McClellan (Liberty Fund, 2001).
JMF Summer Institute Course Packet ("[CP]") (2015).
James Madison, *Notes of Debates in the Federal Convention of 1787* (Ohio University Press, 1966).
Herbert Storing, ed., *The Anti-Federalist* (University of Chicago, 1985).
Gordon S. Wood, *The American Revolution: A History* (Modern Library, 2002).

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SCHEDULE OF LECTURES:

[1.] ***Monday, June 20:***

Lecture: "Early American Constitutionalism," Dr. Morrison
8:00 AM - 10:00 AM (2 hrs.)
Readings:
Wood, *The American Revolution*.
Belz, "Constitutionalism and the American Founding" [CP].
Cicero, Selections [CP].
Burke, "Speech on Conciliation with the Colonies" [CP].
Montesquieu, *Spirit of the Laws* (selections) [CP].
Hume, *Of the Original Contract* (selections) [CP].

Discussion Sections: Drs. Dreisbach, Halperin, Hardwick, & Morrison
10:30 AM - 11:30 AM (1 hr.)

Lecture: "Founders, Famous and Forgotten," Dr. Dreisbach
1:00 PM - 2:00 PM (1 hr.)
Readings: None.

Arlington National Cemetery Tour (optional)
2:00 PM - 6:00 PM (4 hrs.)

[2.] ***Tuesday, June 21:***

Lecture: "Common Law & the American Legal Tradition," Dr. Dreisbach
8:00 AM - 10:00 AM (2 hrs.)
Readings:
Blackstone, "Of the Laws of England," in St. George Tucker, *Blackstone's Commentaries*, I, 62-92 [CP].

Discussion Sections: Drs. Dreisbach, Halperin, Hardwick, & Morrison
10:30 AM - 11:30 AM (1 hr.)

Lecture: "The Revolutionary War & the Origins of American Constitutionalism," Dr. Jack Warren, Society of the Cincinnati.
1:00 PM - 3:00 PM (2 hrs.)
Readings: TBD.

[3.] ***Wednesday, June 22:***

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Lecture: "Gender & the Founding," Dr. Rosemarie Zagarri, George Mason University
8:00 AM - 10:00 AM (2 hrs.)

Readings:

Women and the Founding (ONLINE ONLY - COURSESITES: June 22).

Discussion Sections: Drs. Dreisbach, Halperin, Hardwick, & Morrison
10:30 AM - 11:30 AM (1 hr.)

Federal Courtroom Simulation
2:00 - 5:00 PM (3 hrs.)

[4.] ***Thursday, June 23:***

Lecture: 17th Century English Constitutionalism, Dr. Hardwick

Readings:

Petition of Right (1628) [CP].

Charles I, *Propositions Made by Both Houses of Parliament . . . with His Majesties Answer Thereunto* (1642) [CP].

"The Agreement of the People" (January 15, 1648/49) [CP].

Sir Henry Vane, "A Healing Question" (1656) [CP].

Sir Robert Filmer, *Patriarcha, or the Natural Power of Kings* (1680) [CP].

English Bill of Rights (1688) [CP].

John Locke, "Second Treatise of Civil Government," Chap. VI. Of Paternal Power (1690) [CP].

Discussion Sections: Drs. Dreisbach, Halperin, Hardwick, & Morrison
10:30 AM - 11:30 AM (1 hr.)

Lecture: "English Colonization," Dr. Hardwick
1:00 PM - 2:00 PM (1 hr.)

Readings:

The Third Virginia Charter (March 12, 1612) [CP].

The Charter of Maryland (June 20, 1632) [CP].

Mayflower Compact (Nov. 11, 1620) [CP].

Fundamental Orders of Connecticut (Jan. 14, 1639) [CP].

Representation of ye affairs of N England by Mr. Randolph (May 6, 1677) [CP].

Commission of Sir Edmund Andros for the Dominion of New England (Apr. 7, 1688) [CP].

The Charter of Massachusetts Bay (1691) [CP].

Pedagogical Session #1: Claire Griffin

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2:00 PM - 3:00 PM (1 hr.)

[5.] ***Friday, June 24:***

Day trip to Monticello and Montpelier
8:00 AM - 5:00 PM (7 total hrs.)

Monticello House and Grounds Tour
8:00 AM - 11:30 AM (3.5 hrs.)

Montpelier House and Grounds Tour
1:00 PM - 2:30 PM (1.5 hrs.)

Lecture (at Montpelier): "Madison & Jefferson: On Liberty," Dr. Morrison
3:30 PM - 5:00 PM (1.5 hrs.)
Readings: None.

[6.] ***Monday, June 27:***

Lecture: "Civil & Religious Sources of Resistance to Tyranny," Dr. Dreisbach
8:00 AM - 10:00 AM (2 hrs.)
Readings:
Bible: *Romans,* verses 13:1-7; *Acts of the Apostles*, verses 5:12-42, esp. verse 29 [CP].
"Brutus," "Vindiciae contra tyrannos" in *Constitutionalism and Resistance in the Sixteenth Century*, ed. J. H. Franklin, 141-61, 180-186 [CP].
Jonathan Mayhew, "A Discourse concerning Unlimited Submission" [CP].
Recommended reading: Jonathan Boucher, "On Civil Liberty; Passive Obedience, and Non-Resistance" (ONLINE ONLY).

Discussion Sections: Drs. Dreisbach, Halperin, Hardwick, & Morrison
10:30 AM - 11:30 AM (1 hr.)

Lecture: Political Weapons: Satire & Cartoons, Dr. Halperin
2:00 PM - 3:00 PM (1 hr.)
Readings: none.

[7.] ***Tuesday, June 28:***

Lecture: "The American Revolution as Imperial Crisis," Dr. Hardwick
8:00 AM - 10:00 AM (2 hrs.)
Readings:

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Greene, *Colonies to Nation*, 8-12, 26-39, 45-59, 63-65, 68-72, 78-84, 121-36, 182-88, 220-38, 297-301.

Discussion Sections: Drs. Dreisbach, Halperin, Hardwick, & Morrison
10:30 AM - 11:30 AM (1 hr.)

Lecture: "Religion & the American Revolution," Dr. Morrison
1:00 PM - 3:00 PM (2 hrs.)

Readings:

Greene, *Colonies to Nation*, 298-301.
Witherspoon, "Dominion of Providence over the Passions of Men" [CP].
West, "On the Right to Rebel against Governors" [CP].
Rev. Samuel Cooper, "Sermon on the Day of Commencement of the [Massachusetts] Constitution" [CP].
Image: "An Attempt to Land a Bishop" (1769) [CP].

[8.] *Wednesday, June 29:*

Lecture: "Race and American Constitutionalism," Dr. Halperin
1:00 PM - 3:00 PM (2 hrs.)

Readings:

Madison, *Notes of Debates in the Philadelphia Convention of 1787*, 98-103, 224-25, 259-60, 268-69, 274-76, 277-81, 355, 409-10, 411-13, 502-03, 503-08, 522, 530-32, 610, 545-46, 552.
Madison, Hamilton, and Jay, *Federalist* No. 54.
"Brutus," Storing, *Anti-Federalist*, 123-24.
Treaty Ending the Third Anglo-Powhatan War (1646) [CP].
Articles of Peace or Treaty of Middle Plantation (1677) [CP].
An Act to Discriminate Between Africans and Others in Maryland [CP].
Virginia Law October (1705) [CP].
A Dangerous Precident for the Future (1640) [CP].
Preservation of Indian Rights and Property (1674) [CP]
The Poor and Distressed Remnant of Chickahominy Indians (1689) [CP]
Unkind and Unjust Usage by English (1699) [CP]
Releese Us Out of Cruel Bondegg (1723) [CP]
Suggested: John Kaminski, "Slavery and the Constitution," Constitutional Conversations @ https://www.youtube.com/watch?v=erPTt8rwGso.

Discussion Sections: Drs. Dreisbach, Halperin, Hardwick, & Morrison
10:30 AM - 11:30 AM (1 hr.)

Pedagogical Session #2: Claire Griffin

1:00 PM - 2:00 PM (1 hr.)

[9.] ***Thursday, June 30:***
Board of Trustees Meeting, Capitol Hill: Conducted by Sens. John Cornyn (R, TX) and Ben Cardin (D, MD)
8:30 AM - 11:00 AM (2.5 hrs.)

Lecture: "State Constitutions," Dr. Halperin
1:00 - 3:00 (2 hrs.)
Readings:
Greene, *Colonies to Nation*, 304-325, 332-348, 352-374.
Pennsylvania Constitution of 1776, Declaration of Rights [CP].
Massachusetts Constitution of 1780, Part I, A Declaration of Rights [CP].

[10.] ***Friday, July 1:***

Full day trip to Mt. Vernon and Gunston Hall
8:00 AM - 5:00 PM (7 total hrs.)

Mt. Vernon House and Grounds Tour
8:00 AM - 9:00 AM (1 hr.)

Lecture (at Mt. Vernon): "George Washington & American Union," Dr. Morrison
9:00 AM - 10:30 AM (1.5 hrs.)
Readings:
Morrison, *The Political Philosophy of George Washington*, 1-18 [CP].
Letter to George Mason (1769) [CP].
Letters to Bryan Fairfax (1774) [CP].
Circular to the States (1783) [CP].
Farewell Address (1796) [CP].

Mt. Vernon Education Center and Museum Tour
10:30 AM - 2:30 PM (4 hrs.)

Lecture (at Gunston Hall): "George Mason," Dr. Dreisbach
3:00 PM - 4:00 PM (1 hr.)
Readings: none.

Gunston Hall House and Grounds Tour
4:00 PM - 5:30 PM (1.5 hrs.)

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[11.] ***Monday, July 4:***

Lecture: "Visualizing Liberty," Dr. Dreisbach
8:00 AM - 9:00 AM (1 hr.)
Readings: None.

Lecture: "Declaration of Independence," Dr. Halperin
9:00 AM – 10:00 AM (1 hr.)
Readings:
Declaration of Independence with changes (1776) [CP].

[12.] ***Tuesday, July 5:***

Requested tours: White House and White House Historical Association
8:00 AM - 11:30 AM (3.5 hrs.)

Lecture: "The Philadelphia Convention/Teaching American History," Dr. Gordon Lloyd (Ashbrook Center, Pepperdine University)
1:00 PM - 3:00 PM (2 hrs.)
Readings:
Teaching American History Website on the Federal Convention (www.teachingamericanhistory.org/convention).

[13.] ***Wednesday, July 6:***

Possible tour: Supreme Court of the United States
8:00 AM - 11:30 AM (3.5 hrs.)

Lecture: "Ratification of the Constitution/Teaching American History," Dr. Gordon Lloyd (Ashbrook Center, Pepperdine University)
1:00 PM - 3:00 PM (2 hrs.)
Readings:
Teaching American History Website on Ratification (www.teachingamericanhistory.org/ratification).

[14.] ***Thursday, July 7:***

Lecture: "The Philadelphia Convention," Dr. Hardwick
8:00 AM - 10:00 AM (2 hrs.)

Readings:

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Madison, *Notes of Debates in the Philadelphia Convention of 1787*, 27-38, 73-81, 81-88, 93-106, 112-154, 193-201, 203-211, 219-231, 231-237, 288-313, 341-355, 385-396, 472-485, 512-521, 546-562, 573-594, 616-632, 642-659.

Discussion Sections: Drs. Dreisbach, Halperin, Hardwick, & Morrison
10:30 AM - 11:30 AM (1 hr.)

Pedagogical Session #3: Claire Griffin
1:00 PM - 2:00 PM (1 hr.)

[15.] *Friday, July 8:*

Lecture: "Ratification of the Constitution," Dr. Hardwick
8:00 AM -10:00 AM (2 hrs.)

Readings:

Hamilton, Madison and Jay, *Federalist* Nos. 1-3, 5, 7, 9-10, 15, 23, 30, 39, 41, 44, 47-48, 51, 55, 62-63, 70, 78, 84.

Storing, *The Anti-Federalist*, 108-72, 182-87, 332-47, 352-56, 23-101.

Supplemental: *Federalist* Nos. 21-22, 31, 38, 44, 56, 68, 80; *Anti-Federalist,* 23-101.

Discussion Sections: Drs. Dreisbach, Halperin, Hardwick, & Morrison
10:30 AM - 11:30 AM (1 hr.)

Annual James Madison Lecture: "George Washington: First Entrepreneur," Prof. Edward Lengel, University of Virginia
1:30 PM - 4:30 PM (3 hrs.)

[16.] *Monday, July 11:*

Lecture: "*The Federalist,*" Dr. Morrison
8:00 AM - 10:00 AM (2 hrs.)

Readings:

Hamilton, Madison and Jay, *Federalist* Nos. 4, 6, 10, 15, 17, 24, 37-38, 51, 55, 85.

Discussion Sections: Drs. Dreisbach, Halperin, Hardwick, & Morrison
10:30 AM - 11:30 AM (1 hr.)

Pedagogical Session #4: Claire Griffin
1:00 PM - 2:00 PM (1 hr.)

Society of the Cincinnati Tour (optional), Washington, DC

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2:30-4:00 PM (1.5 hrs.)

[17.] ***Tuesday, July 12:***

Lecture: "A Republic in a World of Monarchies," Dr. Halperin
8:00 AM - 10:00 AM (2 hrs.)

Readings:

Greene, *Colonies to Nation*, 466-80.

United Indian Nations, "Speech at the Confederate Council," Nov. 28 and Dec. 18, 1786 [American State Papers, Indian Affairs (Washington DC, 1832), 1: 8-9; in Colin G. Calloway, *The World Turned Upside Down* (New York: Bedford Books, 1994), 175-7] [CP].

"Proposal to Maintain Indian Lands," 1793 [in Colin G. Calloway, *The World Turned Upside Down* (New York: Bedford Books, 1994), 181-3] [CP].

"Jefferson and Madison on Republican Political Economy," in *Liberty and Order*, ed. Lance Banning (Indianapolis: Liberty Fund, 2004), 89-94 [CP].

"An Old French Soldier," Aug. 27, 1793 General Advertiser (Philadelphia), in *Liberty and Order*, ed. Lance Banning (Indianapolis: Liberty Fund, 2004), 141-2. [CP].

Discussion Sections: Drs. Dreisbach, Halperin, Hardwick, & Morrison
10:30 AM - 11:30 AM (1 hr.)

[18.] ***Wednesday, July 13:***

Lecture: "Framing the Bill of Rights," Dr. Dreisbach
8:00 AM - 10:00 AM (2 hrs.)

Readings:

Speeches and vote on bill of rights, Sept. 12, 1787, in Madison, *Notes of Debates,* 630.

Storing, *The Anti-Federalist*, 79-86 (letter from the Federal Farmer), 117-22 (Essay of Brutus).

The Federalist Papers, No. 84 (Hamilton).

James Madison, Speech in U.S. House of Representatives, June 8, 1789, in *Annals of Congress*, 1st Cong., 1st sess., secs. 448-59 [CP].

Recommended reading: letter from Madison to Jefferson, Oct. 17, 1788 [CP].

Discussion Sections: Drs. Dreisbach, Halperin, Hardwick, & Morrison
10:30 AM - 11:30 AM (1 hr.)

[19.] ***Thursday, July 14:***

Lecture: "The Constitution in Peril?: Roils & Rebellions of the 1790's," Dr. Halperin
8:00 AM - 10:00 AM (2 hrs.)

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Readings:

Washington's Views of the Democratic Societies and the Whiskey Rebellion, (1794) [CP].

Jefferson on Washington, the Democratic Societies and the Whiskey Rebellion (Jefferson to Madison, Dec. 28, 1794) [CP].

Excerpts from 1798 (Sedition Act, Kentucky Resolutions, Virginia Resolutions) [CP].

Henry Lee, Report of the Minority on the Virginia Resolutions, (1799) [CP].

Jefferson, First Inaugural Address, March 4, 1801 [CP].

Discussion Sections: Drs. Dreisbach, Halperin, Hardwick, & Morrison
10:30 AM - 11:30 AM (1 hr.)

Lecture: "James Madison," Dr. Hardwick
1:00 PM - 2:00 PM (1 hr.)

Readings:

James Madison to Edmund Randolph (Apr. 8, 1787) [CP].

James Madison to George Washington (Apr. 16, 1787) [CP].

James Madison to Thomas Jefferson (Oct. 24, 1787) [CP].

James Madison to Caleb Wallace (Aug. 23, 1785) [CP].

[20.] ***Friday, July 15:***

Concluding roundtable discussion on the Constitution, Drs. Dreisbach, Halperin, Hardwick, & Morrison
8:00 AM - 10:00 AM (2 hrs.)

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CONSTITUTIONALISM AND THE AMERICAN FOUNDING

HERMAN BELZ

Between 1776 and 1789 the American people constituted themselves a nation by creating republican governments in the thirteen former English colonies and then, in the Constitutional Convention, by transforming the Union of confederated states into a genuine law-giving government. The novelty of this achievement was epitomized in the seal of the new nation, "Novus Ordo Seclorum," which announced "a new order of the ages." Yet in founding political societies Americans pursued a goal that had occupied Western man since antiquity: the establishment of government power capable of maintaining the stability and order necessary to realize the purposes of community, yet so defined and structured as to prevent tyranny. This age-old quest for the forms, procedures, and institutional arrangements most suitable for limiting power and implementing a community's conception of political right and justice, we know as constitutionalism. It remains to consider American constitution-making in the perspective of Western and specifically English constitutionalism, and to reflect on its significance in shaping political life in the United States.

Constitutionalism takes as its purpose resolution of the conflict that characterizes political life and makes government necessary, through procedures and institutions that seek to limit government and create spheres of individual and community freedom. Based on the paradoxical idea that the power to make law and to rule can be at once sovereign and effective, yet also defined, reasonable, and responsible, constitutionalism contains an inherent tension that sets it against utopianism and anarchism, which deny the reality of power, and absolutism and totalitarianism, which tolerate no limitations on power. Nevertheless, although constitutionalists can in retrospect be seen as sharing common assumptions, differences among them have sometimes led to irreconcilable conflict. One such division occurred in the eighteenth century when the American people separated from the English nation and adopted a new type of constitutional theory and practice for the conduct of their political life.

Perhaps the most obvious feature of American constitutionalism was its apparent dependence upon legally binding written instruments pre-

scribing the organization of government and fixing primary principles and rules to guide its operation. Texts had of course long been used in law, government, and politics, and the English constitution comprised written elements. Americans' resort to documentary, positive-law techniques of government was more systematic and complete than any previous undertaking, however, so much so as to amount to constitutional innovation. Following the American example, peoples everywhere in the modern world have adopted the practice of forming governments by writing constitutions. But Americans in the founding era did more than invent a new approach to the old problem of limited government. Their constitution-making was informed with a new purpose—the liberal purpose of protecting the natural rights of individuals. American charters of fundamental law were not simply ordinances of government; they were also constitutions of liberty. The meaning of liberty, especially the relation between the individual and the community that was central to any practical definition of it, was a deeply controversial issue that divided Americans in state and national constitution-making. The adoption of the federal Constitution in 1787, however, marked a decisive shift toward protection of individuals in the pursuit of their interests, and away from enforcement of community consensus aimed at making citizens virtuous and moral, as the central purpose of constitutional government in America.

American constitutionalism is thus concerned with organizational and procedural matters, on the one hand, and with substantive questions of political purpose, on the other. Most of the time constitutional politics in the United States deals with the former concern, as groups and individuals assert or deny the existence of proper governmental power or challenge methods used to employ it. Nevertheless, constitutionalism is ultimately normative and purposive. Every state may be said to have a constitution, in the sense of an institutional structure and established procedures for conducting political affairs. But not every state is a constitutional state. In the Western political tradition constitutional government is defined by forms and procedures that limit the exercise of power. American constitutionalism goes farther by pursuing not only the negative goal of preventing tyranny but also the positive end of promoting individual liberty, both in the passive sense of protection against government power and in the active sense of participation in the decisions of the political community. Viewed in this light, American constitutionalism raises basic questions of political value and purpose that connect it with the mainstream of Western political philosophy.

In the history of constitutionalism the great problem has not been to create power but to define and limit it. The Western constitutional tradition has employed two methods toward this end. The first is the theory and practice of arranging the internal structure of government so that power is

distributed and balanced. In Greek political thought the purpose of politics was to promote virtue or moral excellence in men, and the founder of a political community was advised to balance the classes of society—kingship, aristocracy, and democracy—in a structure of mixed government which permitted each element to contribute to this end. The pursuit by each class of its special aptitude or interest prevented the others from seeking merely private ends, transforming the polity into despotism, oligarchy, or mob rule depending on which part of society dominated. A second method of constitutionalism has been to subject government to legal limitations, or the rule of law. Roman juristic writing, which regarded natural law as a standard of reason and equity for judging the validity and legitimacy of government enactments, is usually considered the source of the rule-of-law idea. Significant practical steps toward achieving it were taken in medieval England as common law courts created a sphere of law and legal right protecting individual property and liberties against government and constituting a limitation on royal discretionary authority. Further contributing to the rule-of-law tradition was the tendency of courts to regard basic principles of common law adjudication as embodying reason and justice, and hence as a kind of fundamental law limiting the acts of government.

English constitutionalism in the period of American colonization comprised both strands of the constitutional tradition. The common law courts in the early seventeenth century insisted on the superiority of law over the royal prerogative. Sir Edward Coke gave famous expression to the idea of a higher law controlling government in asserting that "'sovereign power' is no parliamentary word. . . . Magna Charta is such a fellow, that he will have no sovereign." Coke also said that "when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will controul it and adjudge such act to be void."[1] Parliament itself, however, subsequently claimed supremacy in lawmaking, and vindication of its authority in the Revolution of 1688 effectively precluded development of the rule of law into a politically relevant form of higher-law constitutionalism. An internally balanced institutional structure, expressed in the revised and revitalized theory of mixed government in the eighteenth century, became the principal model of constitutional government in England.

Essentially descriptive in its connotation, the English constitution was the structure of institutions, laws, conventions, and practices through which political issues were brought to resolution and carried out in acts of government. Yet the constitution was also prescriptive or normative, or at least it was supposed to be. Lord Bolingbroke's well-known definition pointed to this quality: "By constitution we mean . . . that assemblage of laws, institutions and customs, derived from certain fixed principles of reason, directed to certain fixed objects of public good, that compose the general system, according to which the community hath agreed to be governed."[2]

More specifically, as Montesquieu, Blackstone, and other eighteenth-century writers affirmed, the purpose or end of the English constitution was civil and political liberty.[3] From the standpoint of modern constitutionalism the legislative supremacy that contemporaries regarded as the foundation of English liberty was incompatible with effective restraints on government. Nevertheless, Parliament was believed to be under a moral obligation to protect the rights and liberties of Englishmen, and the sanctions of natural law were still seen as effective restraints. Moreover, political accountability to public opinion through elections operated as a limitation on government. Englishmen thus continued to see their constitution as fixed and fundamental, notwithstanding legislative sovereignty.[4]

American constitutionalism began in the seventeenth century when English settlers founded political societies and institutions of government in North America. Two things stand out in this early constitutional experience. First, the formation of government was to a considerable extent based on written instruments. In corporate and proprietary colonies the founding documents were charters granted by the crown conferring enumerated powers on a particular person or group within a designated geographical area for specific purposes. Under these charters the colonists adopted further agreements, organic acts, ordinances, combinations, and frames of government giving more precise form to political institutions. In religiously motivated colonies government was more clearly the result of mutual pledging and association under civil-religious covenants. American colonists thus used constitutionlike instruments to create political community, define fundamental values and interests, specify basic rights, and organize governmental institutions.[5]

The second outstanding fact in early American constitutional history was substantial community control over local affairs. To be sure, the colonies employed the forms and practices of English government and generally emulated the metropolitan political culture. Their institutions at the provincial and local levels were patterned after English models, and the theory of mixed government and the balanced constitution was accepted as valid. Yet discordant tendencies pointed to a distinctive course of constitutional development. The fact that in most colonies the power of the governor depended on royal authority while the power of the assembly rested on a popular base, as well as frequent conflict of interest between them, made separation and division of power a political reality discrepant with the theory of mixed government. Furthermore, popularly elected assemblies responsive to growing constituencies and enjoying de facto local sovereignty under written charters introduced a republican element into American politics.

As English subjects, Americans believed they lived under a free—and fixed—English constitution. Long before the American Revolution they expressed this view in the course of conflicts with imperial officials. Numerous writers asserted that the constitution was a contract between the people and their rulers; that the legislature could not alter the fundamental laws from which government derived its form, powers, and very existence; that government must exercise power within limits prescribed by a civil compact with the people. Moreover, the compact chosen to organize and direct government, as a colonial sermon of 1768 put it, must coincide with "the moral fitness of things, by which alone the natural rights of mankind can be secured."[6] Disputing the descriptive English constitution that included parliamentary sovereignty, Americans were coming to think of a constitution as normative rules limiting the exercise of power for the purpose of protecting the people's liberty, property, and happiness.

In declaring their independence from England, Americans in a sense reenacted the founding experience of the seventeenth century. They took what their history and political circumstances determined to be the logical step of writing constitutions to organize their political communities. Before issuing the Declaration of Independence, Congress recommended that the colonies adopt governments that "in the opinion of representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general."[7] Although some argued that the people acting in convention should form the government, political exigencies and Whig political theory conferred legitimacy on legislatures, which in all but two instances were responsible for writing or adopting the first state constitutions.

The most distinctive feature of the state constitutions—their documentary or positive character—followed the decision to form new governments as a matter of course. Given the long tradition of founding documents in America, it seemed obvious that the purposes of political community and limitations on government could be achieved better by writing a constitution than by relying on an unstipulated, imprecise constitution like England's, which did not limit government and was not really a constitution after all. Though consisting in part of written documents, the latter was too subjective, ultimately existing in men's minds and premised on the idea that "thinking makes it so."[8] Americans insisted in contrast that the principles and rules essential to organizing power and preserving liberty be separated from the government and objectively fixed in positive form. Old in the tendency it reflected though new in its comprehensive application, American constitutionalism rested on the idea that "saying makes it so," or at least the hope that putting something in writing so it can be authoritatively consulted makes it easier to achieve specified ends.[9]

Professor Lutz's illuminating research has shown that the state constitutions stand in direct line of descent from colonial founding documents which created political communities and established institutions of government. One type of founding document (compact, covenant, combination, agreement) signified mutual promise and consent by which individuals

formed a political community and identified basic values, rights, and interests. A second type of document (enactment, ordinance, frame, constitution) specified governmental institutions.[10] Half the state constitutions written between 1776 and 1789 were described as compacts and contained bills of rights that defined basic community values. In the other constitutions the design of government received principal attention. All the constitutions reflected tendencies of previous political development; none created institutions on a completely clean slate. This fact appeared more clearly in documents that were concerned mainly with establishing a framework of government. In these more modern documents, which anticipated the course of American constitutional development, community consensus yielded in importance to protection of individual rights as the main purpose of constitution-making.

In a formal sense American constitutionalism consisted in the stipulation of principles, institutions, and rules of government by the people or their representatives in the state legislatures. As constitutions are distinguished and ultimately justified by their political purpose and effect, however, the political character of the revolutionary founding documents requires consideration.

Historical scholarship in the past two decades has firmly established republicanism as the political philosophy of the American Revolution. Although lacking in precise meaning, the concept is most accurately defined as government resting on the consent of the people and directed by the public will expressed through representative institutions. In the perspective of Western political thought republican philosophy was formulated in the seventeenth century to defend liberty against absolutism. The state constitutions were republican and liberal insofar as they limited government by prescribing public decision-making procedures that prevented government officials from aggrandizing power for private benefit rather than the public good. The constitutions were liberal in yet another sense in confirming and extending the right of political participation that according to republican philosophy constituted true liberty for individuals. In many respects, however, state constitutionalism in the revolutionary era was a doctrine of community power and control that restricted individual rights in a way that would now be seen as illiberal.

Under the state constitutions the most important power in modern government — the power to make law and compel obedience — was lodged in the legislature. Unimpeded by internal governmental checks under the extreme version of the separation of powers that prevailed in the first phase of state-making, and sustained by presumptive identity with popular sovereignty as the source of political authority before the rejection of monarchy, legislatures acted forcefully to promote public virtue and the common good. Requirements of public virtue frequently took the form of restrictions on

individual liberty through sumptuary laws and statutes regulating the transfer and use of property. Bills of rights that were part of state constitutions had little effect in curbing legislative power because they were treated as hortatory rather than legally binding. In the name of popular sovereignty and patriotism, state legislatures fashioned a constitutionalism of unity and power in government.

The concentrated power of republican virtue acting through institutions of community control was a useful and perhaps necessary expedient in the wartime emergency. In the doctrines of state sovereignty and the police power, revolutionary republicanism entered into the American constitutional tradition, and has offered a compelling model of constitutional government throughout our history to reformers and radicals on both the left and the right. However, the actions of the state legislatures too plainly contradicted the constitutional meaning of the Revolution to become accepted as the principal or exclusive expression of American constitutionalism. That meaning was nowhere better stated than by the Massachusetts General Court in its Circular Letter of 1768, which declared: ". . . in all free States the Constitution is fixed; & as the supreme Legislative derives its Power & Authority from the Constitution, it cannot overleap the Bounds of it, without destroying its own foundation."[11] Yet this was precisely what was happening in the American republics.

The state constitutions may have been fundamental law in the sense of ordaining a framework of government, but they were not fundamental in the sense of controlling legislative power. In all but two states the constitution was written by the legislature and could be altered or abolished by that body if it so chose. More than language of urging and admonition, contained in many of the constitutions, was needed to transform them into effective restraints on the actual exercise of power. Nor was the technique of internal institutional balance effectively employed to limit the state legislatures. In 1784 South Carolinian Thomas Tucker echoed the complaint increasingly heard in other states when he criticized the people of his state for deriving their ideas of government too much from the British constitution, and giving the legislature powers formerly exercised or claimed under a monarchical government. Tucker argued that the South Carolina constitution, written and adopted by the legislature, was not founded on proper authority. He recommended a popular convention to amend the constitution, "fixing it on the firm and proper foundation of the express consent of the people, unalterable by the legislative, or any other authority but that by which it is to be framed."[12]

Attempts to restrict state legislative power in the 1780s broadened and reformed American constitutionalism. As Tucker suggested, writing and amending constitutions by popularly elected conventions clarified the distinction between legislative law and fundamental or paramount law. Massachusetts in 1780 and New Hampshire in 1784 wrote their constitutions in

conventions and required them to be ratified by the people in special elections. In theory this was the most effective way to make the constitution an antecedent higher law secure against legislative alteration. Further restriction of legislative power resulted from changes in the internal structure of government. Executive officers were given greater powers as checks and balances—that is, a partial and limited sharing or mixing of functional powers among the departments—were introduced in some states as modification of the separation of powers. Bicameralism, a carry-over from colonial government, was recognized as a means of making legislative action more deliberate. And courts began to play a more prominent political role by treating constitutions as higher law in relation to legislative enactments.

So strong was the tradition of community self-government under legislative sovereignty, however, that it could not easily be dislodged as the main reliance of constitutionalism. Certainly little could be done to alter it by isolated efforts in the several states. Effective reform, if that was needed, could come only from an interstate collaboration working through the state system created by the colonies when they declared their independence. Heretofore peripheral to republican political development, the union of the states in the Confederation became the focus of constitutional change.

The Continental Congress was formed by the colonies in 1774 as a coordinating and advisory body to protect American interests and eventually to pursue the cause of national independence. Exigencies of war and common concerns among the states gave Congress political power, which it exercised through informal rules and practices that were codified in the Articles of Confederation. Considered from a constitutional perspective as a limiting grant of power, the Articles were inadequate because, while they gave Congress ostensible power to do many things, they did not confer the lawmaking authority that is essential to government. Congress could at best make resolutions and recommendations, which in practice amounted to requests that the states could ignore. The Articles were unconstitutionlike in consequence of having been written by Congress and ratified by the states, rather than based in any direct way on popular authority. They were also unconstitutionlike with respect to institutional structure. Whether considered analogous to a legislative or executive body, Congress was the sole governmentlike organ, and only an evolving departmental system saved it from complete incompetence.

As an alliance or league of friendship (the description used in the document), the Articles were a more successful founding instrument. Yet in the form given it in the Articles, the Confederation was incapable of addressing in a constructive manner the defects in American government revealed in the actions of the states. The confederacy provided a field of political action, however, on which the reform of republican constitutionalism could take place. The practical impossibility of amending the Articles in order to strengthen Congress having been demonstrated, and insecurity

of liberty and property in the states apparently increasing, proponents of constitutional reform turned a last-ditch desperation move—the calling of a convention of the states at Philadelphia in May 1787—into an enduring achievement of statesmanship and constitutional invention.

Perhaps most significant, the Framers gave institutional expression to the idea that a constitution, in order to function as a limiting grant of power, must be higher as well as fundamental law. In addition to originating or organizing power, it must be maintained separate from and paramount to government. In a formal sense the Constitution as a founding document was superficially similar to the state constitutions. A preamble explained the reasons for the document, proclaimed the existence of a people and political community, defined specific purposes, and ordained a framework of government. In reality, however, the Framers departed from the model of the state constitutions. It was unnecessary to return to the fundamentals of the social compact and the purposes of republican government, as state constitution writers to varying degrees were inclined to do. The authors of the Constitution observed that they were not addressing the natural rights of man not yet gathered in society, but natural rights modified by society and interwoven with the rights of the states.[13] They knew that the nation they were creating—or, to be more precise, whose existence they were recognizing—was amorphous, loosely related in its constituent parts, and united by few principles and interests. It was far from being the kind of cohesive, integrated community that the states by contrast seemed to be, and most unlike the nation-state communities of Europe. Hence the Framers briefly addressed in the Preamble those few basic unifying purpose and values—liberty, justice, domestic peace, military defense, the general welfare—and gave virtually the entire document to stipulating the institutions and procedures of government. As fundamental law the Constitution thus was less a social compact for a coherent, like-minded community, and more a contractlike specification of the powers, duties, rights, and responsibilities among the diverse polities and peoples that constituted the American Union.

Far more effectively than writers of earlier founding instruments, the Framers made the Constitution a paramount, controlling law. In a practical sense this boiled down to a question of law enforcement. Creating a real government to operate directly on individuals throughout a vast jurisdiction raised a new and potentially difficult compliance issue, but this received little attention at the convention. It was the old compliance problem of the states that stood in the way of making the Constitution binding and effective. At first the delegates considered a congressional veto on state legislation to deal with this issue. Rejected as impracticable, the veto was replaced by the supremacy clause (Article VI, section 2), stating that the Constitution, laws made in pursuance of it, and treaties made under U.S. authority "shall

be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." This language expressed the paramountcy of the federal constitution over the states, and by inference over national legislative law as well. Not explicitly stated but implied in the judicial article was the idea that the superior force of the Constitution depended on its application and interpretation by the courts.

The higher-law character of the Constitution was further affirmed and institutionalized in the method of its drafting and in provisions for its ratification and amendment. Although delegates to the Philadelphia Convention were appointed by the state legislatures rather than elected by the people, the Constitution was a more genuine expression of the will of the people than were the Articles of Confederation, which were written by Congress. It has always been difficult for historians convinced of the democratic character of the Articles to admit this fact, but the Framers' acknowledged apprehension about unlimited popular rule does not gainsay their commitment to the republican idea that government derives its just powers from the consent of the governed. Consistent with this commitment, institutions of direct popular consent that were still exceptional at the state level were incorporated into the national constitution. Ratification would be decided by conventions in the states, presumably popularly elected. Amendment of the Constitution could occur through popular approval in state legislatures or special conventions, of proposals recommended by Congress or by a convention to be called by Congress on the application of two-thirds of the state legislatures. The superiority of the Constitution to legislative law was enhanced by this provision for its amendment, since an utterly fixed and inflexible political law would become irrelevant to the task of governing an expanding society. If the Constitution required change, however, the people must amend it. Thus were popular sovereignty and the higher-law tradition incorporated into American constitutionalism.

To make the Constitution paramount law in operational fact, however, it was not enough to assert its supremacy and assume that the people's innate law-abidingness would give it effect. This was to rely on "paper barriers," concerning the efficacy of which there was much skepticism among the Framers. It was necessary also to structure the organs of government so that power would be internally checked and limited.

A persistent theme in constitutional theory since the late nineteenth century has been that power should be concentrated and unified—the more so the better, in order to deal with social problems—provided only that government be kept responsible through institutions of political accountability and the rule of law. Although the Framers' objective was to create coercive authority where none existed, they rejected concentrated sovereign power as a proper constitutional principle. Delegated, divided, reciprocally limiting power formed the motif of their institutional design.

Unlike the state constitutions, which organized the inherent plenary power of the community, the Constitution delegated specific powers to the general government. The contrast was most significant in the plan of the legislative department, to which the state constitutions assigned "the legislative power" and which the federal constitutions defined by the enumeration of congressional powers. Stable and energetic government seeming to require a strong executive and an independent judiciary, the Constitution made grants of power of a more general nature to these branches, which under the separation of powers were a counterweight to the lawmaking department. The separation principle by itself, however, as the state experience showed, was not a sufficient limitation on legislative power. Accordingly, checks and balances, by which each branch was given a partial and limited agency in the others' power, as in executive participation in legislation through the veto or legislative judging in the impeachment process, built further restraints into the Constitution.

The structure of the Union of course presented the most urgent question of institutional arrangements affecting the constitutional reality of a supreme political law. A division of power was already evident in the plan of the Articles of Confederation; what was needed was to transform the Union's political authority into the genuine power to impose lawful requirements on its constituent parts. This was achieved by reconstituting the Confederation as a compound republic, based both on the people and the states. Once this was accomplished, the pertinent fact for the paramountcy of the Constitution was the division of sovereignty. By giving the central government power over objects of general concern and allowing the states to retain almost all of their authority over local matters, the Framers divided sovereignty, thereby effectively eliminating it from the constitutional order. Arguments were certain to arise about the nature and extent of the powers of the several governments in the American state system, but the effect of such controversy would be to focus attention on the Constitution as the authoritative source of answers to questions about the rights of constituent members.

The Constitution was both fundamental and higher law because it expressed the will of the people, the ultimate source of authority in America. But it would truly limit power only if it was superior to the people themselves as a political entity, as well as to the legislative law. At the time some theorists of popular sovereignty argued that the people could alter their government at will, exercising the right of peaceful revolution and disregarding legalities of form and procedure, even as the Framers did in drafting and securing ratification of the Constitution against the express requirements of the Articles of Confederation. However we view their action—as illegal, unconstitutional, revolutionary, or merely statesmanlike—the authors of the Constitution rejected the notion of unlimited popular sovereignty. They provided restraints on the people in the form of a limited

number of offices, long terms of office, indirect elections, large electoral districts, and separated and balanced departments of government. Although these provisions have often been viewed as antidemocratic and in conflict with republican theory, they are more accurately seen as modifying the popular form of government adopted during the Revolution. The Framers' intent, as James Madison wrote in *The Federalist* #10, was to supply "a republican remedy for the diseases most incident to republican government." [14] And one should not forget that despite careful distribution and balancing of authority, Congress remained potentially the most powerful branch of the government, most responsive to the people and possessed of the lawmaking power.

Making the Constitution effective as a permanent higher law involved matters of form, procedure, and institutional structure. Yet as procedural issues carry substantive implications, and means sometimes become ends in themselves, it is also necessary to ask what a constitution is for. To prevent tyranny, the constitutionalist goal, is to create a space in which differences among people become manifest, in which politics can appear and questions of purpose arise. If running a constitution always reflects political concerns, making a constitution is all the more a form of political action that derives from or partakes of political philosophy. We thus consider the purposes and ends of the Framers' constitutionalism.

If the end of the English constitution was acknowledged to be political freedom, Americans were all the more emphatic in declaring liberty to be the purpose of their constitutions. Moreover, if the purpose of politics in modern times, as the history of political thought teaches us, is to protect men's natural rights rather than to make them virtuous and good as the ancients thought, then American constitutions were liberal in purpose. Yet the concept of liberty, universally embraced as a political good, can obviously be defined in different ways. And while recognition of natural rights gave modern politics a new purpose, it is equally true that virtue and moral excellence did not disappear from political discourse. In light of these considerations we may discern two conceptions of political freedom in the constitutionalism of the founding period. The first refers to the liberty of self-governing political communities, which were still thought to have an obligation to make men virtuous and on which individuals depended for their happiness and well-being. The second conception of freedom rests on the primacy of natural rights and generally asserts individual liberty over community consensus as the purpose of government.

Although these conceptions of liberty stand in theoretical opposition to each other, they coexisted in the Revolutionary era. After protesting imperial policies in the language of English constitutional rights, Americans justified national independence by appealing to universal natural rights. Wartime exigencies required decisive political action, however, which was

based on the right of local communities to control individuals for the sake of the common good. States interfered with the liberty and property of individuals by controlling markets, restricting personal consumption, awarding monopoly privileges, and limiting imports and exports. They also regulated the speech and press freedoms of persons suspected of disloyalty to the patriot cause. In many ways Revolutionary republicanism subordinated the rights of individual citizens to the community, defining true liberty as the pursuit of public happiness through political action.

Reacting against state encroachments on liberty and property, the Constitution makers of 1787 emphasized protection of individual rights rather than promotion of virtue and community consensus as the purpose of government. Rather than an unattainable ideal of public virtue in ordinary citizens, they appealed to enlightened self-interest as the social reality on which the Constitution would rest. The Framers recognized factional conflict as a limiting condition for creating a constitution, yet also as an opportunity for broadening and redefining republican government. Alongside the communitarian ideal, which remained strong in many states, they created a new constitutional model in the complex and powerful government of the extended republic, based partly on the people yet so structured and limited that individual liberty, property, and pursuit of personal interests would be substantially protected against local legislative interference. This is not to say that mere private enrichment at the expense of the community good or general welfare was the end of the Constitution. The concepts of virtue and the public interest remained integral to political thought and discourse. But virtue assumed a new meaning as the prudent and rational pursuit of private commercial activity. Instead of telling people how to live in accordance with a particular conception of political right or religious truth, the Framers promoted ends believed beneficial to all of society—peace, economic growth, intellectual advancement—by accommodating social competition and upholding citizens' natural rights against invasion by the organized power of the community, whether local, state, or national.

The Founding Fathers are often seen as antidemocratic because they created a strong central government, removed from direct popular and local community control, which they expected to be managed by an aristocratic elite. Notwithstanding its foundation in popular sovereignty and protection of individual liberty and rights, the Constitution in this view contradicted the real meaning of the Revolution, defined as rule by local communities guided by republican civic virtue. Yet while the Revolution stood for government by consent, there is no sound reason for regarding Revolutionary state-making as the single true expression of the republican principle. It was an essential part of that principal that government should operate through law to which all were subordinate, both citizens and government officials, and further that legislative law should be controlled by the higher law of the Constitution. This was the meaning of the rule of law in the United States,

and its more complete realization in the Constitution of 1787 signified climax and fulfillment of the Revolution.

The Framers' purpose must also be considered in relation to the threat of national disintegration, either from internal discord or foreign encroachment, that has traditionally characterized accounts of the "critical period" in American history. The weakness of Congress in discharging its responsibilities was surely an impediment to protecting American interests, and an embarrassment to patriotic men. Yet the belief that national disintegration was imminent perhaps depends too much on the idea, borne of subsequent crises, that American nationality must be expressed through a strong central government or else it cannot exist. Some degree of formal cooperation among the states was necessary, but America could have existed as a plural nation, as it did in the Confederation period (and to an important extent continued to do under the Constitution). The problem in 1787 was not the threat of total rupture of the Union attended by actual warfare among the states. The problem was the character of American politics and government, or the nature and tendency of republican government. Republicanism was the defining idea of the nation, and without it we may say that America would no longer exist. The country was growing in the 1780s as population expanded, economic development occurred, westward settlement continued. Yet the state system of 1776 was incapable of adequately accommodating and guiding this development. The states were too strong for the good of republican principles, the Union not strong enough. By restructuring the state system, by reconstituting the Union on a republican constitution that crystallized tendencies in congressional–state relations in the 1780s, the Framers sought to reform American government to the end of securing the republican ideals of the Revolution.

We are so accustomed to thinking of constitutions as a reflection of, and hence determined by, social forces that we tend not to consider that the historical significance of the Constitution really was to demonstrate, as Alexander Hamilton wrote in *The Federalist* #1, that men are "capable . . . of establishing good government from reflection and choice."[15] Historical analysis may lead to the conclusion, for example, that the idea of a constitution as a higher, fixed law appealed to colonial Americans as an effective means of protesting imperial policy. Not so readily do we entertain the view that the constitutionalism of 1787 was based on a sound understanding of human nature, that it propounded valid principles of government, that it possessed intrinsic and not merely instrumental value. These are normative reflections more appropriate to political science, and an older political science at that, than to history. In writing about constitutionalism, however, it is hard categorically to deny a normative dimension, because the basic questions — the effectiveness of limitations on government, abuses of power, the nature of liberty — defy objective measurement.[16]

Yet, while historical analysis need not judge whether the Framers formulated a valid science of politics, it can employ as an evaluative criterion the requirement that a constitution must recognize and conform to a people's principal characteristics and nature. Considered from this point of view the achievement of the Founding Fathers is undeniable. They created a complex government of delegated and dispersed, yet articulated and balanced powers based on the principle of consent. Confirmation of that principle was in turn required by the Constitution in the cooperation and concurrence among the branches of government that was necessary for the conduct of public business. Made for an open, acquisitive, individualistic, competitive, and pluralistic society, the Constitution ordered the diverse constituent elements of American politics. More than merely a neutral procedural instrument for registering the play of social forces, it was a statement of ends and means for maintaining the principles that defined Americans as a national people. The Framers made a liberal constitution for a liberal society.

That the nation now marks the bicentennial of the Constitution is perhaps evidence enough of the Framers' success in establishing a new kind of constitutional government. Yer formal continuity may conceal substantive alterations. We need to ask how the higher-law and limited-power constitutionalism expressed in the document of 1787 actually worked in practice.

It is a striking fact, considering the unhappy outcome of most revolutions and the high rate of failure of constitution-makers in the twentieth century, that the Constitution was not only formally ratified but quickly accorded full political legitimacy. The state constitutions, while not merely pretextual or façade documents, were not invoked and applied in the actual conduct of government as the United States Constitution was. And the new federal instrument was more than accepted: it rapidly became an object of veneration. This "cult of the Constitution," as it has unappreciatively been described by many students of American government, requires explanation.

Historians have offered a number of reasons for constitution worship, including popular identification of the document with economic prosperity; the Federalists' propagandizing to create an instant tradition of the Constitution and inculcate public commitment to it; the people's need for a unifying social myth and object of loyalty to replace monarchy as a course of authority. It has further been argued that Anti-Federalist critics of the document in the ratification debate became its most vigorous supporters because of ideological conditioning that led them to treat it as an ancient constitution requiring literalistic defense to prevent political corruption. More broadly we may say that the Constitution took deep and abiding hold on the American political mind because it reflected a sober regard for the propensities of ordinary human nature and the realities of republican society; created powerful institutions capable of attracting men of talent, ambition, and enlarged

civic outlook; and introduced changes in the conduct of public affairs that most people saw as improvements and that caused them to form an interest in the government it created.

The Constitution stipulated institutions, rules, and procedures embodying and symbolizing the principles of republican liberty, national unity, and balance and limitation of power. It was a fixed, objective document that could be consulted and applied, not a formless assemblage of principles, statutes, and decisions carried about in men's minds and dependent on social internalization for its effect. Yet the Constitution's principles and provisions were general and ambiguous enough to allow of varying interpretations. Liberty, union, and reciprocally limiting power meant different things to different people, as did the rules and institutional arrangements expressing and embodying them. At a superficial level this circumstance produced conflict, but at a deeper level the effect was unifying. For groups and individuals were encouraged to pursue political goals within the framework of rules and requirements established by the Constitution. Thus the document became permanent and binding. In the language of social science it was an integrative mechanism. Only the most extreme groups in our history—radical abolitionists and slaveholders in the nineteenth century, totalitarian parties in the twentieth—have repudiated the Constitution as a framework for political action.

The Constitution possessed force and effect because it was useful and relevant to political life. Responsive to the social environment, it had instrumental value. At the same time, repeated reference to the document as the source and symbol of legitimate authority confirmed its intrinsic value, apart from the practical results of specific controversies. People believed, in other words, that it was important to follow the Constitution for its own sake or for the common good, rather than for a particular political reason. The intrinsic value of the Constitution lay not only in the wisdom and reasonableness of its principles in relation to the nature of American society but also in the form those principles were given in a written instrument. The effect of the Constitution as binding political law has much to do with its textual character.

The Framers addressed this issue in discussing "parchment barriers." The state constitutions were evidence that written stipulations were no guarantee of performance, especially when it came to limiting legislative power. Madison in particular said it was not enough to erect parchment barriers in the form of constitutional provisions stating that the legislative department must confine itself to lawmaking. It was further necessary to arrange the interior structure of government so that the constituent parts would limit each other. Personal motives of ambition and interest, Madison reasoned, when linked with a constitutional office would lead men to resist encroachments from other departments. These were the "auxiliary precautions" (supplementing accountability to the people) that would oblige government to control itself.[17] Madison was saying that pluralistic differences in opinion and interest are necessary to make the prescriptions of the text function effectively.

Nevertheless, American constitutionalism insists that the text of the fundamental law be given its due. Madison's auxiliary precautions are in fact rules written into the document. We may agree with an early writer who said political legitimacy consisted "not in the words and letters of the Constitution; but in the temper, habits, and the practices of the people."[18] But it is equally true that while the written text may not be sufficient, it is necessary to achieve the purposes of constitutionalism, or so it has seemed most of the time to Americans. In the Constitutional Convention Rufus King said he was aware that an express guarantee of states' rights, which he favored, would be regarded as "a mere paper security." But "if fundamental articles of compact are no sufficient defence against physical power," King declared, "neither will there be any safety against it if there be no compact."[19] The observation of Carl J. Friedrich is in point: "The 'constitution' tends to become a symbol, and its provisions become so many symbols in turn. It is this symbolic function of *words* which makes the constitution a political *force*."[20]

Reference to the constitutional text has been a fixed feature of American politics. Its significance and effect have been variously estimated. A long tradition of criticism holds that the document has failed to limit government, especially the federal government in relation to the states. Others argue that constant invoking of the Constitution has trivialized politics by translating policy debate into legalistic squabbles that discourage dealing with issues on their merits. Reformers seeking a more programmatic politics have lamented that the Constitution by fragmenting power prevents responsible party government. And still others contend that the Constitution has worked precisely as intended: to eliminate genuine political action and make citizens passive subjects interested in private economic pursuits rather than public happiness and civic virtue.

These criticisms misunderstand the nature of constitutional politics and hence the binding and configurative effect of the Constitution. If politics is concerned with the end or purpose of political community, the proper role of government, the relationship between the individual and society, then it is difficult to see how the Constitution can be said to have brought an end to politics or prevented political action. As an expression of modern liberalism, however, the Constitution did signify a change in the nature of politics. To elevate natural rights into constitutionally protected civil rights, as the Framers did, was to discourage an older politics based on the pursuit of glory, honor, conquest, and political or religious truth, as well as a newer ideological politics borne of modern revolution. The Framers' constitutionalism was a way of organizing political life that paradoxically placed certain principles, rules, and procedures beyond politics, according them the status

of fundamental and paramount law. Premised on the idea that citizens could pursue private interests while preserving community, it was intended to limit the scope and intensity of politics, preventing a total absorption of society that would impose tyranny in the name of ruler, party, people, or community.

Starting in the 1790s and continuing with remarkable continuity to the present day, public policy advocates have charted courses of action with reference to the Constitution. Using constitutional language firmly embedded in political rhetoric, such as due process of law, equal protection of the law, separation of powers, etcetera, they invoke its principles and values to justify their goals, argue over the meaning of its requirements, and align themselves with its manifest tenor as explicated in constitutional law and legislation. Political leaders do this not because they are unwaveringly committed to a specific constitutional principle; in different circumstances they may advocate a different principle. The decisive fact is the high public status accorded the Constitution: policymakers and political actors know that the people take the Constitution seriously, regard it as supreme law, believe it is powerful because embodying sound principles of government and society's basic values, and, indeed, venerate it. Aware of this popular prejudice in favor of the Constitution, and seeking the approval of public opinion, political groups and individuals are constrained to act in conformity with its provisions. Thus the Constitution as binding political law shapes the form and content of policies and events.

The constraining effect of the Constitution might nevertheless be questioned, for it will appear obvious that while some requirements are unequivocally clear (for example, the minimal age of the president), many provisions are ambiguous and imprecise in meaning. Facing this fact, many scholars have concluded that there is no single true meaning of the Constitution, rather several possible readings of it none of which possesses exclusive legitimacy. Some contend there is no real Constitution against which arguments about it can be evaluated, only different assertions as to what the Constitution is at any given time, or what we want it to be. Expressed in the oft-cited statement that the Constitution is what the Supreme Court says it is, this view, carried to its logical conclusion, would mean that the American Constitution is a developing, evolving, growing thing that is changed by the actions of judges, lawmakers, and executive officers. In that case the Constitution ceases to be a fixed, prescriptive, paramount law.

Politically and historically realistic as this analysis appears, it has never been accepted as legitimate in constitutional theory or in the conduct of constitutional politics. From the standpoint of the people and their representatives, the Constitution, in both its procedural requirements and essential principles, has a true, fixed, ascertainable meaning. This popular understanding has existed from the beginning of constitutional politics in the debate over ratification, and it will probably continue until the popular

belief that the Constitution as a document says what it means and means what it says, is eroded or superseded by a more sophisticated view of the nature of texts and political language. There is still a strong tendency in public opinion to think that written constitutions, in Jefferson's words, "furnish a text to which those who are watchful may again rally and recall the people: they fix too for the people principles for their political creed."[21]

The importance of the constitutional text in American government has been raised anew in recent years in the controversy over original-intent jurisprudence. Many legal scholars have expressed doubt about the wisdom and legitimacy of consulting the original intent of the Constitution or its authors in settling constitutional disputes. The words of the text, it is argued, apart from anything that its authors may have written or said about its meaning, must be considered as expressing the original intent. And the text must be read and understood according to the accepted meaning of words in the interpreter's own time, place, and historical situation.[22] Some dispose of original intent more directly by asserting that constitutional interpretation need not be bound by the constitutional text, but may be based on fundamental social values and conceptions of justice and moral progress that judges are specially qualified to understand and apply. Either way, the Constitution is assured of its status as a "living document" adaptable to changing social conditions.

Although there may be sound reasons for disconnecting constitutional politics from original intent, from a historical standpoint it seems clear that neither the Framers nor the people over 200 years have taken so narrow a view of the meaning and relevance of original intent. The purpose of making a fixed, objective constitution was to decide the most important basic questions about politics and government once and for all—or until the people changed their mind and amended the document. The idea was to bind future generations in fundamental ways. This purpose would be defeated if those who later ran the Constitution were free to substitute their own definitions of its key terms. Yet the fact remains that constitutional principles and rules have been reinterpreted and redefined, in apparent contradiction of the Framers' intent, in decisions and statutes that have been accepted as politically legitimate. The Supreme Court has in a sense acted as a continuing constitutional convention.

Although the Founding Fathers intended the Constitution to be permanent and binding, the language of the document cannot realistically or reasonably, in a categorical sense, be frozen in its eighteenth-century meaning. It is the Constitution's essential purposes, its fundamental principles and procedures that were not intended to change. The question to be asked is whether fundamental principles and values—the values of individual liberty, national union, distributed and balanced power, the consent of the people—can be defined in an authoritative text and thereby realized in public law and policy to the satisfaction of the political community. Ameri-

can political history generally provides an affirmative answer to this question. But it is important to remember that an overriding imperative in American politics, law, and government has been to reconcile public policy with constitutional principles and rules as embodied in the text, and in accordance with the Framers' intentions. Moreover, original intent has not been viewed in the narrowly positivistic manner urged by current critics of original-intent jurisprudence. The text was thought to have a definite and lasting meaning, and speeches, writings, and letters of the authors of the Constitution have always been thought pertinent to the task of elucidating its meaning. Whatever the practical effect of dismissal of the text and repudiation of original intent would be, such a step would alter the historic character of American constitutionalism.

The issue of original intent is pertinent to the larger question of the purpose of the Constitutional Bicentennial. What is it that we seek in study and commemoration of the Constitution? In a sense the purpose is the same that informs all historical investigation, namely, the desire to learn how things came to be as they are. Yet commemoration of the founding has implications different from other historical celebrations and remembrances because the Constitution is peculiarly and directly relevant to public life. Historical knowledge about it therefore acquires special political significance. Of course any number of politically interested purposes may be served by facts about the founding, including defense of the original-intent position in the contemporary debate over constitutional adjudication. Broadly conceived, however, the bicentennial may be viewed as having the fundamental purpose of clarifying and confirming the meaning of American nationality.

Diverse in ethnic, religious, cultural, and social characteristics, Americans were united in 1776 by the political principles set forth in the Declaration of Independence. Inchoate though it was, the new nation was defined by these principles—liberty, equality, government by consent, the pursuit of happiness as an individual right—which in various ways were written into the state constitutions. By establishing a republican government for the nation, the Framers of the Constitution confirmed these principles, completing the Revolution and making it permanent. Since then American politics has derived from and been shaped by the Constitution, and has periodically been renewed by popular movements resulting in electoral realignments that have included a return to the first principles of the founding as an essential element. After more than 200 years the United States may be old enough and sufficiently secure in its national identity to exist apart from the political principles that marked its appearance in the world. On the other hand, it may not be, in which case the nation still depends for its existence on preserving the principles of the founding. And when one reflects that a great deal of writing about the Constitution has been shaped

by attitudes hostile to the Framers, such as those of the Beardian school, the possibility of gaining useful insight into the nature of our fundamental law through historical investigation warrants serious consideration.

Bicentennial activities will focus attention on the text of the Constitution, and this as a matter of course. (The American Political Science Association and the American Historical Association, in describing their conjoint Project '87 for commemorating the Constitution, state that its purpose is to promote "public understanding and appraisal of this unique document.") From a social science point of view the documentary character of the Constitution is easily exaggerated; the internalization of principles and values in officials and citizens is seen as the essential thing in achieving constitutionalist purposes. Looked at in this light, the American Constitution is not and never has been simply the text of the Constitution, but consists in addition in concepts not expressly written in the document, such as the rule of law or the presumption of innocence, as well as institutions and practices that derive from political sources, such as the party system. From the standpoint of public opinion, however, legitimacy in American government still appears dependent upon or derived from direct reference to or necessary inference from the text of the Constitution. Perhaps the text-based constitutional order, in a society as open, pluralistic, and dynamic as the United States, has been an obstacle to the kind of internalization of values that characterizes English political life. After 200 years Americans still seem to be constitutional fundamentalists in regarding the text and original intent as conclusive of legitimate authority. Or perhaps we should say that while a narrow, legalistic textualism has not been the dominant characteristic of constitutional government in America, when an issue is made of the constitutional text the people will insist on the indispensable documentary foundation of constitutionalism.

Understanding this attachment to the constitutional text has often been difficult for scholars and intellectuals, who tend to disparage it as Constitution worship. Perhaps reverence for the Constitution expresses not so much a naive literalism, however, as an awareness of the act of foundation as a source of authority. Considered in this perspective the constitutional text stands for the founding, and the principles written into the document symbolically represent values evident in the actions of the Framers. The founding required rational discussion, deliberation, compromise, and choice; consent, concurrence, and mutual pledging. These procedural values are embodied in constitutional provisions which require government under a fixed institutional structure and by deliberative processes that depend on compromise and concurrence, in accordance with substantive principles of natural rights, consent, and limited and balanced power.

We study the making of the Constitution for the same reason Americans have always turned to the founders: to strengthen and preserve our character as a free people, to continue on a course that has brought us

prosperity as a nation. In a world in which governments that impose tyranny on their people are described by some as democracies, we study the founding in an effort to achieve the substance of liberty and natural rights that we believe it is the purpose of government to secure. Ultimately, commemoration of the Constitution expresses the belief that the principles, institutions, and procedures of free government cannot be maintained if divorced from the purpose, intention, and spirit of the Framers of our fundamental law.

CONSTITUTIONALISM AND THE AMERICAN FOUNDING (pp. 333–354)

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2. Quoted in McIlwain, *Constitutionalism*, p. 3.

3. Daniel J. Boorstin, *The Mysterious Science of the Law* (Boston, 1958), pp. 155–159.

4. J. W. Gough, *Fundamental Law in English Constitutional History* (Oxford, 1955), pp. 174–191.

5. Donald S. Lutz, "From Covenant to Constitution in American Political Thought," *Publius*, 10 (Fall 1980):101–133.

6. Daniel Shute, *An Election Sermon* (1768), in Charles S. Hyneman and Donald S. Lutz, eds., *American Political Writings during the Founding Era, 1760–1805*, 2 vols. (Indianapolis, 1983), vol. I, p. 117.

7. Quoted in Fletcher M. Green, *Constitutional Development in the South Atlantic States, 1776–1860* (New York, 1966), p. 54.

8. Benjamin Fletcher Wright, *Consensus and Continuity, 1776–1787* (Boston, 1958), p. 10.

9. Walton H. Hamilton, "Constitutionalism," *Encyclopedia of the Social Sciences* (New York, 1937), vol. III, p. 255; Aaron Wildavsky, "Why Amending the Constitution Is Essential to Achieving Self-Control Through Self-Limitation of Expenditure," *The Bureaucrat*, 9 (Spring 1980):53.

10. Lutz, "From Covenant to Constitution"; Lutz, "The Purposes of American State Constitutions," *Publius*, 12 (Winter 1982):27–44.

11. Henry Steele Commager, ed., *Documents of American History* (New York, 1963), p. 66.

12. Thomas Tucker, *Conciliatory Hints, Attempting by a Fair State of Matters, to Remove Party Prejudice*, in Hyneman and Lutz, eds., *American Political Writings*, vol. I, p. 620.

13. Max Farrand, ed., *The Records of the Federal Convention of 1787*, 4 vols. (New Haven, 1911–1937), vol. II, p. 137.

14. *The Federalist*, ed. Edward Mead Earle (New York, 1938), p. 62.

15. Ibid., p. 3.

16. Observing that the purpose of constitutional government is to prevent tyranny, and that the exact definition of where tyranny begins is difficult to establish, M. J. C. Vile writes: "There are inescapable value-judgments here, and we must accept that a discussion of constitutionalism can only begin by pointing to certain specific examples of societies which are asserted to be non-tyrannical, and to attempt to elucidate their major characteristics," *Constitutionalism and the Separation of Powers* (New York, 1967), p. 308.

17. *The Federalist*, p. 337.

18. Samuel Miller, Sermon (1795), quoted in Michael Lienesch, "The Constitutional Tradition: History, Political Action and Progress in American Political Thought," *Journal of Politics*, 42 (1980):7.

19. Farrand, ed., *Records of the Federal Convention*, vol. I, p. 493.

20. Carl J. Friedrich, *Constitutional Government and Democracy*, 4th ed. (Waltham, Mass., 1968), 169; emphasis in original.

21. Quoted in Charles A. Miller, *The Supreme Court and the Uses of History* (Cambridge, Mass., 1969), p. 184.

22. H. Jefferson Powell, "The Original Understanding of Original Intent," *Harvard Law Review*, 98 (1985):855–947.

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THE FIRST ORATION AGAINST VERRES.

THE ARGUMENT.

After the last oration it was decided that Cicero was to conduct the prosecution against Verres; accordingly, a hundred and ten days were allowed him to prepare the evidence, with which object he went himself to Sicily to examine witnesses, and to collect facts in support of his charges, taking with him his cousin Lucius Cicero as an assistant, and in this journey, contrary to all precedent, he bore his own expenses, resolving to put the island to no charge on his account. At Syracuse the prætor, Metellus, endeavoured to obstruct him in his inquiries, but the magistrates received him with great respect, and, declaring to him that all that they had previously done in favour of Verres (for they had erected a gilt statue of him, and had sent a testimonial of his good conduct and kind government of them to Rome) had been extorted from them by intrigue and terror, they delivered into his hands authentic accounts of many injuries their city had received from Verres, and they revoked by a formal decree the public praises which they had given him. Messana, however, continued firm in its engagements to Verres, and denied Cicero all the honours to which he was entitled. When he finished his investigations, apprehending that he might be waylaid by the contrivance of Verres, he returned by sea to Rome, where he found intrigues carrying on to protract the affair as much as possible, in order to delay the decision of it till the year following, when Hortensius and Metellus were to be the consuls, and the brother of Metellus was to be prætor, by whose united authority the prosecution might be stifled: and it was now so late in the year that there was not time to bring the trial to an end, if the ordinary course of proceeding was adhered to. But Cicero, determined to bring on the decision while Glabrio continued prætor, abandoned his idea of making a long speech, and of taking up time in dilating on and enforcing the different counts of the indictment, and resolved to do nothing more than produce his witnesses, and offer them to examination; and this novel method of conducting the case, together with the powerful evidence produced, which he could not invalidate, so confounded Hortensius, that he could find nothing to say in his client's defence, who in despair went of his own accord into banishment.

The object of Cicero in this oration is to show that it is out of sheer necessity that he does this, and that he is driven to such a proceeding by the intrigues of the opposite party. He therefore exhorts the judges not to be intimidated or cajoled into a dishonest decision, and threatens the opposite party with punishment for endeavouring to corrupt the judges.

I. That which was above all things to be desired, O judges, and which above all things was calculated to have the greatest influence towards allaying the unpopularity of your order, and putting an end to the discredit into which your judicial decisions have fallen, appears to have been thrown in your way, and given to you not by any human contrivance, but almost by the interposition of the gods, at a most important crisis of the republic. For an opinion has now become established, pernicious to us, and

pernicious to the republic, which has been the common talk of every one, not only at Rome, but among foreign nations also,—that in the courts of law as they exist at present, no wealthy man, however guilty he may be, can possibly be convicted. Now at this time of peril to your order and to your tribunals, when men are ready to attempt by harangues, and by the proposal of new laws, to increase the existing unpopularity of the senate, Caius Verres is brought to trial as a criminal, a man condemned in the opinion of every one by his life and actions, but acquitted by the enormousness of his wealth according to his own hope and boast. I, O judges, have undertaken this cause as prosecutor with the greatest good wishes and expectation on the part of the Roman people, not in order to increase the unpopularity of the senate, but to relieve it from the discredit which I share with it. For I have brought before you a man, by acting justly in whose case you have an opportunity of retrieving the lost credit of your judicial proceedings, of regaining your credit with the Roman people, and of giving satisfaction to foreign nations; a man, the embezzler of the public funds, the petty tyrant of Asia and Pamphylia, the robber who deprived the city of its rights, the disgrace and ruin of the province of Sicily. And if you come to a decision about this man with severity and a due regard to your oaths, that authority which ought to remain in you will cling to you still; but if that man's vast riches shall break down the sanctity and honesty of the courts of justice, at least I shall achieve this, that it shall be plain that it was rather honest judgment that was wanting to the republic, than a criminal to the judges, or an accuser to the criminal.

II. I, indeed, that I may confess to you the truth about myself, O judges, though many snares were laid for me by Caius Verres, both by land and sea, which I partly avoided by my own vigilance, and partly warded off by the zeal and kindness of my friends, yet I never seemed to be incurring so much danger, and I never was in such a state of great apprehension, as I am now in this very court of law. Nor does the expectation which people have formed of my conduct of this prosecution, nor this concourse of so vast a multitude as is here assembled, influence me (though indeed I am greatly agitated by these circumstances) so much as his nefarious plots which he is endeavouring to lay at one and the same time against me, against you, against Marcus Glabrio the prætor, and against the allies, against foreign nations, against the senate, and even against the very name of senator; whose favourite saying it is that they have got to fear who have stolen only as much as is enough for themselves, but that he has stolen so much that it may easily be plenty for many; that nothing is so holy that it cannot be corrupted, or so strongly fortified that it cannot be stormed by money. But if he were as secret in acting as he is audacious in attempting, perhaps in some particular he might some time or other have escaped our notice. But it happens very fortunately that to his incredible audacity there is joined a most unexampled folly. For as he was unconcealed in committing his robberies of money, so in his hope of corrupting the judges he has made his intentions and endeavours visible to every one. He says that once only in his life has he felt fear, at the time when he was first impeached as a criminal by me; because he was only lately arrived from his province, and was branded with unpopularity and infamy, not modern but ancient and of long standing; and, besides that, the time was unlucky, being very ill-suited for corrupting the judges. Therefore, when I had demanded a very short time to prosecute my inquiries in Sicily, he found a man to ask for two days less to make investigations in Achaia;1 not with any real intention of doing the same with his diligence and

industry, that I have accomplished by my labour, and daily and nightly investigations. For the Achæan inquisitor never even arrived at Brundusium. I in fifty days so travelled over the whole of Sicily that I examined into the records and injuries of all the tribes and of all private individuals, so that it was easily visible to every one, that he had been seeking out a man not really for the purpose of bringing the defendant whom he accused to trial, but merely to occupy the time which ought to belong to me.

III. Now that most audacious and most senseless man thinks this. He is aware that I am come into court so thoroughly prepared and armed, that I shall fix all his thefts and crimes not only in your ears, but in the very eyes of all men. He sees that many senators are witnesses of his audacity; he sees that many Roman knights are so too, and many citizens, and many of the allies besides to whom he has done unmistakeable injuries. He sees also that very numerous and very important deputations have come here at the same time from most friendly cities, armed with the public authority and evidence collected by their states. And though this is the case, still he thinks so ill of all virtuous men, to such an extent does he believe the decisions of the senators to be corrupt and profligate, that he makes a custom of openly boasting that it was not without reason that he was greedy of money, since he now finds that there is such protection in money, and that he has bought (what was the hardest thing of all) the very time of his trial, in order to be able to buy everything else more easily; so that, as he could not by any possibility shirk the force of the accusations altogether, he might avoid the most violent gusts of the storm. But if he had placed any hope at all, not only in his cause, but in any honourable defence, or in the eloquence or in the influence of any one, he would not be so eager in collecting and catching at all these things; he would not scorn and despise the senatorial body to such a degree, as to procure a man to be selected out of the senate at his will to be made a criminal of, who should plead his cause1 before him, while he in the meantime was preparing whatever he had need of. And what the circumstances are on which he founds his hopes, and what hopes he builds on them, and what he is fixing his mind on, I see clearly. But how he can have the confidence to think that he can effect anything with the present prætor, and the present bench of judges, I cannot conceive. This one thing I know, which the Roman people perceived too when he rejected2 the judges, that his hopes were of that nature that he placed all his expectations of safety in his money; and that if this protection were taken from him, he thought nothing would be any help to him.

IV. In truth, what genius is there so powerful, what faculty of speaking, what eloquence so mighty, as to be in any particular able to defend the life of that man, convicted as it is of so many vices and crimes, and long since condemned by the inclinations and private sentiments of every one. And, to say nothing of the stains and disgraces of his youth, what other remarkable event is there in his quæstorship, that first step to honour, except that Cnæus Carbo was robbed by his quæstor of the public money? that the consul was plundered and betrayed? his army deserted? his province abandoned? the holy nature and obligations imposed on him by lot3 violated?—whose lieutenancy was the ruin of all Asia and Pamphylia, in which provinces he plundered many houses, very many cities, all the shrines and temples; when he renewed and repeated against Cnæus Dolabella his ancient wicked tricks when he had been quæstor, and did not only in his danger desert, but even attack and

betray the man to whom he had been lieutenant, and proquæstor,1 and whom he had brought into odium by his crimes;—whose city prætorship was the destruction of the sacred temples and the public works, and, as to his legal decisions, was the adjudging and awarding of property contrary to all established rules and precedents. But now he has established great and numerous monuments and proofs of all his vices in the province of Sicily, which he for three years so harassed and ruined that it can by no possibility be restored to its former condition, and appears scarcely able to be at all recovered after a long series of years, and a long succession of virtuous prætors. While this man was prætor the Sicilians enjoyed neither their own laws, nor the decrees of our senate, nor the common rights of every nation. Every one in Sicily has only so much left as either escaped the notice or was disregarded by the satiety of that most avaricious and licentious man.

V. No legal decision for three years was given on any other ground but his will; no property was so secure to any man, even if it had descended to him from his father and grandfather, but he was deprived of it at his command; enormous sums of money were exacted from the property of the cultivators of the soil by a new and nefarious system. The most faithful of the allies were classed in the number of enemies. Roman citizens were tortured and put to death like slaves; the greatest criminals were acquitted in the courts of justice through bribery; the most upright and honourable men, being prosecuted while absent, were condemned and banished without being heard in their own defence; the most fortified harbours, the greatest and strongest cities, were laid open to pirates and robbers;2 the sailors and soldiers of the Sicilians, our own allies and friends, died of hunger; the best built fleets on the most important stations were lost and destroyed, to the great disgrace of the Roman people. This same man while prætor plundered and stripped those most ancient monuments, some erected by wealthy monarchs and intended by them as ornaments for their cities; some, too, the work of our own generals, which they either gave or restored as conquerors to the different states in Sicily. And he did this not only in the case of public statues and ornaments, but he also plundered all the temples consecrated in the deepest religious feelings of the people. He did not leave, in short, one god to the Sicilians which appeared to him to be made in a tolerably workmanlike manner, and with any of the skill of the ancients. I am prevented by actual shame from speaking of his nefarious licentiousness as shown in rapes and other such enormities; and I am unwilling also to increase the distress of those men who have been unable to preserve their children and their wives unpolluted by his wanton lust. But, you will say, these things were done by him in such a manner as not to be notorious to all men. I think there is no man who has heard his name who cannot also relate wicked actions of his; so that I ought rather to be afraid of being thought to omit many of his crimes, than to invent any charges against him. And indeed I do not think that this multitude which has collected to listen to me wishes so much to learn of me what the facts of the case are, as to go over it with me, refreshing its recollection of what it knows already.

VI. And as this is the case, that senseless and profligate man attempts to combat me in another manner. He does not seek to oppose the eloquence of any one else to me; he does not rely on the popularity, or influence, or authority of any one. He pretends that he trusts to these things; but I see what he is really aiming at; (and indeed he is not acting with any concealment.) He sets before me empty titles of nobility, that is to say

the names of arrogant men, who do not hinder me so much by being noble, as assist me by being notorious;—he pretends to rely on their protection; when he has in reality been contriving something else this long time. What hope he now has, and what he is endeavouring to do, I will now briefly explain to you, O judges. But first of all, remark, I beg you, how the matter has been arranged by him from the beginning. When he first returned from the province, he endeavoured to get rid of this prosecution by corrupting the judges at a great expense; and this object he continued to keep in view till the conclusion of the appointment of the judges. After the judges were appointed, because in drawing lots for them the fortune of the Roman people had defeated his hopes, and in the rejecting some my diligence had defeated his impudence, the whole attempt at bribery was abandoned. The affair was going on admirably; lists of your names and of the whole tribunal were in every one's hands. It did not seem possible to mark the votes1 of these men with any distinguishing mark or colour or spot of dirt; and that fellow, from having been brisk and in high spirits, became on a sudden so downcast and humbled, that he seemed to be condemned not only by the Roman people but even by himself. But lo! all of a sudden, within these few days, since the consular comitia2 have taken place, he has gone back to his original plan with more money, and the same plots are now laid against your reputation and against the fortunes of every one, by the instrumentality of the same people; which fact at first, O judges, was pointed out to me by a very slight hint and indication; but afterwards, when my suspicions were once aroused, I arrived at the knowledge of all the most secret counsels of that party without any mistake.

VII. For as Hortensius the consul elect was being attended home again from the Campus by a great concourse and multitude of people, Caius Curio fell in with that multitude by chance,—a man whom I wish to name by way of honour rather than of disparagement. I will tell you what, if he had been unwilling to have it mentioned, he would not have spoken of in so large an assembly so openly and undisguisedly; which, however, shall be mentioned by me deliberately and cautiously, that it may be seen that I pay due regard to our friendship and to his dignity. He sees Verres in the crowd by the arch of Fabius;1 he speaks to the man, and with a loud voice congratulates him on his victory. He does not say a word to Hortensius himself, who had been made consul, or to his friends and relations who were present attending on him; but he stops to speak to this man, embraces him, and bids him cast off all anxiety. "I give you notice," said he, "that you have been acquitted by this day's comitia." And as many most honourable men heard this, it is immediately reported to me; indeed, every one who saw me mentioned it to me the first thing. To some it appeared scandalous, to others ridiculous; ridiculous to those who thought that this cause depended on the credibility of the witnesses, on the importance of the charges, and on the power of the judges, and not on the consular comitia; scandalous to those who looked deeper, and who thought that this congratulation had reference to the corruption of the judge. In truth, they argued in this manner—the most honourable men spoke to one another and to me in this manner—that there were now manifestly and undeniably no courts of justice at all. The very criminal who the day before thought that he was already condemned, is acquitted now that his defender has been made consul. What are we to think then? Will it avail nothing that all Sicily, all the Sicilians, that all the merchants who have business in that country, that all public and private documents are now at Rome? Nothing, if the consul elect wills it otherwise.

What! will not the judges be influenced by the accusation, by the evidence, by the universal opinion of the Roman people? No. Everything will be governed by the power and authority of one man.

VIII. I will speak the truth, O judges. This thing agitated me greatly; for every good man was speaking in this way—"That fellow will be taken out of your hands; but we shall not preserve our judicial authority much longer; for who, when Verres is acquitted, wil be able to make any objection to transferring it from us?" It was a grievous thing to every one, and the sudden elation of that profligate man did not weigh with them as much as that fresh congratulation of a very honourable one. I wished to dissemble my own vexation at it; I wished to conceal my own grief of mind under a cheerful countenance, and to bury it in silence. But lo! on the very days when the prætors elected were dividing their duties by lot, and when it fell to the share of Marcus Metellus to hold trials concerning extortion, information is given me that that fellow was receiving such congratulations, that he also sent men home to announce it to his wife. And this too in truth displeased me; and yet I was not quite aware what I had so much to fear from this allotment of the prætor's duties. But I ascertained this one thing from trustworthy men from whom I received all my intelligence; that many chests full of Sicilian money had been sent by some senator to a Roman knight, and that of these about ten chests had been left at that senator's house, with the statement that they were left to be used in the comitia when I expected to be elected ædile, and that men to distribute this money among all the tribes had been summoned to attend him by night. Of whom one, who thought himself under the greatest obligations to me, same to me that same night; reports to me the speech which that fellow had addressed to them; that he had reminded them how liberally he had treated them formerly when he was candidate for the prætorship, and at the last consular and prætorian comitia; and in the second place that he had promised them immediately whatever money they required, if they could procure my rejection from the ædileship. That on this some of them said that they did not dare attempt it; that others answered that they did not think it could be managed; but that one bold friend was found, a man of the same family as himself, Quintus Verres, of the Romilian tribe, of the most perfect school of bribers, the pupil and friend of Verres's father, who promised that, if five hundred thousand sesterces were provided, he would manage it; and that there were some others who said that they would co-operate with him. And as this was the case, he warned me beforehand with a friendly disposition, to take great care.

IX. I was disquieted about many most important matters at one and the same moment, and with very little time to deliberate. The comitia were at hand; and at them I was to be opposed at immense expenditure of money. This trial was at hand; the Sicilian treasurers menaced that matter also. I was afraid, from apprehension about the comitia, to conduct the matters relating to the trial with freedom; and because of the trial, I was unable to attend with all my heart to my canvass. Threatening the agents of bribery was out of the question, because I saw that they were aware that I was hampered and fettered by this trial. And at this same moment I hear that notice has been given to the Sicilians by Hortensius to come to speak to him at his house; that the Sicilians behaved in that matter with a proper sense of their own liberty, and, when they understood on what account they were sent for, they would not go. In the meantime my comitia began to be held; of which that fellow thought himself the

master, as he had been of all the other comitia this year. He began to run about, that influential man, with his son, a youth of engaging and popular manners, among the tribes. The son began to address and to call on all the friends of his father, that is to say, all his agents for bribery; and when this was noticed and perceived, the Roman people took care with the most earnest good-will that I should not be deprived of my honour through the money of that man, whose riches had not been able to make me violate my good faith. After that I was released from that great anxiety about my canvass, I began, with a mind much more unoccupied and much more at ease, to think of nothing and to do nothing except what related to this trial. I find, O judges, these plans formed and begun to be put in execution by them, to protract the matter, whatever steps it might be necessary to take in order to do so, so that the cause might be pleaded before Marcus Metellus as prætor. That by doing so they would have these advantages; firstly, that Marcus Metellus was most friendly to them; secondly, that not only would Hortensius be consul, but Quintus Metellus also: and listen while I show you how great a friend he is to them. For he gave him a token of his good-will of such a sort, that he seemed to be giving it as a return for the suffrages1 of the tribes which he had secured to him. Did you think that I would say nothing of such serious matters as these? and that, at a crisis of such danger to the republic and my own character, I would consult anything rather than my duty and my dignity? The other consul elect sent for the Sicilians; some came, because Lucius Metellus was prætor in Sicily. To them he speaks in this manner: that he is the consul; that one of his brothers has Sicily for his province; that the other is to be judge in all prosecutions for extortion; and that care had been taken in many ways that there should be no possibility of Verres being injured.

X. I ask you, Metellus, what is corrupting the course of justice, if this is not,—to seek to frighten witnesses, and especially Sicilians, timid and oppressed men, not only by your own private influence, but by their fear of the consul, and by the power of two prætors? What would you do for an innocent man or for a relation, when for the sake of a most guilty man, entirely unconnected with you, you depart from your duty and your dignity, and allow what he is constantly saying to appear true to any one who is not acquainted with you? For they said that Verres said, that you had not been made consul by destiny, as the rest of your family had been, but by his assistance. Two consuls, therefore, and the judge are to be such because of his will. We shall not only, says he, avoid having a man too scrupulous in investigating, too subservient to the opinion of the people, Marcus Glabrio, but we shall have this advantage also:—Marcus Cæsonius is the judge, the colleague of our accuser, a man of tried and proved experience in the decision of actions. It will never do for us to have such a man as that on the bench, which we are endeavouring to corrupt by some means or other; for before, when he was one of the judges on the tribunal of which Junius2 was president, he was not only very indignant at that shameful transaction, but he even betrayed and denounced it. After the first of January we shall not have this man for our judge,—we shall not have Quintus Manlius and Quintus Cornificius, two most severe and upright judges, for judges, because they will then be tribunes of the people. Publius Sulpicius, a solemn and upright judge, must enter on his magistracy on the fifth of November. Marcus Crepereius, of that renowned equestrian family and of that incorruptible character; Lucius Cassius, of a family renowned for its severity in all things, and especially as judges; Cnæus Tremellius, a man of the greatest

scrupulousness and diligence;—these three men of ancient strictness of principle are all military tribunes elect. After the first of January they will not be able to act as judges. And besides this, we elect by lot a successor in the room of Marcus Metellus, since he is to preside over this very trial. And so after the first of January, the prætor, and almost the whole bench of judges being changed, we shall elude the terrible threats of the prosecutor, and the great expectations entertained of this trial, and manage it according to our own will and pleasure. Today is the fifth of August. You began to assemble at the ninth hour. This day they do not even count. There are ten days between this and the votive games which Cnæus Pompey is going to celebrate. These games will take up fifteen days; then immediately the Roman games will follow. And so, when nearly forty days have intervened, then at length they think they shall have to answer what has been said by us; and they think that, what with speeches, and what with excuses, they will easily be able to protract the cause till the period of the games of Victory. With these the plebeian games are connected, after which there will be either no day at all, or very few for pleading in. And so, when the accusation has got stale and cold, the matter will come all fresh before Marcus Metellus as prætor. And if I had distrusted his good faith, I should not have retained him as a judge; but now I have such an opinion of him, that I would rather this matter was brought to a close while he is judge than while he is prætor; and I would rather entrust to him his own tablet while he is on his oath, than the tablets of others when he is restrained by no such obligation.

XI. Now, O judges, I consult you as to what you think I ought to do. For you will, in truth, without speaking, give me that advice which I understand that I must inevitably adopt. If I occupy the time which I legitimately might in speaking I shall reap the fruit of my labour, industry, and diligence; and by this prosecution I shall make it manifest that no one in the memory of man appears ever to have come before a court of justice better prepared, more vigilant, or with his cause better got up. But while I am getting this credit for my industry, there is great danger lest the criminal may escape. What, then, is there which can be done? I think it is neither obscure nor hidden. I will reserve for another time that fruit of praise which may be derived from a long uninterrupted speech. At present I must support this accusation by documentary evidence, by witnesses, by letters of private individuals and of public bodies, and by various other kinds of proof. The whole of this contest is between you and me, O Hortensius. I will speak openly. If I thought that you were contending with me in the matter of speaking, and of getting rid of the charges I bring against your client in this cause, I, too, would devote much pains to making an elaborate accusation, and to dilating on my charges. Now, since you have determined to contend against me with artifice, not so much in obedience to the promptings of your own nature, as from consulting his occasions and his cause, it is necessary for me to oppose conduct of that sort with prudence. Your plan is, to begin to answer me after two sets of games have been celebrated; mine is to have the adjournment1 over before the first games. And the result will be, that that plan of yours will be thought crafty, but this determination of mine necessary.

XII. But as for what I had begun to say,—namely, that the contest is between you and me, this is it,—I, when I had undertaken this cause at the request of the Sicilians, and had thought it a very honourable and glorious thing for me that they were willing to

make experiment of my integrity and diligence, who already knew by experience my innocence and temperance: then, when I had undertaken this business, I proposed to myself some greater action also by which the Roman people should be able to see my good-will towards the republic. For that seemed to me to be by no means worthy of my industry and efforts, for that man to be brought to trial by me who had been already condemned by the judgment of all men, unless that intolerable influence of yours, and that grasping nature which you have displayed for some years in many trials, was interposed also in the case of that desperate man. But now, since all this dominion and sovereignty of yours over the courts of justice delights you so much, and since there are some men who are neither ashamed of their licentiousness and their infamy, nor weary of it, and who, as if on purpose, seem to wish to encounter hatred and unpopularity from the Roman people, I profess that I have undertaken this,—a great burden perhaps, and one dangerous to myself, but still worthy of my applying myself to it with all the vigour of my age, and all diligence. And since the whole order of the senate is weighed down by the discredit brought on it by the wickedness and audacity of a few, and is overwhelmed by the infamy of the tribunals, I profess myself an enemy to this race of men, an accuser worthy of their hatred, a persevering, a bitter adversary. I arrogate this to myself, I claim this for myself, and I will carry out this enmity in my magistracy, and from that post in which the Roman people has willed that from the next first of January I shall act in concert with it in matters concerning the republic, and concerning wicked men. I promise the Roman people that this shall be the most honourable and the fairest employment of my ædileship. I warn, I forewarn, I give notice beforehand to those men who are wont either to put money down, to undertake for others, to receive money, or to promise money, or to act as agents in bribery, or as go-betweens in corrupting the seat of judgment, and who have promised their influence or their impudence in aid of such a business, in this trial to keep their hands and inclinations from this nefarious wickedness.

XIII. Hortensius will then be consul with the chief command and authority, but I shall be ædile—that is, I shall be a little more than a private individual; and yet this business, which I promise that I am going to advocate, is of such a nature, so pleasing and agreeable to the Roman people, that the consul himself will appear in this cause, if that be possible, even less than a private individual in comparison of me. All those things shall not only be mentioned, but even, when certain matters have been explained, shall be fully discussed, which for the last ten years, ever since the office of the judge has been transferred to the senate, has been nefariously and wickedly done in the decision of judicial matters. The Roman people shall know from me why it is that when the equestrian body supplied the judges for nearly fifty years together, not even the slightest suspicion ever arose of bribes having been accepted for the purpose of influencing a decision; why it is, I say, when the judicial authority was transferred to the senatorial body, and the power1 of the Roman people over every one of us was taken away, Quintus Calidius, when he was condemned, said that a man of prætorian rank could not honestly be condemned at a less price than three hundred thousand sesterces; why it is that when Publius Septimius, a senator, was condemned for extortion, when Quintus Hortensius was prætor, damages were assessed against him, including money which he had received as judge to decide causes which came before him; why it is, that in the case of Caius Herennius, and in that of Caius

Popillius, senators, both of whom were convicted of peculation—why it is, that in the case of Marcus Atilius, who was convicted of treason—this was made plain,—that they had all received money for the purpose of influencing their judicial decisions; why it is, that senators have been found who, when Caius Verres, as prætor of the city, gave out the lots, voted against the criminal whom they were condemning without having inquired into his case; why it is, that a senator was found who, when he was judge, took money in one and the same trial both from the defendant to distribute among the judges, and from the accuser to condemn the defendant. But how shall I adequately complain of that stain, that disgrace, that calamity of the whole senatorial order,—that this thing actually happened in the city while the senatorial order furnished the judges, that the votes of men on their oaths were marked by coloured tablets? I pledge myself that I will urge all these things with diligence and with strictness.

XIV. And what do you suppose will be my thoughts, if I find in this very trial any violation of the laws committed in any similar manner? especially when I can prove by many witnesses that Caius Verres often said in Sicily, in the hearing of many persons, "that he had a powerful friend, in confidence in whom he was plundering the province; and that he was not seeking money for himself alone, but that he had so distributed the three years of his Sicilian prætorship, that he should say he did exceedingly well, if he appropriated the gains of one year to the augmentation of his own property, those of the second year to his patrons and defenders, and reserved the whole of the third year, the most productive and gainful of all, for the judges." From which it came into my mind to say that which, when I had said lately before Marcus Glabrio at the time of striking the list of judges, I perceived the Roman people greatly moved by; that I thought that foreign nations would send ambassadors to the Roman people to procure the abrogation of the law, and of all trials, about extortion; for if there were no trials, they think that each man would only plunder them of as much as he would think sufficient for himself and his children; but now, because there are trials of that sort, every one carries off as much as it will take to satisfy himself, his patrons, his advocates, the prætor, and the judges; and that this is an enormous sum; that they may be able to satisfy the cupidity of one most avaricious man, but are quite unable to incur the expense of his most guilty victory over the laws. O trials worthy of being recorded! O splendid reputation of our order! when the allies of the Roman people are unwilling that trials for extortion should take place, which were instituted by our ancestors for the sake of the allies. Would that man ever have had a favourable hope of his own safety, if he had not conceived in his mind a bad opinion of you? on which account, he ought, if possible, to be still more hated by you than he is by the Roman people, because he considers you like himself in avarice and wickedness and perjury.

XV. And I beg you, in the name of the immortal gods, O judges, think of and guard against this; I warn you, I give notice to you, of what I am well assured, that this most seasonable opportunity has been given to you by the favour of the gods, for the purpose of delivering your whole order from hatred, from unpopularity, from infamy, and from disgrace. There is no severity believed to exist in the tribunals, nor any scruples with regard to religion; in short, there are not believed to be any tribunals at all. Therefore we are despised and scorned by the Roman people; we are branded with

a heavy and now a long standing infamy. Nor, in fact, is there any other reason for which the Roman people has with so much earnestness sought the restoration of the tribunician power: but when it was demanding that in words, it seemed to be asking for that, but in reality it was asking for tribunals which it could trust. And this did not escape the notice of Quintus Catulus, a most sagacious and honourable man, who, when Cnæus Pompeius, a most gallant and illustrious man, made a motion about the tribunitian power, and when he was asked his opinion, begun his speech in this manner, speaking with the greatest authority, "that the conscript fathers presided over the courts of justice badly and wickedly; but if in deciding judicial trials they had been willing to satisfy the expectations of the Roman people, men would not so greatly regret the tribunitian power." Lastly, when Cnæus Pompeius himself, when first he delivered an address to the people as consul elect, mentioned (what seemed above all things to be watched for) that he would restore the power of the tribunes, a great shout was raised at his words, and a grateful murmur pervaded the assembly. And when he had said also in the same assembly "that the provinces were depopulated and tyrannised over, that the courts of justice were become base and wicked, and that he desired to provide for and to remedy that evil," the Roman people then signified their good will, not with a shout, but with a universal uproar.

XVI. But now men are on the watch towers; they observe how every one of you behaves himself in respecting religion and in preserving the laws. They see that, ever since the passing of the law for restoring the power of the tribunes, only one senator, and he too a very insignificant one,1 has been condemned. And though they do not blame this, yet they have nothing which they can very much commend. For there is no credit in being upright in a case where there is no one who is either able or who endeavours to corrupt one. This is a trial in which you will be deciding about the defendant, the Roman people about you;—by the example of what happens to this man it will be determined whether, when senators are the judges, a very guilty and a very rich man can be condemned. Moreover, he is a criminal of such a sort, that there is absolutely nothing whatever in him except the greatest crimes, and excessive riches; so that if he be acquitted, no other opinion can be formed of the matter except that which is the most discreditable possible. Such numerous and enormous vices as his will not be considered to have been cancelled by influence, by family connexion, by some things which may have been done well, or even by the minor vices of flattery and subservience; in short, I will conduct the cause in this manner; I will bring forward things of such a sort, so well known, so proved by evidence, so important, and so undeniable, that no one shall venture to use his influence to obtain from you the acquittal of that man; for I have a sure path and method by which I can investigate and become acquainted with all their endeavours. The matter will be so managed by me that not only the ears but even the eyes of the Roman people shall seem to be present at all their counsels. You have in your power to remove and to eradicate the disgrace and infamy which has now for many years attached to your order. It is evident to all men, that since these tribunals have been established which we now have, there has never been a bench of judges of the same splendour and dignity as1 this. If anything is done wrongly in this case, all men will think not that other more capable judges should be appointed of the same order of men, which is not possible; but that another order must be sought for, from which to select the judges for the future.

XVII. On which account, in the first place, I beg this of the immortal gods, which I seem to myself to have hopes of too, that in this trial no one may be found to be wicked except him who has long since been found to be such; secondly, if there are many wicked men, I promise this to you, O judges, I promise this to the Roman people, that my life shall fail rather than my vigour and perseverance in prosecuting their iniquity. But that iniquity, which, if it should be committed, I promise to prosecute severely, with however much trouble and danger to myself, and whatever enmities I may bring on myself by so doing, you, O Marcus Glabrio, can guard against ever taking place by your wisdom, and authority, and diligence. Do you undertake the cause of the tribunals. Do you undertake the cause of impartiality, of integrity, of good faith and of religion. Do you undertake the cause of the senate; that, being proved worthy by its conduct in this trial, it may come into favour and popularity with the Roman people. Think who you are, and in what a situation you are placed; what you ought to give to the Roman people, what you ought to repay to your ancestors. Let the recollection of the Acilian1 law passed by your father occur to your mind, owing to which law the Roman people has had this advantage of most admirable decisions and very strict judges in cases of extortion. High authorities surround you which will not suffer you to forget your family credit; which will remind you day and night that your father was a most brave man, your grandfather a most wise one, and your father-in-law a most worthy man. Wherefore, if you have inherited the vigour and energy of your father Glabrio in resisting audacious men; if you have inherited the prudence of your grandfather Scævola in foreseeing intrigues which are prepared against your fame and that of your fellow-judges; if you have any share of the constancy of your father-in-law Scaurus, so that no one can move you from your genuine and deliberate opinion, the Roman people will understand that with an upright and honourable prætor, and a carefully selected bench of judges, abundance of wealth has more influence in bringing a criminal into suspicion, than in contributing to his safety.

XVIII. I am resolved not to permit the prætor or the judges to be changed in this cause. I will not permit the matter to be delayed till the lictors of the consuls can go and summon the Sicilians, whom the servants of the consuls elect did not influence before, when by an unprecedented course of proceeding they sent for them all; I will not permit those miserable men, formerly the allies and friends of the Roman people, now their slaves and suppliants, to lose not only their rights and fortunes by their tyranny, but to be deprived of even the power of bewailing their condition; I will not, I say, when the cause has been summed up by me, permit them after a delay of forty days has intervened, then at last to reply to me when my accusation has already fallen into oblivion through lapse of time; I will not permit the decision to be given when this crowd collected from all Italy has departed from Rome, which has assembled from all quarters at the same time on account of the comitia, of the games, and of the census. The reward of the credit gained by your decision, or the danger arising from the unpopularity which will accrue to you if you decide unjustly, I think ought to belong to you; the labour and anxiety to me; the knowledge of what is done and the recollection of what has been said by every one, to all. I will adopt this course, not an unprecedented one, but one that has been adopted before, by those who are now the chief men of our state,—the course, I meant of at once producing the witnesses. What you will find novel, O judges, is this, that I will so marshal my witnesses as to unfold

the whole of my accusation; that when I have established it by examining my witnesses, by arguments, and by my speech, then I shall show the agreement of the evidence with my accusation: so that there shall be no difference between the established mode of prosecuting, and this new one, except that, according to the established mode, when everything has been said which is to be said, then the witnesses are produced; here they shall be produced as each count is brought forward; so that the other side shall have the same opportunity of examining them, of arguing and making speeches on their evidence. If there be any one who prefers an uninterrupted speech and the old mode of conducting a prosecution without any break, he shall have it in some other trial. But for this time let him understand that what we do is done by us on compulsion, (for we only do it with the design of opposing the artifice of the opposite party by our prudence.) This will be the first part of the prosecution. We say that Caius Verres has not only done many licentious acts, many cruel ones, towards Roman citizens, and towards some of the allies, many wicked acts against both gods and men; but especially that he has taken away four hundred thousand sesterces out of Sicily contrary to the laws. We will make this so plain to you by witnesses, by private documents, and by public records, that you shall decide that, even if we had abundant space and leisure days for making a long speech without any inconvenience, still there was no need at all of a long speech in this matter.

***Speech of Edmund Burke, Esq., on Moving His Resolutions for Conciliation with the Colonies* -Edmund Burke*, Select Works of Edmund Burke, vol. 1* [1775]**

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In this Character of the Americans, a love of Freedom is the predominating feature which marks and distinguishes the whole: and as an ardent is always a jealous affection, your Colonies become suspicious, restive, and untractable, whenever they see the least attempt to wrest from them by force, or shuffle from them by chicane, what they think the only advantage worth living for. This fierce spirit of Liberty is stronger in the English Colonies probably than in any other people of the earth; and this from a great variety of powerful causes; which, to understand the true temper of their minds, and the direction which this spirit takes, it will not be amiss to lay open somewhat more largely.

First, the people of the Colonies are descendants of Englishmen. England, Sir, is a nation, which still I hope respects, and formerly adored, her freedom. The Colonists emigrated from you when this part of your character was most predominant; and they took this bias and direction the moment they parted from your hands. They are therefore not only devoted to Liberty, but to Liberty according to English ideas, and on English principles. Abstract Liberty, like other mere abstractions, is not to be found. Liberty inheres in some sensible object; and every nation[179] has formed to itself some favourite point, which by way of eminence becomes the criterion of their happiness. It happened, you know, Sir, that [[238]] the great contests for freedom in this country were from the earliest times chiefly upon the question of Taxing. Most of the contests in the ancient commonwealths turned primarily on the right of election of magistrates; or on the balance among the several orders of the state. The question of money was not with them so immediate. But in England it was otherwise. On this point of Taxes the ablest pens, and most eloquent tongues, have been exercised; the greatest spirits have acted and suffered. In order to give the fullest satisfaction concerning the importance of this point, it was not only necessary for

those who in argument defended the excellence of the English Constitution, to insist on this privilege of granting money as a dry point of fact, and to prove, that the right had been acknowledged in ancient parchments, and blind usages, to reside in a certain body called an House of Commons. They went much farther; they attempted to prove, and they succeeded, that in theory it ought to be so, from the particular nature of an House of Commons, as an immediate representative of the people; whether the old records had delivered this oracle or not. They took infinite pains to inculcate, as a fundamental principle, that in all monarchies the people must in effect themselves, mediately or immediately, possess the power of granting their own money, or no shadow of liberty can subsist. The Colonies draw from you, as with their life-blood, these ideas and principles. Their love of liberty, as with you, fixed and attached on this specific point of taxing. Liberty might be safe, or might be endangered, in twenty other particulars, without their being much pleased or alarmed. Here they felt its pulse; and as they found that beat, they thought themselves sick or sound. I do not say whether they were[180] right or wrong in applying your general arguments to their own case. It is not easy indeed to make a monopoly of theorems and corollaries. The fact is, that they did thus apply those general arguments; and your mode of governing them, whether through lenity or indolence, [[239]] through wisdom or mistake, confirmed them in the imagination, that they, as well as you, had an interest in these common principles.

They were further confirmed in this pleasing error by the form of their provincial legislative assemblies. Their governments are popular in an high degree; some are merely popular; in all, the popular representative is the most weighty; and this share of the people in their ordinary government never fails to inspire them with lofty sentiments, and with a strong aversion from whatever tends to deprive them of their chief importance.

If anything were wanting to this necessary operation of the form of government, religion would have given it a complete effect. Religion, always a principle of energy, in this new people is no way worn out or impaired; and their mode of professing it is also one main cause of this free spirit. The people are protestants; and of that kind which is the most adverse to all implicit submission of mind and opinion. This is a persuasion not only favourable to liberty, but built upon it. I do not think, Sir, that the reason of this averseness in the dissenting churches, from all that looks like absolute government, is so much to be sought in their religious tenets, as in their history. Every one knows that the Roman Catholick religion is at least coeval with most of the governments where it prevails; that it has generally gone hand in hand with them, and received great favour and every kind of support from authority. The Church of England too was formed from her cradle under the nursing care of regular government. But the dissenting interests have

sprung up in direct opposition to all the ordinary powers of the world;[181]and could justify that opposition only on a strong claim to natural liberty. Their very existence depended on the powerful and unremitted assertion of that claim. All protestantism, even the most cold and passive, is a sort of dissent. But the religion most prevalent in our Northern Colonies is a refinement on the [[240]] principle of resistance; it is the dissidence of dissent, and the protestantism of the protestant religion. This religion, under a variety of denominations agreeing in nothing but in the communion of the spirit of liberty, is predominant in most of the Northern provinces; where the Church of England, notwithstanding its legal rights, is in reality no more than a sort of private sect, not composing most probably the tenth of the people. The Colonists left England when this spirit was high, and in the emigrants was the highest of all; and even that stream of foreigners, which has been constantly flowing into these Colonies, has, for the greatest part, been composed of dissenters from the establishments of their several countries, and have brought with them a temper and character far from alien to that of the people with whom they mixed.

Sir, I can perceive by their manner, that some Gentlemen object to the latitude of this description; because in the Southern Colonies the Church of England forms a large body, and has a regular establishment. It is certainly true. There is, however, a circumstance attending these Colonies, which, in my opinion, fully counterbalances this difference, and makes the spirit of liberty still more high and haughty than in those to the North-ward. It is, that in Virginia and the Carolinas they have a vast multitude of slaves. Where this is the case in any part of the world, those who are free, are by far the most proud and jealous of their freedom. Freedom is to them not only an enjoyment, but a kind of rank and privilege. Not seeing there, that freedom, as in countries where it is a common blessing, and as broad and general[182] as the air, may be united with much abject toil, with great misery, with all the exterior of servitude, liberty looks, amongst them, like something that is more noble and liberal. I do not mean, Sir, to commend the superior morality of this sentiment, which has at least as much pride as virtue in it; but I cannot alter the nature of man. The fact is so; and these people of the Southern Colonies are much more strongly, [[241]] and with an higher and more stubborn spirit, attached to liberty, than those to the North-ward. Such were all the ancient commonwealths; such were our Gothick ancestors; such in our days were the Poles; and such will be all masters of slaves, who are not slaves themselves. In such a people, the haughtiness of domination combines with the spirit of freedom, fortifies it, and renders it invincible.

Permit me, Sir, to add another circumstance in our Colonies, which contributes no mean part towards the growth and effect of this untractable spirit. I mean their education. In no country

perhaps in the world is the law so general a study. The profession itself is numerous and powerful; and in most provinces it takes the lead. The greater number of the Deputies sent to the Congress were Lawyers. But all who read, (and most do read,) endeavour to obtain some smattering in that science. I have been told by an eminent Bookseller, that in no branch of his business, after tracts of popular devotion, were so many books as those on the Law exported to the Plantations. The Colonists have now fallen into the way of printing them for their own use. I hear that they have sold nearly as many of Blackstone's Commentaries in America as in England. General Gage marks out this disposition very particularly in a letter on your table. He states, that all the people in his government are lawyers, or smatterers in law; and that in Boston they have been enabled, by successful chicane, wholly to evade many parts of one of your capital penal constitutions. The smartness of debate[183] will say, that this knowledge ought to teach them more clearly the rights of legislature, their obligations to obedience, and the penalties of rebellion. All this is mighty well. But my Honourable and Learned Friend on the floor, who condescends to mark what I say for animadversion, will disdain that ground. He has heard, as well as I, that when great honours and great emoluments do not win over this knowledge to the service of the state, it is a formidable adversary to government. If [[242]] the spirit be not tamed and broken by these happy methods, it is stubborn and litigious. *Abeunt studia in mores.* This study renders men acute, inquisitive, dexterous, prompt in attack, ready in defence, full of resources. In other countries, the people, more simple, and of a less mercurial cast, judge of an ill principle in government only by an actual grievance; here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They augur misgovernment at a distance; and snuff the approach of tyranny in every tainted breeze.

The last cause of this disobedient spirit in the Colonies is hardly less powerful than the rest, as it is not merely moral, but laid deep in the natural constitution of things. Three thousand miles of ocean lie between you and them. No contrivance can prevent the effect of this distance in weakening government. Seas roll, and months pass, between the order and the execution; and the want of a speedy explanation of a single point is enough to defeat a whole system. You have, indeed, winged ministers of vengeance, who carry your bolts in their pounces to the remotest verge of the sea. But there a power steps in, that limits the arrogance of raging passions and furious elements, and says, *So far shalt thou go, and no farther*. Who are you, that you should fret and rage, and bite the chains of Nature? Nothing worse happens to you than does to all nations who have extensive Empire; and it happens in all the forms into which Empire can be[184] thrown. In large bodies, the circulation of power must be less vigorous at the extremities. Nature has said it. The Turk cannot govern Aegypt, and Arabia, and Curdistan, as he governs Thrace; nor has he the same dominion in Crimea and Algiers, which he has at Brusa and Smyrna.

Despotism itself is obliged to truck and huckster. The Sultan gets such obedience as he can. He governs with a loose rein, that he may govern at all; and the whole of the force and vigour of his authority in his centre is derived from a prudent relaxation [[243]] in all his borders. Spain, in her provinces, is, perhaps, not so well obeyed as you are in yours. She complies too; she submits; she watches times. This is the immutable condition, the eternal Law, of extensive and detached Empire.

Then, Sir, from these six capital sources; of Descent; of Form of Government; of Religion in the Northern Provinces; of Manners in the Southern; of Education; of the Remoteness of Situation from the First Mover of Government; from all these causes a fierce Spirit of Liberty has grown up. It has grown with the growth of the people in your Colonies, and increased with the increase of their wealth; a Spirit, that unhappily meeting with an exercise of Power in England, which, however lawful, is not reconcileable to any ideas of Liberty, much less with theirs, has kindled this flame that is ready to consume us.

I DO NOT MEAN TO COMMEND either the Spirit in this excess, or the moral causes which produce it. Perhaps a more smooth and accommodating Spirit of Freedom in them would be more acceptable to us. Perhaps ideas of Liberty might be desired, more reconcileable with an arbitrary and boundless authority. Perhaps we might wish the Colonists to be persuaded, that their Liberty is more secure when held in trust for them by us, as their guardians during a perpetual[185] minority, than with any part of it in their own hands. The question is, not whether their spirit deserves praise or blame; but—what, in the name of God, shall we do with it? You have before you the object, such as it is, with all its glories, with all its imperfections on its head. You see the magnitude; the importance; the temper; the habits; the disorders. By all these considerations we are strongly urged to determine something concerning it. We are called upon to fix some rule and line for our future conduct, which may give a little stability to our politicks, and prevent the return of such unhappy deliberations as the present. Every such return [[244]]will bring the matter before us in a still more untractable form. For, what astonishing and incredible things have we not seen already! What monsters have not been generated from this unnatural contention! Whilst every principle of authority and resistance has been pushed, upon both sides, as far as it would go, there is nothing so solid and certain, either in reasoning or in practice, that has not been shaken. Until very lately, all authority in America seemed to be nothing but an emanation from yours. Even the popular part of the Colony Constitution derived all its activity, and its first vital movement, from the pleasure of the Crown. We thought, Sir, that the utmost which the discontented Colonists could do, was to disturb authority; we never dreamt they could of themselves supply it; knowing in general what an operose business it is, to

establish a Government absolutely new. But having, for our purposes, in this contention, resolved, that none but an obedient Assembly should sit; the humours of the people there, finding all passage through the legal channel stopped, with great violence broke out another way. Some provinces have tried their experiment, as we have tried ours; and theirs has succeeded. They have formed a Government sufficient for its purposes, without the bustle of a Revolution, or the troublesome formality of an Election.[186] Evident necessity, and tacit consent, have done the business in an instant. So well they have done it, that Lord Dunmore (the account is among the fragments on your table) tells you, that the new institution is infinitely better obeyed than the antient Government ever was in its most fortunate periods. Obedience is what makes Government, and not the names by which it is called; not the name of Governor, as formerly, or Committee, as at present. This new Government has originated directly from the people; and was not transmitted through any of the ordinary artificial media of a positive constitution. It was not a manufacture ready formed, and transmitted to them in that condition from England. The evil arising from hence is this; that the Colonists having once found the possibility [[245]] of enjoying the advantages of order in the midst of a struggle for Liberty, such struggles will not henceforward seem so terrible to the settled and sober part of mankind as they had appeared before the trial.

Pursuing the same plan of punishing by the denial of the exercise of Government to still greater lengths, we wholly abrogated the antient Government of Massachuset. We were confident that the first feeling, if not the very prospect of anarchy, would instantly enforce a compleat submission. The experiment was tried. A new, strange, unexpected face of things appeared. Anarchy is found tolerable. A vast province has now subsisted, and subsisted in a considerable degree of health and vigour, for near a twelvemonth, without Governor, without public Council, without Judges, without executive Magistrates. How long it will continue in this state, or what may arise out of this unheard-of situation, how can the wisest of us conjecture? Our late experience has taught us that many of those fundamental principles, formerly believed infallible, are either not of the importance they were imagined to be; or that we have not at all adverted to some other far more important and far more powerful[187] principles, which entirely overrule those we had considered as omnipotent. I am much against any further experiments, which tend to put to the proof any more of these allowed opinions, which contribute so much to the public tranquillity. In effect, we suffer as much at home by this loosening of all ties, and this concussion of all established opinions, as we do abroad. For, in order to prove that the Americans have no right to their Liberties, we are every day endeavouring to subvert the maxims, which preserve the whole Spirit of our own. To prove that the Americans ought not to be free, we are obliged to depreciate the value of Freedom itself; and we never seem to gain a paltry advantage over them

in debate, without attacking some of those principles, or deriding some of those feelings, for which our ancestors have shed their blood.

But, Sir, in wishing to put an end to pernicious experiments, [[246]] I do not mean to preclude the fullest enquiry. Far from it. Far from deciding on a sudden or partial view, I would patiently go round and round the subject, and survey it minutely in every possible aspect. Sir, if I were capable of engaging you to an equal attention, I would state, that, as far as I am capable of discerning, there are but three ways of proceeding relative to this stubborn Spirit, which prevails in your Colonies, and disturbs your Government. These are—To change that Spirit, as inconvenient, by removing the Causes. To prosecute it as criminal. Or, to comply with it as necessary. I would not be guilty of an imperfect enumeration; I can think of but these three. Another has indeed been started, that of giving up the Colonies; but it met so slight a reception, that I do not think myself obliged to dwell a great while upon it. It is nothing but a little sally of anger; like the frowardness of peevish children; who, when they cannot get all they would have, are resolved to take nothing.

[188]THE FIRST OF THESE PLANS, to change the Spirit as inconvenient, by removing the causes, I think is the most like a systematick proceeding. It is radical in its principle; but it is attended with great difficulties, some of them little short, as I conceive, of impossibilities. This will appear by examining into the Plans which have been proposed.

As the growing population in the Colonies is evidently one cause of their resistance, it was last session mentioned in both Houses, by men of weight, and received not without applause, that in order to check this evil, it would be proper for the Crown to make no further grants of land. But to this scheme there are two objections. The first, that there is already so much unsettled land in private hands, as to afford room for an immense future population, although the Crown not only withheld its grants, but annihilated its soil. If this be the case, then the only effect of this avarice of desolation, this hoarding of a royal wilderness, would be to raise [[247]] the value of the possessions in the hands of the great private monopolists, without any adequate check to the growing and alarming mischief of population.

But if you stopped your grants, what would be the consequence? The people would occupy without grants. They have already so occupied in many places. You cannot station garrisons in every part of these deserts. If you drive the people from one place, they will carry on their annual Tillage, and remove with their flocks and herds to another. Many of the people in the back settlements are already little attached to particular situations. Already they have topped the

Appalachian mountains. From thence they behold before them an immense plain, one vast, rich, level meadow; a square of five hundred miles. Over this they would wander without a possibility of restraint; they would change their manners with the habits of their life; would soon forget a government by which they were disowned; would become Hordes of[189] English Tartars; and pouring down upon your unfortified frontiers a fierce and irresistible cavalry, become masters of your Governors and your Counsellors, your collectors, and comptrollers, and of all the Slaves that adhered to them. Such would, and, in no long time, must be, the effect of attempting to forbid as a crime, and to suppress as an evil, the Command and Blessing of Providence, *Encrease and Multiply.* Such would be the happy result of the endeavour to keep as a lair of wild beasts, that earth, which God, by an express Charter, has *given to the children of men.* Far different, and surely much wiser, has been our policy hitherto. Hitherto we have invited our people, by every kind of bounty, to fixed establishments. We have invited the husbandman to look to authority for his title. We have taught him piously to believe in the mysterious virtue of wax and parchment. We have thrown each tract of land, as it was peopled, into districts; that the ruling power should never be wholly out of sight. We have settled all we could; and we have carefully attended every settlement with government.

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Adhering, Sir, as I do, to this policy, as well as for the reasons I have just given, I think this new project of hedging-in population to be neither prudent nor practicable.

To impoverish the Colonies in general, and in particular to arrest the noble course of their marine enterprizes, would be a more easy task. I freely confess it. We have shown a disposition to a system of this kind; a disposition even to continue the restraint after the offence; looking on ourselves as rivals to our Colonies, and persuaded that of course we must gain all that they shall lose. Much mischief we may certainly do. The power inadequate to all other things is often more than sufficient for this. I do not look on the direct and immediate power of the Colonies to resist our violence as very formidable. In this, however, I may be mistaken. But when I consider, that we have Colonies for[190] no purpose but to be serviceable to us, it seems to my poor understanding a little preposterous, to make them unserviceable, in order to keep them obedient. It is, in truth, nothing more than the old, and, as I thought, exploded problem of tyranny, which proposes to beggar its subjects into submission. But remember, when you have completed your system of impoverishment, that nature still proceeds in her ordinary course; that discontent will encrease with misery; and that there are critical moments in the fortune of all states, when they

who are too weak to contribute to your prosperity, may be strong enough to complete your ruin. *Spoliatis arma supersunt.*

The temper and character which prevail in our Colonies, are, I am afraid, unalterable by any human art. We cannot, I fear, falsify the pedigree of this fierce people, and persuade them that they are not sprung from a nation in whose veins the blood of freedom circulates. The language in which they would hear you tell them this tale would detect the imposition; your speech would betray you. An Englishman is the unfittest person on earth, to argue another Englishman into slavery.

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I think it is nearly as little in our power to change their republican Religion, as their free descent; or to substitute the Roman Catholick, as a penalty; or the Church of England, as an improvement. The mode of inquisition and dragooning is going out of fashion in the Old World; and I should not confide much to their efficacy in the New. The education of the Americans is also on the same unalterable bottom with their religion. You cannot persuade them to burn their books of curious science; to banish their lawyers from their courts of laws; or to quench the lights of their assemblies, by refusing to choose those persons who are best read in their privileges. It would be no less impracticable to think of wholly annihilating the popular[191] assemblies, in which these lawyers sit. The army, by which we must govern in their place, would be far more chargeable to us; not quite so effectual; and perhaps, in the end, full as difficult to be kept in obedience.

With regard to the high aristocratick spirit of Virginia and the Southern Colonies, it has been proposed, I know, to reduce it, by declaring a general enfranchisement of their slaves. This project has had its advocates and panegyrists; yet I never could argue myself into any opinion of it. Slaves are often much attached to their masters. A general wild offer of liberty would not always be accepted. History furnishes few instances of it. It is sometimes as hard to persuade slaves to be free, as it is to compel freemen to be slaves; and in this auspicious scheme, we should have both these pleasing tasks on our hands at once. But when we talk of enfranchisement, do we not perceive that the American master may enfranchise too; and arm servile hands in defence of freedom? A measure to which other people have had recourse more than once, and not without success, in a desperate situation of their affairs.

Slaves as these unfortunate black people are, and dull as all men are from slavery, must they not a little suspect the offer of freedom from that very nation which has sold them to [[250]] their present masters? from that nation, one of whose causes of quarrel with those masters is their

refusal to deal any more in that inhuman traffick? An offer of freedom from England would come rather oddly, shipped to them in an African vessel, which is refused an entry into the ports of Virginia or Carolina, with a cargo of three hundred Angola negroes. It would be curious to see the Guinea captain attempting at the same instant to publish his proclamation of liberty, and to advertise his sale of slaves.

But let us suppose all these moral difficulties got over. The Ocean remains. You cannot pump this dry; and as[192] long as it continues in its present bed, so long all the causes which weaken authority by distance will continue. "*Ye gods, annihilate but space and time, And make two lovers happy!*" was a pious and passionate prayer; but just as reasonable, as many of the serious wishes of very grave and solemn politicians.

IF THEN, SIR, it seems almost desperate to think of any alterative course, for changing the moral causes, and not quite easy to remove the natural, which produce prejudices irreconcileable to the late exercise of our authority; but that the spirit infallibly will continue; and, continuing, will produce such effects as now embarrass us; the second mode under consideration is, to prosecute that spirit in its overt acts, as*criminal.*

At this proposition I must pause a moment. The thing seems a great deal too big for my ideas of jurisprudence. It should seem to my way of conceiving such matters, that there is a very wide difference in reason and policy, between the mode of proceeding on the irregular conduct of scattered individuals, or even of bands of men, who disturb order within the state, and the civil dissensions which may, from time to time, on great questions, agitate the several communities which compose a great Empire. It looks to me to be narrow and pedantic, to apply the ordinary ideas of criminal [[251]] justice to this great public contest. I do not know the method of drawing up an indictment against a whole people. I cannot insult and ridicule the feelings of Millions of my fellow-creatures, as Sir Edward Coke insulted one excellent individual (Sir Walter Rawleigh) at the bar. I hope I am not ripe to pass sentence on the gravest public bodies, intrusted with magistracies of great authority and dignity, and charged with the safety of their fellow-citizens, upon the very same title that I am. I really think, that for[193] wise men, this is not judicious; for sober men, not decent; for minds tinctured with humanity, not mild and merciful.

Perhaps, Sir, I am mistaken in my idea of an Empire, as distinguished from a single State or Kingdom. But my idea of it is this; that an Empire is the aggregate of many States under one common head; whether this head be a monarch, or a presiding republick. It does, in such constitutions, frequently happen (and nothing but the dismal, cold, dead uniformity of servitude

can prevent its happening) that the subordinate parts have many local privileges and immunities. Between these privileges and the supreme common authority the line may be extremely nice. Of course disputes, often, too, very bitter disputes, and much ill blood, will arise. But though every privilege is an exemption (in the case) from the ordinary exercise of the supreme authority, it is no denial of it. The claim of a privilege seems rather, *ex vi termini*, to imply a superior power. For to talk of the privileges of a State, or of a person, who has no superior, is hardly any better than speaking nonsense. Now, in such unfortunate quarrels among the component parts of a great political union of communities, I can scarcely conceive anything more compleatly imprudent, than for the Head of the Empire to insist, that, if any privilege is pleaded against his will, or his acts, his whole authority is denied; instantly to proclaim rebellion, to beat to arms, and to put the offending provinces under the ban. Will not this, Sir, very soon teach the provinces to make no distinctions [[252]] on their part? Will it not teach them that the Government, against which a claim of Liberty is tantamount to high-treason, is a Government to which submission is equivalent to slavery? It may not always be quite convenient to impress dependent communities with such an idea.

We are indeed, in all disputes with the Colonies, by the necessity of things, the judge. It is true, Sir. But I confess,[194] that the character of judge in my own cause is a thing that frightens me. Instead of filling me with pride, I am exceedingly humbled by it. I cannot proceed with a stern, assured, judicial confidence, until I find myself in something more like a judicial character. I must have these hesitations as long as I am compelled to recollect, that, in my little reading upon such contests as these, the sense of mankind has, at least, as often decided against the superior as the subordinate power. Sir, let me add too, that the opinion of my having some abstract right in my favour, would not put me much at my ease in passing sentence; unless I could be sure, that there were no rights which, in their exercise under certain circumstances, were not the most odious of all wrongs, and the most vexatious of all injustice. Sir, these considerations have great weight with me, when I find things so circumstanced, that I see the same party, at once a civil litigant against me in point of right; and a culprit before me, while I sit as a criminal judge, on acts of his, whose moral quality is to be decided upon the merits of that very litigation. Men are every now and then put, by the complexity of human affairs, into strange situations; but Justice is the same, let the Judge be in what situation he will.

There is, Sir, also a circumstance which convinces me, that this mode of criminal proceeding is not (at least in the present stage of our contest) altogether expedient; which is nothing less than the conduct of those very persons who have seemed to adopt that mode, by lately declaring a rebellion in Massachuset's Bay, as they had formerly addressed to have Traitors [[253]] brought

hither, under an Act of Henry the Eighth, for Trial. For though rebellion is declared, it is not proceeded against as such; nor have any steps been taken towards the apprehension or conviction of any individual offender, either on our late or our former Address; but modes of public coercion have been adopted, and such as have much[195] more resemblance to a sort of qualified hostility towards an independent power than the punishment of rebellious subjects. All this seems rather inconsistent; but it shows how difficult it is to apply these juridical ideas to our present case.

In this situation, let us seriously and coolly ponder. What is it we have got by all our menaces, which have been many and ferocious? What advantage have we derived from the penal laws we have passed, and which, for the time, have been severe and numerous? What advances have we made towards our object, by the sending of a force, which, by land and sea, is no contemptible strength? Has the disorder abated? Nothing less. When I see things in this situation, after such confident hopes, bold promises, and active exertions, I cannot, for my life, avoid a suspicion, that the plan itself is not correctly right.

IF THEN THE REMOVAL of the causes of this Spirit of American Liberty be, for the greater part, or rather entirely, impracticable; if the ideas of Criminal Process be inapplicable, or if applicable, are in the highest degree inexpedient; what way yet remains? No way is open, but the third and last—to comply with the American Spirit as necessary; or, if you please, to submit to it as a necessary Evil.

If we adopt this mode; if we mean to conciliate and concede; let us see of what nature the concession ought to be: to ascertain the nature of our concession, we must look at their complaint. The Colonies complain, that they have not the characteristic Mark and Seal of British Freedom. They complain, that they are taxed in a Parliament, in which they [[254]] are not represented. If you mean to satisfy them at all, you must satisfy them with regard to this complaint. If you mean to please any people, you must give them the boon which they ask; not what you may think better for them,[196] but of a kind totally different. Such an act may be a wise regulation, but it is no concession: whereas our present theme is the mode of giving satisfaction.

SIR, I THINK YOU MUST PERCEIVE, that I am resolved this day to have nothing at all to do with the question of the right of taxation. Some gentlemen startle—but it is true; I put it totally out of the question. It is less than nothing in my consideration. I do not indeed wonder, nor will you, Sir, that gentlemen of profound learning are fond of displaying it on this profound subject. But my

consideration is narrow, confined, and wholly limited to the Policy of the question. I do not examine, whether the giving away a man's money be a power excepted and reserved out of the general trust of government; and how far all mankind, in all forms of Polity, are entitled to an exercise of that Right by the Charter of Nature. Or whether, on the contrary, a Right of Taxation is necessarily involved in the general principle of Legislation, and inseparable from the ordinary Supreme Power. These are deep questions, where great names militate against each other; where reason is perplexed; and an appeal to authorities only thickens the confusion. For high and reverend authorities lift up their heads on both sides; and there is no sure footing in the middle. This point is the *great Serbonian bog, Betwixt Damiata and Mount Casius old, Where armies whole have sunk.* I do not intend to be overwhelmed in that bog, though in such respectable company. The question with me is, not whether you have a right to render your people miserable; but whether it is not your interest to make them happy. It is not, what a lawyer tells me I*may* do; but what humanity, reason, and justice tell me I *ought* to do. Is a politic act the worse for being a generous one? [[255]] Is no concession proper, but that which is made from your want of right to keep what you grant? Or does it lessen the[197] grace or dignity of relaxing in the exercise of an odious claim, because you have your evidence-room full of Titles, and your magazines stuffed with arms to enforce them? What signify all those titles, and all those arms? Of what avail are they, when the reason of the thing tells me, that the assertion of my title is the loss of my suit; and that I could do nothing but wound myself by the use of my own weapons?

Such is stedfastly my opinion of the absolute necessity of keeping up the concord of this Empire by anunity of spirit, though in a diversity of operations, that, if I were sure the colonists had, at their leaving this country, sealed a regular compact of servitude; that they had solemnly abjured all the rights of citizens; that they had made a vow to renounce all Ideas of Liberty for them and their posterity to all generations; yet I should hold myself obliged to conform to the temper I found universally prevalent in my own day, and to govern two million of men, impatient of Servitude, on the principles of Freedom. I am not determining a point of law; I am restoring tranquillity; and the general character and situation of a people must determine what sort of government is fitted for them. That point nothing else can or ought to determine.

My idea, therefore, without considering whether we yield as matter of right, or grant as matter of favour, is *to admit the people of our Colonies into an interest in the Constitution;* and, by recording that admission in the Journals of Parliament, to give them as strong an assurance as the nature of the thing will admit, that we mean for ever to adhere to that solemn declaration of systematic indulgence.

Some years ago, the Repeal of a Revenue Act, upon its understood principle, might have served to show, that we intended an unconditional abatement of the exercise of a Taxing Power. Such a measure was then sufficient to[198] [[256]] remove all suspicion, and to give perfect content. But unfortunate events, since that time, may make something further necessary; and not more necessary for the satisfaction of the Colonies, than for the dignity and consistency of our own future proceedings.

I HAVE TAKEN a very incorrect measure of the disposition of the House, if this proposal in itself would be received with dislike. I think, Sir, we have few American Financiers. But our misfortune is, we are too acute; we are too exquisite in our conjectures of the future, for men oppressed with such great and present evils. The more moderate among the opposers of Parliamentary Concession freely confess, that they hope no good from Taxation; but they apprehend the Colonists have further views; and if this point were conceded, they would instantly attack the Trade Laws. These Gentlemen are convinced, that this was the intention from the beginning; and the quarrel of the Americans with Taxation was no more than a cloak and cover to this design. Such has been the language even of a Gentleman of real moderation, and of a natural temper well adjusted to fair and equal Government. I am, however, Sir, not a little surprized at this kind of discourse, whenever I hear it; and I am the more surprized, on account of the arguments which I constantly find in company with it, and which are often urged from the same mouths, and on the same day.

For instance, when we alledge, that it is against reason to tax a people under so many restraints in trade as the Americans, the Noble Lord in the blue ribband shall tell you, that the restraints on trade are futile and useless; of no advantage to us, and of no burthen to those on whom they are imposed; that the trade to America is not secured by the Acts of Navigation, but by the natural and irresistible advantage of a commercial preference.

[199]Such is the merit of the Trade Laws in this posture [[257]] of the debate. But when strong internal circumstances are urged against the taxes; when the scheme is dissected; when experience and the nature of things are brought to prove, and do prove, the utter impossibility of obtaining an effective revenue from the Colonies; when these things are pressed, or rather press themselves, so as to drive the advocates of Colony Taxes to a clear admission of the futility of the scheme; then, Sir, the sleeping Trade Laws revive from their trance; and this useless taxation is to be kept sacred, not for its own sake, but as a counter-guard and security of the laws of trade.

Then, Sir, you keep up Revenue Laws which are mischievous, in order to preserve Trade Laws that are useless. Such is the wisdom of our plan in both its members. They are separately given up as of no value; and yet one is always to be defended for the sake of the other. But I cannot agree with the Noble Lord, nor with the pamphlet from whence he seems to have borrowed these ideas, concerning the inutility of the Trade Laws. For, without idolizing them, I am sure they are still, in many ways, of great use to us: and in former times they have been of the greatest. They do confine, and they do greatly narrow, the market for the Americans. But my perfect conviction of this does not help me in the least to discern how the Revenue Laws form any security whatsoever to the commercial regulations; or that these commercial regulations are the true ground of the quarrel; or that the giving way, in any one instance of authority, is to lose all that may remain unconceded.

One fact is clear and indisputable. The public and avowed origin of this quarrel was on taxation. This quarrel has indeed brought on new disputes on new questions; but certainly the least bitter, and the fewest of all, on the Trade Laws. To judge which of the two be the real, radical cause[200] of quarrel, we have to see whether the commercial dispute did, in order of time, precede the dispute on taxation? There is not a [[258]] shadow of evidence for it. Next, to enable us to judge whether at this moment a dislike to the Trade Laws be the real cause of quarrel, it is absolutely necessary to put the taxes out of the question by a repeal. See how the Americans act in this position, and then you will be able to discern correctly what is the true object of the controversy, or whether any controversy at all will remain. Unless you consent to remove this cause of difference, it is impossible, with decency, to assert that the dispute is not upon what it is avowed to be. And I would, Sir, recommend to your serious consideration, whether it be prudent to form a rule for punishing people, not on their own acts, but on your conjectures? Surely it is preposterous at the very best. It is not justifying your anger, by their misconduct; but it is converting your ill-will into their delinquency.

But the Colonies will go further. Alas! alas! when will this speculation against fact and reason end? What will quiet these panic fears which we entertain of the hostile effect of a conciliatory conduct? Is it true, that no case can exist, in which it is proper for the Sovereign to accede to the desires of his discontented subjects? Is there anything peculiar in this case, to make a rule for itself? Is all authority of course lost, when it is not pushed to the extreme? Is it a certain maxim, that the fewer causes of dissatisfaction are left by government, the more the subject will be inclined to resist and rebel?

All these objections being in fact no more than suspicions, conjectures, divinations; formed in defiance of fact and experience; they did not, Sir, discourage me from entertaining the idea of a conciliatory concession, founded on the principles which I have just stated.

[201]IN FORMING A PLAN for this purpose, I endeavoured to put myself in that frame of mind which was the most natural, and the most reasonable; and which was certainly the most probable means of securing me from all error. I set out with a perfect distrust of my own abilities; a total renunciation [[259]] of every speculation of my own; and with a profound reverence for the wisdom of our ancestors, who have left us the inheritance of so happy a constitution, and so flourishing an empire, and what is a thousand times more valuable, the treasury of the maxims and principles which formed the one, and obtained the other.

During the reigns of the kings of Spain of the Austrian family, whenever they were at a loss in the Spanish councils, it was common for their statesmen to say, that they ought to consult the genius of Philip the Second. The genius of Philip the Second might mislead them; and the issue of their affairs showed, that they had not chosen the most perfect standard. But, Sir, I am sure that I shall not be misled, when in a case of constitutional difficulty, I consult the genius of the English Constitution. Consulting at that oracle (it was with all due humility and piety) I found four capital examples in a similar case before me; those of Ireland, Wales, Chester, and Durham.

Ireland, before the English conquest, though never governed by a despotick power, had no Parliament. How far the English Parliament itself was at that time modelled according to the present form, is disputed among antiquaries. But we have all the reason in the world to be assured that a form of Parliament, such as England then enjoyed, she instantly communicated to Ireland; and we are equally sure that almost every successive improvement in constitutional liberty, as fast as it was made here, was transmitted thither. The feudal Baronage, and the feudal Knighthood, the roots of our primitive Constitution, were early[202] transplanted into that soil; and grew and flourished there. Magna Charta, if it did not give us originally the House of Commons, gave us at least a House of Commons of weight and consequence. But your ancestors did not churlishly sit down alone to the feast of Magna Charta. Ireland was made immediately a partaker. This benefit of English laws and liberties, I confess, was [[260]] not at first extended to *all* Ireland. Mark the consequence. English authority and English liberties had exactly the same boundaries. Your standard could never be advanced an inch before your privileges. Sir John Davis shows beyond a doubt, that the refusal of a general communication of these rights was the true cause why Ireland was five hundred years in subduing; and after the vain projects of a Military Government, attempted in the reign of Queen Elizabeth, it was soon discovered, that

nothing could make that country English, in civility and allegiance, but your laws and your forms of legislature. It was not English arms, but the English Constitution, that conquered Ireland. From that time, Ireland has ever had a general Parliament, as she had before a partial Parliament. You changed the people; you altered the religion; but you never touched the form or the vital substance of free government in that Kingdom. You deposed kings; you restored them; you altered the succession to theirs, as well as to your own Crown; but you never altered their Constitution; the principle of which was respected by usurpation; restored with the restoration of Monarchy, and established, I trust, for ever, by the glorious Revolution. This has made Ireland the great and flourishing Kingdom that it is; and from a disgrace and a burthen intolerable to this nation, has rendered her a principal part of our strength and ornament. This country cannot be said to have ever formally taxed her. The irregular things done in the confusion of mighty troubles, and on the hinge of[203] great revolutions, even if all were done that is said to have been done, form no example. If they have any effect in argument, they make an exception to prove the rule. None of your own liberties could stand a moment if the casual deviations from them, at such times, were suffered to be used as proofs of their nullity. By the lucrative amount of such casual breaches in the constitution, judge what the stated and fixed rule of supply has been in that Kingdom. Your Irish pensioners would starve if they had no other fund [[261]] to live on than taxes granted by English authority. Turn your eyes to those popular grants from whence all your great supplies are come; and learn to respect that only source of public wealth in the British Empire.

My next example is Wales. This country was said to be reduced by Henry the Third. It was said more truly to be so by Edward the First. But though then conquered, it was not looked upon as any part of the Realm of England. Its old Constitution, whatever that might have been, was destroyed; and no good one was substituted in its place. The care of that tract was put into the hands of Lords Marchers—a form of government of a very singular kind; a strange heterogeneous monster, something between Hostility and Government; perhaps it has a sort of resemblance, according to the modes of those terms, to that of Commander-in-chief at present, to whom all civil power is granted as secondary. The manners of the Welsh nation followed the Genius of the Government; the people were ferocious, restive, savage, and uncultivated; sometimes composed, never pacified. Wales, within itself, was in perpetual disorder; and it kept the frontier of England in perpetual alarm. Benefits from it to the state, there were none. Wales was only known to England by incursion and invasion.

Sir, during that state of things, Parliament was not idle.[204] They attempted to subdue the fierce spirit of the Welsh by all sorts of rigorous laws. They prohibited by statute the sending all sorts

of arms into Wales, as you prohibit by proclamation (with something more of doubt on the legality) the sending arms to America. They disarmed the Welsh by statute, as you attempted (but still with more question on the legality) to disarm New England by an instruction. They made an Act to drag offenders from Wales into England for trial, as you have done (but with more hardship) with regard to America. By another Act, where one of the parties was an Englishman, they ordained, that his trial should be always by English. They made Acts to restrain trade, as you do; and [[262]] they prevented the Welsh from the use of fairs and markets, as you do the Americans from fisheries and foreign ports. In short, when the Statute Book was not quite so much swelled as it is now, you find no less than fifteen acts of penal regulation on the subject of Wales.

Here we rub our hands—A fine body of precedents for the authority of Parliament and the use of it!—I admit it fully; and pray add likewise to these precedents, that all the while, Wales rid this Kingdom like an *incubus;* that it was an unprofitable and oppressive burthen; and that an Englishman travelling in that country could not go six yards from the high road without being murdered.

The march of the human mind is slow. Sir, it was not, until after Two Hundred years, discovered, that, by an eternal law, Providence had decreed vexation to violence; and poverty to rapine. Your ancestors did however at length open their eyes to the ill husbandry of injustice. They found that the tyranny of a free people could of all tyrannies the least be endured; and that laws made against a whole nation were not the most effectual methods of securing its obedience. Accordingly, in the Twenty-seventh year of Henry[205] the Eighth, the course was entirely altered. With a preamble stating the entire and perfect rights of the Crown of England, it gave to the Welsh all the rights and privileges of English subjects. A political order was established; the military power gave way to the civil; the Marches were turned into Counties. But that a nation should have a right to English liberties, and yet no share at all in the fundamental security of these liberties—the grant of their own property—seemed a thing so incongruous; that, Eight years after, that is, in the Thirty-fifth of that reign, a complete and not ill proportioned representation by counties and boroughs was bestowed upon Wales, by Act of Parliament. From that moment, as by a charm, the tumults subsided; obedience was restored; peace, order, and civilization followed in the train of liberty. When the day-star [[263]] of the English Constitution had arisen in their hearts, all was harmony within and without

- —simul alba nautis
- Stella refulsit,

- Defluit saxis agitatus humor;
- Concidunt venti, fugiuntque nubes,
- Et minax (quod sic voluere) ponto
- Unda recumbit.

The very same year the County Palatine of Chester received the same relief from its oppressions, and the same remedy to its disorders. Before this time Chester was little less distempered than Wales. The inhabitants, without rights themselves, were the fittest to destroy the rights of others; and from thence Richard the Second drew the standing army of Archers, with which for a time he oppressed England. The people of Chester applied to Parliament in a petition penned as I shall read to you:

> To the King our Sovereign Lord, in most humble wise shewen unto your Excellent Majesty the inhabitants of your Grace's County Palatine of Chester; (1.) That[206] where the said County Palatine of Chester is and hath been always hitherto exempt, excluded and separated out and from your High Court of Parliament, to have any Knights and Burgesses within the said Court; by reason whereof the said inhabitants have hitherto sustained manifold disherisons, losses, and damages, as well in their lands, goods, and bodies, as in the good, civil, and politic governance and maintenance of the commonwealth of their said country: (2.) And forasmuch as the said inhabitants have always hitherto been bound by the Acts and Statutes made and ordained by your said Highness, and your most noble progenitors, by authority of the said Court, as far forth as other counties, cities, and boroughs have been, that have had their Knights and Burgesses within your said Court of Parliament, and yet have had neither Knight ne Burgess there for the said County Palatine; the said inhabitants, for lack thereof, have been oftentimes touched and grieved with Acts and Statutes made within the said Court, as well derogatory unto the most ancient jurisdictions, liberties, and privileges of your said County Palatine, as prejudicial [[264]] unto the commonwealth, quietness, rest, and peace of your Grace's most bounden subjects inhabiting within the same.

What did Parliament with this audacious address?—Reject it as a libel? Treat it as an affront to Government? Spurn it as a derogation from the rights of legislature? Did they toss it over the table? Did they burn it by the hands of the common hangman?—They took the petition of grievance, all rugged as it was, without softening or temperament, unpurged of the original bitterness and indignation of complaint; they made it the very preamble to their Act of redress; and consecrated its principle to all ages in the sanctuary of legislation.

Here is my third example. It was attended with the success of the two former. Chester, civilized as well as Wales, has demonstrated that freedom, and not servitude, is the cure[207] of anarchy; as religion, and not atheism, is the true remedy for superstition. Sir, this pattern of Chester was

followed in the reign of Charles the Second, with regard to the County Palatine of Durham, which is my fourth example. This county had long lain out of the pale of free legislation. So scrupulously was the example of Chester followed, that the style of the preamble is nearly the same with that of the Chester Act; and, without affecting the abstract extent of the authority of Parliament, it recognises the equity of not suffering any considerable district, in which the British subjects may act as a body, to be taxed without their own voice in the grant.

NOW IF THE DOCTRINES of policy contained in these preambles, and the force of these examples in the Acts of Parliaments, avail anything, what can be said against applying them with regard to America? Are not the people of America as much Englishmen as the Welsh? The preamble of the Act of Henry the Eighth says, the Welsh speak a language no way resembling that of his Majesty's English subjects. Are the Americans not as numerous? If we may trust the learned [[265]] and accurate Judge Barrington's account of North Wales, and take that as a standard to measure the rest, there is no comparison. The people cannot amount to above 200,000; not a tenth part of the number in the Colonies. Is America in rebellion? Wales was hardly ever free from it. Have you attempted to govern America by penal statutes? You made Fifteen for Wales. But your legislative authority is perfect with regard to America.—Was it less perfect in Wales, Chester, and Durham? But America is virtually represented.—What! does the electric force of virtual representation more easily pass over the Atlantic, than pervade Wales, which lies in your neighbourhood; or than Chester and Durham, surrounded[208] by abundance of representation that is actual and palpable? But, Sir, your ancestors thought this sort of virtual representation, however ample, to be totally insufficient for the freedom of the inhabitants of territories that are so near, and comparatively so inconsiderable. How then can I think it sufficient for those which are infinitely greater, and infinitely more remote?

You will now, Sir, perhaps imagine, that I am on the point of proposing to you a scheme for a representation of the Colonies in Parliament. Perhaps I might be inclined to entertain some such thought; but a great flood stops me in my course. *Opposuit natura*—I cannot remove the eternal barriers of the creation. The thing, in that mode, I do not know to be possible. As I meddle with no theory, I do not absolutely assert the impracticability of such a representation. But I do not see my way to it; and those who have been more confident have not been more successful. However, the arm of public benevolence is not shortened; and there are often several means to the same end. What nature has disjoined in one way, wisdom may unite in another. When we cannot give the benefit as we would wish, let us not refuse it altogether. If we cannot give the principal, let us find a substitute. But how? Where? What substitute?

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Fortunately I am not obliged for the ways and means of this substitute to tax my own unproductive invention. I am not even obliged to go to the rich treasury of the fertile framers of imaginary commonwealths; not to the Republick of Plato; not to the Utopia of More; not to the Oceana of Harrington. It is before me—it is at my feet, *and the rude swain Treads daily on it with his clouted shoon.* I only wish you to recognise, for the theory, the ancient Constitutional policy of this Kingdom with regard to representation, as that policy has been declared in Acts of Parliament; and, as to[209] the practice, to return to that mode which an uniform experience has marked out to you, as best; and in which you walked with security, advantage, and honour, until the year 1763.

My Resolutions therefore mean to establish the equity and justice of a taxation of America by *grant,*and not by *imposition.* To mark the *legal competency* of the Colony Assemblies for the support of their government in peace, and for public aids in time of war. To acknowledge that this legal competency has had *a dutiful and beneficial exercise;* and that experience has shown the *benefit of their grants,* and the*futility of Parliamentary taxation as a method of supply.*

THESE SOLID TRUTHS compose six fundamental propositions. There are three more Resolutions corollary to these. If you admit the first set, you can hardly reject the others. But if you admit the first, I shall be far from sollicitous whether you accept or refuse the last. I think these six massive pillars will be of strength sufficient to support the temple of British concord. I have no more doubt than I entertain of my existence, that, if you admitted these, you would command an immediate peace; and, with but tolerable future management, a lasting obedience in America. I am not arrogant in this confident assurance. The propositions are all mere matters of fact; and if they are such facts as draw irresistible conclusions even in the stating, this is the power of truth, and not any management of mine.

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Sir, I shall open the whole plan to you, together with such observations on the motions as may tend to illustrate them where they may want explanation. The first is a Resolution—

> That the Colonies and Plantations of Great Britain in North America, consisting of Fourteen separate Governments, and containing Two Millions and upwards of[210] free inhabitants, have not had the liberty and privilege of electing and sending any Knights and Burgesses, or others, to represent them in the High Court of Parliament.

This is a plain matter of fact, necessary to be laid down, and (excepting the description) it is laid down in the language of the Constitution; it is taken nearly *verbatim* from Acts of Parliament.

The second is like unto the first—

> That the said Colonies and Plantations have been liable to, and bounden by, several subsidies, payments, rates, and taxes, given and granted by Parliament, though the said Colonies and Plantations have not their Knights and Burgesses, in the said High Court of Parliament, of their own election, to represent the condition of their country; by lack whereof they have been oftentimes touched and grieved by subsidies given, granted, and assented to, in the said Court, in a manner prejudicial to the commonwealth, quietness, rest, and peace of the subjects inhabiting within the same.

Is this description too hot, or too cold, too strong, or too weak? Does it arrogate too much to the supreme legislature? Does it lean too much to the claims of the people? If it runs into any of these errors, the fault is not mine. It is the language of your own ancient Acts of Parliament.

- Non meus hic sermo, sed quae praecepit Ofellus,
- Rusticus, abnormis sapiens.

It is the genuine produce of the antient, rustic, manly, home-bred sense of this country—I did not dare to rub off a particle of the venerable rust that rather adorns and preserves, than destroys, the metal. It would be a profanation to touch [[268]] with a tool the stones which construct the sacred altar of peace. I would not violate with modern polish the ingenuous and noble roughness of these truly Constitutional materials.[211] Above all things, I was resolved not to be guilty of tampering: the odious vice of restless and unstable minds. I put my foot in the tracks of our forefathers; where I can neither wander nor stumble. Determining to fix articles of peace, I was resolved not to be wise beyond what was written; I was resolved to use nothing else than the form of sound words; to let others abound in their own sense; and carefully to abstain from all expressions of my own. What the Law has said, I say. In all things else I am silent. I have no organ but for her words. This, if it be not ingenious, I am sure is safe.

There are indeed words expressive of grievance in this second Resolution, which those who are resolved always to be in the right will deny to contain matter of fact, as applied to the present case; although Parliament thought them true, with regard to the Counties of Chester and Durham. They will deny that the Americans were ever “touched and grieved” with the taxes. If they consider nothing in taxes but their weight as pecuniary impositions, there might be some pretence for this denial. But men may be sorely touched and deeply grieved in their privileges, as

well as in their purses. Men may lose little in property by the act which takes away all their freedom. When a man is robbed of a trifle on the highway, it is not the Two-pence lost that constitutes the capital outrage. This is not confined to privileges. Even antient indulgences withdrawn, without offence on the part of those who enjoyed such favours, operate as grievances. But were the Americans then not touched and grieved by the taxes, in some measure, merely as taxes? If so, why were they almost all either wholly repealed, or exceedingly reduced? Were they not touched and grieved even by the regulating Duties of the Sixth of George the Second? Else why were the duties first reduced to one Third in 1764, and afterwards to a Third of [[269]] that Third in the year 1766? Were they not[212] touched and grieved by the Stamp Act? I shall say they were, until that tax is revived. Were they not touched and grieved by the duties of 1767, which were likewise repealed, and which Lord Hillsborough tells you (for the Ministry) were laid contrary to the true principle of commerce? Is not the assurance given by that noble person to the Colonies of a resolution to lay no more taxes on them, an admission that taxes would touch and grieve them? Is not the Resolution of the Noble Lord in the blue ribband, now standing on your Journals, the strongest of all proofs that Parliamentary subsidies really touched and grieved them? Else why all these changes, modifications, repeals, assurances, and Resolutions?

The next proposition is—

> That, from the distance of the said Colonies, and from other circumstances, no method hath hitherto been devised for procuring a representation in Parliament for the said Colonies.

This is an assertion of a fact. I go no further on the paper; though, in my private judgement, an useful representation is impossible; I am sure it is not desired by them; nor ought it perhaps by us; but I abstain from opinions.

The fourth Resolution is—

> That each of the said Colonies hath within itself a body, chosen in part, or in the whole, by the freemen, freeholders, or other free inhabitants thereof, commonly called the General Assembly, or General Court; with powers legally to raise, levy, and assess, according to the several usage of such Colonies, duties and taxes towards defraying all sorts of public services.

This competence in the Colony Assemblies is certain. It is proved by the whole tenour of their Acts of Supply in all the Assemblies, in which the constant style of granting is, “an aid to his Majesty”; and Acts granting to the Crown[213] have regularly for near a century passed the

public offices without [[270]]dispute. Those who have been pleased paradoxically to deny this right, holding that none but the British Parliament can grant to the Crown, are wished to look to what is done, not only in the Colonies, but in Ireland, in one uniform unbroken tenour every session. Sir, I am surprised that this doctrine should come from some of the law servants of the Crown. I say, that if the Crown could be responsible, his Majesty—but certainly the Ministers, and even these law officers themselves, through whose hands the Acts pass, biennially in Ireland, or annually in the Colonies, are in an habitual course of committing impeachable offences. What habitual offenders have been all Presidents of the Council, all Secretaries of State, all First Lords of Trade, all Attornies and all Solicitors General! However, they are safe; as no one impeaches them; and there is no ground of charge against them, except in their own unfounded theories.

The fifth Resolution is also a Resolution of fact—

> That the said General Assemblies, General Courts, or other bodies legally qualified as aforesaid, have at sundry times freely granted several large subsidies and public aids for his Majesty's service, according to their abilities, when required thereto by letter from one of his Majesty's principal Secretaries of State; and that their right to grant the same, and their chearfulness and sufficiency in the said grants, have been at sundry times acknowledged by Parliament.

To say nothing of their great expenses in the Indian wars; and not to take their exertion in foreign ones, so high as the supplies in the year 1695; not to go back to their public contributions in the year 1710; I shall begin to travel only where the Journals give me light; resolving to deal in nothing but fact, authenticated by Parliamentary record; and to build myself wholly on that solid basis.

[214]On the 4th of April, 1748, a Committee of this House came to the following Resolution:

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> Resolved,
>
> That it is the opinion of this Committee, That it is just and reasonable that the several Provinces and Colonies of Massachuset's Bay, New Hampshire, Connecticut, and Rhode Island, be reimbursed the expenses they have been at in taking and securing to the Crown of Great Britain the Island of Cape Breton and its dependencies.

The expenses were immense for such Colonies. They were above 200,000*l.* sterling; money first raised and advanced on their public credit.

On the 28th of January, 1756, a Message from the King came to us, to this effect;

> His Majesty, being sensible of the zeal and vigour with which his faithful subjects of certain Colonies in North America have exerted themselves in defence of his Majesty's just rights and possessions, recommends it to this House to take the same into their consideration, and to enable his Majesty to give them such assistance as may be *a proper reward and encouragement.*

On the 3rd of February, 1756, the House came to a suitable Resolution, expressed in words nearly the same as those of the Message: but with the further addition, that the money then voted was as an*encouragement* to the Colonies to exert themselves with vigour. It will not be necessary to go through all the testimonies which your own records have given to the truth of my Resolutions. I will only refer you to the places in the Journals:

> Vol. xxvii.—16th and 19th May, 1757.
>
> Vol. xxviii.—June 1st, 1758—April 26th and 30th, 1759—March 26th and 31st, and April 28th, 1760—Jan. 9th and 20th, 1761.
>
> Vol. xxix.—Jan. 22nd and 26th, 1762—March 14th and 17th, 1763.

[215]Sir, here is the repeated acknowledgment of Parliament, that the Colonies not only gave, but gave to satiety. This nation has formally acknowledged two things; first, that the [[272]] Colonies had gone beyond their abilities, Parliament having thought it necessary to reimburse them; secondly, that they had acted legally and laudably in their grants of money, and their maintenance of troops, since the compensation is expressly given as reward and encouragement. Reward is not bestowed for acts that are unlawful; and encouragement is not held out to things that deserve reprehension. My Resolution therefore does nothing more than collect into one proposition, what is scattered through your Journals. I give you nothing but your own; and you cannot refuse in the gross, what you have so often acknowledged in detail. The admission of this, which will be so honourable to them and to you, will, indeed, be mortal to all the miserable stories, by which the passions of the misguided people have been engaged in an unhappy system. The people heard, indeed, from the beginning of these disputes, one thing continually dinned in their ears, that reason and justice demanded, that the Americans, who paid no Taxes, should be compelled to contribute. How did that fact, of their paying nothing, stand, when the Taxing System began? When Mr. Grenville began to form his system of American Revenue, he stated in this House, that the Colonies were then in debt two millions six hundred thousand pounds sterling money; and was of opinion they would discharge that debt in four years. On this state,

those untaxed people were actually subject to the payment of taxes to the amount of six hundred and fifty thousand a year. In fact, however, Mr. Grenville was mistaken. The funds given for sinking the debt did not prove quite so ample as both the Colonies and he expected. The calculation was too sanguine; the reduction was not completed till some years after, and at different times in different Colonies. However, the[216] Taxes after the war continued too great to bear any addition, with prudence or propriety; and when the burthens imposed in consequence of former requisitions were discharged, our tone became too high to resort again [[273]] to requisition. No Colony, since that time, ever has had any requisition whatsoever made to it.

We see the sense of the Crown, and the sense of Parliament, on the productive nature of a *Revenue by Grant.* Now search the same Journals for the produce of the *Revenue by Imposition.* Where is it? Let us know the volume and the page. What is the gross, what is the nett produce? To what service is it applied? How have you appropriated its surplus? What, can none of the many skilful Index-makers that we are now employing, find any trace of it? Well, let them and that rest together. But are the Journals, which say nothing of the Revenue, as silent on the discontent? Oh no! a child may find it. It is the melancholy burthen and blot of every page.

I think then I am, from those Journals, justified in the sixth and last Resolution, which is—

> That it hath been found by experience, that the manner of granting the said supplies and aids, by the said General Assemblies, hath been more agreeable to the said Colonies, and more beneficial, and conducive to the public service, than the mode of giving and granting aids in Parliament, to be raised and paid in the said Colonies.

This makes the whole of the fundamental part of the plan. The conclusion is irresistible. You cannot say, that you were driven by any necessity to an exercise of the utmost Rights of Legislature. You cannot assert, that you took on yourselves the task of imposing Colony Taxes, from the want of another legal body, that is competent to the purpose of supplying the exigencies of the State without wounding[217]the prejudices of the people. Neither is it true that the body so qualified, and having that competence, had neglected the duty.

The question now, on all this accumulated matter, is; whether you will choose to abide by a profitable experience, or a mischievous theory; whether you choose to build on imagination, or fact; whether you prefer enjoyment or hope; satisfaction in your subjects, or discontent?

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If these propositions are accepted, everything which has been made to enforce a contrary system, must, I take it for granted, fall along with it. On that ground, I have drawn the following Resolution, which, when it comes to be moved, will naturally be divided in a proper manner:

> That it may be proper to repeal an Act, made in the seventh year of the reign of his present Majesty, intituled, An Act for granting certain duties in the British Colonies and Plantations in America; for allowing a drawback of the duties of Customs upon the exportation from this Kingdom, of coffee and cocoa-nuts of the produce of the said Colonies or Plantations; for discontinuing the drawbacks payable on China earthenware exported to America; and for more effectually preventing the clandestine running of goods in the said Colonies and Plantations.—And that it may be proper to repeal an Act, made in the fourteenth year of the reign of his present Majesty, intituled, An Act to discontinue, in such manner, and for such time, as are therein mentioned, the landing and discharging, lading or shipping, of goods, wares, and merchandise, at the town and within the harbour of Boston, in the province of Massachuset's Bay, in North America.—And that it may be proper to repeal an Act, made in the fourteenth year of the reign of his present Majesty, intituled, An Act for the impartial administration of justice, in the cases of persons questioned for any acts done by them, in the execution of the law, or for the suppression of riots and tumults, in the province of Massachuset's Bay, in New England.—And that it may[218] be proper to repeal an Act, made in the fourteenth year of the reign of his present Majesty, intituled, An Act for the better regulating of the Government of the province of the Massachuset's Bay, in New England.—And, also, that it may be proper to explain and amend an Act, made in the thirty-fifth year of the reign of King Henry the Eighth, intituled, An Act for the Trial of Treasons committed out of the King's Dominions.

I wish, Sir, to repeal the Boston Port Bill, because (independently of the dangerous precedent of suspending the rights of the subject during the King's pleasure) it was passed, as I apprehend, with less regularity, and on more partial principles, than it ought. The corporation of Boston was not [[275]] heard before it was condemned. Other towns, full as guilty as she was, have not had their ports blocked up. Even the Restraining Bill of the present Session does not go to the length of the Boston Port Act. The same ideas of prudence, which induced you not to extend equal punishment to equal guilt, even when you were punishing, induced me, who mean not to chastise, but to reconcile, to be satisfied with the punishment already partially inflicted.

Ideas of prudence and accommodation to circumstances, prevent you from taking away the Charters of Connecticut and Rhode Island, as you have taken away that of Massachuset's Colony, though the Crown has far less power in the two former provinces than it enjoyed in the latter; and though the abuses have been full as great, and as flagrant, in the exempted as in the punished. The same reasons of prudence and accommodation have weight with me in restoring the Charter of Massachuset's Bay. Besides, Sir, the act which changes the Charter of

Massachuset's is in many particulars so exceptionable, that if I did not wish absolutely to repeal, I would by all means desire to alter it; as several of its provisions tend to the subversion of all[219] public and private justice. Such, among others, is the power in the Governor to change the sheriff at his pleasure; and to make a new returning officer for every special cause. It is shameful to behold such a regulation standing among English Laws.

The Act for bringing persons accused of committing murder under the orders of Government to England for Trial is but temporary. That Act has calculated the probable duration of our quarrel with the Colonies; and is accommodated to that supposed duration. I would hasten the happy moment of reconciliation; and therefore must, on my principle, get rid of that most justly obnoxious Act.

The Act of Henry the Eighth, for the Trial of Treasons, I do not mean to take away, but to confine it to its proper [[276]] bounds and original intention; to make it expressly for Trial of Treasons (and the greatest Treasons may be committed) in places where the jurisdiction of the Crown does not extend.

Having guarded the privileges of Local Legislature, I would next secure to the Colonies a fair and unbiassed Judicature; for which purpose, Sir, I propose the following Resolution:

That, from the time when the General Assembly or General Court of any Colony or Plantation in North America, shall have appointed by Act of Assembly, duly confirmed, a settled salary to the offices of the Chief Justice and other Judges of the Superior Court, it may be proper that the said Chief Justice and other Judges of the Superior Courts of such Colony, shall hold his and their office and offices during their good behaviour; and shall not be removed therefrom, but when the said removal shall be adjudged by his Majesty in Council, upon a hearing on complaint from the General Assembly, or on a complaint from the Governor, or Council, or the House of Representatives severally, or of the Colony in which the said Chief Justice and other Judges have exercised the said offices.

[220]The next Resolution relates to the Courts of Admiralty.

It is this:

That it may be proper to regulate the Courts of Admiralty, or Vice-Admiralty, authorized by the fifteenth Chapter of the Fourth of George the Third, in such a manner as to make the same more commodious to those who sue, or are sued, in the said Courts, and to provide for the more decent maintenance of the Judges in the same.

These Courts I do not wish to take away; they are in themselves proper establishments. This Court is one of the capital securities of the Act of Navigation. The extent of its jurisdiction, indeed, has been encreased; but this is altogether as proper, and is indeed on many accounts more eligible, where new powers were wanted, than a Court absolutely new. But Courts incommodiously situated, in effect, deny justice; and [[277]] a Court, partaking in the fruits of its own condemnation, is a robber. The Congress complain, and complain justly, of this grievance.

These are the three consequential propositions. I have thought of two or three more; but they come rather too near detail, and to the province of executive Government; which I wish Parliament always to superintend, never to assume. If the first six are granted, congruity will carry the latter three. If not, the things that remain unrepealed will be, I hope, rather unseemly incumbrances on the building, than very materially detrimental to its strength and stability.

HERE, SIR, I SHOULD CLOSE; but I plainly perceive some objections remain, which I ought, if possible, to remove. The first will be, that, in resorting to the doctrine of our ancestors, as contained in the preamble to the Chester Act, I prove too much; that the grievance from a want of representation, stated in that preamble, goes to the whole of[221] Legislation as well as to Taxation. And that the Colonies, grounding themselves upon that doctrine, will apply it to all parts of Legislative Authority.

To this objection, with all possible deference and humility, and wishing as little as any man living to impair the smallest particle of our supreme authority, I answer, that *the words are the words of Parliament, and not mine;* and, that all false and inconclusive inferences, drawn from them, are not mine; for I heartily disclaim any such inference. I have chosen the words of an Act of Parliament, which Mr. Grenville, surely a tolerably zealous and very judicious advocate for the sovereignty of Parliament, formerly moved to have read at your table in confirmation of his tenets. It is true, that Lord Chatham considered these preambles as declaring strongly in favour of his opinions. He was a no less powerful advocate for the privileges of the Americans. Ought I not from hence to presume, that these preambles are as favourable as possible [[278]] to both, when properly understood; favourable both to the rights of Parliament, and to the privilege of the dependencies of this Crown? But, Sir, the object of grievance in my resolution I have not taken from the Chester, but from the Durham Act, which confines the hardship of want of representation to the case of subsidies; and which therefore falls in exactly with the case of the Colonies. But whether the unrepresented counties were *de jure,* or *de facto,* bound, the preambles do not accurately distinguish; nor indeed was it necessary; for, whether *de jure,* or *de facto,*the

Legislature thought the exercise of the power of taxing, as of right, or as of fact without right, equally a grievance, and equally oppressive.

I do not know that the Colonies have, in any general way, or in any cool hour, gone much beyond the demand of humanity in relation to taxes. It is not fair to judge of the temper or dispositions of any man, or any set of men, when[222] they are composed and at rest, from their conduct, or their expressions, in a state of disturbance and irritation. It is besides a very great mistake to imagine, that mankind follow up practically any speculative principle, either of government or of freedom, as far as it will go in argument and logical illation. We Englishmen stop very short of the principles upon which we support any given part of our Constitution; or even the whole of it together. I could easily, if I had not already tired you, give you very striking and convincing instances of it. This is nothing but what is natural and proper. All government, indeed every human benefit and enjoyment, every virtue, and every prudent act, is founded on compromise and barter. We balance inconveniences; we give and take; we remit some rights, that we may enjoy others; and we choose rather to be happy citizens, than subtle disputants. As we must give away some natural liberty, to enjoy civil advantages; so we must sacrifice some civil liberties, for the advantages to be derived from the communion and fellowship of a great empire. But, in all fair dealings, the thing [[279]] bought must bear some proportion to the purchase paid. None will barter away *the immediate jewel of his soul.* Though a great house is apt to make slaves haughty, yet it is purchasing a part of the artificial importance of a great empire too dear, to pay for it all essential rights, and all the intrinsic dignity of human nature. None of us who would not risque his life rather than fall under a government purely arbitrary. But although there are some amongst us who think our Constitution wants many improvements, to make it a complete system of liberty; perhaps none who are of that opinion would think it right to aim at such improvement, by disturbing his country, and risquing everything that is dear to him. In every arduous enterprize, we consider what we are to lose, as well as what we are to gain; and the more and better stake of liberty[223] every people possess, the less they will hazard in a vain attempt to make it more. These are *the cords of man.* Man acts from adequate motives relative to his interest; and not on metaphysical speculations. Aristotle, the great master of reasoning, cautions us, and with great weight and propriety, against this species of delusive geometrical accuracy in moral arguments, as the most fallacious of all sophistry.

The Americans will have no interest contrary to the grandeur and glory of England, when they are not oppressed by the weight of it; and they will rather be inclined to respect the acts of a superintending legislature; when they see them the acts of that power, which is itself the security,

not the rival, of their secondary importance. In this assurance, my mind most perfectly acquiesces: and I confess I feel not the least alarm from the discontents which are to arise from putting people at their ease; nor do I apprehend the destruction of this Empire, from giving, by an act of free grace and indulgence, to two millions of my fellow-citizens some share of those rights, upon which I have always been taught to value myself.

It is said, indeed, that this power of granting, vested in American Assemblies, would dissolve the unity of the [[280]] Empire; which was preserved entire, although Wales, and Chester, and Durham were added to it. Truly, Mr. Speaker, I do not know what this unity means; nor has it ever been heard of, that I know, in the constitutional policy of this country. The very idea of subordination of parts, excludes this notion of simple and undivided unity. England is the head; but she is not the head and the members too. Ireland has ever had from the beginning a separate, but not an independent, legislature; which, far from distracting, promoted the union of the whole. Everything was sweetly and harmoniously disposed through both islands for the conservation of English dominion, and the communication of English[224] liberties. I do not see that the same principles might not be carried into twenty islands, and with the same good effect. This is my model with regard to America, as far as the internal circumstances of the two countries are the same. I know no other unity of this Empire, than I can draw from its example during these periods, when it seemed to my poor understanding more united than it is now, or than it is likely to be by the present methods.

BUT SINCE I SPEAK of these methods, I recollect, Mr. Speaker, almost too late, that I promised, before I finished, to say something of the proposition of the Noble Lord on the floor, which has been so lately received, and stands on your Journals. I must be deeply concerned, whenever it is my misfortune to continue a difference with the majority of this House. But as the reasons for that difference are my apology for thus troubling you, suffer me to state them in a very few words. I shall compress them into as small a body as I possibly can, having already debated that matter at large, when the question was before the Committee.

First, then, I cannot admit that proposition of a ransom by auction; because it is a meer project. It is a thing new; unheard of; supported by no experience; justified by [[281]] no analogy; without example of our ancestors, or root in the Constitution. It is neither regular Parliamentary taxation, nor Colony grant. *Experimentum in corpore vili,* is a good rule, which will ever make me adverse to any trial of experiments on what is certainly the most valuable of all subjects, the peace of this Empire.

Secondly, it is an experiment which must be fatal in the end to our Constitution. For what is it but a scheme for taxing the Colonies in the anti-chamber of the Noble Lord and his successours? To settle the quotas and proportions in this House, is clearly impossible. You, Sir, may flatter[225] yourself you shall sit a State auctioneer, with your hammer in your hand, and knock down to each Colony as it bids. But to settle (on the plan laid down by the Noble Lord) the true proportional payment for four or five and twenty governments, according to the absolute and the relative wealth of each, and according to the British proportion of wealth and burthen, is a wild and chimerical notion. This new taxation must therefore come in by the back door of the Constitution. Each quota must be brought to this House ready formed; you can neither add nor alter. You must register it. You can do nothing further. For on what grounds can you deliberate either before or after the proposition? You cannot hear the counsel for all these provinces, quarrelling each on its own quantity of payment, and its proportion to others. If you should attempt it, the Committee of Provincial Ways and Means, or by whatever other name it will delight to be called, must swallow up all the time of Parliament.

Thirdly, it does not give satisfaction to the complaint of the Colonies. They complain, that they are taxed without their consent; you answer, that you will fix the sum at which they shall be taxed. That is, you give them the very grievance for the remedy. You tell them indeed, that you will leave the mode to themselves. I really beg pardon: it gives me pain to mention it; but you must be sensible that you will not perform [[282]] this part of the compact. For, suppose the Colonies were to lay the duties, which furnished their Contingent, upon the importation of your manufactures; you know you would never suffer such a tax to be laid. You know, too, that you would not suffer many other modes of taxation. So that, when you come to explain yourself, it will be found, that you will neither leave to themselves the quantum nor the mode; nor indeed anything. The whole is delusion from one end to the other.

Fourthly, this method of ransom by auction, unless it be [226]*universally* accepted, will plunge you into great and inextricable difficulties. In what year of our Lord are the proportions of payments to be settled? To say nothing of the impossibility that Colony agents should have general powers of taxing the Colonies at their discretion; consider, I implore you, that the communication by special messages, and orders between these agents and their constituents on each variation of the case, when the parties come to contend together, and to dispute on their relative proportions, will be a matter of delay, perplexity, and confusion that never can have an end.

If all the Colonies do not appear at the outcry, what is the condition of those assemblies, who offer by themselves or their agents, to tax themselves up to your ideas of their proportion? The refractory Colonies, who refuse all composition, will remain taxed only to your old impositions, which, however grievous in principle, are trifling as to production. The obedient Colonies in this scheme are heavily taxed; the refractory remain unburthened. What will you do? Will you lay new and heavier taxes by Parliament on the disobedient? Pray consider in what way you can do it. You are perfectly convinced, that, in the way of taxing, you can do nothing but at the ports. Now suppose it is Virginia that refuses to appear at your auction, while Maryland and North Carolina bid handsomely for their ransom, and are taxed to your quota, how will you put these Colonies on a par? Will you tax the [[283]] tobacco of Virginia? If you do, you give its death-wound to your English revenue at home, and to one of the very greatest articles of your own foreign trade. If you tax the import of that rebellious Colony, what do you tax but your own manufactures, or the goods of some other obedient and already well-taxed Colony? Who has said one word on this labyrinth of detail, which bewilders you more and more as you enter into it? Who has presented, who can present you with a clue, to lead you out of it? I think, Sir,[227] it is impossible, that you should not recollect that the Colony bounds are so implicated in one another, (you know it by your other experiments in the Bill for prohibiting the New England Fishery,) that you can lay no possible restraints on almost any of them which may not be presently eluded, if you do not confound the innocent with the guilty, and burthen those whom, upon every principle, you ought to exonerate. He must be grossly ignorant of America, who thinks that, without falling into this confusion of all rules of equity and policy, you can restrain any single Colony, especially Virginia and Maryland, the central and most important of them all.

Let it also be considered, that, either in the present confusion you settle a permanent contingent, which will and must be trifling; and then you have no effectual revenue: or you change the quota at every exigency; and then on every new repartition you will have a new quarrel.

Reflect besides, that when you have fixed a quota for every Colony, you have not provided for prompt and punctual payment. Suppose one, two, five, ten years' arrears. You cannot issue a Treasury Extent against the failing Colony. You must make new Boston Port Bills, new restraining laws, new Acts for dragging men to England for trial. You must send out new fleets, new armies. All is to begin again. From this day forward the Empire is never to know an hour's tranquillity. An intestine fire will be kept alive in the bowels of the Colonies, which one time or other must consume this whole [[284]] Empire. I allow indeed that the empire of Germany raises her revenue and her troops by quotas and contingents; but the revenue of the empire, and the army of the empire, is the worst revenue, and the worst army, in the world.

Instead of a standing revenue, you will therefore have a perpetual quarrel. Indeed the noble Lord, who proposed[228] this project of a ransom by auction, seemed himself to be of that opinion. His project was rather designed for breaking the union of the Colonies, than for establishing a revenue. He confessed, he apprehended that his proposal would not be to *their taste.* I say, this scheme of disunion seems to be at the bottom of the project; for I will not suspect that the noble Lord meant nothing but merely to delude the nation by an airy phantom which he never intended to realize. But whatever his views may be; as I propose the peace and union of the Colonies as the very foundation of my plan, it cannot accord with one whose foundation is perpetual discord.

COMPARE THE TWO. This I offer to give you is plain and simple. The other full of perplexed and intricate mazes. This is mild; that harsh. This is found by experience effectual for its purposes; the other is a new project. This is universal; the other calculated for certain Colonies only. This is immediate in its conciliatory operation; the other remote, contingent, full of hazard. Mine is what becomes the dignity of a ruling people, gratuitous, unconditional, and not held out as a matter of bargain and sale. I have done my duty in proposing it to you. I have indeed tired you by a long discourse; but this is the misfortune of those to whose influence nothing will be conceded, and who must win every inch of their ground by argument. You have heard me with goodness. May you decide with wisdom! For my part, I feel my mind greatly disburthened by what I have done to-day. I have been the less fearful of trying your patience, because on this subject I mean to spare it altogether in future. I have this comfort, that in [[285]] every stage of the American affairs, I have steadily opposed the measures that have produced the confusion, and may bring on the destruction, of this empire. I now go so far as to risque a[229] proposal of my own. If I cannot give peace to my country; I give it to my conscience.

But what (says the Financier) is peace to us without money? Your plan gives us no Revenue. No! But it does—For it secures to the subject the power of REFUSAL; the first of all Revenues. Experience is a cheat, and fact a liar, if this power in the subject of proportioning his grant, or of not granting at all, has not been found the richest mine of Revenue ever discovered by the skill or by the fortune of man. It does not indeed vote you £152,750: II: 2¾ths, nor any other paltry limited sum. But it gives the strong box itself, the fund, the bank, from whence only revenues can arise amongst a people sensible of freedom: *Posita luditur arca.* Cannot you, in England; cannot you, at this time of day; cannot you, a House of Commons, trust to the principle which has raised so mighty a revenue, and accumulated a debt of near 140 millions in this country? Is this principle to be true in England, and false everywhere else? Is it not true in Ireland? Has it not hitherto been true in the Colonies? Why should you presume, that, in any country, a body duly constituted for any function, will neglect to perform its duty, and abdicate its trust? Such a

presumption would go against all governments in all modes. But, in truth, this dread of penury of supply, from a free assembly, has no foundation in nature. For first observe, that, besides the desire which all men have naturally of supporting the honour of their own government, that sense of dignity, and that security to property, which ever attends freedom, has a tendency to increase the stock of the free community. Most may be taken where most is accumulated. And what is the soil or climate where experience has not uniformly proved, that the voluntary flow of heaped-up plenty, bursting from the weight of its own rich luxuriance, has ever run [[286]] with a more copious stream of revenue, than[230] could be squeezed from the dry husks of oppressed indigence, by the straining of all the politic machinery in the world?

Next we know, that parties must ever exist in a free country. We know too, that the emulations of such parties, their contradictions, their reciprocal necessities, their hopes, and their fears, must send them all in their turns to him that holds the balance of the state. The parties are the Gamesters; but Government keeps the table, and is sure to be the winner in the end. When this game is played, I really think it is more to be feared that the people will be exhausted, than that Government will not be supplied. Whereas, whatever is got by acts of absolute power ill obeyed, because odious, or by contracts ill kept, because constrained, will be narrow, feeble, uncertain, and precarious. "*Ease would retract Vows made in pain, as violent and void.*"

I, for one, protest against compounding our demands: I declare against compounding for a poor limited sum, the immense, ever-growing, eternal Debt, which is due to generous Government from protected freedom. And so may I speed in the great object I propose to you, as I think it would not only be an act of injustice, but would be the worst oeconomy in the world, to compel the Colonies to a sum certain, either in the way of ransom, or in the way of compulsory compact.

But to clear up my ideas on this subject—a revenue from America transmitted hither—do not delude yourselves—you never can receive it—No, not a shilling. We have experience that from remote countries it is not to be expected. If, when you attempted to extract revenue from Bengal, you were obliged toreturn in loan what you had taken in imposition; what can you expect from North America? For certainly, if ever there was a country qualified to produce[231] wealth, it is India; or an institution fit for the transmission, it is the East India Company. America has none of these aptitudes. If America gives you taxable objects, on which you lay your [[287]] duties here, and gives you, at the same time, a surplus by a foreign sale of her commodities to pay the duties on these objects, which you tax at home, she has performed her part to the British revenue. But with regard to her own internal establishments; she may, I doubt not she will, contribute in moderation. I say in moderation; for she ought not to be permitted to exhaust herself. She ought

to be reserved to a war; the weight of which, with the enemies that we are most likely to have, must be considerable in her quarter of the globe. There she may serve you, and serve you essentially.

For that service, for all service, whether of revenue, trade, or empire, my trust is in her interest in the British Constitution. My hold of the Colonies is in the close affection which grows from common names, from kindred blood, from similar privileges, and equal protection. These are ties, which, though light as air, are as strong as links of iron. Let the Colonists always keep the idea of their civil rights associated with your Government—they will cling and grapple to you; and no force under heaven will be of power to tear them from their allegiance. But let it be once understood, that your government may be one thing, and their Privileges another; that these two things may exist without any mutual relation—the cement is gone; the cohesion is loosened; and everything hastens to decay and dissolution. As long as you have the wisdom to keep the sovereign authority of this country as the sanctuary of liberty, the sacred temple consecrated to our common faith, wherever the chosen race and sons of England worship freedom, they will turn their faces towards you. The more they multiply, the more friends you will have; the more ardently they love[232] liberty, the more perfect will be their obedience. Slavery they can have anywhere. It is a weed that grows in every soil. They may have it from Spain, they may have it from Prussia. But, until you become lost to all feeling of your true interest and your natural dignity, freedom they can have from none but you. This is the commodity of price, [[288]] of which you have the monopoly. This is the true Act of Navigation, which binds to you the commerce of the Colonies, and through them secures to you the wealth of the world. Deny them this participation of freedom, and you break that sole bond, which originally made, and must still preserve, the unity of the Empire. Do not entertain so weak an imagination, as that your registers and your bonds, your affidavits and your sufferances, your cockets and your clearances, are what form the great securities of your commerce. Do not dream that your letters of office, and your instructions, and your suspending clauses, are the things that hold together the great contexture of the mysterious whole. These things do not make your government. Dead instruments, passive tools as they are, it is the spirit of the English communion that gives all their life and efficacy to them. It is the spirit of the English Constitution, which, infused through the mighty mass, pervades, feeds, unites, invigorates, vivifies every part of the empire, even down to the minutest member.

Is it not the same virtue which does everything for us here in England? Do you imagine then, that it is the Land Tax Act which raises your revenue? that it is the annual vote in the Committee of Supply which gives you your army? or that it is the Mutiny Bill which inspires it with bravery

and discipline? No! surely no! It is the love of the people; it is their attachment to their government, from the sense of the deep stake they have in such a glorious institution—which gives you your army and your navy, and infuses into both[233] that liberal obedience, without which your army would be a base rabble, and your navy nothing but rotten timber.

All this, I know well enough, will sound wild and chimerical to the profane herd of those vulgar and mechanical politicians, who have no place among us; a sort of people who think that nothing exists but what is gross and material; and who therefore, far from being qualified to be directors of the great movement of empire, are not fit to turn a wheel in the [[289]] machine. But to men truly initiated and rightly taught, these ruling and master principles, which, in the opinion of such men as I have mentioned, have no substantial existence, are in truth every thing, and all in all. Magnanimity in politicks is not seldom the truest wisdom; and a great empire and little minds go ill together. If we are conscious of our station, and glow with zeal to fill our places as becomes our situation and ourselves, we ought to auspicate all our public proceedings on America with the old warning of the church, *Sursum corda!* We ought to elevate our minds to the greatness of that trust to which the order of Providence has called us. By adverting to the dignity of this high calling, our ancestors have turned a savage wilderness into a glorious empire; and have made the most extensive, and the only honourable conquests, not by destroying, but by promoting the wealth, the number, the happiness, of the human race. Let us get an American revenue as we have got an American empire. English privileges have made it all that it is; English privileges alone will make it all it can be.

In full confidence of this unalterable truth, I now (*quod felix faustumque sit*) lay the first stone of the Temple of peace; and I move you,

> That the Colonies and Plantations of Great Britain in North America, consisting of Fourteen separate governments, and containing Two Millions and upwards of free inhabitants, have not had the liberty and privilege[234] of electing and sending any Knights and Burgesses, or others, to represent them in the High Court of Parliament.

[Upon this Resolution, the previous question was put, and carried; for the previous question 270, against it, 78.

The first four motions and the last had the previous question put on them. The others were negatived.]

THE END

***CHAP. II.: Of the republican Government, and the Laws relative to Democracy.* - Charles Louis de Secondat, Baron de Montesquieu, *Complete Works, vol. 1 The Spirit of Laws* [1748]**

Edition used:

The Complete Works of M. de Montesquieu (London: T. Evans, 1777), 4 vols. Vol. 1.

WHEN the body of the people is possessed of the supreme power, this is called a *democracy.* When the supreme power is lodged in the hands of a part of the people, it is then an *aristocracy.*

In a democracy the people are in some respects the sovereign, and in others the subject.

There can be no exercise of sovereignty but by their suffrages, which are their own will: now, the sovereign's will is the sovereign himself. The laws, therefore, which establish the right of suffrage, are fundamental to this government. And indeed it is as important to regulate, in a republic, in what manner, by whom, to whom, and concerning what, suffrages are to be given, as it is, in a monarchy, to know who is the prince, and after what manner he ought to govern.

Libanius* says, that at "Athens a stranger who intermeddled in the assemblies of the people was punished with death." This is because such a man usurped the rights of sovereignty.

It is an essential point, to fix the number of citizens who are to form the public assemblies; otherwise it would be uncertain whether the whole or only a part of the people had given their votes. At Sparta the number was fixed to ten thousand. But Rome, designed by Providence to rise from the weakest beginnings to the highest pitch of grandeur; Rome, doomed to experience all the vicissitudes of fortune; Rome, who had sometimes all her inhabitants without her walls, and sometimes all Italy and a considerable part of the world within them; Rome, I say, never fixed* the number; and this was one of the principal causes of her ruin.

The people, in whom the supreme power resides, ought to have the management of every thing within their reach: what exceeds their abilities must be conducted by their ministers.

But they cannot properly be said to have their ministers, without the power of nominating them: it is therefore a fundamental maxim, in this government, that the people should choose their ministers; that is, their magistrates.

They have occasion, as well as monarchs, and even more so, to be directed by a council or senate. But, to have a proper confidence in these, they should have the choosing of the members; whether the election be made by themselves, as at Athens; or by some magistrate deputed for that purpose, as on certain occasions was customary at Rome.

The people are extremely well qualified for choosing those whom they are to intrust with part of their authority. They have only to be determined by things to which they cannot be strangers, and by facts that are obvious to sense. They can tell when a person has fought many battles, and been crowned with success; they are therefore very capable of electing a general. They can tell when a judge is assiduous in his office, gives general satisfaction, and has never been charged with

bribery: this is sufficient for choosing a prætor. They are struck with the magnificence or riches of a fellow-citizen: no more is requisite for electing an ædile. These are facts of which they can have better information in a public forum than a monarch in his palace. But are they capable of conducting an intricate affair, of seizing and improving the opportunity and critical moment of action? No; this surpasses their abilities.

Should we doubt of the people's natural capacity, in respect to the discernment of merit, we need only cast an eye on the series of surprising elections made by the Athenians and Romans; which no one surely will attribute to hazard.

We know that, though the people of Rome assumed to themselves the right of raising plebeians to public offices, yet they never would exert this power; and though, at Athens, the magistrates were allowed, by the law of Aristides, to be elected from all the different classes of inhabitants, there never was a case, says Xenophon* , that the common people petitioned for employments which could endanger either their security or their glory.

As most citizens have sufficient abilities to choose, though unqualified to be chosen, so the people, though capable of calling others to an account for their administration, are incapable of conducting the administration themselves.

The public business must be carried on, with a certain motion, neither too quick nor too slow. But the motion of the people is always either too remiss or too violent. Sometimes, with a hundred thousand arms, they overturn all before them; and sometimes, with a hundred thousand feet, they creep like insects.

In a popular state the inhabitants are divided into certain classes. It is in the manner of making this division that great legislators have signalized themselves; and it is on this the duration and prosperity of democracy have ever depended.

Servius Tullus followed the spirit of aristocracy in the distribution of his classes. We find, in Livy,† and in Dionysius Halicarnasseus,‡ in what manner he lodged the right of suffrage in the hands of the principal citizens. He had divided the people of Rome into a hundred and ninety-three centuries, which formed six classes; and, ranking the rich, who were in smaller numbers, in the first centuries; and those in middling circumstances, who were more numerous, in the next, he flung the indigent multitude into the last; and, as each century had but one vote* , it was property rather than numbers that decided the elections.

Solon divided the people of Athens into four classes. In this he was directed by the spirit of democracy, his intention not being to fix those who were to choose, but such as were eligible: therefore, leaving to every citizen the right of election, he made† the judges eligible from each of those four classes; but the magistrates he ordered to be chosen only out of the first three, consisting of persons of easy fortunes.

As the division of those who have a right of suffrage is a fundamental law in republics, the manner also of giving this suffrage is another fundamental.

The suffrage by *lot* is natural to democracy, as that by *choice* is to aristocracy.

The suffrage by *lot* is a method of electing that offends no one; but animates each citizen with the pleasing hope of serving his country.

Yet, as this method is in itself defective, it has been the endeavour of the most eminent legislators to regulate and amend it.

Solon made a law, at Athens, that military employments should be conferred by *choice;* but that senators and judges should be elected by *lot.*

The same legislator ordained, that civil magistracies attended with great expence should be given by choice, and the others by lot.

In order, however, to amend the suffrage by lot, he made a rule, that none but those who presented themselves should be elected; that the person elected should be examined by judges,* and that every one should have a right to accuse him if he were unworthy of the office† : this participated at the same time of the suffrage by lot, and of that by choice. When the time of their magistracy was expired, they were obliged to submit to another judgement in regard to their conduct. Persons utterly unqualified must have been extremely backward in giving in their names to be drawn by lot.

The law which determines the manner of giving suffrage is likewise fundamental in a democracy. It is a question of some importance, whether the suffrages ought to be public or secret. Cicero observes,‡ that the laws‖ which rendered them secret, towards the close of the republic, were the cause of its decline. But, as this is differently practised in different republics, I shall offer here my thoughts concerning this subject.

The people's suffrages ought doubtless to be public§ ; and this should be considered as a fundamental law of democracy. The lower class ought to be directed by those of higher rank, and restrained within bounds by the gravity of eminent personages. Hence, by rendering the suffrages secret in the Roman republic, all was lost: it was no longer possible to direct a populace that sought its own destruction. But, when the body of the nobles are to vote in an aristocracy,* or in a democracy the senate,† as the business is then only to prevent intrigues, the suffrages cannot be too secret.

Intriguing in a senate is dangerous: dangerous it is also in a body of nobles; but not so in the people, whose nature is to act through passion. In countries where they have no share in the government, we often see them as much inflamed on the account of an actor, as ever they could be for the welfare of the state. The misfortune of a republic is, when intrigues are at an end; which happens when the people are gained by bribery and corruption: in this case they grow indifferent to public affairs, and avarice becomes their predominant passion. Unconcerned about the government and every thing belonging to it, they quietly wait for their hire.

It is likewise a fundamental law, in democracies, that the people should have the sole power to enact laws. And yet there are a thousand occasions on which it is necessary the senate should

have a power of decreeing: nay, it is frequently proper to make some trial of a law before it is established. The constitutions of Rome and Athens were excellent. The decrees of the senate‡ had the force of laws for the space of a year, but did not become perpetual till they were ratified by the consent of the people.

***ESSAY XII: OF THE ORIGINAL CONTRACT* - David Hume, *Essays Moral, Political, Literary (LF ed.)* [1777]**

Edition used:

Essays Moral, Political, Literary, edited and with a Foreword, Notes, and Glossary by Eugene F. Miller, with an appendix of variant readings from the 1889 edition by T.H. Green and T.H. Grose, revised edition (Indianapolis: Liberty Fund 1987).

When we consider how nearly equal all men are in their bodily force, and even in their mental powers and faculties, till cultivated by education; we must necessarily allow, that nothing but their own consent could, at first, associate them together, and subject them to any authority. The people, if we trace government to its first origin in the woods and desarts, are the source of all power and jurisdiction, and voluntarily, for the sake of peace and order, abandoned their native liberty, and received laws from their equal and companion. The conditions, upon which they were willing to submit, were either expressed, or were so clear and obvious, that it might well be esteemed superfluous to express them. If this, then, be meant by the *original contract*, it cannot be denied, that all government is, at first, founded on a contract, and that the most ancient rude combinations of mankind were formed chiefly by that principle. In vain, are we asked in what records this charter of our liberties is registered. It was not written on parchment, nor yet on leaves or barks of trees. It preceded the use of writing and all the other civilized arts of life. But we trace it plainly in the nature of man, and in the equality, b or something approaching equality, which we find in all the individuals of that species. The force, which now prevails, and which is founded on fleets and armies, is plainly political, and derived from authority, the effect of established government. A man's natural force consists only in the vigour of his limbs, and the firmness of his courage; which could never subject multitudes to the command of one. Nothing but their own consent, and their sense of the advantages resulting from peace and order, could have had that influence.

c Yet even this consent was long very imperfect, and could not be the basis of a regular administration. The chieftain, who had probably acquired his influence during the continuance of war, ruled more by persuasion than command; and till he could employ force to reduce the refractory and disobedient, the society could scarcely be said to have attained a state of civil government. No compact or agreement, it is evident, was expressly formed for general submission; an idea far beyond the comprehension of savages: Each exertion of authority in the chieftain must have been particular, and called forth by the present exigencies of the case: The sensible utility, resulting from his interposition, made these exertions become daily more frequent; and their frequency gradually produced an habitual, and, if you please to call it so, a voluntary, and therefore precarious, acquiescence in the people.

But philosophers, who have embraced a party (if that be not a contradiction in terms) are not contented with these concessions. They assert, not only that government in its earliest infancy arose from consent or rather the voluntary acquiescence of the people; but also, that, even at present, when it has attained full maturity, it rests on no other foundation.3 They affirm, that all men are still born equal, and owe allegiance to no prince or government, unless bound by the obligation and sanction of a *promise.* And as no man, without some equivalent, would forego the

advantages of his native liberty, and subject himself to the will of another; this promise is always understood to be conditional, and imposes on him no obligation, unless he meet with justice and protection from his sovereign. These advantages the sovereign promises him in return; and if he fail in the execution, he has broken, on his part, the articles of engagement, and has thereby freed his subject from all obligations to allegiance. Such, according to these philosophers, is the foundation of authority in every government; and such the right of resistance, possessed by every subject.

But would these reasoners look abroad into the world, they would meet with nothing that, in the least, corresponds to their ideas, or can warrant so refined and philosophical a system. On the contrary, we find, every where, princes, who claim their subjects as their property, and assert their independent right of sovereignty, from conquest or succession. We find also, every where, subjects, who acknowledge this right in their prince, and suppose themselves born under obligations of obedience to a certain sovereign, as much as under the ties of reverence and duty to certain parents. These connexions are always conceived to be equally independent of our consent, in Persia and China; in France and Spain; and even in Holland and England, wherever the doctrines above-mentioned have not been carefully inculcated. Obedience or subjection becomes so familiar, that most men never make any enquiry about its origin or cause, more than about the principle of gravity, resistance, or the most universal laws of nature. Or if curiosity ever move them; as soon as they learn, that they themselves and their ancestors have, for several ages, or from time immemorial, been subject to such a form of government or such a family; they immediately acquiesce, and acknowledge their obligation to allegiance. Were you to preach, in most parts of the world, that political connexions are founded altogether on voluntary consent or a mutual promise, the magistrate would soon imprison you, as seditious, for loosening the ties of obedience; if your friends did not before shut you up as delirious, for advancing such absurdities. It is strange, that an act of the mind, which every individual is supposed to have formed, and after he came to the use of reason too, otherwise it could have no authority; that this act, I say, should be so much unknown to all of them, that, over the face of the whole earth, there scarcely remain any traces or memory of it.

But the contract, on which government is founded, is said to be the *original contract;* and consequently may be supposed too old to fall under the knowledge of the present generation. If the agreement, by which savage men first associated and conjoined their force, be here meant, this is acknowledged to be real; but being so ancient, and being obliterated by a thousand changes of government and princes, it cannot now be supposed to retain any authority. If we would say any thing to the purpose, we must assert, that every particular government, which is lawful, and which imposes any duty of allegiance on the subject, was, at first, founded on consent and a voluntary compact. But besides that this supposes the consent of the fathers to bind the children, even to the most remote generations, (which republican writers will never allow) besides this, I say, it is not justified by history or experience, in any age or country of the world.

Almost all the governments, which exist at present, or of which there remains any record in story, have been founded originally, either on usurpation or conquest, or both, without any pretence of a fair consent, or voluntary subjection of the people. When an artful and bold man is placed at the head of an army or faction, it is often easy for him, by employing, sometimes violence, sometimes false pretences, to establish his dominion over a people a hundred times

more numerous than his partizans. He allows no such open communication, that his enemies can know, with certainty, their number or force. He gives them no leisure to assemble together in a body to oppose him. Even all those, who are the instruments of his usurpation, may wish his fall; but their ignorance of each other's intention keeps them in awe, and is the sole cause of his security. By such arts as these, many governments have been established; and this is all the *original contract*, which they have to boast of.

The face of the earth is continually changing, by the encrease of small kingdoms into great empires, by the dissolution of great empires into smaller kingdoms, by the planting of colonies, by the migration of tribes. Is there any thing discoverable in all these events, but force and violence? Where is the mutual agreement or voluntary association so much talked of?

Even the smoothest way, by which a nation may receive a foreign master, by marriage or a will, is not extremely honourable for the people; but supposes them to be disposed of, like a dowry or a legacy, according to the pleasure or interest of their rulers.

But where no force interposes, and election takes place; what is this election so highly vaunted? It is either the combination of a few great men, who decide for the whole, and will allow of no opposition: Or it is the fury of a multitude, that follow a seditious ringleader, who is not known, perhaps, to a dozen among them, and who owes his advancement merely to his own impudence, or to the momentary caprice of his fellows.

Are these disorderly elections, which are rare too, of such mighty authority, as to be the only lawful foundation of all government and allegiance?

In reality, there is not a more terrible event, than a total dissolution of government, which gives liberty to the multitude, and makes the determination or choice of a new establishment depend upon a number, which nearly approaches to that of the body of the people: For it never comes entirely to the whole body of them. Every wise man, then, wishes to see, at the head of a powerful and obedient army, a general, who may speedily seize the prize, and give to the people a master, which they are so unfit to chuse for themselves. So little correspondent is fact and reality to those philosophical notions.

Let not the establishment at the *Revolution* deceive us, or make us so much in love with a philosophical origin to government, as to imagine all others monstrous and irregular. Even that event was far from corresponding to these refined ideas. It was only the succession, and that only in the regal part of the government, which was then changed: And it was only the majority of seven hundred, who determined that change for near ten millions.[4] I doubt not, indeed, but the bulk of those ten millions acquiesced willingly in the determination: But was the matter left, in the least, to their choice? Was it not justly supposed to be, from that moment, decided, and every man punished, who refused to submit to the new sovereign? How otherwise could the matter have ever been brought to any issue or conclusion?

The republic of Athens was, I believe, the most extensive democracy, that we read of in history: Yet if we make the requisite allowances for the women, the slaves, and the strangers, we shall find, that that establishment was not, at first, made, nor any law ever voted, by a tenth part of

those who were bound to pay obedience to it: Not to mention the islands and foreign dominions, which the Athenians claimed as theirs by right of conquest. And as it is well known, that popular assemblies in that city were always full of licence and disorder, notwithstanding the institutions and laws by which they were checked: How much more disorderly must they prove, where they form not the established constitution, but meet tumultuously on the dissolution of the ancient government, in order to give rise to a new one? How chimerical must it be to talk of a choice in such circumstances?

d The Achæans enjoyed the freest and most perfect democracy of all antiquity; yet they employed force to oblige some cities to enter into their league, as we learn from Polybius.5

Harry the IVth6 and Harry the VIIth of England, had really no title to the throne but a parliamentary election; yet they never would acknowledge it, lest they should thereby weaken their authority. Strange, if the only real foundation of all authority be consent and promise!

It is in vain to say, that all governments are or should be, at first, founded on popular consent, as much as the necessity of human affairs will admit. This favours entirely my pretension. I maintain, that human affairs will never admit of this consent; seldom of the appearance of it. But that conquest or usurpation, that is, in plain terms, force, by dissolving the ancient governments, is the origin of almost all the new ones, which were ever established in the world. And that in the few cases, where consent may seem to have taken place, it was commonly so irregular, so confined, or so much intermixed either with fraud or violence, that it cannot have any great authority.

e My intention here is not to exclude the consent of the people from being one just foundation of government where it has place. It is surely the best and most sacred of any. I only pretend, that it has very seldom had place in any degree, and never almost in its full extent. And that therefore some other foundation of government must also be admitted.

Were all men possessed of so inflexible a regard to justice, that, of themselves, they would totally abstain from the properties of others; they had° for ever remained in a state of absolute liberty, without subjection to any magistrate or political society: But this is a state of perfection, of which human nature is justly deemed incapable. Again; were all men possessed of so perfect an understanding, as always to know their own interests, no form of government had ever been submitted to, but what was established on consent, and was fully canvassed by every member of the society: But this state of perfection is likewise much superior to human nature. Reason, history, and experience shew us, that all political societies have had an origin much less accurate and regular; and were one to choose a period of time, when the people's consent was the least regarded in public transactions, it would be precisely on the establishment of a new government. In a settled constitution, their inclinations are often consulted; but during the fury of revolutions, conquests, and public convulsions, military force or political craft usually decides the controversy.

When a new government is established, by whatever means, the people are commonly dissatisfied with it, and pay obedience more from fear and necessity, than from any idea of allegiance or of moral obligation. The prince is watchful and jealous, and must carefully guard

against every beginning or appearance of insurrection. Time, by degrees, removes all these difficulties, and accustoms the nation to regard, as their lawful or native princes, that family, which, at first, they considered as usurpers or foreign conquerors. In order to found this opinion, they have no recourse to any notion of voluntary consent or promise, which, they know, never was, in this case, either expected or demanded. The original establishment was formed by violence, and submitted to from necessity. The subsequent administration is also supported by power, and acquiesced in by the people, not as a matter of choice, but of obligation. They imagine not, that their consent gives their prince a title: But they willingly consent, because they think, that, from long possession, he has acquired a title, independent of their choice or inclination.

Should it be said, that, by living under the dominion of a prince, which one might leave, every individual has given a *tacit* consent to his authority, and promised him obedience; it may be answered, that such an implied consent can only have place, where a man imagines, that the matter depends on his choice. But where he thinks (as all mankind do who are born under established governments) that by his birth he owes allegiance to a certain prince or certain form of government; it would be absurd to infer a consent or choice, which he expressly, in this case, renounces and disclaims.

Can we seriously say, that a poor peasant or artizan has a free choice to leave his country, when he knows no foreign language or manners, and lives from day to day, by the small wages which he acquires? We may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her.

What if the prince forbid his subjects to quit his dominions; as in Tiberius's time, it was regarded as a crime in a Roman knight that he had attempted to fly to the Parthians, in order to escape the tyranny of that emperor?[7] Or as the ancient Muscovites prohibited all travelling under pain of death? And did a prince observe, that many of his subjects were seized with the frenzy of migrating to foreign countries, he would doubtless, with great reason and justice, restrain them, in order to prevent the depopulation of his own kingdom. Would he forfeit the allegiance of all his subjects, by so wise and reasonable a law? Yet the freedom of their choice is surely, in that case, ravished from them.

A company of men, who should leave their native country, in order to people some uninhabited region, might dream of recovering their native freedom; but they would soon find, that their prince still laid claim to them, and called them his subjects, even in their new settlement. And in this he would but act conformably to the common ideas of mankind.

The truest *tacit* consent of this kind, that is ever observed, is when a foreigner settles in any country, and is beforehand acquainted with the prince, and government, and laws, to which he must submit: Yet is his allegiance, though more voluntary, much less expected or depended on, than that of a natural born subject. On the contrary, his native prince still asserts a claim to him. And if he punish not the renegade, when he seizes him in war with his new prince's commission; this clemency is not founded on the municipal law, which in all countries condemns the prisoner; but on the consent of princes, who have agreed to this indulgence, in order to prevent reprisals.

f Did one generation of men go off the stage at once, and another succeed, as is the case with silk-worms and butterflies, the new race, if they had sense enough to choose their government, which surely is never the case with men, might voluntarily, and by general consent, establish their own form of civil polity, without any regard to the laws or precedents, which prevailed among their ancestors. But as human society is in perpetual flux, one man every hour going out of the world, another coming into it, it is necessary, in order to preserve stability in government, that the new brood should conform themselves to the established constitution, and nearly follow the path which their fathers, treading in the footsteps of theirs, had marked out to them. Some innovations must necessarily have place in every human institution, and it is happy where the enlightened genius of the age give these a direction to the side of reason, liberty, and justice: but violent innovations no individual is entitled to make: they are even dangerous to be attempted by the legislature: more ill than good is ever to be expected from them: and if history affords examples to the contrary, they are not to be drawn into precedent, and are only to be regarded as proofs, that the science of politics affords few rules, which will not admit of some exception, and which may not sometimes be controuled by fortune and accident. The violent innovations in the reign of Henry VIII.8 proceeded from an imperious monarch, seconded by the appearance of legislative authority: Those in the reign of Charles I. were derived from faction and fanaticism; and both of them have proved happy in the issue: But even the former were long the source of many disorders, and still more dangers; and if the measures of allegiance were to be taken from the latter, a total anarchy must have place in human society, and a final period at once be put to every government.

Suppose, that an usurper, after having banished his lawful prince and royal family, should establish his dominion for ten or a dozen years in any country, and should preserve so exact a discipline in his troops, and so regular a disposition in his garrisons, that no insurrection had ever been raised, or even murmur heard, against his administration: Can it be asserted, that the people, who in their hearts abhor his treason, have tacitly consented to his authority, and promised him allegiance, merely because, from necessity, they live under his dominion? Suppose again their native prince restored, by means of an army, which he levies in foreign countries: They receive him with joy and exultation, and shew plainly with what reluctance they had submitted to any other yoke. I may now ask, upon what foundation the prince's title stands? Not on popular consent surely: For though the people willingly acquiesce in his authority, they never imagine, that their consent made him sovereign. They consent; because they apprehend him to be already, by birth, their lawful sovereign. And as to that tacit consent, which may now be inferred from their living under his dominion, this is no more than what they formerly gave to the tyrant and usurper.

When we assert, that all lawful government arises from the consent of the people, we certainly do them a great deal more honour than they deserve, or even expect and desire from us. After the Roman dominions became too unwieldly for the republic to govern them, the people, over the whole known world, were extremely grateful to Augustus for that authority, which, by violence, he had established over them; and they shewed an equal disposition to submit to the successor, whom he left them, by his last will and testament. It was afterwards their misfortune, that there never was, in one family, any long regular succession; but that their line of princes was continually broken, either by private assassinations or public rebellions. The *prætorian* bands, on the failure of every family, set up one emperor; the legions in the East a second; those in

Germany, perhaps, a third: And the sword alone could decide the controversy. The condition of the people, in that mighty monarchy, was to be lamented, not because the choice of the emperor was never left to them; for that was impracticable: But because they never fell under any succession of masters, who might regularly follow each other. As to the violence and wars and bloodshed, occasioned by every new settlement; these were not blameable, because they were inevitable.

The house of Lancaster ruled in this island about sixty years;g yet the partizans of the white rose seemed daily to multiply in England.9 The present establishment has taken place during a still longer period. Have all views of right in another family been utterly extinguished; even though scarce any man now alive had arrived at years of discretion, when it was expelled, or could have consented to its dominion, or have promised it allegiance? A sufficient indication surely of the general sentiment of mankind on this head. For we blame not the partizans of the abdicated family, merely on account of the long time, during which they have preserved their imaginary loyalty. We blame them for adhering to a family, which, we affirm, has been justly expelled, and which, from the moment the new settlement took place, had forfeited all title to authority.

But would we have a more regular, at least a more philosophical, refutation of this principle of an original contract or popular consent; perhaps, the following observations may suffice.

All *moral* duties may be divided into two kinds.10 The *first* are those, to which men are impelled by a natural instinct or immediate propensity, which operates on them, independent of all ideas of obligation, and of all views, either to public or private utility. Of this nature are, love of children, gratitude to benefactors, pity to the unfortunate. When we reflect on the advantage, which results to society from such humane instincts, we pay them the just tribute of moral approbation and esteem: But the person, actuated by them, feels their power and influence, antecedent to any such reflection.

The *second* kind of moral duties are such as are not supported by any original instinct of nature, but are performed entirely from a sense of obligation, when we consider the necessities of human society, and the impossibility of supporting it, if these duties were neglected. It is thus *justice* or a regard to the property of others, *fidelity* or the observance of promises, become obligatory, and acquire an authority over mankind. For as it is evident, that every man loves himself better than any other person, he is naturally impelled to extend his acquisitions as much as possible; and nothing can restrain him in this propensity, but reflection and experience, by which he learns the pernicious effects of that licence, and the total dissolution of society which must ensue from it. His original inclination, therefore, or instinct, is here checked and restrained by a subsequent judgment or observation.

The case is precisely the same with the political or civil duty of *allegiance*, as with the natural duties of justice and fidelity.11 Our primary instincts lead us, either to indulge ourselves in unlimited freedom, or to seek dominion over others: And it is reflection only, which engages us to sacrifice such strong passions to the interests of peace and public order. A small degree of experience and observation suffices to teach us, that society cannot possibly be maintained without the authority of magistrates, and that this authority must soon fall into contempt, where

exact obedience is not payed to it. The observation of these general and obvious interests is the source of all allegiance, and of that moral obligation, which we attribute to it.

***SECTION III.: OF THE LAWS OF ENGLAND.* - Sir William Blackstone, *Commentaries on the Laws of England in Four Books, vol. 1* [1753]**

Edition used:

Commentaries on the Laws of England in Four Books. Notes selected from the editions of Archibold, Christian, Coleridge, Chitty, Stewart, Kerr, and others, Barron Field's Analysis, and Additional Notes, and a Life of the Author by George Sharswood. In Two Volumes. (Philadelphia: J.B. Lippincott Co., 1893). Vol. 1 - Books I & II.

The municipal law of England, or the rule of civil conduct prescribed to the inhabitants of this kingdom, may with sufficient propriety be divided into two kinds: the *lex non scripta*, the unwritten, or common law; and the *lex scripta*, the written, or statute law.

The *lex non scripta*, or unwritten law, includes not only *general customs*, on the common law properly so called; but also the *particular customs* of certain parts of the kingdom; and likewise those *particular laws*, that are by custom observed only in certain courts and jurisdictions.

When I call these parts of our law *leges non scriptæ*, I would not be understood as if all those laws were at present merely *oral*, or communicated from the former ages to the present solely by word of mouth. It is true indeed that, in the profound ignorance of letters, which formerly overspread the whole western world, all laws were entirely traditional, for this plain reason, because the nations among which they prevailed had but little idea of writing. Thus the British as well as the Gallic Druids committed all their laws as well as learning to memory;(*a*) and it is said of the primitive Saxons here, as well as their brethren on the continent, that *leges sola memoria et usu retinebant*.(*b*) But, with us at present, the monuments and evidences of our legal customs are contained in the records of the several courts of justice in books of *[*64reports and judicial decisions, and in the treatises of learned sages of the profession, preserved and handed down to us from the times of highest antiquity. However, I therefore style these parts of our law *leges non scriptæ*, because their original institution and authority are not set down in writing, as acts of parliament are, but they receive their binding power, and the force of laws, by long and immemorial usage, and by their universal reception throughout the kingdom. In like manner as Aulus Gellius defines the *jus non scriptum* to be that, which is "*tacito et illiterato hominum consensu et moribus expressum.*"

Our ancient lawyers, and particularly Fortescue,(*c*) insist with abundance of warmth that these customs are as old as the primitive Britons, and continued down through the several mutations of government and inhabitants, to the present time, unchanged and unadulterated. This may be the case as to some; but in general, as Mr. Selden in his notes observes, this assertion must be understood with many grains of allowance; and ought only to signify, as the truth seems to be, that there never was any formal exchange of one system of laws for another; though doubtless, by the intermixture of adventitious nations, the Romans, the Picts, the Saxons, the Danes, and the Normans, they must have insensibly introduced and incorporated many of their own customs with those that were before established; thereby, in all probability, improving the texture and wisdom of the whole by the accumulated wisdom of divers particular countries. Our laws, saith

Lord Bacon,(*d*) are mixed as our language; and, as our language is so much the richer, the laws are the more complete.

And indeed our antiquaries and early historians do all positively assure us, that our body of laws is of this compounded nature. For they tell us that in the time of Alfred the local customs of the several provinces of the kingdom were grown so various, that he found it expedient to compile his *Dome-Book,* or *Liber Judicialis,* for the general use of the whole kingdom. *[*65This book is said to have been extant so late as the reign of King Edward the Fourth, but is now unfortunately lost.1 It contained, we may probably suppose, the principal maxims of the common law, the penalties for misdemesnors, and the forms of judicial proceedings. Thus much may at least be collected from that injunction to observe it, which we find in the laws of king Edward the elder, the son of Alfred.(*e*) "*Omnibus qui reipublicæ præsunt etiam atque etiam mando, ut omnibus æquos se præbeant judices, perinde ac in judiciali libro* (*Saxonice,* dom-bec) *scriptum habetur: nec quicquam formident quin jus commune* (*Saxonice,* folcpibre) *audacter libereque dicant.*"

But the irruption and establishment of the Danes in England, which followed soon after, introduced new customs, and caused this code of Alfred in many provinces to fall into disuse, or at least to be mixed and debased with other laws of a coarser alloy; so that about the beginning of the eleventh century there were three principal systems of laws prevailing in different districts: 1. The *Mercen-Lage,* or Mercian laws, which were observed in many of the midland counties, and those bordering on the principality of Wales, the retreat of the ancient Britons; and therefore very probably intermixed with the British or Druidical customs. 2. The *West-Saxon Lage,* or laws of the West Saxons, which obtained in the counties to the south and west of the island, from Kent to Devonshire. These were probably much the same with the laws of Alfred above mentioned, being the municipal law of the far most considerable part of his dominions, and particularly including Berkshire, the seat of his peculiar residence. 3. The *Dane-Lage,* or Danish law, the very name of which speaks its original and composition. This was principally maintained in the rest of the midland counties, and also on the eastern coast, the part most exposed to the visits of that piratical people. As for the very northern provinces, they were at that time under a distinct government.(*f*)

**66]Out of these three laws, Roger Hoveden(*g*) and Ranulphus Cestrensis(*h*) inform us, king Edward the confessor extracted one uniform law, or digest of laws, to be observed throughout the whole kingdom; though Hoveden, and the author of an old manuscript chronicle,(*i*) assure us likewise that this work was projected and begun by his grandfather king Edgar. And indeed a general digest of the same nature has been constantly found expedient, and therefore put in practice by other great nations, which were formed from an assemblage of little provinces, governed by peculiar customs, as in Portugal, under king Edward, about the beginning of the fifteenth century:(*k*) in Spain under Alonzo X., who, about the year 1250, executed the plan of his father St. Ferdinand, and collected all the provincial customs into one uniform law, in the celebrated code entitled *Las Partidas:*(*l*) and in Sweden, about the same æra, when a universal body of common law was compiled out of the particular customs established by the laghman of every province, and entitled the *land's lagh,* being analogous to the *common law* of England.(*m*)2

Both these undertakings of king Edgar and Edward the confessor seem to have been no more

than a new edition, or fresh promulgation, of Alfred's code or dome-book, with such additions and improvements as the experience of a century and a half had suggested; for Alfred is generally styled by the same historians the *legum Anglicanarum conditor*, as Edward the confessor is the *restitutor*.3 These, however, are the laws which our histories so often mention under the name of the laws of Edward the confessor, which our ancestors struggled so hardly to maintain, under the first princes of the Norman line; and which subsequent princes so frequently promised to keep and restore, as the most popular act they could do, when pressed by foreign emergencies or domestic discontents. These are the laws that so vigorously withstood *[*67the repeated attacks of the civil law, which established in the twelfth century a new Roman empire over most of the states of the continent; states that have lost, and perhaps upon that account, their political liberties: while the free constitution of England, perhaps upon the same account, has been rather improved than debased. These, in short, are the laws which gave rise and original to that collection of maxims and customs which is now known by the name of the common law; a name either given to it in contradistinction to other laws, as the statute law, the civil law, the law merchant, and the like; or, more probably, as a law common to all the realm, the *jus commune*, or *folcright*, mentioned by king Edward the elder, after the abolition of the several provincial customs and particular laws before mentioned.4

But though this is the most likely foundation of this collection of maxims and customs, yet the maxims and customs, so collected, are of higher antiquity than memory or history can reach.5 nothing being more difficult than to ascertain the precise beginning and first spring of an ancient and long established custom. Whence it is that in our law the goodness of a custom depends upon its having been used time out of mind; or, in the solemnity of our legal phrase, time whereof the memory of man runneth not to the contrary. This it is that gives it its weight and authority: and of this nature are the maxims and customs which compose the common law, or *lex non scripta*, of this kingdom.6

This unwritten, or common, law is properly distinguishable into three kinds: 1. General customs; which are the universal rule of the whole kingdom, and form the common law, in its stricter and more usual signification. 2. Particular customs; which, for the most part, affect only the inhabitants of particular districts. 3. Certain particular laws; which, by custom, are adopted and used by some particular courts, of pretty general and extensive jurisdiction.

68]I. As to general customs, or the common law, properly so called; this is that law, by which proceedings and determinations in the king's ordinary courts of justice are guided and directed. This, for the most part, settles the course in which lands descend by inheritance; the manner and form of acquiring and transferring property; the solemnities and obligation of contracts; the rules of expounding wills, deeds, and acts of parliament; the respective remedies of civil injuries; the several species of temporal offences, with the manner and degree of punishment; and an infinite number of minuter particulars, which diffuse themselves as extensively as the ordinary distribution of common justice requires. Thus, for example, that there shall be four superior courts of record, the Chancery, the King's Bench, the Common Pleas, and the Exchequer;—that the eldest son alone is heir to his ancestor;—that property may be acquired and transferred by writing;—that a deed is of no validity unless sealed and delivered;—that wills shall be construed more favourably, and deeds more strictly;—that money lent upon bond is recoverable by action of debt;—that breaking the public peace is an offence, and punishable by fine and

imprisonment:—all these are doctrines that are not set down in any written statute or ordinance, but depend merely upon immemorial usage, that is, upon common law, for their support.

Some have divided the common law into two principal grounds or foundations: 1. Established customs; such as that, where there are three brothers, the eldest brother shall be heir to the second, in exclusion of the youngest: and 2. Established rules and maxims; as, "that the king can do no wrong, that no man shall be bound to accuse himself," and the like. But I take these to be one and the same thing. For the authority of these maxims rests entirely upon general reception and usage: and the only method of proving, that this or that maxim is a rule of the common law, is by showing that it hath been always the custom to observe it.

69]But here a very natural, and very material, question arises: how are these customs or maxims to be known, and by whom is their validity to be determined? The answer is, by the judges in the several courts of justice. They are the depositaries of the laws; the living oracles, who must decide in all cases of doubt, and who are bound by an oath to decide according to the law of the land. The knowledge of that law is derived from experience and study; from the "*viginti annorum lucubrationes*," which Fortescue(*n*) mentions; and from being long persoually accustomed to the judicial decisions of their predecessors. And indeed these judicial decisions are the principal and most authoritative evidence, that can be given, of the existence of such a custom as shall form a part of the common law. The judgment itself, and all the proceedings previous thereto, are carefully registered and preserved, under the name of *records*, in public repositories set apart for that particular purpose; and to them frequent recourse is had, when any critical question arises, in the determination of which former precedents may give light or assistance. And therefore, even so early as the conquest, we find the "*præteritorum memoria eventorum*" reckoned up as one of the chief qualifications of those, who were held to be "*legibus patriæ optime instituti*."(*o*) For it is an established rule to abide by former precedents, where the same points come again in litigation: as well to keep the scale of justice even and steady, and not liable to waver with every new judge's opinion; as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule, which it is not in the breast of any subsequent judge to alter or vary from according to his private sentiments: he being sworn to determine, not according to his own private judgement, but according to the known laws and customs of the land; not delegated to pronounce a new law, but to maintain and expound the old one. Yet this rule admits of exception, where the former determination is most evidently contrary to reason; *[*70much more if it be clearly contrary to the divine law. But even in such cases the subsequent judges do not pretend to make a new law, but to vindicate the old one from misrepresentation. For if it be found that the former decision is manifestly absurd or unjust,7 it is declared, not that such a sentence was *bad law*, but that it was *not law;* that is, that it is not the established custom of the realm, as has been erroneously determined. And hence it is that our lawyers are with justice so copious in their encomiums on the reason of the common law; that they tell us, that the law is the perfection of reason, that it always intends to conform thereto, and that what is not reason is not law. Not that the particular reason of every rule in the law can at this distance of time be always precisely assigned; but it is sufficient that there be nothing in the rule flatly contradictory to reason, and then the law will presume it to be well founded.(*p*) And it hath been an ancient observation in the laws of England, that whenever a standing rule of law of which the reason perhaps could not be remembered or discerned, hath been wantonly broken in upon by statutes or new resolutions, the

wisdom of the rule hath in the end appeared from the inconveniences that have followed the innovation.

The doctrine of the law then is this: that precedents and rules must be followed, unless flatly absurd or unjust;8 for though their reason be not obvious at first view, yet we owe such a deference to former times as not to suppose that they acted wholly without consideration. To illustrate this doctrine by examples. It has been determined, time out of mind, that a brother of the half blood shall never succeed as heir to the estate of his half brother, but it shall rather escheat to the king or other superior lord. Now this is a positive law, fixed and established by custom, which custom is evidenced by judicial decisions, and therefore can never be departed from by any modern judge without a breach of his oath and *[*71the law. For herein there is nothing repugnant to natural justice;9 though the artificial reason of it, drawn from the feodal law, may not be quite obvious to everybody.10 And therefore, though a modern judge, on account of a supposed hardship upon the half brother, might wish it had been otherwise settled, yet it is not in his power to alter it. But if any court were now to determine, that an elder brother of the half blood might enter upon and seize any lands that were purchased by his younger brother, no subsequent judges would scruple to declare that such prior determination was unjust, was unreasonable, and therefore was *not law.* So that *the law,* and the *opinion of the judge,* are not always convertible terms, or one and the same thing; since it sometimes may happen that the judge may *mistake* the law. Upon the whole, however, we may take it as a general rule, "that the decisions of courts of justice are the evidence of what is common law:" in the same manner as, in the civil law, what the emperor had once determined was to serve for a guide for the future.(*q*)11

The decisions therefore of courts are held in the highest regard, and are not only preserved as authentic records in the treasuries of the several courts, but are handed out to public view in the numerous volumes of *reports* which furnish the lawyer's library. These reports are histories of the several cases, with a short summary of the proceedings, which are preserved at large in the record; the arguments on both sides, and the reasons the court gave for its judgment; taken down in short notes by persons present at the determination. And these serve as indexes to, and also to explain the records, which always, in matters of consequence and nicety, the judges direct to be searched. The reports are extant in a regular series from the reign of king Edward the Second inclusive; and from this time to that of Henry the **72]Eighth, were taken by the prothonotaries, or chief scribes of the court, at the expense of the crown, and published *annually,* whence they are known under the denomination of the *year books.* And it is much to be wished that this beneficial custom had, under proper regulations, been continued to this day; for, though king James the First, at the instance of Lord Bacon, appointed two reporters(*r*) with a handsome stipend for this purpose, yet that wise institution was soon neglected, and from the reign of Henry the Eighth to the present time this task has been executed by many private and contemporary hands; who sometimes through haste and inaccuracy, sometimes through mistake and want of skill, have published very crude and imperfect (perhaps contradictory) accounts of one and the same determination. Some of the most valuable of the ancient reports are those published by Lord Chief-Justice Coke; a man of infinite learning in his profession, though not a little infected with the pedantry and quaintness of the times he lived in, which appear strongly in all his works. However, his writings are so highly esteemed, that they are generally cited without the author's name.(*s*)

Besides these reporters, there are also other authors, to whom great veneration and respect is paid by the students of the common law. Such are Glanvil and Bracton, Britton and Fleta, Hengham and Littleton, Statham, Brooke, Fitzherbert, and Staundforde,12 with some others of ancient date; whose treatises are cited as authority, and are evidence that cases have formerly happened in which such and such points were determined, which are now become settled and first principles. One of the last of these methodical writers in point of time, whose works are of any intrinsic authority in the courts of justice, and do not entirely depend on the strength of their quotations from older authors, is the **73]same learned judge we have just mentioned, Sir Edward Coke; who hath written four volumes of institutes, as he is pleased to call them, though they have little of the institutional method to warrant such a title The first volume is a very extensive comment upon a little excellent treatise of tenures, compiled by Judge Littleton in the reign of Edward the Fourth. This comment is a rich mine of valuable common law learning, collected and heaped together from the ancient reports and year books, but greatly defective in method.(*t*) The second volume is a comment upon many old acts of parliament, without any systematical order; the third a more methodical treatise of the pleas of the crown; and the fourth an account of the several species of courts.(*u*)

And thus much for the first ground and chief corner-stone of the laws of England, which is general immemorial custom, or common law, from time to time declared in the decisions of the courts of justice; which decisions are preserved among our public records, explained in our reports, and digested for general use in the authoritative writings of the venerable sages of the law.

The Roman law, as practised in the times of its liberty, paid also a great regard to custom; but not so much as our law: it only then adopting it, when the written law was deficient. Though the reasons alleged in the digest(*v*) will fully justify our practice, in making it of equal authority with, when it is not contradicted by, the written law. "For since, (says Julianus,) the written law binds us for no other reason but because it is approved by the judgment of the people, therefore those laws which the people have approved without writing ought also to bind everybody. For where is the difference, whether the people declare their *[*74assent to a law by suffrage, or by a uniform course of acting accordingly?" Thus did they reason while Rome had some remains of her freedom; but, when the imperial tyranny came to be fully established, the civil laws speak a very different language. "*Quod principi placuit*13*legis habet vigorem, cum populus ei et in eum omne suum imperium et potestatem conferat,*" says Ulpian.(*w*) "*Imperator solus et conditor et interpres legis existimatur,*" says the code.(*x*) And again, "*sacrilegii instar est rescripto principis obviari.*"(*y*) And indeed it is one of the characteristic marks of English liberty, that our common law depends upon custom; which carries this internal evidence of freedom along with it, that it probably was introduced by the voluntary consent of the people.14

II. The second branch of the unwritten laws of England are particular customs, or laws, which affect only the inhabitants of particular districts.

These particular customs, or some of them, are without doubt the remains of that multitude of local customs before mentioned, out of which the common law, as it now stands, was collected at first by king Alfred, and afterwards by king Edgar and Edward the confessor: each district mutually sacrificing some of its own special usages, in order that the whole kingdom might enjoy

the benefit of one uniform and universal system of laws. But for reasons that have been now long forgotten, particular counties, cities, towns, manors, and lordships, were very early indulged with the privilege of abiding by their own customs, in contradistinction to the rest of the nation at large: which privilege is confirmed to them by several acts of parliament.(*z*)

Such is the custom of gavelkind in Kent, and some other parts of the kingdom, (though perhaps it was also general till the Norman conquest,) which ordains, among other things, **75]that not the eldest son only of the father shall succeed to his inheritance, but all the sons alike; and that, though the ancestor be attainted and hanged, yet the heir shall succeed to his estate, without any escheat to the lord.—Such is the custom that prevails in divers ancient boroughs, and therefore called borough-English, that the youngest son shall inherit the estate, in preference to all his elder brothers.—Such is the custom in other boroughs, that a widow shall be entitled, for her dower, to all her husband's lands; whereas, at the common law, she shall be endowed of one-third part only.—Such also are the special and particular customs of manors, of which every one has more or less, and which bind all the copyhold and customary tenants that hold of the said manors.—Such likewise is the custom of holding divers inferior courts, with power of trying causes, in cities and trading towns, the right of holding which, when no royal grant can be shown, depends entirely upon immemorial and established usage.—Such, lastly, are many particular customs within the city of London, with regard to trade, apprentices, widows, orphans, and a variety of other matters. All these are contrary to the general law of the land, and are good only by special usage; though the customs of London are also confirmed by act of parliament.(*a*)

To this head may most properly be referred a particular system of customs used only among one set of the king's subjects, called the custom of merchants or *lex mercatoria:* which, however different from the general rules of the common law, is yet ingrafted into it, and made a part of it;(*b*) being allowed, for the benefit of trade, to be of the utmost validity in all commercial transactions: for it is a maxim of law, that "*cuilibet in sua arte credendum est.*"15

The rules relating to particular customs regard either the *proof* of their exist ence; their *legality* when proved; or their usual method of *allowance.* And first we will consider the rules of *proof.*

*[*76As to gavelkind, and borough-English, the law takes particular notice of them,(*c*) and there is no occasion to prove that such customs actually exist, but only that the lands in question are subject thereto. All other private customs must be particularly pleaded,(*d*) and as well the existence of such customs must be shown, as that the thing in dispute is within the custom alleged. The trial in both cases (both to show the existence of the custom, as, "that in the manor of Dale, lands shall descend only to the heirs male, and never to the heirs female;" and also to show "that the lands in question are within that manor") is by a jury of twelve men, and not by the judges; except the same particular custom has been before tried, determined, and recorded in the same court.(*e*)

The customs of London differ from all others in point of trial: for, if the existence of the custom be brought in question, it shall not be tried by a jury, but by certificate from the lord mayor and aldermen by the mouth of their recorder;(*f*) unless it be such a custom as the corporation is itself interested in, as a right of taking toll, &c.; for then the law permits them not to certify on their

own behalf.(*g*)

When a custom is actually proved to exist, the next inquiry is into the *legality* of it; for, if it is not a good custom, it ought to be no longer used. "*Malus usus abolendus est*" is an established maxim of the law.(*h*) To make a particular custom good, the following are necessary requisites.

1. That it have been used so long, that the memory of man runneth not to the contrary.16 So that, if any one can show the beginning of it, it is no good custom. For which reason no custom can prevail against an express act of **77]parliament,17 since the statute itself is a proof of a time when such a custom did not exist.(*i*)

2. It must have been *continued.* Any interruption would cause a temporary ceasing: the revival gives it a new beginning, which will be within time of memory, and thereupon the custom will be void. But this must be understood with regard to an interruption of the *right;* for an interruption of the *possession* only, for ten or twenty years, will not destroy the custom.(*j*) As if the inhabitants of a parish have a customary right of watering their cattle at a certain pool, the custom is not destroyed, though they do not use it for ten years; it only becomes more difficult to prove: but if the *right* be any how discontinued for a day, the custom is quite at an end.

3. It must have been *peaceable*, and acquiesced in; not subject to contention and dispute.(*k*) For as customs owe their original to common consent, their being immemorially disputed, either at law or otherwise, is a proof that such consent was wanting.

4. Customs must be *reasonable;*(*l*) or rather, taken negatively, they must not be unreasonable. Which is not always, as Sir Edward Coke says,(*m*) to be understood of every unlearned man's reason, but of artificial and legal reason, warranted by authority of law. Upon which account a custom may be good, though the particular reason of it cannot be assigned; for it sufficeth, if no good legal reason can be assigned against it. Thus a custom in a parish, that no man shall put his beasts into the common till the third of October, would be good; and yet it would be hard to show the reason why that day in particular is fixed upon, rather than the day before or after. But a custom, that no cattle shall be put in till the lord of the manor has first put in his, is unreasonable, and therefore bad: for peradventure the lord will never put in his, and then the tenants will lose all their profits.(*n*)

**78]5. Customs ought to be *certain.* A custom, that lands shall descend to the most worthy of the owner's blood, is void; for how shall this worth be determined? but a custom to descend to the next male of the blood, exclusive of females, is certain, and therefore good.(*o*) A custom to pay two-pence an acre in lieu of tithes, is good; but to pay sometimes two-pense, and sometimes three-pence, as the occupier of the land pleases, is bad for its uncertainty. Yet a custom, to pay a year's improved value for a fine on a copyhold estate, is good; though the value is a thing uncertain: for the value may at any time be ascertained; and the maxim of law is, *id certum est, quod certum reddi potest.*18

6. Customs, though established by consent, must be (when established) *comulsory;* and not left to the option of every man, whether he will use them or no. Therefore a custom, that all the inhabitants shall be rated toward the maintenance of a bridge, will be good; but a custom, that

every man is to contribute thereto at his own pleasure, is idle and absurd, and indeed no custom at all.

7. Lastly, customs must be *consistent* with each other: one custom cannot be set up in opposition to another. For if both are really customs, then both are of equal antiquity, and both established by mutual consent; which to say of contradictory customs is absurd. Therefore, if one man prescribes that by custom he has a right to have windows looking into another's garden; the other cannot claim a right by custom to stop up or obstruct those windows: for these two contradictory customs cannot both be good, nor both stand together. He ought rather to deny the existence of the former custom.(*p*)

Next, as to the *allowance* of special customs. Customs, in derogation of the common law, must be construed strictly.19 Thus, by the custom of gavelkind, an infant of fifteen years *[*79may, by one species of conveyance, (called a deed of feoffment,) convey away his lands in fee-simple, or forever Yet this custom does not empower him to use any other conveyance, or even to lease them for seven years; for the custom must be strictly pursued.(*q*)20 And, moreover, all special customs must submit to the king's prerogative. Therefore, if the king purchases lands of the nature of gavelkind, where all the sons inherit equally; yet, upon the king's demise, his eldest son shall succeed to those lands alone.(*r*) And thus much for the second part of the *leges non scriptæ*, or those particular customs which affect particular persons or districts only.21

III. The third branch of them are those peculiar laws, which by custom are adopted and used only in certain peculiar courts and jurisdictions. And by these I understand the civil and canon laws.(*s*)

It may seem a little improper at first view to rank these laws under the head of *leges non scriptæ*, or unwritten laws, seeing they are set forth by authority in their pandects, their codes, and their institutions; their councils, decrees, and decretals; and enforced by an immense number of expositions, decisions and treatises of the learned in both branches of the law. But I do this, after the example of Sir Matthew Hale,(*t*) because it is most plain, that it is not on account of their being *written* laws that either the canon law, or the civil law, have any obligation within this kingdom: neither do their force and efficacy depend upon their own intrinsic authority, which is the case of our written laws, or acts of parliament. They bind not the subjects of England, because their materials were collected from popes or emperors, were digested by Justinian, or declared to be authentic by Gregory. These considerations give them no authority here; for the legislature of England doth not, nor ever did, recognise any foreign power as superior or equal to it in this kingdom, or as having the right to give law to any, the meanest, of its subjects. But all the **80]strength that either the papal or imperial laws have obtained in this realm, or indeed in any other kingdom in Europe, is only because they have been admitted and received by immemorial usage and custom in some particular cases, and some particular courts; and then they form a branch of the *leges non scriptæ*, or customary laws; or else because they are in some other cases introduced by consent of parliament; and then they owe their validity to the *leges scriptæ*, or statute law. This is expressly declared in those remarkable words of the statute 25 Hen. VIII. c. 21, addressed to the king's royal majesty:—"This your grace's realm, recognising no superior under God but only your grace, hath been and is free from subjection to any man's laws, but only to such as have been devised, made, and ordained *within* this realm, for the wealth

of the same; or to such other as, by sufferance of your grace and your progenitors, the people of this your realm have taken at their free liberty, by their own consent, to be used among them; and have bound themselves by long use and custom to the observance of the same; not as to the observance of the laws of any foreign prince, potentate, or prelate; but as to the *customed* and ancient laws of this realm, originally established as laws of the same, by the said sufferance, consents, and custom; and none otherwise."

By the civil law, absolutely taken, is generally understood the civil or municipal law of the Roman empire, as comprised in the institute, the code, and the digest of the emperor Justinian, and the novel constitutions of himself and some of his successors. Of which, as there will frequently be occasion to cite them, by way of illustrating our own laws, it may not be amiss to give a short and general account.

The Roman law (founded first upon the regal constitutions of their ancient kings, next upon the twelve tables of the *decemviri,* then upon the laws or statutes enacted by the senate or people, the edicts of the prætor, and the *responsa prudentum,* or opinions of learned lawyers, and **81]lastly upon the imperial decrees, or constitutions of successive emperors) had grown to so great a bulk, or, as Livy expresses it,(*u*) "*tam immensus aliarum super alias acervatarum legum cumulus,*" that they were computed to be many camels' load by an author who preceded Justinian.(*v*) This was in part remedied by the collections of three private lawyers, Gregorius, Hermogenes, and Papirius; and then by the emperor Theodosius the younger, by whose orders a code was compiled ad 438, being a methodical collection of all the imperial constitutions then in force: which Theodosian code was the only book of civil law received as authentic in the western part of Europe till many centuries after; and to this it is probable that the Franks and Goths might frequently pay some regard, in framing legal constitutions for their newly erected kingdoms: for Justinian commanded only in the eastern remains of the empire; and it was under his auspices that the present body of civil law was compiled and finished by Tribonian and other lawyers, about the year 533.

This consists of, 1. The institutes, which contain the elements or first principles of the Roman law, in four books. 2. The digests, or pandects, in fifty books; containing the opinions and writings of eminent lawyers, digested in a systematical method. 3. A new code, or collection of imperial constitutions, in twelve books; the lapse of a whole century having rendered the former code of Theodosius imperfect. 4. The novels, or new constitutions, posterior in time to the other books, and amounting to a supplement to the code; containing new decrees of successive emperors, as new questions happened to arise. These form the body of Roman law, or *corpus juris civilis,* as published about the time of Justinian; which, however, fell soon into neglect and oblivion, till about the year 1130, when a copy of the digests was found at Amalfi, in Italy; which accident, concurring with the policy of the Roman ecclesiastics,(*w*) suddenly gave new vogue and authority to the civil law, introduced it into several nations, and *[*82occasioned that mighty inundation of voluminous comments, with which this system of law, more than any other, is now loaded.

The canon law is a body of Roman ecclesiastical law, relative to such matters as that church either has, or pretends to have, the proper jurisdiction over. This is compiled from the opinions of the ancient Latin fathers, the decrees of general councils, and the decretal epistles and bulls of

the holy see; all which lay in the same disorder and confusion as the Roman civil law, till, about the year 1151, one Gratian, an Italian monk, animated by the discovery of Justinian's pandects, reduced the ecclesiastical constitutions also into some method, in three books, which he entitled *Concordia Discordantium Canonum,* but which are generally known by the name of *Decretum Gratiani.* These reached as low as the time of pope Alexander III. The subsequent papal decrees, to the pontificate of Gregory IX., were published in much the same method, under the auspices of that pope, about the year 1230, in five books, entitled *Decretalia Gregorii Noni.* A sixth book was added by Boniface VIII. about the year 1298, which is called *Sextus Decretalium.* The Clementine constitutions, or decrees of Clement V., were in like manner authenticated in 1317, by his successor John XXII., who also published twenty constitutions of his own, called the *Extravagantes Joannis,* all which in some measure answer to the novels of the civil law. To these have been since added some decrees of later popes, in five books, called *Extravagantes Communes:* and all these together, Gratian's decree, Gregory's decretals, the sixth decretal, the Clementine constitutions, and the extravagants of John and his successors, form the *corpus juris canonici,* or body of the Roman canon law.

Besides these pontifical collections, which, during the times of popery, were received as authentic in this island, as well as in other parts of Christendom, there is also a kind of natural canon law, composed of *legatine* and *provincial* constitutions, and adapted only to the exigencies of this church *[*83and kingdom. The *legatine* constitutions were ecclesiastical laws, enacted in national synods held under the cardinals Otho and Othobon, legates from pope Gregory IX. and pope Clement IV. in the reign of king Henry III., about the years 1220 and 1268. The *provincial* constitutions are principally the decrees of provincial synods, held under divers archbishops of Canterbury, from Stephen Langton, in the reign of Henry III., to Henry Chichele, in the reign of Henry V.; and adopted also by the province of York(*x*) in the reign of Henry VI. At the dawn of the Reformation, in the reign of king Henry VIII., it was enacted in parliament(*y*) that a review should be had of the canon law; and, till such review should be made, all canons, constitutions, ordinances, and synodals provincial, being then already made, and not repugnant to the law of the land or the king's prerogative, should still be used and executed. And, as no such review has yet been perfected, upon this statute now depends the authority of the canon law in England.

As for the canons enacted by the clergy under James I. in the year 1603, and never confirmed in parliament, it has been solemnly adjudged upon the principles of law and the constitution, that where they are not merely declaratory of the ancient canon law, but are introductory of new regulations, they do not bind the laity,(*z*) whatever regard the clergy may think proper to pay them.22

There are four species of courts in which the civil and canon laws are permitted, under different restrictions, to be used: 1. The courts of the archbishops and bishops, and their derivative officers, usually called in our law courts Christian, *curiæ Christianitatis,* or the ecclesiastical courts. 2. The military courts. 3. The courts of admiralty. 4. The courts of the two universities. In all, their reception in general, and the different degrees of that reception, are grounded entirely upon custom, corroborated in the latter instance by act of **84]parliament, ratifying those charters which confirm the customary law of the universities. The more minute consideration of these will fall properly under that part of these commentaries which treats of the jurisdiction of courts. It will suffice at present to remark a few particulars relative to them all, which may serve

to inculcate more strongly the doctrine laid down concerning them.(*a*)

1. And, first, the courts of common law have the superintendency over these courts; to keep them within their jurisdictions, to determine wherein they exceed them, to restrain and prohibit such excess, and, in case of contumacy, to punish the officer who executes, and in some cases the judge who enforces, the sentence so declared to be illegal.

2. The common law has reserved to itself the exposition of all such acts of parliament as concern either the extent of these courts, or the matters depending before them. And therefore, if these courts either refuse to allow these acts of parliament, or will expound them in any other sense than what the common law puts upon them, the king's courts at Westminster will grant prohibitions to restrain and control them.

3. An appeal lies from all these courts to the king, in the last resort; which proves that the jurisdiction exercised in them is derived from the crown of England, and not from any foreign potentate, or intrinsic authority of their own.—And, from these three strong marks and ensigns of superiority, it appears beyond a doubt that the civil and canon laws, though admitted in some cases by custom in some courts, are only subordinate, and *leges sub graviori lege;* and that, thus admitted, restrained, altered, new-modelled, and amended, they are by no means with us a distinct independent species of laws, but are inferior branches of the customary or unwritten laws of England, properly called the king's ecclesiastical, the king's military, the king's maritime, or the king's academical laws.

**85]Let us next proceed to the *leges scriptæ*, the written laws of the kingdom, which are statutes, acts, or edicts, made by the king's majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in parliament assembled.(*b*) The oldest of these now extant, and printed in our statute books, is the famous *magna charta*, as confirmed in parliament 9 Hen. III., though doubtless there were many acts before that time, the records of which are now lost, and the determinations of them perhaps at present currently received for the maxims of the old common law.

The manner of making these statutes will be better considered hereafter, when we examine the constitution of parliaments. At present we will only take notice of the different kinds of statutes, and of some general rules with regard to their construction.(*c*)

First, as to their several kinds. Statutes are either *general* or *special*, *public* or *private.* A general or public act is an *[*86universal rule, that regards the whole community; and of this the courts of law are bound to take notice judicially and *ex officio;* without the statute being particularly pleaded, or formally set forth by the party who claims an advantage under it. Special or private acts are rather exceptions than rules, being those which only operate upon particular persons, and private concerns; such as the Romans entitled *senatus decreta*, in contradistinction to the *senatus consulta*, which regarded the whole community;(*d*) and of these (which are not promulgated with the same notoriety as the former) the judges are not bound to take notice, unless they be formally shown and pleaded. Thus, to show the distinction, the statute 13 Eliz. c. 10, to prevent spiritual persons from making leases for longer terms than twenty-one years, or three lives, is a public act; it being a rule prescribed to the whole body of spiritual persons in the nation: but an act to enable

the bishop of Chester to make a lease to A.B. for sixty years is an exception to this rule; it concerns only the parties and the bishop's successors; and is therefore a private act.23

Statutes also are either *declaratory* of the common law, or *remedial* of some defects therein.24 Declaratory, where the old custom of the kingdom is almost fallen into disuse, or become disputable; in which case the parliament has thought proper, *in perpetuum rei testimonium,* and for avoiding all doubts and difficulties, to declare what the common law is and ever hath been. Thus the statute of treasons, 25 Edw. III. cap. 2, doth not make any new species of treasons, but only, for the benefit of the subject, declares and enumerates those several kinds of offence which before were treason at the common law. Remedial statutes are those which are made to supply such defects, and abridge such superfluities, in the common law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatsoever. And this being done, either by enlarging the common law, where it was too narrow and circumscribed, or by restraining it **87]where it was too lax and luxuriant, hath occasioned another subordinate division of remedial acts of parliament into *enlarging* and *restraining* statutes. To instance again in the case of treason: clipping the current coin of the kingdom was an offence not sufficiently guarded against by the common law; therefore it was thought expedient, by statute 5 Eliz. c. 11, to make it high treason, which it was not at the common law: so that this was an *enlarging* statute.25 At common law also spiritual corporations might lease out their estates for any term of years, till prevented by the statute 13 Eliz. before mentioned: this was, therefore, a *restraining* statute.

Secondly, the rules to be observed with regard to the construction of statutes are principally these which follow.26

1. There are three points to be considered in the construction of all remedial statutes; the old law, the mischief, and the remedy: that is, how the common law stood at the making of the act; what the mischief was, for which the common law did not provide; and what remedy the parliament hath provided to cure this mischief. And it is the business of the judges so to construe the act as to suppress the mischief and advance the remedy.(*e*) Let us instance again in the same restraining statute of 13 Eliz. c. 10: By the common law, ecclesiastical corporations might let as long leases as they thought proper: the mischief was, that they let long and unreasonable leases, to the impoverishment of their successors; the remedy applied by the statute was by making void all leases by ecclesiastical bodies for longer terms than three lives, or twenty-one years. Now, in the construction of this statute, it is held, that leases, though for a longer term, if made by a bishop, are not void during the bishop's continuance in his see; or, if made by a dean and chapter, they are not void during the continuance of the dean; for the act was made for the benefit and protection of the successor.(*f*) The mischief is therefore sufficiently suppressed by vacating them after the determination of the interest of the *[*88grantors; but the leases, during their continuance, being not within the mischief, are not within the remedy.

2. A statute, which treats of things or persons of an inferior rank, cannot by any *general words* be extended to those of a superior.27 So a statute, treating of "deans, prebendaries, parsons, vicars, *and others having spiritual promotion,*" is held not to extend to bishops, though they have spiritual promotion, deans being the highest persons named, and bishops being of a still higher

order.(*g*)

3. Penal statutes must be construed strictly. Thus the statute 1 Edw. VI. c. 12, having enacted that those who are convicted of stealing *horses* should not have the benefit of clergy, the judges conceived that this should not extend to him that should steal but one *horse*,28 and therefore procured a new act for that purpose in the following year.(*h*) And, to come nearer our own times, by the statute 14 Geo II. c. 6, stealing sheep, *or other cattle*, was made felony, without benefit of clergy. But these general words, "or other cattle," being looked upon as much too loose to create a capital offence, the act was held to extend to nothing but mere sheep. And therefore, in the next sessions, it was found necessary to make another statute, 15 Geo. II. c. 34, extending the former to bulls, cows, oxen, steers, bullocks, heifers, calves, and lambs, by name.29

4. Statutes against frauds30 are to be liberally and beneficially expounded. This may seem a contradiction to the last rule; most statutes against frauds being in their consequences penal. But this difference is here to be taken: where the statute acts upon the offender, and inflicts a penalty, as the pillory or a fire, it is then to be taken strictly; but when the statute acts upon the offence, by setting aside the fraudulent transaction,31 here it is to be construed liberally. Upon this footing the statute of 13 Eliz. c. 5, which avoids all gifts of goods, &c. made to defraud creditors *and others*, was **89]held to extend by the general words to a gift made to defraud the queen of a forfeiture.(*i*)32

5. One part of a statute must be so construed by another, that the whole may (if possible) stand: *ut res magis valeat, quam pereat.* As if land be vested in the king and his heirs by act of parliament, saving the right of A and A. has at that time a lease of it for three years: here A. shall hold it for his term of three years, and afterwards it shall go to the king. For this interpretation furnishes matter for every clause of the statute to work and operate upon. But,

6. A saving, totally repugnant to the body of the act, is void. If, therefore, an act of parliament vests land in the king and his heirs, saving the right of all persons whatsoever; or vests the land of A. in the king, saving the right of A.; in either of these cases the saving is totally repugnant to the body of the statute, and (if good) would render the statute of no effect or operation; and therefore the saving is void, and the land vests absolutely in the king.(*k*)33

7. Where the common law and a statute differ, the common law gives place to the statute; and an old statute gives place to a new one. And this upon a general principle of universal law, that "*leges posteriores priores contrarias abrogant:*" consonant to which it was laid down by a law of the twelve tables at Rome, that "*quod populus postremum jussit, id jus ratum esto.*" But this is to be understood only when the letter statute is couched in negative terms, or where its matter is so clearly repugnant that it necessarily implies a negative. As if a former act says, that a juror upon such a trial shall have twenty pounds a year; and a new statute afterwards enacts, that he shall have twenty marks: here the latter statute, though it does not express, yet necessarily implies a negative, and virtually repeals the former. For if twenty marks be made qualification sufficient, the former statute which requires twenty pounds is at an end.(*l*) But if both acts be merely affirmative, *[*90and the substance such that both may stand together, here the latter does not repeal the former, but they shall both have a concurrent efficacy. If by a former law an offence be indictable at the quarter-sessions, and a latter law makes the same offence indictable

at the assizes, here the jurisdiction of the sessions is not taken away, but both have a concurrent jurisdiction, and the offender may be prosecuted at either: unless the new statute subjoins express negative words, as, that the offence shall be indictable at the assizes, *and not elsewhere*.(*m*)34

8. If a statute, that repeals another, is itself repealed afterwards, the first statute is hereby revived, without any formal words for that purpose. So when the statutes of 26 and 35 Hen. VIII., declaring the king to be the supreme head of the church, were repealed by a statute 1 and 2 Philip and Mary, and this latter statute was afterwards repealed by an act of 1 Eliz. there needed not any express words of revival in Queen Elizabeth's statute, but these acts of King Henry were impliedly and virtually revived.(*n*)35

9. Acts of parliament derogatory from the power of subsequent parliaments bind not. So the statute 11 Hen. VII. c. 1, which directs that no person for assisting a king *de facto* shall be attainted of treason by act of parliament or otherwise, is held to be good only as to common prosecutions for high treason; but will not restrain or clog any parliamentary attainder.(*o*) Because the legislature, being in truth the sovereign power, is always of equal, always of absolute authority: it acknowledges no superior upon earth, which the prior legislature must have been, if its ordinances could bind a subsequent parliament. And upon the same principle Cicero, in his letters to Atticus, treats with a proper contempt these restraining clauses, which endeavour to tie up the hands of succeeding legislatures. "When you repeal the **91]law itself, (says he,) you at the same time repeal the prohibitory clause, which guards against such repeal."(*p*)

10. Lastly, acts of parliament that are impossible to be performed are of no validity: and if there arise out of them collaterally any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void.36 I lay down the rule with these restrictions; though I know it is generally laid down more largely, that acts of parliament contrary to reason are void. But if the parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution that is vested with authority to control it: and the examples usually alleged in support of this sense of the rule do none of them prove, that, where the main object of a statute is unreasonable, the judges are at liberty to reject it; for that were to set the judicial power above that of the legislature, which would be subversive of all government. But where some collateral matter arises out of the general words, and happens to be unreasonable; there the judges are in decency to conclude that this consequence was not foreseen by the parliament, and therefore they are at liberty to expound the statute by equity, and only *quoad hoc* disregard it. Thus if an act of parliament gives a man power to try all causes, that arise within his manor of Dale; yet, if a cause should arise in which he himself is party, the act is construed not to extend to that, because it is unreasonable that any man should determine his own quarrel.(*q*) But, if we could conceive it possible for the parliament to enact, that he should try as well his own causes as those of other persons, there is no court that has power to defeat the intent of the legislature, when couched in such evident and express words, as leave no doubt whether it was the intent of the legislature or no.37

These are the several grounds of the laws of England: over and above which, equity is also frequently called in to *[*92assist, to moderate, and to explain them. What equity is, and how impossible in its very essence to be reduced to stated rules, hath been shown in the preceding section. I shall therefore only add, that (besides the liberality of sentiment with which our

common law judges interpret acts of parliament, and such rules of the unwritten law as are not of a positive kind) there are also peculiar courts of equity established for the benefit of the subject: to detect latent frauds and concealments, which the process of the courts of law is not adapted to reach; to enforce the execution of such matters of trust and confidence, as are binding in conscience, though not cognizable in a court of law; to deliver from such dangers as are owing to misfortune or oversight; and to give a more specific relief, and more adapted to the circumstances of the case, than can always be obtained by the generality of the rules of the positive or common law. This is the business of our courts of equity, which however are only conversant in matters of property. For the freedom of our constitution will not permit, that in criminal cases a power should be lodged in any judge, to construe the law otherwise than according to the letter. This caution, while it admirably protects the public liberty, can never bear hard upon individuals. A man cannot suffer *more* punishment than the law assigns, but he may suffer *less.* The laws cannot be strained by partiality to inflict a penalty beyond what the letter will warrant; but, in cases where the letter induces any apparent hardship, the crown has the power to pardon.

[(*a*)] Cæs. *de B. G. lib.* 6, c. 13.

[(*b*)] Spelm. *Gl.* 362.

[(*c*)] C. 17.

[(*d*)] See his proposals for a digest.

[1] Both Hallam and Turner doubted the fact that such a work ever existed. It has, however, recently been brought to light, and may be seen, in both Saxon and English in "The Ancient Laws and Institutes of England," published by the Record Commissioners, vol. i. pp. 45-101. At the head of it stand the Ten Commandments, followed by many of the Mosaic precepts, with the express and solemn sanction given them by our Saviour in the Gospel:—"*Think not that I am come to destroy the law or the prophets: I am not come to destroy, but to fulfil.*" After quoting the canons of the apostolical council at Jerusalem, Alfred refers to the divine commandment, "*As ye would that men should do to you, do ye also to them,*" adding, "from this one doom, a man may remember that he judge every one righteously: he need heed no other doom-book." A noble and affecting incident this in the history of our laws,—which, though since swollen into an enormous bulk and complexity and fed from many sources, still bear the same relations to religion, which we observe in the rude and simple elements of these laws in the days of our illustrious Alfred. The work, however, is little more than a collection of punishments for offences, and has no pretensions to be regarded as a general system of municipal law.—Warren. Spence says there is no trace of it. 1 Spence, 61 n.

[(*e*)] C. 1.

[(*f*)] Hal. Hist. 55.

[(*g*)]*In Hen. II.*

[(*h*)]*In Edw. Confessor.*

[(*i*)]*In Seld. ad Eadmer*, 6.

[(*k*)] Mod. Un. Hist. xxii. 135.

[(*l*)]*Ibid.* xx. 211.

[(*m*)]*Ibid.* xxxiii. 21, 58.

[2] The commentators on the old French law cite Littleton for illustration; and, for the same reason, the antiquarian lawyer will cite Les Coutumes de Beavoisis, collected by Beaumanoir, first printed at Bourges, 1690, for the purpose of illustrating Littleton. Beaumanoir's compilation was made long antecedent to our venerable author, or, as he has been called, father of our law.—Lee.

[3] To assign, however, to the common law no other original than this, would be to take an imperfect and erroneous view of the subject. Our system of tenures was chiefly constructed, if not first founded, by the Norman conqueror; our judicial forms and pleadings, while they have nothing in common with the Anglo-Saxon style, are in striking conformity with the Norman; and it has been remarked with great truth that the general language of our jurisprudence and its terms of art are exclusively of French extraction. (Crag. Jus. Feud. l. 1, d. 7.) We cannot hesitate, therefore, to recognise in the ancient law of Normandy another parent of the common law, and one from which it has inherited some of its most remarkable features.—Stephen.

[4] The student who may be desirous of pursuing this investigation further may add to his own conjectures those of Dr. Wilkins, in his code of ancient laws; Selden, in his Notes on Eadmer; and of Garberon, editor of the works of Anselm.—Lee.

[5] What Lord Hale says is undoubtedly true, that "the original of the common law is as undiscoverable as the head of the Nile." *Hist. Com. Law*, 55.—Christian.

[6] There is no common law of the country designated geographically as the United States. The Union is composed of sovereign and independent States, each of which may have its local usages, customs, and common law. There is no principle which per vades the Union and has the authority of law that is not embodied in the constitutior and acts of Congress. As the federal government has no powers not specially delegated, and no jurisdiction over the regulation of real and personal property, nor over crimes, except such as relate to federal subjects, the common law neither is, nor could it by legislative adoption be made, a part of the federal system.

It is true that the common law was the substratum of the jurisprudence of the thirteen States by whom the constitution of the United States was at first adopted. The men by whom it was framed had been educated under that system, and many of them lawyers. No doubt, upon the commonly-received principles of interpretation, the language of that instrument, and the technical terms employed in it, are to be construed by the common law. Of the remaining States, Vermont was formed out of territory originally belonging to New Hampshire, and Maine from Massachusetts.

Of the States which have since acceded to the Union, Kentucky, Tennessee, Ohio, Indiana, Mississippi, Illinois, Alabama, Michigan, Wisconsin, Iowa, comprise territory which originally belonged to one or more of the thirteen States and was ceded by them to the United States. Louisiana, Missouri, and Arkansas were formed out of territory ceded to the United States by France by the treaty of April 30, 1803. Florida was formed out of territory ceded by Spain by the treaty of February 22, 1819. Texas, an independent republic, but originally one of the United States of Mexico, was received into the Union by a joint resolution of Congress, approved March 1, 1845. California was formed of part of the territory ceded to the United States by the Mexican Republic by the treaty of Guadaloupe Hidalgo, February 2, 1848.

In Texas, Missouri, Arkansas, and California, the common law has been adopted by express legislative enactment, so that Louisiana is the only State in which any other law prevails. In that State the law of France, which is the Roman civil law with such modifications as obtained at the time of her purchase, is the foundation of her jurisprudence; for it is a well-settled principle of international law, that whenever a country is conquered by or ceded to another, the law of that country as it was at the time of its cession or conquest remains until it is changed by its new master.—Sharswood.

[(*n*)]*Cup.* 8.

[(*o*)] Seld. Review of Tith. c. 8.

[7] But it cannot be dissembled, that both in our law, and in all other laws, there are decisions drawn from established principles and maxims, which are good law, though such decisions may be both manifestly absurd and unjust. But notwithstanding this, they must be rigorously adhered to by the judges in all courts, who are not to assume the characters of legislators. It is their province *jus dicere,* and not *jus dare.* Lord Coke, in his enthusiastic fondness for the common law, goes farther than the learned commentator: he lays down, that *argumentum ab inconvenienti plurimum valet in lege,* because *nihil quod est inconveniens est licitum.* Mr. Hargrave's note upon this is well conceived and expressed:—"Arguments from inconvenience certainly deserve the greatest attention, and, where the weight of other reasoning is nearly on an equipoise, ought to turn the scale. But if the rule of law is clear and explicit, it is in vain to insist upon inconveniences; nor can it be true that nothing which is inconvenient is lawful, for that supposes in those who make laws a perfection which the most exalted human wisdom is incapable of attaining, and would be an invincible argument against ever changing the law."—*Harg. Co. Lit.* 66—Christian.

[(*p*)] Herein agreeing with the civil law, *Ff.* 1, 3, 20, 21. "*Non omnium, quæ a majoribus nostris constituta sunt, ratio reddi potest. Et ideo rationes eorum, quæ constituuntur, inquiri non oportet: alioquin multa ex his, quæ certa sunt, subvertuntur.*"

[8] Precedents and rules must be followed even when they are flatly absurd and unjust, if they are agreeable to ancient principles. If an act of parliament had been brought in at the close of a session, and passed on the last day, which made an innocent act criminal or even a capital crime; and if no day was fixed for the commencement of its operation, it had the same efficacy as if it had been passed on the first day of the session, and all who, during a long session, had been

doing an act which at the time was legal and inoffensive, were liable to suffer the punishment prescribed by the statute. (4 Inst. 25; 4 Term. Rep. 660.) This was both flatly absurd and unjust; but it was the clear law of England, and could only be abrogated by the united authority of the king, Lords, and Commons in parliament assembled, who, by the 33 Geo. III, c. 13, enacted that when the operation of an act of parliament is not directed to commence from any time specified within it, the clerk of the parliament shall endorse upon it the day upon which it receives the royal assent, and that day shall be the date of its commencement. Many other similar instances might be adduced.

It is therefore justly said in the civil law, that *non omnium, quæ a majoribus constituta sunt, ratio reddi potest; et ideo rationes eorum quæ constituuntur, inquiri non oportet: alioquin multa ex his, quæ certa sunt, subvertuntur*. Domat, 8.—Christian.

Professor Christian maintains that precedents and rules must be followed, even when they are flatly absurd and unjust, *if they are agreeable to ancient principles;* a condition which, it is apprehended, extracts the whole negation with which he would reverse the maxim in the text. Mr. Sedgwick contends, on the other hand, that Sir William Blackstone urges the doctrine too far, and sets up a distinction between legal precedents and laws, which, however sound in itself, does not aid the argument it is intended to enforce. “A law,” he says, “is a public statute, solemnly framed by the legislative, and confirmed by the executive, power. The decrees and determinations of the magistrates are not, rigorously speaking, laws: legal precedents ought therefore not despotically to govern, but discreetly to guide. With laws it is otherwise: to them the judge in his adjudications must conform,” &c. Now, it is evident that our author is speaking of the common law, and his commentators must so understand him; which common law is as absolute as the parliamentary statutes, and must be as rigidly observed by the judicature. Assuming that the legal precedent, or the statute, is absurd and unjust, the only question is, by what authority shall it be abrogated? Mr. Sedgwick points to the judges on the bench; and Professor Christian maintains the sole and supreme right of the legislature to exercise this function. The spirit and practice of the constitution is with him, and it is well for the interests of public justice that they are so. In the multitude of counsels there is wisdom; and the business of legislation, even upon the substitution of a wholesome law in the place of an absurd or unjust precedent, may well employ the highest wisdom in the state. There may be a difference of opinion as to what is absurd and unjust. For instance, the law of primogeniture has fallen under that censure from the lips of men whose station in society recommend even their hasty notions to the respect of their contemporaries. It would be difficult to reconcile the preference of the first-born to the exclusion of all the other offspring of the same family, with the law of nature, or the law of God; yet no judge would dare to treat this rule of law as absurd or unjust, and substitute an equal division of the patrimony among all the children, upon the question being brought before him. Had he such power given him by the constitution, his fellows might exercise it also; and it is no overstrained conjecture to say that fluctuating and conflicting adjudications would be the consequence, producing much more mischief than can ensue from the enforcement of any precedent or rule of law, however absurd or unjust, till the legislature provides the proper remedy.

So, it being a rule of law, that a person born in England owes a natural allegiance, from which he cannot release himself, it was held, that a person born in England, of French parents, but

removed out of England immediately after his birth, and educated in France, was guilty of treason in joining the French in war against England. Foster, Co. L. 59—Chitty.

[9] But it is certainly repugnant to natural reason, where a father leaves two sons by two different mothers, and dies intestate, and a large estate descends to his eldest son, who dies a minor or intestate, that this estate should go to the lord of the manor, or to the king, rather than to the younger son. When such a case happens in the family of a nobleman or a man of great property, this law will then appear so absurd and unreasonable that it will not be suffered to remain long afterwards to disgrace our books. See book ii. p. 231.—Christian.

[10] The more advanced student may consult Mr. Humphrey's "Observations on the Actual State of the English Laws of Real Property, with the Outline of a Code;" a production indicative of great mental vigour. He states the evil with perspicuity; whether it be fundamental, or whether it be one merely of inconvenient anomaly; and, with equal clearness, and, to many, with irresistible reason on his side, suggests the antidote.—Chitty.

[(*q*)] "*Si imperialis majestas causam cognitionaliter examinaverit, et partibus, cominus constitutis, sententiam dixerit, omnes omnino judices, qui sub nostro imperio sunt, sciant hanc esse legem, non solum illi causæ pro qua producta est, sed et in omnibus similibus.*" *C.* 1, 14, 12.

[11] It is not possible to lay down, with mathematical precision, any rule in regard to the authority of precedents. Every judge and every court must consider that their function is *jus aïcere* and not *jus dare.* How far previous determinations ought to be regarded as definitely settling any point or principle of law, will depend very much upon circumstances. The character of the court, and of the times in which such decision took place, will have its weight; and not a little, after all, will depend upon the tone and tendency of prevailing opinions. No constitutional lawyer would now think of citing precedents in State trials during the Tudors. The rule anciently applied in actions of slander with ridiculous particularity—*verba sunt accipienda in mitiori sensu*—has been exploded, and a large class of solemn adjudications, made while it prevailed, are of no authority. Thus: "You have poisoned your husband." "Sir Thomas Holt struck his cook on the head with a cleaver, and cleaved her head: the one part lay on one shoulder, and the other on the other:" in both cases held not actionable. 1 Roll. Abr. 71. Cro. Jac. 184. For, though she poisoned her husband, he might not have died: Though he cleaved the cook's head into two parts, the wound might not have been mortal. So in regard to the bar of the statute of limitations. Almost any admission or acknowledgment was greedily caught at to take the case out of the statute. "Prove your debt, and I will pay you: I am ready to account; but nothing is due." Cowp. 548. "As to the matters between you and me, they will be rectified." 2 T. R. 760. "What an extravagant bill you have sent me!" Peake, 93. "I do not consider myself to owe a farthing, it being more than six years since I contracted." 4 East. 599. These are some of the acknowledgements held sufficient. These cases are not now considered as authority. Many other changes of the judicial current might be cited illustrative of the position that the declaration of what the law is rests in the sound, conscientious judgment of the court; the weight to be allowed to prior determinations depending altogether upon the circumstances of the case. A recent decision, which has not been frequently recognised nor grown into a landmark, is not entitled to so much respect as one of older date, of which such a remark may be predicated. Hardly a modern report-book appears in which some prior case is not found in express terms overruled. A

court or judge ought to be very cautious even in regard to recent cases, much more in regard to older ones, especially such as have been subsequently recognised and acted on. It is best to err on the safe side; and the safe side is *stare decisis*.—Sharswood.

[(*r*)]*Pat.* 15, *Jac. I.* p. 18, 17 Rym. 26.

[(*s*)] His reports, for instance, are styled κατ᾽ εξοχην, *the reports;* and, in quoting them, we usually say, 1 or 2 Rep., not 1 or 2 Coke's Rep. as in citing other authors. The reports of Judge Croke are also cited in a peculiar manner, by the names of those princes in whose reigns the cases reported in his three volumes were determined; viz. Queen Elizabeth, King James, and King Charles the First; as well as by the number of each volume. For sometimes we call them 1, 2, and 3 Cro. but more commonly Cro. Eliz., Cro. Jac., and Cro. Car.

[12] The works of these authors are distinguished by the following titles:—"Glanvil's Treatise of the Laws and Customs of England," written in the time of Henry II., edit. 1780; "Bracton's Treatise of the Laws and Customs of England," written in the reign of Henry III., edit. 1569; "Britton, corrected by Wingate," edit. 1640; "Fleta, or a Commentary upon the English Law," written by an anonymous author (a prisoner in the Fleet) in the time of Edw. I., with a small Treatise, called "Fet Assavoir," annexed, and Mr. Selden's "Dissertations," edit. 1685; "Hengham, [Chief-Justice of the King's Bench in the time of Edw. I.] Summa Magna and Parva, treating of Essoigns and Defaults in Writs of Right, Writs of Assize and Dower, &c.," which is printed with "Fortescue de Laudibus Legum Angliæ," edit. 1775; "Littleton's Tenures," various edits. "Statham's Abridgment, containing the Cases down to the End of Henry VI.:" only one edit., without date; "Brooke's Grand Abridgment of the Law," 1573; "Fitzherbert's Grand Abridgment of the Law," 1665; "Staundforde's Pleas of the Crown," to which is added an "Exposition of the King's Prerogative," 1607.—Chitty.

[(*t*)] It is usually cited either by the name of Co. Litt. or as 1 Inst.

[(*u*)] These are cited as 2, 3, or 4 Inst. without any author's name. An honorary distinction, which, we observed, is paid to the works of no other writer; the generality of reports and other tracts being quoted in the name of the compiler as 2 Ventris, 4 Leonard, 1 Siderfin, and the like.

[(*v*)]*Ff.* 1, 3, 32.

[13] This is the first sentence of the definition of a constitution in the beginning of the Institutes. It ought to be cited at length, that it may receive the execration it deserves. It is no wonder, from this specimen, that the civil law should have experienced such protection and patronage from all the despotic governments of Europe, and such opposition and detestation from the sturdy English barons.

Constitutio.—*Sed et quod principi placuit, legis habet vigorem: quum lege regia, quæ de ejus imperio lata est, populus ei, et in eum omne imperium suum et potestatem concedat. Quodcunqus ergo imperator per epistolam constituit; vel cognoscens decrevit, vel edicto præcepit, legem esse constat; hæc sunt, quæ constitutiones appellantur. Planè ex his quædam sunt personales, quæ nec ad exemplum trahuntur quoniam non hoc princeps vult, nam quod alicui ob meritum indulsit,*

vel si quam pœnam irrogavit, ve si cui sine exemplo subvenit, personam non transgreditur. Aliæ autem, quum generales sint, omnes procul dubio tenent. Inst. 1, 2, 6.—Christian.

[(*w*)]*Ff.* 1, 4, 1.

[(*x*)]*C.* 1, 14, 12.

[(*y*)]*C.* 1, 23, 5.

[14] Lord Chief-Justice Wilmot has said that "the statute law is the will of the legislature in writing; the common law is nothing else but statutes worn out by time. All our law began by consent of the legislature, and whether it is now law by usage or writing is the same thing. (2 *Wils.* 348.) And statute law, and common law, both originally flowed from the same fountain." (Ib. 350.) And to the same effect Lord Hale declares "that many of those things that we now take for common law, were undoubtedly acts of parliament, though now not to be found of record." (*Hist. Com. Law*, 66.) Though this is the probable origin of the greatest part of the common law, yet much of it certainly has been introduced by usage, even of modern date, which general convenience has adopted. As in the civil law, *sine scripto jus venit, quod usus approbavit, nam diuturni mores consensu utentium comprobati legem imitantur.* (Inst. 1, 2, 9.) Of this nature in this country is the law of the road, viz.: that horses and carriages should pass each other on the whip-hand. This law has not been enacted by statute, and is so modern, that perhaps this is the first time that it has been noticed in a book of law. But general convenience discovered the necessity of it, and our judges have so far confirmed it, as to declare frequently, at nisi prius, that he who disregards this salutary rule is answerable in damages for all the consequences.

The action in which this rule is applied, viz.: for negligently driving a carriage, by which any one is injured, is as ancient as the common law; but the uniform determination of the judges that the non-observance of this rule is negligence is of modern date.

It is now decided, that, where an injury is done by a man's driving his carriage on the wrong side of the road, the action must be trespass, *vi et armis.* Lord Ellenborough and the court laid down generally, that, where there is an immediate injury from an immediate act of force, the proper remedy is trespass, and wilfulness is not necessary to constitute trespass. 3 East, 593.

When two carriages meet, the impact is a reciprocal act of force; but the force of that only is wrongful which is on the wrong side of the way.—Christian.

It should be remembered, however, that, when the carriage is driven by a servant, the action against the master must always be trespass *on the case,* unless, indeed, the wrong was committed by the immediate command of the master.—Sharswood.

[(*z*)]*Mag. Cart.* 9 Hen. III. c. 9.—1 Edw. III. st. 2. c. 9.—14 Edw. III. st. 1. c. 1.—and 2 Hen. IV. c. 1.

[(*a*)] 8 Rep. 126; Cro. Car. 347.

[(*b*)] Winch. 24.

[15] The *lex mercatoria*, or the custom of merchants, like the *lex et consuetudo parliamenti*. describes only a great division of the law of England. The laws relating to bills of exchange, insurance, and all mercantile contracts, are as much the general law of the land as the laws relating to marriage or murder. But the expression has very unfortunately led merchants to suppose, that all their crude and new-fangled fashions and devices immediately become the law of the land; a notion which, perhaps, has been too much encouraged by our courts. Merchants ought to take their law from the courts, and not the courts from merchants; and when the law is found inconvenient for the purposes of extended commerce, application ought to be made to parliament for redress. Merchants ought to be considered in no higher degree their own legislators or judges upon subjects of commerce, than farmers or sportsmen in questions upon leases or the gamelaws. For the position of Lord Coke ought never to be forgotten:—"That the common law has no controller in any part of it, but the high court of parliament; and if it be not abrogated or altered by parliament, it remains still, as Littleton saith." (*Co. Litt.* 115.) This is agreeable to the opinion of Mr. Justice Foster, who maintains that "the custom of merchants is the general law of the kingdom, and therefore ought not to be left to a jury after it has been settled by judicial determinations." 2 *Bur.* 1226.—Christian.

That large branch of law which relates to the transactions of commerce is now a part of the municipal law of the country, whether it be found in statutes or codes, or adopted by general reasoning and the authority of the opinions of jurists and civilians. It is taken notice of judicially by the courts, and is not decided by the jury, as a mere custom would be. Mercantile usage is often appealed to in order to explain doubtful words in a contract, but never to contradict or vary any settled rule or principle of law. The sources of the mercantile law are, mainly, the Roman law, the various codes of modern European nations, and the writings of general jurists; but it is not to be denied that these questions were originally treated in England as matters of custom, and were referred to the decision of a jury of merchants. After one point of such custom was ascertained by the verdict of a jury, it was not considered proper to submit the same question to another jury, but it was thereafter judicially noticed and applied by the court. "Before the time of Lord Mansfield," says Mr. J. Buller, "we find that, in courts of law, all the evidence in mercantile cases was thrown together: they were left generally to a jury, and they produced no established principle. From that time, we all know, the great study has been to find out some certain general principles, which shall be known to all mankind, not only to rule the particular case then under consideration, but to serve as a guide for the future. Most of us have heard those principles stated, reasoned upon, enlarged, and explained, till we have been lost in admiration of the strength and stretch of the human understanding. And I should be very sorry to find myself under a necessity of differing from any case, which has been decided by Lord Mansfield, who may be truly said to be the founder of the commercial law of this country." (2 T. R. 73.) "The law merchant," said Lord Denman, "forms a branch of the law of England; and those customs which have been universally and notoriously prevalent amongst merchants, and have been found by experience to be of public use, have been adopted as a part of it, upon a principle of convenience, and for the benefit of trade and commerce; and, when so adopted, it is unnecessary to plead and prove them. They are binding on all without proof. Accordingly, we find that usages affecting bills of exchange and bills of lading are taken notice of judicially." 6 *Man. & Gr.*

665.—Sharswood.

[(*c*)] Co. Litt. 175.

[(*d*)] Litt. 265.

[(*e*)] Dr. and St. 1, 10.

[(*f*)] Cro. Car. 516.

[(*g*)] Hob. 85.

[(*h*)] Litt. 212; 4 Inst. 274.

[16] It seems that a custom beginning within any time after the first year of the reign of king Richard I. is bad.—Chitty.

[17] Therefore, a custom that every pound of butter sold in a certain market should weigh eighteen ounces is bad, because it is directly contrary to 13 and 14 Car. II. c. 26, which directs that every pound, throughout the kingdom, should contain sixteen ounces. (3 T. R. 271.) But there could be no doubt, I conceive, but it would be a good custom to sell lumps of butter containing eighteen ounces; for, if it is lawful to sell a pound, it must be so to sell a pound and any aliquot part of one. The inconvenience and deception arise from calling that a pound in one place which is not a pound in another.—Christian. Therefore, where a contract is made to sell specified goods by quantities of weight or measure, this must mean *statute* weight or measure. As, if a plaintiff declares for breach of contract, in not delivering "four hundred bushels of oats," and it is proved the agreement was for four hundred bushels in *some particular measure other than the Winchester bushel*, which is the statute measure, this is a fatal variance, and the plaintiff would be nonsuited. See 4 T. R. 314. 6 T. R. 338. 4 Taunton, 102. 11 East, 300.—Chitty.

[(*i*)] Co. Litt. 114.

[(*j*)] Co. Litt. 114.

[(*k*)]*Ibid.*

[(*l*)] Litt. 212.

[(*m*)] 1 Inst. 62.

[(*n*)] Co. Copyh. 33.

[(*o*)] 1 Roll. Abr. 565.

[18] A custom that poor housekeepers shall carry away rotten wood in a chase is bad, being too vague and uncertain. 2 T. R. 758. A right to glean in the harvest-field can not be claimed at

common law; neither have the poor of a parish legally settled such right within the parish. 1 H. Bl. 51, 52. So, a custom for every inhabitant of an ancient messuage within a parish to take a profit *a prendre* in the land of an individual is bad. But such a right may be enjoyed by prescription or grant. 4 Term Rep. 717, 718. 2 H. Bl. 393. 1 Ld. Raym. 407. 1 Saund. 341, n. 3; 346, n. 3.—Christian.

[(*p*)] 9 Rep. 58.

[19] This rule is founded upon the consideration that a variety of customs in different places upon the same subject is a general inconvenience. The courts, therefore, will not admit such customs but upon the clearest proof. So, where there is a custom that lands shall descend to the eldest sister, the courts will not extend this custom to the eldest niece, or to any other eldest female relation, but upon the same authority by which the custom between sisters is supported. 1 T. R. 466.—Christian.

[(*q*)] Co. Cop. 33.

[20] There does not appear to be any authority for this; but, on the contrary, Sir Edward Coke, in the same section, says that a custom is not to be confined to literal Interpretation; for, if there be a custom within a manor that copyhold lands may be granted in fee-simple, by the same custom they may be granted in tail for life, for years, or any other extent whatever, because *cui licet quod majus non debet quod minus est non licere.*—Stewart.

[(*r*)] Co. Litt. 15.

[21] In some of the States—as in Pennsylvania, for instance—general customs and usage on certain subjects prevailed to such an extent as to produce a distinctive common law. In very few of the States, however, do any mere local customs exist such as are treated of by the commentator in this section. They, however, are to be carefully distinguished from usages of trade or business. These are everywhere allowed their just influence and operation. A usage of trade and business clearly proved to exist, to be ancient, notorious, reasonable, and consistent with law, is permitted to explain the meaning of ambiguous words in written contracts, and to control the mode and extent of their rights where the parties have been silent. But it is never admitted against the expressed agreement of the parties, nor in violation of any statute or well-established rule of law. Perhaps in some cases the courts have gone further than is here indicated; but the current of judicial decisions of late years has been to restrain and limit the allowance and influence of special usages.—Sharswood.

[(*s*)] Hist. C. L. c. 2.

[(*t*)] Hist. C. L. c. 2.

[(*u*)]*l.* 3, c. 34.

[(*v*)] Taylor's Elements of Civil Law, 17.

[(*w*)] See 1, page 18.

[(*x*)] Burn's Eccl. Law, pref. viii.

[(*y*)] Statute 25 Hen. VIII. c. 19, revised and confirmed by 1 Eliz. c. 1.

[(*z*)] Stra. 1057.

[22] Lord Hardwicke cites the opinion of Lord Holt, and declares it is not denied by any one, that it is very plain all the clergy are bound by the canons confirmed by the king only, but they must be confirmed by the parliament to bind the laity. (2 Atk. 605.) Hence, if the archbishop of Canterbury grants a dispensation to hold two livings distant from each other more than thirty miles, no advantage can be taken of it by lapse or otherwise in the temporal courts, for the restriction to thirty miles was introduced by a canon made since the 25 Hen. VIII. 2 Bl. Rep. 968.—Christian.

[(*a*)] Hale, Hist. c. 2.

[(*b*)] 8 Rep. 20.

[(*c*)] The method of citing these acts of parliament is various. Many of our ancient statutes are called after the name of the place where the parliament was held that made them; as the statutes of Merton and Marleberge, of Westminster, Gloucester, and Winchester. Others are denominated entirely from their subject, as the statutes of Wales and Ireland, the *articuli cleri,* and the *prærogativa regis.* Some are distinguished by their initial words, a method of citing very ancient, being used by the Jews in denominating the books of the Pentateuch; by the Christian church in distinguishing their hymns and divine offices; by the Romanists in describing their papal bulls; and, in short, by the whole body of ancient civilians and canonists, among whom this method of citation generally prevailed, not only with regard to chapters, but inferior sections also; in imitation of all which we still call some of our old statutes by their initial words, as the statute of *quia emptores,* and that of *circumspecte agatis.* But the most usual method of citing them, especially since the time of Edward the Second, is by naming the year of the king's reign in which the statute was made, together with the chapter, or particular act, according to its numeral order, as 9 Geo. II. c. 4, for all the acts of one session of parliament taken together make properly but one statute; and therefore, when two sessions have been held in one year, we usually mention stat. 1 or 2. Thus the bill of rights is cited as 1 W. and M. st. 2. c. 2, signifying that it is the second chapter or act of the second statute, or the laws made in the second session of parliament, in the first year of king William and queen Mary.

[(*d*)] Gravin. *Orig.* i. 24.

[23] See other cases upon the distinction between public and private acts. Bac. Ab. Statute F. The distinction between public and private acts is marked with admirable precision by Mr. Abbot, (the present Lord Colchester,) in the following note, in the printed report from the committee for the promulgation of the statutes:—public and private acts.—1. In legal language,—1. Acts are deemed to be *public* and *general* acts which the judges will take notice of

without pleading,—viz., acts concerning the king, the queen, and the prince; those concerning all prelates, nobles, and great officers; those concerning the whole spirituality, and those which concern all officers in general, such as all sheriffs, &c. Acts concerning trade in general, or any specific trade; acts concerning all persons generally, though it be a special or particular thing, such as a statute concerning assizes, or woods in forests, chases, &c. &c. Com. Dig. tit. Parliament, (R. 6.) Bac. Ab. Statute F. 2. *Private* acts are those which concern only a particular species, thing, or person, of which the judges will not take notice without pleading them,—viz., acts relating to the bishops only; acts for toleration of dissenters; acts relating to any particular place, or to divers particular towns, or to one or divers particular counties, or to the colleges only in the universities. Com. Dig. tit. Parliament, (R. 7.) 3. In a *general* act there may be a *private* clause, ibid. and a *private* act, if recognised by a *public* act, must afterwards be noticed by the courts as such. 2 Term Rep. 569. 2. In parliamentary language,—1. The distinction between *public* and *private* bills stands upon different grounds as to *fees.* All bills whatever from which private persons, corporations, &c. derive benefit, are subject to the payment of *fees;* and such bills are in this respect denominated *private* bills. Instances of bills within this description are enumerated in the second volume of Mr. Hatsel's Precedents of Proceedings in the House of Commons, edit. 1796, p. 267, &c. 2. In parliamentary language another sort of distinction is also used: and some acts are called *public general acts,* others *public local acts,*—viz., church acts, canal acts, &c. To this class may also be added some acts which, though public, are merely personal,—viz., acts of attainder, and patent acts. &c. Others are called *private* acts. of which latter class some are local,—viz., enclosure acts, &c.; and some personal,—viz., such as relate to names, estates, divorces, &c.

In many statutes which would otherwise have been private, there are clauses by which they are declared to be public statutes. Bac. Ab. Statutes F.—Chitty.

[24] This division is generally expressed by declaratory statutes and statutes introductory of a new law. Remedial statutes are generally mentioned in contradistinction to penal statutes. See note 19, p. 88.—Christian.

[25] This statute against clipping the coin hardly corresponds with the general notion either of a remedial or an enlarging statute. In ordinary legal language remedial statutes are contradistinguished to penal statutes. An enlarging or an enabling statute is one which increases, not restrains, the power of action, as the 32 Hen. VIII. c. 28, which gave bishops and all other sole ecclesiastical corporations, except parsons and vicars, a power of making leases, which they did not possess before, is always called an enabling statute. The 13 Eliz. c. 10, which afterwards limited that power, is, on the contrary, styled a restraining or disabling statute. See this fully explained by the learned commentator, 2 Book, p. 319.—Christian.

[26] Where there are conflicting decisions upon the construction of a statute, the court must refer to that which ought to be the source of all such decisions,—that is, the words of the statute itself, per Lord Ellenborough. 16 East, 122.

The power of construing a statute is in the judges of the temporal courts, who, in cases of doubtful construction, are to mould them according to reason and convenience, to the best use.

Hob. 346. Plowd. 109. 3 Co. 7.—Chitty.

[(*e*)] 3 Rep. 7; Co. Litt. 11, 42.

[(*f*)] Co. Litt. 45. 3 Rep. 60. 10 Rep. 58.

[27] Modern statutes of importance have what is commonly called a "dictionary clause," the object of which is to define what persons, things, places, &c. shall be included in every general word used in the act. For example, the first section of the Limitation of Actions, act 3 and 4 Wm. IV. c. 27, defines what shall be included in the words "land," "rent," and "person."—Hargrave.

[(*g*)] 2 Rep. 46.

[28] Lord Hale thinks that the scruple of the judges did not merely depend upon the words being in the plural number, because no doubt had ever occurred respecting former statutes in the plural number; as, for instance, it was enacted by the 32 Hen. VIII. c. 1 that no person convicted of burning *any dwelling-houses* should be admitted to clergy. But the reason of the difficulty in this case was, because the statute of 37 Hen. VIII. c. 8 was expressly penned in the singular number,—*If any man do steal any horse, mare, or filly;* and then this statute, varying the number, and at the same time expressly repealing all other exclusions of clergy introduced since the beginning of Hen. VIII., it raised a doubt whether it were not intended by the legislature to restore clergy where only one horse was stolen. 2 H. P. C. 365.

It has since been decided, that where statutes use the plural number, a single instance will be comprehended. The 2 Geo. II. c. 25 enacts, that it shall be felony to steal any bank-notes; and it has been determined that the offence is complete by stealing *one* bank-note. Hassel's Case, Leach, Cr. L. 1.—Christian.

[(*h*)] 2 and 3 Edw. VI. c. 33. Bav. Elem. c. 12.

[29] There are some kinds of statutes in the construction of which the courts have considered themselves bound to adhere more closely to the words than in other cases. This is termed strict construction. The text confines it to penal statutes; but there are others also of this class. As to penal statutes, however, it is to be observed that such laws are not to be construed so strictly as to defeat the obvious intention of the legislature. The United States *vs.* Wiltberger, 5 Wheat. 76. They are to be construed strictly in that sense that the case in hand must be brought within the definition of the law, but not so strictly as to exclude a case which is within its words taken in their ordinary acceptation: that is to say, there is no peculiar technical meaning given to language in penal any more than in remedial laws. U.S. *vs.* Wilson, Baldw. C. C. Rep. 78. Hall *vs.* The State, 20 Ohio, 7. But, besides penal statutes, laws made in derogation of common right are to be construed strictly; as, for instance, statutes for any cause disabling any person of full age and sound mind to make contracts. Smith *vs.* Spooner, 3 Pick. 229. So statutes conferring exclusive privileges on corporations or individuals fall under this rule Sprague *vs.* Birdsall, 2 Cowen, 419. Young *vs.* McKensie, 3 Kelly, 31. Charters of incorporation are to be construed most strongly against those corporations or persons who claim rights or powers under them, and most favourably for the public. Mayor *vs.* Railroad Co., 7 Georgia, 221. Railroad Co. *vs.* Briggs, 2 N.

Jersey, 623. In the same class are statutes which impose restrictions on trade or common occupations, or which levy a tax upon them. Sewall *vs.* Jones, 9 Pick. 412. So a statute conferring authority to impose taxes. Moseley *vs.* Tift, 4 Florida, 402. So laws exempting property from taxation. Cincinnati College *vs.* Ohio, 19 Ohio, 110. So when the liberty of the citizen is involved. Pierce's Case, 4 Shipley, 255. The power invested in public bodies to take the lands of private persons for public uses is in derogation of the common law, and ought therefore to receive a rigid interpretation. Sharp *vs.* Speir, 4 Hill, 76. Sharp *vs.* Johnson, ibid. 92. Enough has been specified to illustrate the general bearing and application of the principle of strict construction.

By far the most important question, which has ever been agitated, has been in regard to the constitution of the United States. Two schools of constitutional law—the National and State-Rights school—maintain different doctrines upon this subject. The former have always contended that the delegations of power to the federal government ought to receive a large and liberal interpretation; and that at all events, wherever a general object was within the scope of the powers specified, Congress ought to be considered as invested with a large discretion as to the means to be employed for the purpose of giving effect to the power, and especially that there existed no limitation upon their right to appropriate the public money but their own judgment of what would conduce to the "general welfare." On the other hand, the State-Rights school zealously contend that, the government being conceded to be one of special limited powers, such a principle of construction as that assumed on the other side in effect destroys all limitation; that any thing and every thing can be reached under the power of appropriating money for the "general welfare;" that Congress can employ no means except such as are necessary as well as proper to the end, and have no right to assume a substantive power, not granted, as incidental. *Non nobis tantas componcre lites.*—Sharswood.

[30] These are generally called remedial statutes; and it is a fundamental rule of construction that penal statutes shall be construed strictly, and remedial statutes shall be construed liberally. It was one of the laws of the twelve tables of Rome, that whenever there was a question between liberty and slavery, the presumption should be on the side of liberty. This excellent principle our law has adopted in the construction of penal statutes; for whenever any ambiguity arises in a statute introducing a new penalty or punishment, the decision shall be on the side of lenity and mercy; or in favour of natural right and liberty; or, in other words, the decision shall be according to the strict letter in favour of the subject. And though the judges in such cases may frequently raise and solve difficulties contrary to the intention of the legislature, yet no further inconvenience can result than that the law remains as it was before the statute. And it is more consonant to principles of liberty that the judge should acquit whom the legislator intended to punish, than that he should punish whom the legislator intended to discharge with impunity. But remedial statutes must be construed according to the spirit; for, in giving relief against fraud, or in the furtherance and extension of natural right and justice, the judge may safely go beyond even that which existed in the minds of those who framed the law.—Christian.

[31] And, therefore, it has been held that the same words in a statute will bear different interpretations, according to the nature of the suit or prosecution instituted upon them. As by the 9 Ann. c. 14, the statute against gaming, if any person shall lose at any time or sitting 10*l.* and shall pay it to the winner, he may recover it back within three months; and if the loser does not

within that time, any other person may sue for it and treble the value besides. So where an action was brought to recover back fourteen guineas, which had been won and paid after a continuance at play, except an interruption during dinner, the court held the statute was remedial, as far as it prevented the effects of gaming, without inflicting a penalty, and, therefore, in this action, they considered it one time or sitting; but they said if an action had been brought by a common informer for the penalty, they would have construed it strictly in favour of the defendant, and would have held that the money had been lost at two sittings. 2 Bl. Rep. 1226.—Christian.

[(*i*)] 3 Rep. 82.

[32] Some kinds of statutes are held entitled to receive a liberal or favourable interpretation. Thus, remedial laws are to be so construed as to suppress the mischief and advance the remedy. Smith *vs.* Maffott, 1 Barb. 65. Franklin *vs.* Franklin, 1 Maryl. Ch. 342. Carey *vs.* Giles, 9 Geo. 253. So laws which have reference to the public welfare or the policy of the State, which are intended to encourage her staple productions, to maintain public peace and security, or to extend the blessings of education, Wolcott *vs.* Pond, 19 Conn. 597. Bryan *vs.* Dennis, 4 Florida, 445. In like manner, acts of the legislature relative to the general administration of justice. Mitchell *vs.* Mitchell, 1 Gill, 66.—Sharswood.

[(*k*)] 1 Rep. 47.

[33] But a proviso, (that is, a clause ingrafted upon a preceding and complete enactment, 9 B. & C. 835,) though totally repugnant to the body or provision of the act, shall not be void, but shall stand, being held to be a repeal of the preceding enactment, by analogy to the well-known rule of construction applicable to testamentary instruments, that a later clause, if inconsistent with a former one, expresses the last intention and revokes the preceding expressions. Fitz. 195, Bac. Abr. Statute.—Hargrave.

[(*l*)] Jenk. Cent. 2, 73.

[(*m*)] 11 Rep. 63.

[34] Later statutes abrogate prior ones. In affirmative statutes, however, such parts of the prior as may be incorporated into the subsequent one, and are consistent with it, must be considered in force. Daviess *vs.* Fairbairn, 3 Howard U. S. 636. Where two statutes can be construed together so as to allow both to stand, the latter will not be construed a repeal of the former. Morris *vs.* Canal Co., 4 Watts & Serg. 461. Canal Co. *vs.* Railroad Co., 4 Gill & John. 1. Statutes which apparently conflict with each other are to be reconciled as far as may be, on any fair hypothesis, and effect given to each if it can be, and especially if it is necessary to preserve the titles to property undisturbed. Beals *vs.* Hale, 4 Howard U. S. 37. The law does not favour repeals by implication. Bowen *vs.* Lean, 5 Hill, 221. Wyman *vs.* Campbell, 6 Porter, 219. Strut *vs.* Commonwealth, 4 W. & S., 209. A subsequent statute, attaching milder and different punishments to offences than are attached to the same offence by a prior statute, is a repeal of such prior statute. The State *vs.* Whitworth, 8 Porter. 434. A general law however, does not operate a repeal of a special law upon the same subject passed previous to the general law.

McFarland *vs.* The State Bank, 4 Pike, 410.—Sharswood.

[(*n*)] 4 Inst. 325.

[35] Where a repealing statute is itself repealed, the first or original statute is thereby *ipso facto* revived. Commonwealth *vs.* Churchill, 2 Metc. 118. Directors *vs.* Railroad Co., 7 W. & S. 236. Harrison *vs.* Walker, 1 Kelly, 32. The repeal of a statute, however, will not be construed to divest rights which have vested under it. Davis *vs.* Minor, 1 Howard, (Miss.,) 183. James *vs.* Dubois, 1 Harr. 285. Mitchell *vs.* Doggett, 1 Branch, 356. The repeal of a prohibitory act does not make valid contracts prohibited by it which were made while it was in force. Milne *vs.* Huber, 3 McLean, 212. Where a statute, reviving a statute which had been repealed, is itself repealed, the statute which was revived stands as it did before the revival. Calvert *vs.* Makepeace, 1 Smith, 86. This rule has been altered in England by St. 12 & 13 Vict. c. 21, s. 5, which enacts that repealed statutes shall not be revived by the repeal of the act repealing them, unless express words be added reviving such repealed acts. The same enactment was made in Virginia in the year 1789.—Sharswood.

[(*o*)] 4 Inst. 43.

[(*p*)]*Cum lex abrogatur, illud ipsum abrogatur, quo non eam abrogari oporteat. l.* 3, ep. 23.

[36] If an act of parliament is clearly and unequivocally expressed, with all deference to the learned commentator, I conceive it is neither void in its direct nor collateral consequences, however absurd and unreasonable they may appear. If the expression will admit of doubt, it will not then be presumed that that construction can be agreeable to the intention of the legislature, the consequences of which are unreasonable; but where the signification of a statute is manifest, no authority less than that of parliament can restrain its operation.Christian.

[(*q*)] 8 Rep. 118.

[37] The following canons of interpretation may be added to those stated in the text:-

11. A statute shall always be so construed as to operate prospectively, and not retrospectively, unless, indeed, the language is so clear as to preclude all question as to the intention of the legislature. Sayre *vs.* Wisner, 8 Wend. 661. Hastings *vs.* Lane, 3 Shep. 134. Brown *vs.* Wilcox, 14 S. & M. 127. Quackenbush *vs.* Danks, 1 Denio, 128. This is a very important rule and frequently called into exercise. The provision in the Federal and most of the State constitutions prohibiting the passage of *ex post facto* laws has been confined by construction to criminal or penal laws; and the power of the legislature to affect injuriously vested rights, when the obligation of contracts is not violated, is generally conceded. Hence the value and necessity of the rule in question.

12. Contemporaneous usage may be resorted to as evidence of the construction put upon a statute by those best acquainted with the mind and intention of the lawmakers. When a particular construction has thus been assumed and acted on at an early day, and especially if many titles depend upon it, the courts will not at a subsequent period disturb it, even if it should appear to be

indefensible on principle. McKeer *vs.* Delancy, 5 Cranch, 22. Chesnut *vs.* Shane, 16 Ohio, 519. Kernion *vs.* Hills, 1 Louis. Ann. R. 419.

13. The judicial interpretation of the statute of a State as settled by its own courts is to be received and followed by the courts of other States and by the Federal Judiciary. Johnston *vs.* The Bank, 3 Strobh. Eq. 263. Hoyt *vs.* Thompson, 3 Sandf. Supreme Court, 416. So even the Supreme Court of the United States is held bound by the determination of the State courts upon the construction of their State constitutions, and the validity of State laws as dependent thereon. Elmendorf *vs.* Taylor, 10 Wheat. 152. Harpending *vs.* Dutch Church, 16 Peters, 439.

14. Where there has been a general revision of the statute code of a State, under the authority of the legislature, and the revision has been approved and adopted, a mere change of phraseology introduced by the revisers will not be held to have effected a change, unless such appear clearly to have been the intention. Chambers *vs.* Carson, 2 Whart. 9. Commonwealth *vs.* Rainey, 4 W. & S. 186. In re Brown, 21 Wendell, 316. It has been held in some States, however, that where a statute is revised and a provision contained in it is omitted in the new statute, the inference is that a change in the law is intended. If the omission is accidental, it belongs to the legislature to supply it. Back *vs.* Spofford, 31 Maine, 34. Ellis *vs.* Paige, 1 Pick. 43.

15. A statute cannot be repealed by usage or become obsolete by non-user. Wright *vs.* Crane, 13 Serg. & R. 447. Snowden *vs.* Snowden, 1 Bland. 550. When the circumstances or business of a community so materially change that the facts no longer can arise to which a statute was meant to apply, in that sense it may become obsolete. It may, however, so happen that the current of legislation shows that an old statute, never actually repealed, was regarded by the legislature as no longer in force; and in that case it may be regarded as repealed by implication. Hill *vs.* Smith, 1 Morris, 70.—Sharswood.

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The Petition of Right, 1628

The Petition exhibited to his Majesty by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, concerning divers Rights and Liberties of the Subjects, with the King's Majesty's royal answer thereunto in full Parliament.

To the King's Most Excellent Majesty,

Humbly show unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament assembles, that whereas it is declared and enacted by a statute made in the time of the reign of King Edward I, commonly called Stratutum de Tellagio non Concedendo, that no tallage or aid shall be laid or levied by the king or his heirs in this realm, without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other the freemen of the commonalty of this realm; and by authority of parliament holden in the five-and-twentieth year of the reign of King Edward III, it is declared and enacted, that from thenceforth no person should be compelled to make any loans to the king against his will, because such loans were against reason and the franchise of the land; and by other laws of this realm it is provided, that none should be charged by any charge or imposition called a benevolence, nor by such like charge; by which statutes before mentioned, and other the good laws and statutes of this realm, your subjects have inherited this freedom, that they should not be compelled to contribute to any tax, tallage, aid, or other like charge not set by common consent, in parliament.

II. Yet nevertheless of late divers commissions directed to sundry commissioners in several counties, with instructions, have issued; by means whereof your people have been in divers places assembled, and required to lend certain sums of money unto your Majesty, and many of them, upon their refusal so to do, have had an oath administered unto them not warrantable by the laws or statutes of this realm, and have been constrained to become bound and make appearance and give utterance before your Privy Council and in other places, and others of them have been therefore imprisoned, confined, and sundry other ways molested and disquieted; and divers other charges have been laid and levied upon your people in several counties by lord lieutenants, deputy lieutenants, commissioners for musters, justices of peace and others, by command or direction from your Majesty, or your Privy Council, against the laws and free custom of the realm.

III. And whereas also by the statute called 'The Great Charter of the Liberties of England,' it is declared and enacted, that no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.

IV. And in the eight-and-twentieth year of the reign of King Edward III, it was declared and enacted by authority of parliament, that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disinherited nor put to death without being brought to answer by due process of law.

V. Nevertheless, against the tenor of the said statutes, and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause showed; and when for their deliverance they were brought before your justices by your Majesty's writs of habeas corpus, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your Majesty's special command, signified by the lords of your Privy Council, and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law.

VI. And whereas of late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn against the laws and customs of this realm, and to the great grievance and vexation of the people.

VII. And whereas also by authority of parliament, in the five-and-twentieth year of the reign of King Edward III, it is declared and enacted, that no man shall be forejudged of life or limb against the form of the Great Charter and the law of the land; and by the said Great Charter and other the laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm, or by acts of parliament: and whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm; nevertheless of late time divers commissions under your Majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners with power and authority to proceed within the land, according to the justice of martial law, against such soldiers or mariners, or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanor whatsoever, and by such summary course and order as is agreeable to martial law, and is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial.

VIII. By pretext whereof some of your Majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been judged and executed.

IX. And also sundry grievous offenders, by color thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes, upon pretense that the said offenders were punishable only by martial law, and by authority of such commissions as aforesaid; which commissions, and all other of like nature, are wholly and directly contrary to the said laws and statutes of this your realm.

X. They do therefore humbly pray your most excellent Majesty, that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent by act of parliament; and that none be called to make answer, or take such oath,

or to give attendance, or be confined, or otherwise molested or disquieted concerning the same or for refusal thereof; and that no freeman, in any such manner as is before mentioned, be imprisoned or detained; and that your Majesty would be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come; and that the aforesaid commissions, for proceeding by martial law, may be revoked and annulled; and that hereafter no commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, lest by color of them any of your Majesty's subjects be destroyed or put to death contrary to the laws and franchise of the land.

XI. All which they most humbly pray of your most excellent Majesty as their rights and liberties, according to the laws and statutes of this realm; and that your Majesty would also vouchsafe to declare, that the awards, doings, and proceedings, to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example; and that your Majesty would be also graciously pleased, for the further comfort and safety of your people, to declare your royal will and pleasure, that in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm, as they tender the honor of your Majesty, and the prosperity of this kingdom.

Charles I, Propositions Made by Both Houses of Parliament ... with His Majesties Answer Thereunto (1642)

[KRH Redact, 12 February 2014]

XIX. Propositions made by both Houses of Parliament, to the Kings most excellent Majestie, touching the differences between His Majestie and the said Houses.

Your Majestie's most humble and faithfull Subjects, the Lords and Commons in Parliament, having nothing in their thoughts and desires more precious and of higher esteem (next to the Honour and immediate Service of God) than the just and faithfull performance of their Dutie to your Majestie and this Kingdom, and being very sensible of the great distractions and distempers, and of the imminent Dangers and Calamities which those Distractions and Distempers are like to bring upon your Majestie and your Subjects: All which have proceeded from the subtill Insinuations, mischievous Practises, and evill Counsels of Men disaffected to God's true Religion, your Majestie's Honor and Safetie, and the publike Peace and Prosperitie of your people: After a serious observation of the Causes of those Mischiefs, do in all Humilitie and Sinceritie present to your Majestie their most dutifull Petition and Advice; That out of your Princely Wisdom, for the establishing your own Honour and Safetie, and gracious tendernesse of the welfare and securitie of your Subjects and Dominions, You will be pleased to Grant and Accept these their humble Desires and Propositions, as the most necessarie effectuall means, through God's blessing, of removing those Jealousies and Differences which have unhappily fallen betwixt You and your People, and procuring both your Majestie and them a constant course of Honour, Peace, and Happinesse.

I. That the Lords, and others of your Majestie's Privie Councell, and such great Officers and Ministers of State, either at home or beyond the Seas, may be put from your Privie Councell, and from those Offices and Imployments, excepting such as shall be approved of by both Houses of Parliament; And that the Persons put into the Places and Imployments of those that are removed, may be approved of by both Houses of Parliament; And that all Privie Councellors shall take an Oath for the due execution of their Places, in such forme as shall be agreed upon by both Houses of Parliament.

II.That the great Affairs of the Kingdom may not be Concluded or Transacted by the Advise of private men, or by any unknown or unsworn Councellors; but that such Matters as concern the Publike, and are proper for the high Court of Parliament, which is your Majestie's great and supreme Councell, may be Debated, Resolved, and Transacted only in Parliament, and not elsewhere. And such as shall presume to do anything to the contrary, shall be reserved to the Censure and Judgement of Parliament: And such other matters of State as are proper for your Majestie's Privie Councell, shall be debated and concluded by such of the Nobility and Others, as shall from time to time be chosen for that place by approbation of both Houses of Parliament.That no publicke Act concerning the Affairs of the Kingdom, which are proper for your Privie Councell, may be esteemed of any validity, as proceeding from the Royall Authority, unlesse it be done by the advice and consent of the major part of your Councell, attested under their hands. And that your Councell may be limited to a certain number, not exceeding five and twenty, nor under fifteen; and if any Councellor's place happen to be void in the Intervals of

Parliament, it shall not be supplied without the Assent of the major part of the Councell; which choice shall be confirmed at the next sitting of the Parliament, or else to be void.

III.That the Lord high Steward of England, Lord high Constable, Lord Chancellour, or Lord Keeper of the great Seal, Lord Treasurer, Lord Privie Seal, the Earle Marshall, Lord Admirall,Warden of the Cinque-Ports, chief Governour of Ireland, Chancellour of the Exchequer, Master of the Wards, Secretaries of State, two chief Justices, and chief Baron, may be alwayes chosen with the approbation of both Houses of Parliament: And in the Intervals of Parliaments by assent of the major part of the Councell, in such manner as is before expressed in the choice of Councellors.

IV.That he or they unto whom the Government and education of the King's Children shall be committed, shall be approved of by both Houses of Parliament; and in the Intervals of Parliaments, by the assent of the major part of the Councell, in such manner as is before exprest in the choice of Councellors: And that all such Servants as are now about them, against whom both Houses shall have any just exception, shall be removed.

V.That no Marriage shall be Concluded, or Treated for any of the King's Children, with any Forraign Prince, or other Person whatsoever abroad, or at home, without the consent of Parliament, under the penalty of a Premunire unto such as shall so Conclude or Treate any Marriage as aforesaid. And that the said Penalty shall not be pardoned or dispensed with, but by the consent of both Houses of Parliament.

VI.That the Laws in force against Jesuites, Priests, and Popish Recusants, be strictly put in execution, without any Toleration or Dispensation to the contrary; and that some more effectuall Course may be Enacted, by Authoritie of Parliament, to disable them from making any disturbance in the State, or eluding the Law by Trusts, or otherwise.

VII.That the Votes of Popish Lords in the House of Peers, may be taken away, so long as they continue Papists; and that His Majestie would consent to such a Bill as shall be drawn for the Education of the Children of Papists by Protestants in the Protestant Religion.

VIII.That your Majestie will be pleased to Consent,That such a Reformation be made of the Church-Government, and Liturgie as both Houses of Parliament shall advise, wherein they intend to have Consultations with Divines, as is expressed in the Declaration to that purpose; and that your Majestie will contribute your best Assistance to them for the raising of a sufficient Maintenance for Preaching Ministers thorowout the Kingdom: And that your Majestie will be pleased to give your consent to Laws for the taking away of Innovations and Superstition, and of Pluralities, and against Scandalous Ministers.

IX. That your Majestie will be pleased to rest satisfied with that Course that the Lords and Commons have appointed for Ordering the Militia, untill the same shall be further setled by a Bill: And that you will recall your Declarations and Proclamations against the Ordinance made by the Lords and Commons concerning it.

X. That such Members of either House of Parliament, as have, during this present Parliament, been put out of any Place and Office, may either be restored to that Place and Office, or otherwise have satisfaction for the same, upon the Petition of that House, whereof he or they are Members.

XI.That all Privie Councellors and Judges may take an Oath, the form whereof to be agreed on, and setled by Act of Parliament, for the maintaining of the Petition of Right, and of certain Statutes made by this Parliament, which shall be mentioned by both Houses of Parliament: And that an enquiry of the Breaches and Violations of those Laws may be given in charge by the Justices of the King's- Bench every Tearm, and by the Judges of Assize in their Circuits, and Justices of Peace at the Sessions, to be presented and punished according to Law.

XII.That all the Judges and all Officers placed by approbation of both Houses of Parliament, may hold their Places, Quam diu bene se gesserint.

XIII. That the justice of Parliament may passe upon all Delinquents, whether they be within the Kingdom, or fled out of it; And that all Persons cited by either House of Parliament, may appear and abide the censure of Parliament.

XIIII.That the Generall Pardon offered by your Majestie, may be granted with such Exceptions, as shall be advised by both Houses of Parliament.

XV.That the Forts and Castles of this Kingdom, may be put under the Command and Custody of such Persons as your Majestie shall appoint, with the approbation of your Parliaments: and in the intervals of Parliament, with the approbation of the major part of the Councell, in such manner as is before expressed in the choice of Councellors.

XVI.That the extraordinary Guards, and Millitary Forces, now attending your Majestie, may be removed and discharged; and that for the future you will raise no such Guards or extraordinary Forces, but according to the Law, in case of actuall Rebellion or Invasion.

XVII.That your Majestie will be pleased to enter into a more strict Alliance with the States of the United Provinces, and other neighbour Princes and States of the Protestant Religion, for the defence and maintenance thereof against all Designes and Attempts of the Pope and his Adherents, to subvert and suppresse it, whereby your Majestie will obtain a great accesse of Strength and Reputation, and your Subjects be much encouraged and enabled in a Parliamentary way, for your aid and assistance in restoring your Royall Sister and her Princely Issue to those Dignities and Dominions which belong unto them, and relieving the other distressed Protestant Princes who have suffered in the same Cause.

XVIII.That your Majestie will be pleased, by Act of Parliament, to cleer the Lord Kimbolton, and the five Members of the House of Commons, in such manner that future Parliaments may be secured from the consequence of that evill precedent.

XIX.That your Majestie will be graciously pleased to passe a Bill for restraining Peers made hereafter from Sitting or Voting in Parliament; unlesse they be admitted thereunto with the consent of both Houses of Parliament.

And these our humble desires being granted by your Majestie, we shall forthwith apply ourselves to regulate your present Revenue, in such sort, as may be for your best advantage; and likewise to settle such an ordinary and constant increase of it as shall be sufficient to support your Royall Dignitie in Honour and plenty, beyond the proportion of any former Grants of the Subjects of this Kingdom to your Majestie's Royall Predecessors.We shall likewise put the Town of Hull into such hands as your Majestie shall appoint,7 with the Consent and Approbation of Parliament; and deliver up a just accompt of all the Magazine; and cheerfully imploy the uttermost of our Power and Endeavour in the reall expression and performance of our most dutifull and loyall affections to the preserving and maintaining the Royall Honour, Greatnesse, and Safetie of your Majestie and your Posterity.

His Majesties Answer to the Nineteen Propositions of Both Houses of Parliament.

. . . We suppose these Demands by this time to appear such as the Demanders cannot be supposed to have any such reall fear of Us as hath been long pretended, they are too much in the style, not only of equals, but of Conquerors. . . . But we call God to witnesse, that as for Our Subjects' sake these Rights are vested in Us, so for their sakes, as well as for Our own,We are resolved not to quit them, nor to subvert (though in a Parliamentary way) the ancient, equall, happy,well-poised, and never-enough commended Constitution of the Government of this Kingdom, nor to make Ourself of a King of England a Duke of Venice, and this of a Kingdom a Republique.

There being three kindes of Government amongst men, Absolute Monarchy, Aristocracy and Democracy, and all these having their particular conveniencies and inconveniencies. The experience and wisdom of your Ancestors hath so moulded this out of a mixture of these, as to give to this Kingdom (as far as human prudence can provide) the conveniencies of all three, without the inconveniencies of any one, as long as the Balance hangs even between the three Estates, and they run jointly on in their proper Chanell (begetting Verdure and Fertilitie in the Meadows on both sides) and the overflowing of either on either side raise no deluge or Inundation.The ill of absolute Monarchy is Tyrannie, the ill of Aristocracy is Faction and Division, the ills of Democracy are Tumults, Violence and Licentiousnesse. The good of Monarchy is the uniting a Nation under one Head to resist Invasion from abroad, and Insurrection at home.The good of Aristocracie is the Conjuncion of Counsell in the ablest Persons of a State for the publike benefit.The good of Democracy is Liberty, and the Courage and Industrie which Libertie begets.

In this Kingdom the Laws are jointly made by a King, by a House of Peers, and by a House of Commons chosen by the People, all having free Votes and particular Priviledges.The Government according to these Laws is trusted to the King, Power of Treaties of War and Peace, of making Peers, of chusing Officers and Councellors for State, Judges for Law, Commanders for Forts and Castles, giving Commissions for raising men to make War abroad, or to prevent or provide against Invasions or Insurrections at home, benefit of Confiscations, power of pardoning,

and some more of the like kinde are placed in the King. And this kinde of regulated Monarchie having this power to preserve that Authoritie, without which it would be disabled to preserve the Laws in their Force, and the Subjects in their Liberties and Proprieties, is intended to draw to him such a Respect and Relation from the great Ones, as may hinder the ills of Division and Faction, and such a Fear and Reverence from the people, as may hinder Tumults, Violence, and Licenciousnesse. Again, that the Prince may not make use of this high and perpetuall power to the hurt of those for whose good he hath it, and make use of the name of Publike Necessitie for the gain of his private Favourites and Followers, to the detriment of his People, the House of Commons (an excellent Conserver of Libertie, but never intended for any share in Government, or the chusing of them that should govern) is solely intrusted with the first Propositions concerning the Levies of Moneys (which is the sinews as well of Peace, as War) and the Impeaching of those, who for their own ends, though countenanced by any surreptitiously gotten Command of the King, have violated that Law, which he is bound (when he knows it) to protect, and to the protection of which they were bound to advise him, at least not to serve him in the Contrary. And the Lords being trusted with a Judicatory power, are an excellent Screen and Bank between the Prince and People, to assist each against any Incroachments of the other, and by just Judgements to preserve that Law, which ought to be the Rule of every one of the three. For the better enabling them in this, beyond the Examples of any of Our Ancestors,We were willingly contented to Oblige Ourself, both to call a Parliament every three yeers, and not to dissolve it in fiftie dayes, and for the present exigent, the better to raise Money, and avoid the pressure (no lesse grievous to Us than them) Our people must have suffered by a longer continuance of so vast a charge as two great Armies, and for their greater certaintie of having sufficient time to remedie the inconveniencies arisen during so long an absence of Parliaments, and for the punishment of the Causers and Ministers of them,We yeelded up Our Right of dissolving this Parliament, expecting an extraordinarie moderation from it in gratitude for so unexampled a Grace, and little looking that any Malignant Partie should have been encouraged or enabled to have perswaded them, first to countenance the Injustices and Indignities We have endured, and then by a new way of satisfaction for what was taken from Us, to demand of Us at once to Confirm what was so taken, and to give up almost all the rest.

Since therefore the Power Legally placed in both Houses is more than sufficient to prevent and restrain the power of Tyrannie, and without the power which is now asked from Us, we shall not be able to discharge that Trust which is the end of Monarchie, since this would be a totall Subversion of the Fundamentall Laws, and that excellent Constitution of this Kingdom, which hath made this Nation so many yeers both famous and happie to a great degree of Envie; since to the power of punishing (which is alreadie in your hands according to Law) if the power of Preferring be added,We shall have nothing left for Us, but to look on; since the incroaching of one of these Estates upon the power of the other, is unhappie in the effects both to them and all the rest; since this power of at most a joint Government in Us with Our Councellors (or rather Our Guardians) will return Us to the worst kinde of Minoritie, and make Us despicable both at home and abroad, and beget eternall Factions and Dissentions (as destructive to publike Happinesse as War) both in the chosen, and the Houses that chuse them, and the people who chuse the Chusers; since so new a power will undoubtedly intoxicate persons who were not born to it, & beget not only Divisions among them as equals, but in them contempt of Us as become an equall to them, and Insolence and Injustice towards Our people, as now so much their inferiors, which will be the more grievous unto them, as suffering from those who were so lately

of a neerer degree to themselves, and being to have redresse only from those that placed them, and fearing they may be inclined to preserve what they have made, both out of kindnesse and policie; since all great changes are extreamly inconvenient, and almost infallibly beget yet greater changes, which beget yet greater Inconveniencies. . . .

For all these Reasons to all these Demands Our Answer is, Nolumus Leges Angliae mutari. But this We promise, that We will be as carefull of preserving the Laws in what is supposed to concern wholly Our Subjects, as in what most concerns Ourself. For indeed We professe to beleeve, that the preservation of every Law concerns Us, those of Obedience being not secure, when those of Protection are violated. And We being most of any injured in the least violation of that, by which We enjoy the highest Rights and greatest Benefits, and are therefore obliged to defend no lesse by Our Interest, than by Our Duty, and hope that no Jealousies to the contrary shall be any longer nourished in any of Our good people, by the subtill insinuations, and secret practices of men, who for private ends are disaffected to Our Honour and Safety, and the Peace and Prosperity of Our People. . . .

The Agreement of the People. January 15, 1648/49.

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Samuel Rawson Gardiner, THE CONSTITUTIONAL DOCUMENTS OF THE PURITAN REVOLUTION, 1625-1660. THIRD EDITION. REVISED 1906 (OXFORD AT THE CLARENDON PRESS, Oxford University Press, Walton Street, Oxford OX2 6DP), 359-370.

An Agreement of the People of England, and the places therewith incorporated, for a secure and present peace, upon grounds of common right, freedom and safety.

Having, by our late labours and hazards, made it appear to the world at how high a rate we value our just freedom, and God having so far owned our cause as to deliver the enemies thereof into our hands, we do now hold ourselves bound, in mutual duty to each other, to take the best care we can for the future, to avoid both the danger of returning into a slavish condition and the chargeable remedy of another war: for as it cannot be imagined that so many of our countrymen would have opposed us in this quarrel if they had understood their own good, so may we hopefully promise to ourselves, that when our common rights and liberties shall be cleared, their endeavours will be disappointed that seek to make themselves our masters. Since therefore our former oppressions and not-yet-ended troubles have been occasioned either by want of frequent national meetings in council, or by the undue or unequal constitution thereof, or by rendering those meetings ineffectual, we are fully agreed and resolved, God willing, to provide, that hereafter our Representatives be neither left to an uncertainty for times nor be unequally constituted, nor made useless to the ends for which they are intended. In order whereunto we declare and agree,

First, that, to prevent the many inconveniences apparently arising from the long continuance of the same persons in supreme authority, this present Parliament end and dissolve upon, or before, the last day of April, 1649.

Secondly, that the people of England (being at this day very unequally distributed by counties, cities, and boroughs, for the election of their Representatives) be indifferently proportioned; and, to this end, that the Representative of the whole nation shall consist of 400 persons, or not above; and in each county, and the places thereto subjoined, there shall be chosen, to make up the said Representative at all times, the several numbers here mentioned, viz. . . .

Provided, that the first or second Representative may, if they see cause, assign the remainder of the 400 representers, not hereby assigned, or so many of them as they shall see cause for, unto such counties as shall appear in this present distribution to have less than their due proportion. Provided also, that where any city or borough, to which one representer or more is assigned, shall be found in a due proportion not competent alone to elect a representer, or the number of representers assigned thereto, it is left to future Representatives to assign such a number of parishes or villages near adjoining to such city or borough, to be joined therewith in the elections, or may make the same proportionable.

Thirdly. That the people do, of course, choose themselves a Representative once in two years, and shall meet for that purpose upon the first Thursday in every second May, by eleven in the morning; and the Representatives so chosen to meet upon the second Thursday in the June following, at the usual place in Westminster, or such other place as, by the foregoing Representative, or the Council of State in the interval, shall be, from time to time, appointed and published to the people, at the least twenty days before the time of election: and to continue their sessions there, or elsewhere, until the second Thursday in December following, unless they shall adjourn or dissolve themselves sooner; but not to continue longer. The election of the first Representative to be on the first Thursday in May, 1649; and that, and all future elections, to be according to the rules prescribed for the same purpose in this Agreement, viz. 1. That the electors in every division shall be natives or denizens of England; not persons receiving alms, but such as are assessed ordinarily towards the relief of the poor; no servants to, and receiving wages from, any particular person; and in all elections, except for the Universities, they shall be men of twenty-one years of age, or upwards, and housekeepers, dwelling within the division for which the election is: provided, that (until the end of seven years next ensuing the time herein limited for the end of this present Parliament) no person shall be admitted to, or have any hand or voice in, such elections, who hath adhered unto or assisted the King against the Parliament in any of the late wars or insurrections; or who shall make or join in, or abet, any forcible opposition against this Agreement. . . . 4. That to the end all officers of state may be certainly accountable, and no faction made to maintain corrupt interests, no member of a Council of State, nor any officer of any salary-forces in army or garrison, nor any treasurer or receiver of public money, shall, while such, be elected to be of a Representative: and in case any such election shall be, the same to be void. And in case any lawyer shall be chosen into any Representative or Council of State, then he shall be incapable of practice as a lawyer during that trust. 5. For the more convenient election of Representatives, each county, wherein more than three representers are to be chosen, with the town corporate and cities, if there be any, lying within the compass thereof, to which no representers are herein assigned, shall be divided by a due proportion into so many, and such parts, as each part may elect two, and no part above three representers. . . .

Fourthly. That 150 members at least be always present in each sitting of the Representative, at the passing of any law or doing of any act whereby the people are to be bound; saving, that the number of sixty may make a House for debates or resolutions that are preparatory thereunto.

Fifthly. That the Representative shall, within twenty days after their first meeting, appoint a Council of State for the managing of public affairs, until the tenth day after the meeting of the next Representative, unless that next Representative think fit to put an end to that trust sooner. And the same Council to act and proceed therein, according to such instructions and limitations as the Representative shall give, and not otherwise.

Sixthly. That in each interval between biennial Representatives, the Council of State, in case of imminent danger or extreme necessity, may summon a Representative to be forthwith chosen, and to meet; so as the Session thereof continue not above eighty days; and so as it dissolve at least fifty days before the appointed time for the next biennial Representative; and upon the fiftieth day so preceding it shall dissolve of course, if not otherwise dissolved sooner.

Seventhly. That no member of any Representative be made either receiver, treasurer, or other officer, during that employment, saving to be a member of the Council of State.

Eighthly. That the Representatives have, and shall be understood to have, the supreme trust in order to the preservation and government of the whole; and that their power extend, without the consent or concurrence of any other person or persons, to the erecting and abolishing of Courts of Justice and public offices, and to the enacting, altering, repealing and declaring of laws, and the highest and final judgment, concerning all natural or civil things, but not concerning things spiritual or evangelical. Provided that, even in things natural and civil, these six particulars next following are, and shall be, understood to be excepted and reserved from our Representatives, viz. 1. We do not empower them to impress or constrain any person to serve in foreign war, either by sea or land, nor for any military service within the kingdom; save that they may take order for the forming, training, and exercising of the people in a military way, to be in readiness for resisting of foreign invasions, suppressing of sudden insurrections, or for assisting in execution of the laws; and may take order for the employing and conducting of them for those ends; provided, that, even in such cases, none be compellable to go out of the county he lives in, if he procure another to serve in his room. 2. That, after the time herein limited for the commencement of the first Representative, none of the people may be at any time questioned for any thing said or done in relation to the late wars or public differences, otherwise than in execution or pursuance of the determinations of the present House of Commons, against such as have adhered to the King, or his interest, against the people; and saving that accomptants for public moneys received, shall remain accountable for the same. 3. That no securities given, or to be given, by the public faith of the nation, nor any engagements of the public faith for satisfaction of debts and damages, shall be made void or invalid by the next or any future Representatives; except to such creditors as have, or shall have, justly forfeited the same: and saving, that the next Representative may confirm or make null, in part or in whole, all gifts of lands, moneys, offices, or otherwise, made by the present Parliament to any member or attendant of either House. 4. That, in any laws hereafter to be made, no person, by virtue of any tenure, grant, charter, patent, degree or birth, shall be privileged from subjection thereto, or from being bound thereby, as well as others. 5. That the Representative may not give judgment upon any man's person or estate, where no law hath before provided; save only in calling to account and punishing public officers for abusing or failing in their trust. 6. That no Representative may in any wise render up, or give, or take away, any of the foundations of common right, liberty, and safety contained in this Agreement, nor level men's estates, destroy property, or make all things common; and that, in all matters of such fundamental concernment, there shall be a liberty to particular members of the said Representatives to enter their dissents from the major vote.

Ninthly. Concerning religion, we agree as followeth: — I. It is intended that the Christian Religion be held forth and recommended as the public profession in this nation, which we desire may, by the grace of God, be reformed to the greatest purity in doctrine, worship and discipline, according to the Word of God; the instructing the people thereunto in a public way, so it be not compulsive; as also the maintaining of able teachers for that end, and for the confutation or discovering of heresy, error, and whatsoever is contrary to sound doctrine, is allowed to be provided for by our Representatives; the maintenance of which teachers may be out of a public treasury, and, we desire, not by tithes: provided, that Popery or Prelacy be not held forth as the public way or profession in this nation. 2. That, to the public profession so held forth, none be

compelled by penalties or otherwise; but only may be endeavoured to be won by sound doctrine, and the example of a good conversation. 3. That such as profess faith in God by Jesus Christ, however differing in judgment from the doctrine, worship or discipline publicly held forth, as aforesaid, shall not be restrained from, but shall be protected in, the profession of their faith and exercise of religion, according to their consciences, in any place except such as shall be set apart for the public worship; where we provide not for them, unless they have leave, so as they abuse not this liberty to the civil injury of others, or to actual disturbance of the public peace on their parts. Nevertheless, it is not intended to be hereby provided, that this liberty shall necessarily extend to Popery or Prelacy. 4. That all laws, ordinances, statutes, and clauses in any law, statute, or ordinance to the contrary of the liberty herein provided for, in the two particulars next preceding concerning religion, be, and are hereby, repealed and made void.

Tenthly. It is agreed, that whosoever shall, by force of arms, resist the orders of the next or any future Representative (except in case where such Representative shall evidently render up, or give, or take away the foundations of common right, liberty, and safety, contained in this Agreement), he shall forthwith, after his or their such resistance, lose the benefit and protection of the laws, and shall be punishable with death, as an enemy and traitor to the nation. Of the things expressed in this Agreement: the certain ending of this Parliament, as in the first Article; the equal or proportionable distribution of the number of the representers to be elected, as in the second; the certainty of the people's meeting to elect for Representatives biennial, and their freedom in elections; with the certainty of meeting, sitting and ending of Representatives so elected, which are provided for in the third Article; as also the qualifications of persons to elect or be elected, as in the first and second particulars under the third Article; also the certainty of a number for passing a law or preparatory debates, provided for in the fourth Article; the matter of the fifth Article, concerning the Council of State, and of the sixth, concerning the calling, sitting and ending of Representatives extraordinary; also the power of Representatives to be, as in the eighth Article, and limited, as in the six reserves next following the same: likewise the second and third Particulars under the ninth Article concerning religion, and the whole matter of the tenth Article; all these we do account and declare to be fundamental to our common right, liberty, and safety: and therefore do both agree thereunto, and resolve to maintain the same, as God shall enable us. The rest of the matters in this Agreement we account to be useful and good for the public; and the particular circumstances of numbers, times, and places, expressed in the several Articles, we account not fundamental; but we find them necessary to be here determined, for the making the Agreement certain and practicable, and do hold these most convenient that are here set down; and therefore do positively agree thereunto. By the appointment of his Excellency the Lord-General and his General Council of Officers.

John Rushworth, Sec.

Sir Henry Vane, A Healing Question (1656)

[Source: American Historical Documents, 1000–1904. The Harvard Classics. 1909–14.]
[KRH Redact 12 February 2014]

THE QUESTION propounded is, What possibility doth yet remain (all things considered) of reconciling and uniting the dissenting judgments of honest men within the three nations, who still pretend to agree in the spirit, justice, and reason of the same good cause [KRH: The "cause" of which Vane writes is the cause of Parliament, in the war against King Charles I], and what is the means to effect this?

Answ. If it be taken for granted (as, on the magistrate's part, from the ground inviting the people of England and Wales to a solemn day of fasting and humiliation, may not be despaired of) that all the dissenting parties agree still in the spirit and reason of the same righteous cause, the resolution seems very clear in the affirmative; arguing not only for a possibility, but a great probability hereof; nay, a necessity daily approaching nearer and nearer to compel it, if any or all of the dissenting parties intend or desire to be safe from the danger of the common enemy, who is not out of work, though at present much out of sight and observation. . . .

A serious discussion and sober enlarging upon these grounds will quickly give an insight into the state of the question, and naturally tend to a plain and familiar resolution thereof.
That which is first to be opened is the nature and goodness of the cause; which, had it not carried in it its own evidence, would scarce have found so many of the people of God adherers to it within the three nations, . . .

The two last-mentioned particulars, rightly stated, will evidence sufficiently the nature and goodness of this cause.

For the first of these, that is to say, the natural right, which the whole party of honest men adhering to this cause are by success of their arms restored unto, fortified in, and may claim as their undeniable privilege, that righteously cannot be taken from them, nor they debarred from bringing into exercise, it lies in this:

They are to have and enjoy the freedom (by way of dutiful compliance and condescension from all the parts and members of this society) so set up meet [KRH: right, or suitable] persons in the place of supreme judicature and authority among them, whereby they may have the use and benefit of the choicest light and wisdom of the nation that they are capable to call forth, for the rule and government under which they will live; and through the orderly exercise of such measure of wisdom and counsel as the Lord in this way shall please to give unto them, to shape and form all subordinate actings and administrations of rule and government so as shall best answer the public welfare and safety of the whole.

This, in substance, is the right and freedom contained in the nature and goodness of the cause wherein the honest party have been engaged; for in this all the particulars of our civil right and freedom are comprehended, conserved in, and derived from their proper root; in which, while they grow, they will ever thrive, flourish, and increase; whereas, on the contrary, if there be

never so many fair branches of liberty planted on the root of a private and selfish interest, they will not long prosper, but must, within a little time, wither and degenerate into the nature of that whereinto they are planted; and hence, indeed, sprung the evil of that government which rose in and with the Norman Conquest. . . .

The utmost and last reserve, therefore, which they have had, in case all other failed, hath been their military capacity, not only strictly taken for the standing army, but in the largest sense, wherein the whole party may (with the army, and under that military constitution and conduct which, by the providence of God, they shall then be found in) associate themselves in the best order they can for the common defence and safety of the whole; as not ignorant that when once embodied in this their military posture, in such manner as by common consent shall be found requisite for the safety of the body, they are most irresistible, absolute, and comprehensive in their power, having that wherein the substance of all government is contained, and under the protection whereof, and safety that may be maintained thereby, they can contrive and determine in what manner this irresistible, absolute, and boundless power, unto which they are now arrived in this their military capacity, shall have just and due limits set unto it, and be drawn out in a meet and orderly way of exercise for the commonweal and safety of the whole body, under the rule and oversight of a supreme judicature, unto the wisdom of whose laws and orders the sword is to become most entirely subject and subservient; and this without the least cause of jealousy or unsafety, either to the standing army, or any member thereof, or unto the good people adhering to this cause, or any of them, since the interest of both, by this mutual action of either, will be so combined together in one (even in that wherein before they were distinct), that all just cause of difference, fear, animosity, emulation, jealousy, or the like, will be wholly abolished and removed.

For when once the whole body of the good people find that the military interest and capacity is their own, and that into which necessity at the last may bring the whole party (whereof, of right, a place is to be reserved for them), and that herein they are so far from being in subjection or slavery, that in this posture they are most properly sovereign, and possess their right of natural sovereignty, they will presently see a necessity of continuing ever one with their army, raised and maintained by them for the promoting this cause against the common enemy, who in his next attempt will put for all with greater desperateness and rage than ever.

Again, when once the standing army and their governors shall also find that, by setting and keeping up themselves in a divided interest from the rest of the body of honest men, they withhold from themselves those contributions in all voluntary and cheerful assistances, by the affections and prayers, by the persons and purses of the good party, to the weakening themselves thereby, as to any vigorous support from them, in the times of most imminent danger (whereof the late king had an experience, that will not suddenly be out of memory, when he undertook the war, in the beginning of these troubles, against the Scots, and was, in a manner, therein deserted by all the good party in England), they will then find (if they stay not till it be too late) that, by espousing the interest of the people, in submitting themselves with their fellow-adherents to the cause, under the rule and authority of their own supreme judicature, they lose not their power or sovereignty, but, becoming one civil or politic incorporation with the whole party of honest men, they do therein keep the sovereignty, as originally seated in themselves, and part with it only but as by deputation and representation of themselves, when it is brought into an orderly way of

exercise, by being put into the hands of persons chosen and intrusted by themselves to that purpose.

By this mutual and happy transition, which may be made between the party of honest men in the three nations virtually in arms, and those actually so now in power at the head of the army; how suddenly would the union of the whole body be consolidated, and made so firm as it will not need to fear all the designs and attempts of the common enemy, especially if herein they unite themselves in the first place to the Lord, as willing to follow his providence, and observe his will in the way and manner of bringing this to pass! in which case we shall not need to fear what all the gates of hell are able to do in opposition thereunto.

It is not, then, the standing and being of the present army and military forces in the three nations that is liable to exception of offence from any dissenting judgments at this time among the honest, well-affected party. In and with them, under God, stand the welfare and outward safety of the whole body; and to be enemies to them, or wish them hurt, were to do it to themselves; and, by trying such conclusions, to play the game of the common enemy, to the utter ruin and destruction, not only of the true freedom aimed at and contended for in the late wars, but of the very persons themselves that have been in any sort active or eminent promoters thereof.

The army, considered as it is in the hands of an honest and wise general, and sober, faithful officers, embodied with the rest of the party of honest men, and espousing still the same cause, and acting in their primitive simplicity, humility, and trust, in reference to the welfare and safety of the whole body, is the only justifiable and most advantageous posture and capacity that the good party at present can find themselves in, in order to the obtaining that true freedom they have fought for, and possessing of it in the establishment thereof upon the true basis and foundation, as hath been showed, of right government.

That wherein the offence lies, and which causes such great thoughts of heart among the honest party (if it may be freely expressed, as sure it may, when the magistrate himself professes he doth but desire and wait for conviction therein), is, in short, this:

That when the right and privilege is returned, nay, is restored by conquest unto the whole body (that forfeited not their interest therein), of freely disposing themselves in such a constitution of righteous government as may best answer the ends held forth in this cause; that, nevertheless, either through delay they should be withheld as they are, or through design they should come at last to be utterly denied the exercise of this their right, upon pretence that they are not in capacity as yet to use it, which, indeed, hath some truth in it, if those that are now in power, and have the command of the arms, do not prepare all things requisite thereunto, as they may, and, like faithful guardians to the Commonwealth, admitted to be in its nonage, they ought.

But if the bringing of true freedom into exercise among men, yea, so refined a party of men, be impossible, why hath this been concealed all this while? and why was it not thought on before so much blood was spilt, and treasure spent? Surely such a thing as this was judged real and practicable, not imaginary and notional. . . .

The matter which is in question among the dissenting parts of the whole body of honest men is not so trivial and of such small consequence as some would make it. 'Tis, in effect, the main and whole of the cause; without which all the freedom which the people have or can have is in comparison but shadow and in name only, and therefore can never give that peace and satisfaction to the body which is requisite unto a durable and solid settlement. This is that which makes all sound and safe at the root, and gives the right balance necessary to be held up between sovereignty and subjection in the exercise of all righteous government; applying the use of the sword to the promoting and upholding the public safety and welfare of the whole body, in preference, and, if need be, in opposition unto any of the parts; while yet, by its equal and impartial administration in reference unto each, it doth withal maintain the whole body in a most delightful harmony, welfare, and correspondency. The sword never can, nor is it to be expected ever will do this, while the sovereignty is admitted and placed anywhere else than in the whole body of the people that have adhered to the cause, and by them be derived unto their successive representatives, as the most equal and impartial judicature for the effecting hereof.

Where there is, then, a righteous and good constitution of government, there is first, an orderly union of many understandings together, as the public and common supreme judicature or visible sovereignty, set in a way of free and orderly exercise, for the directing and applying the use of the ruling power or the sword, to promote the interest and common welfare of the whole, without any disturbance or annoyance from within or from without; and then, secondly, there is a like union and readiness of will in all the individuals, in their private capacities, to execute and obey (by all the power requisite, and that they are able to put forth) those sovereign laws and orders issued out by their own deputies and trustees.

A supreme judicature, thus made the representative of the whole, is that which, we say, will most naturally care, and most equally provide for the common good and safety. Though by this it is not denied but that the supreme power, when by free consent 'tis placed in a single person or in some few persons, may be capable also to administer righteous government; at least, the body that gives this liberty, when they need not, are to thank themselves if it prove otherwise. But when this free and natural access unto government is interrupted and declined, so as a liberty is taken by any particular member, or number of them, that are to be reputed but a part in comparison of the whole, to assume and engross the office of sovereign rule and power, and to impose themselves as the competent public judge of the safety and good of the whole, without their free and due consent, and to lay claim unto this, as those that find themselves possessed of the sword (and that so advantageously as it cannot be recovered again out of their hands without more apparent danger and damage to the whole body than such attempts are worth), this is that anarchy that is the first rise and step to tyranny, and lays grounds of manifest confusion and disorder, exposing the ruling power to the next hand that on the next opportunity can lay hold on the sword, and so, by a kind of necessity, introduces the highest imposition and bondage upon the whole body, in compelling all the parts, though never so much against the true public interest, to serve and obey, as their sovereign rule and supreme authority, the arbitrary will and judgment of those that bring themselves into rule by the power of the sword, in the right only of a part that sets up itself in preference before, or at least in competition with, the welfare of the whole.

And if this, which is so essential to the well-being and right constitution of government, were once obtained, the disputes about the form would not prove so difficult, nor find such opposition, as to keeping the bone of contention and disunion, with much danger to the whole; for if, as the foundation of all, the sovereignty be acknowledged to reside originally in the whole body of adherents to this cause (whose natural and inherent right thereunto is of a far ancienter date than what is obtained by success of their arms, and so cannot be abrogated even by conquest itself, if that were the case), and then if, in consequence hereof, a supreme judicature be set up and orderly constituted, as naturally arising and resulting from the free choice and consent of the whole body taken out from among themselves, as flesh of their flesh and bone of their bone, of the same public spirit and nature with themselves, and the main be by this means secured, what could be propounded afterward as to the form of administration that would much stick?

Would a standing council of state, settled for life, in reference to the safety of the Commonwealth, and for the maintaining intercourse and commerce with foreign states, under the inspection and oversight of the supreme judicature, but of the same fundamental constitution with themselves—would this be disliked? admitting their orders were binding, in the intervals of supreme national assemblies, so far only as consonant to the settled laws of the Commonwealth, the vacancy of any of which, by death or otherwise, might be supplied by the vote of the major part of themselves: nay, would there be any just exception to be taken if (besides both these) it should be agreed (as another part of the fundamental constitution of the government) to place that branch of sovereignty which chiefly respects the execution of laws in a distinct office from that of the legislative power (and yet subordinate to them and to the laws), capable to be intrusted into the hands of one single person, if need require, or in a greater number, as the legislative power should think fit; and, for the greater strength and honour unto this office, that the execution of all laws and orders (that are binding) may go forth in his or their name, and all disobedience thereunto, or contempt thereof, be taken as done to the people's sovereignty, whereof he or they bear the image or representation, subordinate to the legislative power, and at their will to be kept up and continued in the hands of a single person or more, as the experience of the future good or evil of it shall require?

Would such an office as this, thus stated, carry in it any inconsistency with a free state? Nay, if it be well considered, would it not rather be found of excellent use to the wellbeing of magistracy, founded upon this righteous bottom, that such a lieutenancy of the people's sovereignty in these three nations may always reside in some one or more person, in whose administration that which is reward and punishment may shine forth?

And if now it shall be objected that (notwithstanding all these cautions), should once this sovereignty be acknowledged to be in the diffused body of the people (though the adherents to this cause, not only as their natural, but as their acquired right by conquest), they would suddenly put the use and exercise of the legislative power into such hands as would, through their ill qualifiedness to the work, spoil all by mal-administration thereof, and hereby lose the cause instead of upholding and maintaining it.

The answer unto this is, first, that God, by his providence, hath eased our minds much in this solicitude by the course he hath already taken to fit and prepare a choice and selected number of the people unto this work, that are tried and refined by their inward and outward experiences in

this great quarrel, and the many changes they have passed through; in respect whereof well qualified persons are to be found, if due care be but taken in the choice of them. And if herein this people of the Lord shall be waiting upon him for his guidance and presence with them, we may have grounds and hope that God (whose name hath all along been called upon in the maintaining of this cause) will pour out so abundantly of his spirit upon his people attending on him in righteous ways, and will also move their hearts to choose persons bearing his image into the magistracy, that a more glorious product may spring up out of this than at first we can expect, to the setting up of the Lord himself as chief judge and lawgiver among us. And unto this the wisdom and honesty of the persons now in power may have an opportunity eminently to come into discovery; for in this case, and upon the grounds already laid, the very persons now in power are they unto whose lot it would fall to set about this preparatory work, and by their orders and directions to dispose the whole body, and bring them into the meetest capacity to effect the same, the most natural way for which would seem to be by a general council, or convention of faithful, honest, and discerning men, chosen for that purpose by the free consent of the whole body of adherents to this cause in the several parts of the nations, and observing the time and place of meeting appointed to them (with other circumstances concerning their election) by order from the present ruling power, but considered as general of the army:

Which convention is not properly to exercise the legislative power, but only to debate freely, and agree upon the particulars that by way of fundamental constitutions shall be laid and inviolably observed as the conditions upon which the whole body so represented doth consent to cast itself into as civil and politic incorporation, and under the visible form and administration of government therein declared, and to be by each individual member of the body subscribed in testimony of his or their particular consent given thereunto: which conditions so agreed (and among them an Act of Oblivion for one) will be without danger of being broken or departed from, considering of what it is they are the conditions, and the nature of the convention wherein they are made, which is of the people represented in their highest state of sovereignty, as they have the sword in their hands unsubjected unto the rules of civil government, but what themselves orderly assembled for that purpose do think fit to make. And the sword, upon these conditions, subjecting itself to the supreme judicature thus to be set up, how suddenly might harmony, righteousness, love, peace, and safety unto the whole body follow hereupon, as the happy fruit of such a settlement, if the Lord have any delight to be among us!

And this once put in a way, and declared for by the general and army (as that which they are clearly convinced, in the sight of God, is their duty to bring about, and which they engage accordingly to see done) how firmly and freely would this oblige the hearts and persons, the counsels and purses, the affections and prayers, with all that is in the power of this whole party to do, in way of assistance and strengthening the hands of those now in power, whatever straits and difficulties they may meet with in the maintenance of the public safety and peace!

This, then, being the state of our present affairs and differences, let it be acknowledged on all hands, and let all be convinced that are concerned, that there is not only a possibility, but a probability, yea, a compelling necessity, of a firm union in this great body, the setting of which in joint and tune again, by a spirit of meekness and fear of the Lord, is the work of the present day, and will prove the only remedy under God to uphold and carry on this blessed cause and work of the Lord in the three nations, that is already come thus far onward in its progress to its

desired and expected end of bringing in Christ, the desire of all nations, as the chief Ruler among us.

Sir Robert Filmer, PATRIARCHA, OR THE NATURAL POWER OF KINGS [1680]

[KRH redact 28 Jan. 2014]

[KRH: NB: Filmer wrote this treatise sometime shortly after 1628, but it remained in manuscript until published by supporters of Charles II in 1680.]

CHAPTER I

THAT THE FIRST KINGS WERE FATHERS OF FAMILIES

1. SINCE the time that school divinity began to flourish there hath been a common opinion maintained, as well by divines as by divers other learned men, which affirms:

"Mankind is naturally endowed and born with freedom from all subjection, and at liberty to choose what form of government it please, and that the power which any one man hath over others was at first bestowed according to the discretion of the multitude."

This tenet was first hatched in the schools, and hath been fostered by all succeeding Papists for good divinity. The divines, also, of the Reformed Churches have entertained it, and the common people everywhere tenderly embrace it as being most plausible to flesh and blood, for that it prodigally distributes a portion of liberty to the meanest of the multitude, who magnify liberty as if the height of human felicity were only to be found in it, never remembering that the desire of liberty was the first cause of the fall of Adam.

But howsoever this vulgar opinion hath of late obtained a great reputation, yet it is not to be found in the ancient fathers and doctors of the primitive Church. It contradicts the doctrine and history of the Holy Scriptures, the constant practice of all ancient monarchies, and the very principles of the law of nature. It is hard to say whether it be more erroneous in divinity or dangerous in policy.

Yet upon the ground of this doctrine, both Jesuits and some other zealous favourers of the Geneva discipline have built a perilous conclusion, which is, that the people or multitude have power to punish or deprive the prince if he transgress the laws of the kingdom; witness Parsons and Buchanan. The first, under the name of Dolman, in the third chapter of his first book, labours to prove that kings have been lawfully chastised by their commonwealths. The latter, in his book De Jure Regni apud Scotos, maintains a liberty of the people to depose their prince. Cardinal Bellarmine and Calvin both look asquint this way.

This desperate assertion whereby kings are made subject to the censures and deprivations of their subjects follows — as the authors of it conceive — as a necessary consequence of that former position of the supposed natural equality and freedom of mankind, and liberty to choose what form of government it please.

. . . I am not to question or quarrel at the rights or liberties of this or any other nation; my task is chiefly to inquire from whom these first came, not to dispute what or how many these are, but whether they were derived from the laws of natural liberty or from the grace and bounty of princes. My desire and hope is that the people of England may and do enjoy as ample privileges as any nation under heaven; the greatest liberty in the world — if it be duly considered — is for a people to live under a monarch. It is the Magna Charta of this kingdom; all other shows or pretexts of liberty are but several degrees of slavery, and a liberty only to destroy liberty. . . .

2. To make evident the grounds of this question about the natural liberty of mankind, I will lay down some passages of Cardinal Bellarmine that may best unfold the state of this controversy.

> Secular or civil power is instituted by men, it is in the people, unless they bestow it on a prince. This power is immediately in the whole multitude, as in the subject of it; for this power is in the divine law, but the divine law hath given this power to no particular man. If the positive law be taken away, there is left no reason why amongst a multitude — who are equal — one rather than another should bear rule over the rest. Power is given by the multitude to one man or to more by the same law of nature; for the commonwealth cannot exercise this power; therefore it is bound to bestow it upon some one man, or some few. It depends upon the consent of the multitude to ordain over themselves a king, or consul, or other magistrates; and if there be a lawful cause, the multitude may change the kingdom into an aristocracy or democracy.

Thus far Bellarmine, in which passages are comprised the strength of all that ever I have read or heard produced for the natural liberty of the subject. . . .

3. I come now to examine that argument which is used by Bellarmine, and is the one and only argument I can find produced by my author for the proof of the natural liberty of the people. It is thus framed: "That God hath given or ordained power, is evident by Scripture; but God hath given it to no particular person, because by nature all men are equal, therefore he hath given power to the people or multitude."

To answer this reason, drawn from the equality of mankind by nature, I will first use the help of Bellarmine himself, whose very words are these: "If many men had been together created out of the earth, they all ought to have been princes over their posterity." In these words we have an evident confession that creation made man prince of his posterity. And indeed not only Adam, but the succeeding patriarchs had, by right of fatherhood, royal authority over their children. Nor dares Bellarmine deny this also. That the patriarchs, saith he, were endowed with kingly power, their deeds do testify; for as Adam was lord of his children, so his children under him had a command and power over their own children, but still with subordination to the first parent, who is lord-paramount over his children's children to all generations, as being the grandfather of his people.

4. I see not then how the children of Adam, or of any man else, can be free from subjection to their parents. And this subjection of children being the fountain of all regal authority, by the ordination of God himself; it follows that civil power not only in general is by divine institution, but even the assignment of it specifically to the eldest parents, which quite takes away that new and common distinction which refers only power universal and absolute to God, but power respective in regard of the special form of government to the choice of the people. . . .

8. It may seem absurd to maintain that kings now are the fathers of their people, since experience shows the contrary. It is true, all kings be not the natural parents of their subjects, yet they all either are, or are to be reputed, the next heirs to those first progenitors who were at first the natural parents of the whole people, and in their right succeed to the exercise of supreme jurisdiction; and such heirs are not only lords of their own children, but also of their brethren, and all others that were subject to their fathers. And therefore we find that God told Cain of his brother Abel, "His desires shall be subject unto thee, and thou shalt rule over him." Accordingly, when Jacob bought his brother's birthright, Isaac blessed him thus: "Be lord over thy brethren, and let the sons of thy mother bow before thee."

As long as the first fathers of families lived, the name of patriarchs did aptly belong unto them; but after a few descents, when the true fatherhood itself was extinct, and only the right of the father descends to the true heir, then the title of prince or king was more significant to express the power of him who succeeds only to the right of that fatherhood which his ancestors did naturally enjoy. By this means it comes to pass that many a child, by succeeding a king, hath the right of a father over many a greyheaded multitude, and hath the title of Pater Patriae. . . .

10. In all kingdoms or commonwealths in the world, whether the prince be the supreme father of the people or but the true heir of such a father, or whether he come to the crown by usurpation, or by election of the nobles or of the people, or by any other way whatsoever, or whether some few or a multitude govern the commonwealth, yet still the authority that is in any one, or in many, or in all these, is the only right and natural authority of a supreme father. There is and always shall be continued to the end of the world a natural right of a supreme father over every multitude, although, by the secret will of God, many at first do most unjustly obtain the exercise of it.

To confirm this natural right of regal power, we find in the Decalogue that the law which enjoins obedience to kings is delivered in the terms of "Honour thy father," as if all power were originally in the father. If obedience to parents be immediately due by a natural law, and subjection to princes but by the mediation of a human ordinance, what reason is there that the laws of nature should give place to the laws of men, as we see the power of the father over his child gives place and is subordinate to the power of the magistrate? If we compare the natural rights of a father with those of a king, we find them all one, without any difference at all but only in the latitude or extent of them: as the father over one family, so the king, as father over many families, extends his care to preserve, feed, clothe, instruct, and defend the whole commonwealth. His war, his peace, his courts of justice, and all his acts of sovereignty, tend only to preserve and distribute to every subordinate and inferior father, and to their children, their rights and privileges, so that all the duties of a king are summed up in an universal fatherly care of his people.

BILL OF RIGHTS [1689]

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 thirteenth day of February in the year of our Lord one thousand six hundred eighty-eight [old style date] present unto their Majesties, then called and known by the names and style 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;

By assuming and exercising a power of dispensing with and suspending of laws and the execution of laws without consent of Parliament;

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

By issuing and causing to be executed a commission under the great seal for erecting a court called the Court of Commissioners for Ecclesiastical Causes;

By 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;

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

By causing several good subjects being Protestants to be disarmed at the same time when papists were both armed and employed contrary to law;

By violating the freedom of election of members to serve in Parliament;

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;

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;

And excessive bail hath been required of persons committed in criminal cases to elude the benefit of the laws made for the liberty of the subjects;

And excessive fines have been imposed;

And illegal and cruel punishments inflicted;

And several grants and promises made of fines and forfeitures before any conviction 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 choosing 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 day of January in this year one thousand six hundred eighty and eight [old style date], 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 ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties declare:

That the pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament is illegal;

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;

That the commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other commissions and courts of like nature, are illegal and pernicious;

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;

That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal;

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;

That the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law;

That election of members of Parliament ought to be free;

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;

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

That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders;

That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void;

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 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, 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 to 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 same 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.

And that the oaths hereafter mentioned be taken by all persons of whom the oaths have allegiance and supremacy might be required by law, instead of them; and that the said oaths of allegiance and supremacy be abrogated.

"I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to their Majesties King William and Queen Mary. So help me God."

"I, A.B., do swear that I do from my heart abhor, detest and abjure as impious and heretical this damnable doctrine and position, that princes excommunicated or deprived by the Pope or any authority of the see of Rome may be deposed or murdered by their subjects or any other whatsoever. And I do declare that no foreign prince, person, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm. So help me God."

Upon which their said Majesties did accept the crown and royal dignity of the kingdoms of England, France and Ireland, and the dominions thereunto belonging, according to the resolution and desire of the said Lords and Commons contained in the said declaration.

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.

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 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 successors according to the same in all time to come.

And the said Lords Spiritual and Temporal and Commons, seriously considering how it hath pleased Almighty God in his marvellous providence and merciful goodness to this nation to provide and preserve their said Majesties' royal persons most happily to reign over us upon the throne of their ancestors, for which they render unto him from the bottom of their hearts their humblest thanks and praises, do truly, firmly, assuredly and in the sincerity of their hearts think, and do hereby recognize, acknowledge and declare, that King James the Second having abdicated the government, and their Majesties having accepted the crown and royal dignity as aforesaid, their said Majesties did become, were, are and of right ought to be by the laws of this realm our sovereign liege lord and lady, king and queen of England, France and Ireland and the dominions thereunto belonging, in and to whose princely persons the royal state, crown and dignity of the said realms with all honours, styles, titles, regalities, prerogatives, powers, jurisdictions and authorities to the same belonging and appertaining are most fully, rightfully and entirely invested and incorporated, united and annexed. And for preventing all questions and

divisions in this realm by reason of any pretended titles to the crown, and for preserving a certainty in the succession thereof, in and upon which the unity, peace, tranquility and safety of this nation doth under God wholly consist and depend, the said Lords Spiritual and Temporal and Commons do beseech their Majesties that it may be enacted, established and declared, that the crown and regal government of the said kingdoms and dominions, with all and singular the premises thereunto belonging and appertaining, shall be and continue to their said Majesties and the survivor of them during their lives and the life of the survivor of them, and that the entire, perfect and full exercise of the regal power and government be only in and executed by his Majesty in the names of both their Majesties during their joint lives; and after their deceases the said crown and premises shall be and remain to the heirs of the body of her Majesty, and for default of such issue to her Royal Highness the Princess Anne of Denmark and the heirs of the body of his said Majesty; and thereunto the said Lords Spiritual and Temporal and Commons do in the name of all the people aforesaid most humbly and faithfully submit themselves, their heirs and posterities for ever, and do faithfully promise that they will stand to, maintain and defend their said Majesties, and also the limitation and succession of the crown herein specified and contained, to the utmost of their powers with their lives and estates against all persons whatsoever that shall attempt anything to the contrary.

And whereas it hath been found by experience that it is inconsistent with the safety and welfare of this Protestant kingdom to be governed by a popish prince, or by any king or queen marrying a papist, the said Lords Spiritual and Temporal and Commons do further pray that it may be enacted, that all and every person and persons that is, are or shall be reconciled to or shall hold communion with the see or Church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded and be for ever incapable to inherit, possess or enjoy the crown and government of this realm and Ireland and the dominions thereunto belonging or any part of the same, or to have, use or exercise any regal power, authority or jurisdiction within the same; and in all and every such case or cases the people of these realms shall be and are hereby absolved of their allegiance; and the said crown and government shall from time to time descend to and be enjoyed by such person or persons being Protestants as should have inherited and enjoyed the same in case the said person or persons so reconciled, holding communion or professing or marrying as aforesaid were naturally dead; and that every king and queen of this realm who at any time hereafter shall come to and succeed in the imperial crown of this kingdom shall on the first day of the meeting of the first Parliament next after his or her coming to the crown, sitting in his or her throne in the House of Peers in the presence of the Lords and Commons therein assembled, or at his or her coronation before such person or persons who shall administer the coronation oath to him or her at the time of his or her taking the said oath (which shall first happen), make, subscribe and audibly repeat the declaration mentioned in the statute made in the thirtieth year of the reign of King Charles the Second entitled, _An Act for the more effectual preserving the king's person and government by disabling papists from sitting in either House of Parliament._ But if it shall happen that such king or queen upon his or her succession to the crown of this realm shall be under the age of twelve years, then every such king or queen shall make, subscribe and audibly repeat the same declaration at his or her coronation or the first day of the meeting of the first Parliament as aforesaid which shall first happen after such king or queen shall have attained the said age of twelve years.

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.

II. 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 of in such statute, 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.

III. Provided that no charter or grant or pardon granted before the three and twentieth day of October in the year of our Lord one thousand six hundred eighty-nine shall be any ways impeached or invalidated by this Act, but that the same shall be and remain of the same force and effect in law and no other than as if this Act had never been made.

John Locke, Second Treatise on Civil Government (1690)
[KRH Redact January 29, 2014]

CHAP. VI.
Of Paternal Power.

Sec. 52. IT may perhaps be censured as an impertinent criticism, in a discourse of this nature, to find fault with words and names, that have obtained in the world: and yet possibly it may not be amiss to offer new ones, when the old are apt to lead men into mistakes, as this of paternal power probably has done, which seems so to place the power of parents over their children wholly in the father, as if the mother had no share in it; whereas, if we consult reason or revelation, we shall find, she hath an equal title. This may give one reason to ask, whether this might not be more properly called parental power? for whatever obligation nature and the right of generation lays on children, it must certainly bind them equal to both the concurrent causes of it. And accordingly we see the positive law of God every where joins them together, without distinction, when it commands the obedience of children, Honour thy father and thy mother, Exod. xx. 12. Whosoever curseth his father or his mother, Lev. xx. 9. Ye shall fear every man his mother and his father, Lev. xix. 3. Children, obey your parents, &c. Eph. vi. 1. is the stile of the Old and New Testament.

Sec. 53. Had but this one thing been well considered, without looking any deeper into the matter, it might perhaps have kept men from running into those gross mistakes, they have made, about this power of parents; which, however it might, without any great harshness, bear the name of absolute dominion, and regal authority, when under the title of paternal power it seemed appropriated to the father, would yet have founded but oddly, and in the very name shewn the absurdity, if this supposed absolute power over children had been called parental; and thereby have discovered, that it belonged to the mother too: for it will but very ill serve the turn of those men, who contend so much for the absolute power and authority of the fatherhood, as they call it, that the mother should have any share in it; and it would have but ill supported the monarchy they contend for, when by the very name it appeared, that that fundamental authority, from whence they would derive their government of a single person only, was not placed in one, but two persons jointly. But to let this of names pass.

Sec. 54. Though I have said above, Chap. II. That all men by nature are equal, I cannot be supposed to understand all sorts of equality: age or virtue may give men a just precedency: excellency of parts and merit may place others above the common level: birth may subject some, and alliance or benefits others, to pay an observance to those to whom nature, gratitude, or other respects, may have made it due: and yet all this consists with the equality, which all men are in, in respect of jurisdiction or dominion one over another; which was the equality I there spoke of, as proper to the business in hand, being that equal right, that every man hath, to his natural freedom, without being subjected to the will or authority of any other man.

Sec. 55. Children, I confess, are not born in this full state of equality, though they are born to it. Their parents have a sort of rule and jurisdiction over them, when they come into the world, and for some time after; but it is but a temporary one. The bonds of this subjection are like the swaddling clothes they art wrapt up in, and supported by, in the weakness of their infancy: age

and reason as they grow up, loosen them, till at length they drop quite off, and leave a man at his own free disposal.

Sec. 56. Adam was created a perfect man, his body and mind in full possession of their strength and reason, and so was capable, from the first instant of his being to provide for his own support and preservation, and govern his actions according to the dictates of the law of reason which God had implanted in him. From him the world is peopled with his descendants, who are all born infants, weak and helpless, without knowledge or understanding: but to supply the defects of this imperfect state, till the improvement of growth and age hath removed them, Adam and Eve, and after them all parents were, by the law of nature, under an obligation to preserve, nourish, and educate the children they had begotten; not as their own workmanship, but the workmanship of their own maker, the Almighty, to whom they were to be accountable for them.

Sec. 57. The law, that was to govern Adam, was the same that was to govern all his posterity, the law of reason. But his offspring having another way of entrance into the world, different from him, by a natural birth, that produced them ignorant and without the use of reason, they were not presently under that law; for no body can be under a law, which is not promulgated to him; and this law being promulgated or made known by reason only, he that is not come to the use of his reason, cannot be said to be under this law; and Adam's children, being not presently as soon as born under this law of reason, were not presently free: for law, in its true notion, is not so much the limitation as the direction of a free and intelligent agent to his proper interest, and prescribes no farther than is for the general good of those under that law: could they be happier without it, the law, as an useless thing, would of itself vanish; and that ill deserves the name of confinement which hedges us in only from bogs and precipices. So that, however it may be mistaken, the end of law is not to abolish or restrain, but to preserve and enlarge freedom: for in all the states of created beings capable of laws, where there is no law, there is no freedom: for liberty is, to be free from restraint and violence from others; which cannot be, where there is no law: but freedom is not, as we are told, a liberty for every man to do what he lists: (for who could be free, when every other man's humour might domineer over him?) but a liberty to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own.

Sec. 58. The power, then, that parents have over their children, arises from that duty which is incumbent on them, to take care of their off-spring, during the imperfect state of childhood. To inform the mind, and govern the actions of their yet ignorant nonage, till reason shall take its place, and ease them of that trouble, is what the children want, and the parents are bound to: for God having given man an understanding to direct his actions, has allowed him a freedom of will, and liberty of acting, as properly belonging thereunto, within the bounds of that law he is under. But whilst he is in an estate, wherein he has not understanding of his own to direct his will, he is not to have any will of his own to follow: he that understands for him, must will for him too; he must prescribe to his will, and regulate his actions; but when he comes to the estate that made his father a freeman, the son is a freeman too.

Sec. 59. This holds in all the laws a man is under, whether natural or civil. Is a man under the law of nature? What made him free of that law? what gave him a free disposing of his property,

according to his own will, within the compass of that law? I answer, a state of maturity wherein he might be supposed capable to know that law, that so he might keep his actions within the bounds of it. When he has acquired that state, he is presumed to know how far that law is to be his guide, and how far he may make use of his freedom, and so comes to have it; till then, some body else must guide him, who is presumed to know how far the law allows a liberty. If such a state of reason, such an age of discretion made him free, the same shall make his son free too. Is a man under the law of England? What made him free of that law? that is, to have the liberty to dispose of his actions and possessions according to his own will, within the permission of that law? A capacity of knowing that law; which is supposed by that law, at the age of one and twenty years, and in some cases sooner. If this made the father free, it shall make the son free too. Till then we see the law allows the son to have no will, but he is to be guided by the will of his father or guardian, who is to understand for him. And if the father die, and fail to substitute a deputy in his trust; if he hath not provided a tutor, to govern his son, during his minority, during his want of understanding, the law takes care to do it; some other must govern him, and be a will to him, till he hath attained to a state of freedom, and his understanding be fit to take the government of his will. But after that, the father and son are equally free as much as tutor and pupil after nonage; equally subjects of the same law together, without any dominion left in the father over the life, liberty, or estate of his son, whether they be only in the state and under the law of nature, or under the positive laws of an established government.
. . .

Sec. 63. The freedom then of man, and liberty of acting according to his own will, is grounded on his having reason, which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will. To turn him loose to an unrestrained liberty, before he has reason to guide him, is not the allowing him the privilege of his nature to be free; but to thrust him out amongst brutes, and abandon him to a state as wretched, and as much beneath that of a man, as their's. This is that which puts the authority into the parents hands to govern the minority of their children. God hath made it their business to employ this care on their offspring, and hath placed in them suitable inclinations of tenderness and concern to temper this power, to apply it, as his wisdom designed it, to the children's good, as long as they should need to be under it.

Sec. 64. But what reason can hence advance this care of the parents due to their off-spring into an absolute arbitrary dominion of the father, whose power reaches no farther, than by such a discipline, as he finds most effectual, to give such strength and health to their bodies, such vigour and rectitude to their minds, as may best fit his children to be most useful to themselves and others; and, if it be necessary to his condition, to make them work, when they are able, for their own subsistence. But in this power the mother too has her share with the father.

Sec. 65. Nay, this power so little belongs to the father by any peculiar right of nature, but only as he is guardian of his children, that when he quits his care of them, he loses his power over them, which goes along with their nourishment and education, to which it is inseparably annexed; and it belongs as much to the foster-father of an exposed child, as to the natural father of another. So little power does the bare act of begetting give a man over his issue; if all his care ends there, and this be all the title he hath to the name and authority of a father. And what will become of this paternal power in that part of the world, where one woman hath more than one husband at a

time? or in those parts of America, where, when the husband and wife part, which happens frequently, the children are all left to the mother, follow her, and are wholly under her care and provision? If the father die whilst the children are young, do they not naturally every where owe the same obedience to their mother, during their minority, as to their father were he alive? and will any one say, that the mother hath a legislative power over her children? that she can make standing rules, which shall be of perpetual obligation, by which they ought to regulate all the concerns of their property, and bound their liberty all the course of their lives? or can she inforce the observation of them with capital punishments? for this is the proper power of the magistrate, of which the father hath not so much as the shadow. His command over his children is but temporary, and reaches not their life or property: it is but a help to the weakness and imperfection of their nonage, a discipline necessary to their education: and though a father may dispose of his own possessions as he pleases, when his children are out of danger of perishing for want, yet his power extends not to the lives or goods, which either their own industry, or another's bounty has made their's; nor to their liberty neither, when they are once arrived to the infranchisement of the years of discretion. The father's empire then ceases, and he can from thence forwards no more dispose of the liberty of his son, than that of any other man: and it must be far from an absolute or perpetual jurisdiction, from which a man may withdraw himself, having license from divine authority to leave father and mother, and cleave to his wife. . . .

Sec. 70. A man may owe honour and respect to an ancient, or wise man; defence to his child or friend; relief and support to the distressed; and gratitude to a benefactor, to such a degree, that all he has, all he can do, cannot sufficiently pay it: but all these give no authority, no right to any one, of making laws over him from whom they are owing. And it is plain, all this is due not only to the bare title of father; not only because, as has been said, it is owing to the mother too; but because these obligations to parents, and the degrees of what is required of children, may be varied by the different care and kindness, trouble and expence, which is often employed upon one child more than another.
. . .

Documents to Support Lecture English Colonization

1. The Third Virginia Charter (March 12, 1612)
2. The Charter of Maryland (June 20, 1632)
3. Mayflower Compact (Nov. 11, 1620)
4. Fundamental Orders of Connecticut (Jan. 14, 1639)
5. Representation of ye affairs of N England by Mr. Randolph (6 May 1677)
6. Commission of Sir Edmund Andros for the Dominion of New England (April 7, 1688)
7. The Charter of Massachusetts Bay (1691)

1. The Third Virginia Charter (March 12, 1612)

James, by the grace of God [King of England, Scotland, France and Ireland, Defender of the Faith;] to all to whom [these presents shall come,] greeting. Whereas at the humble suite of divers and sundry our lovinge subjects, aswell adventurers as planters of the First Colonie in Virginia, and for the propagacion of Christian religion and reclayminge of people barbarous to civilitie and humanitie, we have by our lettres patent bearing date at Westminster the three and twentieth daie of May in the seaventh yeare of our raigne of England, Frannce and Ireland, and the twoe and fortieth of Scotland, given and grannted unto them, that they and all suche and soe manie of our loving subjects as shold from time to time for ever after be joyned with them as planters or adventurers in the said plantacion, and their successors for ever, shold be one body politique incorporated by the name of The Treasorer and Planters of the Cittie of London for the First Colonie in Virginia;

And whereas allsoe for the greater good and benefitt of the said Companie and for the better furnishing and establishing of the said plantacion we did further [give], grannte and confirme by our said lettres patent unto the said Treasorer and Companie and their successors for ever, all those landes, contries and territories scituate, lyeing and being in that part of America called Virginia, from the point of land called Cape [or] Pointe Comfort all along the seacoste to the northward twoe hundred miles, and from the said point of Cape Comfort all along the seacoste to the sowthward twoe hundred miles, and all the space and circuit of land lying from the sea coste of the precinct aforesaid up or into the land throughout from sea to sea, west and northwest, and allso all the islandes lying within one hundred miles along the coast of both the seas of the precinct aforsaid, with diverse other grannts, liberties, franchises, preheminences, privileges, profiitts, benefitts, and commodities, grannted in and by our said lettres patent to the said Tresorer and Companie, and their successors, for ever:

Now for asmuchas we are given to undestande that in these seas adjoyning to the said coast of Virginia and without the compasse of those twoe hundred miles by us soe grannted unto the said Treasurer and Companie as aforesaid, and yet not farr distant from the said Colony in Virginia, there are or may be divers islandes lying desolate and uninhabited, some of which are already made knowne and discovered by the industry, travell, and expences of the said Company, and others allsoe are supposed to be and remaine as yet unknowen and undiscovered, all and every of which itt maie importe the said Colony both in safety and pollecy of trade to populate and plant, in regard where of, aswell for the preventing of perill as for the better comodity and prosperity of the said Colony, they have bin humble suitors unto us that we wold be pleased to grannt unto them an inlardgement of our said former lettres patent, aswell for a more ample extent of their limitts and territories into the seas adjoyning to and uppon the coast of Virginia as allsoe for some other matters and articles concerning the better government of the said Company and Collony, in which point our said former lettres patents doe not extende soe farre as time and experience hath found to be needfull and convenient:

We, therefore, tendring the good and happy successe of the said plantacion both in respect of the generall weale of humane society as in respect of the good of our owne estate and kingedomes, and being willing to give furtherannt untoall good meanes that may advannce the benefitt of the said Company and which maie secure the safety of our loving subjects, planted in our said

Colony under the favour and proteccion of God Almighty and of our royall power and authority, have therefore of our especiall grace, certein knowledge and mere mocion, given, grannted and confirmed, and for us, our heires and successors we doe by theis presents, give, grannt and confirme unto the said Treasurer and Company of Adventurers and Planters of the said Citty of London for the First Colony in Virginia, and to their heires and successors for ever, all and singuler the said iselandes [whatsoever] scituat and being in anie part of the said ocean bordering upon the coast of our said First Colony in Virginia and being within three hundred leagues of anie the partes hertofore grannted to the said Treasorer and Company in our said former lettres patents as aforesaid, and being within or betweene the one and fortie and thirty degrees of Northerly latitude, together with all and singuler [soils] landes, groundes, havens, ports, rivers, waters, fishinges, mines and mineralls, aswell royal mines of gold and silver as other mines and mineralls, perles, precious stones, quarries, and all and singuler other commodities, jurisdiccions, royalties, priviledges, franchises and preheminences, both within the said tract of lande uppon the maine and allso within the said iselandes and seas adjoyning, whatsoever, and thereunto or there abouts both by sea and land being or scituat; and which, by our lettres patents, we maie or cann grannt and in as ample manner and sort as we or anie our noble progenitors have heretofore grannted to anie person or persons or to anie Companie, bodie politique or corporate or to any adventurer or adventurers, undertaker or undertakers of anie discoveries, plantacions or traffique, of, in, or into anie foreigne parts whatsoever, and in as lardge and ample manner as if the same were herein particularly named, mencioned and expressed: provided allwaies that the said iselandes or anie the premisses herein mencioned and by theis presents intended and meant to be grannted be not already actually possessed or inhabited by anie other Christian prince or estate, nor be within the bounds, limitts or territories of the Northerne Colonie, hertofore by us grannted to be planted by divers of our loving subjects in the northpartes of Virginia. To have and to hold, possesse and injoie all and singuler the said iselandes in the said ocean seas soe lying and bordering uppon the coast or coasts of the territories of the said First Colony in Virginia as aforesaid, with all and singuler the said soiles, landes and groundes and all and singular other the premisses heretofore by theis presents grannted, or mencioned to be grannted, to them, the said Treasurer and Companie of Adventurers and Planters of the Cittie of London for the First Colonie in Virginia, and to their heires, successors and assignes for ever, to the sole and proper use and behoofe of them, the said Treasurer and Companie and their heires, successores and assignes for ever; to be holden of us, our heires and successors as of our mannor of Eastgreenwich, in free and common soccage and not in capite, yealding and paying therefore, to us, our heires and successors, the fifte part of the oare of all gold and silver which shalbe there gotten, had or obteined for all manner of services, whatsoever. . . .

And we doe hereby ordaine and grannt by theis presents that the said Treasurer and Companie of Adventurers and Planters, aforesaid, shall and maie, once everie weeke or oftener at their pleasure, hold and keepe a court and assembly for the better ordening [ordering] and government of the said plantacion and such thinges as shall concerne the same; and that anie five persons of the said Counsell for the said First Collonie in Virginia, for the time being, of which Companie the Treasurer or his deputie allwaies to be one, and the nomber of fifteene others at the least of the generality of the said Companie assembled together in such court or assembly in such manner as is and hath bin heretofore used and accustomed, shalbe said, taken, held and reputed

to be and shalbe a full and sufficient court of the said Companie for the handling, ordring and dispatching of all such casuall and particuler occurrences and accidentall matters of lesse consequence and waight, as shall from time to time happen, touching and concerning the said plantacion.

And that, nevertheles, for the handling, ordring and disposing of matters and affaires of great waight and importance and such as shall or maie in anie sort concerne the weale publike and generall good of the said Companie and plantacion as namely, the manner of government from time to time to be used, the ordring and disposing of the said possessions and the setling and establishing of a trade there, or such like, there shalbe held and kept everie yeare uppon the last Wednesdaie save one of Hillary, Easter, Trinity and Michaelmas termes, for ever, one great, generall and solemne assembly, which fower severall assemblies shalbe stiled and called The Fower Great and Generall Courts of the Counsell and Companie of Adventurers for Virginia; in all and every of which said great and generall Courts soe assembled our will and pleasure is and we doe, for us, our heires and successors forever, give and grannt to the said Treasurer and Companie and their successors for ever by theis presents, that they, the said Treasurer and Companie or the greater nomber of them soe assembled, shall and maie have full power and authoritie from time to time and att all times hereafter to ellect and choose discreet persons to be of our [said] Counsell for the said First Colonie in Virginia and to nominate and appoint such officers as theie shall thinke fitt and requisit for the government, managing, ordring and dispatching of the affaires of the said Companie; and shall likewise have full power and authority to ordaine and make such lawes and ordinances for the good and wellfare of the said plantacion as to them from time to time shalbe thought requisite and meete: soe allwaies as the same be not contrary to the lawes and statutes of this our realme of England; and shall in like manner have power and authority to expulse, disfranchise and putt out of and from their said Companie and societie for ever all and everie such person and persons as having either promised or subscribed their names to become adventurers to the said plantacion of the said First Colonie in Virginia, or having bin nominated for adventurers in theis or anie our lettres patent or having bin otherwise admitted and nominated to be of the said Companie, have nevertheles either not putt in anie adventure [at] all for and towards the said plantacion or els have refused and neglected, or shall refuse and neglect, to bringe in his or their adventure by word or writing promised within sixe monthes after the same shalbe soe payable and due.

And wheras the failing and nonpaiment of such monies as have bin promised in adventure for the advanncement of the said plantacion hath bin often by experience found to be danngerous and prejudiciall to the same and much to have hindred the progresse and proceeding of the said plantacion; and for that itt seemeth to us a thing reasonable that such persons as by their handwriting have engaged themselves for the payment of their adventures, and afterwards neglecting their faith and promise, shold be compellable to make good and kepe the same; therefore our will and pleasure is that in anie suite or suites comenced or to be comenced in anie of our courts att Westminster, or elswhere, by the said Treasurer and Companie or otherwise against anie such persons, that our judges for the time being both in our Court of Channcerie and at the common lawe doe favour and further the said suits soe farre forth as law and equitie will in anie wise suffer and permitt.

And we doe, for us, our heires and successors, further give and grannt to the said Tresorer and Companie, and their successors for ever, that theie, the said Tresorer and Companie or the greater part of them for the time being, so in a full and generall court assembled as aforesaid shall and maie, from time to time and att all times hereafter, for ever, ellect, choose and permitt into their Company and society anie person or persons, as well straungers and aliens borne in anie part beyond the seas wheresoever, being in amity with us, as our naturall liedge subjects borne in anie our realmes and dominions; and that all such persons soe elected, chosen and admitted to be of the said Companie as aforesaid shall thereuppon be taken, reputed and held and shalbe free members of the said Companie and shall have, hold and enjoie all and singuler freedoms, liberties, franchises, priviledges, immunities, benefitts, profitts and commodities, whatsoever, to the said Companie in anie sort belonging or apperteining as fully, freely [and] amplie as anie other adventurer or adventurers now being, or which hereafter att anie time shalbe, of the said Companie, hath, have, shall, maie, might or ought to have or enjoy the same to all intents and purposes whatsoever.

And we doe further of our speciall grace, certaine knowledge and mere mocion, for us, our heires and successors, give and grantt to the said Tresorer and Companie and their successors, for ever by theis present, that itt shalbe lawfull and free for them and their assignes att all and everie time and times hereafter, out of anie our realmes and dominions whatsoever, to take, lead, carry and transport in and into the said voyage and for and towards the said plantacion of our said First Collonie in Virginia, all such and soe manie of our loving subjects or anie other straungers that will become our loving subjects and live under our allegiance as shall willingly accompanie them in the said voyage and plantacion; with shipping, armour, weapons, ordinannce, munition, powder, shott, victualls, and all manner of merchandizes and wares, and all manner of clothing, implement, furniture, beasts, cattell, horses, mares, and all other thinges necessarie for the said plantacion and for their use and defence, and for trade with the people there and in passing and retourning to and froe, without paying or yealding anie subsedie, custome or imposicion, either inward or outward, or anie other dutie to us, our heires or successors, for the same, for the space of seven yeares from the date of theis present.

And we doe further, for us, our heires and successors, give and grannt to the said Treasurer and Companie and their successors for ever, by theis present, that the said Treasurer of the said Companie, or his deputie for the time being or anie twoe others of our said Counsell for the said First Colonie in Virginia for the time being, shall and maie attall times hereafter and from time to time, have full power and authoritie to minister and give the oath and oathes of supremacie and allegiannce, or either of them, to all and every person and persons which shall, at anie time and times hereafter, goe or passe to the said Colonie in Virginia:

And further, that itt shalbe likewise lawfull for the said Tresorer, or his deputy for the time, or anie twoe others of our said Counsell for the said First Colonie in Virginia, for the time being, from time to time and att all times hereafter, to minister such a formall oathe as by their discrescion shalbe reasonably devised, aswell unto anie person or persons imployed or to be imployed in, for, or touching the said plantacion for their honest, faithfull and just dischardge of their service in all such matters as shalbe committed unto them for the good and benefitt of the said Company, Colonie and plantacion; as alsoe unto such other person or persons as the said Treasurer or his deputie, with twoe others of the said Counsell, shall thinke meete for the

examinacion or clearing of the truith in anie cause whatsoever concerninge the said plantacion or anie business from thence proceeding or there unto proceeding or thereunto belonging.

And, furthermore, whereas we have ben certefied that diverse lewde and ill disposed persons, both sailors, souldiers, artificers, husbandmen, laborers, and others, having received wages, apparrell or other entertainment from the said Company or having contracted and agreed with the said Companie to goe, to serve, or to be imployed in the said plantacion of the said First Colonie in Virginia, have afterwards either withdrawen, hid or concealed themselves, or have refused to goe thither after they have bin soe entertained and agreed withall; and that divers and sundry persons allso which have bin sent and imployed in the said plantacion of the said First Colonie in Virginia at and upon the chardge of the said Companie, and having there misbehaved themselves by mutinies, sedition, and other notorious misdemeanors, or having bin employed or sent abroad by the governor of Virginia or his deputie with some ship or pinnace for provisions for the said Colonie, or for some discoverie or other buisines and affaires concerning the same, have from thence most trecherouslie either come back againe and retorned into our realme of England by stelth or without licence of our Governor of our said Colonie in Virginia for the time being, or have bin sent hither as misdoers and offenders; and that manie allsoe of those persons after their retourne from thence, having bin questioned by our said Counsell here for such their misbehaviors and offences, by their insolent and contemptuous carriage in the presence of our said Counsaile, have shewed little respect and reverence, either to the place or authoritie in which we have placed and appointed them; and others, for the colouring of their lewdnes and misdemeanors committed in Virginia, have endeavored them by most vile and slanndrous reports made and divulged, aswell of the cuntrie of Virginia as alsoe of the government and estate of the said plantacion and Colonie, as much as in them laie, to bring the said voyage and plantacion into disgrace and contempt; by meanes where of not only the adventures and planters alreadie ingaged in the said plantacion have bin exceedingly abused and hindred, and a greate nomber of other our loving and welldisposed subjects otherwise well affected and inclyning to joine and adventure insoe noble, Christian and worthie an action have bin discouraged from the same, but allsoe the utter overthrow and ruine of the said enterprise hath bin greatlie indanngered which cannott miscarrie without some dishonor to us and our kingdome;

Now, for asmuch as it appeareth unto us that theis insolences, misdemeanors and abuses, not to be tollerated in anie civill government, have for the most part growne and proceeded inregard of our Counsaile have not anie direct power and authoritie by anie expresse wordes in our former lettres patent to correct and chastise such offenders, we therefore, for the more speedy reformacion of soe greate and enormous abuses and misdemeanors heretofore practised and committed, and for the preventing of the like hereafter, doe by theis present for us, our heires and successors, give and grannt to the said Treasurer and Companie, and their successors for ever, that itt shall and maie be lawfull for our said Councell for the said First Colonie in Virginia or anie twoe of them, whereof the said Tresorer or his deputie for the time being to be allwaies one by warrant under their handes to send for, or cause to be apprehended, all and every such person and persons who shalbe noted or accused or found, att anie time or times here after, to offend or misbehave themselves in anie the offences before mencioned and expressed; and uppon the examinacion of anie such offender or offendors and just proofe made by oath taken before the Counsaile of anie such notorious misdemeanors by them committed as aforesaid; and allsoe uppon anie insolent, contemptuous or unreverent carriage and misbehavior to or against our said

Counsell shewed or used by anie such person or persons soe called, convented and apearing before them as aforesaid; that in all such cases theie, our said Counsell or anie twoe of them for the time being, shall and maie have full power and authoritie either here tO binde them over with good suerties for their good behaviour and further therein to proceed to all intents and purposes, as itt is used in other like cases within our realme of England; or ells att their discrescion to remannd and send back the said offenders or anie of them unto the said Colonie in Virginia, there to be proceeded against and punished as the Governor, deputie and Counsell there for the time being shall thinke meete; or otherwise, according to such lawes and ordinannces as are or shalbe in use there for the well ordring and good governement of the said Colonie. . . .

And further our will and pleasure is that in all questions and dobts that shall arise uppon anie difficultie of construccion or interpretacion of anie thing conteined in theis or anie other our former lettres patent the same shalbe taken and interpreted in most ample and beneficiall manner for the said Tresorer and Companie and their successors and everie member there of. . . .

In witnes whereof [we have caused these our letters to be made patents.] Wittnes our selfe att Westminster, the twelveth daie of March [1612] [in the ninth year of our reign of England, France, and Ireland, and of Scotland the five and fortieth.]

2. The Charter of Maryland (June 20, 1632)

Whereas our well beloved and right trusty Subject Caecilius Calvert, Baron of Baltimore, in our Kingdom of Ireland, Son and Heir of George Calvert, Knight, late Baron of Baltimore, in our said Kingdom of Ireland, treading in the steps of his Father, being animated with a laudable, and pious Zeal for extending the Christian Religion, and also the Territories of our Empire, hath humbly besought Leave of us, that he may transport, by his own Industry, and Expense, a numerous Colony of the English Nation, to a certain Region, herein after described, in a Country hitherto uncultivated, in the Parts of America, and partly occupied by Savages, having no knowledge of the Divine Being, and that all that Region, with some certain Privileges, and Jurisdiction, appertaining unto the wholesome Government, and State of his Colony and Region aforesaid, may by our Royal Highness be given, granted and confirmed unto him, and his Heirs.

Know Ye therefore, that We, encouraging with our Royal Favour, the pious and noble purpose of the aforesaid Barons of Baltimore, of our special Grace, certain knowledge, and mere Motion, have Given, Granted and Confirmed, and by this our present Charter, for Us our Heirs, and Successors, do Give, Grant and Confirm, unto the aforesaid Caecilius, now Baron of Baltimore, his Heirs, and Assigns, all that Part of the Peninsula, or Chersonese, lying in the Parts of America, between the Ocean on the East and the Bay of Chesapeake on the West, divided from the Residue thereof by a Right Line drawn from the Promontory, or Head-Land, called Watkin's Point, situate upon the Bay aforesaid, near the river Wigloo, on the West, unto the main Ocean on the East; and between that Boundary on the South, unto that Part of the Bay of Delaware on the North, which lieth under the Fortieth Degree of North Latitude from the Equinoctial, where New England is terminated; And all that Tract of Land within the Metes underwritten (that is to say) passing from the said Bay, called Delaware Bay, in a right Line, by the Degree aforesaid, unto the true meridian of the first Fountain of the River of Pattowmack, thence verging toward the South, unto the further Bank of the said River, and following the same

on the West and South, unto a certain Place, called Cinquack, situate near the mouth of the said River, where it disembogues into the aforesaid Bay of Chesapeake, and thence by the shortest Line unto the aforesaid Promontory or Place, called Watkin's Point; so that the whole tract of land, divided by the Line aforesaid, between the main Ocean and Watkin's Point, unto the Promontory called Cape Charles, and every the Appendages thereof, may entirely remain excepted for ever to Us, our Heirs and Successors.

Also We do grant and likewise Confirm unto the said Baron of Baltimore, his Heirs, and Assigns, all Islands and Inlets within the Limits aforesaid, all and singular the Islands, and Islets, from the Eastern Shore of the aforesaid Region, towards the East, which had been, or shall be formed in the Sea, situate within Ten marine Leagues from the said shore; with all and singular the Ports, Harbours, Bays, Rivers, and Straits belonging to the Region or Islands aforesaid, and all the Soil, Plains, Woods, Marshes, Lakes, Rivers, Bays, and Straits, situate, or being within the Metes, Bounds, and Limits aforesaid, with the Fishings of every kind of Fish, as well of Whales, Sturgeons, and other royal Fish, as of other Fish, in the Sea, Bays, Straits, or Rivers, within the Premises, and the fish t here taken; And moreover all Veins, Mines, and Quarries, as well opened as hidden, already found, or that shall be found within the Region, Islands, or Limits aforesaid, of Gold, Silver, Gems, and precious Stones, and any other whatsoever, whether they be of Stones, or Metals, or of any other Thing, or Matter whatsoever; And furthermore the Patronages, and Advowsons of all Churches which (with the increasing Worship and Religion of Christ) within the said Region, Islands, Islets, and Limits aforesaid, hereafter shall happen to be built, together with License and Faculty of erecting and founding Churches, Chapels, and Places of Worship, in convenient and suitable places, within the Premises, and of causing the same to be dedicated and consecrated according to the Ecclesiastical Laws of our Kingdom of England, with all, and singular such, and as ample Rights, Jurisdictions, Privileges, Prerogatives, Royalties, Liberties, Immunities, and royal Rights, and temporal Franchises whatsoever, as well by Sea as by Land, within the Region, Islands, Islets, and Limits aforesaid, to be had, exercised, used, and enjoyed, as any Bishop of Durham, within the Bishoprick or County Palatine of Durham, in our Kingdom of England, ever heretofore hath had, held, used, or enjoyed, or of right could, or ought to have, hold, use, or enjoy.

And we do by these Presents, for us, our Heirs, and Successors, Make, Create, and Constitute Him, the now Baron of Baltimore, and his Heirs, the true and absolute Lords and Proprietaries of the Region aforesaid, and of all other Premises (except the before excepted) saving always the Faith and Allegiance and Sovereign Dominion due to Us, our Heirs, and Successors; to have, hold, possess, and enjoy the aforesaid Region, Islands, Islets, and other the Premises, unto the aforesaid now Baron of Baltimore, and to his Heirs and Assigns, to the sole and proper Behoof and Use of him, the now Baron of Baltimore, his Heirs and Assigns, forever. To Hold of Us, our Heirs and Successors, Kings of England, as of our Castle of Windsor, in our County of Berks, in free and common Soccage, by Fealty only for all Services, and not in Capite, nor by Knights Service, Yielding therefore unto Us, our Heirs and Successors Two Indian Arrows of these Parts, to be delivered at the said Castle of Windsor, every Year, on Tuesday in Easter Week: And also the fifth Part of all Gold and Silver Ore, which shall happen from Time to Time, to be found within the aforesaid Limits.

Now, That the aforesaid Region, thus by us granted and described, may be eminently distinguished above all other Regions of that- Territory, and decorated with more ample Titles, Know Ye, that We, of our more especial Grace, certain knowledge, and mere Motion, have thought fit that the said Region and Islands be erected into a Province, as out of the Plenitude of our royal Power and Prerogative, We do, for Ifs' our Heirs and Successors, erect and incorporate the same into a Province, and nominate the same Maryland, by which Name We will that it shall from henceforth be called.

And . . . We . . . do grant unto the said now Baron, . . . and to his Heirs, for the good and happy Government of the said Province, free, full, and absolute Power, by the Tenor of these Presents, to Ordain, Make, and Enact Laws, of what Kind soever, according to their sound Discretions whether relating to the Public State of the said Province, or the private Utility of Individuals, of and with the Advice, Assent, and Approbation of the Free-Men of the same Province, or the greater Part of them, or of their Delegates or Deputies, whom We will shall be called together for the framing of Laws, when, and as often as Need shall require, by the aforesaid now Baron of Baltimore, and his Heirs, and in the Form which shall seem best to him or them, and the same to publish under the Seal of the aforesaid now Baron of Baltimore, and his Heirs, and duly to execute the same upon all Persons, for the time being, within the aforesaid Province, and the Limits thereof, or under his or their Government and Power, . . . by the Imposition of Fines, Imprisonment, and other Punishment whatsoever; even if it be necessary, and the Quality of the Offence require it, by Privation of Member, or Life. . . . So, nevertheless, that the Laws aforesaid be consonant to Reason, and be not repugnant or contrary, but (so far as conveniently may be) agreeable to the Laws, Statutes, Customs, and Rights of this Our Kingdom of England.

And forasmuch as, in the Government of so great a Province, sudden accidents may frequently happen, to which it will be necessary to apply a Remedy, before the Freeholders of the said Province, their Delegates, or Deputies, can be called together for the framing of Laws; neither will it be fit that so great a Number of People should immediately, on such emergent Occasion, be called together, We therefore, for the better Government of so great a Province, do Will and Ordain, and by these Presents, for Us, our Heirs and Successors, do grant unto the said now Baron of Baltimore, and to his Heirs, that the aforesaid now Baron of Baltimore, and his Heirs, by themselves, or by their Magistrates and Officers, thereunto duly to be constituted as aforesaid, may, and can make and constitute fit and Wholesome Ordinances from Time to Time, to be Kept and observed within the Province aforesaid, as well for the Conservation of the Peace, as for the better Government of the People inhabiting therein, and publicly to notify the same to all Persons whom the same in any wise do or may affect. Which Ordinances We will to be inviolably observed within the said Province, under the Pains to be expressed in the same. So that the said Ordinances be consonant to Reason and be not repugnant nor contrary, but (so far as conveniently may be done) agreeable to the Laws, Statutes, or Rights of our Kingdom of England: And so that the same Ordinances do not, in any Sort, extend to oblige, bind, charge, or take away the Right or Interest of any Person or Persons, of, or in Member, Life, Freehold, Goods or Chattels.

Furthermore, that the New Colony may more happily increase by a Multitude of People resorting thither, and at the same Time may be more firmly secured from the Incursions of

Savages, or of other Enemies, Pirates, and Ravagers: We therefore, for Us. our Heirs and Successors, do by these Presents give and grant Power, License and Liberty, to all the Liege-Men and Subjects, present and future, of Us, our Heirs and Successors, except such to whom it shall be expressly forbidden, to transport themselves and their Families to the said Province, with fitting Vessels, and suitable Provisions, and therein to settle, dwell and inhabit; and to build and fortify Castles, Forts, and other Places of Strength, at the Appointment of the aforesaid now Baron of Baltimore, and his Heirs, for the Public and their own Defence; the Statute of Fugitives, or any other whatsoever to the contrary of the Premises in any wise notwithstanding.

We will also, and of our more abundant Grace, for Us, our Heirs and Successors, do firmly charge, constitute, ordain, and command, that the said Province be of our Allegiance; and that all and singular the Subjects and Liege-Men of Us, our Heirs and Successors, transplanted, or hereafter to be transplanted into the Province aforesaid, and the Children of them, and of others their Descendants, whether already born there, or hereafter to be born, be-and shall be Natives and Liege-Men of Us, our Heirs and Successors, of our Kingdom of England and Ireland; and in all Things shall be held, treated, reputed, and esteemed as the faithful Liege-Men of Us, and our Heirs and Successors, born within our Kingdom of England; also Lands, Tenements, Revenues, Services, and other Hereditaments whatsoever, within our Kingdom of England, and other our Dominions, to inherit, or otherwise purchase, receive, take, have, hold, buy, and possess, and the same to use and enjoy, and the same to give, sell, alien and bequeath; and likewise all Privileges, Franchises and Liberties of this our Kingdom of England, freely, quietly, and peaceably to have and possess, and the same may use and enjoy in the same manner as our Liege-Men born, or to be born within our said Kingdom of England, without Impediment, Molestation, Vexation, Impeachment, or Grievance of Us, or any of our Heirs or Successors; any Statute, Act, Ordinance, or Provision to the contrary thereof, notwithstanding.

Furthermore, That our Subjects may be incited to undertake this Expedition with a ready and cheerful mind: Know Ye, that We, of our especial Grace, certain Knowledge, and mere Motion, do, by the Tenor of these Presents, give and grant, as well as to the aforesaid Baron of Baltimore, and to his Heirs, as to all other Persons who shall from Time to Time repair to the said Province, either for the Sake of Inhabiting, or of Trading with the Inhabitants of the Province aforesaid, full License to Ship and Lade in any the Ports of Us, our Heirs and Successors, all and singular their Goods, as well movable, as immovable, Wares and Merchandizes, likewise Grain of what Sort soever, and other Things whatsoever necessary for Food and dothing, by the Laws and Statutes of our Kingdoms and Dominions, not prohibited to be transported out of the said Kingdoms; and the same to transport, by themselves, or their Servants or Assigns, into the said Province, without the Impediment or Molestation of Us, our Heirs or Successors, or any Officers of Us, our Heirs or Successors, (Saving unto Us, our Heirs and Successors, the Impositions, Subsidies, Customs, and other Dues payable for the same Goods and Merchandizes) any Statute, Act, Ordinance, or other Thing whatsoever to the contrary notwithstanding.

But because, that in so remote a Region, placed among so many barbarous Nations, the Incursions as well of the Barbarians themselves, as of other Enemies, Pirates and Ravagers, probably will be feared. Therefore We have Given, and for Us, our Heirs, and Sucessors, do Give by these Presents, as full and unrestrained Power, as any Captain-General of an Army ever hath had, unto the aforesaid now Baron of Baltimore, and to his Heirs and Assigns, by

themselves, or by their Captains, or other Officers to summon to their Standards, and to array all men, of whatsoever Condition, or wheresoever born, for the Time being, in the said Province of Maryland, to wage War, and to pursue, even beyond the Limits of their Province, the Enemies and Ravagers aforesaid, infesting those Parts by Land and by Sea, and (if God shall grant it) to vanquish and captivate them, and the Captives to put to Death, or, according to their Discretion, to save, and to do all other and singular the Things which appertain, or have been accustomed to appertain unto the Authority and Office of a Captain-General of an Army.

We also will, and by this our Charter, do give unto the aforesaid now Baron of Baltimore, and to his Heirs and Assigns, Power, Liberty, and Authority, that, in Case of Rebellion, sudden Tumult, or Sedition, if any (which God forbid) should happen to arise, whether upon Land within the Province aforesaid, or upon the High Sea in making a Voyage to the said Province of Maryland. or in returning thence, they may, by themselves, or by their Captains, or others Officers, thereunto deputed under their Seals (to whom We, for Us, our Heirs and Successors, by these Presents, do Give and Grant the fullest Power and Authority) exercise Martial Law as freely, and in as ample Manner and Form, as any Captain-General of an Army, by virtue of his Office may, or hath accustomed to use the same, against the seditious Authors of Innovations in those Parts, with-drawing themselves from the Government of him or them, refusing to serve in War, flying over to the Enemy, exceeding their Leave of Absence, Deserters, or otherwise howsoever offending against the Rule, Law, or Discipline of War. . . .

Moreover, We will appoint, and ordain, and by these Presents, for Us, our Heirs and Successors, do grant unto the aforesaid now Baron of Baltimore, his Heirs and Assigns, that the same Baron of Baltimore, his Heirs and Assigns, from Time to Time, forever, shall have, and enjoy the Taxes and Subsidies payable, or arising within the Ports, Harbors, and other Creeks and Places aforesaid within the Province aforesaid, for Wares bought and sold, and Things there to be laden, or unladen, to be reasonably assessed by. them, and the People there as aforesaid, on emergent Occasion; to whom We grant Power by these Presents, for Us, our Heirs and Successors, to assess and impose the said Taxes and Subsidies there, upon just Cause and in due Proportion.

And furthermore, of our special Grace, and certain Knowledge, and mere Motion, We have given, granted, and confirmed, and by these Presents, for Us, our Heirs and Successors, do give, grant and confirm, unto the said now Baron of Baltimore, his Heirs and Assigns, full and absolute License, Power, and Authority, that he the aforesaid now Baron of Baltimore, his Heirs and Assigns, from Time to Time hereafter, forever, may and can, at his or their Will and Pleasure, assign, alien, grant, demise, or enfeoff so many, such, and proportionate Parts and Parcels of the Premises, to any Person or Persons willing to purchase the same, as they shall think convenient, to have and to hold to the same Person or Persons willing to take or purchase the same, and his and their Heirs and Assigns, in Fee-simple, or Fee-tail, or for Term of Life, Lives or Years; to hold of the aforesaid now Baron of Baltimore, his Heirs and Assigns, by so many, such, and so great Services, Customs and Rents of this Kind, as to the same now Baron of Baltimore, his Heirs, and Assigns, shall seem fit and agreeable . . .

We also, by these Presents, do give and grant License to the same Baron of Baltimore, and to his Heirs, to erect any Parcels of Land within the Province aforesaid, into Manors, and in every

of those Manors, to have and to hold a Court-Baron, and all Things which to a Court Baron do belong; and to have and to Keep View of Frank-Pledge, for the Conservation of the Peace and better Government of those Parts, by themselves and their Stewards, or by the Lords, for the Time being to be deputed, of other of those Manors when they shall be constituted, and in the same to exercise all Things to the View of Frank Pledge belong.

And further We will, and do, by these Presents, for Us, our Heirs and Successors, covenant and grant to, and with the aforesaid now Baron of Baltimore, His Heirs and Assigns, that We, our Heirs, and Successors, at no Time hereafter, will impose, or make or cause to be imposed, any Impositions, Customs, or other Taxations, Quotas, or Contributions whatsoever, in or upon the Residents or Inhabitants of the Province aforesaid for their Goods, Lands, or Tenements within the same Province, or upon any Tenements, Lands, Goods or Chattels within the Province aforesaid, or in or upon any Goods or Merchandizes within the Province aforesaid, or within the Ports or Harbors of the said Province, to be laden or unladen;

3. Mayflower Compact (Nov. 11, 1620)

In the name of God, Amen. We whose names are under-written, the loyal subjects of our dread sovereign Lord, King James, by the grace of God, of Great Britain, France, and Ireland King, Defender of the Faith, etc.

Having undertaken, for the glory of God, and advancement of the Christian faith, and honor of our King and Country, a voyage to plant the first colony in the northern parts of Virginia, do by these presents solemnly and mutually, in the presence of God, and one of another, covenant and combine our selves together into a civil body politic, for our better ordering and preservation and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute, and frame such just and equal laws, ordinances, acts, constitutions and offices, from time to time, as shall be thought most meet and convenient for the general good of the Colony, unto which we promise all due submission and obedience. In witness whereof we have hereunder subscribed our names at Cape Cod, the eleventh of November [New Style, November 21], in the year of the reign of our sovereign lord, King James, of England, France, and Ireland, the eighteenth, and of Scotland the fifty-fourth. Anno Dom. 1620.

[Names of the signatories to the compact.]

4. Fundamental Orders of Connecticut (Jan. 14, 1639)

For as much as it hath pleased Almighty God by the wise disposition of his divine providence so to order and dispose of things that we the Inhabitants and Residents of Windsor, Hartford and Wethersfield are now cohabiting and dwelling in and upon the River of Connectecotte and the lands thereunto adjoining; and well knowing where a people are gathered together the word of God requires that to maintain the peace and union of such a people there should be an orderly and decent Government established according to God, to order and dispose of the affairs of the people at all seasons as occasion shall require; do therefore associate and conjoin ourselves to be as one Public State or Commonwealth; and do for ourselves and our successors and such as shall be adjoined to us at any time hereafter,

enter into Combination and Confederation together, to maintain and preserve the liberty and purity of the Gospel of our Lord Jesus which we now profess, as also, the discipline of the Churches, which according to the truth of the said Gospel is now practiced amongst us; as also in our civil affairs to be guided and governed accordinbg to such Laws, Rules, Orders and Decrees as shall be made, ordered, and decreed as followeth:

1. It is Ordered, sentenced, and decreed, that there shall be yearly two General Assemblies or Courts, the one the second Thursday in April, the other the second Thursday in September following; the first shall be called the Court of Election, wherein shall be yearly chosen from time to time, so many Magistrates and other public Officers as shall be found requisite: Whereof one to be chosen Governor for the year ensuing and until another be chosen, and no other Magistrate to be chosen for more than one year: provided always there be six chosen besides the Governor, which being chosen and sworn according to an Oath recorded for that purpose, shall have the power to administer justice according to the Laws here established, and for want thereof, according to the Rule of the Word of God; which choice shall be made by all that are admitted freemen and have taken the Oath of Fidelity, and do cohabit within this Jurisdiction having been admitted Inhabitants by the major part of the Town wherein they live or the major part of such as shall be then present.
2. It is Ordered, sentenced, and decreed, that the election of the aforesaid Magistrates shall be in this manner: every person present and qualified for choice shall bring in (to the person deputed to receive them) one single paper with the name of him written in it whom he desires to have Governor, and that he that hath the greatest number of papers shall be Governor for that year. And the rest of the Magistrates or public officers to be chosen in this manner: the Secretary for the time being shall first read the names of all that are to be put to choice and then shall severally nominate them distinctly, and every one that would have the person nominated to be chosen shall bring in one single paper written upon, and he that would not have him chosen shall bring in a blank; and every one that hath more written papers than blanks shall be a Magistrate for that year; which papers shall be received and told by one or more that shall be then chosen by the court and sworn to be faithful therein; but in case there should not be six chosen as aforesaid, besides the Governor, out of those which are nominated, than he or they which have the most writen papers shall be a Magistrate or Magistrates for the ensuing year, to make up the aforesaid number.
3. It is Ordered, sentenced, and decreed, that the Secretary shall not nominate any person, nor shall any person be chosen newly into the Magistracy which was not propounded in some General Court before, to be nominated the next election; and to that end it shall be lawful for each of the Towns aforesaid by their deputies to nominate any two whom they conceive fit to be put to election; and the Court may add so many more as they judge requisite.

4. It is Ordered, sentenced, and decreed, that no person be chosen Governor above once in two years, and that the Governor be always a member of some approved Congregation, and formerly of the Magistracy within this Jurisdiction; and that all the Magistrates, Freemen of this Commonwealth; and that no Magistrate or other public officer shall execute any part of his or their office before they are severally sworn, which shall be done in the face of the court if they be present, and in case of absence by some deputed for that purpose.
5. It is Ordered, sentenced, and decreed, that to the aforesaid Court of Election the several Towns shall send their deputies, and when the Elections are ended they may proceed in any public service as at other Courts. Also the other General Court in September shall be for making of laws, and any other public occasion, which concerns the good of the Commonwealth.
6. It is Ordered, sentenced, and decreed, that the Governor shall, either by himself or by the Secretary, send out summons to the Constables of every Town for the calling of these two standing Courts one month at least before their several times: And also if the Governor and the greatest part of the Magistrates see cause upon any special occasion to call a General Court, they may give order to the Secretary so to do within fourteen days' warning: And if urgent necessity so required, upon a shorter notice, giving sufficient grounds for it to the deputies when they meet, or else be questioned for the same; And if the Governor and major part of Magistrates shall either neglect or refuse to call the two General standing Courts or either of them, as also at other times when the occasions of the Commonwealth require, the Freemen thereof, or the major part of them, shall petition to them so to do; if then it be either denied or neglected, the said Freemen, or the major part of them, shall have the power to give order to the Constables of the several Towns to do the same, and so may meet together, and choose to themselves a Moderator, and may proceed to do any act of power which any other General Courts may.
7. It is Ordered, sentenced, and decreed, that after there are warrants given out for any of the said General Courts, the Constable or Constables of each Town, shall forthwith give notice distinctly to the inhabitants of the same, in some public assembly or by going or sending from house to house, that at a place and time by him or them limited and set, they meet and assemble themselves together to elect and choose certain deputies to be at the General Court then following to agitate the affairs of the Commonwealth; which said deputies shall be chosen by all that are admitted Inhabitants in the several Towns and have taken the oath of fidelity; provided that none be chosen a Deputy for any General Court which is not a Freeman of this Commonwealth.

   The aforesaid deputies shall be chosen in manner following: every person that is present and qualified as before expressed, shall bring the names of such, written in several papers, as they desire to have chosen for that employment, and these three or four, more or less, being the number agreed

on to be chosen for that time, that have the greatest number of papers written for them shall be deputies for that Court; whose names shall be endorsed on the back side of the warrant and returned into the Court, with the Constable or Constables' hand unto the same.

8. It is Ordered, sentenced, and decreed, that Windsor, Hartford, and Wethersfield shall have power, each Town, to send four of their Freemen as their deputies to every General Court; and Whatsoever other Town shall be hereafter added to this Jurisdiction, they shall send so many deputies as the Court shall judge meet, a reasonable proportion to the number of Freemen that are in the said Towns being to be attended therein; which deputies shall have the power of the whole Town to give their votes and allowance to all such laws and orders as may be for the public good, and unto which the said Towns are to be bound.
9. It is Ordered, sentenced, and decreed, that the deputies thus chosen shall have power and liberty to appoint a time and a place of meeting together before any General Court, to advise and consult of all such things as may concern the good of the public, as also to examine their own Elections, whether according to the order, and if they or the greatest part of them find any election to be illegal they may seclude such for present from their meeting, and return the same and their reasons to the Court; and if it be proved true, the Court may fine the party or parties so intruding, and the Town, if they see cause, and give out a warrant to go to a new election in a legal way, either in part or in whole. Also the said deputies shall have power to fine any that shall be disorderly at their meetings, or for not coming in due time or place according to appointment; and they may return the said fines into the Court if it be refused to be paid, and the Treasurer to take notice of it, and to escheat or levy the same as he does other fines.
10. It is Ordered, sentenced, and decreed, that every General Court, except such as through neglect of the Governor and the greatest part of the Magistrates the Freemen themselves do call, shall consist of the Governor, or some one chosen to moderate the Court, and four other Magistrates at least, with the major part of the deputies of the several Towns legally chosen; and in case the Freemen, or major part of them, through neglect or refusal of the Governor and major part of the Magistrates, shall call a Court, it shall consist of the major part of Freemen that are present or their deputiues, with a Moderator chosen by them: In which said General Courts shall consist the supreme power of the Commonwealth, and they only shall have power to make laws or repeal them, to grant levies, to admit of Freemen, dispose of lands undisposed of, to several Towns or persons, and also shall have power to call either Court or Magistrate or any other person whatsoever into question for any misdemeanor, and may for just causes displace or deal otherwise according to the nature of the offense; and also may deal in any other matter that concerns the good of this Commonwealth, except election of Magistrates, which shall be done by the whole body of Freemen.

In which Court the Governor or Moderator shall have power to order the Court, to give liberty of speech, and silence unseasonable and disorderly speakings, to put all things to vote, and in case the vote be equal to have the casting voice. But none of these Courts shall be adjourned or dissolved without the consent of the major part of the Court.

11. It is Ordered, sentenced, and decreed, that when any General Court upon the occasions of the Commonwealth have agreed upon any sum, or sums of money to be levied upon the several Towns within this Jurisdiction, that a committee be chosen to set out and appoint what shall be the proportion of every Town to pay of the said levy, provided the committee be made up of an equal number out of each Town. . . .

5. Representation of ye affaires of N England by Mr. Randolph, 6 May 1677

The present State of the affaires of New England Depending before the Lords of the Committee for Plantations are reduced to two heads Viz matter of Law and ffact.

Matter of Law ariseth from the Title of Lands and Government Claimed by Mr Mason and Mr Gorges in Their Several provinces of New Hampshire and Main and Also what right and the Title the Massachusets have to Land Either or Government in any part of New England; these are referred to the Lords Cheif Justices of the Kings Bench and Common Pleas for their Opinion

Matters of ffact concerne as well his Majestie as Mr Mason and Mr Gorges, and against the Government of the Massachusets these following Articles will be proved.

1 That they have noe right either to Land or Government in any part of New England and have allwayes been Vsurpers.

2 That they have formed themselves into a Common Wealth, deneying any Appeals to England, and contrary to other Plantations doe not take the Oath of Allegiance.

3 They have protected the Late Kings Murtherers, directly contrary to his Maj Royall Proclamation of the 6th of June 1660 and of his Letters of 28th June 1662.

4 They Coine money with their owne Impress.

5 They have put his Maj Subjects to death for opinion in matters of Religion.

6 In the yeare 1665 they did violently oppose his Maj CommissionTM in the Settlement of New Hampshire and in 1668 by Armed fforces turned out his Maj Justices of the peace in the Province of Main in Contempt of his Majesties Authority and Declaration of the 10 of Aprill 1666.

7 They impose an Oath of ffidelity upon all that inhabit within their Territoryes To be true and ffaithfull to their Government.

8 They violate all the Acts of Trade and navigation by which they have ingrossed the greatest part of the West India Trade whereby his Maj is damaged in his Customs above 100000 i yearely and this Kingdome much more.

Reasons induceing a Speedy hearing and Determination.

1 His Majestie hath an oppertunity to Settle That Country under His Royall Authority with little charge Mr John Berry Being now at Virginia not farr distance from New England and it Lyes in His way home, where are many good harbors free from the worms, Townes convenient for Quartering of Souldiers and plentifull Accomidation for men and shipping

2 The Earnest desire of MOST and best of the Inhabitants wearied out With The Arbitrary proceedings of Those in the present Government to be under His Maj Governement and Laws.

3 The Indians upon the Settlement of That Country it is Presumed would vnanimously Submitt and Become would be very servicable and vsefull for improveing That Country Being there being vpward of Three hundred Thousand English inhabiting therein.

Proposals for the Setling of That Country

1 His Majesties Gratious and General pardon vpon Their conviction of having ACTED without and in Contempt of His Majesties Authority will make the most refractory to Comply to save Their Estates.

2 His Majesties declaration confirming vnto the Inhabitants of the Lands and houses vpon They Now POSSESS vpon payment of an Easie Quit rent and Granting Libertie of Conscience in matters of Religion.

3 His Majesties Commission directed to The most Eminent Persons for Estates and Loyalty in every Colony to meet consult and act for the present peace and Safety of That Country dureing His Majesties pleasure, and That Such of the present Magistrates be of the Councill as Shall Readily Comply With His Majesties Commands in the Setleing of the Country and to pention to be allowed them out of the publicque Reuenue of the Country with Some Title of Honour to be conferred vpon The most deserveing of them, will cause a generall Submission.

All Which is humbly offered Preferred to Consideration by Edward Randolph

6. Commission of Sir Edmund Andros for the Dominion of New England. April 7, 1688

James the Second by the Grace of God King of England, Scotland France and Ireland Defender of the Faith &c. To our trusty and welbeloved Sr Edmund Andros Knt Greeting: Whereas by our Commission under our Great Seal of England, bearing date the third day of June in the second year of our reign wee have constituted and appointed you to be our Captain Generall and Governor in Chief in and over all that part of our territory and dominion of New

England in America known by the names of our Colony of the Massachusetts Bay, our Colony of New Plymouth, our Provinces of New Hampshire and Main and the Narraganset Country or King's Province. And whereas since that time Wee have thought it necessary for our service and for the better protection and security of our subjects in those parts to join and annex to our said Government the neighboring Colonies of Road Island and Connecticutt, our Province of New York and East and West Jersey, with the territories "hereunto belonging, as wee do hereby join annex and unite the same to our said government and dominion of New England. Wee therefore reposing especiall trust and confidence in the prudence courage and loyalty of you the said Sir Edmund Andros, out of our especiall grace certain knowledge and meer motion, have thought fit to constitute and appoint as wee do by these presents constitute and appoint vou the said Sr Edmund Andros to be our Captain Generall and Governor in Cheif in and over our Colonies of the Massachusetts Bay and New Plymouth, our Provinces of New Hampsllire and Main, the Narraganset country or King's Province, our Colonys of Road Island and Connecticutt our Province of New York and East and West Jersey, and of all that tract of land circuit continent precincts and limits in America lying and being in breadth from forty degrees of Northern latitude from the Equinoctiall Line to the River of St. Croix Eastward, and from thence directly Northward to the river of Canada, and in length and longitude by all the breadth aforesaid and throughout the main land from the Atlantick or Western Sea or Ocean on the East part, to the South Sea on the West part, with all the Islands, Seas, Rivers, waters, rights, members, and appurtenances, thereunto belonging (our province of Pensilvania and country of Delaware only excepted), to be called and known as formerly by the name and title of our territory and dominion of New England in America.

And for your better guidance and direction Wee doe hereby require and command you to do & execute all things in due manner, that shall belong unto the said office and the trust wee have reposed in you, according to the severall powers instructions and authoritys mentioned in these presents, or such further- powers instructions and authoritys mentioned in these presents, as you shall herewith receive or which shall at any time hereafter be granted or appointed You under our signet and sign manual or by our order in our Privy Councill and according to such reasonable lawes and statutes as are now in force or such others as shall hereafter be made and established within our territory & dominion aforesaid.

And our will and pleasure is that You the said Sr Edmund Andros having, after publication of these our Letters Patents, first taken the Oath of duly executing the office of our Captain Generall and Governor in Cheif of our said territory and dominion, which our Councill there or any three of them are hereby required authorized and impowered to give and administer unto you, you shall administer unto each of the members of our Councill the Oath for the due execution of their places and trusts.

And Wee do hereby give and grant unto you full power and authority to suspend any member of our Councill from sitting voting and assisting therein, as you shall find just cause for so doing.

And if it shall hereafter at any time happen that by the death, departure out of our said territory, or suspension of any of our Counselors, or otherwise, there shall be a vacancy in our said Councill, (any five whereof wee do hereby appoint to be a Quorum) Our will and pleasure is

that you signify the same unto us by the first oppurtunity, that Wee may under our Signet and Sign Manuall constitute and appoint others in their room.

And Wee do hereby give and grant unto you full power and authority, by and with the advise and consent of our said Councill or the major part of them, to make constitute and ordain lawes statutes and ordinances for the public peace welfare and good governmt of our said territory & dominion and of the people and inhabitants thereof, and such others as shall resort thereto, and for the benefit of us, our heires and successors. Which said lawes statutes and ordinances, are to be, as near as conveniently may be, aggreeable to the lawes & statutes of this our kingdom of England: Provided that all such lawes statutes and ordinances of what nature or duration soever, be within three months, or sooner, after the making of the same, transmitted unto Us, under our Seal of New England, for our allowance or disapprobation of them, as also duplicates thereof by the next conveyance.

And Wee do by these presents give and grant unto you full power and authority by and with the advise and consent of our said Councill, or the major part of them, to impose assess and raise and levy rates and taxes as you shall find necessary for the support of the government within our territory and dominion of New England, to be collected and leveyed and to be imployed to the uses aforesaid in such manner as to you & our said Councill or the major part of them shall seem most equall and reasonable.

And for the better supporting the charge of the governmt of our said Territory and Dominion, our will and pleasure is and wee do by these presents authorize and impower you the sd Sr Admund Andros and our Councill, to continue such taxes and impositions as are now laid and imposed upon the Inhabitants thereof; and to levy and distribute or cause the same to be levyed and distributed to those ends in the best and most equall manner, untill you shall by & with the advise and consent of our Councill agree on and settle such other taxes as shall be sufficient for the support of our government there, which are to be applied to that use and no other.

And our further will and pleasure is, that all publick money raised or to be raised or appointed for the support of the government within our said territory and dominion be issued out by warrant or order from you by & with the advise and consent of our Councill as aforesaid.

And our will and pleasure is that you shall and may keep and use our Seal appointed by Us for our said territory and dominion.

And wee do by these presents ordain constitute and appoint you or the Commander in Cheif for the time being, and the Councill of our said territory & dominion for the time being, to be a constant and setled Court of Record for ye administration of justice to all our subjects inhabiting within our said Territory and Dominion, in all causes as well civill as Criminall with full power and authority to hold pleas in all cases, from time to time, as well in Pleas of the Crown and in all matters relateing to the conservation of the peace and punishment of offenders, as in Civill causes and actions between party and party, or between us and any of our subjects there, whether the same do concerne the realty and relate to any right of freehold & inheritance or whether the same do concerne the personality and relate to matter of debt contract damage or other personall injury; and also in all mixt actions which may concern both realty and personalty; and therein

after due and orderly proceeding and deliberate hearing of both sides, to give judgement and to award execution, as well in criminall as in Civill cases as aforesaid, so as always that the forms of proceedings in such cases and the judgment thereupon to be given, be as consonant and agreeable to the lawes and statutes of this our realm of England as the present state and condition of our subjects inhabiting within our said Territory and Dominion and the circumstances of the place will admit.

And Wee do further hereby give and grant unto you full power and authority with the advise and consent of our said Councill to erect constitute and establish such and so many Courts of Judicature and public Justice within our said Territory and Dominion as you and they shall think fit and necessary for the determining of all causes as well Criminall as Civill according to law and equity, and for awarding of execution thereupon, with all reasonable and necessary powers authorities fees and privileges belonging unto them.

And Wee do hereby give and grant unto you full power and authority to constitute and appoint Judges and in cases requisite Commissioners of Oyer and Terminer, Justices of the Peace, Sheriffs, & all other necessary Officers and Ministers within our said Territory for the better administration of Justice and putting the lawes in execution, & to administer such oath and oaths as are usually given for the due execution and performance of offices and places and for the cleering of truth in judiciall causes.

And our further will and pleasure is and Wee doe hereby declare that all actings and proceedings at law or equity heretofore had or don or now depending within any of the courts of our said Territory, and all executions thereupon, be hereby confirmed and continued so fare forth as not to be avoided for want of any legall power in the said Courts; but that all and every such judiciall actings, proceeding and execution shall be of the same force effect and virtue as if such Courts had acted by a just and legall authority.

And wee do further by these presents will and require you to permit Appeals to be made in cases of Error from our Courts in our said Territory and Dominion of New England unto you, or the Commander in Cheif for the time being and the Council, in Civill causes: Provided the value appealed for do exceed the sum of one hundred pounds sterling, and that security be first duly given by the Appellant to answer such charges as shall be awarded in case the first sentence shall be affirmed

And whereas Wee judge it necessary that all our subjects may have liberty to Appeal to our Royall Person in cases that may require the same: Our will and pleasure is that if either party shall not rest satisfied with the judgement or sentence of you (or the Commander in Cheif for the time being) and the Councill, they may Appeal unto Us in our Privy Councill: Provided the matter in difference exceed the value and summ of three hundred pounds stern and that such Appeal be made within one fortnight after sentence, and that security be likewise duly given by the Appellant to answer such charges as shall be awarded in case the sentence of you (or the Commander in Cheif for the time being) and the Councill be confirmed; and provided also that execution be not suspended by reason of any such appeal unto us.

And Wee do hereby give and graunt unto you full power where You shall see cause and shall judge any offender or offenders in capitall and criminall matters, or for any fines or forfeitures due unto us, fit objects of our mercy, to pardon such offenders and to remit such fines & forfeitures, treason and wilfull murder only excepted, in which case you shall likewise have power upon extraordinary occasions to grant reprieves to the offenders therein untill and to the intent our pleasure may Fe further known.

And Wee do hereby give and grant unto you the said Sr Edmd Andros by your self your Captains and Commanders, by you to be authorized, full power and authority to levy arme muster command or employ, all persons whatsoever residing within our said Territory and Dominion of New England, and, as occasion shall serve, them to transfers from one place to another for the resisting and withstanding all enemies pyrats and rebells, both at land and sea, and to transfers such forces to any of our Plantations in America or the Territories thereunto belonging, as occasion shall require for the defence of the same against the invasion or attempt of any of our enemies, and then, if occasion shall require to pursue and prosecute in or out of the limits of our said Territories and Plantations or any of them, And if it shall so please God, them to vanquish; and, being taken, according to the law of arms to put to death or keep and preserve alive, at your discretion. And also to execute martiall law in time of invasion insurrection or warr, and during the continuance of the same, and upon soldiers in pay, and to do and execute all and every other thing which to a Captain Generall doth or ought of right to belong, as fully and amply as any our Captain Generall doth or hath usually don.

And Wee do hereby give and grant unto you full power and authority to erect raise and build within our Territory and Dominion aforesaid, such and so many forts, platformes, Castles, cities, boroughs, towns, and fortifications as you shall judge necessary; and the same or any of them to fortify and furnish with ordnance ammunition and all sorts of armes, fit and necessary for the security & defence of our said territory; and the same again or any of them to demolish or dismantle as may be most convenient.

And Wee do hereby give and grant unto you the said Sr Edmund Andros full power and authority to erect one or more Court or Courts Admirall within our said Territory and Dominion, for the hearing and determining of all marine and other causes and matters proper therein to be heard & determined, with all reasonable and necessary powers, authorities fees and priviledges.

And you are to execute all powers belonging to the place and office of Vice Admirall of and in all the seas and coasts about your Government; according to such commission authority and instructions as you shall receive from ourself under the Seal of our Admiralty or from High Admirall of our Foreign Plantations for the time being.

And forasmuch as divers mutinies & disorders do happen by persons shipped and imployed at Sea, and to the end that such as shall be shipped or imployed at Sea may be better governed and ordered; Wee do hereby give and grant unto you the said Sr Edmund Andros our Captain Generall and Governor in Cheif, full power and authority to constitute and appoint Captains, Masters of Ships, and other Commanders, commissions to execute the law martial, and to use such proceedings authorities, punishment, correction and execution upon any offender or offenders who shall be mutinous seditious, disorderly or any way unruly either at sea or during

the time of their abode or residence in any of the ports harbors or bays of our said Territory and Dominion, as the Cause shall be found to require, according to martial law. Provided that nothing herein conteined shall be construed to the enabling you or any by your authority to hold plea or have jurisdiction of any offence cause matter or thing committed or don upon the sea or within any of the havens, rivers, or creeks of our said Territory and Dominion under your government, by any Captain Commander Lieutenant Master or other officer seaman soldier or person whatsoever, who shall be in actuall service and pay in and on board any of our ships of War or other vessels acting by immediat commission or warrant from our self under the Seal of our Admiralty, or from our High Admirall of England for the time being; but that such Captain Commander Lieut Master officer seaman soldier and other person so offending shall be left to be proceeded against and tryed, as the merit of their offences shall require, either by Commission under our Great Seal of England as the statute of 28 Henry VIII directs, or by commission from our said High Admirall, according to the Act of Parliament passed in the 13th year of the reign of the late King our most dear and most intirely beloved brother of ever blessed memory (entituled An Act for the establishing articles and Orders for the regulating and better governmt of His Matys navys, shipps or warr, and Forces by sea) and not otherwise. Saving only, that it shall and may be lawfull for you, upon such Captains and Commanders refusing or neglecting to execute. Or upon his negligent or undue execution of any the written orders he shall receive from You for our service, & the service of our said Territory and Dominion. to suspend him the said Captain or Commander from the exercise of the said office of Commander and commit him safe custody, either on board his own ship or elsewhere, at the discretion of you, in order to his being brought to answer for the same by commission either under our Great Seal of England or from our said High Admirall as is before expressed. In which case our will and pleasure is that the Captain or Commander so by you suspended shall during his suspension and commitmt be succeeded in his said office, by such commission or Warrant Officer of our said ship appointed by our self or our High Admirall for the time being, as by the known practice and discipline of our Navy doth and ought next to succeed him, as is case of death sickness of other ordinary disability hapning to the Commander of any of our ships & not otherwise; you standing also accountable to us for the truth & importance of the crimes and misdemeanours for which you shall so proceed to the suspending of such our said Captain or Commander. Provided also that all disorders and misdemeanors committed on shore by any Captain Commander, Lieutent, Master, or other officer seaman soldier or person whatsoever belonging to any of our ships of warr or other vessel acting by immediate commission or warrt from our self under the Great Seal of our Admiralty or from our High Admll from England for the time being may be tryed & punished according to the lawes of the place where any such disorders off'ences and misdemeanors shall be so committed on shore, notwithstanding such offender be in our actuall service and borne in our pay on board any such out shipps of warr or other vessels acting by immediate Commission or warrant from ourself or our High Admirall as aforesaid; so as he shall not receive any protection (for the avoiding of justice for such offences committed on shore) from any presence of his being improved in our service at sea.

And Wee do likewise give and grant unto you full power and authority by and with the advice and consent of our said Councill to agree with the planters and inhabitants of our said Territory and Dominion concerning such lands, tenements & hereditaments as now are or hereafter shall be in our power to dispose of, and them to grant unto any person or persons for such terms and under such moderat Quit Rents, Services and acknowledgements to be thereupon

reserved unto us as shall be appointed by us. Which said grants are to pass and be sealed by our Seal of New England and (being entred upon record by such officer or officers as you shall appoint thereunto, shall be good and effectual in law against us, our heires and successors.

And Wee do hereby give you full power and authority to appoint so many faires martes and markets as you with the advise of the said Councill shall think fitt.

As likewise to order and appoint within our said Territory such and so many ports harbors, bayes havens and other places for the convenience and security of shipping, and for the better loading and unloading of goods and merchandise as by you with the advice and consent of our Councill shall be thought flit and necessary; and in them or any of them to erect nominal and appoint Cuxtom houses ware houses and officers relating thereto; and them to alter change, place, or displace from time to time, as with the advice aforesaid shall be thought fitt.

And forasmuch as pursuant to the lawes & customes of our Colony of the Massachusetts Bay and of our other Colonies and Probes aforementioned, divers marriages have been made and performs by the Magstrats of our said territory; Our royall will and please is hereby to confirm all the said marriages and to direct that they be held good and valid in the same manner to all intents and purposes whatsoever as if they had been made and contracted according to the lawes established within our kingdom of England.

And Wee do hereby require and command all officers and ministers, civill and military and all other inhabitants of our said Territory and Dominion to be obedient aiding and assisting unto you the said Sr Edmd Andros in the execution of this our commission and of the powers and authorityes therein contained, and upon your death or absence out of our said Territory unto our Lieut. Governor, to whom wee do therefore by these presents give and grant all and singular the powers and authorityes aforesaid to be exercised and enjoyed by him in case of your death or absence during our pleasure, or untill your arrival within our said Territory and Dominion; as Wee do further hereby give and grant full power and authority to our Lieut. Governor to do and execute whatsoever he shall be by you authorized and appointed to do and execute, in pursuance of and according to the powers granted to you by this Commission.

And if in the case of your death or absence there be no person upon the place, appointed by us to be Commander in Cheif; our will and pleasure is, that the then' present Councill of our Territory aforesaid, do take upon them the administration of the Governmt and execute this commission and the severall powers and authoritys herein contained; and that the first Counselor who shall be at the time of yor death or absence residing within the same, do preside in our said Councill, with such powers and preheminencies as any former President hath used and enjoyed within our said territory, or any other our plantations in America, untill our pleasure be further known, or your arrivall as aforesaid.

And lastly, our will and pleasure is that you the said Sr Edmund Andros shall and may hold exercise and enjoy the office and place of Captain Generall and Governor in Cheif in and over our Territory and Dominion aforesaid, with all its rights members and appurtenances'whatsoever, together with all and singular the powers and authorityes hereby granted unto you, for and during our will and pleasure.

In Witness whereof Wee have caused these our letters to be made Patents. Witness our self at Westminster the seventh day of Aprill in the fourth year of our reign.

By Writ of Privy Seal

7. The Charter of Massachusetts Bay - 1691

WILLIAM & MARY by the grace of God King and Queene of England Scotland France and Ireland Defenders of the Faith &c To all to whome these presents shall come Greeting . . .

And Wee doe further for Vs Our Heires and Successors Will Establish and ordeyne that from henceforth for ever there shall be one Goverour One Leivtent or Deputy Governour and One Secretary of Our said Province or Territory to be from time to time appointed and Commissionated by Vs Our Heires and Successors and Eight and Twenty Assistants or Councillors to be advising and assisting to the Governour of Our said Province or Territory for the time being as by these presents is hereafter directed and appointed which said Councillors or Assistants are to be Constituted Elected and Chosen in such forme and manner as hereafter in these presents is expressed. . . . *And Our* Will and Pleasure is that the Governour of Our said Province from the time being shall have Authority from time to time at his discretion to assemble and call together the Councillors or Assistants of Our said Province for the time being and that the said Governour with the said Assistants or Councillors or Seaven of them at the least shall and may from time to time hold and keep a Councill for the ordering and directing the AfEaires of Our said Province *And further* Wee Will and by these presents for Vs Our Heires and Successors doe ordeyne and Grant that there shall and may be convened held and kept by the Governour for the time being vpon every last Wednesday in the Moneth of May every yeare for ever and at all such other times as the Governour of Our said Province shall think fitt and appoint a great and Generall Court of Assembly Which said Great and Generall Court of Assembly shall consist of the Governour and Councill or Assistants for the time being and of such-Freeholders of Our said Province or Territory as shall be from time to time elected or deputed by the Major parse of the Freeholders and other Inhabitants of the respective Townes or Places who shall be present at such Eleccons Each of the said Townes and Places being hereby impowered to Elect and Depute Two Persons and noe more to serve for and represent them respectively in the said Great and Generall Court or Assembly To which Great and Generall Court or Assembly to be held as aforesaid Wee doe hereby for Vs Our Heires and Successors give and grant full power and authority from time to time to direct appoint and declare what Number each County Towne and Place shall Elect and Depute to serve for and represent them respectively in the said Great and Generall Court or Assembly *Provided* alwayes that noe Freeholder or other Person shall have a Vote in the Eleccon of Members to serve in any Greate and Generall Court or Assembly to be held as aforesaid who at the time of such Eleccon shall not have an estate of Freehold in Land within Our said Province or Territory to the value of Forty Shillings per Annu at the least or other estate to the value of Forty pounds Sterl' And that every Person who shall be soe elected shall before he silt or Act in the said Great and Generall Court or Assembly take the Oaths menconed in an Act of Parliament made in the first yeare of Our Reigne Entituled an Act for abrogateing of the Oaths of Allegiance and Supremacy and appointing other Oaths and thereby appointed to be taken instead of the Oaths of Allegiance and Supremacy and shall make Repeat and Subscribe the Declaracon menconed in the said Act before the Governour and Lievtent or

Deputy Governour or any two of the Assistants for the time being who shall be therevnto authorized and Appointed by Our said Governour and that the Governour for the time being shall have full power and Authority from time to time as he shall Judge necessary to adjourns Prorogue and dissolve all Great and Generall Courts or Assemblyes met and convened as aforesaid And Our Will and Pleasure is and Wee doe hereby for Vs Our Heires and Successors Grant Establish and Ordeyne that yearly once in every yeare for ever hereafter the aforesaid Number of Eight and Twenty Councillors or Assistants shall be by the Generall Court or Assembly newly chosen that is to say Eighteen at least of the Inhabitants of or Proprietors of Lands within the Territory formerly called the Collony of the Massachusetts Bay and four at the least of the Inhabitants of or Proprietors of Lands within the Territory formerly called New Plymouth and three at the least of the Inhabitants of or Proprietors of Land within the Territory formerly called the Province of Main and one at the least of the Inhabitants of or Proprietors of Land within the Territory lying between the River of Sagadahoc and Nova Scotia And that the said Councillors or Assistants or any of them shall or may at any time hereafter be removed or displaced from their respective Places or Trust of Councillors or Assistants by any Great or Generall Court or Assembly And that if any of the said Councillors or Assistants shall happen to dye or be removed as aforesaid before the Generall day of Eleccon That then and in every such Case the Great and Generall Court or Assembly at their first sitting may proceed to a New Eleccon of one or more Councillors or Assistants in the roome or place of such Councillors or Assistants soe dying or removed And Thee doe further Grant and Ordeyne that it shall and may be lawfull for the said Governour with the advice and consent of the Councill or Assistants from time to time to nominate and appoint Judges Commissioners of Oyer and Terminer Sheriffs Provosts Marshalls Justices of the Peace and other Officers to Our Councill and Courts of Justice belonging *Provided* alwayes that noe such Nominacon or Appointment of Officers be made without notice first given or sumons Issued out seaven dayes before such Nominacon or Appointment onto such of the said Councillors or Assistants as shall be at that time resideing within Our said Province *And Our* Will and Pleasure is that the Governour and Leivtent or Deputy Governour and Councillors or Assistants for the time being and all other Officers to be appointed or Chosen as aforesaid shall before the Vndertaking the Execucon of their Offices and Places respectively take their severall and respectiveOaths for the due and faithfull performance of their duties in their severall and respective Offices and Places and alsoe the Oaths appointed by the said Act of Parliament made in the first yeare of Our Reigne to be taken instead of the Oaths of Allegiance and Supremacy and shall make repeate and subscribe the Declaracon menconed in the said Act before such Person or Persons as are by these presents herein after appointed. . . *And further* Our Will and Pleasure is and Wee doe hereby for Vs Our Heires and Successors Grant Establish and Ordaine That all and every of the Subjects of Vs Our Heires and Successors which shall goe to and Inhabit within Our said Province and Territory and every of their Children which shall happen to be born there or on the Seas in goeing thither or returning from thence shall have and enjoy all Libertyes and Immunities of Free and naturall Subjects within any of the Dominions of Vs Our Heires and Successors to all Intents Construccons and purposes whatsoever as if they and every of them were borne within this *Our Realme* of England and for the greater Ease and Encouragement of Our Loveing Subjects Inhabiting our said Province or Territory of the Massachusetts Bay and of such as shall come to Inhabit there Wee doe by these presents for vs Our heires and Successors Grant Establish and Ordaine that for ever hereafter there shall be a liberty of Conscience allowed in the Worshipp of God to all Christians (Except Papists) Inhabiting or which shall Inhabit or be Resident within our said Province or

Territory And Wee doe hereby Grant and Ordaine that the Gouernor or leivtent or Deputy Gouernor of our said Province or Territory for the time being or either of them or any two or more of the Councill or Assistants for the time being as shall be "hereunto appointed by the said Gouernor shall and may at all times and from time to time hereafter have full Power and Authority to Administer and give the Oathes appointed by the said Act of Parliament made in the first yeare of Our Reigne to be taken instead of the Oathes of Allegiance and Supremacy to all and every person and persons which are now Inhabiting or resideing within our said Province or Territory or which shall at any time or times hereafter goe or passe thither And wee doe of our further Grace certaine knowledge and meer mocon Grant Establish and Ordaine for Vs our heires and Successors that the great and Generall Court or Assembly of our said Province or Territory for the time being Convened as aforesaid shall for ever have full Power and Authority to Erect and, Constitute Judicatories and Courts of Record or other Courts to be held in the name of Vs Our heires and successors for the Hearing Trying and Determining of all manner of Crimes Odences Pleas Processes Plaints Accons Matters Causes and things whatsoever ariseing or happening within Our said Province or Territory or between persons Inhabiting or resideing there whether the same be Criminall or Civill and whether the said Crimes be Capitall or not Capitall and whether the said Pleas be Reall personall or mixt and for the awarding and makeing out of Execution thereupon To which Courts and Judicatories wee doe hereby for vs our heirs and Successors Give and Grant full power and Authority from time to time to Administer oathes for the better Discovery of Truth in any matter in Controversy or depending before them *And* wee doe for vs Our Heires and Successors Grant Establish and Ordaine that the Gouernor of our said Province or Territory for the time being with the Councill or Assistants may doe execute or performe all that is necessary for the Probate of Wills and Granting of Administracons for touching or concerning any Interest or Estate which any person or persons shall have within our said Province or Territory. . . . *And whereas* Wee judge it necessary that all our Subjects shouId have liberty to Appeale to vs our heires and Successors in Cases that may deserve the same Wee doe by these presents Ordaine that incase either party shall not rest satisfied with the Judgement or Sentence of any Judicatories or Courts within our said Province or Territory in any Personall Accon wherein the matter in difference doth exceed the value of three hundred Pounds Sterling that then he or they may appeale to vs Our heires and Successors in our or their Privy Councill Provided such Appeale be made within Fourteen dayes after ye Sentence or Judgement given and that before such Appeale be allowed Security be given by the party or parties appealing in the value of the matter in Difference to pay or Answer the Debt or Damages for the which Judgement or Sentence is given With such Costs and Damages as shall be Awarded by vs Our Heires or Successors incase the Judgement or Sentence be affirmed. . . . *And* wee doe for vs our Heires and Successors Giue and grant that the said Generall Court or Assembly shall have full power and Authority to name and settle annually all Civill Officers within the said Province such Officers Excepted the Election and Constitution of whome wee have by these presents reserved to vs Our Heires and Successors or to the Governor of our said Province for the time being and to Sett forth the severall Duties Powers and Lymitts of every such Officer to be appointed by the said Generall Court or Assembly and the formes of such Oathes not repugnant to the Lawes and Statutes of this, our Realme of England as shall be respectiuely Administered vnto them for the Execution of their severall Offices and places And alsoe to impose Fines mulcts Imprisonments and other Punishments And to impose and leavy proportionable and reasonable Assessments Rates and Taxes vpon the Estates and Persons of all and every the Proprietors and Inhabitants of our said Province or Territory to be Issued and disposed of by Warrant vnder the hand of the

Governor of our said Province for the time being with the advice and Consent of the Councill for Our service in the necessary defence and support of our Government of our said Province or Territory and the Protection and Preservation of the Inhabitants there according to such Acts as are or shall be in force within our said Province and to dispose of matters and things whereby our Subjects inhabitants of our said Province may be Religiously peaceably and Civilly Governed Protected and Defended soe as their good life and orderly Conversation may win the Indians Natives of the Country to the knowledge and obedience of the onely true God and Saviour of Mankinde and the Christian Faith which his Royall Majestie our Royall Grandfather king Charles the first in his said Letters Patents declared was his Royall Intentions And the Adventurers free Possession(9) to be the Princepall end of the said Plantation And for the better secureing and maintaining Liberty of Conscience hereby granted to all persons at any time being and resideing within our said Province or Territory as aforesaid *Willing* Comanding and Requireing and by these presents for vs Our heires and Successors Ordaining and appointing that all such Orders Lawes Statutes and Ordinances Instructions and Directions as shall be soe made and published vnder our Seale of our said Province or Territory shall be Carefully and duely observed kept and performed and put in Execution according to the true intent and meaning of these presents *Provided* alwaies and Wee doe by these presents for vs Our Heires and Successors Establish and Ordaine that in the frameing and passing of all such Orders Laws Statutes and Ordinances and in all Elections and Acts of Government whatsoever to be passed made or done by the said Generall Court or Assembly or in Councill the Governor of our said Province or Territory of the Massachusetts Bay in New England for the time being shall have the Negative voice and that without his consent or Approbation signified and declared in Writeing no such Orders Laws Statutes Ordinances Elections or other Acts of Government whatsoever soe to be made passed or done by the said Generall Assembly or in Councill shall be of any Force effect or validity anything herein contained to the contrary in anywise notwithstanding *And* wee doe for vs Our Heires and Successors Establish and Ordaine that the said Orders Laws Statutes and Ordinances be by the first opportunity after the makeing thereof sent or Transmitted vnto vs Our Heires and Successors under the Publique Seale to be appointed by vs for Our or their approbation or Disallowance And that incase all or any of them shall at any time within the space of three years next after the same shall have presented to vs our Heires and Successors in Our or their Privy Councill be disallowed and rejected and soe signified by vs Our Heires and Successors under our or their Signe Manuall and Signett or by or in our or their Privy Councill vnto the Governor for the time being then such and soe many of them as shall be soedisallowed and riected shall thenceforth cease and determine and become vtterly void and of none effect *Provided* alwais that incase Wee our Heires or Successors shall not within the Terme of Three Yeares after the presenting of such Orders Lawes Statutes or Ordinances as aforesaid signifie our or their Disallowance of the same Then the said orders Lawes Statutes or Ordinances shall be and continue in full force and effect according to the true Intent and meaneing of the same vntill the Expiracon thereof or that the same shall be Repealed by the Generall Assembly of our said Province for the time being. . . .

The King James (Authorized) Version of the Holy Bible (1611)

The Epistle of Paul the Apostle to the Romans

Chapter 13, verses 1-7:

[**1**] Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God.

[**2**] Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation.

[**3**] For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same:

[**4**] For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil.

[**5**] Wherefore ye must needs be subject, not only for wrath, but also for conscience sake.

[**6**] For for this cause pay ye tribute also: for they are God's ministers, attending continually upon this very thing.

[**7**] Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour.

The Acts of the Apostles

Chapter 5, verses 12-42, especially verse 29:

[**12**] And by the hands of the apostles were many signs and wonders wrought among the people; (and they were all with one accord in Solomon's porch.

[**13**] And of the rest durst no man join himself to them: but the people magnified them.

[**14**] And believers were the more added to the Lord, multitudes both of men and women.)

[**15**] Insomuch that they brought forth the sick into the streets, and laid them on beds and couches, that at the least the shadow of Peter passing by might overshadow some of them.

[**16**] There came also a multitude out of the cities round about unto Jerusalem, bringing sick folks, and them which were vexed with unclean spirits: and they were healed every one.

[**17**] Then the high priest rose up, and all they that were with him, (which is the sect of the Sadducees,) and were filled with indignation,

[**18**] And laid their hands on the apostles, and put them in the common prison.

[**19**] But the angel of the Lord by night opened the prison doors, and brought them forth, and said,

[**20**] Go, stand and speak in the temple to the people all the words of this life.

[**21**] And when they heard that, they entered into the temple early in the morning, and taught. But the high priest came, and they that were with him, and called the council together, and all the senate of the children of Israel and sent to the prison to have them brought.

[**22**] But when the officers came, and found them not in the prison, they returned, and told,

[**23**] Saying, The prison truly found we shut with all safety, and the keepers standing without before the doors: but when we had opened, we found no man within.

[**24**] Now when the high priest and the captain of the temple and the chief priests heard these things, they doubted of them whereunto this would grow.

[**25**] Then came one and told them, saying, Behold, the men whom ye put in prison are standing in the temple, and teaching the people.

[**26**] Then went the captain with the officers, and brought them without violence: for they feared the people, lest they should have been stoned.

[**27**] And when they had brought them, they set them before the council: and the high priest asked them,

[**28**] Saying, Did not we straitly command you that ye should not teach in this name? and, behold, ye have filled Jerusalem with your doctrine, and intend to bring this man's blood upon us.

[**29**] Then Peter and the other apostles answered and said, **We ought to obey God rather than men**.

[**30**] The God of our fathers raised up Jesus, whom ye slew and hanged on a tree.

[**31**] Him hath God exalted with his right hand to be a Prince and a Saviour, for to give repentance to Israel, and forgiveness of sins.

[**32**] And we are his witnesses of these things; and so is also the Holy Ghost, whom God hath given to them that obey him.

[**33**] When they heard that, they were cut to the heart, and took counsel to slay them.

[**34**] Then stood there up one in the council, a Pharisee, named Gamaliel, a doctor of the law, had in reputation among all the people, and commanded to put the apostles forth a little space;

[**35**] And said unto them, Ye men of Israel, take heed to yourselves what ye intend to do as touching these men.

[**36**] For before these days rose up Theudas, boasting himself to be somebody; to whom a number of men, about four hundred, joined themselves: who was slain; and all, as many as obeyed him, were scattered, and brought to nought.

[**37**] After this man rose up Judas of Galilee in the days of the taxing, and drew away much people after him: he also perished; and all, even as many as obeyed him, were dispersed.

[**38**] And now I say unto you, Refrain from these men, and let them alone: for if this counsel or this work be of men, it will come to nought:

[**39**] But if it be of God, ye cannot overthrow it; lest haply ye be found even to fight against God.

[**40**] And to him they agreed: and when they had called the apostles, and beaten them, they commanded that they should not speak in the name of Jesus, and let them go.

[**41**] And they departed from the presence of the council, rejoicing that they were counted worthy to suffer shame for his name.

[**42**] And daily in the temple, and in every house, they ceased not to teach and preach Jesus Christ.

Constitutionalism and Resistance in the Sixteenth Century

Three Treatises by Hotman, Beza, & Mornay

Translated and edited by

Julian H. Franklin

PEGASUS NEW YORK

J. Sander

VINDICIAE CONTRA TYRANNOS:

SIVE,

DE PRINCIPIS IN Populum, Populique in Principem, legitima potestate,

STEPHANO IVNIO
Bruto Celta, Auctore.

[Hotman, Hubert]
[du Plessis-Marnay]?

EDIMBVRGI, ANNO M. D. LXXIX.

Courtesy: Columbia University Libr

Vindiciae contra tyrannos

The First Question

Are subjects bound to obey princes if their orders contradict the Law of God?

At first sight this question may seem utterly idle and profitless, since it implies that uncertainty exists about an indubitable axiom of Christianity, which is stated very frequently in Holy Scripture, which has been exemplified continuously throughout the centuries, and which has been attested by the pyres of many martyrs. For why, it may be asked, have the faithful endured so many painful trials if they did not all believe that only God is to be obeyed absolutely and implicitly—kings, on the other hand, only insofar as their commands are not in conflict with God's Law? Or how are we to interpret the maxims of the Apostles that we are to obey God rather than men? And since only the will of the one God is invariably just and injustice is always possible in the will of every other being, how can we doubt that our obedience to God must be implicit and that our obedience to men must always be conditional? Yet there are princes today, professing to be Christians, who brazenly arrogate a power so unlimited that it cannot be from God at all; and they have a swarm of flatterers, who worship them as gods on earth and who, from fear or other pressure, believe, or pretend to believe, that there is no occasion in which princes ought not to be obeyed. The vice of our times, it thus appears, is that there is nothing so firm as to pass uncontradicted, or so certain as to pass undoubted, or so sacred as to go unviolated. Hence anyone who reflects on the matter will conclude, I fear, that this question is not only useful but even highly necessary, especially in our age. . . .

[One should obey God rather than man. God is the proprietor

of all, men are only usufructuaries of their possessions. The relationship of kings to God may be compared to that of vassals to their lords. The vassal's fief is forfeited for felony, *i.e.*, for breach of faith.]

In short, if the vassal does not keep the fealty he swore, his fief is forfeited and he is legally deprived of all prerogatives. So also with the king. If he neglects God, if he goes over to His enemies and is guilty of felony towards God, his kingdom is forfeited of right and is often lost in fact. And this principle is clearly shown in the covenant that is regularly concluded between the king and God (for God sees fit to honor His servants by accepting them as partners to a covenant). At the coronation of kings, then, we read of a twofold covenant: the first, between God, the king, and the people that the people will be God's people; the second, between the king and the people that if he is a proper ruler, he will be obeyed accordingly. We will consider the second of these later and here take up the first.

The Covenant Between God and the King

We read that at the coronation of Joash a covenant was concluded between God, the king, and the people—or, as it is related elsewhere, between the high priest Jehoiada, the whole people, and the king—that they would be God's people; and in yet another place that Josiah and the whole people entered into a covenant with God. We also learn that in making this covenant the high priest, speaking in God's name, expressly asked the king and the people, first, whether they were willing to guarantee that God would be purely worshipped in the Jewish kingdom according to His ritual; second, whether the king, in ruling, would permit the people to serve God and also hold them to God's Law; and finally, whether the people in obeying the king would obey God no less and first of all. Thus the king and the people, like joint underwriters of a promise, swore to keep the Law of God, and obliged themselves by solemn oath to worship God above all. Hence, as soon as this covenant was solemnized, Josiah and Joash extirpated the idolatrous cult of Baal and restored the service of God.

The articles of this covenant were, in sum, as follows: the king and the entire people would worship God according to the prescription of His Law as individuals and would act collectively to protect that worship; that if they did so, God would be with them and preserve their commonwealth. If not, he would despise and abandon them. And this is evident from a great many passages in Scripture. . . .

[Cases from the Old Testament are cited in which kings lost their kingdoms because they broke their oath to God.]

But since the form of the church and the kingdom of the Jews has changed, and what was formerly bounded by Judea has spread throughout the world, we should now consider Christian kings. Just as the Gospels succeeded to the Law, Christian rulers have replaced the Jewish kings. The covenant remains the same; the stipulations are unaltered; and there are the same penalties if these are not fulfilled, as well as the same God, omnipotent, avenging perfidy. And as the Jews were bound to keep the Law, so are Christians to observe the Gospels, and each Christian is sworn to propagation of the Gospels as his first and chief concern. . . .

[Warning is given to contemporary kings who persecute Protestant defenders of the true religion.]

What, then, of heathen kings? Although not anointed by God, they are undoubtedly His vassals, and have received their power from Him alone, whether by lot or any other means. For if by vote, it is God who rules the hearts of men and guides them to the one He wills. And if by lot, it is thrown into the midst, says Solomon, and sorted out by God. It is always by Him only, and by His judgment, that kings are raised up, established, confirmed, and overthrown. For which reason Isaiah calls Cyrus the "anointed of the Lord," and Daniel, also, says that Nebuchadnezzar and the rest received their power from God, which is what [St.] Paul says of any magistrate whatever. For although God did not entrust His Law to them expressly, they acknowledge that they owe their reign to God, the highest king. Hence, if they do not see that the tribute owed to God is paid or, even worse, if they divert and seize what is due God from His proper subjects, or arrogate divine jurisdiction to themselves

in any other way, it is truly a crime of the kingdom so affected, for which God has grievously punished even pagan kings. . . .

[The principle of rendering unto Caesar what is Caesar's and unto God what is God's is restated in several formulations, and additional examples and analogies are given. The principle is then established by citation of authorities, including the First Table of the Law, which is even more sacred than the Second.]

But on this matter, we are not without an express law stated in specific terms. Whenever the Christian apostles enjoin obedience to kings and magistrates, they take special pains to warn us that we must obey God first of all, so they do not provide the slightest ground for that preposterous servility that the sycophants of princes urge upon the simpleminded. "Let every soul," says [St.] Paul, "be subject to the higher powers, for there is no power but of God." (He says "every soul" so that no rank may seek exemption.) These words are enough to make it clear that we are to obey God before the king, that we obey the king because of God and surely not against Him. But wishing to avoid all ambiguity, he adds that the prince is God's minister for our good and to do justly—from which we may again conclude that we are to obey God rather than His minister. But even this, he thought, was not enough. Render, he says, tribute to whom tribute is due; honor, to whom honor is due; reverence, to whom reverence is due; as if to say, with Christ, render unto Caesar what is Caesar's, unto God what is God's. . . .

[Consideration of the first question concludes with further citations of authority, elaborations, and reformulations.]

The Second Question

Is it permissible to resist a prince who violates God's Law and desolates His Church? Who may resist, in what manner, and to what extent?

. . . The question here is whether it is permissible to resist a prince who is a violator of God's Law and is trying either to destroy His Church or to obstruct its propagation. Holy Scripture, if only we accept its verdict, will provide us with an answer. For if, as may readily be shown, the Jewish people taken as a whole were not only so permitted but enjoined, none, I believe, will deny that the same must surely apply to the whole people of a Christian kingdom.

The prime consideration here is that God, in choosing the Jews from all the other nations as His chosen people, made a covenant with them that they would be God's people, which is documented throughout the Book of Deuteronomy. . . . Hence, we see that the whole people was obligated to maintain God's Law, to defend His Church, and thus to drive the idols of the gentiles from the Land of Canaan, which stipulation cannot apply to individuals, but only to the people as a whole. And it is significant, in this respect, that all the tribes encamped around the Ark of the Lord, so that what was entrusted to the care of all all were obliged to protect. . . .

[Examples are given of collective action taken by the Jews to punish violations of God's Law.]

The Covenant Between God and the People

When kings were given to the people, this compact did not lapse but was instead confirmed and constantly renewed. We have said that at the coronation of a king a twofold covenant was made. The first was between God, the king, and the people. (Indeed, the people are put first in *Chronicles* 2:23.) And its purpose was that the people should become God's people,

that is, that they should be God's Church. Why God covenanted with the king we have already shown; why, with the whole people we must now inquire. For its is certain that God did not require this in vain. And it would have been an empty covenant if there were not some authority remaining in the people to make a promise and to keep it. It seems, therefore, that God did what creditors so often do with borrowers of doubtful credit, which is to obligate several for the same amount so that there are two or more co-signers for the single loan, each one of whom may be held responsible for the entire sum as though he were the principal debtor. Since it was dangerous to entrust the Church to a single, all-too-human individual, the Church was committed and entrusted to the people as a whole. The king, situated on a slippery height, could easily have fallen into irreligion. Hence, God wished to have the people intervene, so that the Church might not be ruined with the king.

In the stipulation we are now discussing, God, or the high priest acting as His representative, is the stipulating party; the king and the people as a whole—that is, Israel—are the promissory parties, both being conjointly obligated of their own accord for one and the same thing. The high priest asks the people whether they will promise to become God's people and to assume the obligation of maintaining His Temple and His Church among them, wherein He will be duly worshipped. Then the king gives his promise, and the people give their promise (the corporate body of them here acting as a single individual). And it is clear, from the very wording of their oaths, that these promises are given conjointly, and not separately, at the same and not at different times. The king and Israel, therefore, are established as two co-signers equally obligated for the entire promise. And just as Caius and Titus, who have jointly promised Seius the same stipulated sum of money, are each individually bound by law for the entire sum, and the whole may be demanded of either one of them; so the king, on his part, and the people, on their part, are bound to see that no harm is suffered by the Church. If one of them is negligent, God may demand the whole from either, and from the people sooner

than the king, since many men are less likely to default than one and have more resources. . . . So, if Israel turns away from God and the king does not correct them, the guilt of the people falls on him. Conversely, if the king goes over to false gods and not only goes over but takes others with him and seeks to destroy the Church in every way he can; and if Israel fails to drag him back from this defection, by use of force if necessary, then his guilt falls on them. . . .

[Examination of the Biblical accounts shows that the Covenant did in fact anticipate that kings would be corrected by the people.]

For how can we understand why the consent of the whole people was required, why they were constrained to observe God's Law, and why they gave a solemn promise to be the people of God forever unless we understand that they were also accorded the authority, and the capacity, to defend themselves from perjury and the Church from devastation? Why, in other words, a Covenant with the people to be God's people if they may, and even must, allow themselves to be led by their kings to the worship of strange gods? Why an agreement that God is to be worshipped purely if the people, in the position of slaves, can contract no obligation? And, finally, if the people may not act to discharge their obligation as they promised, why then did God make a solemn Covenant with persons who have no right either to promise or perform? The truth, rather, is that, in making a Covenant with the people, God wished to give us clear-cut evidence that the people had the right, not only of making a Covenant, but also of performing it and of enforcing its performance. For if we agree that contracts made with slaves and servants are ridiculous and will not be noticed by the courts [in civil law], it would be impudent of us to attribute a compact of this sort to God. . . .

[Prophets appealed to the people, or rather the assembled estates of the people, to act against idolatrous kings. Failure of the people to act was punished by God. There are many examples of the punishment of the Israelites for their failure to correct a wicked king.]

It is, furthermore, the part of a good legislator not only to

make sure that delinquencies are punished, but to prevent them from being committed, just as good physicians would rather prescribe diets to prevent disease than remedies for the symptoms. Hence, a religious people not only will restrain a prince in the act of doing violence to God's Law, but will, from the beginning, prevent gradual changes arising from his guilt or negligence, for the true worship of God may be slowly corrupted over extended periods of time. Moreover, they will not only refuse to tolerate crimes committed against God's majesty in public, but will constantly strive to remove all occasions for such crimes. We, thus, read that King Hezekiah, with Israel convened in public assembly, warned those who lived beyond the Jordan to smash the bronze serpent they had made and also the altar they had built for it.

It is, then, not only lawful for Israel to resist a king who overturns the Law and the Church of God, but if they do not do so, they are guilty of the same crime and are subject to the same penalty. Hence, if they are attacked with words, they will resist with words, but if with force, with force, and with strategems, I say, as well as open warfare. For if deception is encountered, they will resort to licit deception of their own. If a war is just, it makes no difference whether one fights in the open or through ruses, as long as trickery is always distinguished carefully from treachery, which is never permissible.

But here an objection is to be anticipated. Do you really mean, it will be said, that the entire multitude, that many-headed monster, should go rushing into matters of this sort like a raging flood? Can order be expected from the mob? Or wisdom for settling affairs?

When we speak of the people collectively, we mean those who receive authority from the people, that is, the magistrates below the king who have been elected by the people or established in some other way. These take the place of the people assembled as a whole and are ephors to kings and associates in their rule. And we also mean the assembly of the Estates, which are nothing less than the epitome of a kingdom to which all public matters are referred. The seventy elders of the kingdom of Israel were magistrates of this sort. They were

originally chosen from the tribes that went into Egypt, six from each, and, with the high priest presiding, they decided all important questions. And there were also the chiefs or heads of the individual tribes, the judges and officials of the several districts, *i.e.*, the captains of the thousands and captains of the hundreds, who presided over groups of families; and finally the nobles and the notables and so on. All of these composed the public council, the meetings of which are very often reported in terms like "the elders were assembled at Raman" as in the election of Saul, or "all Israel," or "all Judah," or "all Benjamin," etc., when it is unlikely that the entire multitude assembled.

In every properly constituted kingdom, this is the character of the officers of the crown, the peers, the lords, the patricians, the notables, and others chosen by the several estates who, in various combinations, make up the membership of the ordinary or the extraordinary council—the parliament *(parlamentum)*, diet, and other such assemblies, which have different names in different regions. The office of all of these is to see that no harm is suffered either by the commonwealth or by the Church. For although these officers are severally below the king, they are collectively above him. Just as an Ecumenical Council is above the Pope, as was rightly decided at the Councils of Basel and Constance, and just as the cathedral chapter is above the bishop; a corporation, above its representative *(actor)*; a court above its president; and as generally one who receives authority from an aggregate is inferior to the aggregate even if superior to each individual member; so there can be no doubt that Israel, which chose and established its king as a kind of public representative *(actor)*, was superior to Saul, who was established at Israel's initiative and for Israel's benefit, as we shall further show below. Since, therefore, good government depends on a degree of order that cannot be maintained in a large multitude, and since affairs of state often cannot be communicated publicly without danger to the common interest, everything that we have maintained was granted and entrusted to the people as a whole applies rather to the officers of the kingdom; and whatever we say is granted and entrusted to Israel refers to its princes and its elders, and this is indicated by the way they act. . . .

[The point is illustrated by the deposition and execution of Athaliah, who, as queen mother, had taken control of the government in violation of a fundamental law of Judah excluding women from the throne, and who had also governed tyrannically. Punishment was at the hand of Jehoiada, the high priest, who had rallied certain notables.]

She [Athaliah] was therefore justly punished—and by one who was acting in accordance with his office. For Jehoiada was not a private subject but the high priest, whose jurisdiction extended to civil matters also. Furthermore, he had all the princes of Judah and the Levites on his side and was himself related to the [infant] king. Although he did not summon the customary assembly at Mizpah, he was not criticized for this; nor was he criticized for planning and conspiring in secret. A conspiracy is good or bad as its aim is good or bad, and as those involved in it are good or not. The princes of Judah were, therefore, right in proceeding as they did and would have been wrong if they had acted otherwise. For just as a guardian must look to the welfare of his ward and is subject to legal action for neglect, so these officials must protect the safety of the people, which has put itself in their collective care and stewardship, and which has, in a sense, given them all of its own power of initiative.

Thus, as a whole people is permitted to oppose a tyrant, so also are the principal persons of the kingdom, who represent the body of the people, in the same manner that municipal officials may make contracts for the good of the entire corporation. And as the decisions of the majority of a corporation publicly arrived at are taken as the decisions of the entire body, so the action of the majority of princes and notables is taken to be that of all of them, and what all of them have done is regarded as an act of the people as a whole.

May a Part of the Kingdom Resist?

But here we face another question. Let us suppose that a king is aiming to abolish the Law of God and His Church, and that the people generally, or a clear majority, has consented, and that all the principal persons, or the greater part of them,

have failed to act against the tyrant. Now let us also suppose that a very small part of the people, and just one of the principal persons and magistrates, wish to maintain and preserve God's Law and worship God correctly. What may they do if the king should try to force that part of the people to practice idolatry or to keep them from true worship?

Now we are not speaking here of private individuals, who are not to be regarded as the basic parts of a community any more than planks, nails, and pegs are taken as the parts of a ship; or stones, beams, and mortar as the parts of a house. We are speaking rather of a province or a town, which is a part of the kingdom in the same way the prow, deck, and rudder are the parts of a ship, or the roof, walls, and foundation are the parts of a house. And we are also speaking of the magistrate who is in charge of that province or town. . . .

[The revolt of Libnah against Jehoram, of the Maccabees against Antiochus, and of Deborah against Jagin, the king of the Canaanites, are cited as cases in which parts of Israel repudiated a ruler in the name of religion.]

We have already said that the king took an oath to maintain the Law of God as far he was able, and that Israel as a whole, taken as a single entity, likewise gave its promise to observe God's stipulations. We now say that each of the towns that form part of the kingdom, and also the magistrates of each, have individually and expressly sworn to do the same insofar as they were directly affected. And this is a rule that all Christian cities and communities have tacitly observed. . . .

[The Biblical citations that follow are designed to show that the presence in the assembly of the whole people, of the towns and communities, or the magistrates thereof, was taken as implying the responsibility of each. The basic argument is the same as in the following example.]

When an emperor is to be inaugurated in the German Empire, the electors and princes, lay and ecclesiastical, are present either in person or through deputies; as are the prelates, counts, and barons; and, finally, delegates from all the towns of the Empire with special mandates to submit and bind themselves, as well as those they represent, to the Emperor. Hence if some-

one who has recognized the Emperor should now drive him from office and seize his place, the princes and the barons must surely deny this usurper the aids and tributes owed the emperor, unless they would not only connive in his misfortune, but actually conspire with his adversaries, in violation of their faith. But if this be so, do not the people of Strasbourg or of Nuremberg have a perfect right to shut their gates against the outlaw and to keep him out? Indeed, were they not to do so, and were they to give no aid to their Emperor in his distress, could it possibly be said that they fulfilled the faith they pledged? Indeed, the rule [of civil law] is that anyone who does not protect his superior when he is able to do so is as guilty as the attacker. But if this is so (and it is surely plain enough), do not the people of Libnah and of Modin have the same right and duty if God, whom they know they are bound to obey above all, is deserted by the other estates *(ordines)* of the kingdom? What, then, shall we say is the proper course for a town that desires to worship God in purity if a Jehoram or Antiochus should appear, who would suppress worship of the true God and would raise himself above God, and if Israel should cooperate or look the other way? . . .

[The town should not only persist in its worship but, if threatened by the tyrant, should close its gates against him and resist. The towns are not, as some would argue, the king's property. They have individually joined in the covenant with God. Furthermore, it is not the town that rebels, but the king who provokes resistance by rebelling against God. The town will return to obedience as soon as the king desists from his disobedience. The town's action, in shutting its gates, is an act of self-defense that ceases when the threat has passed, and so the Maccabees recognized King Demetrius once he accorded them freedom of worship. In addition, the right of a subdivision to resist is even confirmed by the doctors of the Sorbonne, who legitimized many actions by French kings to protect the French Church against the Pope. The Sorbonnists argued that resistance to Boniface VIII (among others) was not schismatic, since the separation was not from the Church or from the Pope, but from Boniface, and the separation could continue without taint of schism until an honest Pope was named.]

Hence, we may say in summary that a people, acting through the authorities that have the power of the people in them, or through the greater part of these authorities, can and should use force against a prince who commands unholy action or prohibits holy ones. Also, all, or at least the leading citizens, of the several towns, acting under their chief magistrates, may rightfully drive out idolatry from their walls and foster true religion. Furthermore, since the Church is ever one, they may extend its confines, and if they do not do so when they have the power, they are guilty of treason against God.

May Private Persons Resist by Force of Arms?

It only remains to consider the case of private persons. In the first place, individuals in their private capacity are not bound by the Covenant between God and the people as a whole in which it promises to be God's people. For what is owed a corporation is not owed to any single individual, and the debts of a corporation are not owed by any single individual. In the second place, private individuals are not obligated [to resist] by any office. Each individual is bound to serve God in the vocation to which he is called. But private persons have no power, discharge no magistracy, and have no dominion [*imperium*] or right of punishment [*ius gladii*]. And since God did not give the sword to private persons, He does not require them to use it. To private persons it is said: "Put thy sword into its scabbard"; to magistrates, however: "You do not bear the sword in vain." The first are guilty if they draw the sword, the latter bear a heavy burden of guilt for neglect of duty if they do not draw it when the need arises.

What, it will be said, does God not covenant with private individuals as well as with the generality, and with humble men as well as magistrates? Why then circumcision? Why baptism? And why such frequent mention of the Covenant throughout the Bible? All of this is right, but very much beside the point. For just as the subjects of a good prince are all bound to obey no matter what their rank, and yet some, the magistrates, are specially obliged to make sure the rest obey, so all men are bound to serve God, but some, whose rank is higher, take on

an even greater burden in that, if they neglect their duty, they are in some measure responsible for the guilt of all the others. Kings and magistrates, who have received the sword from the people as a whole, should make sure that the general body of the Church is rightly governed; private individuals, that they are members of the Church. The former must see that the Temple of God is not ruined or polluted and is safe against corruption from within and damage from without; the latter, that their own body, which is God's Temple, is not impure and is fit for the dwelling of God's Spirit. "Whosoever shall destroy God's Temple, which you are," says [St.] Paul, "him-shall God destroy." For this reason, the authorities are armed with the visible sword. To private persons, only the sword of the spirit is commended. And this is the Word of God, with which [St.] Paul arms all Christians against the onslaught of the devil.

But what may private subjects do if the king would drive them to idolatry? If the leading men, who hold authority from the people as a whole, or else the local magistrates, should intervene, private persons should obey and follow and use all their energy and zeal as soldiers on the side of God to support these holy enterprises. And as one example among many, they may take the unhesitating obedience of the officers and soldiers to the princes of Judah, who, at Jehoiada's urging, saved the kingdom from the tyranny of Athaliah. But if the notables and magistrates go on doing honor to a maddened king or simply initiate no effort to resist him, private persons should follow the advice of Christ and go to another city. An example for them is the faithful of the ten tribes of Israel, who went to the kingdom of Judah, where the worship of the true God continued, after it had been suppressed in Israel by Jeroboam with the connivance of the other authorities. And if they cannot flee, they should rather give up life than God and rather be crucified themselves than again crucify Christ, as the Apostle says. . . .

[The resistance of Moses against Pharaoh, of Ehud against Eglon, and of Jehu against Jehoram were not, as they might perhaps appear, the deeds of private individuals. Since all of them were specially called by God, they possessed an authority

surpassing even that of magistrates. At least in principle, therefore, private persons may initiate resistance if they are specially summoned for that purpose.]

But where God has not spoken with His own mouth or through His prophets in extraordinary fashion, we must be extremely circumspect and sober. Let any man who would assume a responsibility like that, as though he felt the inspiration of God's Spirit, make sure that it is not his own arrogance that swells within him, that he does not confuse himself with God, that these great inspirations of his are not creations of his own, and that he does not, therefore, conceive vanities and beget lies. And let the people be sure that, in hastening to enlist under the banners of Christ, they are not enrolling with some Theudas of Galilee or Bar-Kochba—and bring evil on themselves (which is what happened to the inhabitants of Münster not so long ago in Germany). I do not say that the same God who has sent us Pharaohs and Ahabs in this age may not inspire liberators also, in some extraordinary way. For His justice and His mercy are the same in any age. And if we are given no evident external signs, we should at least look for these internal signs through their effects—absence of all ambition, genuine and earnest zeal, conscientiousness, and finally, learning—which indicate a man who will not be led by error to the service of false gods or be driven by the passions of ambition to worship of himself rather than the true God.

May Force Be Used in the Cause of Religion?

But to remove all scruple we must answer those who believe that the Church may not be defended by force or, more probably, would at least have it appear that this is their belief. . . .

[Old Testament examples of resort to arms in defense of religion are advanced. The coming of Christ does not remove the rights of magistrates. There have been, furthermore, many wars by Christians to defend true religion.]

Thus, although the Church is not enlarged by arms, by arms may it justly be defended. Nor are those who died in holy wars any less martyrs than those who suffered on the cross. Indeed, the path of the first would even seem to be the better

one. The merit of the latter is only not to have objected to the death that threatened them. The former knowingly, yet prudently, assumed the risk.

The Turks attempt to spread their doctrine by the force of arms. Whenever they subject a country, they introduce the unholy dogmas of Mohammed, relying upon force exclusively, for in his Koran Mohammed recommends the use of force so highly that he does not shrink from calling it the path to Heaven, although the Turks force no one to convert. But much worse, by far, are those enemies of Christ and true religion, and of the kings they have won over by their spells, who oppose the Gospel's light with flames, the Word of God with blows, and the sword of the Spirit with a battle line of steel, who use threats of torture to herd everyone they can to their unholy rites and are not ashamed to defend what they please to call the faith by faithlessness and to promote belief by endless treacheries.

Defense of true religion, on the contrary, is when pious magistrates and princes fence in and fortify the vine of Christ, where it exists or is to be implanted, against the depredations of wild boars; when they make sure that those converted to the true religion by the preaching of the Word are protected by their shields and guarded by their swords; and when, with wall, trench, and rampart, they fortify God's Temple built of living flesh against the violent onslaughts of the wicked, until it has reached its fullest height.

So much, then, to remove all qualms about our second question. We have shown that the people as a whole, or the officers of the kingdom whom the people have established, or the majority of these, or any one of them, very gravely sin against the Covenant with God if they do not use force against a king who corrupts God's Law or prevents its restoration, in order to confine him to his proper bounds. Residents of towns and provinces, which are the individual parts of a kingdom, are subject to the same penalty if they do not at least drive idolatry beyond their borders, when the ruler seeks to introduce it, and maintain true doctrine by whatever means they can, even if it means seceding temporarily at some point. Private persons,

finally, have no excuse to obey sacrilegious commands. But beyond this they have no right whatsoever to take up arms on their own initiative unless they have clearly received an extraordinary calling. And all of this is evidenced by Holy Scripture.

The Third Question

May a prince who oppresses or devastates a commonwealth be resisted; and to what extent, by whom, in what fashion, and by what principle of law?

[What follows will be approved by proper kings and give offense to tyrants only.]

Kings Are Created by the People

. . . We have already shown that it is God who makes kings, gives kingdoms, and selects rulers. And now we say that it is the people that establishes kings, gives them kingdoms, and approves their selection by its vote. For God willed that every bit of authority held by kings should come from the people, after Him, so that kings would concentrate all their care, energy, and thought upon the people's interests. And kings are not to think that they are of a higher nature than the rest of men and rule as men rule over cattle. Born the same as all the rest of men, they are always to remember that they were raised up from below to their estates, upon all others' shoulders, as it were, so that thereafter the burdens of the commonwealth should fall, for the most part, upon theirs.

In ages past, when the people of Israel asked God for a king, God laid the foundation of their kingdom as we read in *Deuteronomy* 17:14–15. "When," says Moses, "you have come into the land that the Lord thy God has given you to possess, and when you have dwelt in it, you will say, 'Establish a king over me, like the kings of the other peoples living roundabout.'

Then will you establish the king whom thy God will choose for you from amongst thy brethren . . ." Here we see the King's selection attributed to God, his establishment to the people. And this, we read, is exactly how it happened in the actual event. The elders of Israel, who represented the people as a whole (for in this passage and throughout, the term "elders" also includes the captains of the thousands, the captains of the hundreds, the captains of the fifties, the captains of the tens, the judges and officers of all the tribes of Israel, as well as the princes and chiefs of each tribe more especially), met with Samuel at Ramah. And partly because they were tired of Samuel's sons, whose judgments were inequitable, and partly because they believed that their wars would be conducted better, they demanded a king of Samuel. Upon Samuel's request for counsel, God revealed that He had selected Saul to rule the people. And so Samuel anointed Saul. All of this, so far, bears on the selection of a king at the people's request, and it might have seemed sufficient for Samuel to present the people with the king whom God had chosen and to command them to obey. But in order that the king might know that he was established by the people, Samuel called an assembly at Miżpah, and there—as if the entire transaction had to be redone, as if, that is, the choice of Saul had not occurred—the lot was drawn. And it fell on someone from the tribe of Benjamin, and from the family of Matri, and within this family on Saul, whom God had chosen. Then only, with the acclamation of the people as a whole, was Saul considered king. But God also willed that royal status should not be attributed solely to lot. After Saul had given a token of his virtue by liberating Jabesh-Gilead from a siege by the Ammonites, he was confirmed as king in the presence of God by the whole people assembled at Gilgal, even though some of them dissented. We see, then, that the king whom God had chosen, who had been selected from all the rest by lot, became king by the votes of the people. . . .

[The role of the people in confirming David and Solomon is even clearer. The purpose of these elections, it is again pointed out, was less to give the people a choice than to remind rulers of their obligation. Election of kings, furthermore, was

also practiced among the Medes and early Romans, and also by the Romans of the Empire until the custom was broken by the tyrant Nero.]

And since no one is born a king, and no one is a king by nature; and since a king cannot rule without a people, while a people can rule itself without a king, it is clear, beyond all doubt, that the people is prior to the king and that kings were originally established by the people. By adhering to the virtues of their forebears, the sons and relatives of kings sometimes seem to have rendered a kingdom hereditary, and in certain regions the right of free elections almost seems no longer to exist. And yet in all properly constituted kingdoms, the practice still remains inviolate. Children do not properly succeed to the fathers' thrones until they are established, as if *de novo,* by the people. They are not kings by birth, or by inheritance, but become kings only when they have received the office, together with the sceptre and the crown, from those who represent the people's majesty.

In Christian kingdoms now reputed to descend by succession, these traces of election are quite evident. The kings of France, Spain, England, and other countries are normally inaugurated by the estates of the realm—that is, by the peers, patricians, and magnates, who represent the people as a whole and who put the king into possession of the kingdom, as it were. In Germany, the emperors are chosen by the electors, and the king of Poland by the Wojewodowie, or palatines, since in both of these countries the right of election is preserved intact. Furthermore, the cities of a kingdom do not accord an incumbent regal honors until he has been properly inaugurated. And in ancient times the beginning of a reign was dated from the day of coronation, a practice followed very strictly in France. But so that we are not misled by recurrent series of direct successions in these kingdoms, it should be noted that the Estates have often preferred the uncle to the son, the younger brother to the elder—as in France Louis was preferred over his brother, Robert, Count of Evreux; and Henry, the king's brother, over Robert Capet, the surviving son of Henry's older brother. And in France the crown was also transferred from

family to family by the authority of the people—from the Merovingians to the Carolingians and from these to the Capetians.

[Additional evidence of election in early French history is given.]

Thus, at the beginning all kings were elected. And even those who seem today to come to the throne by succession must first be inaugurated by the people. Furthermore, even if a people has customarily chosen its kings from a particular family because of its outstanding merits, that decision is not so unconditional that if the established line degenerates, the people may not select another. Indeed, even the nearest kin of the selected family are not born kings but are made such. At their birth they are considered not kings but rather candidates for kingship.

The People Is Greater than the King

Since kings, then, are created by the people, it seems to follow that the people as a whole is greater than the king. This is an implication of the term itself, since one who is created by another is considered his inferior. Potiphar set Joseph over his family; Nebuchadnezzar set Daniel over his provinces of Babylon; Darius created 180 governors to superintend his kingdom. Masters set up slaves; kings, ministers. And the people sets up a king as a kind of minister to the commonwealth. . . .

[Kings are made for the people, not the people for the king. The people are compared to the owner, the king to the pilot of a ship. The conquests of a king belong not to him but to the people. There can be no king without a people, but a people can exist without a king. A king is powerless if the people do not support him.]

The People as a Whole Is Represented by the Officers of the Kingdom Ordinarily and by the Assembly of the Estates Either Extraordinarily or Annually

Moreover, what we have said of the whole people also applies, as was shown in our second question, to those who lawfully represent the whole people of the kingdom or of a single region, and who are commonly called officers, not of the king, but of the kingdom. Officers of the king are created

kings that are described in the foregoing passage, but the right that kings so often arrogate; not what kings are permitted by their office, but what most of them usurp from wickedness. . . .

[The point is elaborated with further citations. It is argued that, in emphasizing the corruptibility of one man, Samuel was suggesting that the people of Israel should put a bridle on their kings, which, in fact, they did.]

The Covenant, or Compact, Between the King and the People.*

We have already said that the creation of a king involved a double compact. The first, between God, the king, and the people, has been discussed above. The second, between the king and the people, we shall now take up.

When Saul is made king, he accepts a *lex regia*** as the condition of his rule. David at Hebron, in the presence of God—with God, that is, as witness—enters into a covenant with all the elders of Israel, who represented the people as a whole. Joash, too, covenanted with the people of the land in the House of the Lord, with the high priest Jehoiada presiding. We are told, indeed, that a "testimony" was imposed on him, and many interpreters take this to mean the Word of God which, in many passages, is called the "testimony." And Josiah also promises that he will observe the precepts, testimonies, and commandments included in the Book of the Covenant, and he is thus referring to the precepts of religion and justice.

In all the relevant passages, the compact is said to be made with the whole people, or the entire multitude, or all the elders, or all the men of Judah—so that we may understand, even if it were not expressly stated, that not only did the chiefs of the tribes attend, but also the lesser military chiefs and lower magistrates acting in the name of the towns, each of which covenanted of its own right with the king.

This compact created the king. For the people made the king,

**Foedus sive pactum.* Here and throughout *foedus* and *pactum* are used as equivalent. *Foedus* is the favored term where the agreement with God is mentioned. I have most often translated it as "covenant."

**Here used in a general sense as the "fundamental law of a kingdom." Cf. above, note on p. 12.

not the king the people. Therefore, there is no doubt that the people was the stipulator and the king the promiser. And the position of the stipulator is considered stronger under civil law. The people asked, by way of stipulation, whether the king would rule justly and according to the law. He then promised to do so. And the people, finally, replied that they would faithfully obey, as long as his commands were just. Hence, the promise of the king was absolute, that of the people was conditional; and if he does not perform, the people, by the same principle of civil law, are released from any obligation.

By the first covenant, or compact, religious piety becomes an obligation; by the second, justice. In the first the king promises to obey God religiously, in the second, to rule the people justly; in the former, to maintain God's glory, in the latter, to preserve the people's welfare. The condition in the first is: "If you will observe My Law"; the condition in the second is: "If you will render each his own." If the king does not perform the conditions of the first, God is properly the avenger, while the whole people may lawfully punish non-performance of the second.

In all legitimate governments a compact is always to be found. After sacrifices were performed, the Persians made the following covenant with Cyrus: "Do you, Cyrus, promise to support your country with all your might against anyone who wars against the Persians or violates their laws?" After he responds, they said, "We Persians will support you if anyone refuses to obey, as long as your commands are for the defense of the country." Xenophon calls this agreement a *"symmachia,"* that is, a mutual agreement *(confoederationem),* just as Isocrates calls his oration on the duty of subjects toward a prince *Symmachion Logon.* The covenant between the kings of Sparta and the ephors was renewed each month, even though the kings were always from the line of the Hercules. The kings swore that they would rule according to the law; the ephors, that they would maintain the kings in possession of their kingdom if they kept their promise. In the Roman kingdom, similarly, Romulus made a compact with the Senate and the people that the people would make the laws and he would enforce them,

that the people would declare wars and he would conduct them. And even though most Roman emperors came to power more by force and fraud than by lawful procedure, and even though they arrogated every species of power in the name of the *lex regia,** as it is called, it is sufficiently clear from the fragments of that law found in books and in Roman inscriptions that the power which it granted was to protect and administer the commonwealth, not to disrupt and oppress it tyrannically. The good emperors, indeed, avowed that they were bound by law. They accepted their office from the Senate, referred the most important questions to it, and considered it improper to make any great decision until the Senate was consulted.

And if we look at modern kingdoms, we find none deemed worthy of the name in which this kind of compact between the prince and his subjects is not a regular procedure. In the German Empire, not so long ago, the King of the Romans,** who was about to be crowned emperor, used to pledge fealty and homage to the Empire, like a vassal to his lord when the vassal is invested with a fief. And although the form of the oath has been somewhat altered by the Popes, the substance still remains the same. We know, for example, that Charles V of Austria, and his successors, were elected emperors under definite rules and conditions, the sum of which is as follows: that the emperor would maintain established law, that he would not make new ones without consulting the electors, and that he would neither alienate nor mortgage any of the domain belonging to the Empire—all of which articles are expressly enumerated by historians. Further, when an emperor is crowned at Aachen, the Archbishop of Cologne, speaking first as the stipulator, asks, "Will you defend the Church, do justice, and preserve the Empire? And will you make sure that orphans and all others who deserve our pity are protected?" And he is not anointed and does not receive the sword as defender of the Empire or any of the other imperial insignia until he has taken that oath. It is therefore clear enough that the emperor is obligated absolutely, the princes of the Empire, but conditionally.

*See above, note on p. 12.

**The title of the emperor-elect before his coronation.

In the kingdom of Poland the practice is similar, as none will doubt who is familiar with the ritual very recently performed at the election and coronation of Henry of Anjou. Its character was revealed with special clarity when the king's obligation to protect both the Evangelical and the Catholic religions was solemnized, the nobles formally stipulating thrice, and he responding thrice. In Hungary, Bohemia, and so on, the custom is the same, but it would take too long to report the details.

This practice, furthermore, is not confined only to kingdoms where the rule of election has remained intact, since a stipulation of this sort is also a regular procedure even in kingdoms where it is commonly thought that pure succession obtains. When a king of France is inaugurated, the bishops of Laon and Beauvais, as peers of the Church, ask all the people present whether it is their will and pleasure to have the designee as king, and there is, accordingly, a statement in the coronation formula itself that the people have elected him. After the people have indicated their consent, he swears that he will maintain the law and privilege of France and the rights of all men generally, that he will not alienate the domain, and so forth. Interpolations have crept into these articles, and they are now very different from the ancient formula, which is extant in the library of the cathedral chapter at Beauvais, and which, it has been discovered, was used by Philip I. But despite these changes, the main point is eloquently expressed. And the king is not presented the sword, anointed, or crowned by the peers (who are adorned with wreaths themselves); and he does not receive the sceptre or the rod, and is not called "king" until the people have so ordered. Furthermore, the peers do not swear fealty until he has given them his pledge that he will strictly keep the law, *i.e.,* that he will not waste the public patrimony; that he will not, on his own discretion, impose or collect taxes, duties, or subsidies, declare war, or make peace; and, finally, that he will not pass public decrees except in the public council. It is also understood that the Senate, the assembly, and the officers of the kingdom are each to retain its own authority and all other privileges that have customarily been recognized

in the French kingdom. Hence, when the king visits any town or province, he is obliged to confirm its privileges and to bind himself by oath to maintain their law and custom. This particularly applies to Toulouse, Dauphiné, Brittany, and Provence, which have special agreements with the king that do not make sense unless they are considered the equivalents of contracts.

The oath taken by the early kings of Burgundy is still extant word for word. "I will maintain law, justice, and protection for all." In England, Sweden, and Denmark the custom is almost the same as in France. In the kingdom of Aragon a king who is about to be inaugurated pledges fealty and homage to the person who represents the justice of Aragon, or the public majesty, and who is seated on a higher throne. After many ceremonies involving the *justicia* and the king, there is a reading of the laws and conditions that the king is obligated to fulfill, and then, finally, the magnates address the king in the vernacular as follows: "We who are worth as much as you, and can do more than you, elect you king on these and these conditions. Between you and us there is one whose command is more than yours." Moreover, it is their custom to repeat this formula every three years in the public assembly, lest the king should think it perfunctory or regard his oath as a mere gesture toward ancient usage. And if the king, inflated with pride of station, should grow insolent and should break the law despite his oath, then, by that same law, he is declared anathema, just as Julian the Apostate was once declared anathema by the Church. Prayers are then no longer offered for him, but against him, and all persons are released from their fealty and obligation to him, by the same rule under which the vassal of a lord who has been excommunicated has no duty to obey and is no longer bound by his oath.

[There are similar practices in Castile, Portugal, Leon, and other parts of the Iberian peninsula, as well as in Belgium, Austria, Carinthia, and so on. The custom of Brabant is held especially interesting, since there is an express warning to the king that he will be deposed if he does not perform the specified conditions. The general rule, then, is that almost all kings take an oath that formalizes a compact between king and people.]

But even if these ceremonies, these vows, these oaths did not take place, is it not clear, from the very nature of the case, that kings are created by the people on condition that they govern well, just as judges are established on condition that they do justice, and military commanders on condition that they lead their armies against foreign foes? And if kings become oppressors, if they commit injustices, if they become the enemy, they are no longer kings and should not be so regarded by the people. But, you may ask, what if a ruler forcibly compels a people to take an oath in his favor? What, I answer, if a robber, pirate, or tyrant—with whom, it is held, no legal bonds exist—should extort a promise at the point of a sword? Or are you unaware that a pledge elicited by force is void, and especially when the promise is against good custom and the laws of nature? And what is more at war with nature than for a people to promise a prince that it will put chains and fetters on itself, will put its throat beneath the knife, and will do violence to itself (for this is what that promise really means)? Thus, between king and people there exists a mutual obligation which, whether civil or only natural, explicit or tacit, cannot be superseded by any other compact, or violated in the name of any other right, or rescinded by any act of force. So great is its force that a king who breaks it willfully may properly be called a "tyrant," while a people that breaks it may be properly called "seditious."

The Nature of Tyranny

Now that we have described a king, let us continue with a more detailed description of a tyrant. A king, we have said, is someone who has obtained the kingdom in due form, either by descent or by election, and who rules and governs in accordance with the law. Since a tyrant is the opposite of a king, it follows either that he has seized authority by force or fraud, or that he is a king who rules a kingdom freely given him in a manner contrary to equity and justice and persists in that misrule in violation of the laws and compacts to which he took a solemn oath. A single person can, of course, be both of these at once. The former is commonly called a "tyrant without

title" *(tyrannus absque titulo),* the latter, "a tyrant by conduct" *(tyrannus exercitio).* But it sometimes happens that a kingdom occupied by force is governed justly; a kingdom legally conveyed, unjustly. And since justice is here more important than inheritance, and performance more important than title to possession, it appears that a ruler who performs his office badly is more properly a tyrant than one who did not receive his office in due form. Similarly, a Pope who enters office illegally is called an "intruder," one who governs badly, an "abuser." . . .

[The last point is illustrated by further analogies. The usurper *(tyrannus absque titulo)* who governs well is to be preferred to the tyrant-king. Usurpers are subdivided into foreign conquerors; elective kings who illegally make their crown hereditary; generals who turn their arms against their own country; women who have themselves made queen or regent in countries where women are legally excluded from the throne; and high officials who gradually accumulate powers under indolent kings. In this presentation the ungrateful general and the ambitious woman are treated with special revulsion.

The tyrant-king *(tyrannus exercitio)* is described at length, with all of the traditional commonplaces. The tyrant by conduct is self-willed, is devious, lops off the taller stalks of corn, pretends that there are conspiracies against him, shows no respect for princes of the blood, advances low and vicious men, is suspicious of wise and virtuous men, fears public assemblies of any sort, encourages factions among his subjects to weaken them, uses foreign mercenaries, disarms his own countrymen, surrounds himself with bodyguards, foments foreign wars to distract the people, imposes oppressive taxes to keep his subjects impoverished, wastes the public revenue on his favorites, counterfeits religion and concern for the public welfare, and gives the appearance of virtue by deceit. The description of the tyrant-king then concludes as follows:]

Furthermore, as a well-constituted kingdom contains all the advantages of the other good regimes, tyranny contains all the evils of the bad ones. A kingdom resembles aristocracy in that the best men are invited to the royal council, whereas tyranny resembles oligarchy in inviting the worst and most

corrupt. If the council of the first is like a gathering of kings, that of the second is a gang of tyrants. A kingdom also resembles constitutional democracy *(politia)* in that there is an assembly of all the orders to which the best men are sent as deputies to deliberate the affairs of the commonwealth. Tyranny resembles lawless democracy, or mob-rule *(democratia seu ochlocratia),* because, insofar as it cannot prevent assemblies, it bends every effort, uses every device of electioneering and deception, to insure that the worst of men are sent to them. Thus does the tyrant affect the posture of a king, and tyranny, the appearance of a kingdom. The shrewder it is at this, the longer it is able to survive. For, as Aristotle says, we scarcely read of any tyranny that has endured a hundred years.

In sum, a king promotes the public interest, a tyrant seeks his own. But since men are only human, no king can have the public interest in view on every question, and no tyrant can exist for long who seeks his own advantage in all respects whatever. Therefore, if the public interest is generally uppermost we may speak of a king and of a kingdom, and if the ruler's interest generally predominates, we speak of a tyrant and a tyranny. . . .

The Obligation to Resist a Tyrant Without a Title

The next question is whether a tyrant may be lawfully resisted and, if so, by whom and by what means. And we shall begin by considering tyranny without title, as it is commonly called. Suppose, then, that a Ninus invades a people over which he has no legal claim and which has not done him any injury; or that a Ceasar subjugates the Roman Republic, his fatherland; or that a Popelus uses murder and deceit in an attempt to make the kingdom of Poland hereditary rather than elective; or that a Bruenhilde takes over the entire government of France for herself and her Protadius; or that an Ebroinus, encouraged by Theodoric's negligence, seizes the governorships of the kingdom and enslaves the people. What is the law in all these cases?

In the first place, nature instructs us to defend our lives and also our liberty, without which life is hardly life at all. If this

A

DISCOURSE

CONCERNING

Unlimited Submiſſion

AND

Non-Reſiſtance

TO THE

HIGHER POWERS:

With ſome REFLECTIONS on the RESISTANCE made to

King CHARLES I.

AND ON THE

Anniverſary of his Death:

In which the MYSTERIOUS Doctrine of that Prince's Saintſhip and Martyrdom is UNRIDDLED:

The Subſtance of which was delivered in a SERMON preached in the Weſt Meeting-Houſe in *Boſton* the LORD'S-DAY after the 30th of *January*, 1749 | 50.

Publiſhed at the Requeſt of the Hearers.

By JONATHAN MAYHEW, A.M.

Paſtor of the Weſt Church in *Boſton.*

Fear GOD, honor the King. Saint PAUL.

He that ruleth over Men, muſt be juſt, ruling in the Fear of GOD. Prophet SAMUEL.

I have said, ye are Gods—but ye ſhall die like Men, and fall like one of the PRINCES. King DAVID.

Quid memorem infandas cædes? quid facta TYRANNI
Effera? Dii CAPITI ipſius GENERIQUE reſervent—
Necnon Threïcius *longa cum veſte* SACERDOS
Obloquitur— *Rom. Vat. Prin.*

BOSTON, Printed and Sold by D. FOWLE in Queen-street; and by D. GOOKIN over-against the South-Meeting-House. 1750.

"And here is a plain reason also why ye should pay tribute to them; for they are God's ministers; exalted above the common level of mankind, not that they may indulge themselves in softness and luxury, and be entitled to the servile homage of their fellow men; but that they may execute an office no less laborious than honourable; and attend continually upon the public welfare. This being their business and duty, it is but reasonable, that they should be requited for their care and

diligence in performing it; and enabled, by taxes levied upon the subject, effectually to prosecute the great end of their institution, the good of society. "The apostle sums all up in the following words—*Render therefore to all their dues: tribute,* * *to whom tribute is due; custom,* * *to whom custom; fear, to whom fear; honour, to whom honour,* ver. 7. q. d. "Let it not, therefore, be said of any of you hereafter, that you contemn government, to the reproach of yourselves, and of the *christian* religion. Neither your being *jews* by nation, nor your becoming the subjects of Christ's kingdom, gives you any dispensation for making disturbances in the government under which you live. Approve yourselves, therefore, as peaceable and dutiful subjects. Be ready to pay to your rulers all that they may, in respect of their office, justly demand of you. Render tribute and custom to those of your governors to whom tribute and custom belong: And chearfully honor and reverence all who are vested with civil authority, according to their deserts."

THE apostle's doctrine, in the passage thus explained, concerning the office of civil rulers, and the duty of subjects, may be summed up in the following

** *Grotius* observes that the greek words here used, answer to the *tributum* and *vectigal* of the Romans; the former was the money paid for the soil and poll; the latter, the duties laid upon some sorts of merchandize. And what the apostle here says, deserves to be seriously considered by all christians concerned in that common practice of carrying on an *illicit trade,* and *running of goods.*

observations; * viz. That the end of magistracy is the good of civil society, *as such*:

THAT civil rulers, as such, are the ordinance and ministers of God; it being by his permission and providence that any bear rule; and agreeable to his will, that there should be some persons vested with authority in society, for the well-being of it: That which is here said concerning civil rulers, extends to all of them in common: it relates indifferently to monarchical, republican and aristocratical government.; and to all other forms which truly answer the sole end of government, the happiness of society; and to all the different degrees of authority in any particular state; to inferior officers no less than to the supreme:

THAT disobedience to civil rulers in the due exercise of their authority; is not merely a *political sin*, but an heinous *offence against God* and *religion*:

THAT the true ground and reason † of our obligation to be subject to the *higher powers*, is the usefulness

* The several observations here only mentioned, were handled at large in two preceeding discourses upon this subject.

† Some suppose the apostle in this passage inforces the duty of submission, with *two* arguments quite distinct from each other; one taken from this consideration, that rulers are the ordinance, and the ministers of God, (ver. 1. 2. and 4.) and the other, from the benefits that accrue to society, from civil government, (ver. 3, 4, and 6.) And indeed these may be distinct motives and arguments for submission, as they may be separately viewed and contemplated. But when we consider that rulets are not the ordinance and the ministers of God, but only so far forth as they perform God's will, by acting up to their

of magistracy (when properly exercised) to human society, and its subserviency to the general welfare :

THAT obedience to civil rulers is here equally required under all forms of government, which answer the sole end of all government, the good of society ; and to every degree of authority in any state, whether supreme or subordinate :

(From whence it follows,

THAT if unlimited obedience and non-resistance, be here required as a duty under anyone form of government, it is also required as a duty under all other forms ; and as a duty to subordinate rulers as well as to the supreme.)

AND lastly, that those civil rulers to whom the apostle injoins subjection, are the persons *in possession* ;

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office and character, and so by being benefactors to society, this makes these arguments coincide, and run up into *one* at last : At least so far, that the former of them cannot hold good for submission, where the latter fails. Put the supposition, that any man bearing the title of a magistrate, should exercise his power in such a manner as to have no claim to obedience by virtue of that argument which is founded upon the usefulness of magistracy ; and you equally take off the force of the other argument also, which is founded upon his being the ordinance and the minister of God. For he is no longer God's ordinance and minister, than he acts up to his office and character, by exercising his power for the good of society—This is, in brief, the reason why it is said above, in the *singular* number, *that the true ground and reason*, &c. The use and propriety of this remark may possibly be more apparent in the progress of the argument concerning resistance.

the powers that be; those who are *actually* vested with authority. †

THERE is one very important and interesting point which remains to be inquired into; namely, the *extent* of that subjection *to the higher powers,* which is here enjoined as a duty upon all christians. Some have thought it warrantable and glorious, to disobey the civil powers in certain circumstances; and, in cases of very great and general oppression, when humble remonstrances fail of having any effect; and when the publick welfare cannot be otherwise provided for and secured, to rise unanimously even against the sovereign himself, in order to redress their grievances; to vindicate their natural and legal rights: to break the yoke of tyranny, and free themselves and posterity from inglorious servitude and ruin. It is upon this principle that many royal oppressors have been driven from their thrones ihto banishment; and many slain by the hands of their subjects. It

† This must be understood with this *proviso,* that they do not grosly *abuse* their power and trust, but exercise it for the good of those that are governed. Who these persons were, whether *Nero,* &c. or not, the apostle does not say; but leaves it to be determined by those to whom he writes. God does not interpose, in a miraculous way, to point out the persons who shall bear rule, and to whom subjection is due. And as to the unalienable, indefeasible right of *primogeniture,* the scriptures are intirely silent: or rather plainly contradict it: *Saul* being the first king among the *Israelites*; and appointed to the royal dignity, during his own father's life-time: and he was succeeded, or rather superseded, by *David, the last born among many brethren*—Now if *God* has not invariably determined this matter, it. must, of course, be determined by *men.* And if it be determined by *men,* it must be determined either in the way of *force,* or of *compact.* And which of these is the most *equitable,* can be no question.

was upon this principle that. *Tarquin* was expelled from *Rome*; and *Julius Cesar,* the conqueror of the world, and the tyrant of his country, cut off in the senate house. It was upon this principle, that king *Charles* I, was beheaded before his own banqueting house. It was upon this principle, that king *James* II. was made to fly that country which he aim'd at enslaving: And upon this principle was that revolution brought about, which has been so fruitful of happy consequences to *Great-Britain.* But, in opposition to this principle, it. has often been asserted, that the scripture in general (and the passage under consideration in particular) makes all resistance to princes a crime, in any case whatever—If they turn tyrants, and become the common oppressors of those, whose welfare they ought to regard with a paternal affection, we must not pretend to right ourselves, unless it be by prayers and tears and humble intreaties: And if these methods fail of procuring redress, we must not have recourse to any other, but all suffer ourselves to be robbed and butchered at the pleasure of the *Lord's anointed*; lest we should incur the sin of rebellion, and the punishment of damnation. For he has God's authority and commission to bear him out in the worst of crimes, so far that he may not be withstood or controuled. Now whether we are obliged to yield such an absolute submission to our prince; or whether disobedience and resistance may not be justifiable in some cases, notwithstanding any thing in the passage before us, is an inquiry in which we are all concerned; and this is the inquiry which is the main design of the present discourse.

If it be said, that the apostle here uses another argument for submission to the *higher powers,* besides that which is taken from the usefulness of their office to civil society, when properly discharged and executed; namely, that their *power is from God*; that they *are ordained of God*; and that they *are God's ministers*: And if it be said, that this argument for submission to them will hold good, although they do not exercise their power for the benefit, but for the ruin, and destruction of human society; this objection was obviated, in part, before. † Rulers have no authority from God to do mischief. They are not *God's ordinance,* or *God's ministers,* in any other sense than as it is by his permission and providence, that they are exalted to bear rule; and as magistracy duly exercised, and authority rightly applied, in the enacting and executing good laws,—laws attempered and accommodated to the common welfare of the subjects, must be supposed to be agreeable to the will of the beneficent author and supreme Lord of the universe; whose *kingdom ruleth over all*; *

† See the margin, page 10, note †. * Psal. ciii. 19.

and whose *tender mercies are over all his works.* † It is blasphemy to call tyrants and oppressors, *God's ministers.* They are more properly *the messengers of satan to buffet us.* * No rulers are properly *God's ministers,* but such as are *just, ruling in the fear of God.* || When once magistrates act contrary to their office, and the end of their institution ; when they rob and ruin the public, instead of being guardians of its peace and welfare ; they immediately cease to be the *ordinance* and *ministers of God* ; and no more deserve that glorious character than common *pirates* and *highwaymen.* So that whenever that argument for submission, fails, which is grounded upon the usefulness of magistracy to civil society, (as it always does when magistrates do hurt to society instead of good) the other argument, which is taken from their being the ordinance of God, must necessarily fail also ; no person of a civil character being *God's minister,* in the sense of the apostle, any farther than he performs God's will, by exercising a just and reasonable authority ; and ruling for the good of the subject.

THIS in general. Let us now trace the apostle's reasoning in favor of submission to the higher powers, a little more particularly and exactly. For by this it will appear, on one hand, how good and conclusive itis, for submission to those rulers who exercise their power in a proper manner : And, on the other, how weak and trifling and inconnected it is, if it be supposed to be meant by the apostle to show the obligation and duty

† Psal. cxlv. 19. * 2 Cor. xii. 7. || 2 Sam. xxiii. 3.

of obedience to tyrannical, oppressive rulers in common with others of a different character.

THE apostle enters upon his subject thus—*Let every soul be subject unto the higher powers; for there is no power but of God: the powers that be, are ordained of God.** Here he urges the duty of obedience from this topic of argument, that civil rulers, as they are supposed to fulfil the pleasure of God, are the ordinance of God. But how is this an argument for obedience to such rulers as do not perform the pleasure of God, by doing good; but the pleasure of the devil, by doing evil; and such as are not, therefore, *God's ministers,* but the devil's! *Whosoever, therefore, resisteth the power, resisteth the ordinance of God; and they that resist, shall receive to themselves damnation.*† Here the apostle argues, that those who resist a reasonable and just authority, which is agreeable to the will of God, do really resist the will of God himself; and will, therefore, be punished by him. But how does this prove, that those who resist a lawless, unreasonable power, which is contrary to the will of God, do therein resist the will and ordinance of God? Is resisting those who resist God's will, the same thing with resisting God? Or shall those who do so, *receive to themselves damnation! For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good; and thou shalt have praise of the same. For he is the minister of God to thee for good.*‡ Here the apostle argues more explicitly than he had before done, for rev-

* Ver. 1. † Ver. 2. ‡ Ver. 3d. and part of the 4th.

ereing, and submitting to, magistracy, from this consideration, that such as really performed the duty of magistrates, would be enemies only to the evil actions of men, and would befriend and encourage the good; and so be a common blessing to society. But how is this an argument, that we must honor, and submit to, such magistrates as are not enemies to the evil actions of men; but to the good; and such as are not a common blessing, but a common curse, to society! *But if thou do that which is evil, be afraid: For he is the minister of God, a revenger, to execute wrath upon him that doth evil.* † Here the apostle argues from the nature and end of magistracy, that such as did evil, (and such only) had reason to be afraid of the *higher powers*; it being part of their office to punish evil-doers, no less than to defend and encourage such as do well. But if magistrates are unrighteous; if they are *respecters of persons*; if they are partial in their administration of justice; then those who do well have as much reason to *be afraid,* as those that do evil: there can be no safety for the good, nor any peculiar ground of terror to the unruly and injurious. So that, in this case, the main end of civil government will be frustrated. And what reason is there for submitting to that government, which does by no means answer the design of government? *Wherefore ye must needs be subject not only for wrath, but also for conscience sake.* * Here the apostle argues the duty of a chearful and conscientious submission to civil government,

† Ver. 4th. latter part. * Ver. 5.

from the nature and end of magistracy as he had before laid it down, i. e. as the design of it was to punish evil doers, and to support and encourage such as do well; and as it must, if so exercised, be agreeable to the will of God. But how does what he here says, prove the duty of a chearful and conscientious subjection to those who forfeit the character of rulers? to those who encourage the bad, and discourage the good? The argument here used no more proves it to be a sin to resist such rulers, than it does, to *resist the devil,* that he may *flee from us.* * For one is as truly the *minister of God* as the other. *For, for this cause pay you tribute also; for they are God's ministers, attending continually upon this very thing.* † Here the apostle argues the duty of paying taxes, from this consideration, that those who perform the duty of rulers, are continually attending upon the public welfare. But how does this argument conclude for paying taxes to such princes as are continually endeavouring to ruin the public? And especially when such payment would facilitate and promote this wicked design! *Render therefore to all their dues; tribute, to whom tribute is due; custom, to whom custom; fear, to whom fear, honor, to whom honor.* ‖ Here the apostle sums up what he had been saying concerning the duty of subjects to rulers. And his argument stands thus—"Since magistrates who execute their office well, are common benefactors to society; and may, in that respect, be properly stiled *the ministers and ordinance of God*; and since they are con-

* James iv. 7. † Ver. 6. ‖ Ver. 7.

stantly employed in the service of the public; it becomes you to pay them tribute and custom; and to reverence, honor, and submit to, them in the execution of their respective offices." This is apparently good reasoning. But does this argument conclude for the duty of paying tribute, custom, reverence, honor and obedience, to such persons as (although they bear the title of rulers) use all their power to hurt and injure the public? such as are not *God's ministers,* but *satan's?* such as do not take care of, and attend upon, the public interest, but their own, to the ruin of the public? that is, in short, to such as have no natural and just claim at all to tribute, custom, reverence, honor and obedience? It is to be hoped that those who have any regard to the apostle's character as an inspired writer, or even as a man of common understanding, will not represent him as reasoning in such a loose incoherent manner; and drawing conclusions which have not the least relation to his premises. For what can be more absurd than an argument thus framed? "Rulers are, by their office, bound to consult the public welfare and the good of society: therefore you are bound to pay them tribute, to honor, and to submit to them, even when they destroy the public welfare, and area common pest to society, by acting in direct contradiction to the nature and end of their office."

THUS, upon a careful review of the apostle's reasoning in this passage, it appears that his arguments to enforce submission, are of such a nature, as to conclude only in favour of submission *to such rulers as he himself de-*

scribes; i. e. such as rule for the good of society, which is the only end of their institution. Common tyrants, and public oppressors, are not intitled to obedience from their subjects, by virtue of any thing here laid down by the inspired apostle.

I NOW add, farther, that the apostle's argument is so far from proving it to be the duty of people to obey, and submit to, such rulers as act in contradiction to the public good, † and so to the design of their office, that it proves *the direct contrary.* For, please to observe, that if the end of all civil government, be the good of society; if this be the thing that is aimed at in constituting civil rulers; and if the motive and argument for submission to government, be taken from the apparent usefulness of civil authority; it follows, that when no such good end can be answered by submission, there remains no argument or motive to enforce it; and if instead of this good end's being brought about by submission, a *contrary end* is brought about, and the ruin and misery of society effected by it, here is a plain and positive reason against submission in all such cases, should they ever happen. And therefore, in such cases, a regard to the public welfare, ought to make us withhold from our rulers, that obedience and subjection which it would, otherwise, be our duty to render to them. If it be our duty, for example, to obey our king,

† This does not intend, their acting so in *a few particular instances,* which the best of rulers may do through mistake, &c. but their acting so *habitually*; and in a manner which plainly shows, that they aim at making themselves great, by the ruin of their subjects.

merely for this reason, that he rules for the public welfare, (which is the only argument the apostle makes use of) it follows, by a parity of reason, that when he turns tyrant, and makes his subjects his prey to devour and to destroy, instead of his charge to defend and cherish, we are bound to throw offour allegiance to him, and to resist; and that according to the tenor of the apostle's argument in this passage. Not to discontinue our allegiance, in this case, would be to join with the sovereign in promoting the slavery and misery of that society, the welfare of which, we ourselves, as well as our sovereign, are indispensably obliged to secure and promote, as far as in us lies. It is true the apostle puts no case of such a tyrannical prince; but by his grounding his argument for submission wholly upon the good of civil society; it is plain he implicitly authorises, and even requires us to make resistance, whenever this shall be necessary to the public safety and happiness. Let me make use of this easy and familiar *similitude* to illustrate the point in hand—Suppose God requires a family of children, to obey their father and not to resist him; and inforces his command with this argument; that the superintendence and care and authority of a just and kind parent, will contribute to the happiness of the whole family; so that they ought to obey him for their own sakes more than for his: Suppose this parent at length runs distracted, and attempts, in his mad fit, to cut all his children's throats: Now, in this case, is not the reason before assigned, why these children should obey their parent while he continued of a sound mind, namely,

their common good, a reason equally conclusive for disobeying and resisting him, since he is become delirious, and attempts their ruin? It makes no alteration in the argument, whether this parent, properly speaking, loses his reason; or does, while he retains his understanding, that which is as fatal in its consequences, as any thing he could do, were he really deprived of it. This similitude needs no formal application—

BUT it ought to be remembred, that if the duty of universal obedience and non-resistance to our king or prince, can be argued from this passage, the same unlimited submission under a republican, or any other form of government; and even to all the subordinate powers in any particular state, can be proved by it as well: which is more than those who alledge it for the mentioned purpose, would be willing should be inferred from it. So that this passage does not answer their purpose; but really overthrows and confutes it. This matter deserves to be more particularly considered.—The advocates for unlimited submission and passive obedience, do, if I mistake not, always speak with reference to kingly or monarchical government, as distinguished from all other forms; and, with reference to submitting to the will of the king, in distinction from all subordinate officers, acting beyond their commission, and the authority which they have received from the crown. It is not pretended that any persons besides kings, have a divine right to do what they please, so that no one may resist them, without incurring the guilt of factiousness and rebellion. If any

other supreme powers oppress the people, it is generally allowed, that the people may get redress, by resistance, if other methods prove ineffectual, And if any officers in a kingly government, go beyond the limits of that power which they have derived from the crown, (the supposed original source of all power and authority in the state) and attempt, illegally, to take away the properties and lives of their fellow-subjects, they may be *forcibly* resisted, at least till application can be made to the crown. But as to the sovereign himself, he may not be resisted in any case; nor any of his officers, while they confine themselves within the bounds which he has prescribed to them. This is, I think, a true sketch of the principles of those who defend the doctrine of passive obedience and non-resistance. Now there is nothing in scripture which supports this scheme of political principles. As to the passage under consideration, the apostle here speaks of civil rulers in *general*; of all persons in *common*, vested with authority for the good of society, without any particular reference to one form of government, more than to another; or to the supreme power in any particular state, more than to subordinate powers. The apostle does not concern himself with the different forms of government. † This he supposes left intirely to hu-

* The essence of government (I mean *good* government; and this is the *only* government which the apostle treats of in this passage) consists in the *making* and *executing of good laws*—laws attempered to the common felicity of the *governed*. And if this be, *in fact*, done, it is evidently, in it self, a thing of no consequence at all, what the particular form of government is;—whether the legislative and executive power be lodged in *one and the same* person, or in *different* persons;—whether in one

man prudence and discretion. Now the consequence of this is, that unlimited and passive obedience is no more enjoined in this passage, under monarchical government; or to the supreme power in any state, than under all other species of government, which answer the end of government; or, to all the subordinate degrees of civil authority, from the highest to the lowest. Those, therefore, who would from this passage infer the guilt of resisting kings, in all cases whatever, though acting ever so contrary to the design of their office, must, if they will be consistent, go much farther, and infer from it the guilt of resistance under all other forms of government; and of resisting *any petty officer* in the state, tho' acting beyond his commission, in the most arbitrary, illegal manner possible. The argument holds equally strong in both cases. All civil rulers, as such, are the *ordinance* and *ministers of God*; and they are all, by the nature of their office, and in their respective spheres and stations, botlnd to consult the public welfare. With the same reason therefore, that any deny unlimited and passive obedience to be here

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person, whom we call an *absolute monarch*;—whether in a *few*, so as to constitute an *aristrocrasy*;—whether in *many*, so as to constitute a *republic*; or whether in *three coordinate branches*, in such manner as to make the government *partake* something of *each* of these forms; and to be, at the same time, *essentially different* from them *all*. If the *end* be attained, it is enough. But no form of government seems to be so unlikely to accomplish this *end*, as *absolute monarchy*.—Nor is there any one that has solittle pretence to a *divine original*, unless it be in this sense, that God *first* introduced it into, and thereby overturned, the common wealth of *Israel*, as a *curse* upon that people for their *folly* and *wickedness*, particularly in *desiring* such a government. (See 1 *Sam.* viii. chap.) Just so God, before, sent *Quails* amongst them, as a *plague*, and a *curse*, and not as a *blessing*. *Numb.* chap. xi.

injoined under a republic or aristocrasy, or any other established form of civil government; or to subordinate powers, acting in an illegal and oppressive manner; (with the same reason) others may deny, that such obedience is enjoined to a king or monarch, or any civil power whatever. For the apostle says nothing that is *peculiar to kings*; what he says, extends equally to *all* other persons whatever, vested with any civil office. They are all, in exactly the same sense, the *ordinance of God*; and the *ministers of God*; and obedience is equally enjoined to be paid to them all. For, as the apostle expresses it, *there is* NO POWER *but of God*: And we are required to *render to* ALL *their* DUES; and not MORE than their DUES. And what these *dues* are, and to whom they are to be *rendered,* the apostle *sayeth not*; but leaves to the reason and consciences of men to determine.

THUS it appears, that the common argument, grounded upon this passage, in favor of universal, and passive obedience, really overthrows itself, by proving too much, if it proves any thing at all; namely, that no civil officer is, in any case whatever, to be resisted, though acting in express contradiction to the design of his office; which no man, in his senses, ever did, or can assert.

IF we calmly consider the nature of the thing itself, nothing can well be imagined more directly contrary to common sense, than to suppose that *millions* of people should be subjected to the arbitrary, precarious pleasure of *one single man*; (who has *naturally* no superiority over them in point of authority) so that their es-

tates, and every thing that is valuable in life, and even their lives also, shall be absolutely at his disposal, if he happens to be wanton and capricious enough to demand them. What unprejudiced man can think, that God made ALL to be thus subservient to the lawless pleasure and phrenzy of ONE, so that it shall always be a sin to resist him! Nothing but the most plain and express revelation from heaven could make a sober impartial man believe such a monstrous, unaccountable doctrine, and indeed, the thing itself, appears so shocking—so out of all *proportion,* that it may be questioned, whether all the *miracles* that ever were wrought, could make it credible, that this doctrine *really* came from God. At present, there is not the least syllable in scripture which gives any countenance to it. The hereditary, indefeasible, divine right of kings., and the doctrine of non-resistance, which is built upon the supposition of such a right, are altogether as fabulous and chimerical, as transubstantiation; or any of the most absurd reveries of ancient or modern visionaries. These notions are fetched neither from divine revelation, nor human reason; and if they are derived from neither of those sources, it is not much matter from *whence they come, or whither they go.* Only it is a pity that such doctrines should be propagated in society, to raise factions and rebellions, as we see they have, in fact, been both in the *last,* and in the *present,* REIGN.

But then, if unlimited submission and passive obedience to the *higher powers,* in all possible cases, be not a duty, it will be asked, "How far are we obliged to sub-

mit? If we may innocently disobey and resist in some cases, why not in all? Where shall we stop? What is the measure of our duty? This doctrine tends to the total dissolution of civil government; and to introduce such scenes of wild anarchy and confusion, as are more fatal to society than the worst of tyranny."

AFTER this manner, some men object; and, indeed, this is the most plausible thing that can be said in favor of such an absolute submission as they plead for. But the worst (or rather the best) of it, is, that there is very little strength or solidity in it. For similar difficulties maybe raised with respect to almost every duty of natural and revealed religion.—To instance only in two, both of which are near akin, and indeed exactly parallel, to the case before us. It is unquestionably the duty of children to submit to their parents; and of servants, to their masters. But no one asserts, that it is their duty to obey, and submit to them, in all supposeable cases; or universally a sin to resist them. Now does this tend to subvert the just authority of parents and masters? Or to introduce confusion and anarchy into private families? No. How then does the same principle tend to unhinge the government of that larger family, the body politic? We know, in general, that children and servants are obliged to obey their parents and masters respectively. We know also, with equal certainty, that they are not obliged to submit to them in all things, without exception; but may, in some cases, reasonably, and therefore innocently, resist them. These principles are acknowledged upon all hands, whatever diffi-

culty there may be in fixing the exact limits of submission. Now there is at least as much difficulty in stating the measure of duty in these two cases, as in the case of rulers and subjects. So that this is really no objection, at least no reasonable one, against resistance to the *higher powers*: Or, if it is one, it will hold equally against resistance in the other cases mentioned.—It is indeed true, that turbulent, vicious-minded men, may take occasion from this principle, that their rulers may, in some cases, be lawfully resisted, to raise factions and disturbances in the state; and to make resistance where resistance is needless, and therefore, sinful. But is it not equally true, that children and servants of turbulent, vicious minds, may take occasion from this principle, that parents and masters may, in some cases be lawfully resisted, to resist when resistance is unnecessary, and therefore, criminal? Is the principle in either case false in itself, merely because it may be abused; and applied to legitimate disobedience and resistance in those instances, to which it ought not to be applied? According to this way of arguing, there will be no true principles in the world; for there are none but what may be wrested and perverted to serve bad purposes, either through the weakness or wickedness of men. †

† We may very safely assert these two things in general, without undermining government: One is, That no civil rulers are to be obeyed when they enjoin things that are inconsistent with the commands of God: All such disobedience is lawful and glorious; particularly, if persons refuse to comply with any *legal establishment of religion,* because it is a gross perversion and corruption (as to doctrine, worship and discipline) of a pure and divine religion, brought from heaven to earth by the *Son of God,* (the only King and Head of the *christian* church) and propagated through the world by his inspired apostles. All

A PEOPLE, really oppressed to a great degree by their sovereign, cannot well be insensible when they are so oppressed. And such a people (if I may allude to an ancient *fable*) have, like the *hesperian* fruit, a DRAGON

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commands running counter to the declared will of the supreme legislator of heaven and earth, are null and void: And therefore disobedience to them is a duty, not a crime. (See the marginal note, page 7.)—Another thing that may be asserted with equal truth and safety, is, That no government is to be submitted to, at the *expence* of that which is the *sole end* of all government,—the common good and safety of society. Because, to submit in this case, if it should ever happen, would evidently be to set up the *means* as more valuable, and above, the *end*: than which there cannot be a greater solecism and contradiction. The only reason of the institution of civil government; and the only rational ground of submission to it, is the common safety and utility. If therefore, in any case, the common safety and utility would not be promoted by submission to government, but the contrary, there is no ground or motive for obedience and submission, but, for the contrary.

WHOEVER considers the nature of civil government must, indeed, be sensible that a great degree of *implicit confidence,* must unavoidably be placed in those that bear rule: this is implied in the very notion of authority's being originally a *trust,* committed by the people, to those who are vested with it, as all just and righteous authority is; all besides, is mere lawless force and usurpation; neither God nor nature, having given any man a right of dominion over any society, independently of that society's approbation, and consent to be governed by him—Now as all men are fallible, it cannot be supposed that the public affairs of any state, should be always administered in the best manner possible, even by persons of the greatest wisdom and integrity. Nor is it sufficient to legitimate disobedience to the *higher powers* that they are not so administred; or that they are, in some instances, very ill-managed; for upon this principle, it is scarcely supposeable that any government at all could be supported, or subsist. Such a principle manifestly tends to the dissolution of government; and to throw all things into confusion and anarchy.—But it is equally evident, upon the other hand, that those in authority may abuse their *trust* and power *to such a degree,* that neither the law of reason, nor of religion, requires, that any obedience or submission should be paid to them; but, on the contrary, that they should be totally *discarded*; and the author-

for their *protector* and *guardian*: Nor would they have any reason to mourn, if some HERCULES should ap-

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ity which they were before vested with, transferred to others, who may exercise it more to those good purposes for which it is given.—Nor is this principle, that resistance to the *higher powers*, is, in some extraordinary cases, justifiable, so liable to abuse, as many persons seem to apprehend it. For although there will be always some petulant, querulous men, in every state—men of factious, turbulent and carping dispositions,—glad to lay hold of any trifle to justify and legitimate their caballing against their rulers, and other seditious practices; yet there are, comparatively speaking, but few men of this *contemptible character*. It does not appear but that mankind, in general, have a disposition to be as submissive and passive and tame under government as they ought to be.—Witness a great, if not the greatest, part of the known world, who are now groaning, but not murmuring, under the heavy yoke of tyranny! While those who govern, do it with any tolerable degree of moderation and justice, and, in any good measure act up to their office and character, by being public benefactors; the people will generally be easy and peaceable; and be rather inclined to flatter and adore, than to insult and resist, them. Nor was there ever any *general* complaint against any administration, *which lasted long*, but what there was good reason for. Till people find themselves greatly abused and oppressed by their governors, they are not apt to complain; and whenever they do, in fact, find themselves thus abused and oppressed, they must be stupid not to complain. To say that subjects in general are not proper judges when their governors oppress them, and play the tyrant; and when they defend their rights, administer justice impartially, and promote the public welfare, is as great *treason* as ever man uttered;—'tis treason, —not against one *single* man, but the state—against the whole body politic;—'tis treason against mankind;—'tis treason against common sense;—'tis treason against God. And this impious principle lays the foundation for justifying all the tyranny and oppression that ever any prince was guilty of. The people know for what end they set up, and maintain, their governors; and they are the proper judges when they execute their trust as they ought to do it;—when their prince exercises an equitable and paternal authority over them;—when from a prince and common father, he exalts himself into a tyrant—when from subjects and children, he degrades them into the class of slaves; —plunders them, makes them his prey, and unnaturally sports himself with their lives and fortunes——

pear to dispatch him—For a nation thus abused to arise unanimously, and to resist their prince, even to the dethroning him, is not criminal; but a reasonable I way of vindicating their liberties and just rights; it is making use of the means, and the only means, which God has put into their power, for mutual and self-defence. And it would be highly criminal in them, not to make use of this means. It would be stupid tameness, and unaccountable folly, for whole nations to suffer *one* unreasonable, ambitious and cruel man, to wanton and riot in their misery. And in such a case it would, of the two, be more rational to suppose, that they did NOT *resist,* than that they who did, would *receive to themselves damnation.*

And

THIS naturally brings us to make some reflections upon the resistance which was made about a century since, to that unhappy prince, KING CHARLES I; and upon the ANNIVERSARY of his death. This is a point which I should not have concerned myself about, were it not that *some men* continue to speak of it, even to this day, with a great deal of warmth and zeal; and in such a manner as to undermine all the principles of LIBERTY, whether civil or religious, and to introduce the most abject slavery both in church and state: so that it is become a matter of universal concern.—What I have to offer upon this subject, will be comprised in a short answer to the following *queries*; *viz.*

***17: John Witherspoon, THE DOMINION OF PROVIDENCE OVER THE PASSIONS OF MEN* - Ellis Sandoz*, Political Sermons of the American Founding Era. Vol. 1 (1730-1788)* [1991]**

Edition used:

Political Sermons of the American Founding Era: 1730-1805, 2 vols, Foreword by Ellis Sandoz (2nd ed. Indianapolis: Liberty Fund, 1998). Vol. 1.

Surely the Wrath of Man shall praise thee; the remainder of Wrath shalt thou restrain.

Psalm LXXVI. 10.

There is not a greater evidence either of the reality or the power of religion, than a firm belief of God's universal presence, and a constant attention to the influence and operation of his providence. It is by this means that the Christian may be said, in the emphatical scripture language, "to walk with God, and to endure as seeing him who is invisible."

The doctrine of divine providence is very full and complete in the sacred oracles. It extends not only to things which we may think of great moment, and therefore worthy of notice, but to things the most indifferent and inconsiderable; "Are not two sparrows sold for a farthing," says our Lord, "and one of them falleth not to the ground without your heavenly Father"; nay, "the very hairs of your head are all numbered.["] It extends not only to things beneficial and salutary, or to the direction and assistance of those who are the servants of the living God; but to things seemingly most hurtful and destructive, and to persons the most refractory and disobedient. He overrules all his creatures, and all their actions. Thus we are told, that "fire, hail, snow, vapour, and stormy wind, fulfil his word," in the course of nature; and even so the most impetuous and disorderly passions of men, that are under no restraint from themselves, are yet perfectly subject to the dominion of Jehovah. They carry his commission, they obey his orders, they are limited and restrained by his authority, and they conspire with every thing else in promoting his glory. There is the greater need to take notice of this, that men are not generally sufficiently aware of the distinction between the law of God and his purpose; they are apt to suppose, that as the temper of the sinner is contrary to the one, so the outrages of the sinner are able to defeat the other; than which nothing can be more false. The truth is plainly asserted, and nobly expressed by the psalmist in the text, "Surely the wrath of man shall praise thee; the remainder of wrath shalt thou restrain."

This psalm was evidently composed as a song of praise for some signal victory obtained, which was at the same time a remarkable deliverance from threatening danger. The author was one or other of the later prophets, and the occasion probably the unsuccessful assault of Jerusalem, by the army of Sennacherib king of Assyria, in the days of Hezekiah. Great was the insolence and boasting of his generals and servants against the city of the living God, as may be seen in the thirty-sixth chapter of Isaiah. Yet it pleased God to destroy their enemies, and, by his own immediate interposition, to grant them deliverance. Therefore the Psalmist says in the fifth and sixth verses of this psalm, "The stout-hearted are spoiled, they have slept their sleep. None of the men of might have found their hands. At thy rebuke, O God of Jacob! both the chariot and the

horse are cast into a deep sleep." After a few more remarks to the same purpose, he draws the inference, or makes the reflection in the text, "Surely the wrath of man shall praise thee; the remainder of wrath shalt thou restrain["]: which may be paraphrased thus, The fury and injustice of oppressors shall bring in a tribute of praise to thee; the influence of thy righteous providence shall be clearly discerned; the countenance and support thou wilt give to thine own people shall be gloriously illustrated; thou shalt set the bounds which the boldest cannot pass.

I am sensible, my brethren, that the time and occasion of this psalm, may seem to be in one respect ill suited to the interesting circumstances of this country at present. It was composed after the victory was obtained; whereas we are now but putting on the harness and entering upon an important contest, the length of which it is impossible to foresee, and the issue of which it will perhaps be thought presumption to foretell. But as the truth, with respect to God's moral government, is the same and unchangeable; as the issue, in the case of Sennacherib's invasion, did but lead the prophet to acknowledge it; our duty and interest conspire in calling upon us to improve it. And I have chosen to insist upon it on this day of solemn humiliation, as it will probably help us to a clear and explicit view of what should be the chief subject of our prayers and endeavors, as well as the great object of our hope and trust, in our present situation.

The truth, then, asserted in this text, which I propose to illustrate and improve, is, That all the disorderly passions of men, whether exposing the innocent to private injury, or whether they are the arrows of divine judgment in public calamity, shall, in the end, be to the praise of God: Or, to apply it more particularly to the present state of the American colonies, and the plague of war, The ambition of mistaken princes, the cunning and cruelty of oppressive and corrupt ministers, and even the inhumanity of brutal soldiers, however dreadful, shall finally promote the glory of God, and in the mean time, while the storm continues, his mercy and kindness shall appear in prescribing bounds to their rage and fury.

In discoursing on this subject, it is my intention, through the assistance of divine grace,

- I. To point out to you in some particulars, how the wrath of man praises God.
- II. To apply these principles to our present situation, by inferences of truth for your instruction and comfort, and by suitable exhortations to duty in the important crisis.

In the first place, I am to point out to you in some particulars, how the wrath of man praises God. I say in some instances, because it is far from being in my power, either to mention or explain the whole. There is an unsearchable depth in the divine counsels, which it is impossible for us to penetrate. It is the duty of every good man to place the most unlimited confidence in divine wisdom, and to believe that those measures of providence that are most unintelligible to him, are yet planned with the same skill, and directed to the same great purposes as others, the reason and tendency of which he can explain in the clearest manner. But where revelation and experience enables us to discover the wisdom, equity, or mercy of divine providence, nothing can be more delightful or profitable to a serious mind, and therefore I beg your attention to the following remarks.

In the first place, the wrath of man praises God, as it is an example and illustration of divine truth, and clearly points out the corruption of our nature, which is the foundation stone of the

doctrine of redemption. Nothing can be more absolutely necessary to true religion, than a clear and full conviction of the sinfulness of our nature and state. Without this there can be neither repentance in the sinner, nor humility in the believer. Without this all that is said in scripture of the wisdom and mercy of God in providing a Saviour, is without force and without meaning. Justly does our Saviour say, “The whole have no need of a physician, but those that are sick. I came not to call the righteous, but sinners to repentance.” Those who are not sensible that they are sinners, will treat every exhortation to repentance, and every offer of mercy, with disdain or defiance.

But where can we have a more affecting view of the corruption of our nature, than in the wrath of man, when exerting itself in oppression, cruelty and blood? It must be owned, indeed, that this truth is abundantly manifest in times of the greatest tranquility. Others may, if they please, treat the corruption of our nature as a chimera: for my part, I see it every where, and I feel it every day. All the disorders in human society, and the greatest part even of the unhappiness we are exposed to, arises from the envy, malice, covetousness, and other lusts of man. If we and all about us were just what we ought to be in all respects, we should not need to go any further for heaven, for it would be upon earth. But war and violence present a spectacle still more awful. How affecting is it to think, that the lust of domination should be so violent and universal? That men should so rarely be satisfied with their own possessions and acquisitions, or even with the benefit that would arise from mutual service, but should look upon the happiness and tranquility of others, as an obstruction to their own? That, as if the great law of nature, were not enough, “Dust thou art, and to dust thou shalt return,” they should be so furiously set for the destruction of each other? It is shocking to think, since the first murder of Abel by his brother Cain, what havock has been made of man by man in every age. What is it that fills the pages of history, but the wars and contentions of princes and empires? What vast numbers has lawless ambition brought into the field, and delivered as a prey to the destructive sword?

If we dwell a little upon the circumstances, they become deeply affecting. The mother bears a child with pain, rears him by the laborious attendance of many years; yet in the prime of life, in the vigor of health, and bloom of beauty, in a moment he is cut down by the dreadful instruments of death. “Every battle of the warrior is with confused noise, and garments rolled in blood”; but the horror of the scene is not confined to the field of slaughter. Few go there unrelated, or fall unlamented; in every hostile encounter, what must be the impression upon the relations of the deceased? The bodies of the dead can only be seen, or the cries of the dying heard for a single day, but many days shall not put an end to the mourning of a parent for a beloved son, the joy and support of his age, or of the widow and helpless offspring, for a father taken away in the fullness of health and vigor.

But if this may be justly said of all wars between man and man, what shall we be able to say that is suitable to the abhorred scene of civil war between citizen and citizen? How deeply affecting is it, that those who are the same in complexion, the same in blood, in language, and in religion, should, notwithstanding, butcher one another with unrelenting rage, and glory in the deed? That men should lay waste the fields of their fellow subjects, with whose provision they themselves had been often fed, and consume with devouring fire those houses in which they had often found a hospitable shelter.

These things are apt to overcome a weak mind with fear, or overwhelm it with sorrow, and in the greatest number are apt to excite the highest indignation, and kindle up a spirit of revenge. If this last has no other tendency than to direct and invigorate the measures of self-defence, I do not take upon me to blame it, on the contrary, I call it necessary and laudable.

But what I mean at this time to prove by the preceding reflections, and wish to impress on your minds, is the depravity of our nature. James iv. i. “From whence come wars and fighting among you? come they not hence even from your lusts that war in your members?” Men of lax and corrupt principles, take great delight in speaking to the praise of human nature, and extolling its dignity, without distinguishing what it was, at its first creation, from what it is in its present fallen state. These fine speculations are very grateful to a worldly mind. They are also much more pernicious to uncautious and unthinking youth, than even the temptations to a dissolute and sensual life, against which they are fortified by the dictates of natural conscience, and a sense of public shame. But I appeal from these visionary reasonings to the history of all ages, and the inflexible testimony of daily experience. These will tell us what men have been in their practice, and from thence you may judge what they are by nature, while unrenewed. If I am not mistaken, a cool and candid attention, either to the past history, or present state of the world, but above all, to the ravages of lawless power, ought to humble us in the dust. It should at once lead us to acknowlege the just view given us in scripture of our lost state; to desire the happy influence of renewing grace each for ourselves; and to long for the dominion of righteousness and peace, when “men shall beat their swords into plow-shares, and their spears into pruning hooks; when nation shall not lift up sword against nation, neither shall they learn war any more.”* * Mic iv. 3.

2. The wrath of man praiseth God, as it is the instrument in his hand for bringing sinners to repentance, and for the correction and improvement of his own children. Whatever be the nature of the affliction with which he visits either persons, families, or nations; whatever be the disposition or intention of those whose malice he employs as a scourge; the design on his part is, to rebuke men for iniquity, to bring them to repentance, and to promote their holiness and peace. The salutary nature and sanctifying influence of affliction in general, is often taken notice of in scripture, both as making a part of the purpose of God, and the experience of his saints. Heb. xii. 11. “Now, no affliction for the present seemeth to be joyous, but grievous: Nevertheless, afterwards it yieldeth the peaceable fruit of righteousness unto them which are exercised thereby.” But what we are particularly led to observe by the subject of this discourse is, that the wrath of man, or the violence of the oppressor that praiseth God in this respect, it has a peculiar tendency to alarm the secure conscience, to convince and humble the obstinate sinner. This is plain from the nature of the thing, and from the testimony of experience. Public calamities, particularly the destroying sword, is so awful that it cannot but have a powerful influence in leading men to consider the presence and the power of God. It threatens them not only in themselves, but touches them in all that is dear to them, whether relations or possessions. The prophet Isaiah says, Is. xxvi. 8, 9. “Yea, in the way of thy judgments, O Lord, have we waited for thee,—for when thy judgments are in the earth, the inhabitants of the world will learn righteousness.” He considers it as the most powerful mean of alarming the secure and subduing the obstinate. Is. xxvi. 11. “Lord when thy hand is lifted up, they will not see, but they shall see and be ashamed for their envy at the people, yea the fire of thine enemies shall devour them.” It is also sometimes represented as a symptom of a hopeless and irrecoverable state, when public judgments have no effect. Thus says the prophet Jeremiah, Jer. v. 3. “O Lord, are not thine eyes

upon the truth? thou hast stricken them, but they have not grieved; thou hast consumed them, but they have refused to receive correction: they have made their faces harder than a rock, they have refused to return." We can easily see in the history of the children of Israel, how severe strokes brought them to submission and penitence, Ps. lxxviii. 34, 35. "When he slew them, then they sought him, and they returned and inquired early after God, and they remembered that God was their rock, and the high God their redeemer."

Both nations in general, and private persons, are apt to grow remiss and lax in a time of prosperity and seeming security; but when their earthly comforts are endangered or withdrawn, it lays them under a kind of necessity to seek for something better in their place. Men must have comfort from one quarter or another. When earthly things are in a pleasing and promising condition, too many are apt to find their rest, and be satisfied with them as their only portion. But when the vanity and passing nature of all created comfort is discovered, they are compelled to look for something more durable as well as valuable. What therefore, can be more to the praise of God, than that when a whole people have forgotten their resting place, when they have abused their privileges, and despised their mercies, they should by distress and suffering be made to hearken to the rod, and return to their duty?

There is an inexpressible depth and variety in the judgments of God, as in all his other works; but we may lay down this as a certain principle, that if there were no sin, there could be no suffering. Therefore they are certainly for the correction of sin, or for the trial, illustration, and perfecting of the grace and virtue of his own people. We are not to suppose, that those who suffer most, or who suffer soonest, are therefore more criminal than others. Our Saviour himself thought it necessary to give a caution against this rash conclusion, as we are informed by the evangelist Luke, Luke xiii. 1. "There were present at that season some that told him of the Galileans, whose blood Pilate had mingled with their sacrifices. And Jesus answering said unto them, Suppose ye that these Galileans were sinners above all the Galileans, because they suffered such things? I tell you nay, but except ye repent, ye shall all likewise perish." I suppose we may say with sufficient warrant, that it often happens, that those for whom God hath designs of the greatest mercy, are first brought to the trial, that they may enjoy in due time the salutary effect of the unpalatable medicine.

I must also take leave to observe, and I hope no pious humble sufferer will be unwilling to make the application, that there is often a discernible mixture of sovereignty and righteousness in providential dispensations. It is the prerogative of God to do what he will with his own, but he often displays his justice itself, by throwing into the furnace those, who though they may not be visibly worse than others, may yet have more to answer for, as having been favored with more distinguished privileges, both civil and sacred. It is impossible for us to make a just and full comparison of the character either of persons or nations, and it would be extremely foolish for any to attempt it, either for increasing their own security, or impeaching the justice of the Supreme Ruler. Let us therefore neither forget the truth, nor go beyond it. "His mercy fills the earth." He is also "known by the judgment which he executeth." The wrath of man in its most tempestuous rage, fulfills his will, and finally promotes the good of his chosen.

3. The wrath of man praiseth God, as he sets bounds to it, or restrains it by his providence, and sometimes makes it evidently a mean of promoting and illustrating his glory.

There is no part of divine providence in which a greater beauty and majesty appears, than when the Almighty Ruler turns the counsels of wicked men into confusion, and makes them militate against themselves. If the psalmist may be thought to have had a view in this text to the truths illustrated in the two former observations, there is no doubt at all that he had a particular view to this, as he says in the latter part of the verse, “the remainder of wrath shalt thou restrain.” The scripture abounds with instances, in which the designs of oppressors were either wholly disappointed, or in execution fell far short of the malice of their intention, and in some they turned out to the honor and happiness of the persons or the people, whom they were intended to destroy. We have an instance of the first of these in the history to which my text relates.* We have also an instance in Esther, in which the most mischievous designs of Haman, the son of Hammedatha the Agagite against Mordecai the Jew, and the nation from which he sprung, turned out at last to his own destruction, the honor of Mordecai, and the salvation and peace of his people.

From the New Testament I will make choice of that memorable event on which the salvation of believers in every age rests as its foundation, the death and sufferings of the Son of God. This the great adversary and all his agents and instruments prosecuted with unrelenting rage. When they had blackened him with slander, when they scourged him with shame, when they had condemned him in judgment, and nailed him to the cross, how could they help esteeming their victory complete? But oh the unsearchable wisdom of God! they were but perfecting the great design laid for the salvation of sinners. Our blessed Redeemer by his death finished his work, overcame principalities and powers, and made a shew of them openly, triumphing over them in his cross. With how much justice do the apostles and their company offer this doxology to God, “They lift up their voice with one accord, and said, Lord thou art God which hast made heaven and earth, and the sea, and all that in them is; Who by the mouth of thy servant David hast said, Why did the Heathen rage, and the people imagine vain things? The kings of the earth stood up, and the rulers were gathered together against the Lord, and against his Christ. For of a truth, against thy holy child Jesus, whom thou hast anointed, both Herod and Pontius Pilate, with the Gentiles, and the people of Israel were gathered together, for to do whatsoever thy hand and thy counsel determined before to be done.” Acts iv. 24. 28.

In all after ages, in conformity to this, the deepest laid contrivances of the prince of darkness, have turned out to the confusion of their author; and I know not, but considering his malice and pride, this perpetual disappointment, and the superiority of divine wisdom, may be one great source of his suffering and torment. The cross hath still been the banner of truth, under which it hath been carried through the world. Persecution has been but as the furnace to the gold, to purge it of its dross, to manifest its purity, and increase its lustre. It was taken notice of very early, that the blood of the martyrs was the seed of christianity; the more abundantly it was shed, the more plentifully did the harvest grow.

So certain has this appeared, that the most violent infidels, both of early and later ages, have endeavored to account for it, and have observed that there is a spirit of obstinacy in man which inclines him to resist violence, and that severity doth but increase opposition, be the cause what it will. They suppose that persecution is equally proper to propagate truth and error. This though in part true, will by no means generally hold. Such an apprehension, however, gave occasion to a glorious triumph of divine providence of an opposite kind, which I must shortly relate to you.

One of the Roman emperors, Julian, surnamed the apostate, perceiving how impossible it was to suppress the gospel by violence, endeavored to extinguish it by neglect and scorn. He left the Christians unmolested for sometime, but gave all manner of encouragement to those of opposite principles, and particularly to the Jews, out of hatred to the Christians; and that he might bring public disgrace upon the Galileans, as he affected to stile them, he encouraged the Jews to rebuild the temple of Jerusalem, and visibly refute the prophecy of Christ, that it should lie under perpetual desolation. But this profane attempt was so signally frustrated, that it served, as much as any one circumstance, to spread the glory of our Redeemer, and establish the faith of his saints. It is affirmed by some ancient authors, particularly by Ammianus Marcellinus, a heathen historian, that fire came out of the earth and consumed the workmen when laying the foundation. But in whatever way it was prevented, it is beyond all controversy, from the concurring testimony of heathens and Christians, that little or no progress was ever made in it, and that in a short time, it was entirely defeated.

It is proper here to observe, that at the time of the reformation, when religion began to revive, nothing contributed more to facilitate its reception and increase its progress than the violence of its persecutors. Their cruelty and the patience of the sufferers, naturally disposed men to examine and weigh the cause to which they adhered with so much constancy and resolution. At the same time also, when they were persecuted in one city, they fled to another, and carried the discoveries of popish fraud to every part of the world. It was by some of those who were persecuted in Germany, that the light of the reformation was brought so early into Britain.

The power of divine providence appears with the most distinguished lustre, when small and inconsiderable circumstances, and sometimes, the weather and seasons, have defeated the most formidable armaments, and frustrated the best concerted expeditions. Near two hundred years ago, the monarchy of Spain was in the height of its power and glory, and determined to crush the interest of the reformation. They sent out a powerful armament against Britain, giving it ostentatiously, and in my opinion profanely, the name of the Invincible Armada. But it pleased God so entirely to discomfit it by tempests, that a small part of it returned home, though no British force had been opposed to it at all.

We have a remarkable instance of the influence of small circumstances in providence in the English history. The two most remarkable persons in the civil wars, had earnestly desired to withdraw themselves from the contentions of the times, Mr. Hampden and Oliver Cromwell. They had actually taken their passage in a ship for New England, when by an arbitrary order of council they were compelled to remain at home. The consequence of this was, that one of them was the soul of the republican opposition to monarchical usurpation during the civil wars, and the other in the course of that contest, was the great instrument in bringing the tyrant to the block.

The only other historical remark I am to make, is, that the violent persecution which many eminent Christians met with in England from their brethren, who called themselves Protestants, drove them in great numbers to a distant part of the world, where the light of the gospel and true religion were unknown. Some of the American settlements, particularly those in New-England, were chiefly made by them; and as they carried the knowledge of Christ to the dark places of the earth, so they continue themselves in as great a degree of purity, of faith, and strictness of

practice, or rather a greater, than is to be found in any protestant church now in the world. Does not the wrath of man in this instance praise God? Was not the accuser of the brethren, who stirs up their enemies, thus taken in his own craftiness, and his kingdom shaken by the very means which he employed to establish it.*

II. Proceed now to the second general head, which was to apply the principles illustrated above to our present situation, by inferences of truth for your instruction and comfort, and by suitable exhortations to duty in this important crisis. And,

In the first place, I would take the opportunity on this occasion, and from this subject, to press every hearer to a sincere concern for his own soul's salvation. There are times when the mind may be expected to be more awake to divine truth, and the conscience more open to the arrows of conviction, than at others. A season of public judgment is of this kind, as appears from what has been already said. That curiosity and attention at least are raised in some degree, is plain from the unusual throng of this assembly. Can you have a clearer view of the sinfulness of your nature, than when the rod of the oppressor is lifted up, and when you see men putting on the habit of the warrior, and collecting on every hand the weapons of hostility and instruments of death? I do not blame your ardor in preparing for the resolute defence of your temporal rights. But consider I beseech you, the truly infinite importance of the salvation of your souls. Is it of much moment whether you and your children shall be rich or poor, at liberty or in bonds? Is it of much moment whether this beautiful country shall increase in fruitfulness from year to year, being cultivated by active industry, and possessed by independent freemen, or the scanty produce of the neglected fields shall be eaten up by hungry publicans, while the timid owner trembles at the tax gatherers approach? And is it of less moment my brethren, whether you shall be the heirs of glory or the heirs of hell? Is your state on earth for a few fleeting years of so much moment? And is it of less moment, what shall be your state through endless ages? Have you assembled together willingly to hear what shall be said on public affairs, and to join in imploring the blessing of God on the counsels and arms of the united colonies, and can you be unconcerned, what shall become of you for ever, when all the monuments of human greatness shall be laid in ashes, for "the earth *itself* and all the works that are therein shall be burnt up."

Wherefore my beloved hearers, as the ministry of reconciliation is committed to me, I beseech you in the most earnest manner, to attend to "the things that belong to your peace, before they are hid from your eyes." How soon and in what manner a seal shall be set upon the character and state of every person here present, it is impossible to know; for he who only can know does not think proper to reveal it. But you may rest assured that there is no time more suitable, and there is none so safe, as that which is present, since it is wholly uncertain whether any other shall be your's. Those who shall first fall in battle, have not many more warnings to receive. There are some few daring and hardened sinners who despise eternity itself, and set their Maker at defiance, but the far greater number by staving off their convictions to a more convenient season, have been taken unprepared, and thus eternally lost. I would therefore earnestly press the apostles exhortation, 2 Cor. vi. i, 2. "We then, as workers together with him, beseech you also, that ye receive not the grace of God in vain: For he saith, I have heard thee in a time accepted, and in the day of salvation have I succoured thee: Behold, now is the accepted time; behold, now is the day of salvation."

Suffer me to beseech you, or rather to give you warning, not to rest satisfied with a form of godliness, denying the power thereof. There can be no true religion, till there be a discovery of your lost state by nature and practice, and an unfeigned acceptance of Christ Jesus, as he is offered in the gospel. Unhappy they who either despise his mercy, or are ashamed of his cross! Believe it, "there is no salvation in any other. There is no other name under heaven given amongst men by which we must be saved." Unless you are united to him by a lively faith, not the resentment of a haughty monarch, but the sword of divine justice hangs over you, and the fulness of divine vengeance shall speedily overtake you. I do not speak this only to the heaven, daring profligate, or grovelling sensualist, but to every insensible secure sinner; to all those, however decent and orderly in their civil deportment, who live to themselves and have their part and portion in this life; in fine to all who are yet in a state of nature, for "except a man be born again, he cannot see the kingdom of God." The fear of man may make you hide your profanity: prudence and experience may make you abhor intemperance and riot; as you advance in life, one vice may supplant another and hold its place; but nothing less than the sovereign grace of God can produce a saving change of heart and temper, or fit you for his immediate presence.

2. From what has been said upon this subject, you may see what ground there is to give praise to God for his favors already bestowed on us, respecting the public cause. It would be a criminal inattention not to observe the singular interposition of Providence hitherto, in behalf of the American colonies. It is however impossible for me, in a single discourse, as well as improper at this time, to go through every step of our past transactions, I must therefore content myself with a few remarks. How many discoveries have been made of the designs of enemies in Britain and among ourselves, in a manner as unexpected to us as to them, and in such season as to prevent their effect? What surprising success has attended our encounters in almost every instance? Has not the boasted discipline of regular and veteran soldiers been turned into confusion and dismay, before the new and maiden courage of freemen, in defence of their property and right? In what great mercy has blood been spared on the side of this injured country? Some important victories in the south have been gained with so little loss, that enemies will probably think it has been dissembled; as many, even of ourselves thought, till time rendered it undeniable. But these were comparatively of small moment. The signal advantage we have gained by the evacuation of Boston, and the shameful flight of the army and navy of Britain, was brought about without the loss of a man. To all this we may add, that the counsels of our enemies have been visibly confounded, so that I believe that I may say with truth, that there is hardly any step which they have taken, but it has operated strongly against themselves, and been more in our favor, than if they had followed a contrary course.

While we give praise to God the supreme disposer of all events, for his interposition in our behalf, let us guard against the dangerous error of trusting in, or boasting of an arm of flesh. I could earnestly wish, that while our arms are crowned with success, we might content ourselves with a modest ascription of it to the power of the Highest. It has given me great uneasiness to read some ostentatious, vaunting expressions in our news-papers, though happily I think, much restrained of late. Let us not return to them again. If I am not mistaken, not only the holy scriptures in general, and the truths of the glorious gospel in particular, but the whole course of providence, seem intended to abase the pride of man, and lay the vain-glorious in the dust. How many instances does history furnish us with, of those who after exulting over, and despising their enemies, were signally and shamefully defeated.* The truth is, I believe, the remark may be

applied universally, and we may say, that through the whole frame of nature, and the whole system of human life, that which promises most, performs the least. The flowers of finest colour seldom have the sweetest fragrance. The trees of quickest groweth or fairest form, are seldom of the greatest value or duration. Deep waters move with least noise. Men who think most are seldom talkative. And I think it holds as much in war as in any thing, that every boaster is a coward.

Pardon me, my brethren, for insisting so much upon this, which may seem but an immaterial circumstance. It is in my opinion of very great moment. I look upon ostentation and confidence to be a sort of outrage upon Providence, and when it becomes general, and infuses itself into the spirit of a people, it is a forerunner of destruction. How does Goliath the champion armed in a most formidable manner, express his disdain of David the stripling with his sling and his stone, 1 Sam. xvii. 42, 43, 44, 45. "And when the Philistine looked about and saw David, he disdained him: for he was but a youth, and ruddy, and of a fair countenance. And the Philistine said unto David, Am I a dog, that thou comest to me with staves? And the Philistine cursed David by his gods, and the Philistine said to David, come to me, and I will give thy flesh unto the fowls of the air, and to the beasts of the field." But how just and modest the reply? ["]Then said David to the Philistine, thou comest to me with a sword and with a spear, and with a shield, but I come unto thee in the name of the Lord of hosts, the God of the armies of Israel, whom thou hast defied." I was well pleased with a remark of this kind thirty years ago in a pamphlet,* in which it was observed, that there was a great deal of profane ostentation in the names given to ships of war, as the Victory, the Valient, the Thunderer, the Dreadnought, the Terrible, the Firebrand, the Furnace, the Lightning, the Infernal, and many more of the same kind. This the author considered as a symptom of the national character and manners very unfavorable, and not likely to obtain the blessing of the God of heaven.†

3. From what has been said you may learn what encouragement you have to put your trust in God, and hope for his assistance in the present important conflict. He is the Lord of hosts, great in might, and strong in battle. Whoever hath his countenance and approbation, shall have the best at last. I do not mean to speak prophetically, but agreeably to the analogy of faith, and the principles of God's moral government. Some have observed that true religion, and in her train, dominion, riches, literature, and arts, have taken their course in a slow and gradual manner, from east to west, since the earth was settled after the flood, and from thence forebode the future glory of America. I leave this as a matter rather of conjecture than certainty, but observe, that if your cause is just, if your principles are pure, and if your conduct is prudent, you need not fear the multitude of opposing hosts.

If your cause is just—you may look with confidence to the Lord and intreat him to plead it as his own. You are all my witnesses, that this is the first time of my introducing any political subject into the pulpit. At this season however, it is not only lawful but necessary, and I willingly embrace the opportunity of declaring my opinion without any hesitation, that the cause in which America is now in arms, is the cause of justice, of liberty, and of human nature. So far as we have hitherto proceeded, I am satisfied that the confederacy of the colonies, has not been the effect of pride, resentment, or sedition, but of a deep and general conviction, that our civil and religious liberties, and consequently in a great measure the temporal and eternal happiness of us and our posterity, depended on the issue. The knowledge of God and his truths have from the

beginning of the world been chiefly, if not entirely, confined to those parts of the earth, where some degree of liberty and political justice were to be seen, and great were the difficulties with which they had to struggle from the imperfection of human society, and the unjust decisions of usurped authority. There is not a single instance in history in which civil liberty was lost, and religious liberty preserved entire. If therefore we yield up our temporal property, we at the same time deliver the conscience into bondage.

You shall not, my brethren, hear from me in the pulpit, what you have never heard from me in conversation, I mean railing at the king personally, or even his ministers and the parliament, and people of Britain, as so many barbarous savages. Many of their actions have probably been worse than their intentions. That they should desire unlimited dominion, if they can obtain or preserve it, is neither new nor wonderful. I do not refuse submission to their unjust claims, because they are corrupt or profligate, although probably many of them are so, but because they are men, and therefore liable to all the selfish bias inseparable from human nature. I call this claim unjust, of making laws to bind us in all cases whatsoever, because they are separated from us, independent of us, and have an interest in opposing us. Would any man who could prevent it, give up his estate, person, and family, to the disposal of his neighbour, although he had liberty to chuse the wisest and the best master? Surely not. This is the true and proper hinge of the controversy between Great-Britain and America. It is however to be added, that such is their distance from us, that a wise and prudent administration of our affairs is as impossible as the claim of authority is unjust. Such is and must be their ignorance of the state of things here, so much time must elapse before an error can be seen and remedied, and so much injustice and partiality must be expected from the arts and misrepresentation of interested persons, that for these colonies to depend wholly upon the legislature of Great-Britain, would be like many other oppressive connexions, injury to the master, and ruin to the slave.

The management of the war itself on their part, would furnish new proof of this, if any were needful. Is it not manifest with what absurdity and impropriety they have conducted their own designs? We had nothing so much to fear as dissension, and they have by wanton and unnecessary cruelty forced us into union. At the same time to let us see what we have to expect, and what would be the fatal consequence of unlimited submission, they have uniformly called those acts *lenity*, which filled this whole continent with resentment and horror. The ineffable disdain expressed by our fellow subject, in saying, “That he would not harken to America, till she was at his feet,” has armed more men, and inspired more deadly rage, than could have been done by laying waste a whole province with fire and sword. Again we wanted not numbers, but time, and they sent over handful after handful till we were ready to oppose a multitude greater than they have to send. In fine, if there was one place stronger than the rest, and more able and willing to resist, there they made the attack, and left the others till they were duly informed, completely incensed, and fully furnished with every instrument of war.

I mention these things, my brethren, not only as grounds of confidence in God, who can easily overthrow the wisdom of the wise, but as decisive proofs of the impossibility of these great and growing states, being safe and happy when every part of their internal polity is dependant on Great Britain. If, on account of their distance, and ignorance of our situation, they could not conduct their own quarrel with propriety for one year, how can they give direction and vigor to every department of our civil constitutions from age to age? There are fixed bounds to every

human thing. When the branches of a tree grow very large and weighty, they fall off from the trunk. The sharpest sword will not pierce when it cannot reach. And there is a certain distance from the seat of government, where an attempt to rule will either produce tyranny and helpless subjection, or provoke resistance and effect a separation.

I have said, if your principles are pure—the meaning of this is, if your present opposition to the claims of the British ministry does not arise from a seditious and turbulent spirit, or a wanton contempt of legal authority; from a blind and factious attachment to particular persons or parties; or from a selfish rapacious disposition, and a desire to turn public confusion to private profit—but from a concern for the interest of your country, and the safety of yourselves and your posterity. On this subject I cannot help observing, that though it would be a miracle if there were not many selfish persons among us, and discoveries now and then made of mean and interested transactions, yet they have been comparatively inconsiderable both in number and effect. In general, there has been so great a degree of public spirit, that we have much more reason to be thankful for its vigor and prevalence, than to wonder at the few appearances of dishonesty or disaffection. It would be very uncandid to ascribe the universal ardor that has prevailed among all ranks of men, and the spirited exertions in the most distant colonies, to any thing else than public spirit. Nor was there ever perhaps in history so general a commotion from which religious differences have been so entirely excluded. Nothing of this kind has as yet been heard, except of late in the absurd, but malicious and detestable attempts of our few remaining enemies to introduce them. At the same time I must also, for the honor of this country observe, that though government in the ancient forms has been so long unhinged, and in some colonies not sufficient care taken to substitute another in its place; yet has there been, by common consent, a much greater degree of order and public peace, than men of reflection and experience foretold or expected. From all these circumstances I conclude favorably of the principles of the friends of liberty, and do earnestly exhort you to adopt and act upon those which have been described, and resist the influence of every other.

Once more, if to the justice of your cause, and the purity of your principles, you add prudence in your conduct, there will be the greatest reason to hope, by the blessing of God, for prosperity and success. By prudence in conducting this important struggle, I have chiefly in view union, firmness, and patience. Every body must perceive the absolute necessity of union. It is indeed in every body's mouth, and therefore instead of attempting to convince you of its importance, I will only caution you against the usual causes of division. If persons of every rank, instead of implicitly complying with the orders of those whom they themselves have chosen to direct, will needs judge every measure over again, when it comes to be put in execution; if different classes of men intermix their little private views, or clashing interest with public affairs, and marshal into parties, the merchant against the landholder, and the landholder against the merchant; if local provincial pride and jealousy arise, and you allow yourselves to speak with contempt of the courage, character, manners, or even language of particular places, you are doing a greater injury to the common cause, than you are aware of. If such practices are admitted among us, I shall look upon it as one of the most dangerous symptoms, and if they become general, a presage of approaching ruin.

By firmness and patience, I mean a resolute adherence to your duty, and laying your account with many difficulties, as well as occasional disappointments. In a former part of this discourse, I

have cautioned you against ostentation and vain glory. Be pleased farther to observe that extremes often beget one another, the same persons who exult extravagantly on success, are generally most liable to despondent timidity on every little inconsiderable defeat. Men of this character are the bane and corruption of every society or party to which they belong, but they are especially the ruin of an army, if suffered to continue in it. Remember the vicissitude of human things, and the usual course of providence. How often has a just cause been reduced to the lowest ebb, and yet when firmly adhered to, has become finally triumphant. I speak this now while the affairs of the colonies are in so prosperous a state, lest this propriety itself should render you less able to bear unexpected misfortunes—the sum of the whole is, that the blessing of God is only to be looked for by those who are not wanting in the discharge of their own duty. I would neither have you to trust in an arm of flesh, nor sit with folded hands and expect that miracles should be wrought in your defence—this is a sin which is in scripture stiled tempting God. In opposition to it, I would exhort you as Joab did the host of Israel, who, though he does not appear to have had a spotless character throughout, certainly in this instance spoke like a prudent general and a pious man. 2 Sam. x. 12. “Be of good courage, and let us behave ourselves valiantly for our people and for the cities of our God, and let the Lord do that which is good in his sight.”

I shall now conclude this discourse by some exhortations to duty, founded upon the truths which have been illustrated above, and suited to the interesting state of this country at the present time; and,

1. Suffer me to recommend to you an attention to the public interest of religion, or in other words, zeal for the glory of God and the good of others. I have already endeavored to exhort sinners to repentance; what I have here in view is to point out to you the concern which every good man ought to take in the national character and manners, and the means which he ought to use for promoting public virtue, and bearing down impiety and vice. This is a matter of the utmost moment, and which ought to be well understood, both in its nature and principles. Nothing is more certain than that a general profligacy and corruption of manners make a people ripe for destruction. A good form of government may hold the rotten materials together for some time, but beyond a certain pitch, even the best constitution will be ineffectual, and slavery must ensue. On the other hand, when the manners of a nation are pure, when true religion and internal principles maintain their vigour, the attempts of the most powerful enemies to oppress them are commonly baffled and disappointed. This will be found equally certain, whether we consider the great principles of God’s moral government, or the operation and influence of natural causes.

What follows from this? That he is the best friend to American liberty, who is most sincere and active in promoting true and undefiled religion, and who sets himself with the greatest firmness to bear down profanity and immorality of every kind. Whoever is an avowed enemy to God, I scruple not to call him an enemy to his country. Do not suppose, my brethren, that I mean to recommend a furious and angry zeal for the circumstantials of religion, or the contentions of one sect with another about their peculiar distinctions. I do not wish you to oppose any body’s religion, but every body’s wickedness. Perhaps there are few surer marks of the reality of religion, than when a man feels himself more joined in spirit to a true holy person of a different denomination, than to an irregular liver of his own. It is therefore your duty in this important and critical season to exert yourselves, every one in his proper sphere, to stem the tide of prevailing

vice, to promote the knowledge of God, the reverence of his name and worship, and obedience to his laws.

Perhaps you will ask, what it is that you are called to do for this purpose farther than your own personal duty? I answer this itself when taken in its proper extent is not a little. The nature and obligation of visible religion is, I am afraid, little understood and less attended to.

Many from a real or pretended fear of the imputation of hypocrisy, banish from their conversation and carriage every appearance of respect and submission to the living God. What a weakness and meanness of spirit does it discover, for a man to be ashamed in the presence of his fellow sinners, to profess that reverence to almighty God which he inwardly feels: The truth is, he makes himself truly liable to the accusation which he means to avoid. It is as genuine and perhaps a more culpable hypocrisy to appear to have less religion than you really have, than to appear to have more. This false shame is a more extensive evil than is commonly apprehended. We contribute constantly, though insensibly, to form each others character and manners; and therefore, the usefulness of a strictly holy and conscientious deportment is not confined to the possessor, but spreads its happy influence to all that are within its reach. I need scarcely add, that in proportion as men are distinguished by understanding, literature, age, rank, office, wealth, or any other circumstance, their example will be useful on the one hand, or pernicious on the other.

But I cannot content myself with barely recommending a silent example. There is a dignity in virtue which is entitled to authority, and ought to claim it. In many cases it is the duty of a good man, by open reproof and opposition, to wage war with profaneness. There is a scripture precept delivered in very singular terms, to which I beg your attention; “Thou shalt not hate thy brother in thy heart, but shalt in any wise rebuke him, and not suffer sin upon him.” How prone are many to represent reproof as flowing from ill nature and surliness of temper? The spirit of God, on the contrary, considers it as the effect of inward hatred, or want of genuine love, to forbear reproof, when it is necessary or may be useful. I am sensible there may in some cases be a restraint from prudence, agreeably to that caution of our Saviour, “Cast not your pearls before swine, lest they trample them under their feet, and turn again and rent you.” Of this every man must judge as well as he can for himself; but certainly, either by open reproof, or expressive silence, or speedy departure from such society, we ought to guard against being partakers of other men’s sins.

To this let me add, that if all men are bound in some degree, certain classes of men are under peculiar obligations, to the discharge of this duty. Magistrates, ministers, parents, heads of families, and those whom age has rendered venerable, are called to use their authority and influence for the glory of God and the good of others. Bad men themselves discover an inward conviction of this, for they are often liberal in their reproaches of persons of grave characters or religious profession, if they bear with patience the profanity of others. Instead of enlarging on the duty of men in authority in general, I must particularly recommend this matter to those who have the command of soldiers inlisted for the defence of their country. The cause is sacred, and the champions for it ought to be holy. Nothing is more grieving to the heart of a good man, than to hear from those who are going to the field, the horrid sound of cursing and blasphemy; it cools the ardor of his prayers, as well as abates his confidence and hope in God. Many more circumstances affect me in such a case, than I can enlarge upon, or indeed easily enumerate at present; the glory of God, the interest of the deluded sinner, going like a devoted victim, and

imprecating vengeance on his own head, as well as the cause itself committed to his care. We have sometimes taken the liberty to forebode the downfall of the British empire, from the corruption and degeneracy of the people. Unhappily the British soldiers have been distinguished among all the nations in Europe, for the most shocking profanity. Shall we then pretend to emulate them in this internal distinction, or rob them of the horrid privilege? God forbid. Let the officers of the army in every degree remember, that as military subjection, while it lasts, is the most complete of any, it is in their power greatly to restrain, if not wholly to banish, this flagrant enormity.

2. I exhort all who are not called to go into the field, to apply themselves with the utmost diligence to works of industry. It is in your power by this mean not only to supply the necessities, but to add to the strength of your country. Habits of industry prevailing in a society, not only increase its wealth, as their immediate effect, but they prevent the introduction of many vices, and are intimately connected with sobriety and good morals. Idleness is the mother or nurse of almost every vice; and want, which is its inseparable companion, urges men on to the most abandoned and destructive courses. Industry, therefore is a moral duty of the greatest moment, absolutely necessary to national prosperity, and the sure way of obtaining the blessing of God. I would also observe, that in this, as in every other part of God's government, obedience to his will is as much a natural mean, as a meritorious cause, of the advantage we wish to reap from it. Industry brings up a firm and hardy race. He who is inured to the labor of the field, is prepared for the fatigues of a campaign. The active farmer who rises with the dawn and follows his team or plow, must in the end be an overmatch for those effeminate and delicate soldiers, who are nursed in the lap of self-indulgence, and whose greatest exertion is in the important preparation for, and tedious attendance on, a masquerade, or midnight ball.

3. In the last place, suffer me to recommend to you frugality in your families, and every other article of expence. This the state of things among us renders absolutely necessary, and it stands in the most immediate connexion both with virtuous industry, and active public spirit. Temperance in meals, moderation and decency in dress, furniture and equipage, have, I think, generally been characteristics of a distinguished patriot. And when the same spirit pervades a people in general, they are fit for every duty, and able to encounter the most formidable enemy. The general subject of the preceding discourse has been the wrath of man praising God. If the unjust oppression of your enemies, which withholds from you many of the usual articles of luxury and magnificence, shall contribute to make you clothe yourselves and your children with the works of your own hands, and cover your tables with the salutary productions of your own soil, it will be a new illustration of the same truth, and a real happiness to yourselves and your country.

I could wish to have every good thing done from the purest principles and the noblest views. Consider, therefore, that the Christian character, particularly the self-denial of the gospel, should extend to your whole deportment. In the early times of Christianity, when adult converts were admitted to baptism, they were asked among other questions, Do you renounce the world, its shews, its pomp, and its vanities? I do. The form of this is still preserved in the administration of baptism, where we renounce the devil, the world, and the flesh. This certainly implies not only abstaining from acts of gross intemperance and excess, but a humility of carriage, a restraint and moderation in all your desires. The same thing, as it is suitable to your Christian profession, is

also necessary to make you truly independent in yourselves, and to feed the source of liberality and charity to others, or to the public. The riotous and wasteful liver, whose craving appetites make him constantly needy, is and must be subject to many masters, according to the saying of Solomon, “The borrower is servant to the lender.” But the frugal and moderate person, who guides his affairs with discretion, is able to assist in public counsels by a free and unbiassed judgment, to supply the wants of his poor brethren, and sometimes, by his estate and substance to give important aid to a sinking country.

Upon the whole, I beseech you to make a wise improvement of the present threatening aspect of public affairs, and to remember that your duty to God, to your country, to your families, and to yourselves, is the same. True religion is nothing else but an inward temper and outward conduct suited to your state and circumstances in providence at any time. And as peace with God and conformity to him, adds to the sweetness of created comforts while we possess them, so in times of difficulty and trial, it is in the man of piety and inward principle, that we may expect to find the uncorrupted patriot, the useful citizen, and the invincible soldier. God grant that in America true religion and civil liberty may be inseparable, and that the unjust attempts to destroy the one, may in the issue tend to the support and establishment of both.

***[33]: Samuel West 1730-1807: On the Right to Rebel Against Governors (Election Day Sermon)* - Charles S. Hyneman*, American Political Writing During the Founding Era: 1760-1805, vol. 1* [1983]**

Edition used:

American Political Writing During the Founding Era: 1760-1805, ed. Charles S. Hyneman and Donald Lutz (Indianapolis: Liberty Fund, 1983). 2 vols. Volume 1.

Samuel West was another of New England's revered and highly influential clergymen. After completing his education at Harvard and a five-year turn at teaching, West took over the Congregational pulpit at Dartmouth, Massachusetts (later called New Bedford), and retained that post until death approached. Persistent in study, West was widely regarded to be one of the most learned men of his time, and because of his reputation, he was repeatedly sought out for advice on political matters. He was an active member of the convention that drew up the Massachusetts Constitution of 1780, but when invited to serve as a member of the Massachusetts delegation to the national convention of 1787, he declined to make the trip to Philadelphia. He was, however, a strong force for acceptance of the new Constitution in the Massachusetts ratifying convention of 1788. This particular sermon was preached before the Council and House of Representatives on the anniversary of the members' having been elected. Originally published in Boston by John Gill, the text here is based upon one edited by J.W. Thornton: *The Pulpit of the American Revolution,* pages 267-322.

PUT THEM IN MIND TO BE SUBJECT TO PRINCIPALITIES AND POWERS, TO OBEY MAGISTRATES, TO BE READY TO EVERY GOOD WORK.—Titus iii. 1.

The great Creator, having designed the human race for society, has made us dependent on one another for happiness. He has so constituted us that it becomes both our duty and interest to seek the public good; and that we may be the more firmly engaged to promote each other's welfare, the Deity has endowed us with tender and social affections, with generous and benevolent principles: hence the pain that we feel in seeing an object of distress; hence the satisfaction that arises in relieving the afflictions, and the superior pleasure which we experience in communicating happiness to the miserable. The Deity has also invested us with moral powers and faculties, by which we are enabled to discern the difference between right and wrong, truth and falsehood, good and evil: hence the approbation of mind that arises upon doing a good action, and the remorse of conscience which we experience when we counteract the moral sense and do that which is evil. This proves that, in what is commonly called a state of nature, we are the subjects of the divine law and government; that the Deity is our supreme magistrate, who has written his law in our hearts, and will reward or punish us according as we obey or disobey his commands. Had the human race uniformly persevered in a state of moral rectitude, there would have been little or no need of any other law besides that which is written in the heart,—for every one in such a state would be a law unto himself. There could be no occasion for enacting or enforcing of penal laws; for such are "not made for the righteous man, but for the lawless and disobedient, for the ungodly, and for sinners, for the unholy and profane, for murderers of fathers and murderers of mothers, for manslayers, for whoremongers, for them that defile themselves with mankind, for men-stealers, for liars, for perjured persons, and if there be any other thing that

is contrary to" moral rectitude and the happiness of mankind. The necessity of forming ourselves into politic bodies, and granting to our rulers a power to enact laws for the public safety, and to enforce them by proper penalties, arises from our being in a fallen and degenerate state. The slightest view of the present state and condition of the human race is abundantly sufficient to convince any person of common sense and common honesty that civil government is absolutely necessary for the peace and safety of mankind; and, consequently, that all good magistrates, while they faithfully discharge the trust reposed in them, ought to be religiously and conscientiously obeyed. An enemy to good government is an enemy not only to his country, but to all mankind; for he plainly shows himself to be divested of those tender and social sentiments which are characteristic of a human temper, even of that generous and benevolent disposition which is the peculiar glory of a rational creature. An enemy to good government has degraded himself below the rank and dignity of a man, and deserves to be classed with the lower creation. Hence we find that wise and good men, of all nations and religions, have ever inculcated subjection to good government, and have borne their testimony against the licentious disturbers of the public peace.

Nor has Christianity been deficient in this capital point. We find our blessed Saviour directing the Jews to render to Caesar the things that were Caesar's; and the apostles and first preachers of the gospel not only exhibited a good example of subjection to the magistrate, in all things that were just and lawful, but they have also, in several places in the New Testament, strongly enjoined upon Christians the duty of submission to that government under which Providence had placed them. Hence we find that those who despise government, and are not afraid to speak evil of dignities, are, by the apostles Peter and Jude, classed among those presumptuous, self-willed sinners that are reserved to the judgment of the great day. And the apostle Paul judged submission to civil government to be a matter of such great importance, that he thought it worth his while to charge Titus to put his hearers in mind to be submissive to principalities and powers, to obey magistrates, to be ready to every good work; as much as to say, none can be ready to every good work, or be properly disposed to perform those actions that tend to promote the public good, who do not obey magistrates, and who do not become good subjects of civil government. If, then, obedience to the civil magistrates is so essential to the character of a Christian, that without it he cannot be disposed to perform those good works that are necessary for the welfare of mankind,—if the despisers of governments are those presumptuous, self-willed sinners who are reserved to the judgment of the great day,—it is certainly a matter of the utmost importance to us all to be thoroughly acquainted with the nature and extent of our duty, that we may yield the obedience required; for it is impossible that we should properly discharge a duty when we are strangers to the nature and extent of it.

In order, therefore, that we may form a right judgment of the duty enjoined in our text, I shall consider the nature and design of civil government, and shall show that the same principles which oblige us to submit to government do equally oblige us to resist tyranny; or that tyranny and magistracy are so opposed to each other that where the one begins the other ends. I shall then apply the present discourse to the grand controversy that at this day subsists between Great Britain and the American colonies.

That we may understand the nature and design of civil government, and discover the foundation of the magistrate's authority to command, and the duty of subjects to obey, it is necessary to

derive civil government from its original, in order to which we must consider what “state all men are naturally in, and that is (as Mr. Locke observes) a state of perfect freedom to order all their actions, and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave or depending upon the will of any man.” It is a state wherein all are equal,—no one having a right to control another, or oppose him in what he does, unless it be in his own defence, or in the defence of those that, being injured, stand in need of his assistance.

Had men persevered in a state of moral rectitude, every one would have been disposed to follow the law of nature, and pursue the general good. In such a state, the wisest and most experienced would undoubtedly be chosen to guide and direct those of less wisdom and experience than themselves,—there being nothing else that could afford the least show or appearance of any one’s having the superiority or precedency over another; for the dictates of conscience and the precepts of natural law being uniformly and regularly obeyed, men would only need to be informed what things were most fit and prudent to be done in those cases where their inexperience or want of acquaintance left their minds in doubt what was the wisest and most regular method for them to pursue. In such cases it would be necessary for them to advise with those who were wiser and more experienced than themselves. But these advisers could claim no authority to compel or to use any forcible measures to oblige any one to comply with their direction or advice. There could be no occasion for the exertion of such a power; for every man, being under the government of right reason, would immediately feel himself constrained to comply with everything that appeared reasonable or fit to be done, or that would any way tend to promote the general good. This would have been the happy state of mankind had they closely adhered to the law of nature, and persevered in their primitive state.

Thus we see that a state of nature, though it be a state of perfect freedom, yet is very far from a state of licentiousness. The law of nature gives men no right to do anything that is immoral, or contrary to the will of God, and injurious to their fellow-creatures; for a state of nature is properly a state of law and government, even a government founded upon the unchangeable nature of the Deity, and a law resulting from the eternal fitness of things. Sooner shall heaven and earth pass away, and the whole frame of nature be dissolved, than any part even the smallest iota, of this law shall ever be abrogated; it is unchangeable as the Deity himself, being a transcript of his moral perfections. A revelation, pretending to be from God, that contradicts any part of natural law, ought immediately to be rejected as an imposture; for the Deity cannot make a law contrary to the law of nature without acting contrary to himself,—a thing in the strictest sense impossible, for that which implies contradiction is not an object of the divine power. Had this subject been properly attended to and understood, the world had remained free from a multitude of absurd and pernicious principles, which have been industriously propagated by artful and designing men, both in politics and divinity. The doctrine of nonresistance and unlimited passive obedience to the worst of tyrants could never have found credit among mankind had the voice of reason been hearkened to for a guide, because such a doctrine would immediately have been discerned to be contrary to natural law.

In a state of nature we have a right to make the persons that have injured us repair the damages that they have done us; and it is just in us to inflict such punishment upon them as is necessary to restrain them from doing the like for the future,—the whole end and design of punishing being

either to reclaim the individual punished, or to deter others from being guilty of similar crimes. Whenever punishment exceeds these bounds it becomes cruelty and revenge, and directly contrary to the law of nature. Our wants and necessities being such as to render it impossible in most cases to enjoy life in any tolerable degree without entering into society, and there being innumerable cases wherein we need the assistance of others, which if not afforded we should very soon perish; hence the law of nature requires that we should endeavor to help one another to the utmost of our power in all cases where our assistance is necessary. It is our duty to endeavor always to promote the general good; to do to all as we would be willing to be done by were we in their circumstances; to do justly, to love mercy, and to walk humbly before God. These are some of the laws of nature which every man in the world is bound to observe, and which whoever violates exposes himself to the resentment of mankind, the lashes of his own conscience, and the judgment of Heaven. This plainly shows that the highest state of liberty subjects us to the law of nature and the government of God. The most perfect freedom consists in obeying the dictates of right reason, and submitting to natural law. When a man goes beyond or contrary to the law of nature and reason, he becomes the slave of base passions and vile lusts; he introduces confusion and disorder into society, and brings misery and destruction upon himself. This, therefore, cannot be called a state of freedom, but a state of the vilest slavery and the most dreadful bondage. The servants of sin and corruption are subjected to the worst kind of tyranny in the universe. Hence we conclude that where licentiousness begins, liberty ends.

The law of nature is a perfect standard and measure of action for beings that persevere in a state of moral rectitude; but the case is far different with us, who are in a fallen and degenerate estate. We have a law in our members which is continually warring against the law of the mind, by which we often become enslaved to the basest lusts, and are brought into bondage to the vilest passions. The strong propensities of our animal nature often overcome the sober dictates of reason and conscience, and betray us into actions injurious to the public and destructive of the safety and happiness of society. Men of unbridled lusts, were they not restrained by the power of the civil magistrate, would spread horror and desolation all around them. This makes it absolutely necessary that societies should form themselves into politic bodies, that they may enact laws for the public safety, and appoint particular penalties for the violation of their laws, and invest a suitable number of persons with authority to put in execution and enforce the laws of the state, in order that wicked men may be restrained from doing mischief to their fellow-creatures, that the injured may have their rights restored to them, that the virtuous may be encouraged in doing good, and that every member of society may be protected and secured in the peaceable, quiet possession and enjoyment of all those liberties and privileges which the Deity has bestowed upon him; *i.e.,* that he may safely enjoy and pursue whatever he chooses, that is consistent with the public good. This shows that the end and design of civil government cannot be to deprive men of their liberty or take away their freedom; but, on the contrary, the true design of civil government is to protect men in the enjoyment of liberty.

From hence it follows that tyranny and arbitrary power are utterly inconsistent with and subversive of the very end and design of civil government, and directly contrary to natural law, which is the true foundation of civil government and all politic law. Consequently, the authority of a tyrant is of itself null and void; for as no man can have a right to act contrary to the law of nature, it is impossible that any individual, or even the greatest number of men, can confer a right upon another of which they themselves are not possessed; *i.e.,* no body of men can justly and

lawfully authorize any person to tyrannize over and enslave his fellow-creatures, or do anything contrary to equity and goodness. As magistrates have no authority but what they derive from the people, whenever they act contrary to the public good, and pursue measures destructive of the peace and safety of the community, they forfeit their right to govern the people. Civil rulers and magistrates are properly of human creation; they are set up by the people to be the guardians of their rights, and to secure their persons from being injured or oppressed,—the safety of the public being the supreme law of the state, by which the magistrates are to be governed, and which they are to consult upon all occasions. The modes of administration may be very different, and the forms of government may vary from each other in different ages and nations; but, under every form, the end of civil government is the same, and cannot vary: it is like the laws of the Medes and Persians—it altereth not.

Though magistrates are to consider themselves as the servants of the people, seeing from them it is that they derive their power and authority, yet they may also be considered as the ministers of God ordained by him for the good of mankind; for, under him, as the Supreme Magistrate of the universe, they are to act: and it is God who has not only declared in his word what are the necessary qualifications of a ruler, but who also raises up and qualifies men for such an important station. The magistrate may also, in a more strict and proper sense, be said to be ordained of God, because reason, which is the voice of God, plainly requires such an order of men to be appointed for the public good. Now, whatever right reason requires as necessary to be done is as much the will and law of God as though it were enjoined us by an immediate revelation from heaven, or commanded in the sacred Scriptures.

From this account of the origin, nature, and design of civil government, we may be very easily led into a thorough knowledge of our duty; we may see the reason why we are bound to obey magistrates, viz., because they are the ministers of God for good unto the people. While, therefore, they rule in the fear of God, and while they promote the welfare of the state,—*i.e.*, while they act in the character of magistrates,—it is the indispensable duty of all to submit to them, and to oppose a turbulent, factious, and libertine spirit, whenever and wherever it discovers itself. When a people have by their free consent conferred upon a number of men a power to rule and govern them, they are bound to obey them. Hence disobedience becomes a breach of faith; it is violating a constitution of their own appointing, and breaking a compact for which they ought to have the most sacred regard. Such a conduct discovers so base and disingenuous a temper of mind, that it must expose them to contempt in the judgment of all the sober, thinking part of mankind. Subjects are bound to obey lawful magistrates by every tender tie of human nature, which disposes us to consult the public good, and to seek the good of our brethren, our wives, our children, our friends and acquaintance; for he that opposes lawful authority does really oppose the safety and happiness of his fellow-creatures. A factious, seditious person, that opposes good government, is a monster in nature; for he is an enemy to his own species, and destitute of the sentiments of humanity.

Subjects are also bound to obey magistrates, for conscience' sake, out of regard to the divine authority, and out of obedience to the will of God; for if magistrates are the ministers of God, we cannot disobey them without being disobedient to the law of God; and this extends to all men in authority, from the highest ruler to the lowest officer in the state. To oppose them when in the exercise of lawful authority is an act of disobedience to the Deity, and, as such, will be punished

by him. It will, doubtless, be readily granted by every honest man that we ought cheerfully to obey the magistrate, and submit to all such regulations of government as tend to promote the public good; but as this general definition may be liable to be misconstrued, and every man may think himself at liberty to disregard any laws that do not suit his interest, humor, or fancy, I would observe that, in a multitude of cases, many of us, for want of being properly acquainted with affairs of state, may be very improper judges of particular laws, whether they are just or not. In such cases it becomes us, as good members of society, peaceably and conscientiously to submit, though we cannot see the reasonableness of every law to which we submit, and that for this plain reason: if any number of men should take it upon themselves to oppose authority for acts, which may be really necessary for the public safety, only because they do not see the reasonableness of them, the direct consequence will be introducing confusion and anarchy into the state.

It is also necessary that the minor part should submit to the major; *e.g.*, when legislators have enacted a set of laws which are highly approved by a large majority of the community as tending to promote the public good, in this case, if a small number of persons are so unhappy as to view the matter in a very different point of light from the public, though they have an undoubted right to show the reasons of their dissent from the judgment of the public, and may lawfully use all proper arguments to convince the public of what they judge to be an error, yet, if they fail in their attempt, and the majority still continue to approve of the laws that are enacted, it is the duty of those few that dissent peaceably and for conscience's sake to submit to the public judgment, unless something is required of them which they judge would be sinful for them to comply with; for in that case they ought to obey the dictates of their own consciences rather than any human authority whatever. Perhaps, also, some cases of intolerable oppression, where compliance would bring on inevitable ruin and destruction, may justly warrant the few to refuse submission to what they judge inconsistent with their peace and safety; for the law of self-preservation will always justify opposing a cruel and tyrannical imposition, except where opposition is attended with greater evils than submission, which is frequently the case where a few are oppressed by a large and powerful majority.a Except the above-named cases, the minor ought always to submit to the major; otherwise, there can be no peace nor harmony in society. And, besides, it is the major part of a community that have the sole right of establishing a constitution and authorizing magistrates; and consequently it is only the major part of the community that can claim the right of altering the constitution, and displacing the magistrates; for certainly common sense will tell us that it requires as great an authority to set aside a constitution as there was at first to establish it. The collective body, not a few individuals, ought to constitute the supreme authority of the state.

The only difficulty remaining is to determine when a people may claim a right of forming themselves into a body politic, and assume the powers of legislation. In order to determine this point, we are to remember that all men being by nature equal, all the members of a community have a natural right to assemble themselves together, and act and vote for such regulations as they judge are necessary for the good of the whole. But when a community is become very numerous, it is very difficult, and in many cases impossible, for all to meet together to regulate the affairs of the state; hence comes the necessity of appointing delegates to represent the people in a general assembly. And this ought to be looked upon as a sacred and inalienable right, of which a people cannot justly divest themselves, and which no human authority can in equity ever

take from them, viz., that no one be obliged to submit to any law except such as are made either by himself or by his representative.

If representation and legislation are inseparably connected, it follows, that when great numbers have emigrated into a foreign land, and are so far removed from the parent state that they neither are or can be properly represented by the government from which they have emigrated, that then nature itself points out the necessity of their assuming to themselves the powers of legislation; and they have a right to consider themselves as a separate state from the other, and, as such, to form themselves into a body politic.

In the next place, when a people find themselves cruelly oppressed by the parent state, they have an undoubted right to throw off the yoke, and to assert their liberty, if they find good reason to judge that they have sufficient power and strength to maintain their ground in defending their just rights against their oppressors; for, in this case, by the law of self-preservation, which is the first law of nature, they have not only an undoubted right, but it is their indispensable duty, if they cannot be redressed any other way, to renounce all submission to the government that has oppressed them, and set up an independent state of their own, even though they may be vastly inferior in numbers to the state that has oppressed them. When either of the aforesaid cases takes place, and more especially when both concur, no rational man, I imagine, can have any doubt in his own mind whether such a people have a right to form themselves into a body politic, and assume to themselves all the powers of a free state. For, can it be rational to suppose that a people should be subjected to the tyranny of a set of men who are perfect strangers to them, and cannot be supposed to have that fellow-feeling for them that we generally have for those with whom we are connected and acquainted; and, besides, through their unacquaintedness with the circumstances of the people over whom they claim the right of jurisdiction, are utterly unable to judge, in a multitude of cases, which is best for them?

It becomes me not to say what particular form of government is best for a community,—whether a pure democracy, aristocracy, monarchy, or a mixture of all the three simple forms. They have all their advantages and disadvantages, and when they are properly administered may, any of them, answer the design of civil government tolerably. Permit me, however, to say, that an unlimited, absolute monarchy, and an aristocracy not subject to the control of the people, are two of the most exceptionable forms of government: firstly, because in neither of them is there a proper representation of the people; and, secondly, because each of them being entirely independent of the people, they are very apt to degenerate into tyranny. However, in this imperfect state, we cannot expect to have government formed upon such a basis but that it may be perverted by bad men to evil purposes. A wise and good man would be very loth to undermine a constitution that was once fixed and established, although he might discover many imperfections in it; and nothing short of the most urgent necessity would ever induce him to consent to it; because the unhinging a people from a form of government to which they had been long accustomed might throw them into such a state of anarchy and confusion as might terminate in their destruction, or perhaps, in the end, subject them to the worst kind of tyranny.

Having thus shown the nature, end, and design of civil government, and pointed out the reasons why subjects are bound to obey magistrates,—viz., because in so doing they both consult their own happiness as individuals, and also promote the public good and the safety of the state,—I

proceed, in the next place, to show that the same principles that oblige us to submit to civil government do also equally oblige us, where we have power and ability, to resist and oppose tyranny; and that where tyranny begins government ends. For, if magistrates have no authority but what they derive from the people; if they are properly of human creation; if the whole end and design of their institution is to promote the general good, and to secure to men their just rights,—it will follow, that when they act contrary to the end and design of their creation they cease being magistrates, and the people which gave them their authority have the right to take it from them again. This is a very plain dictate of common sense, which universally obtains in all similar cases; for who is there that, having employed a number of men to do a particular piece of work for him, but what would judge that he had a right to dismiss them from his service when he found that they went directly contrary to his orders, and that, instead of accomplishing the business he had set them about, they would infallibly ruin and destroy it? If, then, men, in the common affairs of life, always judge that they have a right to dismiss from their service such persons as counteract their plans and designs, though the damage will affect only a few individuals, much more must the body politic have a right to depose any persons, though appointed to the highest place of power and authority, when they find that they are unfaithful to the trust reposed in them, and that, instead of consulting the general good, they are disturbing the peace of society by making laws cruel and oppressive, and by depriving the subjects of their just rights and privileges. Whoever pretends to deny this proposition must give up all pretence of being master of that common sense and reason by which the Deity has distinguished us from the brutal herd.

As our duty of obedience to the magistrate is founded upon our obligation to promote the general good, our readiness to obey lawful authority will always arise in proportion to the love and regard that we have for the welfare of the public; and the same love and regard for the public will inspire us with as strong a zeal to oppose tyranny as we have to obey magistracy. Our obligation to promote the public good extends as much to the opposing every exertion of arbitrary power that is injurious to the state as it does to the submitting to good and wholesome laws. No man, therefore, can be a good member of the community that is not as zealous to oppose tyranny as he is ready to obey magistracy. A slavish submission to tyranny is a proof of a very sordid and base mind. Such a person cannot be under the influence of any generous human sentiments, nor have a tender regard for mankind.

Further: if magistrates are no farther ministers of God than they promote the good of the community, then obedience to them neither is nor can be unlimited; for it would imply a gross absurdity to assert that, when magistrates are ordained by the people solely for the purpose of being beneficial to the state, they must be obeyed when they are seeking to ruin and destroy it. This would imply that men were bound to act against the great law of self-preservation, and to contribute their assistance to their own ruin and destruction, in order that they may please and gratify the greatest monsters in nature, who are violating the laws of God and destroying the rights of mankind. Unlimited submission and obedience is due to none but God alone. He has an absolute right to command; he alone has an uncontrollable sovereignty over us, because he alone is unchangeably good; he never will nor can require of us, consistent with his nature and attributes, anything that is not fit and reasonable; his commands are all just and good; and to suppose that he has given to any particular set of men a power to require obedience to that which is unreasonable, cruel, and unjust, is robbing the Deity of his justice and goodness, in which

consists the peculiar glory of the divine character, and it is representing him under the horrid character of a tyrant.

If magistrates are ministers of God only because the law of God and reason points out the necessity of such an institution for the good of mankind, it follows, that whenever they pursue measures directly destructive of the public good they cease being God's ministers, they forfeit their right to obedience from the subject, they become the pests of society, and the community is under the strongest obligation of duty, both to God and to its own members, to resist and oppose them, which will be so far from resisting the ordinance of God that it will be strictly obeying his commands. To suppose otherwise will imply that the Deity requires of us an obedience that is self-contradictory and absurd, and that one part of his law is directly contrary to the other; *i. e.*, while he commands us to pursue virtue and the general good, he does at the same time require us to persecute virtue, and betray the general good, by enjoining us obedience to the wicked commands of tyrannical oppressors. Can any one not lost to the principles of humanity undertake to defend such absurd sentiments as these? As the public safety is the first and grand law of society, so no community can have a right to invest the magistrate with any power or authority that will enable him to act against the welfare of the state and the good of the whole. If men have at any time wickedly and foolishly given up their just rights into the hands of the magistrate, such acts are null and void, of course; to suppose otherwise will imply that we have a right to invest the magistrate with a power to act contrary to the law of God,—which is as much as to say that we are not the subjects of divine law and government. What has been said is, I apprehend, abundantly sufficient to show that tyrants are no magistrates, or that whenever magistrates abuse their power and authority to the subverting the public happiness, their authority immediately ceases, and that it not only becomes lawful, but an indispensable duty to oppose them; that the principle of self-preservation, the affection and duty that we owe to our country, and the obedience we owe the Deity, do all require us to oppose tyranny.

If it be asked, Who are the proper judges to determine when rulers are guilty of tyranny and oppression? I answer, the public. Not a few disaffected individuals, but the collective body of the state, must decide this question; for, as it is the collective body that invests rulers with their power and authority, so it is the collective body that has the sole right of judging whether rulers act up to the end of their institution or not. Great regard ought always to be paid to the judgment of the public. It is true the public may be imposed upon by a misrepresentation of facts; but this may be said of the public, which cannot always be said of individuals, viz., that the public is always willing to be rightly informed, and when it has proper matter of conviction laid before it its judgment is always right.

This account of the nature and design of civil government, which is so clearly suggested to us by the plain principles of common sense and reason, is abundantly confirmed by the sacred Scriptures, even by those very texts which have been brought by men of slavish principles to establish the absurd doctrine of unlimited passive obedience and non-resistance, as will abundantly appear by examining the two most noted texts that are commonly brought to support the strange doctrine of passive obedience. The first that I shall cite is in 1 Peter ii. 13, 14: "Submit yourselves to every ordinance of man,"—or, rather, as the words ought to be rendered from the Greek, submit yourselves to every human creation, or human constitution,—"for the Lord's sake, whether it be to the king as supreme, or unto governors, as unto them that are sent

by him for the punishment of evil-doers, and for the praise of them that do well." Here we see that the apostle asserts that magistracy is of human creation or appointment; that is, that magistrates have no power or authority but what they derive from the people; that this power they are to exert for the punishment of evildoers, and for the praise of them that do well; *i. e.*, the end and design of the appointment of magistrates is to restrain wicked men, by proper penalties, from injuring society, and to encourage and honor the virtuous and obedient. Upon this account Christians are to submit to them for the Lord's sake; which is as if he had said, Though magistrates are of mere human appointment, and can claim no power or authority but what they derive from the people, yet, as they are ordained by men to promote the general good by punishing evil-doers and by rewarding and encouraging the virtuous and obedient, you ought to submit to them out of a sacred regard to the divine authority; for as they, in the faithful discharge of their office, do fulfill the will of God, so ye, by submitting to them, do fulfil the divine command. If the only reason assigned by the apostle why magistrates should be obeyed out of a regard to the divine authority is because they punish the wicked and encourage the good, it follows, that when they punish the virtuous and encourage the vicious we have a right to refuse yielding any submission or obedience to them; *i. e.*, whenever they act contrary to the end and design of their institution, they forfeit their authority to govern the people, and the reason for submitting to them, out of regard to the divine authority, immediately ceases; and they being only of human appointment, the authority which the people gave them the public have a right to take from them, and to confer it upon those who are more worthy. So far is this text from favoring arbitrary principles, that there is nothing in it but what is consistent with and favorable to the highest liberty that any man can wish to enjoy; for this text requires us to submit to the magistrate no further than he is the encourager and protector of virtue and the punisher of vice; and this is consistent with all that liberty which the Deity has bestowed upon us.

The other text which I shall mention, and which has been made use of by the favorers of arbitrary government as their great sheet-anchor and main support, is in Rom. xiii., the first six verses: "Let every soul be subject to the higher powers; for there is no power but of God. The powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God; and they that resist shall receive to themselves damnation; for rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same: for he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doth evil. Wherefore ye must needs be subject not only for wrath, but also for conscience' sake. For, for this cause pay you tribute also; for they are God's ministers, attending continually upon this very thing." A very little attention, I apprehend, will be sufficient to show that this text is so far from favoring arbitrary government, that, on the contrary, it strongly holds forth the principles of true liberty. Subjection to the higher powers is enjoined by the apostle because there is no power but of God; the powers that be are ordained of God; consequently, to resist the power is to resist the ordinance of God: and he repeatedly declares that the ruler is the minister of God. Now, before we can say whether this text makes for or against the doctrine of unlimited passive obedience, we must find out in what sense the apostle affirms that magistracy is the ordinance of God, and what he intends when he calls the ruler the minister of God.

I can think but of three possible senses in which magistracy can with any propriety be called God's ordinance, or in which rulers can be said to be ordained of God as his ministers. The first is a plain declaration from the word of God that such a one and his descendants are, and shall be, the only true and lawful magistrates: thus we find in Scripture the kingdom of Judah to be settled by divine appointment in the family of David. Or,

Secondly, By an immediate commission from God, ordering and appointing such a one by name to be the ruler over the people: thus Saul and David were immediately appointed by God to be kings over Israel. Or,

Thirdly, Magistracy may be called the ordinance of God, and rulers may be called the ministers of God, because the nature and reason of things, which is the law of God, requires such an institution for the preservation and safety of civil society. In the two first senses the apostle cannot be supposed to affirm that magistracy is God's ordinance, for neither he nor any of the sacred writers have entailed the magistracy to any one particular family under the gospel dispensation. Neither does he nor any of the inspired writers give us the least hint that any person should ever be immediately commissioned from God to bear rule over the people. The third sense, then, is the only sense in which the apostle can be supposed to affirm that the magistrate is the minister of God, and that magistracy is the ordinance of God; viz., that the nature and reason of things require such an institution for the preservation and safety of mankind. Now, if this be the only sense in which the apostle affirms that magistrates are ordained of God as his ministers, resistance must be criminal only so far forth as they are the ministers of God, *i. e.*, while they act up to the end of their institution, and ceases being criminal when they cease being the ministers of God, *i. e.*, when they act contrary to the general good, and seek to destroy the liberties of the people.

That we have gotten the apostle's sense of magistracy being the ordinance of God, will plainly appear from the text itself; for, after having asserted that to resist the power is to resist the ordinance of God, and they that resist shall receive to themselves damnation, he immediately adds as the reason of this assertion, "For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same: for he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doth evil." Here is a plain declaration of the sense in which he asserts that the authority of the magistrate is ordained of God, viz., because rulers are not a terror to good works, but to the evil; therefore we ought to dread offending them, for we cannot offend them but by doing evil; and if we do evil we have just reason to fear their power; for they bear not the sword in vain, but in this case the magistrate is a revenger to execute wrath upon him that doeth evil: but if we are found doers of that which is good, we have no reason to fear the authority of the magistrate; for in this case, instead of being punished, we shall be protected and encouraged. The reason why the magistrate is called the minister of God is because he is to protect, encourage, and honor them that do well, and to punish them that do evil; therefore it is our duty to submit to them, not merely for fear of being punished by them, but out of regard to the divine authority, under which they are deputed to execute judgement and to do justice. For this reason, according to the apostle, tribute is to be paid them, because, as the ministers of God, their whole

business is to protect every man in the enjoyment of his just rights and privileges, and to punish every evil-doer.

If the apostle, then, asserts that rulers are ordained of God only because they are a terror to evil works and a praise to them that do well; if they are ministers of God only because they encourage virtue and punish vice; if for this reason only they are to be obeyed for conscience' sake; if the sole reason why they have a right to tribute is because they devote themselves wholly to the business of securing to men their just rights, and to the punishing of evil-doers,—it follows, by undeniable consequence, that when they become the pests of human society, when they promote and encourage evil-doers, and become a terror to good works, they then cease being the ordinance of God; they are no longer rulers nor ministers of God; they are so far from being the powers that are ordained of God that they become the ministers of the powers of darkness, and it is so far from being a crime to resist them, that in many cases it may be highly criminal in the sight of Heaven to refuse resisting and opposing them to the utmost of our power; or, in other words, that the same reasons that require us to obey the ordinance of God, do equally oblige us, when we have power and opportunity, to oppose and resist the ordinance of Satan.

Hence we see that the apostle Paul, instead of being a friend to tyranny and arbitrary government, turns out to be a strong advocate for the just rights of mankind, and is for our enjoying all that liberty with which God has invested us; for no power (according to the apostle) is ordained of God but what is an encourager of every good and virtuous action,—"Do that which is good, and thou shalt have praise of the same." No man need to be afraid of this power which is ordained of God who does nothing but what is agreeable to the law of God; for this power will not restrain us from exercising any liberty which the Deity has granted us; for the minister of God is to restrain us from nothing but the doing of that which is evil, and to this we have no right. To practise evil is not liberty, but licentiousness. Can we conceive of a more perfect, equitable, and generous plan of government than this which the apostle has laid down, viz., to have rulers appointed over us to encourage us to every good and virtuous action, to defend and protect us in our just rights and privileges, and to grant us everything that can tend to promote our true interest and happiness; to restrain every licentious action, and to punish every one that would injure or harm us; to become a terror of evil-doers; to make and execute such just and righteous laws as shall effectually deter and hinder men from the commission of evil, and to attend continually upon this very thing; to make it their constant care and study, day and night, to promote the good and welfare of the community, and to oppose all evil practices? Deservedly may such rulers be called the ministers of God for good. They carry on the same benevolent design towards the community which the great Governor of the universe does towards his whole creation. 'Tis the indispensable duty of a people to pay tribute, and to afford an easy and comfortable subsistence to such rulers, because they are the ministers of God, who are continually laboring and employing their time for the good of the community. He that resists such magistrates does, in a very emphatical sense, resist the ordinance of God; he is an enemy to mankind, odious to God, and justly incurs the sentence of condemnation from the great Judge of quick and dead. Obedience to such magistrates is yielding obedience to the will of God, and, therefore, ought to be performed from a sacred regard to the divine authority.

For any one from hence to infer that the apostle enjoins in this text unlimited obedience to the worst of tyrants, and that he pronounces damnation upon those that resist the arbitrary measures

of such pests of society, is just as good sense as if one should affirm, that because the Scripture enjoins us obedience to the laws of God, therefore we may not oppose the power of darkness; or because we are commanded to submit to the ordinance of God, therefore we may not resist the ministers of Satan. Such wild work must be made with the apostle before he can be brought to speak the language of oppression! It is as plain, I think, as words can make it, that, according to this text, no tyrant can be a ruler; for the apostle's definition of a ruler is, that he is not a terror to good works, but to the evil; and that he is one who is to praise and encourage those that do well. Whenever, then, the ruler encourages them that do evil, and is a terror to those that do well,—*i. e.*, as soon as he becomes a tyrant,—he forfeits his authority to govern, and becomes the minister of Satan, and, as such, ought to be opposed.

I know it is said that the magistrates were, at the time when the apostle wrote, heathens, and that Nero, that monster of tyranny, was then Emperor of Rome; that therefore the apostle, by enjoining submission to the powers that then were, does require unlimited obedience to be yielded to the worst of tyrants. Now, not to insist upon what has been often observed, viz., that this epistle was written most probably about the beginning of Nero's reign, at which time he was a very humane and merciful prince, did everything that was generous and benevolent to the public, and showed every act of mercy and tenderness to particulars, and therefore might at that time justly deserve the character of the minister of God for good to the people,—I say, waiving this, we will suppose that this epistle was written after that Nero was become a monster of tyranny and wickedness; it will by no means follow from thence that the apostle meant to enjoin unlimited subjection to such an authority, or that he intended to affirm that such a cruel, despotic authority was the ordinance of God. The plain, obvious sense of his words, as we have already seen, forbids such a construction to be put upon them, for they plainly imply a strong abhorrence and disapprobation of such a character, and clearly prove that Nero, so far forth as he was a tyrant, could not be the minister of God, nor have a right to claim submission from the people; so that this ought, perhaps, rather to be viewed as a severe satire upon Nero, than as enjoining any submission to him.

It is also worthy to be observed that the apostle prudently waived mentioning any particular persons that were then in power, as it might have been construed in an invidious light, and exposed the primitive Christians to the severe resentments of the men that were then in power. He only in general requires submission to the higher powers, because the powers that be are ordained of God. Now, though the emperor might at that time be such a tyrant that he could with no propriety be said to be ordained of God, yet it would be somewhat strange if there were no men in power among the Romans that acted up to the character of good magistrates, and that deserved to be esteemed as the ministers of God for good unto the people. If there were any such, notwithstanding the tyranny of Nero, the apostle might with great propriety enjoin submission to those powers that were ordained of God, and by so particularly pointing out the end and design of magistrates, and giving his definition of a ruler, he might design to show that neither Nero, nor any other tyrant, ought to be esteemed as the minister of God. Or, rather,—which appears to me to be the true sense,—the apostle meant to speak of magistracy in general, without any reference to the emperor, or any other person in power, that was then at Rome; and the meaning of this passage is as if he had said, It is the duty of every Christian to be a good subject of civil government, for the power and authority of the civil magistrate are from God; for the powers that be are ordained of God; *i. e.*, the authority of the magistrates that are now either at Rome or

elsewhere is ordained of the Deity. Wherever you find any lawful magistrates, remember, they are of divine ordination. But that you may understand what I mean when I say that magistrates are of divine ordination, I will show you how you may discern who are lawful magistrates, and ordained of God, from those who are not. Those only are to be esteemed lawful magistrates, and ordained of God, who pursue the public good by honoring and encouraging those that do well and punishing all that do evil. Such, and such only, wherever they are to be found, are the ministers of God for good: to resist such is resisting the ordinance of God, and exposing yourselves to the divine wrath and condemnation.

In either of these senses the text cannot make anything in favor of arbitrary government. Nor could he with any propriety tell them that they need not be afraid of the power so long as they did that which was good, if he meant to recommend an unlimited submission to a tyrannical Nero; for the best characters were the likeliest to fall a sacrifice to his malice. And, besides, such an injunction would be directly contrary to his own practice, and the practice of the primitive Christians, who refused to comply with the sinful commands of men in power; their answer in such cases being this, We ought to obey God rather than men. Hence the apostle Paul himself suffered many cruel persecutions because he would not renounce Christianity, but persisted in opposing the idolatrous worship of the pagan world.

This text, being rescued from the absurd interpretations which the favorers of arbitrary government have put upon it, turns out to be a noble confirmation of that free and generous plan of government which the law of nature and reason points out to us. Nor can we desire a more equitable plan of government than what the apostle has here laid down; for, if we consult our happiness and real good, we can never wish for an unreasonable liberty, viz., a freedom to do evil, which, according to the apostle, is the only thing that the magistrate is to refrain us from. To have a liberty to do whatever is fit, reasonable, or good, is the highest degree of freedom that rational beings can possess. And how honorable a station are those men placed in, by the providence of God, whose business it is to secure to men this rational liberty, and to promote the happiness and welfare of society, by suppressing vice and immorality, and by honoring and encouraging everything that is honorable, virtuous, and praiseworthy! Such magistrates ought to be honored and obeyed as the ministers of God and the servants of the King of Heaven. Can we conceive of a larger and more generous plan of government than this of the apostle? Or can we find words more plainly expressive of a disapprobation of an arbitrary and tyrannical government? I never read this text without admiring the beauty and nervousness of it; and I can hardly conceive how he could express more ideas in so few words than he has done. We see here, in one view, the honor that belongs to the magistrate, because he is ordained of God for the public good. We have his duty pointed out, viz., to honor and encourage the virtuous, to promote the real good of the community, and to punish all wicked and injurious persons. We are taught the duty of the subject, viz., to obey the magistrate for conscience' sake, because he is ordained of God; and that rulers, being continually employed under God for our good, are to be generously maintained by the paying them tribute; and that disobedience to rulers is highly criminal, and will expose us to the divine wrath. The liberty of the subject is also clearly asserted, viz., that subjects are to be allowed to do everything that is in itself just and right, and are only to be restrained from being guilty of wrong actions. It is also strongly implied, that when rulers become oppressive to the subject and injurious to the state, their authority, their respect, their maintenance, and the duty of submitting to them, must immediately cease; they are

then to be considered as the ministers of Satan, and, as such, it becomes our indispensable duty to resist and oppose them.

Thus we see that both reason and revelation perfectly agree in pointing out the nature, end, and design of government, viz., that it is to promote the welfare and happiness of the community; and that subjects have a right to do everything that is good, praiseworthy, and consistent with the good of the community, and are only to be restrained when they do evil and are injurious either to individuals or the whole community; and that they ought to submit to every law that is beneficial to the community for conscience' sake, although it may in some measure interfere with their private interest; for every good man will be ready to forego his private interest for the sake of being beneficial to the public. Reason and revelation, we see, do both teach us that our obedience to rulers is not unlimited, but that resistance is not only allowable, but an indispensable duty in the case of intolerable tyranny and oppression. From both reason and revelation we learn that, as the public safety is the supreme law of the state,—being the true standard and measure by which we are to judge whether any law or body of laws are just or not,—so legislatures have a right to make, and require subjection to, any set of laws that have a tendency to promote the good of the community.

Our governors have a right to take every proper method to form the minds of their subjects so that they may become good members of society. The great difference that we may observe among the several classes of mankind arises chiefly from their education and their laws: hence men become virtuous or vicious, good commonwealthsmen or the contrary, generous, noble, and courageous, or base, mean-spirited, and cowardly, according to the impression that they have received from the government that they are under, together with their education and the methods that have been practised by their leaders to form their minds in early life. Hence the necessity of good laws to encourage every noble and virtuous sentiment, to suppress vice and immorality, to promote industry, and to punish idleness, that parent of innumerable evils; to promote arts and sciences, and to banish ignorance from among mankind.

And as nothing tends like religion and the fear of God to make men good members of the commonwealth, it is the duty of magistrates to become the patrons and promoters of religion and piety, and to make suitable laws for the maintaining public worship, and decently supporting the teachers of religion. Such laws, I apprehend, are absolutely necessary for the well-being of civil society. Such laws may be made, consistent with all that liberty of conscience which every good member of society ought to be possessed of; for, as there are few, if any, religious societies among us but what profess to believe and practise all the great duties of religion and morality that are necessary for the well-being of society and the safety of the state, let every one be allowed to attend worship in his own society, or in that way that he judges most agreeable to the will of God, and let him be obliged to contribute his assistance to the supporting and defraying the necessary charges of his own meeting. In this case no one can have any right to complain that he is deprived of liberty of conscience, seeing that he has a right to choose and freely attend that worship that appears to him to be most agreeable to the will of God; and it must be very unreasonable for him to object against being obliged to contribute his part towards the support of that worship which he has chosen. Whether some such method as this might not tend, in a very eminent manner, to promote the peace and welfare of society, I must leave to the wisdom of our legislators to determine; be sure it would take off some of the most popular objections against

being obliged by law to support public worship while the law restricts that support only to one denomination.

But for the civil authority to pretend to establish particular modes of faith and forms of worship, and to punish all that deviate from the standard which our superiors have set up, is attended with the most pernicious consequences to society. It cramps all free and rational inquiry, fills the world with hypocrits and superstitious bigots—nay, with infidels and skeptics; it exposes men of religion and conscience to the rage and malice of fiery, blind zealots, and dissolves every tender tie of human nature; in short, it introduces confusion and every evil work. And I cannot but look upon it as a peculiar blessing of Heaven that we live in a land where every one can freely deliver his sentiments upon religious subjects, and have the privilege of worshipping God according to the dictates of his own conscience without any molestation or disturbance,—a privilege which I hope we shall ever keep up and strenuously maintain. No principles ought ever to be discountenanced by civil authority but such as tend to the subversion of the state. So long as a man is a good member of society, he is accountable to God alone for his religious sentiments; but when men are found disturbers of the public peace, stirring up sedition, or practising against the state, no pretence of religion or conscience ought to screen them from being brought to condign punishment. But then, as the end and design of punishment is either to make restitution to the injured or to restrain men from committing the like crimes for the future, so, when these important ends are answered, the punishment ought to cease; for whatever is inflicted upon a man under the notion of punishment after these important ends are answered, is not a just and lawful punishment, but is properly cruelty and base revenge.

From this account of civil government we learn that the business of magistrates is weighty and important. It requires both wisdom and integrity. When either are wanting, government will be poorly administered; more especially if our governors are men of loose morals and abandoned principles; for if a man is not faithful to God and his own soul, how can we expect that he will be faithful to the public? There was a great deal of propriety in the advice that Jethro gave to Moses to provide able men,—men of truth, that feared God, and that hated covetousness,—and to appoint them for rulers over the people. For it certainly implies a very gross absurdity to suppose that those who are ordained of God for the public good should have no regard to the laws of God, or that the ministers of God should be despisers of the divine commands. David, the man after God's own heart, makes piety a necessary qualification in a ruler: "He that ruleth over men (says he) must be just, ruling in the fear of God." It is necessary it should be so, for the welfare and happiness of the state; for, to say nothing of the venality and corruption, of the tyranny and oppression, that will take place under unjust rulers, barely their vicious and irregular lives will have a most pernicious effect upon the lives and manners of their subjects: their authority becomes despicable in the opinion of discerning men. And, besides, with what face can they make or execute laws against vices which they practise with greediness? A people that have a right of choosing their magistrates are criminally guilty in the sight of Heaven when they are governed by caprice and humor, or are influenced by bribery to choose magistrates that are irreligious men, who are devoid of sentiment, and of bad morals and base lives. Men cannot be sufficiently sensible what a curse they may bring upon themselves and their posterity by foolishly and wickedly choosing men of abandoned characters and profligate lives for their magistrates and rulers.

We have already seen that magistrates who rule in the fear of God ought not only to be obeyed as the ministers of God, but that they ought also to be handsomely supported, that they may cheerfully and freely attend upon the duties of their station; for it is a great shame and disgrace to society to see men that serve the public laboring under indigent and needy circumstances; and, besides, it is a maxim of eternal truth that the laborer is worthy of his reward.

It is also a great duty incumbent on people to treat those in authority with all becoming honor and respect,—to be very careful of casting any aspersion upon their characters. To despise government, and to speak evil of dignities, is represented in Scripture as one of the worst of characters; and it was an injunction of Moses, "Thou shalt not speak evil of the ruler of thy people." Great mischief may ensue upon reviling the character of good rulers; for the unthinking herd of mankind are very apt to give ear to scandal, and when it falls upon men in power, it brings their authority into contempt, lessens their influence, and disheartens them from doing that service to the community of which they are capable; whereas, when they are properly honored, and treated with that respect which is due to their station, it inspires them with courage and a noble ardor to serve the public: their influence among the people is strengthened, and their authority becomes firmly established. We ought to remember that they are men like to ourselves, liable to the same imperfections and infirmities with the rest of us, and therefore, so long as they aim at the public good, their mistakes, misapprehensions, and infirmities, ought to be treated with the utmost humanity and tenderness.

But though I would recommend to all Christians, as a part of the duty that they owe to magistrates, to treat them with proper honor and respect, none can reasonably suppose that I mean that they ought to be flattered in their vices, or honored and caressed while they are seeking to undermine and ruin the state; for this would be wickedly betraying our just rights, and we should be guilty of our own destruction. We ought ever to persevere with firmness and fortitude in maintaining and contending for all that liberty that the Deity has granted us. It is our duty to be ever watchful over our just rights, and not suffer them to be wrested out of our hands by any of the artifices of tyrannical oppressors. But there is a wide difference between being jealous of our rights, when we have the strongest reason to conclude that they are invaded by our rulers, and being unreasonably suspicious of men that are zealously endeavoring to support the constitution, only because we do not thoroughly comprehend all their designs. The first argues a noble and generous mind; the other, a low and base spirit.

Thus have I considered the nature of the duty enjoined in the text, and have endeavored to show that the same principles that require obedience to lawful magistrates do also require us to resist tyrants; this I have confirmed from reason and Scripture.

It was with a particular view to the present unhappy controversy that subsists between us and Great Britain that I chose to discourse upon the nature and design of government, and the rights and duties both of governors and governed, that so, justly understanding our rights and privileges, we may stand firm in our opposition to ministerial tyranny, while at the same time we pay all proper obedience and submission to our lawful magistrates; and that, while we are contending for liberty, we may avoid running into licentiousness; and that we may preserve the due medium between submitting to tyranny and running into anarchy. I acknowledge that I have undertaken a difficult task; but, as it appeared to me, the present state of affairs loudly called for

such a discourse; and, therefore, I hope the wise, the generous, and the good, will candidly receive my good intentions to serve the public. I shall now apply this discourse to the grand controversy that at this day subsists between Great Britain and the American colonies.

And here, in the first place, I cannot but take notice how wonderfully Providence has smiled upon us by causing the several colonies to unite so firmly together against the tyranny of Great Britain, though differing from each other in their particular interest, forms of government, modes of worship, and particular customs and manners, besides several animosities that had subsisted among them. That, under these circumstances, such a union should take place as we now behold, was a thing that might rather have been wished than hoped for.

And, in the next place, who could have thought that, when our charter was vacated, when we became destitute of any legislative authority, and when our courts of justice in many parts of the country were stopped, so that we could neither make nor execute laws upon offenders,—who, I say, would have thought, that in such a situation the people should behave so peaceably, and maintain such good order and harmony among themselves? This is a plain proof that they, having not the civil law to regulate themselves by, became a law unto themselves; and by their conduct they have shown that they were regulated by the law of God written in their hearts. This is the Lord's doing, and it ought to be marvellous in our eyes.

From what has been said in this discourse, it will appear that we are in the way of our duty in opposing the tyranny of Great Britain; for, if unlimited submission is not due to any human power, if we have an undoubted right to oppose and resist a set of tyrants that are subverting our just rights and privileges, there cannot remain a doubt in any man, that will calmly attend to reason, whether we have a right to resist and oppose the arbitrary measures of the King and Parliament; for it is plain to demonstration, nay, it is in a manner self-evident, that they have been and are endeavoring to deprive us not only of the privileges of Englishmen, and our charter rights, but they have endeavored to deprive us of what is much more sacred, viz., the privileges of men and Christians;[a] *i. e.*, they are robbing us of the inalienable rights that the God of nature has given us as men and rational beings, and has confirmed to us in his written word as Christians and disciples of that Jesus who came to redeem us from the bondage of sin and the tyranny of Satan, and to grant us the most perfect freedom, even the glorious liberty of the sons and children of God; that here they have endeavored to deprive us of the sacred charter of the King of Heaven. But we have this for our consolation: the Lord reigneth; he governs the world in righteousness, and will avenge the cause of the oppressed when they cry unto him. We have made our appeal to Heaven, and we cannot doubt but that the Judge of all the earth will do right.

Need I upon this occasion descend to particulars? Can any one be ignorant what the things are of which we complain? Does not every one know that the King and Parliament have assumed the right to tax us without our consent? And can any one be so lost to the principles of humanity and common sense as not to view their conduct in this affair as a very grievous imposition? Reason and equity require that no one be obliged to pay a tax that he has never consented to, either by himself or by his representative. But, as Divine Providence has placed us at so great a distance from Great Britain that we neither are nor can be properly represented in the British Parliament, it is a plain proof that the Deity designed that we should have the powers of legislation and taxation among ourselves; for can any suppose it to be reasonable that a set of men that are

perfect strangers to us should have the uncontrollable right to lay the most heavy and grievous burdens upon us that they please, purely to gratify their unbounded avarice and luxury? Must we be obliged to perish with cold and hunger to maintain them in idleness, in all kinds of debauchery and dissipation? But if they have the right to take our property from us without our consent, we must be wholly at their mercy for our food and raiment, and we know by sad experience that their tender mercies are cruel.

But because we were not willing to submit to such an unrighteous and cruel decree,—though we modestly complained and humbly petitioned for a redress of our grievances,—instead of hearing our complaints, and granting our requests, they have gone on to add iniquity to transgression, by making several cruel and unrighteous acts. Who can forget the cruel act to block up the harbor of Boston, whereby thousands of innocent persons must have been inevitably ruined had they not been supported by the continent? Who can forget the act for vacating our charter, together with many other cruel acts which it is needless to mention? But, not being able to accomplish their wicked purposes by mere acts of Parliament, they have proceeded to commence open hostilities against us, and have endeavored to destroy us by fire and sword. Our towns they have burnt, our brethren they have slain, our vessels they have taken, and our goods they have spoiled. And, after all this wanton exertion of arbitrary power, is there the man that has any of the feeling of humanity left who is not fired with a noble indignation against such merciless tyrants, who have not only brought upon us all the horrors of a civil war, but have also added a piece of barbarity unknown to Turks and Mohammedan infidels, yea, such as would be abhorred and detested by the savages of the wilderness,—I mean their cruelly forcing our brethren whom they have taken prisoners, without any distinction of whig or tory, to serve on board their ships of war, thereby obliging them to take up arms against their own countrymen, and to fight against their brethren, their wives, and their children, and to assist in plundering their own estates! This, my brethren, is done by men who call themselves Christians, against their Christian brethren,—against men who till now gloried in the name of Englishmen, and who were ever ready to spend their lives and fortunes in the defence of British rights. Tell it not in Gath, publish it not in the streets of Askelon, lest it cause our enemies to rejoice and our adversaries to triumph! Such a conduct as this brings a great reproach upon the profession of Christianity; nay, it is a great scandal even to human nature itself.

It would be highly criminal not to feel a due resentment against such tyrannical monsters. It is an indispensable duty, my brethren, which we owe to God and our country, to rouse up and bestir ourselves, and, being animated with a noble zeal for the sacred cause of liberty, to defend our lives and fortunes, even to the shedding the last drop of blood. The love of our country, the tender affection that we have for our wives and children, the regard we ought to have for unborn posterity, yea, everything that is dear and sacred, do now loudly call upon us to use our best endeavors to save our country. We must beat our ploughshares into swords, and our pruning-hooks into spears, and learn the art of self-defence against our enemies. To be careless and remiss, or to neglect the cause of our country through the base motives of avarice and self-interest, will expose us not only to the resentments of our fellow-creatures, but to the displeasure of God Almighty; for to such base wretches, in such a time as this, we may apply with the utmost propriety that passage in Jeremiah xlviii. 10: “Cursed be he that doth the work of the Lord deceitfully, and cursed be he that keepeth back his sword from blood.” To save our country from the hands of our oppressors ought to be dearer to us even than our own lives, and, next the

eternal salvation of our own souls, is the thing of the greatest importance,—a duty so sacred that it cannot justly be dispensed with for the sake of our secular concerns. Doubtless for this reason God has been pleased to manifest his anger against those who have refused to assist their country against its cruel oppressors. Hence, in a case similar to ours, when the Israelites were struggling to deliver themselves from the tyranny of Jabin, the King of Canaan, we find a most bitter curse denounced against those who refused to grant their assistance in the common cause; see Judges v. 23: “Curse ye Meroz, said the angel of the Lord, curse ye bitterly the inhabitants thereof; because they came not to the help of the Lord, to the help of the Lord against the mighty.”

Now, if such a bitter curse is denounced against those who refused to assist their country against its oppressors, what a dreadful doom are those exposed to who have not only refused to assist their country in this time of distress, but have, through motives of interest or ambition, shown themselves enemies to their country by opposing us in the measures that we have taken, and by openly favoring the British Parliament! He that is so lost to humanity as to be willing to sacrifice his country for the sake of avarice or ambition, has arrived to the highest stage of wickedness that human nature is capable of, and deserves a much worse name than I at present care to give him. But I think I may with propriety say that such a person has forfeited his right to human society, and that he ought to take up his abode, not among the savage men, but among the savage beasts of the wilderness.

Nor can I wholly excuse from blame those timid persons who, through their own cowardice, have been induced to favor our enemies, and have refused to act in defence of their country; for a due sense of the ruin and destruction that our enemies are bringing upon us is enough to raise such a resentment in the human breast that would, I should think, be sufficient to banish fear from the most timid male. And, besides, to indulge cowardice in such a cause argues a want of faith in God; for can he that firmly believes and relies upon the providence of God doubt whether he will avenge the cause of the injured when they apply to him for help? For my own part, when I consider the dispensations of Providence towards this land ever since our fathers first settled in Plymouth, I find abundant reason to conclude that the great Sovereign of the universe has planted a vine in this American wilderness which he has caused to take deep root, and it has filled the land, and that he will never suffer it to be plucked up or destroyed.

Our fathers fled from the rage of prelatical tyranny and persecution, and came into this land in order to enjoy liberty of conscience, and they have increased to a great people. Many have been the interpositions of Divine Providence on our behalf, both in our fathers’ days and ours; and, though we are now engaged in a war with Great Britain, yet we have been prospered in a most wonderful manner. And can we think that he who has thus far helped us will give us up into the hands of our enemies? Certainly he that has begun to deliver us will continue to show his mercy towards us, in saving us from the hands of our enemies: he will not forsake us if we do not foresake him. Our cause is so just and good that nothing can prevent our success but only our sins. Could I see a spirit of repentance and reformation prevail through the land, I should not have the least apprehension or fear of being brought under the iron rod of slavery, even though all the powers of the globe were combined against us. And though I confess that the irreligion and profaneness which are so common among us gives something of a damp to my spirits, yet I cannot help hoping, and even believing, that Providence has designed this continent for to be the asylum of liberty and true religion; for can we suppose that the God who created us free agents,

and designed that we should glorify and serve him in this world that we might enjoy him forever hereafter, will suffer liberty and true religion to be banished from off the face of the earth? But do we not find that both religion and liberty seem to be expiring and gasping for life in the other continent?—where, then, can they find a harbor or place of refuge but in this?

There are some who pretend that it is against their consciences to take up arms in defence of their country; but can any rational being suppose that the Deity can require us to contradict the law of nature which he has written in our hearts, a part of which I am sure is the principle of self-defence, which strongly prompts us all to oppose any power that would take away our lives, or the lives of our friends? Now, for men to take pains to destroy the tender feelings of human nature, and to eradicate the principles of self-preservation, and then to persuade themselves that in so doing they submit to and obey the will of God, is a plain proof how easily men may be led to pervert the very first and plainest principles of reason and common sense, and argues a gross corruption of the human mind. We find such persons are very inconsistent with themselves; for no men are more zealous to defend their property, and to secure their estates from the encroachments of others, while they refuse to defend their persons, their wives, their children, and their country, against the assaults of the enemy. We see to what unaccountable lengths men will run when once they leave the plain road of common sense, and violate the law which God has written in the heart. Thus some have thought they did God service when they unmercifully butchered and destroyed the lives of the servants of God; while others, upon the contrary extreme, believe that they please God while they sit still and quietly behold their friends and brethren killed by their unmerciful enemies, without endeavoring to defend or rescue them. The one is a sin of omission, and the other is a sin of commission, and it may perhaps be difficult to say, under certain circumstances, which is the most criminal in the sight of Heaven. Of this I am sure, that they are, both of them, great violations of the law of God.

Having thus endeavored to show the lawfulness and necessity of defending ourselves against the tyranny of Great Britain, I would observe that Providence seems plainly to point to us the expediency, and even necessity, of our considering ourselves as an independent state. For, not to consider the absurdity implied in making war against a power to which we profess to own subjection, to pass by the impracticability of our ever coming under subjection to Great Britain upon fair and equitable terms, we may observe that the British Parliament has virtually declared us an independent state by authorizing their ships of war to seize all American property, wherever they can find it, without making any distinction between the friends of administration and those that have appeared in opposition to the acts of Parliament. This is making us a distinct nation from themselves. They can have no right any longer to style us rebels; for rebellion implies a particular faction risen up in opposition to lawful authority, and, as such, the factious party ought to be punished, while those that remain loyal are to be protected. But when war is declared against a whole community without distinction, and the property of each party is declared to be seizable, this, if anything can be, is treating us as an independent state. Now, if they are pleased to consider us as in a state of independency, who can object against our considering ourselves so too?

But while we are nobly opposing with our lives and estates the tyranny of the British Parliament, let us not forget the duty which we owe to our lawful magistrates; let us never mistake licentiousness for liberty. The more we understand the principles of liberty, the more readily

shall we yield obedience to lawful authority; for no man can oppose good government but he that is a stranger to true liberty. Let us ever check and restrain the factious disturbers of the peace; whenever we meet with persons that are loth to submit to lawful authority, let us treat them with the contempt which they deserve, and even esteem them as the enemies of their country and the pests of society. It is with peculiar pleasure that I reflect upon the peaceable behavior of my countrymen at a time when the courts of justice were stopped and the execution of laws suspended. It will certainly be expected of a people that could behave so well when they had nothing to restrain them but the laws written in their hearts, that they will yield all ready and cheerful obedience to lawful authority. There is at present the utmost need of guarding ourselves against a seditious and factious temper; for when we are engaged with so powerful an enemy from without, our political salvation, under God, does, in an eminent manner, depend upon our being firmly united together in the bonds of love to one another, and of due submission to lawful authority. I hope we shall never give any just occasion to our adversaries to reproach us as being men of turbulent dispositions and licentious principles, that cannot bear to be restrained by good and wholesome laws, even though they are of our own making, nor submit to rulers of our own choosing. But I have reason to hope much better things of my countrymen, though I thus speak. However, in this time of difficulty and distress, we cannot be too much guarded against the least approaches to discord and faction. Let us, while we are jealous of our rights, take heed of unreasonable suspicions and evil surmises which have no proper foundation; let us take heed lest we hurt the cause of liberty by speaking evil of the ruler of the people.

Let us treat our rulers with all that honor and respect which the dignity of their station requires; but let it be such an honor and respect as is worthy of the sons of freedom to give. Let us ever abhor the base arts that are used by fawning parasites and cringing courtiers, who by their low artifices and base flatteries obtain offices and posts which they are unqualified to sustain, and honors of which they are unworthy, and oftentimes have a greater number of places assigned them than any one person of the greatest abilities can ever properly fill, by means of which the community becomes greatly injured, for this reason, that many an important trust remains undischarged, and many an honest and worthy member of society is deprived of those honors and privileges to which he has a just right, whilst the most despicable, worthless courtier is loaded with honorable and profitable commissions. In order to avoid this evil, I hope our legislators will always despise flattery as something below the dignity of a rational mind, and that they will ever scorn the man that will be corrupted or take a bribe. And let us all resolve with ourselves that no motives of interest, nor hopes of preferment shall ever induce us to act the part of fawning courtiers towards men in power. Let the honor and respect which we show our superiors be true and genuine, flowing from a sincere and upright heart.

The honors that have been paid to arbitrary princes have often been very hypocritical and insincere. Tyrants have been flattered in their vices, and have often had an idolatrous reverence paid them. The worst princes have been the most flattered and adored; and many such, in the pagan world, assumed the title of gods, and had divine honors paid them. This idolatrous reverence has ever been the inseparable concomitant of arbitrary power and tyrannical government; for even Christian princes, if they have not been adored under the character of gods, yet the titles given them strongly savor of blasphemy, and the reverence paid them is really idolatrous. What right has a poor sinful worm of the dust to claim the title of his most sacred Majesty? Most sacred certainly belongs only to God alone,—for there is none holy as the

Lord,—yet how common is it to see this title given to kings! And how often have we been told that the king can do no wrong! Even though he should be so foolish and wicked as hardly to be capable of ever being in the right, yet still it must be asserted and maintained that it is impossible for him to do wrong!

The cruel, savage disposition of tyrants, and the idolatrous reverence that is paid them, are both most beautifully exhibited to view by the apostle John in the Revelation, thirteenth chapter, from the first to the tenth verse, where the apostle gives a description of a horrible wild beasta which he saw rise out of the sea, having seven heads and ten horns, and upon his heads the names of blasphemy. By heads are to be understood forms of government, and by blasphemy, idolatry; so that it seems implied that there will be a degree of idolatry in every form of tyrannical government. This beast is represented as having the body of a leopard, the feet of a bear, and the mouth of a lion; *i. e.*, a horrible monster, possessed of the rage and fury of the lion, the fierceness of the bear, and the swiftness of the leopard to seize and devour its prey. Can words more strongly point out, or exhibit in more lively colors, the exceeding rage, fury, and impetuosity of tyrants, in their destroying and making havoc of mankind? To this beast we find the dragon gave his power, seat, and great authority; *i. e.*, the devil constituted him to be his vicegerent on earth; this is to denote that tyrants are the ministers of Satan, ordained by him for the destruction of mankind.

Such a horrible monster, we should have thought, would have been abhorred and detested of all mankind, and that all nations would have joined their powers and forces together to oppose and utterly destroy him from off the face of the earth; but, so far are they from doing this, that, on the contrary, they are represented as worshipping him (verse 8): "And all that dwell on the earth shall worship him," viz., all those "whose names are not written in the Lamb's book of life;" *i. e.*, the wicked world shall pay him an idolatrous reverence, and worship him with a godlike adoration. What can in a more lively manner show the gross stupidity and wickedness of mankind, in thus tamely giving up their just rights into the hands of tyrannical monsters, and in so readily paying them such an unlimited obedience as is due to God alone?

We may observe, further, that these men are said (verse 4) to "worship the dragon;"—not that it is to be supposed that they, in direct terms, paid divine homage to Satan, but that the adoration paid to the beast, who was Satan's vicegerent, did ultimately centre in him. Hence we learn that those who pay an undue and sinful veneration to tyrants are properly the servants of the devil; they are worshippers of the prince of darkness, for in him all that undue homage and adoration centres that is given to his ministers. Hence that terrible denunciation of divine wrath against the worshippers of the beast and his image: "If any man worship the beast and his image, and receive his mark in his forehead, or in his hand, the same shall drink of the wine of the wrath of God which is poured out without mixture into the cup of his indignation, and he shall be tormented with fire and brimstone in the presence of the holy angels, and in the presence of the Lamb; and the smoke of their torment ascendeth for ever and ever: and they have no rest day nor night, who worship the beast and his image, and who receive the mark of his name."a We have here set forth in the clearest manner, by the inspired apostle, God's abhorrence of tyranny and tyrants, together with the idolatrous reverence that their wretched subjects are wont to pay them, and the awful denunciation of divine wrath against those who are guilty of this undue obedience to tyrants.

Does it not, then, highly concern us all to stand fast in the liberty wherewith Heaven hath made us free, and to strive to get the victory over the beast and his image—over every species of tyranny? Let us look upon a freedom from the power of tyrants as a blessing that cannot be purchased too dear, and let us bless God that he has so far delivered us from that idolatrous reverence which men are so very apt to pay to arbitrary tyrants; and let us pray that he would be pleased graciously to perfect the mercy he has begun to show us by confounding the devices of our enemies and bringing their counsels to nought, and by establishing our just rights and privileges upon such a firm and lasting basis that the powers of earth and hell shall not prevail against it.

Under God, every person in the community ought to contribute his assistance to the bringing about so glorious and important an event; but in a more eminent manner does this important business belong to the gentlemen that are chosen to represent the people in this General Assembly, including those that have been appointed members of the Honorable Council Board.

Honored fathers, we look up to you, in this day of calamity and distress, as the guardians of our invaded rights, and the defenders of our liberties against British tyranny. You are called, in Providence, to save your country from ruin. A trust is reposed in you of the highest importance to the community that can be conceived of, its business the most noble and grand, and a task the most arduous and difficult to accomplish that ever engaged the human mind—I mean as to things of the present life. But as you are engaged in the defence of a just and righteous cause, you may with firmness of mind commit your cause to God, and depend on his kind providence for direction and assistance. You will have the fervent wishes and prayers of all good men that God would crown all your labors with success, and direct you into such measures as shall tend to promote the welfare and happiness of the community, and afford you all that wisdom and prudence which is necessary to regulate the affairs of state at this critical period.

Honored fathers of the House of Representatives: We trust to your wisdom and goodness that you will be led to appoint such men to be in council whom you know to be men of real principle, and who are of unblemished lives; that have shown themselves zealous and hearty friends to the liberties of America; and men that have the fear of God before their eyes; for such only are men that can be depended upon uniformly to pursue the general good.

My reverend fathers and brethren in the ministry will remember that, according to our text, it is part of the work and business of a gospel minister to teach his hearers the duty they owe to magistrates. Let us, then, endeavor to explain the nature of their duty faithfully, and show them the difference between liberty and licentiousness; and, while we are animating them to oppose tyranny and arbitrary power, let us inculcate upon them the duty of yielding due obedience to lawful authority. In order to the right and faithful discharge of this part of our ministry, it is necessary that we should thoroughly study the law of nature, the rights of mankind, and the reciprocal duties of governors and governed. By this means we shall be able to guard them against the extremes of slavish submission to tyrants on one hand, and of sedition and licentiousness on the other. We may, I apprehend, attain a thorough acquaintance with the law of nature and the rights of mankind, while we remain ignorant of many technical terms of law, and are utterly unacquainted with the obscure and barbarous Latin that was so much used in the ages of popish darkness and superstition.

To conclude: While we are fighting for liberty, and striving against tyranny, let us remember to fight the good fight of faith, and earnestly seek to be delivered from that bondage of corruption which we are brought into by sin, and that we may be made partakers of the glorious liberty of the sons and children of God: which may the Father of Mercies grant us all, through Jesus Christ. Amen.

***21: Samuel Cooper, A SERMON ON THE DAY OF THE COMMENCEMENT OF THE CONSTITUTION* - Ellis Sandoz*, Political Sermons of the American Founding Era. Vol. 1 (1730-1788)* [1991]**

Edition used:

Political Sermons of the American Founding Era: 1730-1805, 2 vols, Foreword by Ellis Sandoz (2nd ed. Indianapolis: Liberty Fund, 1998). Vol. 1.

SamuelCooper (1725-1783). A life-long Bostonian, Samuel Cooper was trained at Harvard and received a D.D. from the University of Edinburgh. In 1743 he followed his father, Reverend William Cooper, as the junior pastor of Boston's Fourth, or "Manifesto," Church, also known as the Brattle Street Church. In 1747 he became the successor to Benjamin Colman as senior pastor, and until his death he was the sole pastor of that church. Until 1767 he served as a member of the Harvard Corporation. In 1774 he declined the presidency of Harvard. Active in the cause of American freedom from 1754, when he published a pamphlet entitled *The Crisis*, he was a frequent contributor to newspapers and was much in demand as an orator. With other leaders, he was warned in time to flee on April 8, 1775, to avoid arrest by the British authorities. He died, in Boston, eight years later.

The 1780 sermon reprinted here is regarded as Cooper's best. He had preached the artillery election sermon at the age of twenty-six (1751) and had preached an earlier election sermon (1756). The 1780 sermon was regarded as the model of a patriotic sermon, and it had the distinction of being translated into Dutch and included in *Verzameling van stukken tot de dertien Vereenigde Staeten van Noord-America betrekkelijk* (Leyden, 1781).

Their Congregation shall be established before me: and their Nobles shall be of themselves, and their Governor shall proceed from the midst of them.

XXXth Jeremiah, 20, 21 Ver.

Nothing can be more applicable to the solemnity in which we are engaged, than this passage of sacred writ. The prophecy seems to have been made for ourselves, it is so exactly descriptive of that important, that comprehensive, that essential civil blessing, which kindles the lustre, and diffuses the joy of the present day. Nor is this the only passage of holy scripture that holds up to our view a striking resemblance between our own circumstances and those of the antient Israelites; a nation chosen by God a theatre for the display of some of the most astonishing dispensations of his providence. Like that nation we rose from oppression, and emerged "from the House of Bondage": Like that nation we were led into a wilderness, as a refuge from tyranny, and a preparation for the enjoyment of our civil and religious rights: Like that nation we have been pursued through the sea, by the armed hand of power, which, but for the signal interpositions of heaven, must before now have totally defeated the noble purpose of our emigration: And, to omit many other instances of similarity, like that nation we have been ungrateful to the Supreme Ruler of the world, and too "lightly esteemed the Rock of our Salvation"; accordingly, we have been corrected by his justice, and at the same time remarkably supported and defended by his mercy: So that we may discern our own picture in the figure of

the antient church divinely exhibited to Moses in vision, “a bush burning and not consumed.” This day, this memorable day, is a witness, that the Lord, he whose “hand maketh great, and giveth strength unto all, hath not forsaken us, nor our God forgotten us.” This day, which forms a new æra in our annals, exhibits a testimony to all the world, that contrary to our deserts, and amidst all our troubles, the blessing promised in our text to the afflicted seed of Abraham is come upon us; “Their Nobles shall be of themselves, and their Governor shall proceed from the midst of them.”

This prophecy has an immediate respect to the deliverance of the Jews from the cruel oppressions of the king of Babylon. Their sufferings, when they fell under the power of this haughty tyrant, as they are represented to us in sacred history, must harrow a bosom softened with the least degree of humanity. They give us a frightful picture of the effects of despotic power, guided and inflamed by those lusts of the human heart with which it is seldom unaccompanied. Can we forbear weeping for human nature, or blushing for its degradation, when we view either the sufferer or the actor in such a scene; the relentless oppressor, or those who are “sore broken in the place of dragons”? What can be more pathetic than the description of it given by the same prophet who gave the consolation in our text[?]

How doth the city sit solitary that was full of people? How is she become as a widow: she that was great among the nations, and princess among the provinces? She weepeth sore in the night, and her tears are on her cheeks; she hath none to comfort her; her friends have dealt treacherously with her. Judah is gone into captivity; because of affliction, and because of great servitude, she findeth no rest. Her mighty men are trodden under foot; her young men are crushed; the young and the old lie on the ground in the streets—Mine eyes do fail with tears; my bowels are troubled, my liver is poured on the earth, for the destruction of the daughter of my people.

Such are the fruits of lawless and despotic power in a mortal man intoxicated with it: Such desolations does it make in the earth—such havock in the family of God, merely for the sake of enlarging it’s bounds and impressing its terror on the human bosom. It often, indeed, claims a divine original, and impudently supports itself not barely on the permission, but the express designation of him “whose tender mercies are over all his works”; though it exactly resembles the grand adversary of God and man, and is only a “roaring lion that seeketh whom he may devour.” To plead a divine right for such a power is truly to teach “the doctrine of devils.” It covets every thing without bounds: It grasps every thing without pity: It riots on the spoils of innocence and industry: It is proud to annihilate the rights of mankind; to destroy the fairest constitutions of wisdom, policy and justice, the broadest sources of human happiness: While it enslaves the bodies, it debases the minds of the offspring of God: In its progress it changes the very face of nature, it withers even the fruits of the earth, and frustrates the bounties of our common parent. “Before it is the garden of God, behind it is a desolate wilderness.”

Looking upon the Jews when groaning under such a power; their armies vanquished; the flower of their country cut off by the sword; their fortresses reduced; their cities in ashes; their land ravaged; their temple and worship destroyed, and the remnant of the nation led in chains to a foreign land; who would have thought that in a few years, these cities and this temple should rise again from their ruins, and a people so totally enslaved and widely dispersed be restored to their

rights and possessions, their laws and institutions; peace, liberty and plenty daily augmenting their numbers, and lighting up the face of joy through their whole land; while the haughty empire of Babylon, from which they had suffered so much, should set to rise no more! Such, however, were the decrees of heaven; such the predictions of the inspired prophets; and such the event.

Thus saith the Lord of Hosts, I will break his yoke from off thy neck, and will burst thy bonds, and strangers shall no more serve themselves of thee; but thou shalt serve the Lord thy God: and the city shall be builded upon her own heap, and they shall come and sing in the height of Zion: And fields shall be bought in this land whereof ye say it is desolate, it is given into the hand of the Chaldeans—men shall buy fields for money. And they that devour thee shall be devoured; and they that spoil thee shall be a spoil. And out of Judah shall proceed thanksgiving and the voice of them that make merry: and I will multiply them and they shall not be few; I will also glorify them and they shall not be small. Their children also shall be as aforetime, and their congregation, their religious and civil assemblies, shall be established before me: and I will punish all that oppress them: and their Nobles shall be of themselves, and their Governor shall proceed from the midst of them, and I will cause him to draw near, and he shall approach unto me.

When Nebuchadnezzar invaded the land of Judea, and brought upon it such devastations and miseries, it was governed by a king, who shared in the captivity of his subjects, and was led with them by the conqueror in chains to Babylon. But in the happy restoration promised in our text, it is observable, that the royal part of their government was not to be renewed. No mention is made in this refreshing prediction of a king, but only of nobles, men of principal character and influence, who were to *be of themselves*, and such as they would chuse to conduct their affairs; and a governor, who should also *proceed from the midst of them*, and preside over all, cloathed with a tempered authority and dignity, not with arbitrary power, and the means of gratifying an unbounded avarice and ambition.

The form of government originally established in the Hebrew nation by a charter from heaven, was that of a free republic, over which God himself, in peculiar favour to that people, was pleased to preside. It consisted of three parts; a chief magistrate who was called judge or leader, such as Joshua and others, a council of seventy chosen men, and the general assemblies of the people. Of these the two last were the most essential and permanent, and the first more occasional, according to the particular circumstances of the nation. Their council or Sanhedrim, remained with but little suspension, through all the vicissitudes they experienced, till after the commencement of the christian æra. And as to the assemblies of the people, that they were frequently held by divine appointment, and considered as the fountain of civil power, which they exerted by their own decrees, or distributed into various channels as they judged most conducive to their own security, order, and happiness, is evident beyond contradiction from the sacred history. Even the law of Moses, though framed by God himself, was not imposed upon that people against their will; it was laid open before the whole congregation of Israel; they freely adopted it, and it became their law, not only by divine appointment, but by their own voluntary and express consent. Upon this account it is called in the sacred writings a covenant, compact, or mutual stipulation.

A solemn renewal of this covenant was the very last public act of Joshua their renowned leader. “He gathered all the tribes of Israel to Sechem, and called for the elders of Israel, and for the heads and for the judges, and for their officers, and they presented themselves before God.” The occasion was great and important; being nothing less than to renew their acceptance of the constitution they had received from heaven, and solemnly to confirm the national compact. How august was this assembly of a great nation, it’s representatives and magistrates of every order, with their brave and faithful leader at their head; he, who had been foremost to face the dangers of their cause, who had fought so many battles for their happy settlement, and rendered such various and important services to his country. In a short but nervous and pathetic address to the assembly, he reminded them of their small original; of the peculiar favors granted by heaven to their progenitors; of their remarkable deliverance from the slavery of Egypt; of the wonders wrought for them by a divine hand in their progress thro’ the wilderness; in their conquests on the borders of Canaan, and their firm possession of that promised land. Deeply impressed with this interesting recollection, he warmly declares his own resolution to abide by that noble cause for which they had been led by heaven from an ignominious and servile dependence, and formed into a distinct and respectable nation. But as the memorable act of the day depended intirely on the consent of the people, he accordingly refers the matter to their own free determination. “Chuse you this day whom you will serve.” It was impossible for the people not to be moved by such an address; not to discern the excellency of the mosaic constitutions; how well they were adapted to the particular circumstances of the nation, and the noble purposes they were designed to promote. The people replied, *the Lord our God we will serve*; we consent, and are determined to be governed by the laws and the statutes he has been so graciously pleased to afford us. “Then Joshua said unto the people, ye are witnesses against yourselves that ye have chosen the Lord to serve him; and they said, we are witnesses.” If ever we renounce the constitution and happy settlement granted to us by heaven; if ever we break the sacred compact; this day, and all the public and voluntary transactions of it, must be a witness against us. “Thus Joshua made a covenant with the people at Sechem,” which, we are afterwards told, he recorded in a book, and at the same time erected a monumental stone upon the spot, as a memorial of these sacred stipulations, and as a perpetual testimony, that the Supreme Ruler himself had not established their polity without their own free concurrence, and that the Hebrew nation, lately redeemed from tyranny, had now a civil and religious constitution of their own choice, and were governed by laws to which they had given their solemn consent.

To mention all the passages in sacred writ which prove that the Hebrew government, tho’ a theocracy, was yet as to the outward part of it, a free republic, and that the sovereignty resided in the people, would be to recite a large part of it’s history. I will therefore only add a single instance. When the tribes of Reuben and Gad, and the half tribe of Manassah had erected a separate altar, tho’ it afterwards appeared with no bad intention, all the other tribes were extremely alarmed, and being met in general assembly, determined to make war on their offending brethren. But previous to the intended assault they agreed to send an embassy to expostulate with them on the occasion. Phinehaz and ten princes, or principal men, were appointed for this purpose. Here was an act of sovereignty, and an act of the highest importance to the interest of any nation, involving in it nothing less than the power of making peace or war. It was not done by Joshua, tho’ he was then alive; it was an act of the congregation of Israel: The embassy upon this momentous matter was chosen, commissioned, and instructed by them. “As it was democratically sent,[”] says a great author,* who wrote conclusively, who fought bravely,

and died gloriously in the cause of liberty, [“]it was democratically received: It was not directed to one man, but to all the children of Reuben, Gad and Manassah, and the answer was sent by them all.” The report was made to the congregation, who finally determined the grand question, and decided for peace.

Such was the civil constitution of the Hebrew nation, till growing weary of the gift of heaven, they demanded a king. After being admonished by the prophet Samuel of the ingratitude and folly of their request, they were punished in the grant of it. Impiety, corruption and disorder of every kind afterwards increasing among them, they grew ripe for the judgments of heaven in their desolation and captivity. Taught by these judgments the value of those blessings they had before despised, and groaning under the hand of tyranny more heavy than that of death, they felt the worth of their former civil and religious privileges, and were prepared to receive with gratitude and joy a restoration not barely to the land flowing with milk and honey, but to the most precious advantage they ever enjoyed in that land, their original constitution of government: They were prepared to welcome with the voice of mirth and thanksgiving the re-establishment of their congregations; nobles chosen from among themselves, and a governor proceeding from the midst of them.

Such a constitution, twice established by the hand of heaven in that nation, so far as it respects civil and religious liberty in general, ought to be regarded as a solemn recognition from the Supreme Ruler himself of the rights of human nature. Abstracted from those appendages and formalities which were peculiar to the Jews, and designed to answer some particular purposes of divine Providence, it points out in general what kind of government infinite wisdom and goodness would establish among mankind.

We want not, indeed, a special revelation from heaven to teach us that men are born equal and free; that no man has a natural claim of dominion over his neighbours, nor one nation any such claim upon another; and that as government is only the administration of the affairs of a number of men combined for their own security and happiness, such a society have a right freely to determine by whom and in what manner their own affairs shall be administered. These are the plain dictates of that reason and common sense with which the common parent of men has informed the human bosom. It is, however, a satisfaction to observe such everlasting maxims of equity confirmed, and impressed upon the consciences of men, by the instructions, precepts, and examples given us in the sacred oracles; one internal mark of their divine original, and that they come from him “who hath made of one blood all nations to dwell upon the face of the earth,” whose authority sanctifies only those governments that instead of oppressing any part of his family, vindicate the oppressed, and restrain and punish the oppressor.

Unhappy the people who are destitute of the blessing promised in our text; who have not the ulterior powers of government within themselves; who depend upon the will of another state, with which they are not incorporated as a vital part, the interest of which must in many respects be opposite to their own; and who at the same time have no fixed constitutional barrier to restrain this reigning power: There is no meanness or misery to which such a people is not liable: There is not a single blessing, tho’ perhaps indulged to them for a while, that they can call their own; there is nothing they have not to dread. Whether the governing power be itself free or despotic, it matters not to the poor dependent. Nations who are jealous of their own liberties often sport with

those of others; nay, it has been remarked, that the dependent provinces of free states have enjoyed less freedom than those belonging to despotic powers. Such was our late dismal situation, from which heaven hath redeemed us by a signal and glorious revolution. We thought, indeed, we had a charter to support our rights: but we found a written charter, a thin barrier against all-prevailing power, that could construe it to its own purpose, or rescind it by the sword at its own pleasure.

Upon our present independence, sweet and valuable as the blessing is, we may read the inscription, *I am found of them that sought me not*. Be it to our praise or blame, we cannot deny, that when we were not searching for it, it happily found us. It certainly must have been not only innocent but laudable and manly, to have desired it even before we felt the absolute necessity of it. It was our birth right; we ought to have valued it highly, and never to have received a mess of pottage, a small temporary supply, as an equivalent for it. Going upon the trite metaphor of a mother country, which has so often been weakly urged against us, like a child grown to maturity, we had a right to a distinct settlement in the world, and to the fruits of our own industry; and it would have been but justice, and no great generosity, in her who so much boasted her maternal tenderness to us, had she not only readily acquiesced, but even aided us in this settlement. It is certain, however, that we did not seek an independence; and it is equally certain that Britain, though she meant to oppose it with all her power, has by a strange infatuation, taken the most direct, and perhaps the only methods that could have established it. Her oppressions, her unrelenting cruelty, have driven us out from the family of which we were once a part: This has opened our eyes to discern the inestimable blessing of a separation from her; while, like children that have been inhumanly treated and cast out by their parents, and at the same time are capable of taking care of themselves, we have found friendship and respect from the world, and have formed new, advantageous, and honorable connections.

Independence gives us a rank among the nations of the earth, which no precept of our religion forbids us to understand and feel, and which we should be ambitious to support in the most reputable manner. It opens to us a free communication with all the world, not only for the improvement of commerce, and the acquisition of wealth, but also for the cultivation of the most useful knowledge. It naturally unfetters and expands the human mind, and prepares it for the impression of the most exalted virtues, as well as the reception of the most important science. If we look into the history and character of nations, we shall find those that have been for a long time, and to any considerable degree dependent upon others, limited and cramped in their improvements; corrupted by the court, and stained with the vices of the ruling state; and debased by an air of servility and depression marking their productions and manners. Servility is not only dishonorable to human nature, but commonly accompanied with the meanest vices, such as adulation, deceit, falshood, treachery, cruelty, and the basest methods of supporting and procuring the favour of the power upon which it depends.

Neither does the time allow, nor circumstances require, that I should enter into a detail of all the principles and arguments upon which the right of our present establishment is grounded. They are known to all the world; they are to be found in the immortal writings of Sidney and Locke, and other glorious defenders of the liberties of human nature; they are also to be found, not dishonored, in the acts and publications of America on this great occasion, which have the approbation and applause of the wise and impartial among mankind, and even in Britain itself:

They are the principles upon which her own government and her own revolution under William the third were founded; principles which brutal force may oppose, but which reason and scripture will forever sanctify. The citizens of these states have had sense enough to comprehend the full force of these principles, and virtue enough, in the face of uncommon dangers, to act upon so just, so broad, and stable a foundation.

It has been said, that every nation is free that deserves to be so. This may not be always true: But had a people so illuminated as the inhabitants of these states, so nurtured by their ancestors in the love of freedom; a people to whom divine Providence was pleased to present so fair an opportunity of asserting their natural right as an independent nation, and who were even compelled by the arms of their enemies to take sanctuary in the temple of liberty; had such a people been disobedient to the heavenly call, and refused to enter, who could have asserted their title to the glorious wreaths and peculiar blessings that are no where bestowed but in that hallowed place?

It is to the dishonor of human nature, that liberty, wherever it has been planted and flourished, has commonly required to be watered with blood. Britain, in her conduct towards these states, hath given a fresh proof of the truth of this observation. She has attempted to destroy by her arms in America, what she professes to defend by these very arms on her own soil. Such is the nature of man, such the tendency of power in a nation as well as a single person. It makes a perpetual effort to enlarge itself, and presses against the bounds that confine it. It loses by degrees all idea of right but its own; and therefore that people must be unhappy indeed, who have nothing but humble petitions and remonstrances, and the feeble voice of a charter to oppose to the arms of another nation, that claims *a right to bind them in all cases whatsoever*.

Poor Genoa! says an author* who exposes with great energy and spirit the idea of receiving as the gift of a despot, by a written charter, a title to the rights of human nature, and to which all men are born;

Poor Genoa! wherefore shouldest thou be vain of exhibiting a charter of privileges given thee by one Berenger: Concessions of privileges are but titles of servitude: The true charter of liberty is *independency supported by force*. It is with the point of the sword the diplomas that ratify this natural right must be signed. Happy Switzerland! To what placart owest thou thy liberty? To thy courage, thy firmness, thy mountains. But hold—I am your emperor. “We do not chuse you should be any longer so.” But your fathers were my father’s slaves. “It is for that reason their children will not be your’s.” But I have a right by dignity. “And we have a right by nature.[”] When did the seven united provinces become possessed of this incontestable right? [“]From the moment they united; and from that moment Philip II became the rebel.”

Heaven and earth can bear witness that these states are innocent of the blood that hath been shed, and the miseries diffused by this unrighteous war. We have stood upon the ground of justice, honor, and liberty, and acted meerly a defensive part. Not unreasonable in our demands, not violent in our councils, not precipitate in our conduct, our “moderation has been known to all men”; and without refusing a single claim that Britain could in equity make upon us, our persons, our property, our rights have been invaded, in every step that led to this revolution. I do not wish that this should be taken for granted barely upon our own declaration. Without appealing to

foreign nations, whose conduct towards us demonstrates what opinion they form of our principles and measures; we have an acknowledgment of the truth of this assertion from Britain itself; from men of approved wisdom, integrity and candor; from some of the first characters, and brightest ornaments in her own government; from innumerable speeches in her Parliaments, and from solemn protests in her House of Lords.

Allow me particularly to mention on this occasion the letters of Mr. Hartley, member of the British House of Commons for Hull, to his constituents; in which he gives a detail of the measures of that government respecting America, and upon which he says; “Thinking, as I have always thought, that the foundation and prosecution of the war against America has been unjust, I have taken some pains to lay open those insidious arts which ministers have practised, that I may contribute my feeble efforts to vindicate my country at large from so grievous a charge as that of supporting an unjust cause, knowing it to be unjust.” In another place, he says, “When all those transactions shall come hereafter to be revised in some cooler hour, I am confident there is not a man with a British heart who will not say, that in the same circumstances he would have acted as the Americans have done.” He goes on,

What had the Americans to look to after the refusal of their last petition, but to seek for shelter in their own strength and independence? They were cut off from all possible communication with their sovereign and their mother country; and the first act of the second session of parliament was to cast them out of all national and parliamentary protection; to send 20,000 German mercenaries against them; to incite an insurrection of negroes against their masters, and to let loose the Indian savages upon their innocent and unarmed back settlers, and upon defenceless women and children. They had petitioned and addressed; they had disclaimed every idea of independence; in return for which administration sends against them an army of 50,000 men. Now let ministers answer to God and their country for the blood which they have shed. The blood of thousands of their fellow creatures, wilfully and premeditatedly shed in an unjust cause, will be required at their hands; who have taken their full stretch of vengeance, in their attempts to destroy and to lay waste to the utmost of their malignant power the lives, liberty, property, and all the rights of mankind.

Nothing can be more full to the point than this acknowledgment from a gentleman of such distinguished character: He imputes indeed the whole to the ministers, but as it was all adopted and authorised by the whole British government, it became an act of the nation in general; though many worthy individuals, with himself, abhorred the injustice and cruelty.

In the protest of the Lords, against the prohibitory bill, the dissentient Peers say, “We are preparing the minds of the Americans for that independence we charge them with affecting, whilst we drive them to the necessity of it by repeated injuries.” “I rejoice that the Americans have resisted,” said Lord Chatham in parliament; a short but full testimony from that great man to the justice of our cause.

Thus are we acquitted from the guilt of all this blood that “crieth from the ground,” by the public declarations of many of the wisest and best men in Britain; men who perfectly knew all the measures of her government, and all that could be offered to justify them, being themselves a part of this government: Men deeply versed in natural and political law, capable of forming the

truest judgment upon so important a point, and who cannot be suspected of partiality in our favour. With all this justice on our side, we still put our cause to great hazard by delaying to declare ourselves a seperate nation, even after Britain had with her own hands violently broken every bond of union.

By this conduct of our enemies, heaven hath granted us an inestimable opportunity, and such as has been rarely if ever indulged to so great a people: An opportunity to avail ourselves of the wisdom and experience of all past ages united with that of the present; of comparing what we have seen and felt ourselves, with what we have known and read of others; and of chusing for ourselves, unencumbered with the pretensions of royal heirs, or lordly peers, of feudal rights, or ecclesiastical authority, that form of civil government which we judge most conducive to our own security and order, liberty and happiness: An opportunity, though surrounded with the flames of war, of deliberating and deciding upon this most interesting of all human affairs with calmness and freedom. This, in all it's circumstances, is a singular event; it is hard to tell where another such scene was ever beheld. The origin of most nations is covered with obscurity, and veiled by fiction; the rise of our own is open as it is honorable; and the new-born state, may I not be allowed to say, is a "spectacle to men and angels." For as piety, virtue, and morals are not a little interested in government, such a transaction has an aspect upon both worlds; and concerns us not only as members of civil society upon earth, but as candidates for "the city of the living God, the Jerusalem on high."

Happy people! who not awed by the voice of a master; not chained by slavish customs, superstitions, and prejudices, have deliberately framed the constitution under which you chuse to live; and are to be subject to no laws, by which you do not consent to bind yourselves. In such an attitude human nature appears with it's proper dignity: On such a basis, life, and all that sweetens and adorns it, may rest with as much security as human imperfection can possibly admit: In such a constitution we find a country deserving to be loved, and worthy to be defended. For what is our country? Is it a foil of which, tho' we may be the present possessors, we can call no part our own? or the air in which we first drew our breath, from which we may be confined in a dungeon, or of which we may be deprived by the ax or the halter at the pleasure of a tyrant? Is not a country a constitution—an established frame of laws; of which a man may say, "we are here united in society for our common security and happiness. These fields and these fruits are my own: The regulations under which I live are my own; I am not only a proprietor in the soil, but I am part of the sovereignty of my country." Such ought to be the community of men, and such, adored be the goodness of the supreme Ruler of the world, such, at present is our own country; of which this day affords a bright evidence, a glorious recognition.

To the disappointment of our enemies, and the joy of our friends, we have now attained a settled government with a degree of peace and unanimity, all circumstances considered, truly surprizing. The sagacity, the political knowledge, the patient deliberation, the constant attention to the grand principles of liberty, and the mutual condescention and candor under a diversity of apprehension respecting the modes of administration, exhibited by those who were appointed to form this constitution, and by the people who ratified it, must do immortal honor to our country. It is, we believe, "an happy foundation for many generations"; and the framers of it are indeed the fathers of their country; since nothing is so essential to the increase, and universal prosperity of a

community, as a constitution of government founded in justice, and friendly to liberty. Such men have a monument of glory more durable than brass or marble.

I need not enlarge before such an audience upon the particular excellencies of this constitution: How effectually it makes the people the keepers of their own liberties, with whom they are certainly safest: How nicely it poizes the powers of government, in order to render them as far as human foresight can, what God ever designed they should be, powers only to do good: How happily it guards on the one hand against anarchy and confusion, and on the other against tyranny and oppression: How carefully it separates the legislative from the executive power, a point essential to liberty: How wisely it has provided for the impartial execution of the laws in the independent situation of the judges; a matter of capital moment, and without which the freedom of a constitution in other respects, might be often delusory, and not realized in the just security of the person and property of the subject.

In addition to all this, what a broad foundation for the exercise of the rights of conscience is laid in this constitution! which declares, that "no subject shall be hurt, molested, or restrained in his person, liberty or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments; and that every denomination of christians, demeaning themselves peaceably, and as good subjects of the commonwealth, shall be equally under the protection of the law, and no subordination of any one sect or denomination to another shall be established by law." It considers indeed morality and the public worship of God as important to the happiness of society: And surely it would be an affront to the people of this state, as the convention speak in their previous address, "to labor to convince them that the honor and happiness of a people depend upon morality; and that the public worship of God has a tendency to inculcate the principles thereof, as well as to preserve a people from forsaking civilization, and falling into a state of savage barbarity."

Of these, and other excellent properties of our present constitution, the citizens of this state are throughly sensible, or well informed, and jealous as they are of their rights, they never would have adopted and ratified it with so great a degree of unanimity. They know it is framed upon an extent of civil and religious liberty, unexampled perhaps in any country in the world, except America. This must highly endear it to them; and while it is written upon their own hearts, they have the satisfaction to find that it has already received the elogiums of others, whose capacity and distinction render their testimony truly honorable. But left thro' the imperfection of human nature, and after all the deliberation and caution with which it has been formed and approved, some inconveniences should be found lurking in it, of which experience can best inform us, a right is expressly reserved to the people of removing them in a revision of the whole, after a fair experiment of fifteen years.

When a people have the rare felicity of chusing their own government, every part of it should first be weighed in the balance of reason, and nicely adjusted to the claims of liberty, equity and order; but when this is done, a warm and passionate patriotism should be added to the result of cool deliberation, to put in motion and animate the whole machine. The citizens of a free republic should reverence their constitution: They should not only calmly approve, and readily submit to it, but regard it also with veneration and affection rising even to an enthusiasm, like that which prevailed at Sparta and at Rome. Nothing can render a commonwealth more

illustrious, nothing more powerful, than such a manly, such a sacred fire. Every thing will then be subordinated to the public welfare; every labour necessary to this will be chearfully endured, every expence readily submitted to, every danger boldly confronted.

May this heavenly flame animate all orders of men in the state! May it catch from bosom to bosom, and the glow be universal! May a double portion of it inhabit the breasts of our civil rulers, and impart a lustre to them like that which sat upon the face of Moses, when he came down from the holy mountain with the tables of the Hebrew constitution in his hand! Thus will they sustain with true dignity the first honours, the first marks of esteem and confidence, the first public employments bestowed by this new commonwealth, and in which they this day appear. Such men must naturally care for our state; men whose abilities and virtues have obtained a sanction from the free suffrages of their enlightned and virtuous fellow citizens. Are not these suffrages, a public and solemn testimony that in the opinion of their constituents, they are men who have steadily acted upon the noble principles on which the frame of our government now rests? Men who have generously neglected their private interest in an ardent pursuit of that of the public—men who have intrepidly opposed one of the greatest powers on earth, and put their fortunes and their lives to no small hazard in fixing the basis of our freedom and honour. Who can forbear congratulating our rising state, and casting up a thankful eye to heaven, upon this great and singular occasion, the establishment of our congregation; our nobles freely chosen by ourselves; and our governour coming forth, at the call of his country, from the midst of us?

Behold the man, whose name as president of Congress, authenticates that immortal act, which, in form, constitutes the independence of these United States, and by which a nation was literally born in a day! See him, who had taken too early and decided a part, and done too much for the liberties of America, to be forgiven by it's enemies! See him, whose name, with that of another distinguished patriot,* was expressly excepted from a British act of grace, and upon whose head a price was virtually bid by those who meant to enslave us: Behold this very man, declared by the voice of his country, "the head of the corner" in our political building; the first magistrate of this free commonwealth. It was not in the power of his fellow-citizens to give an higher testimony how well they remember the generous and important services he has already rendered to his country, and how much they confide in his disposition and abilities still to serve it.

May God Almighty take his Excellency and the other honourable branches of the government, the lieutenant-governour, the council, the Senate, and House of Representatives into his holy protection, and unite them in measures glorious to themselves, and happy to their country! Vested as they are with particular honours, they have a painful preheminence: Their distinctions call them to the most weighty and important cares, at a time when the administration of public affairs is attended with peculiar difficulties. They need therefore the gracious direction and assistance of the "blessed and only potentate," which, in this solemn assembly of rulers and people, we jointly and devoutly implore.

The people of a free state have a right to expect from those whom they have honoured with the direction of their public concerns, a faithful and unremitting attention to these concerns. He who accepts a public trust, pledges himself, his sacred honour, and by his official oath appeals to his God, that with all good fidelity, and to the utmost of his capacity he will discharge this trust. And that commonwealth which doth not keep an eye of care upon those who govern, and observe

how they behave in their several departments, in order to regulate its suffrages upon this standard, will soon find itself in perplexity, and cannot expect long to preserve either its dignity or happiness.

Dignity of conduct is ever connected with the happiness of a state; particularly at its rise, and the first appearance it makes in the world. Then all eyes are turned upon it; they view it with attention; and the first impressions it makes are commonly lasting. This circumstance must render the conduct of our present rulers peculiarly important, and fall with particular weight upon their minds. We hope from their wisdom and abilities, their untainted integrity and unshaken firmness, this new-formed commonwealth will rise with honour and applause, and attract that respect, which the number and quality of its inhabitants, the extent of its territory and commerce, and the natural advantages with which it is blest, cannot fail, under a good government, to command.

From our present happy establishment we may reasonably hope for a new energy in government; an energy that shall be felt in all parts of the state: We hope that the sinews of civil authority through its whole frame will be well braced, and the public interest in all its extended branches be well attended to; that no officer will be permitted to neglect the duties, or transgress the bounds of his department; that peculations, frauds, and even the smaller oppressions in any office, will be watchfully prevented, or exemplarily punished; and that no corruption will be allowed to rest in any part of the political body, no not in the extremest, which may spread by degrees, and finally reach the very vitals of the community.

Righteousness, says one of the greatest politicians and wisest princes that ever lived, “Righteousness exalteth a nation.” This maxim doth not barely rest upon his own but also on a divine authority; and the truth of it hath been verified by the experience of all ages.

Our civil rulers will remember, that as piety and virtue support the honour and happiness of every community, they are peculiarly requisite in a free government. Virtue is the spirit of a republic; for where all power is derived from the people, all depends on their good disposition. If they are impious, factious and selfish; if they are abandoned to idleness, dissipation, luxury, and extravagance; if they are lost to the fear of God, and the love of their country, all is lost. Having got beyond the restraints of a divine authority, they will not brook the control of laws enacted by rulers of their own creating. We may therefore rely that the present government will do all it fairly can, by authority and example, to answer the end of its institution, that the members of this commonwealth may *lead a quiet and peaceable life in all godliness as well as honesty*, and our liberty never be justly reproached as licentiousness.

I know there is a diversity of sentiment respecting the extent of civil power in religious matters. Instead of entering into the dispute, may I be allowed from the warmth of my heart, to recommend, where conscience is pleaded on both sides, mutual candour and love, and an happy union of all denominations in support of a government, which though human, and therefore not absolutely perfect, is yet certainly founded on the broadest basis of liberty, and affords equal protection to all. Warm parties upon civil or religious matters, or from personal considerations, are greatly injurious to a free state, and particularly so to one newly formed. We have indeed less of this than might be expected: We shall be happy to have none at all; happy indeed, when every

man shall love and serve his country, and have that share of public influence and respect, without distinction of parties, which his virtues and services may justly demand. This is the true spirit of a commonwealth, centring all hearts, and all hands in the common interest.

Neither piety, virtue, or liberty can long flourish in a community, where the education of youth is neglected. How much do we owe to the care of our venerable ancestors upon this important object? Had not they laid such foundations for training up their children in knowledge and religion, in science, and arts, should we have been so respectable a community as we this day appear? Should we have understood our rights so clearly? or valued them so highly? or defended them with such advantage? Or should we have been prepared to lay that basis of liberty, that happy constitution, on which we raise such large hopes, and from which we derive such uncommon joy? We may therefore be confident that the schools, and particularly the university, founded and cherished by our wise and pious fathers, will be patronized and nursed by a government which is so much indebted to them for its honour and efficacy, and the very principles of its existence. The present circumstances of those institutions call for the kindest attention of our rulers; and their close connection with every public interest, civil and religious, strongly enforces the call.

The sciences and arts, for the encouragement of which a new foundation* hath lately been laid in this commonwealth, deserve the countenance and particular favour of every government. They are not only ornamental but useful: They not only polish, but support, enrich, and defend a community. As they delight in liberty, they are particularly friendly to free states. Barbarians are fierce and ungovernable, and having the grossest ideas of order, and the benefits resulting from it, they require the hand of a stern master; but a people enlightened and civilized by the sciences and liberal arts, have sentiments that support liberty and good laws: They may be guided by a silken thread; and the mild punishments proper to a free state are sufficient to guard the public peace.

An established honour and fidelity in all public engagements and promises, form a branch of righteousness that is wealth, is power, and security to a state: It prevents innumerable perplexities: It creates confidence in the government from subjects and from strangers: It facilitates the most advantageous connections: It extends credit; and easily obtains supplies in the most pressing public emergencies, and when nothing else can obtain them: While the want of it, whatever benefits some shortsighted politicians may have promised from delusive expedients, and deceitful arts, renders a state weak and contemptible; strips it of its defence; grieves and provoke[s] its friends, and delivers it up to the will of its enemies. Upon what does the power of the British nation chiefly rest at this moment? That power that has been so unrighteously employed against America? Upon the long and nice preservation of her faith in all monied matters. With all her injustice in other instances, meer policy hath obliged her to maintain a fair character with her creditors. The support this hath given her in frequent and expensive wars, by the supplies it has enabled her to raise upon loan, is astonishing. By this her government hath availed itself of the whole immense capital of the national debt, which hath been expended in the public service, while the creditors content themselves with the bare payment of the interest. It may be demonstrated that the growing resources of these states, under the conduct of prudence and justice, are sufficient to form a fund of credit for prosecuting the present war, so ruinous to Britain, much longer than that nation, loaded as she now is, can possibly support it.

But need I urge, in a christian audience, and before christian rulers, the importance of preserving inviolate the public faith? If this is allowed to be important at all times, and to all states, it must be peculiarly so to those whose foundations are newly laid, and who are but just numbered among the nations of the earth. They have a national character to establish, upon which their very existence may depend. Shall we not then rely that the present government will employ every measure in their power, to maintain in this commonwealth a clear justice, an untainted honour in all public engagements; in all laws respecting property; in all regulations of taxes; in all our conduct towards our sister states, and towards our allies abroad.

The treaty of alliance and friendship between *his most christian majesty* and these states, is engraved on every bosom friendly to the rights and independence of America. If fidelity dwells in such bosoms, it will be conspicuous on every occasion of performing our own part of these sacred stipulations. The interest is indeed mutual, as was openly confessed: The treaty is therefore natural, and likely to be lasting. But mutual interest doth not always banish generosity; a proof of which our illustrious ally hath given in this compact; a proof not unapplauded in Europe, tho' particularly felt and acknowledged in America. I will not affront either the understanding or the feelings of this respectable audience, by attempting formally to demonstrate that we have received great advantages and support from this friendship. It is impossible we should forget the first pledge of it, in the squadron sent to our aid under the orders of that vigilant, active and intrepid commander the Count d'Estaing; who greatly disconcerted the designs of the enemy, and did everything for us that wisdom and valour, in his situation, could perform. Nor need I call your attention to that important armament lately arrived to our assistance, under leaders of distinguished abilities, and the most established military reputation. France, tho' a monarchy, has been the nurse and protectress of free republics. Switzerland among others can attest to this: Her free states can attest, that during an alliance with France of more than three hundred years, their liberties have been constantly befriended by that nation, and every part of the treaty for their support punctually performed. This they have acknowledged in a late solemn renewal of the alliance. An happy omen to these states, whose circumstances are in many respects similar to those of the united cantons of Switzerland.

The personal and royal accomplishments of Louis the Sixteenth are known and admired far beyond his own extended dominions, and afford the brightest prospect to his subjects and allies. The reign of this monarch diffuses new spirit through his kingdom, and gives freshness to the glory of France. A British author, in his account of the regulations which took place after this prince had ascended the throne, calls him "a paternal and patriotic sovereign, who wherever he appears is loaded with the blessings of his subjects." The celebrated Mr. Burke, in his speech before the British House of Commons on February last, adds his own testimony to this, when speaking of some reforms in the finances and the court of France, he says, "The minister who does these things is a great man, but the prince who desires they should be done, is a far greater: We must do justice to our enemies; these are the acts of a patriot king." The friendship of such a monarch must be valuable indeed!

The other great and powerful branch of the house of Bourbon, the king of Spain, tho' not at present formally allied to us, is yet evidently engaged in our cause, by the union of his arms with those of France. We cannot be wanting in the sentiments due to the amity and aid of so respectable a potentate. May God Almighty bless these princes, and their dominions; and crown

their arms, and those of America, with such success as may soon restore to a bleeding world the blessings of peace!

Peace, peace, we ardently wish; but not upon terms dishonourable to ourselves, or dangerous to our liberties; and our enemies seem not yet prepared to allow it upon any other. At present the voice of providence, the call of our still invaded country, and the cry of every thing dear to us, all unite to rouze us to prosecute the war with redoubled vigour; upon the success of which all our free constitutions, all our hopes depend. I need not enumerate the former or more recent events of the war, and the favours or chastisements of heaven sent to us in these events: They are known to you; they cannot be forgotten: God grant they may be properly improved! Thro' his aid, amidst all our mistakes and errors, we have already done great things; but our warfare is not yet accomplished: And our rulers, we hope, like the Roman general, will think nothing done, while any thing remains undone.

We have depended too much upon partial measures, temporary expedients, short and interrupted efforts made only upon the spur of the occasion. An army established in proper numbers, for the whole duration of the war and seasonably furnished with all necessary supplies, is now universally acknowledged of the utmost consequence to the liberties of America. Particular attention will certainly be paid to the recommendations of this great object from the commander in chief—that illustrious man, formed by heaven for the important trust he sustains, and to draw to a point the confidence of these free states, and a patriotic army. Part of the gladness of this day rises from the general expectation, that our new government will give new vigour to the measures necessary to this momentous purpose; that these measures will be instantly pursued, and without that delay we have too much experienced in times past; and which, at this season, must prove greatly distressing, if not fatal to our country.

Can we hesitate a moment at the burden and expence? It is impossible. Why have the citizens of America been framing such wise and excellent constitutions, if they meant not to maintain, but leave them to become the sport of their enemies? If after all the memorable things we have done to repel lawless power, and establish our rights; if after all we have endured in a war savagely conducted by our enemies; if after the rank we have taken, and the reputation we have acquired as an independent nation, we should now relax in our efforts, and suffer tyranny finally to prevail, who can bear to think of the consequences or to look upon the picture imagination presents? In such a reverse, we may "write" upon this fair region the inscription given to an antient dungeon—"You who enter here, leave behind you every hope." What would not this people do; what exertions would they not make, rather than submit to such debasement and misery? It is with you, our civil fathers, to direct such a spirit, and such exertions, in a manner the most effectual to the salvation of our country.

What heroes have bled, what invaluable lives have been offered up to redeem us from slavery, and place us on a free constitution? Their names will never die: Their honours will never wither. Among these we see a Warren, and a Montgomery: Liberty wept over their tombs; and there would have remained inconsolate, had she not beheld a succession of patriots and warriors rising in the same spirit. Rights retrieved with such blood as hath flowed from the veins of America in our great cause, must certainly be held by us at an inestimable price, and improved to the greatest

advantage; nor can any thing shew their value in a clearer light, than a good administration of our free governments.

Our present rulers, as principal founders of the constitution, cannot but regard it with parental tenderness. They cannot but love their own offspring, especially when it has features and charms to attract the love and admiration of the world: And hoping that their names and their glory may long live in such an offspring, they have an irresistible motive to guard against every thing that may weaken or deform it; every thing that may render its existence short, precarious, or dishonourable.

The same kind of motive must excite the body of the people to the same care. It is with you also my fellow-citizens, by whose appointment this constitution was framed, and who have solemnly acknowledged it to be your own; it is with you to give life and vigour to all its limbs[,] freshness and beauty to its whole complexion; to guard it from dangers; to preserve it "from the corruption that is in the world"; and to produce it upon the great theatre of nations with advantage and glory. We have now a government free indeed; but after all, it remains with the people, under God, to make it an honourable and happy one: This must ultimately depend upon the prudence of their elections, and the virtue of their conduct. A government framed by ourselves for our own benefit, and according to the fairest models of our own minds, and administred by men of our own choice, ought to be more deeply respected, and more religiously supported by us than any kind of imposed authority. Having defined and adjusted its powers by our own decisions, and made those who are vested with such as are improper to be long continued in the same hands, amenable, at short intervals, to the judgment of the people, we never can allow it too much weight and energy; we only support ourselves in supporting such authority: While to oppose or weaken it, or bring it under an undue influence, is with the hand of a parricide to destroy order, liberty, and happiness. Upon this general principle, and to establish a dignity and independence, where they must forever operate to the benefit of the community; the citizens of this state have by their present constitution, most freely and wisely secured to their chief magistrate, and the justices of the supreme judicial court, permanent and honourable salaries; an article which, we cannot doubt, will be sacredly observed in the true spirit of the constitution.

In a word, if the rulers and the people act throughout in this spirit; if they mutually watch over and sustain each other; and those virtues are cultivated among us which support and are supported by a free republic, our new government will then open with the most happy omens, and the commencement of it will be the æra of our rising felicity and glory.

While we receive in the settlement of our commonwealth a reward of our atchievements and sufferings, we have the further consolation to reflect, that they have tended to the general welfare, and the support of the rights of mankind. The struggle of America hath afforded to oppressed Ireland a favourable opportunity of insisting upon her own privileges: Nor do any of the powers in Europe oppose our cause, or seem to wish it may be unsuccessful. Britain has maintained her naval superiority with such marks of haughtiness and oppression as have justly given umbrage to the nations around her: They cannot therefore but wish to see her power confined within reasonable bounds, and such as may be consistent with the safety of their own commercial rights. This, they know would at least be exceeding difficult, should the rapidly increasing force of these states be reunited with Britain, and wielded by her, as it hath been in

time past, against every nation upon whom she is pleased to make war. So favourable, through the divine superintendence, is the present situation of the powers in Europe, to the liberties and independence for which we are contending. But as individuals must part with some natural liberties for the sake of the security and advantages of society; the same kind of commutation must take place in the great republic of nations. The rights of kingdoms and states have their bounds; and as in our own establishment we are not likely to find reason, I trust we shall never have an inclination to exceed these bounds, and justly to excite the jealousy and opposition of other nations. It is thus wisdom, moderation and sound policy would connect kingdoms and states for their mutual advantage, and preserve the order and harmony of the world. In all this these free states will find their own security, and rise by natural and unenvied degrees to that eminence, for which, I would fain perswade myself, we are designed.

It is laudable to lay the foundations of our republicks with extended views. Rome rose to empire because she early thought herself destined for it. The great object was continually before the eyes of her sons: It enlarged and invigorated their minds; it excited their vigilance; it elated their courage, and prepared them to embrace toils and dangers, and submit to every regulation friendly to the freedom and prosperity of Rome. They did great things because they believed themselves capable, and born to do them. They reverenced themselves and their country; and animated with unbounded respect for it, they every day added to its strength and glory. Conquest is not indeed the aim of these rising states; sound policy must ever forbid it: We have before us an object more truly great and honourable. We seem called by heaven to make a large portion of this globe a seat of knowledge and liberty, of agriculture, commerce, and arts, and what is more important than all, of christian piety and virtue. A celebrated British historian observes, if I well remember, that the natural features of America are peculiarly striking. Our mountains, our rivers and lakes have a singular air of dignity and grandeur. May our conduct correspond to the face of our country! At present an immense part of it lies as nature hath left it, and human labour and art have done but little, and brightened only some small specks of a continent that can afford ample means of subsistence to many, many millions of the human race. It remains with us and our posterity, to “make the wilderness become a fruitful field, and the desert blossom as the rose”; to establish the honour and happiness of this new world, as far as it may be justly our own, and to invite the injured and oppressed, the worthy and the good to these shores, by the most liberal governments, by wise political institutions, by cultivating the confidence and friendship of other nations, and by a sacred attention to that gospel that breaths “peace on earth, and good will towards men.” Thus will our country resemble the new city which St. John saw “coming down from God out of heaven, adorned as a bride for her husband.” Is there a benevolent spirit on earth, or on high, whom such a prospect would not delight?

But what are those illustrious forms that seem to hover over us on the present great occasion, and to look down with pleasure on the memorable transactions of this day? Are they not the founders and lawgivers, the skilful pilots and brave defenders of free states, whose fame “flows down through all ages, enlarging as it flows”? They, who thought no toils or vigilance too great to establish and protect the rights of human nature; no riches too large to be exchanged for them; no blood too precious to be shed for their redemption? But who are they who seem to approach nearer to us, and in whose countenances we discern a peculiar mixture of gravity and joy upon this solemnity? Are they not the venerable fathers of the Massachusetts; who though not perfect while they dwelt in flesh, were yet greatly distinguished by an ardent piety, by all the manly

virtues, and by an unquenchable love of liberty—they, who to form a retreat for it, crossed the ocean, through innumerable difficulties, to a savage land: They, who brought with them a broad charter of liberty, over which they wept when it was wrested from them by the hand of power, and an insidious one placed in its room. With what pleasure do they seem to behold their children, like the antient seed of Abraham, this day restored to their original foundations of freedom! their Governor "as at the first, and their Councellors as at the beginning"? Do they not call upon us to defend these foundations at every hazard, and to perpetuate their honour in the liberty and virtue of the state they planted?

O thou supreme Governor of the world, whose arm hath done great things for us, establish the foundations of this commonwealth, and evermore defend it with the saving strength of thy right hand! Grant that here the divine constitutions of Jesus thy Son may ever be honoured and maintained! Grant that it may be the residence of all private and patriotic virtues, of all that enlightens and supports, all that sweetens and adorns human society, till the states and kingdoms of this world shall be swallowed up in thine own kingdom: In that, which alone is immortal, may we obtain a perfect citizenship, and enjoy in its completion, "the glorious Liberty of the Sons of God![”] And let all the people say, *Amen!*

Lord, now lettest thou thy Servant depart in Peace
No Lords Spiritual or Temporal in New England
Liberty & Freedom of Conscience
Locke
Sydney on Government
Barclay's Apology
Calvin's Works
The Hillsborough
Shall they be obliged to maintain Bishops that cannot maintain themselves

Treaty Ending the Third Anglo-Powhatan War (1646)

In the following enactment, dated October 1646, the General Assembly confirms a peace treaty ending the Third Anglo-Powhatan War (1644–1646), a relatively short conflict that led to the death of Opechancanough, paramount chief of Tsenacomoco. Necotowance, Opechancanough's successor, assented to the treaty on behalf of the Indians. Some spelling has been modernized.

Art. 1. *BE it enacted by this Grand Assembly,* That the articles of peace foll: between the inhabitants of this collony, and Necotowance King of the Indians bee duely & inviolably observed upon the penaltie within mentioned as followeth:

Imp. That Necotowance do acknowledge to hold his kingdome from the King's Ma'tie of England, and that his successors be appointed or confirmed by the King's Governours from time to time, And on the other side, This Assembly on the behalfe of the collony, doth, undertake to protect him or them against any rebells or other enemies whatsoever, and as an acknowledgment and tribute for such protection, the said Necotowance and his successors are to pay unto the King's Govern'r. the number of twenty beaver skins att the goeing away of Geese yearely.

Art. 2. That it shall be free for the said Necotowance and his people, to inhabit and hunt on the north-

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side of Yorke River, without any interruption from the English. *Provided* that if hereafter, it shall be thought fitt by the Governor and Council to permitt any English to inhabitt from Poropotanke downewards, that first Necotowance be acquainted therewith.

Art. 3. That Necotowance and his people leave free that tract of land betweene Yorke river and James river, from the falls of both the rivers to Kequotan, to the English to inhabitt on, and that neither he the said Necotowance nor any Indians do repaire to or make any abode upon the said tract of land, upon paine of death, and it shall be lawfull for any person to kill any such Indian, And in case any such Indian or Indians being seen upon the said tract of land shall make an escape, That the said Necotowance shall uppon demand deliver the said Indian or Indians to the Englishmen, upon knowledge had of him or them, unles such Indian or Indians be sent upon a message from the said Necotowance.

And to the intent to avoid all injury to such a messenger, and that no ignorance may be pretended to such as shall offer any outrage, *It is thought fitt and hereby enacted,* That the badge worne by a messenger, or, in case there shall be more than one, by one of the company, be a coate of striped stuffe which is to be left by the messenger from time to time so often as he shall returne at the places appointed for coming in.

Art. 4. *And it is further enacted,* That in case any English shall repaire contrary to the articles agreed upon, to the said north side of Yorke river, such persons soe offending, being lawfully

convicted, be adjudged as felons; *Provided* that this article shall not extend to such persons who by stresse of weather are forced upon the said land, *Provided alsoe* and it is agreed by the said Necotowance, that it may be lawfull for any Englishman to goe over to the said north side haveing occasion to fall timber trees or cut sedge, soe as the said persons have warr't for theyre soe doeing under the hand of the Gov. *Provided alsoe* notwitstandinge any thing in this act to the contrary, That it shall bee free and lawfull for any English whatsoever between this present day and the first of March next to kill and bring away what cattle or hoggs that they can by any

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meanes kill or take upon the said north side of the said river.

Art. 5. *And it is further enacted* that neither for the said Necotowance nor any of his people, do frequent come in to hunt or make any abode nearer the English plantations then the lymits of Yapin the black water, and from the head of the black water upon a straite line to the old Monakin Towne, upon such paine and penaltie as aforesaid.

Art. 6. *And it is further ordered enacted* that if any English do entertain any Indian or Indians or doe conceale any Indian or Indians that shall come within the said limits, such persons being lawfully convicted thereof shall suffer death as in case of felony, without benefit of clergy, excepted such as shall be authorized thereto by vertue of this act.

Art. 7. *And it is further enacted* that the said Necotowance and his people upon all occasions of message to the Gov'r. for trade, doe repaire unto the ffort Royall onely on the north side, at which place they are to receive the aforesaid badges, which shall shew them to be messengers, and therefore to be freed from all injury in their passage to the Governor, upon payne of death to any person or persons whatsoever that shall kill them, the badge being worn by one of the company, And in case of any other affront, the offence to be punished according to the quality thereof, and the trade admitted as aforesaid to the said Necotowance and his people with the commander of the said ffort onely on the north side.

Art. 8. *And it is further thought fitt and enacted,* that upon any occasion of message to the Gov'r. or trade, The said Necotowance and his people the Indians doe repair to fforte Henery *alias* Appamattucke fforte, or to the house of Capt. John ffloud, and to no other place or places of the south side of the river, att which places the aforesayd badges of striped stuff are to be and remaine.

Art. 9. *And it is further thought fitt and enacted,* That Necotowance doe with all convenience bring in the English prisoners, And all such negroes and guns which are yet remaining either in the possession of

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himselfe or any Indians, and that here deliver upon demand such Indian servants as have been taken prisoners and shall hereafter run away, In case such Indian or Indians shall be found within the limitts of his dominions; provided that such Indian or Indians be under the age of twelve years at theire running away.

Art. 10. *and it is further enacted & consented,* That such Indian children as shall or will freely and voluntarily come in and live with the English, may remain without breach of the articles of peace provided they be not above twelve yeares old.

Art. 11. *And it is further thought fitt and enacted* That the several commanders of the fforts and places as aforesaid unto which the said Indians as aforesaid are admitted to repaire, In case of trade or Message doe forthwith provide the said coats in manner striped as aforesaid.

Source: William Waller Hening, ed., *The Statutes at Large; Being a Collection of All the Laws of Virginia from the First Session of the Legislature in the Year 1619* (New York: R. & W. & G. Bartow, 1814), 1:323–326. Transcription and editorial note from Encyclopedia Virginia @ http://www.encyclopediavirginia.org/Treaty_Ending_the_Third_Anglo-Powhatan_War_1646 (modified: January 25, 2013).

Articles of Peace or Treaty of Middle Plantation (1677)

In Articles of Peace, published in London in 1677, the British government formalizes what became known as the Treaty of Middle Plantation, signed on May 29, 1677. Following the violence against Virginia Indians that accompanied Bacon's Rebellion(1676–1677), several tribes, formerly part of the paramount chiefdom Tsenacomoco, reunited under the authority of the Pamunkey chief Cockacoeske and promised fidelity to the Crown in exchange for its protection. Some spelling has been modernized.

Articles of Peace between the most Mighty Prince, and our Dread Sovereign Lord CHARLES *the Second, ... And the several* Indian *Kings and Queens,* &c. *Assenters and Subscribers hereunto, made and concluded at the Camp at* Middle Plantation *the* Twenty ninth *day of* May 1677...

I have caused to be drawn up these ensuing Articles and Overtures, for the firm Grounding, and sure Establishment of a good and just Peace with the said Indians. *And that it may be a Secure and Lasting one (Founded upon the strong Pillars of Reciprocal Justice) by Confirming to them their Just Rights, and by Redress of their Wrongs and Injuries, That so the great God (who is a God of Peace, and lover of Justice) may uphold and prosper this our Mutual League and Amity, It is hereby Concluded, Consented to, and mutually Agreed, as followeth;*

Artic. I.

That the respective *Indian* Kings and Queens do from henceforth acknowledge to have their immediate Dependency on, and own all Subjection to the Great King of *England*, our now Dread Sovereign, His Heirs and Successors, when they pay their Tribute to His Majesties Governour for the time being.

II. That thereupon the said *Indian* Kings and Queens and their Subjects, shall hold their Lands, and have the same Confirmed to them and their Posterity, by Patent under the Seal of this His Majesties Colony, without any Fee, Gratuity or Reward for the same, in such sort, and in as free and firm manner as others His Majesties Subjects have and enjoy their Lands and Possessions, paying yearly for and in lieu of a Quit Rent, or Acknowledgment for the same, onely Three *Indian* Arrows.

III. That all *Indians* who are in Amity with Us, and have not Land sufficient to Plant upon, be (upon Information) forthwith provided for, and Land laid out and Confirmed to them as aforesaid, never to be disturbed therein, or taken from them, so long as they own, keep and maintain their due Obedience and Subjection to His Majesty, His Governour and Government, and Amity and Friendship towards the *English*.

IV. Whereas by the mutual Discontents, Complaints, Jealousies and Fears of *English* and *Indians*, occasioned by the Violent Intrusions of divers *English* into their Lands, forcing the *Indians* by way of Revenge, to kill the Cattel and Hogs of the *English,* whereby Offence and Injuries being given and done on both sides, the Peace of this His Majesties Colony hath been much disturbed, and the late unhappy Rebellion by this means (in a great measure) begun and fomented, which hath Involved this Countrey into so much Ruine and Misery: For prevention of which Injuries and evil consequences (as much as possibly we may) for time to come; It is hereby Concluded and Established, That no *English* shall Seat or

Plant nearer then Three miles of any *Indian* Town; and whosoever hath made, or shall make an Incroachment upon their Lands, shall be removed from thence, and proceeded against as by the former Peace made, when the Honourable Colonel *Francis Morison* was Governour, and the Act of Assembly grounded thereupon, is Provided and Enacted.

V. That the said *Indians* be well Secured and Defended in their Persons, Goods and Properties, against all hurts and injuries of the *English*; and that upon any breach or violation, hereof the aggrieved *Indians* do in the first place repair and Address themselves to the Governour, acquainting him therewith (without rashly and suddenly betaking themselves to any Hostile course for Satisfaction) who will Inflict such Punishment on the wilful Infringers hereof, as the Laws of *England* or this Countrey permit, and as if such hurt or injury had been done to any *Englishman*; which is but just and reasonable, they owning themselves to be under the Allegiance of His most Sacred Majesty....

VII. That the said *Indians* have and enjoy their wonted conveniences of Oystering, Fishing, and gathering Tuchahoe, Curtenemons, Wild Oats, Rushes, Puckoone, or anything else (for their natural support) not useful to the *English*, upon the *English* Dividends; Always provided they first repair to some Publick Magistrate of good Repute, and inform him of their number and business, who shall not refuse them a Certificate upon this or any other Lawful occasion, so that they make due return thereof when they come back, and go directly home about their business, without wearing or carrying any manner of Weapon, or lodging under any *Englishmans* Dwelling-house one night.

VIII. That no Foreign *Indian* be suffered to come to any *English* Plantation without a friendly neighbor *Indian* in his company with such Certificate as aforesaid: and no *Indian* King is to refuse to send a safe Conduct with the Foreigner, upon any Lawful occasion of his coming in, and that no *Indian* do paint or disguise themselves when they come in....

XI. That every *Indian* fit to bear Arms, of the Neighbouring Nations in Peace with us, have such quantity of Powder and Shot allotted him, as the Right Honourable the Governour shall think sufficient on any occasion, and that such numbers of them be ready to go out with our Forces upon any March against the Enemy, and to receive such Pay for their good Services, as shall be thought fit....

XIII. That no person whatsoever shall entertain or keep any Neighbouring *Indian* as Servant, or otherwise, but by Licence of the Governour, and to be upon Obligation answerable for all Injuries and Damages by him or them happening to be done to any *English*.

XIV. That no *English* harbour or entertain any Vagrant or Runaway *Indian*, but convey him home by way of Pass, from Justice to Justice to his own Town, under Penalty of paying so much *per* day for harbouring him, as by the Law for entertaining of Runaways is recoverable.

XV. That no *Indian* (of those in Amity with us) shall serve for any longer time then *English*of the like Ages should serve by Act of Assembly, and shall not be sold as Slaves.

XVI. That every *Indian* King and Queen in the Moneth of *March* every year, with some of their Great Men, shall tender their Obedience to the Right Honourable His Majesties Governour at the place of his

Residence, whereever it shall be, and then and there pay the accustomed Tribute of Twenty Beaver Skins to the Governour, and also their Quit-Rent aforesaid, in acknowledgment they hold their Crowns and Lands of the Great King of *England*.

XVII. That due care be had and taken that those *Indian* Kings and Queens, their Great Men and Attendants that come on any Publick Business to the Right Honourable the Governour, Council or Assembly, may be accommodated with Provisions and Houseroom at the Publick Charge, and that no *English* Subject shall abuse, revile, hurt or wrong them at any time in word or deed.

XVIII. That upon any Discord or Breach of Peace happening to arise between any of the *Indians* in Amity with the *English*, upon the first appearance and beginning thereof, and before they enter into any open Acts of Hostility or War one against another, they shall repair to His Majesties Governour, by whose Justice and Wisdom it is concluded such Difference shall be made up and decided, and to whose final Determination the said *Indians* shall submit and conform themselves....

XX. That the several *Indians* concluded in this Peace, do forthwith restore to the respective *English* Parents and Owners all such Children, Servants and Horses, which they have at any time taken from them, and are now remaining with them the said *Indians*, or which they can make discovery of.

XXI. That the Trade with the said *Indians* be continued, limited, restrained or laid open, as shall make best for the Peace and Quiet of the Countrey; upon which Affair the Governour will consult with the Council and Assembly, and conclude thereon at their next meeting.

The Sign of the Queen of Pamunkey, on behalf of her self and the several Indians *under her Subjection.*

The Sign of the Queen of Waonoke.

The Sign of the King of the Nottoways.

The Sign of the King of the Nancymond Indians.

The Sign of Captain John West. *Son to the Queen of* Pamunkey.

Convenit cum Originali.

Test. *Tho. Ludwell* Secretary.

Memorandum the 29th day of *May*, 1677.

That this Instrument of Peace being Read and Expounded to the several *Indian* Kings and Queens then present (at the Court at *Middle Plantation*) by Interpreters Sworn truly to perform the same, the said *Indian* Kings and Queens Signed and delivered the Articles to the Honourable Governour upon their Knees, and received that other part, Signed and Delivered on behalf of the Kings Majesty, in the same posture of kneeling, of their own accords kissing the Paper as they Transferred it from hand to hand to each other, until every one had done the like Mark of Reverence to it, in sign of a most free and joyful acceptance of this Peace concluded with them. At the same time *Pericuhtah* King of

the *Appomatucks* being then present, did earnestly desire to be admitted to the Signing this Peace with the rest; but he being suspected, and Complained of to have Committed by himself or Subjects, some Murthers on His Majesties Subjects of *England*, was not admitted or included into this League at that time, nor is to partake of the benefit of this Peace, before he shall have cleared himself of this Guilt imputed to him, and Committed since His Majesties Commissioners came into *Virginia*, as they were credibly informed: Which Exemption gave the *English* general satisfaction, to find there was so just Inquisition made of the Bloud of their Slaughtered Brethren.

John Berry,

Francis Morison.

Source: *Articles of Peace between the Most Serene and Mighty Prince Charles II. By the Grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c., and Several Indian Kings and Queens, &c. Concluded the 29th day of May, 1677* (London: John Bill, Christopher Barker, Thomas Newcomb, and Henry Hills, 1677). Transcription and editorial note from Encyclopedia Virginia @ http://www.encyclopediavirginia.org/Articles_of_Peace_1677 (modified: January 25, 2013).

An Act to Discriminate Between Africans and Others in Maryland, 1664

Bee it Enacted by the Right Hon.[ble] the Lord Proprietary by the aduice and Consent of the upper and lower house of this present Generall Assembly That all Negroes or other slaues already within the Prouvince And all Negroes and other slaues to bee hereafter imported into the Prouince shall serue Durante Vita[*] And all Children born of any Negro or other slaue shall be Slaues as their ffathers were for the terme of their liues And forasmuch as divers freeborne English women forgetfull of their free Condicon and to the disgrace of our Nation doe intermarry with Negro Slaues by which alsoe diuers suites may arise touching the Issue of such woemen and a great damage doth befall the Masters of such Negroes for preuention whereof for deterring such freeborne women from such shamefull Matches Bee itt further Enacted by the Authority advice and Consent aforesaid That whatsoever free borne woman shall inter marry with any slaue from and after the Last day of this present Assembly shall Serue the master of such slaue dureing the life of her husband And that all the Issue of such freeborne woemen soe marryed shall be Slaues as their fathers were And Bee itt further Enacted that all the Issues of English or other freeborne woemen that haue already marryed Negroes shall serve the Masters of their Parents till they be Thirty yeares of age and noe longer.

[*] during life

From: Thomas C. Holt and Elsa Barkley Brown, *Major Problems in African-American History* (New York: Houghton Mifflin, 2000), I: 89-90.

Virginia Law October 1705-CHAP. XLIX. An act concerning Servants and Slaves.

[*This statute included a definition of who would become a slave upon entering Virginia and repeated previous restrictions placed upon enslaved persons in addition to new constaints. The law contained some modifications on the punishments placed on white women who bore a mulatto child and white individuals who married a person of color in 1691. The legislators made it clear that Christianity was not the path to freedom for a slave.*]

IV. And also be it enacted, by the authority aforesaid, and it is hereby enacted, That all servants imported and brought into this country, by sea or land, who were not christians in their native country, (except Turks and Moors in amity with her majesty, and others that can make due proof their being free in England, or any other christian country, before they were shipped, in order to transportation hither (shall be accounted and be slaves, and as such be here bought and sold notwithstanding a conversion to christianity afterwards.

V. And be it enacted, by the authority aforesaid, and it is hereby enacted, That if any person or persons shall hereafter import into this colony, and here sell as a slave, any person or persons that shall have been a freeman in any christian country, island, or plantation, such importer and seller as aforesaid, shall forfeit and pay, to the party from who the said freeman shall recover his freedom, double the sum for which the said freeman was sold. To be recovered, in any court of record within this colony, according to the course of the common law, wherein the defendant shall not be admitted to plead in bar, any act or statute for limitation of actions.

VI. Provided always, That a slave's being in England, shall not be sufficient to discharge him of his slavery, without other proof of his being manumitted there.

XI. And for a further christian care and usage of all christian servants, Be it also enacted, by the authority aforesaid, and it is hereby enacted, That no negros, mulattos, or Indians, although christians, or Jews, Moors, Mahometans, or other infidels, shall, at any time, purchase any christian servant, nor any other, except of their own complexion, or such as are declared slaves by this act: And if any negro, mulatto, or Indian, Jew, Moor, Mahometan, or other infidel, or such as are declared slaves by this act, shall, notwithstanding, purchase any christian white servant, the said servant shall, ipso facto, become free and acquit from any service then due, and shall be so held, deemed, and taken: And if any person, having such christian servant, shall intermarry with any such negro, mulatto, or Indian, Jew, Moor, Mahometan, or other infidel, every christian white servant of every such person so intermarrying, shall, ipso facto, become free and acquit from any service then due to such master or mistress so intermarrying, as aforesaid.

XV. And also be it enacted, by the authority aforesaid, and it is hereby enacted, That no person whatsoever shall, buy, sell, or receive of, to, or from, any servant, or slave, any coin or commodity whatsoever, without the leave, licence, or consent of the master or owner of the said servant, or slave: And if any person shall, contrary hereunto, without the leave or licence aforesaid, deal with any servant, or slave, he or she so offending, shall be imprisoned one calender month, without bail or main-prize; and then, also continue in prison, until he or she shall find good security, in the sum of ten pounds

current money of Virginia, for the good behaviour for one year following; wherein, a second offence shall be a breach of the bond; and moreover shall forfeit and pay four times the value of the things so bought, sold, or received, to the master or owner of such servant, or slave: To be recovered, with costs, by action upon the case, in any court of record in this her majesty's colony and dominion, wherein no essoin, protection, or wager of law, or other than one imparlance, shall be allowed.

XVI. Provided always, and be it enacted, That when any person or persons convict for dealing with a servant, or slave, contrary to this act, shall not immediately give good and sufficient security for his or her good behaviour, as aforesaid: then in such case, the court shall order thirty-nine lashes, well laid on, upon the bare back of such offender, at the common whipping-post of the county, and the said offender to be thence discharged of giving such bond and security.

XVIII. And if any woman servant shall have a bastard child by a negro, or mulatto, over and above the years service due to her master or owner, she shall immediately, upon the expiration of her time to her then present master or owner, pay down to the church-wardens of the parish wherein such child shall be born, for the use of the said parish, fifteen pounds current money of Virginia, or be by them sold for five years, to the use aforesaid: And if a free christian white woman shall have such bastard child, by a negro, or mulatto, for every such offence, she shall, within one month after her delivery of such bastard child, pay to the church-wardens for the time being, of the parish wherein such child shall be born, for the use of the said parish fifteen pounds current money of Virginia, or be by them sold for five years to the use aforesaid: And in both the said cases, the church-wardens shall bind the said child to be a servant, until it shall be of thirty one years of age.

XIX. And for a further prevention of that abominable mixture and spurious issue, which hereafter may increase in this her majesty's colony and dominion, as well by English, and other white men and women intermarrying with negroes or mulattos, as by their unlawful coition with them, Be it enacted, by the authority aforesaid, and it is hereby enacted, That whatsoever English, or other white man or woman, being free, shall intermarry with a negro or mulatto man or woman, bond or free, shall, by judgment of the county court, be committed to prison, and there remain, during the space of six months, without bail or mainprize; and shall forfeit and pay ten pounds current money of Virginia, to the use of the parish, as aforesaid.

XX. And be it further enacted, That no minister of the church of England, or other minister, or person whatsoever, within this colony and dominion, shall hereafter wittingly presume to marry a white man with a negro or mulatto woman; or to marry a white woman with a negro or mulatto man, upon pain of forfeiting and paying, for every such marriage the sum of ten thousand pounds of tobacco; one half to our sovereign lady the Queen, her heirs and successors, for and towards the support of the government, and the contingent charges thereof; and the other half to the informer; To be recovered, with costs, by action of debt, bill, plaint, or information, in any court of record within this her majesty's colony and dominion, wherein no essoin, protection, or wager of law, shall be allowed.

XXIII. And for encouragement of all persons to take up runaways, Be it enacted, by the authority aforesaid, and it is hereby enacted, That for the taking up of every servant, or slave, if ten miles, or

above, from the house or quarter where such servant, or slave was kept, there shall be allowed by the public, as a reward to the taker-up, two hundred pounds of tobacco; and if above five miles, and under ten, one hundred pounds of tobacco: Which said several rewards of two hundred, and one hundred pounds of tobacco, shall also be paid in the county where such taker-up shall reside, and shall be again levied by the public upon the master or ownmer of such runaway, for re-imbursement of the public, every justice of the peace before whom such runaway shall be brought, upon the taking up, shall mention the proper-name and sur-name of the taker-up, and the county of his or her residence, together with the time and place of taking up the said runaway; and shall also mention the name of the said runaway, and the proper-name and sur-name of the master or owner of such runaway, and the county of his or her residence, together with the distance of miles, in the said justice's judgment, from the place of taking up the said runaway, to the house or quarter where such runaway was kept.

XXIV. Provided, That when any negro, or other runaway, that doth not speak English, and cannot, or through obstinacy will not, declare the name of his or her masters or owner, that then it shall be sufficient for the said justice to certify the same, instead of the name of such runaway, and the proper name and sur-name of his or her master or owner, and the county of his or her residence and distance of miles, as aforesaid; and in such case, shall, by his warrant, order the said runaway to be conveyed to the public gaol, of this country, there to be continued prisoner until the master or owner shall be known; who, upon paying the charges of the imprisonment, or giving caution to the prison-keeper for the same, together with the reward of two hundred or one hundred pounds of tobacco, as the case shall be, shall have the said runaway restored.

XXV. And further, the said justice of the peace, when such runaway shall be brought before him, shall, by his warrant commit the said runaway to the next constable, and therein also order him to give the said runaway so many lashes as the said justice shall think fit, not exceeding the number of thirty-nine; and then to be conveyed from constable to constable, until the said runaway shall be carried home, or to the country gaol, as aforesaid, every constable through whose hands the said runaway shall pass, giving a receipt at the delivery; and every constable failing to execute such warrant according to the tenor thereof, or refusing to give such receipt, shall forefeit and pay two hundred pounds of tobacco to the church-wardens of the parish wherein such failure shall be, for the use of the poor of the said parish: To be recovered, with costs, by action of debt, in any court of record in this her majesty's colony and dominion, wherein no essoin, protection or wager of law, shall be allowed. And such corporal punishment shall not deprive the master or owner of such runaway of the other satisfaction here in this act appointed to be made upon such servant's running away.

XXIX. And be it enacted, by the authority aforesaid, and it is hereby enacted, That if any constable, or sheriff, into whose hands a runaway servant or slave shall be committed, by virtue of this act, shall suffer such runaway to escape, the said constable or sheriff shall be liable to the action of the party agrieved, for recovery of his damages, at the common law with costs.

XXXII. And also be it enacted, by the authority aforesaid, and it is hereby enacted, That no master, mistress, or overseer of a family, shall knowingly permit any slave, not belonging to him or her, to be and remain upon his or her plantation, above four hours at any one time, without the leave of such

slave's master, mistress, or overseer, on penalty of one hundred and fifty pounds of tobacco to the informer; cognizable by a justice of the peace of the county wherein such offence shall be committed.

XXXIV. And if any slave resist his master, or owner, or other person, by his or her order, correcting such slave, and shall happen to be killed in such correction, it shall not be accounted felony; but the master, owner, and every such other person so giving correction, shall be free and acquit of all punishment and accusation for the same, as if such incident had never happened: And also, if any negro, mulatto, or Indian, bond or free, shall at any time, lift his or her hand, in opposition against any christian, not being negro, mulatto, or Indian, he or she so offending shall, for every such offence, proved by the oath of the party, receive on his or her bare back, thirty lashes, well laid on; cognizable by a justice of the peace for that county wherein such offence shall be committed.

XXXV. And also be it enacted, by the authority aforesaid, and it is hereby enacted, That no slave go armed with gun, sword, club, staff, or other weapon, nor go from off the plantation and seat of land where such slave shall be appointed to live, without a certificate of leave in writing, for so doing, from his or her master, mistress, or overseer: And if any slave shall be found offending herein, it shall be lawful for any person or persons to apprehend and deliver such slave to the next constable or head-borough, who is hereby enjoined and required, without further order or warrant, to give such slave twenty lashes on his or her bare back well laid on, and so send him or her home: And all horses, cattle, and hogs, now belonging, or that hereafter shall belong to any slave, or of any slaves mark in this her majesty's colony and dominion, shall be seised and sold by the church-wardens of the parish, wherein such horses, cattle, or hogs shall be, and the profit thereof applied to the use of the poor of the said parish: And also, if any damage shall be hereafter committed by any slave living at a quarter where there is no christian overseer, the master or owner of such slave shall be liable to action for the trespass and damage, as if the same had been done by him or herself.

XXXVI. And also it is hereby enacted and declared, That baptism of slaves doth not exempt them from bondage; and that all children shall be bond or free, according to the condition of their mothers, and the particular direction of this act.

XXXVII. And whereas, many times, slaves run away and lie out, hid or lurking in swamps, woods, and other obscure places, killing hogs, and committing other injuries to the inhabitants of this her majesty's colony and dominion, Be it therefore enacted, by the authority aforesaid, and it is hereby enacted, That in all such cases, upon intelligence given of any slaves lying out, as aforesaid, any two justices (Quorum unus) of the peace of the county wherein such slave is supposed to lurk or do mischief, shall be and are impowered and required to issue proclamation against all such slaves, reciting their names, and owners names, if they are known, and thereby requiring them, and every of them, forthwith to surrender themselves; and also impowering the sheriff of the said county, to take such power with him, as he shall think fit and necessary, for the effectual apprehending such out-lying slave or slaves, and go in search of them: Which proclamation shall be published on a Sabbath day, at the door of every church and chapel, in the said county, by the parish clerk, or reader, of the church, immediately after divine worship: And in case any slave, against whom proclamation hath been thus issued, and once published at any church or chapel, as aforesaid, stay out, and do not immediately return home, it shall be lawful for any person or

persons whatsoever, to kill and destroy such slaves by such ways and means as he, she, or they shall think fit, without accusation or impeachment of any crime for the same: And if any slave, that hath run away and lain out as aforesaid, shall be apprehended by the sheriff, or any other person, upon the application of the owner of the said slave, it shall and may be lawful for the county court, to order such punishment to the said slave, either by dismembring, or any other way, not touching his life, as they in their discretion shall think fit, for the reclaiming any such incorrigible slave, and terrifying others from the like practices.

XXXVIII. Provided Always, and it is further enacted, That for every slave killed, in pursuance of this act, or put to death by law, the master or owner of such slave shall be paid by the public:

XXXIX. And to the end, the true value of every slave killed, or put to death, as aforesaid, may be the better known; and by that means, the assembly the better enabled to make a suitable allowance thereupon, Be it enacted, That upon application of the master or owner of any such slave, to the court appointed for proof of public claims, the said court shall value the slave in money, and the clerk of the court shall return a certificate thereof to the assembly, with the rest of the public claims.

XL. And for the better putting this act in due execution, and that no servants or slaves may have pretense of ignorance hereof, Be it also enacted, That the church-wardens of each parish in this her majesty's colony and dominion, at the charge of the parish, shall provide a true copy of this act, and cause entry thereof to be made in the register book of each parish respectively; and that the parish clerk, or reader of each parish, shall, on the first sermon Sundays in September and March, annually, after sermon or divine service is ended, at the door of every church and chapel in their parish, publish the same; and the sheriff of each county shall, at the next court held for the county, after the last day of February, yearly, publish this act, at the door of the court-house: And every sheriff making default herein, shall forfeit and pay six hundred pounds of tobacco; one half to her majesty, her heirs, and successors, for and towards the support of the government; and the other half to the informer. And every parish clerk, or reader, making default herein, shall, for each time so offending, forfeit and pay six hundred pounds of tobacco; one half whereof to be to the informer; and the other half to the poor of the parish, wherein such omission shall be : To be recovered, with costs, by action of debt, bill, plaint, or information, in any court of record in this her majesty's colony and dominion, wherein no essoin, protection, or wager of law, shall be allowed.

XLI. And be it further enacted, That all and every other act and acts, and every clause and article thereof, heretofore made, for so much thereof as relates to servants and slaves, or to any other matter or thing whatsoever, within the purview of this act, is and are hereby repealed, and made void, to all intents and purposes, as if the same had never been made.

Source: Hening, ed., The Statutes at Large, vol. 3, pp. 447-462 from Virtual Jamestown @ http://www.virtualjamestown.org/laws1.html#43

A Dangerous Precident for the Future Time

(If Unpunished), 1640

Extract from the proceedings of the governor and Council, 22 July 1640. Copy of lost original from Conway Robinson's Notes, Virginia Historical Society.

Whereas complaint has been made to this Board by Capt. Wm Pierce Esqr. that six of his servants and a negro of Mr. Reginolds has plotted to run away unto the Dutch plantation from their said masters and did assay to put the same in Execution upon Saturday night being the 18th. day July 1640 as appeared to the Board by the Examinations of Andrew Noxe, Richd. Hill, Richd. Cookeson and John Williams and likewise by the confession of Christopher Miller, Peter Wilcocke, and Emanuel the foresaid Negro who had at the fore said time, taken the skiff of the said Capt. Wm: Pierce their master, and corn powder and shot and guns, to accomplish their said purposes, which said persons sailed down in the said skiff to Elizabeth river where they were taken and brought back again, the Court taking the same into consideration, as a dangerous precident for the future time (if unpunished) did order that Christopher Miller a dutchman (a prince agent in the business) should receive the punishment of whipping and to have thirty stripes, and to be burnt in the cheek with the letter R and to work with a shakle on his legg for one whole year, and longer if said master shall see cause, and after his full time of service is Expired with his said master to serve the colony for seven whole years, and the said Peter Wilcocke to receive thirty stripes and to be Burnt in the cheek with the letter R and, after his term of service is Expired with his said master to serve the colony for three years and the said Richd. Cookson after his full time Expired with his master to serve the colony for two years and a half, and the said Richd. Hill to remain upon his good behaviour until the next offence and the said Andrew Noxe to receive thirty stripes, and the said John Williams a dutchman and a Chirugeon after his full time of service is Expired with his master to serve the colony for seven years, and Emanuel the Negro to receive thirty stripes and to be burnt in the cheek with the letter R. and to work in shakle one year or more as his master shall see cause, and all those who are condemned to serve the colony after their times are Expired with their masters, then their said masters are required hereby to present to this board their said servants so condemned to the colony

Preservation of the Indians Right and Property, 1674

Extract from the proceedings of the General Court, 8 April 1674. General Court Records, 1670–1676, Virginia Historical Society.

Whereas the Grand Assembly out of their Great care of the Peace and Safety of this Colony (the Preservacon Whereof Doth much Depend upon the Preservacon of the Indians right and property in Those lands which have been Assigned them by the publique Authority of this Colony) have Enacted that for the prevencon of Such Encroachments As should be made uppon lands soe Assigned as aforesaid, it Should not be in the power of any Indian (who might be either Threatned or Deluded therto) to sell or alienate any of the lands within the Said bounds, and all Such Bargaines and Sales are by the Said Act Declared Voyde, and Whereas wee are Informed that Severall persons to Elude the force of the Said Act have only taken leases from the Pomunki and Chickahominy Indians Whereby those inconveniences provided Against by the Said Act will under that pretence be brought uppon this Country, It is therefore order'd that noe person doe presume to take any lease for any time from any Indian Whatsoever and that all Such as have taken any Such leases doe forbeare Seateing uppon or Imploying any of the Said Land till it Shall be Determined by the next Assembly what further Course shall be taken for the future Prevention of Such mischiefs and Inconveniencies as are like to follow Such illegal Disturbances of the Said Indians, and all persons within this Colony are Required to take notice hereof and obey the Same, as they will Answer the Contrary at their Perills, and to the intent that none may pretend Ignorance hereof, It is further order'd that the Sherriffs of every County bordering uppon any of the Indians doe publish this order in their Respective County Courts

The Poor and Distressed Remnant

of Chickahominy Indians, 1689

Petition of Chickahominy Indians to Governor Effingham, with postscript in different handwriting, n.d., ca. 1689. Colonial Papers, folder 6, no. 24, Record Group 1, Library of Virginia.

To his Excellencie Francis Lord Howard Barron of Effingham his Majties Lft & Govenr Genrll of Virginia

Herquapinck

Paucough

Hearseeys.

Monquys and Cheife Rulers of the poor and Distressed Remnant of Chickahomany Indians, Humbly Sheweth,

That yor Petitionrs in times past were a people numerous & of greate Strength and Authority amongst themselves in this Country, & lived under the freedom of their own wills Lawes & ords

and had Large limits Bounds & previlidges in this Land; But now by the Disposition of Allmighty Power and the prevalent forces of the High and mighty Kings of England, yor Petrs hath lost those theire large possessions and are Reduced to an Exiguous Body of people and become Subjects & Tributaries to the Crown of England: all which Providence hath soe ordd it yor Petrs are Content withall & humbly Submitt unto, and are thankfull that his Majtie by his good & Gracious Govert hath beene soe mercifull and Beneficient to us as by many wholesom Lawes made for our Immunity & protection wee are Sencible of; A Grace as farr Exceeding our deserts as 'tis Becoming a Christian King or Governt Yet nevertheless may it please yor Excellencie, yor Petitionrs hath now grevious Cause of Complaint, in as much as about five yeares Since; upon the Approach of the Senecea Indians yor Petrs for theire bettr Security from the Rabid Hostility of the sd Indians and at the Instance & motion of the Pamamuck Indians who at that time were under the like Exigency, did withdraw & Joyne themselves wth the sd Pamamuck Indians on Pamonkey river wth Designs to Continue together untill the sd Senecca's should withdraw to theire Camps or place of residence, and noe longr and then yor Petrs did Expect at theire own wish & pleasures to Remove themselves to theire wanted habitacon, or Else where they should make Choice, on Lawfull Towns, to settle themselves for theire future Tranquillity: And therefore yor Petr have Come and doe now Come & make Known to yor Excelly that the Pamamock Indians are so maliciously disgusted at yor Petrs Continuance wth them that they dayly Conspire to Kill & distroy yor Petrs and will in a Short time (if not by yor Lordshis goodness prevented) utterly Extirpate & root out yor Petrs frome of the face of the Earth, having allready to yor Petrs Ineffible grief to behold murdered & distroyd wth poison half yor Petrs people, and forasmuch as yor Petrs are now soe few and weak, as they dare not adventure to Settle againe & live upon theire own Land on the front of the English Inhabitants on the south Side of Mattapony river and that they have made an Exchange of part of part of the Said Land wth Mr. Benjamin Arnold for a Certaine parcell of his Land Called Rickahock on the north Side of Mattapony river, & have obtained the Consents & free wills of twenty foure of the Chiefest Inhabitants the sd place, according to yor Excellcy's Expectacon, and alsoe the Consents of the Chiefest Dwellers on and neare the Dragon Swamp, the usuall places of yor Petrs Catching Beavers, as by theire Severall Instrumts or Certificates undr theire hands will to yor Excellcy fully Appeare: And also for & in Reard that yor Petrs under Such present bounds are not able to Subsist & pay theire dues to yor Lordship as by theire Articles of Peace they are bound, & for that the like Liberties have not been deny'd to the Chiskiack Indians, nor the Nanzatticoe's nor other distressed nations and for many other pregnant reasons yor Petrs most humbly and wth bended knees implore & beseech yor Excellcy that they may have Liberty to withdraw themselves to the afforesaid Rickahock & yor Petrs doe promise to live honestly & obedient to the Lawe here Established & be true Subjects to the King of England & be gratefull to theople for theire good wills to receive us amongst them the outrageous hand of our foraigne Enimie, and yor Petitionrsto your Excellcy for yor gracious favour, and to the Honble Councill of State,

shall pay all honner & obedience and according to theire Confessed bounden Duty be ver therefore all the dayes of their lives &c

Yor Petrs further Intreat yr Excellcy that they may be admitted to bring an Interprettr for the better & more full Explaining some other theire Desires to yor Excellency.

Unkind and Unjust Usage by the English, 1699

Occahannock, Nansemond, and Nottaway Indians, to Governor Sir Francis Nicholson, and Nicholson's reply, April–May 1699. Colonial Papers, folder 12, no. 18, Record Group 1, Library of Virginia.

Complaints of Severall Indians to His Excellency.

Aprill. 29. 1699.

The Occahanock Indians represent to His Excellency, that they of their great Kindness to the English gave them leave to seat upon their lands, which by the Articles of Peace, were reserved for their own proper use:

that Accordingly the English have seated up all the Lands which were reserved to the Indians by the Articles of Peace:

that the English being so seated upon the said Lands will not give the Indians Liberty to come upon those lands either to Hunt or fish which are their only means of living:

And the Indians Not having any lands of their own, this unkind and unjust Usage of them by the English hath reduced them to very great Poverty & Necessity; therefore they pray His Excellency to give such Direcion for their Redress therein, as to him shall seem Convenient.

May. 2. 1699./

The Nansemund Indians represent to His Excellency, that they are informed, the English intend to take up land and seat upon a Place called their old Town (which lyes between the black water & Nottoway River); this they fear may cause some Differences to arise between the English and them, by reason that by their hunting and shooting they may affright the Englishman's Stocks in those places; and therefore pray His Excellency that He will be pleased to Consider thereof, and give such Direction therein as he shall thinke Proper.

The Nottoway Indians represent to His Excellency, that the Tuskaruroe Indians (being incouraged thereto) do often come into the upper parts of the Countrey, about Appamattox,

amongst the English, who furnish them with Gunns and Powder and shott, which enables them to hunt upon, and burn up all their Grounds, whereby their Game is Destroyed, and their hunting Spoyled

That the English trust the Tuskaruroes in trade with Rum & other Goods, which they bring Out amongst the Nottoways, and sometimes set into Play, and lose all, or great part of those Goods, and not being able to make satissfaction to the English, they tell them the Nottoways take their Gods from them; which Occasions Differences, And disatisfactions between the English and the Nottoways.

They Pray that his Excellency will be pleased to consider of these things, and give such direction therein as he shall thinke fit; And to prevent any new Occasions of Difference with the English, they Desire that their lands may be ascertained by bounds, and that no English may be permitted to seat within those bounds:

Whereupon His Excellency directs them to Consider with themselves what bounds they desire may be sett them, and when they have agreed, either to come and acquaint him themselves, or to let their Interpreter know their desires, that he may wait upon His Excellency and acquaint him therewith.

Copy: Test. B: HARRISON.

Releese Us out of This Cruel Bondegg, 1723

To the Bishop of London, 4 August–8 September 1723, Fulham Papers, XVII, 167–168, Lambeth Palace Library, London.

August the forth 1723

to The Right Raverrand father in god my Lord arch Bishop of Lonnd

this coms to sattisfie your honour that there is in this Land of verJennia a Sort of people that is Calld molatters which are Baptised and brouaht up in the way of the Christan faith and followes the wayes and Rulles of the Chrch of England and sum of them has white fathers and sum white mothers and there is in this Land a Law or act which keeps and makes them and there seed SLaves forever—

and most honoured Sir a mongst the Rest of your Charitabell acts and deed wee your humbell and poore partishinners doo begg Sir your aid and assisttancce in this one thing which Lise as I doo understand in your LordShips brest which is that your honour will by the help of our Sufvering Lord King George and the Rest of the Rullers will Releese us out of this Cruell Bondegg

and this wee beg for Jesus Christs his Sake who has Commaded us to seeke first the kingdom of god and all things shall be addid un to us

and here it is to bee notd that one brother is a SLave to another and one Sister to an othe which is quite out of the way and as for mee my selfe I am my brothers SLave but my name is Secrett

and here it is to bee notd againe that wee are Commandded to keep holey the Sabbath day and wee doo hardly know when it comes for our task mastrs are as hard with us as the Egypttions was with the Chilldann of Issarall god be marcifll unto us

here follows our Sevarity and Sorrowfull Sarvice we are hard used upon Every account in the first place wee are in Ignorance of our Salvation and in the next place wee are kept out of the Church and matrimony is deenied us

and to be plain they doo Look no more upon us then if wee ware dogs which I hope when these Strainge Lines comes to your Lord Ships hands will be Looket in to

and here wee beg for Jesus Christ his Sake that as your honour do hope for the marcy of god att the day of death and the Redemtion of our Saviour Christ that when this comes to your Lord Ships hands you honour wll Take Sum pitty of us who is your humble butt Sorrowfull portitinors

and Sir wee your humble perticners do humblly beg the favour of your Lord Ship that your honour will grant and Settell one thing upon us which is that our Childarn may be broatt up in the way of the Christtian faith and our desire is that they may be Larned the Lords prayer the creed and the ten commandements and that they may appeare Every Lord's day att Church before the Curatt to bee Exammond for our desire is that godlliness Shoulld abbound amongs us and wee desire that our Childarn be putt to Scool and and Larned to Reed through the Bybell

which is al att prasant with our prayers to god for itts good Success before your honour these from your hmbell Servants in the Lord

my Riting is vary bad I whope yr honour will take the will for the deede

I am but a poore Slave that writt itt and has no other time butt Sunday and hardly that att Sumtimes

September the 8th 1723

To the Right Reverrand father in god

my Lord arch bishup of J London

these with care

wee dare nott Subscribe any mans name to this for feare of our masters for if they knew that wee have Sent home to your honour wee Should goo neare to Swing upon the gallass tree

Pennsylvania Constitution of 1776, Declaration of Rights

I. That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

II. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding: And that no man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent: Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship.

III. That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.

IV. That all power being originally inherent in, and consequently derived from, the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.

V. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family, or sett of men, who are a part only of that community; And that the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish government in such manner as shall be by that community judged most conducive to the public weal.

VI. That those who are employed in the legislative and executive business of the State, may be restrained from oppression, the people have a right, at such periods as they may think proper, to reduce their public officers to a private station, and supply the vacancies by certain and regular elections.

VII. That all elections ought to be free; and that all free men having a sufficient evident common interest with, and attachment to the community, have a right to elect officers, or to be elected into office.

VIII. That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expence of that protection, and yield his personal service when necessary, or an equivalent thereto: But no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives: Nor can any man who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent, nor are the people bound by any laws, but such as they have in like manner assented to, for their common good.

IX. That in all prosecutions for criminal offences, a man hath a right to be heard by himself and his council, to demand the cause and nature of his accusation, to be confronted with the witnesses, to call

for evidence in his favour, and a speedy public trial, by an impartial jury of the country, without the unanimous consent of which jury he cannot be found guilty; nor can he be compelled to give evidence against himself; nor can any man be justly deprived of his liberty except by the laws of the land, or the judgment of his peers.

X. That the people have a right to hold themselves, their houses, papers, and possessions free from search and seizure, and therefore warrants without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are contrary to that right, and ought not to be granted.

XI. That in controversies respecting property, and in suits between man and man, the parties have a right to trial by jury, which ought to be held sacred.

XII. That the people have a right to freedom of speech, and of writing, and publishing their sentiments; therefore the freedom of the press ought not to be restrained.

XIII. That the people have a right to bear arms for the defence of themselves and the state; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; And that the military should be kept under strict subordination to, and governed by, the civil power.

XIV. That a frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry, and frugality are absolutely necessary to preserve the blessings of liberty, and keep a government free: The people ought therefore to pay particular attention to these points in the choice of officers and representatives, and have a right to exact a due and constant regard to them, from their legislatures and magistrates, in the making and executing such laws as are necessary for the good government of the state.

XV. That all men have a natural inherent right to emigrate from one state to another that will receive them, or to form a new state in vacant countries, or in such countries as they can purchase, whenever they think that thereby they may promote their own happiness.

XVI. That the people have a right to assemble together, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition, or remonstrance.

The Founders' Constitution, Volume 5, Bill of Rights, Document 5, http://press-pubs.uchicago.edu/founders/documents/bill_of_rightss5.html, The University of Chicago Press
Thorpe, Francis Newton, ed. *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America,* 7 vols. (Washington, D.C.: Government Printing Office, 1909), 5:3082-4

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Massachusetts Constitution of 1780, PT. 1

Part the First. A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts.

Art. I.--All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

II.--It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great creator and preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

III.--As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of GOD, and of public instructions in piety, religion and morality: Therefore, to promote their happiness and to secure the good order and preservation of their government, the people of this Commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies-politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of GOD, and for the support and maintenance of public protestant [Volume 5, Page 8] teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.

And the people of this Commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Provided notwithstanding, that the several towns, parishes, precincts, and other bodies-politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

And all monies paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose

instructions he attends: otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said monies are raised.

And every denomination of christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law: And no subordination of any one sect or denomination to another shall ever be established by law.

IV.--The people of this Commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America, in Congress assembled.

V.--All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

VI.--No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.

VII.--Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men; Therefore the people alone have an incontestible, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

VIII.--In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

IX.--All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

X.--Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: But no part of the property of any individual, can, with justice, be taken from him, or

applied to public uses without his own consent, or that of the representative body of the people: In fine, the people of this Commonwealth are not controlable by any other laws, than those to which their constitutional representative body have given their consent. And whenever the public exigencies require, that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

XI.--Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

XII.--No subject shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his council, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate; but by the judgment of his peers, or the law of the land.

And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

XIII.--In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

XIV.--Every subject has a right to be secure from all unreasonable searches, and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not [Volume 5, Page 9] accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

XV.--In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high-seas, and such as relate to mariners wages, the legislature shall hereafter find it necessary to alter it.

XVI.--The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth.

XVII.--The people have a right to keep and to bear arms for the common defence. And as in time of peace armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it.

XVIII.--A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government: The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: And they have a right to require of their law-givers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the Commonwealth.

XIX.--The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

XX.--The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.

XXI.--The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

XXII.--The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

XXIII.--No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature.

XXIV.--Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

XXV.--No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.

XXVI.--No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

XXVII.--In time of peace no soldier ought to be quartered in any house without the consent of the owner; and in time of war such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

XXVIII.--No person can in any case be subjected to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.

XXIX.--It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

XXX.--In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: The executive shall never exercise the legislative and judicial powers, or either of them: The judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

Source: The Founders' Constitution, Volume 5, Bill of Rights, Document 6, http://press-pubs.uchicago.edu/founders/documents/bill_of_rightss6.html, The University of Chicago Press.

Handlin, Oscar, and Handlin, Mary, eds., *The Popular Sources of Political Authority: Documents on the Massachusetts Constitution of 1780* (Cambridge: Belknap Press of Harvard University Press, 1966), 442-8.

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THE POLITICAL PHILOSOPHY OF *George Washington*

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INTRODUCTION

THREE IDEOLOGIES IN WASHINGTON'S THOUGHT AND CAREER

> [I am] a Philanthropist by character, and . . . a Citizen of the great republic of humanity at large.
>
> Washington to Lafayette, 1786

Classical Republicanism, British Liberalism, and Protestant Christianity

When that protean American Benjamin Franklin set about to make himself virtuous, he chose for his motto thoughts from Cicero, from a British liberal poet, and from the biblical Proverbs. "This my little Book [of virtues]," he wrote in his *Autobiography,* "had for its Motto these Lines . . . from Cicero. . . . from the Proverbs of Solomon . . . [and] I us'd also sometimes a little Prayer which I took from Thomson's Poems."[1] The self-educated Franklin had revealingly picked his quotations from classical republican, British liberal, and Judeo-Christian sources. Marcus Tullius Cicero had been the ablest defender of the republic in the Senate of ancient Rome; James Thomson, whose poems were in Washington's library at Mount Vernon, was a product of the Scottish Enlightenment and author of a tribute to British constitutionalism called *Liberty*; and the Proverbs were a major component of Western wisdom literature that appealed to Franklin's moralistic and pragmatic mind.[2]

Franklin was representative of eighteenth-century American

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public intellectuals. In a sermon delivered during the late 1760s, the Protestant political preacher Jonathan Mayhew also drew on authorities from the classical past and early modern Britain: "Having been initiated in youth into the doctrines of civil liberty as they were taught by such men as Plato, Demosthenes, and Cicero among the ancients, and such as Sidney, Milton, Locke, and Hoadley among the moderns,—I liked them: they seemed rational."[3] Many years after the Revolution, Thomas Jefferson traced out the intellectual origins of the polyglot political philosophy summed up in his Declaration of Independence. That document was meant to be "an expression of the American mind," whose entire "authority rests then on the harmonizing sentiments of the day" expressed "in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, etc." Jefferson insisted, "All American Whigs thought alike on these subjects."[4] In other words, they all thought like classical republicans and British liberals.

Unlike many contemporary American scholars, who emphasize one line of influence over the others, Franklin, Mayhew, and Jefferson saw no conflict between these various authorities from the past. In a similar fashion, Benjamin Rush combined three ideologies when he mused that America seemed "destined by heaven to exhibit to the world the perfection which the mind of man is capable of receiving from the combined operation of liberty, learning, and the gospel upon it."[5] Indeed, there is much overlap in the political and ethical theory of the classical, Christian, and modern worlds. The apostle Paul, for example, quoted the Stoics Cleanthes and Aratus when preaching the Christian gospel to Greeks in Athens.[6] Augustine of Hippo took the title of his famous *City of God* not only from the Psalms but also from the Roman emperor Marcus Aurelius.[7] And the medieval humanist Petrarch said of Cicero, "You would fancy sometimes it is not a Pagan philosopher but a Christian apostle who is speaking."[8] Later thinkers like John Locke practiced a similar kind of syncretism, combining classical republican, Protestant Christian, and British Enlightenment ideas. Locke, one of the "British Empiricist" philosophers, is also considered an "heir of Puritan political theorists," and he began his famous *Second Treatise of*

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Government by quoting Cicero: *Salus populi suprema lex esto*—"the public good is the supreme law."[9]

George Washington similarly mixed classical republican and British Enlightenment liberal ideas in a single sentence of his 1783 Circular to the States. "We shall be left nearly in a state of Nature," he wrote, invoking the concept of a brutal pre-governmental state of nature employed by Thomas Hobbes, Locke, and other British social contract thinkers, "or we may find . . . that there is a natural and necessary progression, from the extreme of anarchy to the extreme of Tyranny; and that arbitrary power is most easily established on the ruins of Liberty abused to licentiousness," a reference to the classical republican typology of political regimes used by Plato and Aristotle.[10]

Less educated and even illiterate Americans also took their bearings from the classical past, identifying with the classical republican rhetoric of Washington and the founders. Speaking of the influence of classical republicanism, Paul Johnson warns: "Let us not underestimate this [influence]. It was strongly intuited by a great many people who could barely write their names. It was vaguely associated in their minds with the ancient virtue and honor of the Romans."[11] In fact, all three founding ideologies—classical republicanism, British liberalism, and Protestant Christianity—were, as the phrase goes, "in the air" of the eighteenth century. A man like George Washington breathed them in as naturally as he filled his lungs with air. Put differently, Washington and his peers wove those three strands together into the patchwork intellectual fabric of the early republic.

Leading scholars have labeled attempts to unravel those tangled skeins as anachronistic. Writing before the historiographical discovery of classical republicanism, Louis Hartz marked "the alliance of Christian pessimism with liberal thought" in early America, a fusion which he claimed has had "a deep and lasting meaning."[12] More recently, David Hackett Fisher, who won the Pulitzer Prize for his *Washington's Crossing,* cautioned against the "learned anachronisms" of professional historians of American political thought.[13] The political scientist Donald Lutz reminds us that it simply "will no longer do to examine a text from the American founding era without considering the possibility of

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multiple influences."[14] James Kloppenberg has demonstrated how "liberal ideas could be joined with ideas from the different traditions of Protestant Christianity and classical republicanism" during the founding.[15] And the legal historian John Witte Jr. has noted: "To be sure, Civic Republicans," for whom "George Washington was . . . [among the] principal spokesmen," shared "much common ground with Evangelicals and Enlightenment exponents."[16]

In fact, Washington's ability to personify all of these traditions and his popularity with most Americans helped secure his place as Father of His Country. He shored up his popularity across the spectrum of society—Federalists and Republicans (including Hamilton and Jefferson within his own cabinet), Enlightenment skeptics and evangelical Christians, and everyone in between—by drawing on all three major sources of intellectual and cultural capital that Americans shared. When he totted up the sources and benefits of human progress, Washington paid homage to classical, modern liberal, and Christian resources:

> The researches of the human mind, after social happiness, have been carried to a great extent; the Treasures of knowledge, acquired through a long succession of years, by the labours of Philosophers, Sages and Legislatures, are laid open for our use, and their collected wisdom may be happily applied in the Establishment of our forms of Government; the free cultivation of letters, the unbounded extension of Commerce, the progressive refinement of Manners, the growing liberality of sentiment, and above all, the pure and benign light of Revelation, have had a meliorating influence on mankind and increased the blessings of Society.[17]

The philosophies of the classical past, modern liberalism, and Christian Revelation were all at Americans' disposal and were to be called into service. That sentence from his 1783 Circular to the States comes as close as any to describing the ground of "the harmonizing sentiments of the day" on which he and his colleagues raised a republic. Washington himself combined classical Roman political virtues with the liberal theory of the British Enlightenment and baptized the result in the tepid waters of Anglican Christianity. These are the traditions we will be tracing out in the political thought and career, or what we might even call the political philosophy, of George Washington.

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Washington and Historiography

Thanks to President Warren Harding, who in a rare moment of eloquence coined the phrase in his inaugural address, we call the men who conceived the United States the Founding Fathers. Harding managed to capture in the early twentieth century a trope of the eighteenth: nearly every founder had been called by his contemporaries the Father of something. Most of those paternal titles have faded with time—who refers to John Adams as the Father of the U.S. Navy anymore?—but two of them remain in our national vocabulary. We call George Washington the Father of the Country, and we call James Madison the Father of the Constitution.

Even though Washington hosted the Mount Vernon Conference, a preliminary to the Constitutional Convention, and then presided over that gathering at Philadelphia and held it together through the long summer of 1787, we still give the constitutional laurels to Madison. While Madison certainly played a key role in fathering the Constitution, his title and Washington's imply a mental difference between the two patriarchs. It is as though we think to ourselves, "Washington may have had leadership skills, but Madison had *brains.*" After all, Madison left behind our supreme organic law—the Constitution and its Bill of Rights—which is enshrined in our civil-religious reliquary, the National Archives in Washington, D.C. Although the capital city was named for him, no document of Washington's is so enshrined. And the only one he wrote (or co-wrote) that may deserve a place in those Archives—his Farewell Address—is no longer studied as it once was.

Washington was mentally outshone by his founding brothers, many of whom gave, and continue to give, an appearance of brilliance; he can appear dull by contrast. Indeed, Washington was in a sense the least philosophical of the major founders. Nor was he a public intellectual of the caliber of Jefferson or Madison, to name two who have previously been profiled in this series. His only authorized biographer, David Humphreys, noted that "his talents were rather solid than brilliant" (a judgment Washington allowed), and Peter Henriques has recently written in *Realistic Visionary* that "Washington was not a brilliant man in the way

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Thomas Jefferson, Alexander Hamilton, and James Madison were brilliant," but he had "remarkably astute judgment on the really important issues of his time."[18] Washington was quick to acknowledge that his mind had been "long employed in public concerns" rather than purely intellectual ones.[19] He was also sensitive to what he called his "defective" formal education—one reason he fobbed off writing his autobiography—and his contemporaries were aware of the perception as well.[20] Washington's vice president, John Adams, who began his career teaching Greek to Massachusetts schoolchildren, declared that the first chief executive was "not a scholar" and too "illiterate" for the job.[21] He agreed with Benjamin Rush that Washington "wrote a great deal, thought constantly, but read (it is said) very little."[22] Washington himself encouraged this view. "My life has been a very busy one," he insisted in the late 1780s while trying to avoid becoming the first president of the United States. "I have had but little leisure to read of late years, and . . . I cannot indeed pretend to be so well acquainted with civil matters, as I was with military affairs."[23] Jefferson paid Washington the left-handed compliment of having sound judgment but a slow mind that lacked "imagination."[24]

But other contemporaries recognized Washington's mental abilities during his lifetime. The electors of the American Philosophical Society, America's version of the British Royal Society, were one such group. His election in 1780 to that body alongside the likes of Jefferson, Franklin, David Rittenhouse, and other scientifically minded Americans flattered Washington, although his note of acknowledgment was characteristically self-deprecating.[25] So did his appointment as Chancellor of the College of William and Mary in 1788. In his acceptance letter, Washington expressed his "heart-felt desire to promote the cause of Science in general" and to place "the system of Education on such a basis, as will render it most beneficial to the Sate and the Republic of letters, as well as to the more extensive interests of humanity and religion."[26] The potential political benefits of religion and education was a theme sounded throughout his career, down to the concluding remarks in his Farewell Address.

Though he had little of it himself, George Washington was an

enthusiastic proponent of formal education. He believed that the study of "Philosophy, Moral, [and] Natural" would yield "very desirable knowledge for a Gentleman" and, more importantly, that it would yield political dividends for the young nation. As he wrote to the former headmaster of a Virginia grammar school, "The best means of forming a manly, virtuous and happy people, will be found in the right education of youth. Without *this* foundation, every other means, in my opinion, must fail."[27] There is ample evidence that Washington quietly worked to gain that sort of knowledge for himself.

However, scholars in the early twentieth century treated Washington with less than filial piety when it came to his education and understanding. Perhaps this was an overreaction to the nineteenth-century tendency toward hagiography represented by Parson Weems, but it resulted in rough handling of Washington for decades.[28] Particularly in the first half of the twentieth century, it was fashionable to portray Washington as crafty in an economically self-interested way but no contemplative. Typical of this attitude is the essay by Samuel Eliot Morison, *The Young Man Washington* (1932). "Ideas did not interest him, nor was he interested in himself," Morison wrote. "Washington gained little discipline from book-learning," he continued, "but like all young Virginians of the day he led an active outdoor life which gave him a magnificent physique."[29] Though he did grudgingly give Washington credit for adopting a "great philosophy" (Stoicism), Admiral Morison considered Washington all brawn and no brains. This characterization is reminiscent of Abigail Adams's breathless quotation of Dryden after seeing Washington for the first time: "Mark his Majestick fabrick! he's a temple/Sacred by birth, and built by hands divine/His Souls the deity that lodges there./Nor is the pile unworthy of the God."[30] In a similar vein, Charles Beard, whose *Economic Interpretation of the Constitution of the United States* (1913) exerted such influence on American historiography, claimed that "it does not appear that in public document or private letter he ever set forth any coherent theory of government."[31] In the 1960s, another historian, Harold Bradley, insisted that "one may search the public papers of Washington without finding a concise statement of political philosophy."[32]

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But Morison was demonstrably wrong about Washington's interest in his own reputation, an interest we now know bordered on self-absorption and, as we shall see, about the religious roots of Washington's political rhetoric.[33] And the statements of Beard and Bradley, particularly the latter's assertion that Washington gave no concise statement of his political philosophy in his public papers, are particularly curious, for two reasons. First, the Farewell Address, Washington's most famous public document, was manifestly a statement of political principles and therefore of political philosophy. Thomas Jefferson certainly thought it such a statement. To the Board of Visitors of the new University of Virginia, he wrote that Washington's "valedictory address" was to be assigned in the Law School as one of a handful of "the best guides" to "the distinctive principles of the government . . . of the United States."[34] Moreover, in 1996 Matthew Spalding and Patrick Garrity published a sustained analysis of the Farewell Address to favorable reviews, one of which described the Address as "the supreme expression of the American political community until it was surpassed by Abraham Lincoln's Gettysburg Address."[35] Second, with the possible exception of Jefferson himself, it is hard to think of any founder who ever did provide a "concise" statement of his political philosophy.

Assertions like those of Beard, Morison, and Bradley, made with regularity by past Washington scholars for decades, now have an air of unreality about them. In recent decades scholars have shown a newfound appreciation for Washington's intellectual qualities. Though they are no longer willing, like Abigail Adams, to call him a god—even an "imperfect" one, as Henry Wiencek recently has—they have at least upgraded their evaluations of Washington's mental capacity.[36] One historian suggested in 2001 that "the best Washington scholarship of the last fifteen years or so has dealt with the intellectual dimensions of Washington's public image, including his part in creating it."[37] The new Gilder-Lehrman Gallery at Mount Vernon pays tribute to what it calls Washington's "insatiable hunger for knowledge, his keen curiosity, and his life-long desire to better understand the world around him," which was especially "shown through manuscripts, maps, prints, and books." So it seems that the days are past when scholars can cavalierly dismiss Washington as a

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non-intellect or repeat the old non sequitur that because he wrote no systematic political treatise he had no coherent political philosophy.

It is true that as a political thinker Washington was no groundbreaker. But perhaps none of the founders, even the best-educated, was an entirely original political philosopher in his own right. Jefferson, fending off a charge that he had cribbed the Declaration of Independence from John Locke, admitted fifty years later to heavy borrowing, though he denied consulting any particular book during the composition of his draft. That eclectic draftsman of the Declaration was typical of the founders as a group. The contemporary philosopher Morton White assures us that "we may repeat what scholars have always known, and what the most candid rebels always admitted, namely, that they did not invent a single idea that may be called philosophical in the philosopher's sense of the word."[38]

Though he may have been unoriginal, there is evidence of a strong intelligence behind Washington's inscrutable forehead: curiosity, an autodidactic streak, an excellent memory (despite his protestations), and, *pace* Jefferson, an ability to imagine on a large scale. In fact, Madison insisted to Jefferson that Washington's efforts to open the west proved that "a mind like his, capable of great views, and which has long been occupied by them, cannot bear a vacancy, and surely he could not have chosen an occupation more worthy of succeeding to that of establishing the political rights of his country."[39] Perhaps the most intriguing question that presents itself to the historian is how Washington was able to raise his mind's eye so quickly above the narrow provincialism of his Virginia neighbors and conjure up a continental vision of America, a vision that guided him from his late teens to the end of his life. Washington was farsighted throughout his career (this meant that he was a better strategist than tactician during the Revolution, for example) and sometimes unusually prescient. He perceived earlier than many of his contemporaries the need for a strong union of colonies, and later states, to protect and build a distinct American nation. John C. Fitzpatrick noted that Washington's suggestion to Virginia Governor Francis Fauquier in 1758 for "commissioners from each of the colonies" to manage the Native American trade "contains

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the same germ of political union which later was to develop as a dominant principle of Washington's life."[40]

Literate if not literary, Washington maintained a lifelong relationship with the written word that until recent decades had been relatively neglected. This is especially true of printed material and even the classics of political philosophy. He kept his boyhood lesson books and letters including a childish note to Richard Henry Lee (future author of the resolution of American independence) and lovesick adolescent poems for girlfriends ("From your bright sparkling Eyes, I was undone . . .") and fastidiously conserved every scrap of paper from his adult life that he could.[41] After his marriage to Martha, Washington refused to allow his stepson John Parke Custis to go on the Grand Tour of Europe until he had sufficient book learning. Washington wrote to Jack's tutor, "I conceive a knowledge of books is the basis upon which all other knowledge is to be built."[42] Around that time he also systematically built a large first-rate library, including works of political philosophy, theology, and economy; poetry by John Milton and Alexander Pope; hundreds of bound political pamphlets; histories of England and Rome—even a *Life of Mohamad*. He kept all of his Revolutionary papers and made sure they survived the war intact. Because of his voluminous and international correspondence during the years between the Revolution and his presidency, David Humphreys described Washington in his study as "the focus of political intelligence in the New World."[43]

But at this point the intellectual historian is confronted with a dilemma. How are we to know which of these weighty books Washington read, from which he derived his political ideas? He almost never wrote in them; one exception is his copy of Adam Smith's *Wealth of Nations,* which contains a single marginal note in Washington's hand. Other founders did so more often, and historians can use those notes as evidence to make arguments about intellectual pedigree. The personal books of John Adams, for instance, are well-worn and contain extensive handwritten diatribes on history and politics in the margins. We know that Washington read Joseph Addison's *Spectator* essays as an adolescent because he noted the fact, as he claimed to have read every polemical essay he could obtain during the ratification debates

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over the new constitution. But as a general rule, Washington's extant diaries (some are missing) are narratives of his military, political, and farming activities, not transcripts of his mental processes. Starting in their school days, more pedantic founders like Adams and Jefferson kept "commonplace books" in which they copied out and evaluated passages from works they were reading for later citation. These records, along with their college curricula, have become guides to their reading habits. By contrast, no commonplace book of Washington's has survived, and he never went to college. Nor did he have the learning or temperament of a pendant. Except for the Bible and Addison's *Cato,* he rarely quoted from literary or philosophical works. Rarely, but not never: for example, in a letter to Annis Boudinot Stockton, whom he called "the Muse of Morven," Washington referred to Cicero and the ethics of the Greek philosopher Epicurus. "But, with Cicero in speaking respecting his belief of the immortality of the Soul, I will say, if I am in a grateful delusion, it is an innocent one," he wrote, alluding to a line from Cicero's dialogue *On Old Age* (*De senectute*), and then declared himself inclined "to dispute your Epicurean position concerning the economy of pleasures."[44] But as a rule Washington did not show off what learning he had acquired, nor did he engage in the sort of literary one-upmanship typical of the Adams-Jefferson correspondence, for example. So with a few exceptions, we must be content with making suggestions rather than assertions about the literary sources of Washington's thinking and actions and try to avoid arbitrary and anachronistic historical arguments about influence. More important to this study is how Washington reflected and contributed to the dominant political ideas of his time. After all, it was part of Washington's genius and a source of his charisma that he was able to embody so completely the political thought of the American founding, including its classical republican, British Enlightenment liberal, and Protestant Christian sources.

Washington considered himself a member of the eighteenth-century "republic of letters." This concept of a transnational country of intellectuals was variously expressed by Europeans and Americans, and by none better than that European-cum-American farmer, J. Hector St. John de Crèvecoeur. "There is,

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no doubt, a secret communion among good men throughout the world," Crèvecoeur wrote, "a mental affinity connecting them by a similitude of sentiments . . . [and] extensive intellectual consanguinity."[45] Washington occasionally harbored ambitions in the intellectual line and allowed them to peek through in his private correspondence. He wrote to Lafayette that he considered himself "a Philanthropist by character, and . . . a Citizen of the great republic of humanity at large" and hoped to contribute to advances so that "mankind may be connected like one great family in fraternal ties."[46]

Despite such ambitions, Washington distrusted (or played at distrusting) his own mental abilities and so gave his critics fodder. Some of his habitual diffidence was doubtless genuine, as when he confessed to relying on "much abler heads than my own" to school him in the niceties of British law, or when he protested that he lacked the "political skill, abilities and inclination which is necessary to manage the helm" of the new federal government.[47] (Of course it turned out that Washington had consummate political skill, which is recognized by modern presidential historians.) But a becoming modesty was also part of the Stoic code to which he adhered throughout his adult life, and it reflected the Christian virtue of humility as well. His own diffidence, even his slowness to speak, did much to perpetuate the myth of Washington as intellectually under-endowed. But although Washington's mind, like the proverbial mill of the gods, may have ground slowly, it ground exceedingly fine.

Scholarship in the latter twentieth century and now into the twenty-first has shown an increasing appreciation for Washington's political sagacity and intelligence. The editors of *Patriot Sage,* a collection of revisionist essays published in 1999, regretted that Washington is "too often seen simply as a man of action; as a doer, not a thinker. His words are often overlooked or simply dismissed by scholars interested in those founders considered to be intellectually more sophisticated. But Washington's letters and speeches deserve much more of our attention."[48] Washington surely was a "doer," and he was, above all others, the "embodiment" of early American political thought, as Michael Kammen and many others have noted.[49] Richard Stevens has called Washington the "very embodiment of the Constitution."[50]

Scholar-turned-president Woodrow Wilson pointed out that during the final years of the Revolution, in "the absence of any real government, Washington proved almost the only prop of authority and law."[51] Joseph Ellis, in his Pulitzer Prize–winning *Founding Brothers* called Washington "the closest approximation to a self-evident truth in American politics."[52] All of these assessments are fair and accurate so far as they go. Indeed, Washington was the flesh-and-blood exemplar of the constitutional principles that lay behind the American Revolution and the early republic. But he was also a thinker. Washington did not enjoy the leisure for study that Jefferson or Madison had, but his mind was always at work, and the ideas he snatched from books and pamphlets were hammered out on what in another context he called "the anvil of necessity."[53] Paul Longmore noted in his study of Washington's reputation that ironically, "precisely because of his skillful embodiment of contemporary ideals, this is perhaps his least recognized and least appreciated gift," a gift Longmore suggests amounted to "genius."[54]

Washington was unique among public intellectuals and politicians of his day for the neutrality of his political ideas. Indeed, Washington was able to play the critical role of embodiment of the Constitution only by being nonpartisan. Jefferson noted with grudging admiration that Washington was the "only man in the United States, who possessed the confidence of all. There was no other one, who was considered as any thing more than a party leader."[55] To James Thomas Flexner, Washington "resembled the keystone of an arch, holding all upright and in equilibrium, while the Hamiltonians curved off to the right and the Jeffersonians to the left."[56] Indeed, as first president Washington was the first national symbol, and Flexner noted how the roles Washington played were necessarily complicated by the fact that in "each citizen's preference concerning Presidential behavior, political theory was entangled . . . with nationalistic, aesthetic, and moral considerations."[57]

Washington confirmed these centrist assessments of himself. Writing to the secretary of war in 1795, he spoke of the "difficulty to one, who is of no party, and whose sole wish is to pursue, with undeviating steps a path which would lead this Country to respectability, wealth and happiness" of watching the ethic of vic-

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tory at any cost increasingly infect party politics in the new nation.[58] Washington was, in other words, America's first political Independent. Being the nonpartisan embodiment of the new republic was part of what it meant to be the unique Father of His Country.

The new school of Washington scholarship emphasizes Washington's political intelligence and denies that he was merely a man of action or a political actor. It takes exception to John Adams's jealous assessment that if Washington "was not the greatest President, he was the best actor of [the] presidency we have ever had."[59] A close cousin of this criticism charges Washington with being a passive conduit through which his cleverer advisors poured their thoughts—that he was, in effect, a shill for Madison or Hamilton, especially toward the end of his career. This charge was first made by contemporary characters as opposite as Adams and Jefferson. According to James McHenry, Adams accused him of being "subservient to Hamilton, who ruled Washington and would still rule if he could."[60] Writing in 1818, Jefferson recalled that from "the moment . . . of my retiring from the administration, the federalists got unchecked hold of Genl. Washington," who finally exhibited "a willingness to let others act and even think for him."[61] At best, so this line of thinking goes, Washington was merely "a clockwork figure programmed to do wisely."[62] This thinking resurfaced recently, along with a newly discovered letter of Washington's, written during the Constitutional Convention in the summer of 1787. Commenting on the discovery, a historian was quoted in *The New York Times* as saying that the letter reveals that Washington's "position was sympathetic to the strong, nationalist implications of Alexander Hamilton and James Madison," as though the Hamiltons and Madisons supplied the important theories of the founding while Washington silently nodded in agreement.[63]

Such conventional wisdom, however, is as mythical as Parson Weems's tale of the cherry tree. That Washington himself contributed to the myth through his diffidence and complaints about his "defective" formal education makes it all the harder to dispel. But during the Revolution Washington had to think and act not only as military commander, quartermaster, chief of intelligence, and recruiter but also as "something of a de

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facto president" in the words of Ron Chernow.[64] In the post-Revolutionary period, Washington thought more deeply about constitutional matters. Political scientist Glenn Phelps published a volume in 1993 devoted entirely to Washington's constitutionalism, and historian Don Higginbotham has claimed that Washington "displayed, in his own unique way, the creativity of an intellectual giant."[65] Edmund Morgan, in the *Genius of George Washington,* wrote of "the quick perception of political realities that lay behind Washington's understanding of power."[66] Paul Longmore, introducing his meticulous appendix on Washington's library and reading habits, noted that "a thorough examination of his papers and library discloses that he gave more thought to reading, learning, and ideas than historians have credited. More important, it makes clear the place of reading in his life."[67] That reflective reading, though he was never able to do as much as he wished, helped reinforce Washington's stable and coherent political philosophy.

Political "Principles"

Washington expressed clearly what he called his political "principles" in his Farewell Address of 1796, a joint production by Washington, Madison, Hamilton, and John Jay, the latter three authors of *The Federalist Papers.* (Because of its patrimony, it could be argued that Washington's Farewell Address is the single best summation of the elite political mind of the founding era.) Washington summed up those principles in one stem-winding sentence in the Address:

> Profoundly penetrated with this idea [of support from the American people], I shall carry it with me to my grave, as a strong incitement to unceasing vows that Heaven may continue to you the choicest tokens of its beneficence; that your Union and brotherly affection may be perpetual; that the free constitution, which is the work of your hands, may be sacredly maintained; that its Administration in every department may be stamped with wisdom and Virtue; that, in fine, the happiness of the people of these States, under the auspices of liberty, may be made complete, by so careful a preservation and so prudent a use of this blessing as will acquire

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> to them the glory of recommending it to the applause, the affection, and adoption of every nation which is yet a stranger to it.[68]

There, within what he might have called a "brief compass," was Washington's core political philosophy as it pertained to the American experiment. That philosophy revolved around the central principles of union, liberty, and self-government under the Constitution, administered with virtue as an example to the world, all under the superintendence of a benevolent Providence. These principles collectively made up the political polestar of his half-century of public service. In a eulogy of Washington in which he (not Richard Henry Lee) penned the famous line "first in war, first in peace, first in the hearts of his countrymen," John Marshall reproduced the "wise principles announced by [Washington] himself, as the basis of his political life." Those principles were "the indissoluble union between virtue and happiness, between duty and advantage, between the genuine maxims of an honest and magnanimous policy and the solid rewards of public prosperity and individual felicity." Washington "laid the foundations of our national policy in the unerring immutable principles of morality, based on religion, exemplifying the pre-eminence of a free government, by all the attributes which win the affections of its citizens, or command the respect of the world." Marshall noted that throughout his career the "finger of an overruling Providence [was] pointing at Washington."[69] Washington expressed similar principles and hopes in a letter to Roman Catholics in 1790, just as he was assuming the presidency. "America, under the smiles of a Divine Providence, the protection of a good government, and the cultivation of manners, morals, and piety, cannot fail of attaining an uncommon degree of eminence, in literature, commerce, agriculture, improvements at home and respectability abroad."[70]

In Washington's mind, religion in general, and Christianity in particular, formed an "indispensable support" of the young republic. He claimed that from the time of the Revolution, Heaven had granted its favor to America, and that favor would have to continue if the American experiment were to succeed. Churches, synagogues, religious bodies of all kinds would have to continue their good work of saving souls and, perhaps just as important to

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Washington, producing moral citizens. The union—which had hardly been a union at all under the Confederation Congress—needed to be perpetual, and the friendship of the states that made union possible had to be nurtured. The Constitution that solidified and codified the union would have to be maintained with something like religious awe. The branches of the government had to be administered with wisdom and, as if that were not difficult enough, with virtue. And it all had to be done in an atmosphere of liberty as an example to foreign nations, as though America were to be an extension of the New England Puritans' "city on a hill."

Most of these political principles marked Washington's thinking and career from his earliest days in the Virginia House of Burgesses, and a few, from even earlier. Some, like his high regard for the federal Constitution, of course unfolded as historical events themselves unfolded—indeed, as he helped them to unfold—but none of them was inconsistent with the others, and none was a novelty. Washington claimed to have steered by them throughout his career. At the beginning of his first presidential term he wrote to Madison that since "the first of everything, *in our situation* will serve to establish a Precedent, it is devoutly wished on my part, that these precedents may be fixed on true principles."[71] At the end of his second term he told the American people: "How far in the discharge of my official duties, I have been guided by the principles which have been delineated, the public Records and other evidences of my conduct must witness to You and to the world. To myself, the assurance of my own conscience is, that I have at least believed myself to be guided by them."[72]

Although not systematic, Washington's political philosophy was remarkably consistent throughout his long public life. Once it was formed as a young man, its essentials never changed, and all of his reading and actions were guided by a small constellation of fixed political stars. Of course, on some important issues—most notably slavery—Washington's thinking did change over time, and his journey from provincial Virginian to continental American was an intellectual odyssey of incalculable importance to the success of the American experiment. But unlike Jefferson, a man of massive contradictions, or Madison, who reversed course

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on a number of issues, including even separation of church and state, the core of Washington's political thought remained steady and constant during his career. The solid republican theory and architectural metaphors of his Farewell Address, composed in 1796 after two unprecedented terms as president, could easily be transposed into his first farewell, the Circular to the States of 1783, which he wrote before there was even a United States government properly speaking.

All of this bespeaks a fully formed political philosophy. Again, this is not to suggest that Washington was a political thinker in the same class with his contemporaries like Jefferson, Madison, Hamilton, and Adams. But Washington was a better theorist than he let on, and more comprehensive than some of his own contemporaries and our own have been aware. One measure of the comprehensiveness of Washington's political thought is his reflection of the three dominant ideologies present at the American founding throughout nearly five decades of public life.

6: TO GEORGE MASON - George Washington, *George Washington: A Collection* [1988]

Edition used:

George Washington: A Collection, compiled and edited by W.B. Allen (Indianapolis: Liberty Fund, 1988).

TO GEORGE MASON

Mount Vernon, April 5, 1769

Dear Sir:

Herewith you will receive a letter and Sundry papers which were forwarded to me a day or two ago by Doctor Ross of Bladensburg. I transmit them with the greater pleasure, as my own desire of knowing your sentiments upon a matter of this importance exactly coincides with the Doctors inclinations.

*Maintaining liberty*At a time when our lordly Masters in Great Britain will be satisfied with nothing less than the deprication of American freedom, it seems highly necessary that some thing shou'd be done to avert the stroke and maintain the liberty which we have derived from our Ancestors; but the manner of doing it to answer the purpose effectually is the point in question.

That no man shou'd scruple, or hesitate a moment to use arms in defence of so valuable a blessing, on which all the good and evil of life depends; is clearly my opinion; yet Arms I wou'd beg leave to add, should be the last resource; the denier resort. Addresses to the Throne, and remonstrances to parliament, we have already, it is said, proved the inefficacy of; how far then their attention to our rights and priviledges is to be awakened or alarmed by starving their Trade and manufactures,*Starving British trade* remains to be tryed.

The northern Colonies, it appears, are endeavouring to adopt this scheme. In my opinion it is a good one, and must be attended with salutary effects, provided it can be carried pretty generally into execution; but how far it is practicable to do so, I will not take upon me to determine. That there will be difficulties attending the execution of it every where, from clashing interests, and selfish designing men (ever attentive to their own gain, and watchful of every turn that can assist their lucrative views, in preference to any other consideration) cannot be denied; but in the Tobacco Colonies where the Trade is so diffused, and in a manner wholly conducted by Factors for their principals at home, these difficulties are certainly enhanced, but I think not insurmountably increased, if the Gentlemen in their several Counties wou'd be at some pains to explain matters to the people, and stimulate them to a cordial agreement to purchase none but certain innumerated Articles out of any of the Stores after such a period, not import nor purchase any themselves. This, if it did not effectually withdraw the Factors from their Importations, wou'd at least make them extremely cautious in doing it, as the prohibited Goods could be vended to none but the non-associator, or those who wou'd pay no regard to their association; both of whom ought to be stigmatized, and made the objects of publick reproach.

The more I consider a Scheme of this sort, the more ardently I wish success to it, because I think there are private, as well as public advantages to result from it; the former certain, however precarious the other may prove; for in respect to the latter I have always thought that by virtue of the same power (for here alone the authority derives) which assume's the right of Taxation, they may attempt at least to restrain our manufactories; especially those of a public nature; the same equity and justice prevailing in the one case as the other, it being no greater hardship to forbid my manufacturing, than it is to order me to buy Goods of them loaded with Duties, for the express purpose of raising a revenue. But as a measure of this sort will be an additional exertion of arbitrary power, we cannot be worsted I think in putting it to the Test. On the other hand, that the Colonies are considerably indebted to Great Britain, is a truth universally acknowledged. That many families are reduced, almost, if not quite, to penury and want, from the low ebb of their fortunes, and Estates daily selling for the discharge of Debts, the public papers furnish but too many melancholy proofs of. And that a scheme of this sort will contribute more effectually than any other I can devise to immerge the Country from the distress it at present labours under, I do most firmly believe, if it can be generally adopted. And I can see but one set of people (the Merchants excepted) who will not, or ought not, to wish well to the Scheme; and that is those who live genteely and hospitably, on clear Estates. Such as these were they, not to consider the valuable object in view, and the good of others, might think it hard to be curtail'd in their living and enjoyments; for as to the penurious Man, he saves his money, and he saves his credit, having the best plea for doing that, which before perhaps he had the most violent struggles to refrain from doing. The extravagant and expensive man has the same good plea to retrench his Expences. He is thereby furnished with a pretext to live within bounds, and embraces it, prudence dictated œconomy to him before, but his resolution was too weak to put in practice; for how can I, *says he*, who have lived in such and such a manner change my method? I am ashamed to do it; and besides such an alteration in the system of my living, will create suspicions of a decay in my fortune, and such a thought the World must not harbour; I will e'en continue my course: till at last the course discontinues the Estate, a sale of it being the consequence of his perseverance in error. This I am satisfied is the way that many who have set out in the wrong tract, have reasoned, till ruin stares them in the face. And in respect to the poor and needy man, he is only left in the same situation he was found; better I might say, because as he judges from comparison his condition is amended in proportion as it approaches nearer to those above him.

Upon the whole therefore, I think the Scheme a good one, and that it ought to be tryed here, with such alterations as the exigency of our circumstances render absolutely necessary; but how, and in what manner to begin the work, is a matter worthy of consideration, and whether it can be attempted with propriety, or efficacy (further than a communication of sentiments to one another) before May, when the Court and Assembly will meet together in Williamsburg, and a uniform plan can be concerted, and sent into the different counties to operate at the same time, and in the same manner every where, is a thing I am somewhat in doubt upon, and shou'd be glad to know your opinion of. I am Dr. Sir, etc.

10: TO BRYAN FAIRFAX - George Washington, *George Washington: A Collection* [1988]

Edition used:

George Washington: A Collection, compiled and edited by W.B. Allen (Indianapolis: Liberty Fund, 1988).

TO BRYAN FAIRFAX

Mount Vernon, July 20, 1774

Dear Sir:

Your letter of the 17th was not presented to me till after the resolutions, (which were adjudged advisable for this county to come to), had been revised, altered, and corrected in the committee; nor till we had gone into a general meeting in the court-house, and my attention necessarily called every moment to the business that was before it. I did, however, upon receipt of it, (in that hurry and bustle,) hastily run it over, and handed it round to the gentlemen on the bench of which there were many; but, as no person present seemed in the least disposed to adopt your sentiments, as there appeared a perfect satisfaction and acquiescence in the measures proposed (except from a Mr. Williamson, who was for adopting your advice literally, without obtaining a second voice on his side), and as the gentlemen, to whom the letter was shown, advised me not to have it read, as it was not like to make a convert, and repugnant, (some of them thought,) to the very principle we were contending for, I forbore to offer it otherwise than in the manner above mentioned; which I shall be sorry for, if it gives you any dissatisfaction in not having your sentiments read to the county at large, instead of communicating them to the first people in it, by offering them the letter in the manner I did.

That I differ very widely from you, in respect to the mode of obtaining a repeal of the acts so much and so justly complained of, I shall not hesitate to acknowledge; and that this difference in opinion may probably proceed from*Comments on intolerable acts* the different constructions we put upon the conduct and intention of the ministry may also be true; but, as I see nothing, on the one hand, to induce a belief that the Parliament would embrace a favorable opportunity of repealing acts, which they go on with great rapidity to pass, and in order to enforce their tyrannical system; and, on the other, I observe, or think I observe, that government is pursuing a regular plan at the expense of law and justice to overthrow our constitutional rights and liberties, how can I expect any redress from a measure, which has been ineffectually tried already? For, Sir, what is it we are contending against? Is it against paying the duty of three pence per pound on tea because burthensome? No, it is the right only, we have all along disputed, and to this end we have already petitioned his Majesty in as humble and dutiful manner as subjects could do. Nay, more, we applied to the House of Lords and House of Commons in their different legislative capacities, setting forth, that, as Englishmen, we could not be deprived of this essential and valuable part of a constitution. If, then, as the fact really is, it is against the right of taxation that we now do, and, (as I before said,) all along have contended, why should they suppose an exertion of this power would be less obnoxious now than formerly? And what

reasons have we to believe, that they would make a second attempt, while the same sentiments filled the breast of every American, if they did not intend to enforce it if possible?

The conduct of the Boston people could not justify the rigor of their measures, unless there had been a requisition of payment and refusal of it; nor did that measure require an act to deprive the government of Massachusetts Bay of their charter, or to exempt offenders from trial in the place where offences were committed, as there was not, nor could not be, a single instance produced to manifest the necessity of it. Are not all these things self evident proofs of a fixed and uniform plan to tax us? If we want further proofs, do not all the debates in the House of Commons serve to confirm this?*General Gage* And has not General Gage's conduct since his arrival, (in stopping the address of his Council, and publishing a proclamation more becoming a Turkish bashaw, than an English governor, declaring it treason to associate in any manner by which the commerce of Great Britain is to be affected,) exhibited an unexampled testimony of the most despotic system of tyranny, that ever was practised in a free government? In short, what further proofs are wanted to satisfy one of the designs of the ministry, than their own acts, which are uniform and plainly tending to the same point, nay, if I mistake not, avowedly to fix the right of taxation? What hope then from petitioning, when they tell us, that now or never is the time to fix the matter? Shall we, after this, whine and cry for relief, when we have already tried it in vain? Or shall we supinely sit and see one province after another fall a prey to despotism? If I was in any doubt, as to the right which the Parliament of Great Britian had to tax us without our consent,*Parliamentary taxation* I should most heartily coincide with you in opinion, that to petition, and petition only, is the proper method to apply for relief; because we should then be asking a favor, and not claiming a right, which, by the law of nature and our constitution, we are, in my opinion, indubitably entitled to. I should even think it criminal to go further than this, under such an idea; but none such I have. I think the Parliament of Great Britain hath no more right to put their hands into my pocket, without my consent, than I have to put my hands into yours for money; and this being already urged to them in a firm, but decent manner, by all the colonies, what reason is there to expect any thing from their justice?

*Petition to the King*As to the resolution for addressing the throne, I own to you, Sir, I think the whole might as well have been expunged. I expect nothing from the measure, nor should my voice have accompanied it, if the non-importation scheme was intended to be retarded by it; or I am convinced, as much as I am of my existence, that there is no relief but in their distress; and I think, at least I hope, that there is public virtue enough left among us to deny ourselves every thing but the bare necessaries of life to accomplish this end. This we have a right to do, and no power upon earth can compel us to do otherwise, till they have first reduced us to the most abject state of slavery that ever was designed for mankind. The stopping our exports would, no doubt, be a shorter cut than the other to effect this purpose; but if we owe money to Great Britain, nothing but the last necessity can justify the non-payment of it; and, therefore, I have great doubts upon this head, and wish to see the other method first tried, which is legal and will facilitate these payments.

I cannot conclude without expressing some concern, that I should differ so widely in sentiment from you, in a matter of such great moment and general import; and should much distrust my own judgment upon the occasion, if my nature did not recoil at the thought of submitting to

measures, which I think subversive of every thing that I ought to hold dear and valuable, and did I not find, at the same time, that the voice of mankind is with me.

I must apologize for sending you so rough a sketch of my thoughts upon your letter. When I looked back, and saw the length of my own, I could not, as I am also a good deal hurried at this time, bear the thoughts of making off a fair copy. I am, &c.

11: TO BRYAN FAIRFAX - George Washington, *George Washington: A Collection* [1988]

Edition used:

George Washington: A Collection, compiled and edited by W.B. Allen (Indianapolis: Liberty Fund, 1988).

TO BRYAN FAIRFAX

Mount Vernon, August 24, 1774

Dear Sir:

Your letter of the 5th instant came to this place, forwarded by Mr. Ramsay, a few days after my return from Williamsburg, and I delayed acknowledging it sooner, in the hopes that I should find time, before I began my other journey to Philadelphia, to answer it fully, if not satisfactorily; but, as much of my time has been engrossed since I came home by company, by your brother's sale and the business consequent thereupon, in writing letters to England, and now in attending to my own domestic affairs previous to my departure as above, I find it impossible to bestow so much time and attention to the subject matter of your letter as I could wish to do, and therefore, must rely upon your good nature and candor in excuse for not attempting it. In truth, persuaded as I am, that you have read all the political pieces, which compose a large share of the *Gazette* at this time, I should think it, but for your request, a piece of inexcusable arrogance in me, to make the least essay towards a change in your political opinions; for I am sure I have no new lights to throw upon the subject, or any other arguments to offer in support of my own doctrine, than what you have seen; and could only in general add, that an innate spirit of freedom first told me, that the measures, which administration hath for some time been, and now are most violently pursuing, are repugnant to every principle of natural justice;*Principles of natural justice* whilst much abler heads than my own hath fully convinced me, that it is not only repugnant to natural right, but subversive of the laws and constitution of Great Britain itself, in the establishment of which some of the best blood in the kingdom hath been spilt. Satisfied, then, that the acts of a British Parliament are no longer governed by the principles of justice, that it is trampling upon the valuable rights of Americans, confirmed to them by charter and the constitution they themselves boast of, and convinced beyond the smallest doubt, that these measures are the result of deliberation, and attempted to be carried into execution by the hand of power, is it a time to trifle, or risk our cause upon petitions, which with difficulty obtain access, and afterwards are thrown by with the utmost contempt? Or should we, because heretofore unsuspicious of design, and then unwilling to enter into disputes with the mother country, go on to bear more, and forbear to enumerate our just causes of complaint? For my own part, I shall not undertake to say where the line between Great Britain and the colonies should be drawn;*The line between Great Britain and the colonies* but I am clearly of opinion, that one ought to be drawn, and our rights clearly ascertained. I could wish, I own, that the dispute had been left to posterity to determine, but the crisis is arrived when we must assert our rights, or submit to every imposition, that can be heaped upon us, till custom and use shall make us as tame and abject slaves, as the blacks we rule over with such arbitrary sway.

I intended to have wrote no more than an apology for not writing; but I find I am insensibly running into a length I did not expect, and therefore shall conclude with remarking, that, if you disavow the right of Parliament to tax us, (unrepresented as we are,) we only differ in respect to the mode of opposition, and this difference principally arises from your belief, that they—the Parliament, I mean—want a decent opportunity to repeal the acts; whilst I am as fully convinced, as I am of my own existence, that there has been a regular, systematic plan formed to enforce them, and that nothing but unanimity in the colonies (a stroke they did not expect) and firmness, can prevent it. It seems from the best advices from Boston, that General Gage is exceedingly disconcerted at the quiet and steady conduct of the people of the Massachusetts Bay, and at the measures pursuing by the other governments; as I dare say he expected to have forced those oppressed people into compliance, or irritated them to acts of violence before this, for a more colorable pretense of ruling that and the other colonies with a high hand. But I am done.

I shall set off on Wednesday next for Philadelphia, whither, if you have any commands, I shall be glad to oblige you in them; being, dear Sir, with real regard, &c.

PS: Pray what do you think of the Canada Bill?

86: CIRCULAR TO THE STATES - George Washington, *George Washington: A Collection* [1988]

Edition used:

George Washington: A Collection, compiled and edited by W.B. Allen (Indianapolis: Liberty Fund, 1988).

CIRCULAR TO THE STATES

Head Quarters, Newburgh, June 14, 1783

Sir:

*Domestic retirement*The great object for which I had the honor to hold an appointment in the Service of my Country, being accomplished, I am now preparing to resign it into the hands of Congress, and to return to that domestic retirement, which, it is well known, I left with the greatest reluctance, a Retirement, for which I have never ceased to sigh through a long and painful absence, and in which (remote from the noise and trouble of the World) I meditate to pass the remainder of life in a state of undisturbed repose; But before I carry this resolution into effect, I think it a duty incumbent on me, to make this my last official communication,*Congratulations* to congratulate you on the glorious events which Heaven has been pleased to produce in our favor, to offer my sentiments respecting some important subjects, which appear to me, to be intimately connected with the tranquility of the United States, to take my leave of your Excellency as a public Character, and to give my final blessing to that Country, in whose service I have spent the prime of my life, for whose sake I have consumed so many anxious days and watchfull nights, and whose happiness being extremely dear to me, will always constitute no inconsiderable part of my own.

Impressed with the liveliest sensibility on this pleasing occasion, I will claim the indulgence of dilating the more copiously on the subjects of our mutual felicitation. When we consider the magnitude of the prize we contended for, the doubtful nature of the contest, and the favorable manner in which it has terminated, we shall find the greatest possible reason for gratitude and rejoicing; this is a theme that will afford infinite delight to every benevolent and liberal mind, whether the event in contemplation, be considered as the source of present enjoyment or the parent of future happiness; and we shall have equal occasion to felicitate ourselves on the lot which Providence has assigned us, whether we view it in a natural, a political or moral point of light.

*America's future*The Citizens of America, placed in the most enviable condition, as the sole Lords and Proprietors of a vast Tract of Continent, comprehending all the various soils and climates of the World, and abounding with all the necessaries and conveniencies of life, are now by the late satisfactory pacification, acknowledged to be possessed of absolute freedom and Independency; They are, from this period, to be considered as the Actors on a most conspicuous Theatre, which seems to be peculiarly designated by Providence for the display of human greatness and felicity; Here, they are not only surrounded with every thing which can contribute

to the completion of private and domestic enjoyment, but Heaven has crowned all its other blessings, by giving a fairer oppertunity for political happiness, than any other Nation has ever been favored with. Nothing can illustrate these observations more forcibly, than a recollection of the happy conjuncture of times and circumstances, under which our Republic assumed its rank among the Nations;*Foundation of American empire* The foundation of our empire was not laid in the gloomy age of Ignorance and Superstition, but at an Epocha when the rights of mankind were better understood and more clearly defined, than at any former period; the researches of the human mind, after social happiness, have been carried to a great extent; the Treasures of knowledge, acquired through a long succession of years, by the labours of Philosophers, Sages and Legislatures, are laid open for our use, and their collected wisdom may be happily applied in the Establishment of our forms of Government; the free cultivation of Letters, the unbounded extension of Commerce, the progressive refinement of Manners, the growing liberality of sentiment, and above all, the pure and benign light of Revelation, have had a meliorating influence on mankind and increased the blessings of Society. At this auspicious period, the United States came into existence as a Nation, and if their Citizens should not be completely free and happy, the fault will be intirely their own.

Such is our situation, and such are our prospects: but notwithstanding the cup of blessing is thus reached out to us, notwithstanding happiness is ours, if we have a disposition to seize the occasion and make it our own; yet, it appears to me there is an option still left to the United States of America, that it is in their choice, and depends upon their conduct, whether they will be respectable and prosperous, or contemptable and miserable as a Nation;*A time of political probation* This is the time of their political probation; this is the moment when the eyes of the whole World are turned upon them; this is the moment to establish or ruin their national Character forever; this is the favorable moment to give such a tone to our Federal Government, as will enable it to answer the ends of its institution; or this may be the ill-fated moment for relaxing the powers of the Union, annihilating the cement of the Confederation, and exposing us to become the sport of European politics, which may play one State against another to prevent their growing importance, and to serve their own interested purposes. For, according to the system of Policy the States shall adopt at this moment, they will stand or fall; and by their confirmation or lapse, it is yet to be decided, whether the Revolution must ultimately be considered as a blessing or a curse: a blessing or a curse, not to the present age alone, for with our fate will the destiny of unborn Millions be involved.

*The importance of the present crisis*With this conviction of the importance of the present Crisis, silence in me would be a crime; I will therefore speak to your Excellency, the language of freedom and of sincerity, without disguise; I am aware, however, that those who differ from me in political sentiment, may perhaps remark, I am stepping out of the proper line of my duty, and they may possibly ascribe to arrogance or ostentation, what I know is alone the result of the purest intention, but the rectitude of my own heart, which disdains such unworthy motives, the part I have hitherto acted in life, the determination I have formed, of not taking any share in public business hereafter, the ardent desire I feel, and shall continue to manifest, of quietly enjoying in private life, after all the toils of War, the benefits of a wise and liberal Government, will, I flatter myself, sooner or later convince my Countrymen, that I could have no sinister views in delivering with so little reserve, the opinions contained in this Address.

*Four pillars of independence*There are four things, which I humbly conceive, are essential to the well being, I may even venture to say, to the existence of the United States as an Independent Power:

1st. An indissoluble Union of the States under one Federal Head.

2dly. A Sacred regard to Public Justice.

3dly. The adoption of a proper Peace Establishment, and

4thly. The prevalence of that pacific and friendly Disposition, among the People of the United States, which will induce them to forget their local prejudices and policies, to make those mutual concessions which are requisite to the general prosperity, and in some instances, to sacrifice their individual advantages to the interest of the Community.

These are the Pillars on which the glorious Fabrick of our Independency and National Character must be supported; Liberty is the Basis, and whoever would dare to sap the foundation, or overturn the Structure, under whatever specious pretexts he may attempt it, will merit the bitterest execration, and the severest punishment which can be inflicted by his injured Country.

On the three first Articles I will make a few observations, leaving the last to the good sense and serious consideration of those immediately concerned.

*Principles of union*Under the first head, altho' it may not be necessary or proper for me in this place to enter into a particular disquisition of the principles of the Union, and to take up the great question which has been frequently agitated, whether it be expedient and requisite for the States to delegate a larger proportion of Power to Congress, or not, Yet it will be a part of my duty, and that of every true Patriot, to assert without reserve, and to insist upon the following positions, That unless the States will suffer Congress to exercise those prerogatives, they are undoubtedly invested with by the Constitution, every thing must very rapidly tend to Anarchy and confusion, That it is indispensable to the happiness of the individual States, that there should be lodged somewhere, a Supreme Power to regulate and govern the general concerns of the Confederated Republic, without which the Union cannot be of long duration. That there must be a faithfull and pointed compliance on the part of every State, with the late proposals and demands of Congress,*Union and liberty* or the most fatal consequences will ensue, That whatever measures have a tendency to dissolve the Union, or contribute to violate or lessen the Sovereign Authority, ought to be considered as hostile to the Liberty and Independency of America, and the Authors of them treated accordingly, and lastly, that unless we can be enabled by the concurrence of the States, to participate of the fruits of the Revolution, and enjoy the essential benefits of Civil Society, under a form of Government so free and uncorrupted, so happily guarded against the danger of oppression, as has been devised and adopted by the Articles of Confederation, it will be a subject of regret, that so much blood and treasure have been lavished for no purpose, that so many sufferings have been encountered without a compensation, and that so many sacrifices have been made in vain. Many other considerations might here be adduced to prove, that without an entire conformity to the Spirit of the Union, we cannot exist as an Independent Power; it will be sufficient for my purpose to mention but one or two which seem to me of the greatest

importance. It is only in our united Character as an Empire, that our Independence is acknowledged, that our power can be regarded, or our Credit supported among Foreign Nations. The Treaties of the European Powers with the United States of America, will have no validity on a dissolution of the Union. We shall be left nearly in a state of Nature, or we may find by our own unhappy experience, that there is a natural and necessary progression, from the extreme of anarchy to the extreme of Tyranny; and that arbitrary power is most easily established on the ruins of Liberty abused to licentiousness.

*Justice to public creditors*As to the second Article, which respects the performance of Public Justice, Congress have, in their late Address to the United States, almost exhausted the subject, they have explained their Ideas so fully, and have enforced the obligations the States are under, to render compleat justice to all the Public Creditors, with so much dignity and energy, that in my opinion, no real friend to the honor and Independency of America, can hesitate a single moment respecting the propriety of complying with the just and honorable measures proposed; if their Arguments do not produce conviction, I know of nothing that will have greater influence; especially when we recollect that the System referred to, being the result of the collected Wisdom of the Continent, must be esteemed, if not perfect, certainly the least objectionable of any that could be devised; and that if it shall not be carried into immediate execution, a National Bankruptcy, with all its deplorable consequences will take place, before any different Plan can possibly be proposed and adopted, So pressing are the present circumstances! and such is the alternative now offered to the States!

The ability of the Country to discharge the debts which have been incurred in its defence, is not to be doubted; an inclination, I flatter myself, will not be wanting; the path of our duty is plain before us; honesty will be found on every experiment, to be the best and only true policy; let us then as a Nation be just; let us fulfil the public Contracts, which Congress had undoubtedly a right to make for the purpose of carrying on the War, with the same good faith we suppose ourselves bound to perform our private engagements; in the mean time, let an attention to the chearfull performance of their proper business, as Individuals, and as members of Society, be earnestly inculcated on the Citizens of America, then will they strengthen the hands of Government, and be happy under its protection: every one will reap the fruit of his labours; every one will enjoy his own acquisitions without molestation and without danger.

*Taxation*In this state of absolute freedom and perfect security, who will grudge to yield a very little of his property to support the common interest of Society, and insure the protection of Government? Who does not remember, the frequent declarations, at the commencement of the War, that we should be compleatly satisfied, if at the expence of one half, we could defend the remainder of our possessions? Where is the Man to be found, who wishes to remain indebted, for the defence of his own person and property, to the exertions, the bravery, and the blood of others, without making one generous effort to repay the debt of honor and of gratitude? In what part of the Continent shall we find any Man, or body of Men, who would not blush to stand up and propose measures, purposely calculated to rob the Soldier of his Stipend, and the Public Creditor of his due? and were it possible that such a flagrant instance of Injustice could ever happen, would it not excite the general indignation, and tend to bring down, upon the Authors of such measures, the aggravated vengeance of Heaven?

. . . *and disunion*If after all, a spirit of disunion or a temper of obstinacy and perverseness, should manifest itself in any of the States, if such an ungracious disposition should attempt to frustrate all the happy effects that might be expected to flow from the Union, if there should be a refusal to comply with the requisitions for Funds to discharge the annual interest of the public debts, and if that refusal should revive again all those jealousies and produce all those evils, which are now happily removed, Congress, who have in all their Transaction shewn a great degree of magnanimity and justice, will stand justified in the sight of God and Man, and the State alone which puts itself in opposition to the aggregate Wisdom of the Continent, and follows such mistaken and pernicious Councils, will be responsible for all the consequences.

*Military pay*For my own part, conscious of having acted while a Servant of the Public, in a manner I conceived best suited to promote the real interests of my Country; having in consequence of my fixed belief in some measure pledged myself to the Army, that their Country would finally do them compleat and ample Justice; and not wishing to conceal any instance of my official conduct from the eyes of the World, I have thought proper to transmit to your Excellency the inclosed collection of Papers, relative to the half pay and commutation granted by Congress to the Officers of the Army; From these communications, my decided sentiment will be clearly comprehended, together with the conclusive reasons which induced me, at an early period, to recommend the adoption of the measure, in the most earnest and serious manner. As the proceedings of Congress, the Army, and myself are open to all, and contain in my opinion, sufficient information to remove the prejudices and errors which may have been entertained by any; I think it unnecessary to say any thing more, than just to observe, that the Resolutions of Congress, now alluded to, are undoubtedly as absolutely binding upon the United States, as the most solemn Acts of Confederation or Legislation. As to the Idea, which I am informed has in some instances prevailed, that the half pay and commutation are to be regarded merely in the odious light of a Pension, it ought to be exploded forever; that Provision, should be viewed as it really was, a reasonable compensation offered by Congress, at a time when they had nothing else to give, to the Officers of the Army, for services then to be performed. It was the only means to prevent a total dereliction of the Service, It was a part of their hire, I may be allowed to say, it was the price of their blood and of your Independency, it is therefore more than a common debt, it is a debt of honour, it can never be considered as a Pension or gratuity, nor be cancelled until it is fairly discharged.

*Compensation for soldiers*With regard to a distinction between Officers and Soldiers, it is sufficient that the uniform experience of every Nation of the World, combined with our own, proves the utility and propriety of the discrimination. Rewards in proportion to the aids the public derives from them, are unquestionably due to all its Servants; In some Lines, the Soldiers have perhaps generally had as ample a compensation for their Services, by the large Bounties which have been paid to them, as their Officers will receive in the proposed Commutation, in others, if besides the donation of Lands, the payment of Arrearages of Cloathing and Wages (in which Articles all the component parts of the Army must be put upon the same footing) we take into the estimate, the Bounties many of the Soldiers have received and the gratuity of one Year's full pay, which is promised to all, possibly their situation (every circumstance being duly considered) will not be deemed less eligible than that of the Officers. Should a farther reward, however, be judged equitable, I will venture to assert, no one will enjoy greater satisfaction than myself, on seeing an exemption from Taxes for a limited time, (which has been petitioned for in

some instances) or any other adequate immunity or compensation, granted to the brave defenders of their Country's Cause;*Commutation of half pay* but neither the adoption or rejection of this proposition will in any manner affect, much less militate against, the Act of Congress, by which they have offered five years full pay, in lieu of the half pay for life, which had been before promised to the Officers of the Army.

Before I conclude the subject of public justice, I cannot omit to mention the obligations this Country is under, to that meritorious Class of veteran Non-commissioned Officers and Privates, who have been discharged for inability,*Disabled soldiers* in consequence of the Resolution of Congress of the 23d of April 1782, on an annual pension for life, their peculiar sufferings, their singular merits and claims to that provision need only be known, to interest all the feelings of humanity in their behalf: nothing but a punctual payment of their annual allowance can rescue them from the most complicated misery, and nothing could be a more melancholy and distressing sight, than to behold those who have shed their blood or lost their limbs in the service of their Country, without a shelter, without a friend, and without the means of obtaining any of the necessaries or comforts of Life; compelled to beg their daily bread from door to door! Suffer me to recommend those of this discription, belonging to your State, to the warmest patronage of your Excellency and your Legislature.

It is necessary to say but a few words on the third topic which was proposed, and which regards particularly the defence of the Republic, As there can be little doubt but Congress will recommend a proper Peace Establishment for the United States,*A regular and uniform militia* in which a due attention will be paid to the importance of placing the Militia of the Union upon a regular and respectable footing; If this should be the case, I would beg leave to urge the great advantage of it in the strongest terms. The Militia of this Country must be considered as the Palladium of our security, and the first effectual resort in case of hostility; It is essential therefore, that the same system should pervade the whole; that the formation and discipline of the Militia of the Continent should be absolutely uniform, and that the same species of Arms, Accoutrements and Military Apparatus, should be introduced in every part of the United States; No one, who has not learned it from experience, can conceive the difficulty, expence, and confusion which result from a contrary system, or the vague Arrangements which have hitherto prevailed.

If in treating of political points, a greater latitude than usual has been taken in the course of this Address, the importance of the Crisis, and the magnitude of the objects in discussion, must be my apology: It is, however, neither my wish or expectation, that the preceding observations should claim any regard, except so far as they shall appear to be dictated by a good intention, consonant to the immutable rules of Justice; calculated to produce a liberal system of policy, and founded on whatever experience may have been acquired by a long and close attention to public business. Here I might speak with the more confidence from my actual observations, and, if it would not swell this Letter (already too prolix) beyond the bounds I had prescribed myself: I could demonstrate to every mind open to conviction, that in less time and with much less expence than has been incurred, the War might have been brought to the same happy conclusion, if the resourses of the Continent could have been properly drawn forth, that the distresses and disappointments which have very often occurred, have in too many instances, resulted more from a want of energy, in the Continental Government, than a deficiency of means in the particular

States. That the inefficiency of measures, arising from the want of an adequate authority in the Supreme Power, from a partial compliance with the Requisitions of Congress in some of the States, and from a failure of punctuality in others, while it tended to damp the zeal of those which were more willing to exert themselves; served also to accumulate the expences of the War, and to frustrate the best concerted Plans, and that the discouragement occasioned by the complicated difficulties and embarrassments, in which our affairs were, by this means involved, would have long ago produced the dissolution of any Army, less patient, less virtuous and less persevering, than that which I have had the honor to command. But while I mention these things, which are notorious facts,*Defects of federal government in time of war* as the defects of our Federal Government, particularly in the prosecution of a War, I beg it may be understood, that as I have ever taken a pleasure in gratefully acknowledging the assistance and support I have derived from every Class of Citizens, so shall I always be happy to do justice to the unparalleled exertion of the individual States, on many interesting occasions.

I have thus freely disclosed what I wished to make known, before I surrendered up my Public trust to those who committed it to me, the task is now accomplished, I now bid adieu to your Excellency as the Chief Magistrate of your State, at the same time I bid a last farewell to the cares of Office, and all the imployments of public life.

It remains then to be my final and only request, that your Excellency will communicate these sentiments to your Legislature at their next meeting, and that they may be considered as the Legacy of One, who has ardently wished, on all occasions, to be useful to his Country, and who, even in the shade of Retirement, will not fail to implore the divine benediction upon it.

*An earnest prayer*I now make it my earnest prayer, that God would have you, and the State over which you preside, in his holy protection, that he would incline the hearts of the Citizens to cultivate a spirit of subordination and obedience to Government, to entertain a brotherly affection and love for one another, for their fellow Citizens of the United States at large, and particularly for their brethren who have served in the Field, and finally, that he would most graciously be pleased to dispose us all, to do Justice, to love mercy, and to demean ourselves with that Charity, humility and pacific temper of mind, which were the Characteristicks of the Divine Author of our blessed Religion, and without an humble imitation of whose example in these things, we can never hope to be a happy Nation.

CHAPTER SEVEN

The General Resigns

1783

WASHINGTON'S transition from statesman-general to citizen-statesman occurred almost effortlessly. The year-and-a half delay between the decisive victory at Yorktown and the achievement of a negotiated peace, with the subsequent six-month delay before all appropriate ratifications had been secured, imposed upon Washington the difficult and sensitive task of maintaining an army prepared to fight at the same time as the new nation was yearning to reacquire the arts of peace. Washington acted on the principle that the army had to remain standing less for the sake of defending the nation's freedom than for the sake of symbolizing a

free nation until the rest of the world officially concurred in its existence. From the beginning of this time, however, he inculcated lessons—which were acts of legislation in all but form—of political responsibility which entailed strengthening the federal union, honoring its debts, and regulating its orderly expansion through the continent. His wide correspondence bears universally the mark of his solicitude—above all for the just compensation of the soldiers.

Washington disbanded the army just as soon as the peace was made final. In taking leave of his troops he no less exhorted them to a republican faith than he had exhorted their fellow-republicans, the civilians, to keep faith with the troops. The war struggle had lasted eight years, and its effect on Washington and the soldiers is best symbolized, perhaps, in Washington's farewell, when he assembled his officers at a tavern and endeavored to utter some parting sentiments. In the end, he could do no more than reach out in a warm embrace of the portly General Henry Knox, who stood nearest. The other officers filed by, silence pervading, and reenacted the ritual.

The effect of the war on the country is perhaps best symbolized by Washington's resignation of his commission immediately after disbanding the army. At that point the United States stood as a free republic under no armed domination. Congress then sat at Annapolis, Maryland, to which Washington journeyed. He inquired how Congress would prefer to receive his farewell, by letter or public address. Congress summoned him to appear and speak; he did so as recorded in this chapter, resigning "with satisfaction the appointment [he] accepted with diffidence."

***178: FAREWELL ADDRESS* - George Washington, *George Washington: A Collection* [1988]**

Edition used:

George Washington: A Collection, compiled and edited by W.B. Allen (Indianapolis: Liberty Fund, 1988).

United States, September 19, 1796

Friends, and Fellow-Citizens:

The period for a new election of a Citizen, to Administer the Executive government of the United States, being not far distant, and the time actually arrived, when your thoughts must be employed in designating the person, who is to be cloathed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice,*Declining to run again for presidency* that I should now apprise you of the resolution I have formed, to decline being considered among the number of those, out of whom a choice is to be made.

I beg you, at the same time, to do me the justice to be assured, that this resolution has not been taken, without a strict regard to all the considerations appertaining to the relation, which binds a dutiful citizen to his country, and that, in with drawing the tender of service which silence in my situation might imply, I am influenced by no diminution of zeal for your future interest, no deficiency of grateful respect for your past kindness; but am supported by a full conviction that the step is compatible with both.

The acceptance of, and continuance hitherto in, the office to which your Suffrages have twice called me, have been a uniform sacrifice of inclination to the opinion of duty, and to a deference for what appeared to be your desire. I constantly hoped, that it would have been much earlier in my power, consistently with motives, which I was not at liberty to disregard, to return to that retirement,*Previous wish to retire after first term* from which I had been reluctantly drawn. The strength of my inclination to do this, previous to the last Election, had even led to the preparation of an address to declare it to you; but mature reflection on the then perplexed and critical posture of our Affairs with foreign Nations, and the unanimous advice of persons entitled to my confidence, impelled me to abandon the idea.

I rejoice, that the state of your concerns, external as well as internal, no longer renders the pursuit of inclination incompatible with the sentiment of duty, or propriety; and am persuaded whatever partiality may be retained for my services, that in the present circumstances of our country, you will not disapprove my determination to retire.

The impressions, with which I first undertook the arduous trust, were explained on the proper occasion. In the discharge of this trust, I will only say, that I have, with good intentions, contributed towards the Organization and Administration of the government, the best exertions of which a very fallible judgment was capable. Not unconscious, in the outset, of the inferiority

of my qualifications, experience in my own eyes, perhaps still more in the eyes of others, has strengthned the motives to diffidence of myself; and every day the encreasing weight of years admonishes me more and more, that the shade of retirement is as necessary to me as it will be welcome. Satisfied that if any circumstances have given peculiar value to my services, they were temporary, I have the consolation to believe, that while choice and prudence invite me to quit the political scene, patriotism does not forbid it.

*Debt of gratitude to country*In looking forward to the moment, which is intended to terminate the career of my public life, my feelings do not permit me to suspend the deep acknowledgment of that debt of gratitude wch. I owe to my beloved country, for the many honors it has conferred upon me; still more for the stedfast confidence with which it has supported me; and for the opportunities I have thence enjoyed of manifesting my inviolable attachment, by services faithful and persevering, though in usefulness unequal to my zeal. If benefits have resulted to our country from these services, let it always be remembered to your praise, and as an instructive example in our annals, that, under circumstances in which the Passions agitated in every direction were liable to mislead, amidst appearances sometimes dubious, viscissitudes of fortune often discouraging, in situations in which not unfrequently want of Success has countenanced the spirit of criticism, the constancy of your support was the essential prop of the efforts, and a guarantee of the plans by which they were effected. Profoundly penetrated with this idea, I shall carry it with me to my grave, as a strong incitement to unceasing vows that Heaven may continue to you the choicest tokens of its beneficence; that your Union and brotherly affection may be perpetual; that the free constitution, which is the work of your hands, may be sacredly maintained; that its Administration in every department may be stamped with wisdom and Virtue; that, in fine, the happiness of the people of these States, under the auspices of liberty, may be made complete, by so careful a preservation and so prudent a use of this blessing as will acquire to them the glory of recommending it to the applause, the affection, and adoption of every nation which is yet a stranger to it.

*Solicitude for future welfare of nation*Here, perhaps, I ought to stop. But a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger, natural to that solicitude, urge me on an occasion like the present, to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments; which are the result of much reflection, of no inconsiderable observation, and which appear to me all important to the permanency of your felicity as a People. These will be offered to you with the more freedom, as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive to biass his counsel. Nor can I forget, as an encouragement to it, your endulgent reception of my sentiments on a former and not dissimilar occasion.

Interwoven as is the love of liberty with every ligament of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment.

*Unity of government, liberty, independence*The Unity of Government which constitutes you one people is also now dear to you. It is justly so; for it is a main Pillar in the Edifice of your real independence, the support of your tranquility at home; your peace abroad; of your safety; of your prosperity; of that very Liberty which you so highly prize. But as it is easy to foresee, that from different causes and from different quarters, much pains will be taken, many artifices employed,

to weaken in your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously)*National union and collective and individual happiness* directed, it is of infinite moment, that you should properly estimate the immense value of your national Union to your collective and individual happiness; that you should cherish a cordial, habitual and immoveable attachment to it; accustoming yourselves to think and speak of it as of the Palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned, and indignantly frowning upon the first dawning of every attempt to alienate any portion of our Country from the rest, or to enfeeble the sacred ties which now link together the various parts.

*A common cause*For this you have every inducement of sympathy and interest. Citizens by birth or choice, of a common country, that country has a right to concentrate your affections. The name of American, which belongs to you, in your national capacity, must always exalt the just pride of Patriotism, more than any appellation derived from local discriminations. With slight shades of difference, you have the same Religion, Manners, Habits and political Principles. You have in a common cause fought and triumphed together. The independence and liberty you possess are the work of joint councils, and joint efforts; of common dangers, sufferings and successes.

But these considerations, however powerfully they address themselves to your sensibility are greatly outweighed by those which apply more immediately to your Interest. Here every portion of our country finds the most commanding motives for carefully guarding and preserving the Union of the whole.

*North and South*The *North*, in an unrestrained intercourse with the *South*, protected by the equal Laws of a common government, finds in the productions of the latter, great additional resources of Maritime and commercial enterprise and precious materials of manufacturing industry. The *South* in the same Intercourse, benefitting by the Agency of the *North*, sees its agriculture grow and its commerce expand. Turning partly into its own channels the seamen of the *North*, it finds its particular navigation envigorated; and while it contributes, in different ways, to nourish and increase the general mass of the National navigation, it looks forward to the protection of a Maritime strength, to which itself is unequally adapted.*East and West* The *East*, in a like intercourse with the *West*, already finds, and in the progressive improvement of interior communications, by land and water, will more and more find a valuable vent for the commodities which it brings from abroad, or manufactures at home. The *West* derives from the *East* supplies requisite to its growth and comfort, and what is perhaps of still greater consequence, it must of necessity owe the *secure* enjoyment of indispensable *outlets* for its own productions to the weight, influence, and the future Maritime strength of the Atlantic side of the Union, directed by an indissoluble community of Interest as *one Nation*. Any other tenure by which the *West* can hold this essential advantage, whether derived from its own seperate strength, or from an apostate and unnatural connection with any foreign Power, must be intrinsically precarious.

*Union's security and lessened rivalry*While then every part of our country thus feels an immediate and particular Interest in Union, all the parts combined cannot fail to find in the united mass of means and efforts greater strength, greater resource, proportionably greater security from external danger, a less frequent interruption of their Peace by foreign Nations; and, what is of inestimable value! they must derive from Union an exemption from those broils and Wars between themselves, which so frequently afflict neighbouring countries, not tied together by the same government; which their own rivalships alone would be sufficient to produce, but which opposite foreign alliances, attachments and intriegues would stimulate and imbitter.*Military establishments* Hence likewise they will avoid the necessity of those overgrown Military establishments, which under any form of Government are inauspicious to liberty, and which are to be regarded as particularly hostile to Republican Liberty: In this sense it is, that your Union ought to be considered as a main prop of your liberty, and that the love of the one ought to endear to you the preservation of the other.

*Union over extensive territory*These considerations speak a persuasive language to every reflecting and virtuous mind, and exhibit the continuance of the Union as a primary object of Patriotic desire. Is there a doubt, whether a common government can embrace so large a sphere? Let experience solve it. To listen to mere speculation in such a case were criminal. We are authorized to hope that a proper organization of the whole, with the auxiliary agency of governments for the respective Subdivisions, will afford a happy issue to the experiment. 'Tis well worth a fair and full experiment. With such powerful and obvious motives to Union, affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason, to distrust the patriotism of those, who in any quarter may endeavor to weaken its bands.

*Geographical discriminations which may disturb union*In contemplating the causes wch. may disturb our Union, it occurs as matter of serious concern, that any ground should have been furnished for characterizing parties by *Geographical* discriminations: *Northern* and *Southern*; *Atlantic* and *Western*; whence designing men may endeavour to excite a belief that there is a real difference of local interests and views. One of the expedients of Party to acquire influence, within particular districts, is to misrepresent the opinions and aims of other Districts. You cannot shield yourselves too much against the jealousies and heart burnings which spring from these misrepresentations. They tend to render Alien to each other those who ought to be bound together by fraternal affection. The Inhabitants of our Western country have lately had a useful lesson on this head. They have seen, in the Negociation by the Executive, and in the unanimous ratification by the Senate, of the Treaty with Spain, and in the universal satisfaction at that event, throughout the United States, a decisive proof how unfounded were the suspicions propagated among them of a policy in the General Government and in the Atlantic States unfriendly to their Interests in regard to the Mississippi. They have been witnesses to the formation of two Treaties, that with G: Britain and that with Spain, which secure to them every thing they could desire, in respect to our Foreign relations, towards confirming their prosperity. Will it not be their wisdom to rely for the preservation of these advantages on the Union by wch. they were procured? Will they not henceforth be deaf to those advisers, if such there are, who would sever them from their Brethren and connect them with Aliens?

To the efficacy and permanency of Your Union, a Government for the whole is indispensable. No Alliances however strict between the parts can be an adequate substitute. They must inevitably experience the infractions and interruptions which all Alliances in all times have experienced. Sensible of this momentous truth, you have improved upon your first essay,*The new Constitution* by the adoption of a Constitution of Government, better calculated than your former for an intimate Union, and for the efficacious management of your common concerns. This government, the offspring of our own choice uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its Laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true Liberty. The basis of our political systems is the right of the people to make and to alter their Constitutions of Government. But the Constitution which at any time exists, 'till changed by an explicit and authentic act of the whole People, is sacredly obligatory upon all. The very idea of the power and the right of the People to establish Government presupposes the duty of every Individual to obey the established Government.

All obstructions to the execution of the Laws, all combinations and Associations, under whatever plausible character, with the real design to direct, controul counteract, or awe the regular deliberation and action of the Constituted authorities are distructive of this fundamental principle and of fatal tendency.*Faction* They serve to organize faction, to give it an artificial and extraordinary force; to put in the place of the delegated will of the Nation, the will of a party; often a small but artful and enterprizing minority of the Community; and, according to the alternate triumphs of different parties, to make the public administration the Mirror of the ill concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common councils and modefied by mutual interests. However combinations or Associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious and unprincipled men will be enabled to subvert the Power of the People, and to usurp for themselves the reins of Government; destroying afterwards the very engines which have lifted them to unjust dominion.

*Spirit of innovation and the Constitution*Towards the preservation of your Government and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles however specious the pretexts. one method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of Governments, as of other human institutions; that experience is the surest standard, by which to test the real tendency of the existing Constitution of a country; that facility in changes upon the credit of mere hypotheses and opinion exposes to perpetual change, from the endless variety of hypotheses and opinion: and remember, especially, that for the efficient management of your common interests, in a country so extensive as ours, a Government of as much vigour as is consistent with the perfect security of Liberty is indispensable.*Liberty and the Constitution* Liberty itself will find in such a Government, with powers properly distributed and adjusted, its

surest Guardian. It is indeed little else than a name, where the Government is too feeble to withstand the enterprises of faction, to confine each member of the Society within the limits prescribed by the laws and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

*Spirit of party, in general*I have already intimated to you the danger of Parties in the State, with particular reference to the founding of them on Geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the Spirit of Party, generally.

This spirit, unfortunately, is inseperable from our nature, having its root in the strongest passions of the human Mind. It exists under different shapes in all Governments, more or less stifled, controuled, or repressed; but, in those of the popular form it is seen in its greatest rankness and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissention, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries, which result, gradually incline the minds of men to seek security and repose in the absolute power of an Individual: and sooner or later the chief of some prevailing faction more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of Public Liberty.

Without looking forward to an extremity of this kind (which nevertheless ought not to be entirely out of sight) the common and continual mischiefs of the spirit of Party are sufficient to make it the interest and the duty of a wise People to discourage and restrain it.

It serves always to distract the Public Councils and enfeeble the Public administration. It agitates the Community with ill founded jealousies and false alarms, kindles the animosity of one part against another, foments occasionally riot and insurrection. It opens the door to foreign influence and corruption, which find a facilitated access to the government itself through the channels of party passions. Thus the policy and the will of one country, are subjected to the policy and will of another.

*Parties in free countries*There is an opinion that parties in free countries are useful checks upon the Administration of the Government and serve to keep alive the spirit of Liberty. This within certain limits is probably true, and in Governments of a Monarchical cast Patriotism may look with endulgence, if not with favour, upon the spirit of party. But in those of the popular character, in Governments purely elective, it is a spirit not to be encouraged. From their natural tendency, it is certain there will always be enough of that spirit for every salutary purpose. And there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate and assuage it. A fire not to be quenched; it demands a uniform vigilance to prevent its bursting into a flame, lest instead of warming it should consume.

*Separation of powers*It is important, likewise, that the habits of thinking in a free Country should inspire caution in those entrusted with its administration, to confine themselves within their

respective Constitutional spheres; avoiding in the exercise of the Powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it, which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power; by dividing and distributing it into different depositories, and constituting each the Guardian of the Public Weal against invasions by the others, has been evinced by experiments ancient and modern; some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

*Religion and morality*Of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable supports. In vain would that man claim the tribute of Patriotism, who should labour to subvert these great Pillars of human happiness, these firmest props of the duties of Men and citizens. The mere Politician, equally with the pious man ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths, which are the instruments of investigation in Courts of Justice? And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that National morality can prevail in exclusion of religious principle.

’Tis substantially true, that virtue or morality is a necessary spring of popular government. The rule indeed extends with more or less force to every species of free Government. Who that is a sincere friend to it, can look with indifference upon attempts to shake the foundation of the fabric.

*General diffusion of knowledge*Promote then as an object of primary importance, Institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.

*Public credit*As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible: avoiding occasions of expence by cultivating peace, but remembering also that timely disbursements to prepare for danger frequently prevent much greater disbursements to repel it; avoiding likewise the accumulation of debt, not only by shunning occasions of expence, but by vigorous exertions in time of Peace to discharge the Debts which unavoidable wars may have occasioned, not ungenerously throwing upon posterity the burthen which we ourselves ought to bear. The execution of these maxims belongs to your Representatives, but it is necessary that public opinion should cooperate.*Taxation* To facilitate to them the performance of their duty, it is essential that you should practically bear in mind, that towards the payment of debts there must be Revenue; that to

have Revenue there must be taxes; that no taxes can be devised which are not more or less inconvenient and unpleasant; that the intrinsic embarrassment inseperable from the selection of the proper objects (which is always a choice of difficulties) ought to be a decisive motive for a candid construction of the Conduct of the Government in making it, and for a spirit of acquiescence in the measures for obtaining Revenue which the public exigencies may at any time dictate.

*Policy towards foreign nations*Observe good faith and justice towds. all Nations. Cultivate peace and harmony with all. Religion and morality enjoin this conduct; and can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and, at no distant period, a great Nation, to give to mankind the magnanimous and too novel example of a People always guided by an exalted justice and benevolence. Who can doubt that in the course of time and things the fruits of such a plan would richly repay any temporary advantages wch. might be lost by a steady adherence to it? Can it be, that Providence has not connected the permanent felicity of a Nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human Nature. Alas! is it rendered impossible by its vices?

In the execution of such a plan nothing is more essential than that permanent, inveterate antipathies against particular Nations and passionate attachments for others should be excluded; and that in place of them just and amicable feelings towards all should be cultivated. The Nation, which indulges towards another an habitual hatred, or an habitual fondness, is in some degree a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one Nation against another, disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable, when accidental or trifling occasions of dispute occur. Hence frequent collisions, obstinate envenomed and bloody contests. The Nation, prompted by ill will and resentment sometimes impels to War the Government, contrary to the best calculations of policy. The Government sometimes participates in the national propensity, and adopts through passion what reason would reject; at other times, it makes the animosity of the Nation subservient to projects of hostility instigated by pride, ambition and other sinister and pernicious motives. The peace often, sometimes perhaps the Liberty, of Nations has been the victim.

So likewise, a passionate attachment of one Nation for another produces a variety of evils. Sympathy for the favourite nation, facilitating the illusion of an imaginary common interest, in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and Wars of the latter, without adequate inducement or justification: It leads also to concessions to the favourite Nation of priviledges denied to others, which is apt doubly to injure the Nation making the concessions; by unnecessarily parting with what ought to have been retained; and by exciting jealousy, ill will, and a disposition to retaliate, in the parties from whom eql. priviledges are withheld: And it gives to ambitious, corrupted, or deluded citizens (who devote themselves to the favourite Nation) facility to betray, or sacrifice the interests of their own country, without odium, sometimes even with popularity; gilding with the appearances of a virtuous sense of obligation a commendable deference for public opinion, or a laudable zeal for public good, the base or foolish compliances of ambition corruption or infatuation.

As avenues to foreign influence in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent Patriot. How many opportunities do they afford to tamper with domestic factions, to practice the arts of seduction, to mislead public opinion, to influence or awe the public Councils! Such an attachment of a small or weak, towards a great and powerful Nation, dooms the former to be the satellite of the latter.

*Wiles of foreign influence*Against the insidious wiles of foreign influence, (I conjure you to believe me fellow citizens) the jealousy of a free people ought to be *constantly* awake; since history and experience prove that foreign influence is one of the most baneful foes of Republican Government. But that jealousy to be useful must be impartial; else it becomes the instrument of the very influence to be avoided, instead of a defence against it. Excessive partiality for one foreign nation and excessive dislike of another, cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real Patriots, who may resist the intriegues of the favourite, are liable to become suspected and odious; while its tools and dupes usurp the applause and confidence of the people, to surrender their interests.

The Great rule of conduct for us, in regard to foreign Nations is in extending our commercial relations to have with them as little *political* connection as possible. So far as we have already formed engagements let them be fulfilled, with perfect good faith. Here let us stop.

*Europe and America*Europe has a set of primary interests, which to us have none, or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence therefore it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships, or enmities:

Our detached and distant situation invites and enables us to pursue a different course. If we remain one People, under an efficient government, the period is not far off, when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war, as our interest guided by our justice shall Counsel.

Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European Ambition, Rivalship, Interest, Humour or Caprice?

Alliances'Tis our true policy to steer clear of permanent Alliances, with any portion of the foreign world. So far, I mean, as we are now at liberty to do it, for let me not be understood as capable of patronising infidility to existing engagements (I hold the maxim no less applicable to public than to private affairs, that honesty is always the best policy). I repeat it therefore, let those engagements be observed in their genuine sense. But in my opinion, it is unnecessary and would be unwise to extend them.

Taking care always to keep ourselves, by suitable establishments, on a respectably defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

*Commercial policy*Harmony, liberal intercourse with all Nations, are recommended by policy, humanity and interest. But even our Commercial policy should hold an equal and impartial hand: neither seeking nor granting exclusive favours or preferences; consulting the natural course of things; diffusing and deversifying by gentle means the streams of Commerce, but forcing nothing; establishing with Powers so disposed; in order to give to trade a stable course, to define the rights of our Merchants, and to enable the Government to support them; conventional rules of intercourse, the best that present circumstances and mutual opinion will permit, but temporary, and liable to be from time to time abandoned or varied, as experience and circumstances shall dictate; constantly keeping in view, that 'tis folly in one Nation to look for disinterested favors from another; that it must pay with a portion of its Independence for whatever it may accept under that character; that by such acceptance, it may place itself in the condition of having given equivalents for nominal favours and yet of being reproached with ingratitude for not giving more. There can be no greater error than to expect, or calculate upon real favours from Nation to Nation. 'Tis an illusion which experience must cure, which a just pride ought to discard.

In offering to you, my Countrymen these counsels of an old and affectionate friend, I dare not hope they will make the strong and lasting impression, I could wish; that they will controul the usual current of the passions, or prevent our Nation from running the course which has hitherto marked the Destiny of Nations: But if I may even flatter myself, that they may be productive of some partial benefit, some occasional good; that they may now and then recur to moderate the fury of party spirit, to warn against the mischiefs of foreign Intriegue, to guard against the Impostures of pretended patriotism; this hope will be a full recompence for the solicitude for your welfare, by which they have been dictated.

How far in the discharge of my Official duties, I have been guided by the principles which have been delineated, the public Records and other evidences of my conduct must Witness to You and to the world. To myself, the assurance of my own conscience is, that I have at least believed myself to be guided by them.

In relation to the still subsisting War in Europe, my Proclamation of the 22d.*Neutral conduct* of April 1793 is the index to my Plan. Sanctioned by your approving voice and by that of Your Representatives in both Houses of Congress, the spirit of that measure has continually governed me; uninfluenced by any attempts to deter or divert me from it.

After deliberate examination with the aid of the best lights I could obtain I was well satisfied that our Country, under all the circumstances of the case, had a right to take, and was bound in duty and interest, to take a Neutral position. Having taken it, I determined, as far as should depend upon me, to maintain it, with moderation, perseverence and firmness.

The considerations, which respect the right to hold this conduct, it is not necessary on this occasion to detail. I will only observe, that according to my understanding of the matter, that right, so far from being denied by any of the Belligerent Powers has been virtually admitted by all.

The duty of holding a Neutral conduct may be inferred, without any thing more, from the obligation which justice and humanity impose on every Nation, in cases in which it is free to act, to maintain inviolate the relations of Peace and amity towards other Nations.

The inducements of interest for observing that conduct will best be referred to your own reflections and experience. With me, a predominant motive has been to endeavour to gain time to our country to settle and mature its yet recent institutions, and to progress without interruption, to that degree of strength and consistency, which is necessary to give it, humanly speaking, the command of its own fortunes.

*Conclusion*Though in reviewing the incidents of my Administration, I am unconscious of intentional error, I am nevertheless too sensible of my defects not to think it probable that I may have committed many errors. Whatever they may be I fervently beseech the Almighty to avert or mitigate the evils to which they may tend. I shall also carry with me the hope that my Country will never cease to view them with indulgence; and that after forty five years of my life dedicated to its Service, with an upright zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the Mansions of rest.

Relying on its kindness in this as in other things, and actuated by that fervent love towards it, which is so natural to a Man, who views in it the native soil of himself and his progenitors for several Generations; I anticipate with pleasing expectation that retreat, in which I promise myself to realize, without alloy, the sweet enjoyment of partaking, in the midst of my fellow Citizens, the benign influence of good Laws under a free Government, the ever favourite object of my heart, and the happy reward, as I trust, of our mutual cares, labours and dangers.

Transcript of Declaration of Independence (Rough Draft) 1776

Note: Italicized words or phrases were omitted in the final draft.
Bracketed words or phrases were added to the original draft and appear in the final draft.

A Declaration by the Representatives
of the UNITED STATES OF AMERICA, in
General Congress assembled.

WHEN in the Course of human Events it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth the separate & equal Station to which the Laws of Nature and of Nature's God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation.

WE hold these Truths to be self-evident: that all Men are created equal; that they are endowed by their creator with *inherent and** [certain] inalienable rights; that among these are life, liberty, & the pursuit of happiness: that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, & to institute new government, laying it's foundation on such principles, & organizing it's powers in such form, as to them shall seem most likely to effect their safety & happiness. Prudence indeed will dictate that governments long established should not be changed for light & transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses & usurpations *begun at a distinguished period and* pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government, & to provide new guards for their future security. Such has been the patient sufferance of these colonies; & such is now the necessity which constrains them to *expunge* [alter] their former systems of government. The history of the present king of Great Britain is a history of *unremitting* [repeated] injuries & usurpations, *among which appears no solitary fact to contradict the uniform tenor of the rest but all have* [all having]in direct object the establishment of an absolute tyranny over these states. To prove this let facts be submitted to a candid world *for the truth of which we pledge a faith yet unsullied by falsehood*.

HE has refused his assent to laws the most wholesome & necessary for the public good.

HE has forbidden his governors to pass laws of immediate & pressing importance, unless suspended in their operation till his assent should be obtained; & when so suspended, he has utterly neglected to attend to them.

HE has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable to them, & formidable to tyrants only.

HE has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

HE has dissolved representative houses repeatedly & *continually* for opposing with manly firmness his invasions on the rights of the people.

HE has refused for a long time after such dissolutions to cause others to be elected, whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the state remaining in the meantime exposed to all the dangers of invasion from without & convulsions within.

HE has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners, refusing to pass others to encourage their migrations hither, & raising the conditions of new appropriations of lands.

HE has *suffered* [obstructed] the administration of justice *totally to cease in some of these states* [by] refusing his assent to laws for establishing judiciary powers.

HE has made *our* judges dependant on his will alone, for the tenure of their offices, & the amount & paiment of their salaries.

HE has erected a multitude of new offices by a *self assumed power* and sent hither swarms of new officers to harass our people and eat out their substance.

HE has kept among us in times of peace standing armies *and ships of war* without the consent of our legislatures.

HE has affected to render the military independent of, & superior to the civil power.

HE has combined with others to subject us to a jurisdiction foreign to our constitutions & unacknowledged by our laws, giving his assent to their acts of pretended legislation:

FOR quartering large bodies of armed troops among us:

FOR protecting them by a mock-trial from punishment for any murders which they should commit on the inhabitants of these states

FOR cutting off our trade with all parts of the world:

FOR imposing taxes on us without our consent:

FOR depriving us [in many cases] of the benefits of trial by jury

FOR transporting us beyond seas to be tried for pretended offences:

FOR abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging it's boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these *states* [colonies]:

FOR taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

FOR suspending our own legislatures, & declaring themselves invested with power to legislate for us in allcases whatsoever.

He has abdicated government here *withdrawing his governors, and declaring us out of his allegiance & protection.* [by declaring us out of his protection and waging war against us.]

He has plundered our seas, ravaged our coasts, burnt our towns, & destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation & tyranny already begun with circumstanccs of cruelty and perfidy [scarcely paralleled in the most barbarous ages, & totally] unworthy the head of a civilized nation.

He has constrained our fellow citizens taken captive on the high seas to bear arms against their country, to become the executioners of their friends & brethren, or to fall themselves by their hands.

He has [excited domestic insurection among us, & has] endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, & conditions of existence.

He has incited treasonable insurrections of our fellow-citizens, with the allurements of forfeiture & confiscation of our property.

He has waged cruel war against human nature itself, violating it's most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. This piratical warfare, the opprobium of INFIDEL Powers, is the warfare of the CHRISTIAN king of Great Britain. Determined to keep open a market where MEN should be bought & sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce. And that this assemblage of horrors might want no fact of distinguished die, he is now exciting those very people to rise in arms among us, and to purchase that liberty of which he has deprived them, by murdering the people on whom he also obtruded them: thus paying off former crimes committed against the LIBERTIES of one people, with crimes which he urges them to commit against the LIVES of another.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injuries.

A prince whose character is thus marked by every act which may define a tyrant is unfit to be the ruler of a [free] people *who mean to be free. Future ages will scarcely believe that the hardiness of one man*

adventured, within the short compass of twelve years only, to lay a foundation so broad & so undisguised for tyranny over a people fostered & fixed in principles of freedom.

Nor have we been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend a [an unwarrantable] jurisdiction over *these our states* [us]. We have reminded them of the circumstances of our emigration & settlement here*, no one of which could warrant so strange a pretension: that these were effected at the expense of our own blood & treasure, unassisted by the wealth or the strength of Great Britain: that in constituting indeed our several forms of government, we had adopted one common king, thereby laying a foundation for perpetual league & amity with them: but that submission to their parliament was no part of our constitution, nor ever in idea, if history may be credited: and*, we [have] appealed to their native justice and magnanimity [and we have conjured them by] *as well as* to the ties of our common kindred to disavow these usurpations which *were likely to* [would inevitably] interrupt our connection and correspondence. They too have been deaf to the voice of justice & of consanguinity, *and when occasions have been given them, by the regular course of their laws, of removing from their councils the disturbers of our harmony, they have, by their free election, re-established them in power. At this very time too they are permitting their chief magistrate to send over not only soldiers of our common blood, but Scotch & foreign mercenaries to invade & destroy us. These facts have given the last stab to agonizing affection, and manly spirit bids us to renounce forever these unfeeling brethren. We must endeavor to forget our former love for them, and hold them as we hold the rest of mankind, enemies in war, in peace friends. We might have been a free and a great people together; but a communication of grandeur & of freedom it seems is below their dignity. Be it so, since they will have it. The road to happiness & to glory is open to us too. We will tread it apart from them, and* [We must therefore] acquiesce in the necessity which denounces our eternal separation! [and hold them as we hold the rest of mankind, enemies in war, in peace friends.]

We therefore the representatives of the united States of America in General Congress assebled [appealing to the Judge of the World for the recititude of our intentions] do in the name & by authority of the good people of these *states* [colonies] *reject and renounce all allegiance & subjections to the kings of Great Britain & all others who may hereafter claim by, through or under them: we utterly disolve all political connection which may heretofore have subsisted between us & the people or parliment of Great Britain: and finally we do assert and declare these colonies to be free and independent states,* [solemly Publish and Declare that these United Colonies are, and of Right ought to be, Free and Independent States; that they are dissolved from allegiance to the British Crown, and that all political Connection between them and the State of Great-Britain, is and ought to be totally dissolved;] and that as free and independent states, they have full power to levy war, conclude peace, contract allies, establish commerce, & do all other acts & things which independent states may of right do.

And for the support of this declaration, [with a firm reliance on the protection of divine providence] we mutually pledge to each other our lives, our fortunes, & our sacred honor.

Source: Boyd, J.P. et al, editors. *The Papers of Thomas Jefferson*. Princeton: Princeton University Press, 1950. Volume I page 426. http://www.monticello.org/site/jefferson/transcript-declaration-independence-rough-draft

Done at Little Tallassie in the Upper Creek Nation
This 10th July 1785
by order and in behalf of the Said Indian Nations
(Signed) Alex: McGillivray

THE UNITED INDIAN NATIONS ANNOUNCE A NEW POLICY

As the new American nation grew and flexed its muscles, it committed itself to expansion across the area of the Old Northwest, bordered by the Ohio River, the Great Lakes, and the Mississippi. Indian people found themselves fighting a desperate holding action as the by now familiar pressures on their lands intensified. At the Treaty of Fort Stanwix in 1784, American commissioners browbeat Iroquois delegates into ceding large amounts of their territory. When those delegates returned home, they were scorned by their people, who disavowed their actions. At the Treaty of Fort McIntosh in 1785, Delawares, Wyandots (also known as Hurons), Miamis (whom the English and Americans often called Twightwees), and other tribes from the Ohio region were coerced into making similar cessions. The Shawnees, who refused to attend the Fort McIntosh treaty, met the Americans the next year at Fort Finney and received similar treatment.

By 1786, however, the northern tribes were coming to realize what was happening and how they could prevent it. As in colonial times, Indian lands were being lost piecemeal in sales and agreements made by individuals, unauthorized speakers, and single tribes. Only by taking a united stance could the Indians hope to halt the loss of their lands. As the newly independent states tried to form themselves into a new, united nation, so Indian nations strove to present a united front against American expansion. The following message from the united tribes to Congress gave the United States clear warning that the Indians regarded the Ohio River as the boundary between Indian lands and American settlers and that henceforth they would consider no land sales as valid without the unanimous agreement of all the tribes. This united opposition checked American expansion beyond the Ohio River for almost ten years.

From: The World Turned Upside Down: Indian Voices from Early America, ed. Colin G. Calloway. NY: Bedford Books, 1994.

UNITED INDIAN NATIONS

Speech at the Confederate Council

November 28 and December 18, 1786

Present:—The Five Nations, the Hurons, Delawares, Shawanese, Ottawas, Chippewas, Powtewattimies, Twichtwees, Cherokees, and the Wabash confederates

To the Congress of the United States of America:

Brethren of the United States of America: It is now more than three years since peace was made between the King of Great Britain and you, but we, the Indians, were disappointed, finding ourselves not included in that peace, according to our expectations: for we thought that its conclusion would have promoted a friendship between the United States and Indians, and that we might enjoy that happiness that formerly subsisted between us and our elder brethren. We have received two very agreeable messages from the thirteen United States. We also received a message from the King, whose war we were engaged in, desiring us to remain quiet, which we accordingly complied with. During the time of this tranquillity, we were deliberating the best method we could to form a lasting reconciliation with the thirteen United States. Pleased at the same time, we thought we were entering upon a reconciliation and friendship with a set of people born on the same continent with ourselves, certain that the quarrel between us was not of our own making. In the course of our councils, we imagined we hit upon an expedient that would promote a lasting peace between us.

Brothers: We still are of the same opinion as to the means which may tend to reconcile us to each other; and we are sorry to find, although we had the best thoughts in our minds, during the beforementioned period, mischief has, nevertheless, happened between you and us. We are still anxious of putting our plan of accommodation into execution, and we shall briefly inform you of the means that seem most probable to us of effecting a firm and lasting peace and reconciliation: the first step towards which should, in our opinion, be, that all treaties carried on with the United States, on our parts, should be with the general voice of the whole confederacy, and carried on in the most open manner, without any restraint on either side; and especially as landed matters are often the subject of our councils with you, a matter of the

American State Papers, Class II: Indian Affairs (Washington, 1832), 1:8–9.

greatest importance and of general concern to us, in this case we hold it indispensably necessary that any cession of our lands should be made in the most public manner, and by the united voice of the confederacy; holding all partial treaties as void and of no effect.

Brothers: We think it is owing to you that the tranquillity which, since the peace between us, has not lasted, and that that essential good has been followed by mischief and confusion, having managed every thing respecting us your own way. You kindled your council fires where you thought proper, without consulting us, at which you held separate treaties, and have entirely neglected our plan of having a general conference with the different nations of the confederacy. Had this happened, we have reason to believe every thing would now have been settled between us in a most friendly manner. We did every thing in our power, at the treaty of fort Stanwix, to induce you to follow this plan, as our real intentions were, at that very time, to promote peace and concord between us, and that we might look upon each other as friends, having given you no cause or provocation to be otherwise.

Brothers: Notwithstanding the mischief that has happened, we are still sincere in our wishes to have peace and tranquillity established between us, earnestly hoping to find the same inclination in you. We wish, therefore, you would take it into serious consideration, and let us speak to you in the manner we proposed. Let us have a treaty with you early in the spring; let us pursue reasonable steps; let us meet half ways, for our mutual convenience; we shall then bring [bury] in oblivion the misfortunes that have happened, and meet each other on a footing of friendship.

Brothers: We say let us meet half way, and let us pursue such steps as become upright and honest men. We beg that you will prevent your surveyors and other people from coming upon our side the Ohio river. We have told you before, we wished to pursue just steps, and we are determined they shall appear just and reasonable in the eyes of the world. This is the determination of all the chiefs of our confederacy now assembled here, notwithstanding the accidents that have happened in our villages, even when in council, where several innocent chiefs were killed when absolutely engaged in promoting a peace with you, the thirteen United States.

Although then interrupted, the chiefs here present still wish to meet you in the spring, for the beforementioned good purpose, when we hope to speak to each other without either haughtiness or menaces.

Brothers: We again request of you, in the most earnest manner, to order your surveyors and others, that mark out lands, to cease from crossing the Ohio, until we shall have spoken to you, because the mischief that has recently happened has originated in that quarter; we shall likewise prevent our people from going over until that time.

Brothers: It shall not be our faults if the plans which we have suggested to you should not be carried into execution; in that case the event will be very precarious, and if fresh ruptures ensue, we hope to be able to exculpate ourselves, and shall most assuredly, with our united force, be obliged to defend those rights and privileges which have been transmitted to us by our ancestors; and if we should be thereby reduced to misfortunes, the world will pity us when they think of the amicable proposals we now make to prevent the unnecessary effusion of blood. These are our thoughts and firm resolves, and we earnestly desire that you will transmit to us, as soon as possible, your answer, be it what it may.

Done at our Confederated Council Fire, at the Huron village, near the mouth of the Detroit river, December 18th, 1786.

The Five Nations,
Hurons, Ottawas, Twichtwees, Shawanese,
Chippewas, Cherokees, Delawares,
Powtewatimies, The Wabash Confederates.

THE WORLD TURNED UPSIDE DOWN

By the time the American colonists had won their independence and created a new nation, the original inhabitants of this country had seen truly revolutionary changes in their own lives. Many Indian people in New England were reduced to petitioning state legislatures for relief from the poverty that now afflicted them. As two Mohegan speakers, Henry Quaquaquid and Robert Ashpo, explain in this petition to the Connecticut State Assembly in May 1789, the forces that had disrupted their world were not only political. The Mohegans may have been playing to their audience by admitting their own responsibility for many of the changes, and nostalgia certainly colored their view of past days as a golden age. Nevertheless, their words convey the bewilderment many Indian people must have felt as their world changed around them.

THE CONTINUING CONFLICT OVER LAND

In 1791, warriors of the northwestern Indian confederacy, led by the Miami war chief Little Turtle and the Shawnee Blue Jacket, inflicted a smashing defeat on the United States, destroying an American army under General Arthur St. Clair, governor of the Northwest Territory. In the wake of that defeat the United States dispatched commissioners to meet with the Indians and negotiate a settlement, but the Americans would not agree to the Indian demand that the Ohio River remain the boundary to their lands.

In a general council held at the foot of the Miami Rapids in northwestern Ohio in August 1793, delegates from the Wyandots, Seven Nations of Canada,[3] Delawares, Shawnees, Miamis, Ottawas, Chippewas, Senecas, Potawatomis, Conoys, Munsees, Nanticokes, Mahicans, Mississaguas, Creeks, and Cherokees met with the American commissioners. The Indian speakers reviewed the history of their relations with the United States, showing how past treaties had failed to stop white expansion onto their lands, and then offered their own solution to the problem.

INDIAN REPRESENTATIVES

Proposal to Maintain Indian Lands

1793

Brothers;—

Money, to us, is of no value, & to most of us unknown, and as no consideration whatever can induce us to sell the lands on which we get sustenance for our women and children; we hope we may be allowed to point out a mode by which your settlers may be easily removed, and peace thereby obtained.

Brothers;—

We know that these settlers are poor, or they would never have ventured to live in a country which have been in continual trouble ever since they crossed the Ohio; divide therefore this large sum of money which you have

E. A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe,* 5 vols. (Toronto: Ontario Historical Society, 1923–31) 2:17–19.

offered to us, among these people, give to each also a portion of what you say you would give us annually over and above this very large sum of money, and we are persuaded they would most readily accept of it in lieu of the lands you sold to them, if you add also the great sums you must expend in raising and paying Armies, with a view to force us to yield you our Country, you will certainly have more than sufficient for the purposes of repaying these settlers for all their labour and improvements.

Brothers;—

You have talked to us about concessions. It appears strange that you should expect any from us, who have only been defending our just Rights against your invasion; We want Peace; Restore to us our Country and we shall be Enemies no longer.

Brothers;—

You make one concession to us, by offering us your money, and another by having agreed to do us justice, after having long and injuriously withheld it. We mean in the acknowledgement you have now made, that the King of England never did, nor never had a right, to give you our Country, by the Treaty of peace, and you want to make this act of Common Justice, a great part of your concessions, and seem to expect that because you have at last acknowledged our independence, we should for such a favor surrender to you our Country.

Brothers;—

You have talked also a great deal about pre-emption and your exclusive right to purchase Indian lands, as ceded to you by the King at the Treaty of peace.

Brothers;—

We never made any agreement with the King, nor with any other Nation that we would give to either the exclusive right of purchasing our lands. And we declare to you that we consider ourselves free to make any bargain or cession of lands, whenever & to whomsoever we please, if the white people as you say, made a treaty that none of them but the King should purchase of us, and that he has given that right to the U. States, it is an affair which concerns you & him & not us. We have never parted with such a power.

Brothers;—

At our General Council held at the Glaize[4] last Fall, we agreed to meet Commissioners from the U. States, for the purpose of restoring Peace, provided they consented to acknowledge and confirm our boundary line to be

the Ohio; and we determined not to meet you until you gave us satisfaction on that point; that is the reason we have never met.

We desire you to consider Brothers, that our only demand, is the peaceable possession of a small part of our once great Country. Look back and view the lands from whence we have been driven to this spot, we can retreat no further, because the country behind hardly affords food for its present inhabitants. And we have therefore resolved, to leave our bones in this small space, to which we are now confined.

Brothers;—

We shall be persuaded that you mean to do us justice if you agree, that the Ohio, shall remain the boundary line between us, if you will not consent thereto, our meeting will be altogether unnecessary.

NOTES

[1]Lawrence J. Kinnaird, ed., *Spain in the Mississippi Valley,* Annual Report of the American Historical Association for 1945 (Washington, D.C.), vol. 3, pt. 2, 117.

[2]*Calendar of Virginia State Papers* 4 (1886): 306.

[3]The Seven Nations of Canada was a confederacy of the mission communities along the St. Lawrence River. Centered at Caughnawaga, it included Oka, Odanak, Akwesasne, and other groups.

[4]The Glaize was the area at the junction of the Auglaize and Maumee rivers in northwestern Ohio. By this time many Indian peoples had congregated in the region as American expansion pushed them from their traditional homelands.

Jefferson and Madison on Republican Political Economy↩

Thomas Jefferson 13 October 1785 G. K. van Hogendorp

Thomas Jefferson to G. K. van Hogendorp 13 October 1785↩

… You ask what I think on the expediency of encouraging our states to be commercial? Were I to indulge my own theory, I should wish them to practice neither commerce nor navigation, but to stand with respect to Europe precisely on the footing of China. We should thus avoid wars, and all our citizens should be husbandmen. Whenever indeed our numbers should so increase as that our produce would overstock the markets of those nations who should come to seek it, the farmers must either employ the surplus of their time in manufactures or the surplus of our hands must be employed in manufactures or in navigation. But that day would, I think be distant, and we should long keep our workmen in Europe, while Europe should be drawing rough materials & even subsistence from America. But this is theory only, & a theory which the servants of America are not at liberty to follow. Our people have a decided taste for navigation & commerce. They take this from their mother country; & their servants are in duty bound to calculate all their measures on this datum: we wish to do it by throwing open all the doors of commerce & knocking off its shackles. But as this cannot be done for others, unless they will do it for us, & there is no great probability that Europe will do this, I suppose we shall be obliged to adopt a system which may shackle them in our ports as they do us in theirs.

James Madison 19 June 1786 Thomas Jefferson

James Madison to Thomas Jefferson 19 June 1786↩

… Your reflections on the idle poor of Europe form a valuable lesson to the legislators of every country, and particularly of a new one. I hope you will enable yourself before you return to America to compare with this description of people in France the condition of the indigent part of other communities in Europe where the like causes of wretchedness exist in a less degree. I have no doubt that the misery of the lower classes will be found to abate wherever the government assumes a freer aspect & the laws favor a subdivision of property. Yet I suspect that the difference will not fully account for the comparative comfort of the mass of people in the United States. Our limited population has probably as large a share in producing this effect as the political advantages which distinguish us. A certain degree of misery seems inseparable from a high degree of populousness. If the lands in Europe which are now dedicated to the amusement of the idle rich were parcelled out among the idle poor, I readily conceive the happy revolution which[90] would be experienced by a certain proportion of the latter. But still would there not remain a great proportion unrelieved? No problem in political economy has appeared to me more puzzling than that which relates to the most proper distribution of the inhabitants of a country fully peopled. Let the lands be shared among them ever so wisely, & let them be supplied with laborers ever so plentifully, as there must be a great surplus of subsistence, there will also remain a great surplus of inhabitants, a greater by far than will be employed in clothing both themselves & those who feed them and in administering to both every other necessary & even comfort of life. What is to be done with this surplus? Hitherto we have seen them distributed into manufacturers of superfluities, idle proprietors of productive funds, domestics, soldiers, merchants, mariners, and a few other less

numerous classes. All these classes notwithstanding have been found insufficient to absorb the redundant members of a populous society; and yet a reduction of most of those classes enters into the very reform which appears so necessary & desireable. From a more equal partition of property, must result a greater simplicity of manners, consequently a less consumption of manufactured superfluities, and a less proportion of idle proprietors & domestics. From a juster government must result less need of soldiers either for defense agst. dangers from without or disturbances from within. The number of merchants must be inconsiderable under any modification of society; and that of mariners will depend more on geographical position than on the plan of legislation. But I forget that I am writing a letter not a dissertation… .

James Madison7 August 1785 James Monroe

James Madison to James Monroe 7 August 1785↩

… Viewing in the abstract the question whether the power of regulating trade, to a certain degree at least, ought to be vested in Congress, it appears to me not to admit of a doubt but that it should be decided in the affirmative. If it be necessary to regulate trade at all, it surely is necessary to lodge the power where trade can be regulated with effect, and experience has confirmed what reason foresaw, that it can never be so regulated by the states acting in their separate capacities. They can no more exercise this power separately than they could separately carry on war or separately form treaties of alliance or commerce. The nature of the thing therefore proves the former power, no less than the latter, to be within the reason of the federal Constitution. Much indeed is it to be wished, as I conceive, that no regulations of trade, that is to say no restrictions or imposts whatever, were necessary. A perfect freedom is the system which would be my choice. But before such a system will be eligible perhaps for the U.S., they must be out of debt; before it will be attainable, all other nations must concur in it. Whilst any one of these imposes on our vessels, seamen, &c in their ports, clogs from which they exempt their own, we must either retort the distinction or renounce not merely a just profit, but our only defence against the danger which may most easily beset us. Are we not at this moment under this very alternative? The policy of G.B. (to say nothing of other nations) has shut against us the channels without which our trade with her must be a losing one, and she has consequently the triumph, as we have the chagrin, of seeing accomplished her prophetic threats that our independence should forfeit commercial advantages for which it would not recompence us with any new channels of trade. What is to be done? Must we remain passive victims to foreign politics; or shall we exert the lawful means which our independence has put into our hands of extorting redress? The very question would be an affront to every citizen who loves his country. What then are those means? Retaliating regulations of trade only. How are these to be effectuated? Only by harmony in the measures of the states. How is this harmony to be obtained? Only by an acquiescence of all the states in the opinion of a reasonable majority. If Congress as they are now constituted can not be trusted with the power of digesting and enforcing this opinion, let them be otherwise constituted: let their numbers be encreased, let them be chosen oftener, and let their period of service be shortened; or if any better medium than Congress can be proposed by which the wills of the states may be concentered, let it be substituted, or lastly let no regulation of trade adopted by Congress be in force untill it shall have been ratified by a certain proportion of the states. But let us not sacrifice the end to the means: let us not rush on certain ruin in order to avoid a possible

danger. I conceive it to be of great importance that the defects of[91] the federal system should be amended, not only because such amendments will make it better answer the purpose for which it was instituted, but because I apprehend danger to its very existence from a continuance of defects which expose a part if not the whole of the empire to severe distress. The suffering part, even when the minor part, can not long respect a government which is too feeble to protect their interest; but when the suffering part came to be the major part, and they despair of seeing a protecting energy given to the general government, from what motives is their allegiance to be any longer expected. Should G.B. persist in the machinations which distress us, and seven or eight of the states be hindered by the others from obtaining relief by federal means, I own, I tremble at the anti-federal expedients into which the former may be tempted. As to the objection against intrusting Congress with a power over trade, drawn from the diversity of interests in the states, it may be answered 1. that if this objection had been listened to, no confederation could have ever taken place among the states. 2. that if it ought now to be listened to, the power held by Congress of forming commercial treaties, by which 9 states may indirectly dispose of the commerce of the residue, ought to be immediately revoked. 3. that the fact is that a case can scarcely be imagined in which it would be the interest of any 2/3ds of the states to oppress the remaining 1/3d. 4. that the true question is whether the commercial interests of the states do not meet in more points than they differ. To me it is clear that they do; and if they do there are so many more reasons for, than against, submitting the commercial interest of each state to the direction and care of the majority. Put the West India trade alone, in which the interest of every state is involved, into the scale against all the inequalities which may result from any probable regulation by nine states, and who will say that the latter ought to preponderate? I have heard the different interest which the Eastern States have as carriers pointed out as a ground of caution to the Southern States who have no bottoms of their own agst their concurring hastily in retaliations on G.B. But will the present system of G.B. ever give the Southern States bottoms; and if they are not their own carriers I should suppose it no mark either of folly or incivility to give our custom to our brethren rather than to those who have not yet entitled themselves to the name of friends. …

James madison Speech in the House of Representatives on Commercial Retaliation and Discrimination 25 April 1789↩

… Let us review the policy of Great Britain toward us; has she ever shown any disposition to enter into reciprocal regulations? Has she not by a temporising policy plainly declared that until we are able and willing to do justice to ourselves, she will shut us out from her ports and make us tributary to her? Have we not seen her taking one legislative step after another to destroy our commerce? Has not her legislature given discretionary powers to the executive, that so she might be ever on the watch and ready to seize every advantage the weakness of our situation might expose? Have we not reason to believe she will continue a policy void of regard to us, whilst she can continue to gather into her lap the benefits we feebly endeavor to withhold, and for which she ought rather to court us by an open and liberal participation of the commerce we desire? Will she not, if she finds us indecisive in counteracting her machinations, continue to consult her own interest as heretofore? If we remain in a state of apathy, we do not fulfill the object of our appointment; most of the states in the union have, in some shape or other, shown symptoms of disapprobation of British policy; those states have now relinquished the

power of continuing their systems, but under an impression that a more efficient government would effectually support their views. If we are timid and inactive we disappoint the just expectations of our constituents, and I venture to say, we disappoint the very nation against whom the measure is principally directed.

[92]

It has been said that Great Britain receives all the produce of this country in our own bottoms. I believe that in some ports of that kingdom our vessels are admitted, but those in the West Indies, into which we want admission most, are closely barred against us; but the reason that she admits us is because it is necessary to repay herself for her exports to this country and to constitute herself a market for this and the European nations. Adventitious causes have drawn within the commercial vortex of her policy almost all the trade of America, and the productions of the most distant clime, consumed among us, are tributary to her revenue; as long therefore as we do not protect ourselves and endeavor to restore the stream of commerce to its natural channel, we shall find no relaxation on the part of Britain, the same obnoxious policy will be pursued while we submissively bear the oppression. This is a copious subject, and leads to serious and important reflections. After what has passed, I am certain that there is a disposition to make a discrimination, to teach the nations that are not in alliance with us that there is an advantage to be gained by the connection. To give some early symptom of the power and will of the new government to redress our national wrongs must be productive of benefit. We soon shall be in a condition, we now are in a condition, we now are in a condition, to wage a commercial warfare with that nation. The produce of this country is more necessary to the rest of the world than that of other countries is to America. If we were disposed to hazard the experiment of interdicting the intercourse between us and the powers not in alliance, we should have overtures of the most advantageous kind tendered by those nations. If we have the disposition, we have abundantly the power to vindicate our cause; let us but show the world that we know justly how to consider our commercial friends and commercial adversaries. Let us show that if a war breaks out in Europe, and is extended and carried on in the West Indies, that we can treat with friendship and succour the one, while we can shut the other out of our ports. By these favors, without entering into the contest, or violating the law of nations, or even the privilege of neutrals, we can give the most decided advantage.

I will not enlarge on this subject; but it must be apparent to every gentleman that we possess natural advantages which no other nation does; we can therefore with justice stipulate for a reciprocity in commerce. The way to obtain this is by discrimination; and therefore, though the proposed measure may not be very favorable to the nations in alliance, yet I hope it will be adopted for the sake of the principle it contains. I should rather be in favor of a small discrimination than a large one, on purpose to avoid the loss of revenue which anyhow in this article will be but trifling.

Congressional Proceedings on Commercial Discrimination 1789↩

James Madison30 June 1789 Thomas Jefferson

James Madison to Thomas Jefferson 30 June 1789↩

The Senate has [rejected the House of Representatives' proposal for commercial discrimination]. It had been proposed by the H. of Reps. that, besides a discrimination in the tonnage, a small reduction should be made in the duty on distilled spirits imported from countries in treaty with the U. States. The Senate were opposed to any discrimination whatsoever, contending that even G. Britain should stand on the same footing with the most favored nations. The arguments on that side of the question were that the U.S. were not bound by treaty to give any commercial preferences to particular nations—that they were not bound by gratitude, since our allies had been actuated by their own interest and had obtained their compensation in the dismemberment of a rival empire—that in national and particularly in commercial measures, gratitude was, moreover, no proper motive, interest alone being the statesman's guide—that G.B. made no discrimination against the U.S. compared with other nations; but on the contrary distinguished them by a number of advantages—that if G.B. possessed almost the whole of our trade it proceeded from causes which proved that she could carry[93] it on for us on better terms than the other nations of Europe—that we were too dependent on her trade to risk her displeasure by irritating measures which might induce her to put us on a worse footing than at present—that a small discrimination could only irritate without operating on her interests or fears—that if any thing were done it would be best to make a bolder stroke at once and that in fact the Senate had appointed a committee to consider the subject in that point of view.

On the other side it was contended that it would be absurd to *give* away every thing that could *purchase*the stipulation wanted by us, that the motives in which the new government originated, the known sentiments of the people at large, and the laws of most of the states subsequent to the peace showed clearly that a distinction between nations in treaty and nations not in treaty would coincide with the public opinion, and that it would be offensive to a great number of citizens to see G.B. in particular put on the footing of the most favored nations by the first act of a government instituted for the purpose of uniting the states in the vindication of their commercial interests against her monopolizing regulations—that this respect to the sentiments of the people was the more necessary in the present critical state of the government—that our trade at present entirely contradicted the advantages expected from the Revolution, no new channels being opened with other European nations, and the British channels being narrowed by a refusal of the most natural and valuable one to the U.S.—that this evil proceeded from the deep hold the British monopoly had taken of our country, and the difficulty experienced by France, Holland, etc. in entering into competition with her—that in order to break this monopoly, those nations ought to be aided till they could contend on equal terms—that the market of France was particularly desireable to us—that her disposition to open it would depend on the disposition manifested on our part, etc., etc.—that our trade would not be in its proper channels until it should flow *directly* to the countries making the exchange, in which case, too, American vessels would have a due share in the transaction, whereas at present the whole carriage of our bulky produce is confined to British bottoms—that with respect to G.B. we had good reason to suppose that her conduct would be regulated by the apparent temper of the new government—that a passiveness under her restrictions would confirm her in them, whilst an evidence of intention as well as ability to face them would ensure a reconsideration of her policy—that it would be sufficient to begin with a moderate discrimination, exhibiting a readiness to invigorate our measures as circumstances might require—that we had no reason to apprehend a disposition in G.B. to resort to a commercial contest, or the

consequences of such an experiment, her dependence on us being greater than ours on her. The supplies of the United States are necessary to the existence, and their market to the value, of her islands. The returns are either superfluities or poisons. In time of famine, the cry of which is heard every three or four years, the bread of the United States is essential. In time of war, which is generally decided in the West Indies, friendly offices, not violating the duties of neutrality, might effectually turn the scale in favor of an adversary. In the direct trade with Great Britain, the consequences ought to be equally dreaded by her. The raw and bulky exports of the United States employ her shipping, contribute to her revenue, enter into her manufactures, and enrich her merchants, who stand between the United States and the consuming nations of Europe. A suspension of the intercourse would suspend all these advantages, force the trade into rival channels from which it might not return, and besides a temporary loss of a market for 1/4 of her exports, hasten the establishment of manufactures here, which would so far cut off the market forever. On the other side, the United States would suffer but little. The manufactures of Great Britain, as far as desirable, would find their way through other channels, and if the price were a little augmented it would only diminish an excessive consumption. They could do almost wholly without such supplies, and better without than with many of them. In one important view the contest would be particularly in their favor. The articles of luxury, a privation of which would be salutary to them, being the work of the indigent, may be regarded as necessaries to the manufacturing party: …

Thomas Jefferson28 August 1789 James Madison

Thomas Jefferson to James Madison 28 August 1789↩

It is impossible to desire better dispositions towards us than prevail in [the French] assembly. Our proceedings have been viewed as a model for them on every occasion; and tho in the heat of debate men are generally disposed to contradict[94] every authority urged by their opponents, ours has been treated like that of the Bible, open to explanation but not to question. I am sorry that in the moment of such a disposition anything should come from us to check it. The placing them on a mere footing with the English will have this effect. When of two nations, the one has engaged herself in a ruinous war for us, has spent her blood and money to save us, has opened her bosom to us in peace, and receive us almost on the footing of her own citizens, while the other has moved heaven, earth and hell to exterminate us in war, has insulted us in all her councils in peace, shut her doors to us in every part where her interests would admit it, libelled us in foreign nations, endeavored to poison them against the reception of our most precious commodities, to place these two nations on a footing is to give a great deal more to one than to the other if the maxim be true that to make unequal quantities equal you must add more to the one than the other. To say in excuse that gratitude is never to enter into the motives of national conduct is to revive a principle which has been buried for centuries with its kindred principles of the lawfulness of assassination, poison, perjury, etc. All of these were legitimate principles in the dark ages which intervened between ancient and modern civilization, but exploded and held in just horror in the 18th century. I know but one code of morality for man whether acting singly or collectively. … Let us hope that our new government will take some other occasion to show that they mean to proscribe no virtue from the canons of their conduct with other nations. In every other instance the new government has ushered itself to the world as honest, masculine and dignified. It has shown genuine dignity in my

opinion in exploding adulatory titles; they are the offerings of abject baseness, and nourish that degrading vice in the people… .

From: *Liberty and Order,* ed. Lance Banning (Indianapolis: Liberty Fund, 2004), 89-94

"An Old French Soldier" (Philadelphia) *General Advertiser* 27 August 1793↩

The period so earnestly wished for by your enemies and by ours is at length at hand. Who would have thought, when the blood of Frenchmen drenched the foundation of the temple of your liberty, that a day would come when the interests of your former tyrants and those of your allies should be weighed in the same balance, and that those of the first should preponderate? Who … would have imagined that efforts tending to break off the bonds that unite us would ever have obtained the approbation of the American people? I surely had no thoughts of this kind when, at Yorktown, I saw a whole army of your tyrants render homage to your rights to independence and bend under the united standards of America and France. Let those brave soldiers who witnessed that memorable day, let your illustrious general whose labors it crowned with victory, ask themselves, and let them tell me, whether a Frenchman will not ever be to them as a brother and a friend? Whether our interests, our perils, and our glory can be indifferent to them?

Who, then, has been able to effect the sudden change I am so unfortunate as to witness? Do you, also, wish to punish us for being free; and generous Americans, if it is a crime, recollect that you set the example. What; because we are free, rights are disputed which would have been acknowledged if the tyrant were yet alive; because we are free our friendship is disregarded when the good will of our last master was courted with so much care and attention. It is because we are free that our advances are despised and that advantages which were solicited so earnestly of[142] our former government are now, when granted, disregarded—Americans: the whole world, posterity will judge you. What can you answer? Your public prints overflow with learned discussions. All the rubbish of low writers is brought forward, authorities are scraped up, all to prove to you that ingratitude is a virtue in certain cases. But do you not feel something within you that spurns at such a decline? My friends! the honest and upright man has no need to consult voluminous works to determine what is right; his heart and his conscience are sufficient guides. What is right cannot cease to be so, and virtue is out of the reach of elaborate calculations.

I am not deep in political knowledge, but I have been forcibly impressed with this truth—*that the present war in Europe is a war of principle; it is a war between liberty and despotism*. Your situation does not permit you to take a part in this war; well, then, we will fight alone in the common cause; but at least give us the consolation to see that on every occasion your wishes are with us, as you have sworn it. Let your own interest prevent your throwing yourselves in the arms of your bitterest enemies.—Do not furnish them with weapons against you by abandoning your only friends.

From: *Liberty and Order,* ed. Lance Banning (Indianapolis: Liberty Fund, 2004), 141-2

***SPEECHES IN THE FIRST CONGRESS—FIRST SESSION. 1* - James Madison, *The Writings, vol. 5 (1787-1790)* [1904]**

Edition used:

The Writings of James Madison, comprising his Public Papers and his Private Correspondence, including his numerous letters and documents now for the first time printed, ed. Gaillard Hunt (New York: G.P. Putnam's Sons, 1900). Vol. 5.

JUNE 8. AMENDMENTS TO THE CONSTITUTION.

I am sorry to be accessary to the loss of a single moment of time by the House. If I had been indulged in my motion, and we had gone into a Committee of the Whole, I think we might have rose and resumed the consideration of other business before this time; that is, so far as it depended upon what I proposed to bring forward. As that mode seems not to give satisfaction, I will withdraw the motion, and move you, sir, that a select committee be appointed to consider and report such amendments as are proper for Congress to propose to the Legislatures of the several States, conformably to the fifth article of the Constitution.

I will state my reasons why I think it proper to propose amendments, and state the amendments themselves, so far as I think they ought to be proposed. If I thought I could fulfil the duty which I owe to myself and my constituents, to let the subject pass over in silence, I most certainly should not trespass upon the indulgence of this House. But I cannot do this, and am therefore compelled to beg a patient hearing to what I have to lay before you. And I do most sincerely believe, that if Congress will devote but one day to this subject, so far as to satisfy the public that we do not disregard their wishes, it will have a salutary influence on the public councils, and prepare the way for a favorable reception of our future measures. It appears to me that this House is bound by every motive of prudence, not to let the first session pass over without proposing to the State Legislatures, some things to be incorporated into the Constitution, that will render it as acceptable to the whole people of the United States, as it has been found acceptable to a majority of them. I wish, among other reasons why something should be done, that those who had been friendly to the adoption of this Constitution may have the opportunity of proving to those who were opposed to it that they were as sincerely devoted to liberty and a Republican Government, as those who charged them with wishing the adoption of this Constitution in order to lay the foundation of an aristocracy or despotism. It will be a desirable thing to extinguish from the bosom of every member of the community, any apprehensions that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled. And if there are amendments desired of such a nature as will not injure the Constitution, and they can be ingrafted so as to give satisfaction to the doubting part of our fellow-citizens, the friends of the Federal Government will evince that spirit of deference and concession for which they have hitherto been distinguished.

It cannot be a secret to the gentlemen in this House, that, notwithstanding the ratification of this system of Government by eleven of the thirteen United States, in some cases unanimously, in others by large majorities; yet still there is a great number of our constituents who are dissatisfied with it, among whom are many respectable for their talents and patriotism, and respectable for

the jealousy they have for their liberty, which, though mistaken in its object is laudable in its motive. There is a great body of the people falling under this description, who at present feel much inclined to join their support to the cause of Federalism, if they were satisfied on this one point. We ought not to disregard their inclination, but, on principles of amity and moderation, conform to their wishes, and expressly declare the great rights of mankind secured under this Constitution. The acquiescence which our fellow-citizens show under the Government, calls upon us for a like return of moderation. But perhaps there is a stronger motive than this for our going into a consideration of the subject. It is to provide those securities for liberty which are required by a part of the community; I allude in a particular manner to those two States that have not thought fit to throw themselves into the bosom of the Confederacy. It is a desirable thing, on our part as well as theirs, that a re-union should take place as soon as possible. I have no doubt, if we proceed to take those steps which would be prudent and requisite at this juncture, that in a short time we should see that disposition prevailing in those States which have not come in, that we have seen prevailing in those States which have embraced the Constitution.

But I will candidly acknowledge, that, over and above all these considerations, I do conceive that the Constitution may be amended; that is to say, if all power is subject to abuse, that then it is possible the abuse of the powers of the General Government may be guarded against in a more secure manner than is now done, while no one advantage arising from the exercise of that power shall be damaged or endangered by it. We have in this way something to gain, and, if we proceed with caution, nothing to lose. And in this case it is necessary to proceed with caution; for while we feel all these inducements to go into a revisal of the Constitution, we must feel for the Constitution itself, and make that revisal a moderate one. I should be unwilling to see a door opened for a reconsideration of the whole structure the Government—for a re-consideration of the principles and the substance of the powers given; because I doubt, if such a door were opened, we should be very likely to stop at that point which would be safe to the Government itself. But I do wish to see a door opened to consider, so far as to incorporate those provisions for the security of rights, against which I believe no serious objection has been made by any class of our constituents: such as would be likely to meet with the concurrence of two-thirds of both Houses, and the approbation of three-fourths of the State Legislatures. I will not propose a single alteration which I do not wish to see take place, as intrinsically proper in itself, or proper because it is wished for by a respectable number of my fellow-citizens; and therefore I shall not propose a single alteration but is likely to meet the concurrence required by the Constitution. There have been objections of various kinds made against the Constitution. Some were levelled against its structure because the President was without a council; because the Senate, which is a legislative body, had judicial powers in trials on impeachments; and because the powers of that body were compounded in other respects, in a manner that did not correspond with a particular theory; because it grants more power than is supposed to be necessary for every good purpose, and controls the ordinary powers of the State governments. I know some respectable characters who opposed this Government on these grounds; but I believe that the great mass of the people who opposed it, disliked it because it did not contain effectual provisions against the encroachments on particular rights, and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power; nor ought we to consider them safe, while a great number of our fellow-citizens think these securities necessary.

It is a fortunate thing that the objection to the Government has been made on the ground I stated; because it will be practicable, on that ground, to obviate the objection, so far as to satisfy the public mind that their liberties will be perpetual, and this without endangering any part of the Constitution, which is considered as essential to the existence of the Government by those who promoted its adoption.

The amendments which have occurred to me, proper to be recommended by Congress to the State Legislatures, are these:

First. That there be prefixed to the Constitution a declaration, that all power is originally vested in, and consequently derived from, the people.

That Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety.

That the people have an indubitable, unalienable, and indefeasible right to reform or change their Government, whenever it be found adverse or inadequate to the purposes of its institution.

Secondly. That in article 1st, section 2, clause 3, these words be struck out, to wit: “The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such enumeration shall be made;” and that in place thereof be inserted these words, to wit: “After the first actual enumeration, there shall be one Representative for every thirty thousand, until the number amounts to —, after which the proportion shall be so regulated by Congress, that the number shall never be less than —, nor more than —, but each State shall, after the first enumeration, have at least two Representatives; and prior thereto.”

Thirdly. That in article 1st, section 6, clause 1, there be added to the end of the first sentence, these words, to wit: “But no law varying the compensation last ascertained shall operate before the next ensuing election of Representatives.”

Fourthly. That in article 1st, section 9, between clauses 3 and 4, be inserted these clauses, to wit: The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.

The people shall not be restrained from peaceably assembling and consulting for their common good; nor from applying to the Legislature by petitions, or remonstrances, for redress of their grievances.

The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.

No soldiers shall in time of peace be quartered in any house without the consent of the owner; nor at any time, but in a manner warranted by law.

No person shall be subject, except in cases of impeachment, to more than one punishment or one trial for the same offence; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without a just compensation.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The rights of the people to be secured in their persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the cause and nature of the accusation, to be confronted with his accusers, and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

The exceptions here or elsewhere in the Constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the Constitution; but either as actual limitations of such powers, or as inserted merely for greater caution.

Fifthly. That in article 1st, section 10, between clauses 1 and 2, be inserted this clause, to wit:

No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.

Sixthly. That, in article 3d, section 2, be annexed to the end of clause 2d, these words, to wit:

But no appeal to such court shall be allowed where the value in controversy shall not amount to — dollars: nor shall any fact triable by jury, according to the course of common law, be otherwise re-examinable than may consist with the principles of common law.

Seventhly. That in article 3d, section 2, the third clause be struck out, and in its place be inserted the clauses following, to wit:

The trial of all crimes (except in cases of impeachments, and cases arising in the land or naval forces, or the militia when on actual service, in time of war or public danger) shall be by an

impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites; and in all crimes punishable with loss of life or member, presentment or indictment by a grand jury shall be an essential preliminary, provided that in cases of crimes committed within any county which may be in possession of an enemy, or in which a general insurrection may prevail, the trial may by law be authorized in some other county of the same State, as near as may be to the seat of the offence.

In cases of crimes committed not within any county, the trial may by law be in such county as the laws shall have prescribed. In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate.

Eighthly. That immediately after article 6th, be inserted, as article 7th, the clauses following, to wit:

The powers delegated by this Constitution are appropriated to the departments to which they are respectively distributed: so that the Legislative Department shall never exercise the powers vested in the Executive or Judicial, nor the Executive exercise the powers vested in the Legislative or Judicial, nor the Judicial exercise the powers vested in the Legislative or Executive Departments.

The powers not delegated by this Constitution, nor prohibited by it to the States, are reserved to the States respectively.

Ninthly. That article 7th be numbered as article 8th.

The first of these amendments relates to what may be called a bill of rights. I will own that I never considered this provision so essential to the Federal Constitution as to make it improper to ratify it, until such an amendment was added; at the same time, I always conceived, that in a certain form, and to a certain extent, such a provision was neither improper nor altogether useless. I am aware that a great number of the most respectable friends to the Government, and champions for republican liberty, have thought such a provision not only unnecessary, but even improper; nay, I believe some have gone so far as to think it even dangerous. Some policy has been made use of, perhaps, by gentlemen on both sides of the question: I acknowledge the ingenuity of those arguments which were drawn against the Constitution, by a comparison with the policy of Great Britain, in establishing a declaration of rights; but there is too great a difference in the case to warrant the comparison: therefore, the arguments drawn from that source were in a great measure inapplicable. In the declaration of rights which that country has established, the truth is, they have gone no farther than to raise a barrier against the power of the Crown; the power of the Legislature is left altogether indefinite. Although I know whenever the great rights, the trial by jury, freedom of the press, or liberty of conscience, come in question in that body, the invasion of them is resisted by able advocates, yet their Magna Charta does not contain any one provision for the security of those rights, respecting which the people of America are most alarmed. The freedom of the press and rights of conscience, those choicest privileges of the people, are unguarded in the British Constitution.

But although the case may be widely different, and it may not be thought necessary to provide limits for the legislative power in that country, yet a different opinion prevails in the United States. The people of many States have thought it necessary to raise barriers against power in all forms and departments of Government, and I am inclined to believe, if once bills of rights are established in all the States as well as the Federal Constitution, we shall find, that, although some of them are rather unimportant, yet, upon the whole, they will have a salutary tendency. It may be said, in some instances, they do no more than state the perfect equality of mankind. This, to be sure, is an absolute truth, yet it is not absolutely necessary to be inserted at the head of a Constitution.

In some instances they assert those rights which are exercised by the people in forming and establishing a plan of Government. In other instances, they specify those rights which are retained when particular powers are given up to be exercised by the Legislature. In other instances, they specify positive rights, which may seem to result from the nature of the compact. Trial by jury cannot be considered as a natural right, but a right resulting from a social compact, which regulates the action of the community, but is as essential to secure the liberty of the people as any one of the pre-existent rights of nature. In other instances, they lay down dogmatic maxims with respect to the construction of the Government; declaring that the Legislative, Executive, and Judicial branches, shall be kept separate and distinct. Perhaps the best way of securing this in practice is, to provide such checks as will prevent the encroachment of the one upon the other.

But, whatever may be the form which the several States have adopted in making declarations in favor of particular rights, the great object in view is to limit and qualify the powers of Government, by excepting out of the grant of power those cases in which the Government ought not to act, or to act only in a particular mode. They point these exceptions sometimes against the abuse of the Executive power, sometimes against the Legislative, and, in some cases, against the community itself; or, in other words, against the majority in favor of the minority.

In our Government it is, perhaps, less necessary to guard against the abuse in the Executive Department than any other; because it is not the stronger branch of the system, but the weaker. It therefore must be levelled against the Legislative, for it is the most powerful, and most likely to be abused, because it is under the least control. Hence, so far as a declaration of rights can tend to prevent the exercise of undue power, it cannot be doubted but such declaration is proper. But I confess that I do conceive, that in a Government modified like this of the United States, the great danger lies rather in the abuse of the community than in the Legislative body. The prescriptions in favor of liberty ought to be levelled against that quarter where the greatest danger lies, namely, that which possesses the highest prerogative of power. But this is not found in either the Executive or Legislative departments of Government, but in the body of the people, operating by the majority against the minority.

It may be thought that all paper barriers against the power of the community are too weak to be worthy of attention. I am sensible they are not so strong as to satisfy gentlemen of every description who have seen and examined thoroughly the texture of such a defence; yet, as they have a tendency to impress some degree of respect for them, to establish the public opinion in

their favor, and rouse the attention of the whole community, it may be one means to control the majority from those acts to which they might be otherwise inclined.

It has been said, by way of objection to a bill of rights, by many respectable gentlemen out of doors, and I find opposition on the same principles likely to be made by gentlemen on this floor, that they are unnecessary articles of a Republican Government, upon the presumption that the people have those rights in their own hands, and that is the proper place for them to rest. It would be a sufficient answer to say, that this objection lies against such provisions under the State Governments, as well as under the General Government; and there are, I believe, but few gentlemen who are inclined to push their theory so far as to say that a declaration of rights in those cases is either ineffectual or improper. It has been said, that in the Federal Government they are unnecessary, because the powers are enumerated, and it follows, that all that are not granted by the Constitution are retained; that the Constitution is a bill of powers, the great residuum being the rights of the people; and, therefore, a bill of rights cannot be so necessary as if the residuum was thrown into the hands of the Government. I admit that these arguments are not entirely without foundation; but they are not conclusive to the extent which has been supposed. It is true, the powers of the General Government are circumscribed, they are directed to particular objects; but even if Government keeps within those limits, it has certain discretionary powers with respect to the means, which may admit of abuse to a certain extent, in the same manner as the powers of the State Governments under their constitutions may to an indefinite extent; because in the Constitution of the United States, there is a clause granting to Congress the power to make all laws which shall be necessary and proper for carrying into execution all the powers vested in the Government of the United States, or in any department or officer thereof; this enables them to fulfil every purpose for which the Government was established. Now, may not laws be considered necessary and proper by Congress, (for it is for them to judge of the necessity and propriety to accomplish those special purposes which they may have in contemplation,) which laws in themselves are neither necessary nor proper; as well as improper laws could be enacted by the State Legislatures, for fulfilling the more extended objects of those Governments? I will state an instance, which I think in point, and proves that this might be the case. The General Government has a right to pass all laws which shall be necessary to collect its revenue; the means for enforcing the collection are within the direction of the Legislature: may not general warrants be considered necessary for this purpose, as well as for some purposes which it was supposed at the framing of their constitutions the State Governments had in view? If there was reason for restraining the State Governments from exercising this power, there is like reason for restraining the Federal Government.

It may be said, indeed it has been said, that a bill of rights is not necessary, because the establishment of this Government has not repealed those declarations of rights which are added to the several State constitutions; that those rights of the people which had been established by the most solemn act, could not be annihilated by a subsequent act of that people, who meant and declared at the head of the instrument, that they ordained and established a new system, for the express purpose of securing to themselves and posterity the liberties they had gained by an arduous conflict.

I admit the force of this observation, but I do not look upon it to be conclusive. In the first place, it is too uncertain ground to leave this provision upon, if a provision is at all necessary to secure

rights so important as many of those I have mentioned are conceived to be, by the public in general, as well as those in particular who opposed the adoption of this Constitution. Besides, some States have no bills of rights, there are others provided with very defective ones, and there are others whose bills of rights are not only defective, but absolutely improper; instead of securing some in the full extent which republican principles would require, they limit them too much to agree with the common ideas of liberty.

It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution.

It has been said that it is unnecessary to load the Constitution with this provision, because it was not found effectual in the constitution of the particular States. It is true, there are a few particular States in which some of the most valuable articles have not, at one time or other, been violated; but it does not follow but they may have, to a certain degree, a salutary effect against the abuse of power. If they are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights. Besides this security, there is a great probability that such a declaration in the federal system would be enforced; because the State Legislatures will jealously and closely watch the operations of this Government, and be able to resist with more effect every assumption of power, than any other power on earth can do; and the greatest opponents to a Federal Government admit the State Legislatures to be sure guardians of the people’s liberty. I conclude, from this view of the subject, that it will be proper in itself, and highly politic, for the tranquillity of the public mind, and the stability of the Government, that we should offer something, in the form I have proposed, to be incorporated in the system of Government, as a declaration of the rights of the people.

In the next place, I wish to see that part of the Constitution revised which declares that the number of Representatives shall not exceed the proportion of one for every thirty thousand persons, and allows one Representative to every State which rates below that proportion. If we attend to the discussion of this subject, which has taken place in the State conventions, and even in the opinion of the friends to the Constitution, an alteration here is proper. It is the sense of the people of America, that the number of Representatives ought to be increased, but particularly that it should not be left in the discretion of the Government to diminish them, below that proportion, which certainly is in the power of the Legislature, as the Constitution now stands; and they may, as the population of the country increases, increase the House of Representatives to a very unwieldy degree. I confess I always thought this part of the Constitution defective, though not dangerous; and that it ought to be particularly attended to whenever Congress should go into the consideration of amendments.

There are several minor cases enumerated in my proposition, in which I wish also to see some alteration take place. That article which leaves it in the power of the Legislature to ascertain its own emolument, is one to which I allude. I do not believe this is a power which, in the ordinary course of Government, is likely to be abused. Perhaps of all the powers granted, it is least likely to abuse; but there is a seeming impropriety in leaving any set of men without control to put their hand into the public coffers, to take out money to put in their pockets; there is a seeming indecorum in such power, which leads me to propose a change. We have a guide to this alteration in several of the amendments which the different conventions have proposed. I have gone, therefore, so far as to fix it, that no law varying the compensation, shall operate until there is a change in the Legislature; in which case it cannot be for the particular benefit of those who are concerned in determining the value of the service.

I wish, also, in revising the Constitution, we may throw into that section, which interdicts the abuse of certain powers in the State Legislatures, some other provisions of equal, if not greater importance than those already made. The words, “No State shall pass any bill of attainder, *ex post facto* law,” &c., were wise and proper restrictions in the Constitution. I think there is more danger of those powers being abused by the State Governments than by the Government of the United States. The same may be said of other powers which they possess, if not controlled by the general principle, that laws are unconstitutional which infringe the rights of the community. I should, therefore, wish to extend this interdiction, and add, as I have stated in the 5th resolution, that no State shall violate the equal right of conscience, freedom of the press, or trial by jury in criminal cases; because it is proper that every Government should be disarmed of powers which trench upon those particular rights. I know, in some of the State constitutions, the power of the Government is controlled by such a declaration; but others are not. I cannot see any reason against obtaining even a double security on those points; and nothing can give a more sincere proof of the attachment of those who opposed this Constitution to these great and important rights, than to see them join in obtaining the security I have now proposed; because it must be admitted, on all hands, that the State Governments are as liable to attack these invaluable privileges as the General Government is, and therefore ought to be as cautiously guarded against.

I think it will be proper, with respect to the judiciary powers, to satisfy the public mind on those points which I have mentioned. Great inconvenience has been apprehended to suitors from the distance they would be dragged to obtain justice in the Supreme Court of the United States, upon an appeal on an action for a small debt. To remedy this, declare that no appeal shall be made unless the matter in controversy amounts to a particular sum; this, with the regulations respecting jury trials in criminal cases, and suits at common law, it is to be hoped, will quiet and reconcile the minds of the people to that part of the Constitution.

I find, from looking into the amendments proposed by the State conventions, that several are particularly anxious that it should be declared in the Constitution, that the powers not therein delegated should be reserved to the several States. Perhaps other words may define this more precisely than the whole of the instrument now does. I admit they may be deemed unnecessary; but there can be no harm in making such a declaration, if gentlemen will allow that the fact is as stated. I am sure I understand it so, and do therefore propose it.

These are the points on which I wish to see a revision of the Constitution take place. How far they will accord with the sense of this body, I cannot take upon me absolutely to determine; but I believe every gentleman will readily admit that nothing is in contemplation, so far as I have mentioned, that can endanger the beauty of the Government in any one important feature, even in the eyes of its most sanguine admirers. I have proposed nothing that does not appear to me as proper in itself, or eligible as patronised by a respectable number of our fellow-citizens; and if we can make the Constitution better in the opinion of those who are opposed to it, without weakening its frame, or abridging its usefulness in the judgment of those who are attached to it, we act the part of wise and liberal men to make such alterations as shall produce that effect.

Having done what I conceived was my duty, in bringing before this House the subject of amendments, and also stated such as I wish for and approve, and offered the reasons which occurred to me in their support, I shall content myself, for the present, with moving "that a committee be appointed to consider of and report such amendments as ought to be proposed by Congress to the Legislatures of the States, to become, if ratified by three-fourths thereof, part of the Constitution of the United States." By agreeing to this motion, the subject may be going on in the committee, while other important business is proceeding to a conclusion in the House. I should advocate greater despatch in the business of amendments, if I were not convinced of the absolute necessity there is of pursuing the organization of the Government; because I think we should obtain the confidence of our fellow-citizens, in proportion as we fortify the rights of the people against the encroachments of the Government.

***TO THOMAS JEFFERSON. mad. mss.* - James Madison, *The Writings, vol. 5 (1787-1790)* [1904]**

Edition used:

The Writings of James Madison, comprising his Public Papers and his Private Correspondence, including his numerous letters and documents now for the first time printed, ed. Gaillard Hunt (New York: G.P. Putnam's Sons, 1900). Vol. 5.

New York, Oc[r] 17, 1788.

Dear Sir,—

I have written a number of letters to you since my return here, and shall add this by another casual opportunity just notified to me by Mr. St. John. Your favor of July 31 came to hand the day before yesterday. The pamphlets of the Marquis Condorcet & Mr. Dupont referred to in it have also been received. Your other letters inclosed to the Delegation have been and will be disposed of as you wish; particularly those to M[r] Eppes & Col. Lewis.

Nothing has been done on the subject of the *outfit,* there not having been a Congress of nine States for some time, nor even of seven for the last week. It is pretty certain that there will not again be a quorum of either number within the present year, and by no means certain that there will be one at all under the old Confederation. The Committee finding that nothing could be done have neglected to make a report as yet. I have spoken with a member of it in order to get one made, that the case may fall of course and in a favorable shape within the attention of the New Government. The fear of a precedent will probably lead to an allowance for a limited time of the *salary,*[1]*as enjoyed originally* by *foreign ministers,* in *preference to a separate allowance for outfit.* One of the *members* of the *treasury board,* who ought, if certain facts have *not escaped his memory, to witness the reasonableness of your* calculations, *takes occasion I find to impress a contrary idea.* Fortunately *his influence will not be a very formidable obstacle to right.*

The States which have adopted the New Constitution are all proceeding to the arrangements for putting it into action in March next. Pennsylv[a]. alone has as yet actually appointed deputies & that only for the Senate. My last mention that these were Mr. R. Morris & a Mr. McClay. How the other elections there & elsewhere will run is matter of uncertainty. The Presidency alone unites the conjectures of the public. The vice president is not at all marked out by the general voice. As the President will be from a Southern State, it falls almost of course for the other part of the Continent to supply the next in rank. South Carolina may however think of Mr. Rutledge unless it should be previously discovered that votes will be wasted on him. The only candidates in the Northern States brought forward with their known consent are *Handcock*[1]*and Adams,* and *between these it seems probable the question will lie.* Both of them *are objectionable & would I think be postponed* by the *general suffrage to several others* if they *would accept the place. Handcock* is *weak ambitious a courtier of popularity, given to low intrigue,* and *lately reunited by a factious friendship with S. Adams. J. Adams* has made *himself obnoxious to many,* particularly in the *Southern States by the political principles avowed in his book.* Others *recollecting his cabal during the war against general Washington,* knowing *his extravagant self-*

importance, and *considering his preference of an unprofitable dignity* to some *place of emolument* better *adapted to private fortune as a proof of his* having *an eye to the presidency, conclude* that *he would not be a very cordial second to the General*, and that *an impatient ambition* might *even intrigue for a premature advancement.* The *danger would be the greater if* particular *factious characters*, as may be the case, *should get into the public councils. Adams* it appears, is *not unaware of* some *of the obstacles to his wish*, and *thro a letterto Smith* has *thrown out popular sentiments as to the proposed president.*

The little pamphlet herewith inclosed will give you a collective view of the alterations which have been proposed for the new Constitution. Various and numerous as they appear they certainly omit many of the true grounds of opposition. The articles relating to Treaties, to paper money, and to contracts, created more enemies than all the errors in the System positive & negative put together. It is true nevertheless that not a few, particularly in Virginia have contended for the proposed alterations from the most honorable & patriotic motives; and that among the advocates for the Constitution there are some who wish for further guards to public liberty & individual rights. As far as these may consist of a constitutional declaration of the most essential rights, it is probable they will be added; though there are many who think such addition unnecessary, and not a few who think it misplaced in such a Constitution. There is scarce any point on which the party in opposition is so much divided as to its importance and its propriety. My own opinion has always been in favor of a bill of rights; provided it be so framed as not to imply powers not meant to be included in the enumeration. At the same time I have never thought the omission a material defect, nor been anxious to supply it even by *subsequent* amendment, for any other reason than that it is anxiously desired by others. I have favored it because I supposed it might be of use, and if properly executed could not be of disservice. I have not viewed it in an important light—1. because I conceive that in a certain degree, though not in the extent argued by Mr. Wilson, the rights in question are reserved by the manner in which the federal powers are granted. 2 because there is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude. I am sure that the rights of conscience in particular, if submitted to public definition would be narrowed much more than they are likely ever to be by an assumed power. One of the objections in New England was that the Constitution by prohibiting religious tests, opened a door for Jews Turks & infidels. 3. because the limited powers of the federal Government and the jealousy of the subordinate Governments, afford a security which has not existed in the case of the State Governments, and exists in no other. 4. because experience proves the inefficacy of a bill of rights on those occasions when its controul is most needed. Repeated violations of these parchment barriers have been committed by overbearing majorities in every State. In Virginia I have seen the bill of rights violated in every instance where it has been opposed to a popular current. Notwithstanding the explicit provision contained in that instrument for the rights of Conscience, it is well known that a religious establishment w^{d} have taken place in that State, if the Legislative majority had found as they expected, a majority of the people in favor of the measure; and I am persuaded that if a majority of the people were now of one sect, the measure would still take place and on narrower ground than was then proposed, notwithstanding the additional obstacle which the law has since created. Wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the majority of the Community, and the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the

major number of the Constituents. This is a truth of great importance, but not yet sufficiently attended to; and is probably more strongly impressed on my mind by facts, and reflections suggested by them, than on yours which has contemplated abuses of power issuing from a very different quarter. Whereever there is an interest and power to do wrong, wrong will generally be done, and not less readily by a powerful & interested party than by a powerful and interested prince. The difference so far as it relates to the superiority of republics over monarchies, lies in the less degree of probability that interest may prompt more abuses of power in the former than in the latter; and in the security in the former agst an oppression of more than the smaller part of the Society, whereas in the former [latter] it may be extended in a manner to the whole. The difference so far as it relates to the point in question—the efficacy of a bill of rights in controuling abuses of power—lies in this: that in a monarchy the latent force of the nation is superior to that of the Sovereign, and a solemn charter of popular rights must have a great effect, as a standard for trying the validity of public acts, and a signal for rousing & uniting the superior force of the community; whereas in a popular Government, the political and physical power may be considered as vested in the same hands, that is in a majority of the people, and, consequently the tyrannical will of the Sovereign is not [to] be controuled by the dread of an appeal to any other force within the community. What use then it may be asked can a bill of rights serve in popular Governments? I answer the two following which, though less essential than in other Governments, sufficiently recommend the precaution: 1. The political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion. 2. Altho. it be generally true as above stated that the danger of oppression lies in the interested majorities of the people rather than in usurped acts of the Government, yet there may be occasions on which the evil may spring from the latter source; and on such, a bill of rights will be a good ground for an appeal to the sense of the community. Perhaps too there may be a certain degree of danger, that a succession of artful and ambitious rulers may by gradual & well timed advances, finally erect an independent Government on the subversion of liberty. Should this danger exist at all, it is prudent to guard agst it, especially when the precaution can do no injury. At the same time I must own that I see no tendency in our Governments to danger on that side. It has been remarked that there is a tendency in all Governments to an augmentation of power at the expence of liberty. But the remark as usually understood does not appear to me well founded. Power when it has attained a certain degree of energy and independence goes on generally to further degrees. But when below that degree, the direct tendency is to further degrees of relaxation, until the abuses of liberty beget a sudden transition to an undue degree of power. With this explanation the remark may be true; and in the latter sense only is it, in my opinion applicable to the Governments in America. It is a melancholy reflection that liberty should be equally exposed to danger whether the Government have too much or too little power, and that the line which divides these extremes should be so inaccurately defined by experience.

Supposing a bill of rights to be proper the articles which ought to compose it, admit of much discussion. I am inclined to think that *absolute* restrictions in cases that are doubtful, or where emergencies may overrule them, ought to be avoided. The restrictions however strongly marked on paper will never be regarded when opposed to the decided sense of the public, and after repeated violations in extraordinary cases they will lose even their ordinary efficacy. Should a Rebellion or insurrection alarm the people as well as the Government, and a suspension of the Hab. Corp. be dictated by the alarm, no written prohibitions on earth would prevent the measure.

Should an army in time of peace be gradually established in our neighborhood by Brit^{n}. or Spain, declarations on paper would have as little effect in preventing a standing force for the public safety. The best security agst these evils is to remove the pretext for them. With regard to Monopolies, they are justly classed among the greatest nuisances in Government. But is it clear that as encouragements to literary works and ingenious discoveries, they are not too valuable to be wholly renounced? Would it not suffice to reserve in all cases a right to the public to abolish the privilege at a price to be specified in the grant of it? Is there not also infinitely less danger of this abuse in our Governments than in most others? Monopolies are sacrifices of the many to the few. Where the power is in the few it is natural for them to sacrifice the many to their own partialities and corruptions. Where the power as with us is in the many not in the few the danger cannot be very great that the few will be thus favored. It is much more to be dreaded that the few will be unnecessarily sacrificed to the many.

I inclose a paper containing the late proceedings in Kentucky. I wish the ensuing Convention may take no step injurious to the character of the district, and favorable to the views of those who wish ill to the U. States. One of my late letters communicated some circumstances which will not fail to occur on perusing the objects of the proposed Convention in next month. Perhaps however there may be less connection between the two cases than at first one is ready to conjecture.

I am, D^{r} sir with the sincerest esteem & affect

2. **Washington's Views of the Democratic Societies and the "Whiskey Rebellion,"** George Washington, Philadelphia, to Burgess Ball, September 25, 1794[1]

Dear Sir:

….I hear with the greatest pleasure of the spirit which so generally pervades the Militia of every State that has been called upon, on the present occasion; and of the decided discountenance the Incendiaries of public peace and order have met with in their attempt to spread their nefarious doctrines, with a view to poison and discontent the minds of the people against the government; particularly by endeavouring to have it believed that their liberties were assailed, and that all the wicked and abominable measures that cod. be devised (under specious guises) are practiced to sap the Constitution, and lay the foundation of future Slavery.

The Insurrection in the Western counties of this State is a striking evidence of this; and may be considered as the first *ripe fruit* of the Democratic Societies. I did not, I must confess; expect their labours would come to maturity so soon; though I never had a doubt, that such conduct would produce some such issue; if it did not meet the frown of those who were well disposed to order and good government, in time; for can any thing be more absurd, more arrogant, or more pernicious to the peace of Society, than for self created bodies, forming themselves into *permanent* Censors, and under the shade of Night in a conclave, resolving that acts of Congress which have undergone the most deliberate, and solemn discussion by the Representatives of the people, chosen for the express purpose, and bringing with them from the different parts of the Union the sense of their Constituents, endeavouring as far as the nature of the thing will admit, to form *that will* into Laws for the government of the whole; I say, under these circumstances, for a self created, *permanent* body, (for no one denies the right of the people to meet occasionally, to petition for, or to remonstrate against, any Act of the Legislature &ca) to declare that *this act* is unconstitutional, and *that* act is pregnant of mischief; and that all who vote contrary to their dogmas are actuated by selfish motives, or under foreign influence; nay in plain terms are traiters to their Country, is such a stretch of arrogant presumption as is not to be reconciled with laudable motives: especially when we see the same set of men endeavouring to destroy all confidence in the Administration, by arraigning all its acts, without knowing on what ground, or with what information it proceeds and this without regard to decency or truth. These things were evidently intended, and could not fail without counteraction, to disquiet the public mind; but I hope, and trust, they will work their own cure; especially when it is known, more generally than it is, that the Democratic Society of this place (from which the others have emanated) was instituted by Mr. Genet for the express purpose of dissention, and to draw a line between the people and the government, after he found the Officers of the latter would not yield to the hostile measures in which he wanted to embroil this Country.

I hope this letter will find you, Mrs. Ball and the family in better health than when you wrote last. remember me to them, and be assured that I remain Your Affectionate.

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[1] *George Washington: A Collection*, comp. and ed. by W.B. Allen (Indianapolis: Liberty Fund, 1988), accessed from http://oll.libertyfund.org/title/848/102147.

3. Jefferson on Washington, the Democratic Societies, and the Whiskey Rebellion, December, 1794

Thomas Jefferson, Monticello, to James Madison, December 28, 1794[1]

Dear Sir,--

....The denunciation of the democratic societies is one of the extraordinary acts of boldness of which we have seen so many from the fraction of monocrats. It is wonderful indeed, that the President should have permitted himself to be the organ of such an attack on the freedom of discussion, the freedom of writing, printing & publishing. It must be a matter of rare curiosity to get at the modifications of these rights proposed by them, and to see what line their ingenuity would draw between democratical societies, whose avowed object is the nourishment of the republican principles of our constitution, and the society of the Cincinnati, *a self-created* one, carving out for itself hereditary distinctions, lowering over our Constitution eternally, meeting together in all parts of the Union, periodically, with closed doors, accumulating a capital in their separate treasury, corresponding secretly & regularly, & of which society the very persons denouncing the democrats are themselves the fathers, founders, & high officers. Their sight must be perfectly dazzled by the glittering of crowns & coronets, not to see the extravagance of the proposition to suppress the friends of general freedom, while those who wish to confine that freedom to the few, are permitted to go on in their principles & practices…. And with respect to the transactions against the excise law, it appears to me that you are all swept away in the torrent of governmental opinions, or that we do not know what these transactions have been. We know of none which, according to the definitions of the law, have been anything more than riotous. There was indeed a meeting to consult about a separation. But to consult on a question does not amount to a determination of that question in the affirmative, still less to the acting on such a determination; but we shall see, I suppose, what the court lawyers, & courtly judges, & would-be ambassadors will make of it. The excise law is an infernal one. The first error was to admit it by the Constitution; the 2d., to act on that admission; the 3d & last will be, to make it the instrument of dismembering the Union, & setting us all afloat to chuse which part of it we will adhere to. The information of our militia, returned from the Westward, is uniform, that tho the people there let them pass quietly, they were objects of their laughter, not of their fear; that 1000 men could have cut off their whole force in a thousand places of the Alleganey; that their detestation of the excise law is universal, and has now associated to it a detestation of the government; & that separation which perhaps was a very distant & problematical event, is now near, & certain, & determined in the mind of every man. …

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[1] Paul Leicester Ford, ed., *The Works of Thomas Jefferson in Twelve Volumes*, Federal Edition, Library of Congress, American Memory website at http://memory.loc.gov/cgi-bin/query/r?ammem/mtj:@field(DOCID+@lit(tj080075))

5. Zenith or Nadir? Excerpts from 1798[1]

From the Sedition Act, approved July 14, 1798

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*. That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the government of the United States, from undertaking, performing, or executing his trust or duty: and if any person or persons, with intent as aforesaid, shall counsel, advise, or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanour, and on conviction before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term of not less than six months, nor exceeding five years; and further, at the discretion of the court, may be holden to find sureties for his good behaviour, in such sum, and for such time, as the said court may direct.

SECT. 2. *And be it further enacted*, That if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering, or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either House of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either House of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States; or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the Constitution of the United States; or to resist, oppose, or defeat any such law or act; or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

The Kentucky Resolutions of November, 1798 (Thomas Jefferson)

1. *Resolved*, That the several States composing, the United States of America, are not united on the principle of unlimited submission to their general government; but that, by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes — delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force: that to this compact each State acceded as a State, and

[1] Constitution Society website, http://www.constitution.org/cons/kent1798.htm, http://www.constitution.org/rf/sedition_1798.htm, and http://www.constitution.org/cons/virg1798.htm.

is an integral part, its co-States forming, as to itself, the other party: that the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress….

3. *Resolved*, That it is true as a general principle, and is also expressly declared by one of the amendments to the Constitutions, that "the powers not delegated to the United States by the Constitution, our prohibited by it to the States, are reserved to the States respectively, or to the people"; and that no power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States by the Constitution, nor prohibited by it to the States, all lawful powers respecting the same did of right remain, and were reserved to the States or the people…. And that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution, which expressly declares, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press": thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press: insomuch, that whatever violated either, throws down the sanctuary which covers the others, and that libels, falsehood, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals. That, therefore, the act of Congress of the United States, passed on the 14th day of July, 1798, intituled "An Act in addition to the act intituled An Act for the punishment of certain crimes against the United States," which does abridge the freedom of the press, is not law, but is altogether void, and of no force….

8th. *Resolved*, That a committee of conference and correspondence be appointed, who shall have in charge to communicate the preceding resolutions to the Legislatures of the several States: to assure them that this commonwealth continues in the same esteem of their friendship and union which it has manifested from that moment at which a common danger first suggested a common union: that it considers union, for specified national purposes, and particularly to those specified in their late federal compact, to be friendly, to the peace, happiness and prosperity of all the States: that faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation: that it does also believe, that to take from the States all the powers of self-government and transfer them to a general and consolidated government, without regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness or prosperity of these States; and that therefore this commonwealth is determined, as it doubts not its co-States are, to submit to undelegated, and consequently unlimited powers in no man, or body of men on earth: that in cases of an abuse of the delegated powers, the members of the general government, being chosen by the people, a change by the people would be the constitutional remedy; but, where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact, (*casus non fœderis*) to nullify of their own authority all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them: that nevertheless, this commonwealth, from

motives of regard and respect for its co States, has wished to communicate with them on the subject: that with them alone it is proper to communicate, they alone being parties to the compact, and solely authorized to judge in the last resort of the powers exercised under it, Congress being not a party, but merely the creature of the compact, and subject as to its assumptions of power to the final judgment of those by whom, and for whose use itself and its powers were all created and modified….

The Virginia Resolutions of December, 1798 (James Madison)

That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

That the General Assembly doth also express its deep regret, that a spirit has in sundry instances, been manifested by the federal government, to enlarge its powers by forced constructions of the constitutional charter which defines them; ...so as to consolidate the states by degrees, into one sovereignty, the obvious tendency and inevitable consequence of which would be, to transform the present republican system of the United States, into an absolute, or at best a mixed monarchy.

[The Sedition Act] exercises ... a power not delegated by the constitution, but on the contrary, expressly and positively forbidden by one of the amendments thereto; a power, which more than any other, ought to produce universal alarm, because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed, the only effectual guardian of every other right.

That this state having by its Convention, which ratified the federal Constitution, expressly declared, that among other essential rights, "the Liberty of Conscience and of the Press cannot be cancelled, abridged, restrained, or modified by any authority of the United States," and from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, having with other states, recommended an amendment for that purpose, which amendment was, in due time, annexed to the Constitution; it would mark a reproachable inconsistency, and criminal degeneracy, if an indifference were now shewn, to the most palpable violation of one of the Rights, thus declared and secured; and to the establishment of a precedent which may be fatal to the other.

Henry Lee, Report of the Minority on the Virginia Resolutions

22 Jan. 1799J. House of Delegates (Va.) 6:93--95 1798--99

The act intitled "An act in addition to the act instituted as an act for the punishment of certain crimes against the United States," and which is commonly called the sedition law, subjects to a fine not exceeding two thousand dollars, and to imprisonment not exceeding two years, any person who shall write, print, utter, or publish, or cause or procure to be written, printed, uttered or published, any false, scandalous, malicious writing or writings against the government of the United States, with intent to defame the said government of the United States, or either house of Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of Congress, or the said President, or to bring them, or either of them, into contempt or disrepute, or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up any sedition within the United States, or to excite any unlawful combination therein for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of such law, or of the powers in him vested by the constitution of the United States, or to resist, oppress, or defeat any such law or act, or to aid, encourage, or abet hostile designs of any foreign nation, against the United States, their people, or government; the person accused is to be tried by jury, and may give in evidence the truth of the matter contained in the libel.

To constitute the crime, the writing must be false, scandalous, and malicious, and the intent must be to effect some of the ill purposes described in the act.

To contend that there does not exist a power to punish writings coming within the description of this law, would be to assert the inability of our nation to preserve its own peace, and to protect themselves from the attempts of wicked citizens, who, incapable of quiet themselves, are incessantly employed in devising means to disturb the public repose.

Government is instituted and preserved for the general happiness and safety--the people therefore are interested in its preservation, and have a right to adopt measures for its security, as well against secret plots as open hostility. But government cannot be thus secured, if by falsehood and malicious slander, it is to be deprived of the confidence and affection of the people. It is vain to urge that truth will prevail, and that slander, when detected, recoils on the calumniator. The experience of the world, and our own experience, prove that a continued course of defamation will at length sully the fairest reputation, and will throw suspicion on the purest conduct. Although the calumnies of the factious and discontented may not poison the minds of the majority of the citizens, yet they will infect a very considerable number, and prompt them to deeds destructive of the public peace and dangerous to the general safety.

This, the people have a right to prevent: and therefore, in all the nations of the earth, where presses are known, some corrective of their licentiousness has been deemed indispensable. But it is contended that though this may be theoretically true, such is the peculiar structure of our government, that this power has either never been confided to, or has been withdrawn from the legislature of this union.--We will examine these positions. The power of making all laws which shall be necessary and proper for carrying into execution all powers vested by the constitution in the government of the United States, or in any

department or officer thereof, is by the concluding clause of the eighth section of the first article, expressly delegated to congress. This clause is admitted to authorize congress to pass any act for the punishment of those who would resist the execution of the laws, because such an act would be incontestably necessary and proper for carrying into execution the powers vested in the government. If it authorizes the punishment of actual resistance, does it not also authorize the punishment of those acts, which are criminal in themselves, and which obviously lead to and prepare resistance? Would it not be strange, if, for the purpose of executing the legitimate powers of the government, a clause like that which has been cited should be so construed as to permit the passage of laws punishing open resistance, and yet to forbid the passage of laws punishing acts which constitute the germ from which resistance springs? That the government must look on, and see preparations for resistance which it shall be unable to control, until they shall break out in open force? This would be an unreasonable and improvident construction of the article under consideration. That continued calumnies against the government have this tendency, is demonstrated by uninterrupted experience. They will, if unrestrained, produce in any society convulsions, which if not totally destructive of, will yet be very injurious to, its prosperity and welfare. It is not to be believed that the people of the western parts of Pennsylvania could have been deluded into that unprovoked and wanton insurrection, which called forth the militia of the neighbouring states, if they had not been at the same time irritated and seduced by calumnies with which certain presses incessantly teemed into the opinion that the people of America, instead of supporting their government and their laws, would join in their subversion. Those calumnies then, tended to prevent the execution of the laws of the union, and such seems to be their obvious and necessary tendency.

To punish all malicious calumnies against an individual with an intent to defame him, is a wrong on the part of the calumniator, and an injury to the individual, for which the laws afford redress. To write or print these calumnies is such an aggravation of the crime, as to constitute an offence against the government, and the author of the libel is subject to the additional punishment which may be inflicted under an indictment. To publish malicious calumnies against government itself, is a wrong on the part of the calumniator, and an injury to all those who have an interest in the government. Those who have this interest and have sustained the injury, have the natural right to an adequate remedy. The people of the United States have a common interest in their govenment, and sustain in common the injury which affects that government. The people of the United States therefore have a right to the remedy for that injury, and are substantially the party seeking redress. By the 2d section of the 3d article of the constitution, the judicial power of the United States is extended to controversies to which the United States shall be a party; and by the same article it is extended to all cases in law and equity arising under the constitution, the laws of the United States, and treaties made or which shall be made under their authority. What are cases arising under the constitution, as contradistinguished from those which arise under the laws made in pursuance thereof? They must be cases triable by a rule which exists independent of any act of the legislature of the union. That rule is the common or unwritten law which pervades all America, and which declaring libels against government to be a punishable offence, applies itself to and protects any government which the will of the people may establish. The judicial power of the United States, then, being extended to the punishment of libels against the government, as a

common law offence, arising under the constitution which create the government, the general clause gives to the legislature of the union the right to make such laws as shall give that power effect.

That such was the contemporaneous construction of the constitution, is obvious from one of the amendments which have been made to it. The 3d amendment which declares, that Congress shall make no law abridging the liberty of the press, is a general construction made by all America on the original instrument admitting its application to the subject. It would have been certainly unnecessary thus to have modified the legislative powers of Congress concerning the press, if the power itself does not exist.

But altho' the original constitution may be supposed to have enabled the government to defend itself against false and malicious libels, endangering the peace, and threatening the tranquility of the American people, yet it is contended that the 3d amendment to that instrument, has deprived it of this power.

The amendment is in these words,--"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or ABRIDGING the freedom of speech or of the press."

In a solemn instrument, as is a constitution, words are well weighed and considered before they are adopted. A remarkable diversity of expression is not used, unless it be designed to manifest a difference of intention. Congress is prohibited from making any law RESPECTIONG a religious establishment, but not from making any law RESPECTING the press. When the power of Congress relative to the press is to be limited, the word RESPECTING is dropt, and Congress is only restrained from the passing any law ABRIDGING its liberty. This difference of expression with respect to religion and the press, manifests a difference of intention with respect to the power of the national legislature over those subjects, both in the person who drew, and in those who adopted this amendment.

All ABRIDGMENT of the freedom of the press is forbidden, but it is only an ABRIDGEMENT of that freedom which is forbidden. It becomes then necessary in order to determine whether the act in question be unconstitutional or not, to inquire whether it does in fact ABRIDGE the freedom of the press.

The act is believed not to have that operation, for two reasons.

1st. A punishment of the licentiousness is not considered as a restriction of the freedom of the press,

2d. The act complained of does not punish any writing not before punishable, nor does it inflict a more severe penalty than that to which the same writing was before liable.

1st. If by freedom of the press is meant a perfect exemption from all punishment for whatever may be published, that freedom never has, and most probably never will exist. It is known to all, that the person who writes or publishes a libel, may be both sued and indicted, and must bear the penalty which the judgment of his country inflicts upon him. It is also known to all that the person who shall libel the government of the state, is for that offence, punishable in the like manner. Yet this liability to punishment for slanderous and malicious publications has never been considered as detracting from the liberty of the press. In fact the liberty of the press is a term which has a definite and appropriate

signification, completely understood. It signifies a liberty to publish, free from previous restraint, any thing and every thing at the discretion of the printer only, but not the liberty of spreading with impunity false and scandalous slanders which may destroy the peace and mangle the reputation of an individual or of a community.

If this definition of the term be correct, and it is presumed that its correctness is not to be questioned, then a law punishing the authors and publishers of false, malicious and scandalous libels can be no attack on the liberty of the press.

But the act complained of is no abridgment of the liberty of the press, for another reason.

2d. It does not punish any writing not before punishable, nor does it inflict a heavier penalty than the same writing was before liable to.

No man will deny, that at common law, the author and publisher of a false, scandalous and malicious libel against the government or an individual, were subject to fine and imprisonment, at the discretion of the judge. Nor will it be denied, that previous to our revolution, the common law was the law of the land throughout the now United States.

We believe it to be a principle incontestibly true, that a change of government does not dissolve obligations previously created, does not annihilate existing laws, and dissolve the bonds of society; but that a People passing from one form of government to another, retain in full force all their municipal institutions not necessarily changed by the change of government. If this be true, then the common law continued to be the law of the land after the revolution, and was of complete obligation even before the act of our Assembly for its adoption. Whether similar acts have been passed by the legislature of other states or not, it is certain that in every state the common law is admitted to be in full force, except as it may have been altered by the statute law. The only question is, whether the doctrines of the common law are applicable to libels against the government of the United States, as well as to libels against the governments of particular states. For such a distinction there seems to be no sufficient reason. It is not to a magistrate of this or that description that the rules of the common law apply. That he is a magistrate, that he is cloathed with the authority of the laws, that he is invested with power by the people, is a sufficient title to the protection of the common law. The government of the United States is for certain purposes as entirely the government of each state, chosen by the people thereof, and cloathed with their authority, as the government of each particular state is the government of every subdivision of that state; and no satisfactory reason has been heretofore assigned why a general rule common to all, and punishing generally the malicious calumniators of magistrates, should not be as applicable to magistrates chosen for the whole, as to those chosen for its different parts.

If then it were even true that the punishment of the printer of malicious falsehoods affected the liberty of the press, yet the act does not abridge that liberty, since it does not substitute a harsher or severer rule of punishment than that which before existed.

On points so extremely interesting, a difference of opinion will be entertained. On such occasions all parties must be expected to maintain their real opinions, but to maintain them with moderation and

with decency. The will of the majority must prevail, or the republican principle is abandoned and the nation is destroyed. If upon every constitutional question which presents itself, or on every question we choose to term constitutional, the construction of the majority shall be forcibly opposed, and hostility to the government excited throughout the nation, there is an end of our domestic peace, and we may ever bid adieu to our representative government.

The legislature of Virginia has itself passed more than one unconstitutional law, but they have not been passed with an intention to violate the constitution. On being decided to be unconstitutional by the legitimate authority, they have been permitted to fall. Had the judges deemed them constitutional, they should have been maintained. The same check, nor is it a less efficient one, exists in the government of the union. The judges of the United States are as independent as the judges of the state of Virginia, nor is there any reason to believe them less wise and less virtuous. It is their province, and their duty to construe the constitution and the laws, and it cannot be doubted, but that they will perform this duty faithfully and truly. They will perform it unwarmed by political debate, uninfluenced by party zeal. Let us in the mean time seek a repeal of any acts we may disapprove, by means authorized by our happy constitution, but let us not endeavor to disseminate among our fellow citizens the most deadly hate against the government of their own creation, against the government, on the preservation of which we firmly believe the peace and liberty of America to depend, because in some respects its judgment has differed from our own.

The Founders' Constitution, Volume 5, Amendment I (Speech and Press), Document 20
http://press-pubs.uchicago.edu/founders/documents/amendI_speechs20.html, The University of Chicago Press

Thomas Jefferson, First Inaugural Address, March 4, 1801

Friends & Fellow Citizens,

Called upon to undertake the duties of the first Executive office of our country, I avail myself of the presence of that portion of my fellow citizens which is here assembled to express my grateful thanks for the favor with which they have been pleased to look towards me, to declare a sincere consciousness that the task is above my talents, and that I approach it with those anxious and awful presentiments which the greatness of the charge, and the weakness of my powers so justly inspire. A rising nation, spread over a wide and fruitful land, traversing all the seas with the rich productions of their industry, engaged in commerce with nations who feel power and forget right, advancing rapidly to destinies beyond the reach of mortal eye; when I contemplate these transcendent objects, and see the honour, the happiness, and the hopes of this beloved country committed to the issue and the auspices of this day, I shrink from the contemplation & humble myself before the magnitude of the undertaking. Utterly indeed should I despair, did not the presence of many, whom I here see, remind me, that, in the other high authorities provided by our constitution, I shall find resources of wisdom, of virtue, and of zeal, on which to rely under all difficulties. To you, then, gentlemen, who are charged with the sovereign functions of legislation, and to those associated with you, I look with encouragement for that guidance and support which may enable us to steer with safety the vessel in which we are all embarked, amidst the conflicting elements of a troubled world.

During the contest of opinion through which we have past, the animation of discusions and of exertions has sometimes worn an aspect which might impose on strangers unused to think freely, and to speak and to write what they think; but this being now decided by the voice of the nation, announced according to the rules of the constitution all will of course arrange themselves under the will of the law, and unite in common efforts for the common good. All too will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate would be oppression. Let us then, fellow citizens, unite with one heart and one mind, let us restore to social intercourse that harmony and affection without which liberty, and even life itself, are but dreary things. And let us reflect that having banished from our land that religious intolerance under which mankind so long bled and suffered, we have yet gained little if we countenance a political intolerance, as despotic, as wicked, and capable of as bitter and bloody persecutions. During the throes and convulsions of the ancient world, during the agonising spasms of infuriated man, seeking through blood and slaughter his long lost liberty, it was not wonderful that the agitation of the billows should reach even this distant and peaceful shore; that this should be more felt and feared by some and less by others; and should divide opinions as to measures of safety; but every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all republicans: we are all federalists. If there be any among us who would wish to dissolve this Union, or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated, where reason is left free to combat it. I know indeed that some honest men fear that a republican government cannot be strong; that this government is not strong enough. But would the honest patriot, in the full tide of successful experiment, abandon a government which has so far kept us

free and firm, on the theoretic and visionary fear, that this government, the world's best hope, may, by possibility, want energy to preserve itself? I trust not. I believe this, on the contrary, the strongest government on earth. I believe it the only one, where every man, at the call of the law, would fly to the standard of the law, and would meet invasions of the public order as his own personal concern.—Sometimes it is said that man cannot be trusted with the government of himself. Can he then be trusted with the government of others? Or have we found angels, in the form of kings, to govern him? Let history answer this question.

Let us then, with courage and confidence, pursue our own federal and republican principles; our attachment to union and representative government. Kindly separated by nature and a wide ocean from the exterminating havoc of one quarter of the globe; too high minded to endure the degradations of the others, possessing a chosen country, with room enough for our descendants to the thousandth and thousandth generation, entertaining a due sense of our equal right to the use of our own faculties, to the acquisitions of our own industry, to honor and confidence from our fellow citizens, resulting not from birth, but from our actions and their sense of them, enlightened by a benign religion, professed indeed and practised in various forms, yet all of them inculcating honesty, truth, temperance, gratitude and the love of man, acknowledging and adoring an overruling providence, which by all its dispensations proves that it delights in the happiness of man here, and his greater happiness hereafter; with all these blessings, what more is necessary to make us a happy and a prosperous people? Still one thing more, fellow citizens, a wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government; and this is necessary to close the circle of our felicities.

About to enter, fellow citizens, on the exercise of duties which comprehend every thing dear and valuable to you, it is proper you should understand what I deem the essential principles of our government, and consequently those which ought to shape its administration. I will compress them within the narrowest compass they will bear, stating the general principle, but not all its limitations.—Equal and exact justice to all men, of whatever state or persuasion, religious or political:—peace, commerce, and honest friendship with all nations, entangling alliances with none:—the support of the state governments in all their rights, as the most competent administrations for our domestic concerns, and the surest bulwarks against anti-republican tendencies:—the preservation of the General government in its whole constitutional vigor, as the sheet anchor of our peace at home, and safety abroad: a jealous care of the right of election by the people, a mild and safe corrective of abuses which are lopped by the sword of revolution where peaceable remedies are unprovided:—absolute acquiescence in the decisions of the majority, the vital principle of republics, from which is no appeal but to force, the vital principle and immediate parent of the despotism:—a well disciplined militia, our best reliance in peace, and for the first moments of war, till regulars may relieve them:—the supremacy of the civil over the military authority:—economy in the public expence, that labor may be lightly burthened:—the honest payment of our debts and sacred preservation of the public faith:—encouragement of agriculture, and of commerce as its handmaid:—the diffusion of information, and arraignment of all abuses at the bar of the public reason:—freedom of religion; freedom of the press;

and freedom of person, under the protection of the Habeas Corpus:—and trial by juries impartially selected. These principles form the bright constellation, which has gone before us and guided our steps through an age of revolution and reformation. The wisdom of our sages, and blood of our heroes have been devoted to their attainment:—they should be the creed of our political faith; the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps, and to regain the road which alone leads to peace, liberty and safety.

I repair then, fellow citizens, to the post you have assigned me. With experience enough in subordinate offices to have seen the difficulties of this the greatest of all, I have learnt to expect that it will rarely fall to the lot of imperfect man to retire from this station with the reputation, and the favor, which bring him into it. Without pretensions to that high confidence you reposed in our first and greatest revolutionary character, whose pre-eminent services had entitled him to the first place in his country's love, and destined for him the fairest page in the volume of faithful history, I ask so much confidence only as may give firmness and effect to the legal administration of your affairs. I shall often go wrong through defect of judgment. When right, I shall often be thought wrong by those whose positions will not command a view of the whole ground. I ask your indulgence for my own errors, which will never be intentional; and your support against the errors of others, who may condemn what they would not if seen in all its parts. The approbation implied by your suffrage, is a great consolation to me for the past; and my future solicitude will be, to retain the good opinion of those who have bestowed it in advance, to conciliate that of others by doing them all the good in my power, and to be instrumental to the happiness and freedom of all.

Relying then on the patronage of your good will, I advance with obedience to the work, ready to retire from it whenever you become sensible how much better choices it is in your power to make. And may that infinite power, which rules the destinies of the universe, lead our councils to what is best, and give them a favorable issue for your peace and prosperity.

Printed in the National Intelligencer, 4 Mch. 1801; at head of text: "President's Speech this day At 12 o'clock, Thomas Jefferson, President of the United States, Took the oath of office required by the Constitution, in the Senate Chamber, in the presence of the Senate, the members of the House of Representatives, the public officers, and a large concourse of citizens. Previously to which he delivered the following Address:" (this version in DLC: TJ Papers, 110:18838).

"III. First Inaugural Address, 4 March 1801," Founders Online, National Archives (http://founders.archives.gov/documents/Jefferson/01-33-02-0116-0004 [last update: 2014-12-01]). Source: *The Papers of Thomas Jefferson*, vol. 33, *17 February–30 April 1801*, ed. Barbara B. Oberg. Princeton: Princeton University Press, 2006, pp. 148–152.

Lecture: James Madison
Kevin R. Hardwick

Document 1:

James Madison to Edmund Randolph

8 Apr. 1787 *Papers 9:369--71*

I am glad to find that you are turning your thoughts towards the business of May next. My despair of your finding the necessary leisure as signified in one of your letters, with the probability that some leading propositions at least would be expected from Virga. had engaged me in a closer attention to the subject than I should otherwise have given. I will just hint the ideas which have occurred, leaving explanations for our interview.

I think with you that it will be well to retain as much as possible of the old Confederation, tho' I doubt whether it may not be best to work the valuable articles into the new System, instead of engrafting the latter on the former. I am also perfectly of your opinion that in framing a system, no material sacrifices ought to be made to local or temporary prejudices. An explanatory address must of necessity accompany the result of the Convention on the main object. I am not sure that it will be practicable to present the several parts of the reform in so detached a manner to the States as that a partial adoption will be binding. Particular States may view the different articles as conditions of each other, and would only ratify them as such. Others might ratify them as independent propositions. The consequence would be that the ratification of both would go for nothing. I have not however examined this point thoroughly. In truth my ideas of a reform strike so deeply at the old Confederation, and lead to such a systematic change, that they scarcely admit of the expedient.

I hold it for a fundamental point that an individual independence of the States, is utterly irreconcileable with the idea of an aggregate sovereignty. I think at the same time that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient. Let it be tried then whether any middle ground can be taken which will at once support a due supremacy of the national authority, and leave in force the local authorities so far as they can be subordinately useful.

The first step to be taken is I think a change in the principle of representation. According to the present form of the Union, an equality of suffrage if not just towards the larger members of it, is at least safe to them, as the liberty they exercise of rejecting or executing the acts of Congress, is uncontroulable by the nominal sovereignty of Congress. Under a system which would operate without the

intervention of the States, the case would be materially altered. A vote from Delaware would have the same effect as one from Massts. or Virga.

Let the national Government be armed with a positive & compleat authority in all cases where uniform measures are necessary. As in trade &c. &c. Let it also retain the powers which it now possesses.

Let it have a negative in all cases whatsoever on the Legislative Acts of the States as the K. of G. B. heretofore had. This I conceive to be essential and the least possible abridgement of the State Soveriegnties. Without such a defensive power, every positive power that can be given on paper will be unavailing. It will also give internal stability to the States. There has been no moment since the peace at which the federal assent wd have been given to paper money &c. &c.

Let this national supremacy be extended also to the Judiciary departmt. If the judges in the last resort depend on the States & are bound by their oaths to them and not to the Union, the intention of the law and the interests of the nation may be defeated by the obsequiousness of the Tribunals to the policy or prejudices of the States. It seems at least essential that an appeal should lie to some national tribunals in all cases which concern foreigners, or inhabitants of other States. The admiralty jurisdiction may be fully submitted to the national Government.

The supremacy of the whole in the Executive department seems liable to some difficulty. Perhaps an extension of it to the case of the Militia may be necessary & sufficient.

A Government formed of such extensive powers ought to be well organized. The Legislative department may be divided into two branches: One of them to be chosen every years by the Legislatures or the people at large; the other to consist of a more select number, holding their appointments for a longer term and going out in rotation. Perhaps the negative on the State laws may be most conveniently lodged in this branch. A Council of Revision may be superadded, including the great ministerial officers.

A National Executive will also be necessary. I have scarcly venturd to form my own opinion yet either of the manner in which it ought to be constituted or of the authorities with which it ought [to be] cloathed.

An article ought to be inserted expressly guarantying the tranquility of the States agst. internal as well as external dangers.

To give the new system its proper energy it will be desirable to have it ratified by the authority of the people, and not merely by that of the Legislatures.

I am afraid you will think this project, if not extravagant, absolutely unattainable and unworthy of being attempted. Conceiving it my self to go no further than is essential, The objections drawn from this source are to be laid aside. I flatter myself however that they may be less formidable on trial than in contemplation. The change in the principle of representation will be relished by a majority of the States, and those too of most influence. The Northern States will be reconciled to it by the *actual* superiority of their populousness: the Southern by their *expected* superiority in this point. This principle established, the repugnance of the large States to part with power will in a great degree subside, and the smaller States must ultimately yield to the predominant Will. It is also already seen by many & must by degrees be seen by all that unless the Union be organized efficiently & on Republican Principles, innovations of a much more objectionable form may be obtruded, or in the most favorable event, the partition of the Empire into rival & hostile confederacies, will ensue.

The Founders' Constitution
Volume 1, Chapter 6, Document 9
http://press-pubs.uchicago.edu/founders/documents/v1ch6s9.html
The University of Chicago Press

The Papers of James Madison. Edited by William T. Hutchinson et al. Chicago and London: University of Chicago Press, 1962--77 (vols. 1--10); Charlottesville: University Press of Virginia, 1977--(vols. 11--).

Document 2:

James Madison to George Washington

16 Apr. 1787 *Papers 9:382--85*

I have been honoured with your letter of the 31 of March, and find with much pleasure that your views of the reform which ought to be pursued by the Convention, give a sanction to those which I have entertained. Temporising applications will dishonor the Councils which propose them, and may foment the internal malignity of the disease, at the same time that they produce an ostensible palliation of it. Radical attempts, although unsuccessful, will at least justify the authors of them.

Having been lately led to revolve the subject which is to undergo the discussion of the Convention, and formed in my mind *some* outlines of a new system, I take the liberty of submitting them without apology, to your eye.

Conceiving that an individual independence of the States is utterly irreconcileable with their aggregate sovereignty; and that a consolidation of the whole into one simple republic would be as inexpedient as it is unattainable, I have sought for some middle ground, which may at once support a due supremacy of the national authority, and not exclude the local authorities wherever they can be subordinately useful.

I would propose as the ground-work that a change be made in the principle of representation. According to the present form of the Union in which the intervention of the States is in all great cases necessary to effectuate the measures of Congress, an equality of suffrage, does not destroy the inequality of importance, in the several members. No one will deny that Virginia and Massts. have more weight and influence both within & without Congress than Delaware or Rho. Island. Under a system which would operate in many essential points without the intervention of the State legislatures, the case would be materially altered. A vote in the national Councils from Delaware, would then have the same effect and value as one from the largest State in the Union. I am ready to believe that such a change would not be attended with much difficulty. A majority of the States, and those of greatest influence, will regard it as favorable to them. To the Northern States it will be recommended by their present populousness; to the Southern by their expected advantage in this respect. The lesser States must in every event yield to the predominant will. But the consideration which particularly urges a change in the representation is that it will obviate the principal objections of the larger States to the necessary concessions of power.

I would propose next that in addition to the present federal powers, the national Government should be armed with positive and compleat authority in all cases which require uniformity; such as the regulation of trade, including the right of taxing both exports & imports, the fixing the terms and forms of naturalization, &c &c.

Over and above this positive power, a negative *in all cases whatsoever* on the legislative acts of the States, as heretofore exercised by the Kingly prerogative, appears to me to be absolutely necessary, and to be the least possible encroachment on the State jurisdictions. Without this defensive power, every positive power that can be given on paper will be evaded & defeated. The States will continue to invade the national jurisdiction, to violate treaties and the law of nations & to harrass each other with rival and spiteful measures dictated by mistaken views of interest. Another happy effect of this prerogative would be its controul on the internal vicisitudes of State policy; and the aggressions of interested majorities on the rights of minorities and of individuals. The great desideratum which has not yet been found for Republican Governments, seems to be some disinterested & dispassionate umpire in disputes between different passions & interests in the State. The majority who alone have the right of decision, have frequently an interest real or supposed in abusing it. In Monarchies the sovereign is more neutral to the interests and views of different

parties; but unfortunately he too often forms interests of his own repugnant to those of the whole. Might not the national prerogative here suggested be found sufficiently disinterested for the decision of local questions of policy, whilst it would itself be sufficiently restrained from the pursuit of interests adverse to those of the whole Society? There has not been any moment since the peace at which the representatives of the union would have given an assent to paper money or any other measure of a kindred nature.

The national supremacy ought also to be extended as I conceive to the Judiciary departments. If those who are to expound & apply the laws, are connected by their interests & their oaths with the particular States wholly, and not with the Union, the participation of the Union in the making of the laws may be possibly rendered unavailing. It seems at least necessary that the oaths of the Judges should include a fidelity to the general as well as local constitution, and that an appeal should lie to some national tribunals in all cases to which foreigners or inhabitants of other States may be parties. The admiralty jurisdiction seems to fall entirely within the purview of the national Government.

The national supremacy in the Executive departments is liable to some difficulty, unless the officers administering them could be made appointable by the supreme Government. The Militia ought certainly to be placed in some form or other under the authority which is entrusted with the general protection and defence.

A Government composed of such extensive powers should be well organized and balanced. The Legislative department might be divided into two branches; one of them chosen every years by the people at large, or by the legislatures; the other to consist of fewer members, to hold their places for a longer term, and to go out in such a rotation as always to leave in office a large majority of old members. Perhaps the negative on the laws might be most conveniently exercised by this branch. As a further check, a council of revision including the great ministerial officers might be superadded.

A national Executive must also be provided. I have scarcely ventured as yet to form my own opinion either of the manner in which it ought to be constituted or of the authorities with which it ought to be cloathed.

An article should be inserted expressly guarantying the tranquillity of the States against internal as well as external dangers.

In like manner the right of coercion should be expressly declared. With the resources of Commerce in hand, the national administration might always find means of exerting it either by sea or land; But the difficulty & awkwardness of operating by

force on the collective will of a State, render it particularly desirable that the necessity of it might be precluded. Perhaps the negative on the laws might create such a mutuality of dependence between the General and particular authorities, as to answer this purpose. Or perhaps some defined objects of taxation might be submitted along with commerce, to the general authority.

To give a new System its proper validity and energy, a ratification must be obtained from the people, and not merely from the ordinary authority of the Legislatures. This will be the more essential as inroads on the *existing Constitutions* of the States will be unavoidable.

The Founders' Constitution
Volume 1, Chapter 8, Document 6
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Document 3:

James Madison to Thomas Jefferson

24 Oct. 1787 *Papers 10:207--15*

You will herewith receive the result of the Convention, which continued its Session till the 17th. of September. I take the liberty of making some observations on the subject which will help to make up a letter, if they should answer no other purpose.

It appeared to be the sincere and unanimous wish of the Convention to cherish and preserve the Union of the States. No proposition was made, no suggestion was thrown out, in favor of a partition of the Empire into two or more Confederacies.

It was generally agreed that the objects of the Union could not be secured by any system founded on the principle of a confederation of sovereign States.
A *voluntary* observance of the federal law by all the members, could never be hoped for. A *compulsive* one could evidently never be reduced to practice, and if it could, involved equal calamities to the innocent & the guilty, the necessity of a military force both obnoxious & dangerous, and in general, a scene resembling much more a civil war, than the administration of a regular Government.

Hence was embraced the alternative of a Government which instead of operating, on the States, should operate without their intervention on the individuals composing them; and hence the change in the principle and proportion of representation.

This ground-work being laid, the great objects which presented themselves were 1. to unite a proper energy in the Executive and a proper stability in the Legislative departments, with the essential characters of Republican Government. 2. to draw a line of demarkation which would give to the General Government every power requisite for general purposes, and leave to the States every power which might be most beneficially administered by them. 3. to provide for the different interests of different parts of the Union. 4. to adjust the clashing pretensions of the large and small States. Each of these objects was pregnant with difficulties. The whole of them together formed a task more difficult than can be well concieved by those who were not concerned in the execution of it. Adding to these considerations the natural diversity of human opinions on all new and complicated subjects, it is impossible to consider the degree of concord which ultimately prevailed as less than a miracle.

The first of these objects as it respects the Executive, was peculiarly embarrassing. On the question whether it should consist of a single person, or a plurality of coordinate members, on the mode of appointment, on the duration in office, on the degree of power, on the re-eligibility, tedious and reiterated discussions took place. The plurality of co-ordinate members had finally but few advocates. Governour Randolph was at the head of them. The modes of appointment proposed were various, as by the people at large--by electors chosen by the people--by the Executives of the States--by the Congress, some preferring a joint ballot of the two Houses--some a separate concurrent ballot allowing to each a negative on the other house--some a nomination of several canditates by one House, out of whom a choice should be made by the other. Several other modifications were started. The expedient at length adopted seemed to give pretty general satisfaction to the members. As to the duration in office, a few would have preferred a tenure during good behaviour--a considerable number would have done so, in case an easy & effectual removal by impeachment could be settled. It was much agitated whether a long term, seven years for example, with a subsequent & perpetual ineligibility, or a short term with a capacity to be re-elected, should be fixed. In favor of the first opinion were urged the danger of a gradual degeneracy of re-elections from time to time, into first a life and then a heriditary tenure, and the favorable effect of an incapacity to be reappointed, on the independent exercise of the Executive authority. On the other side it was contended that the prospect of necessary degradation, would discourage the most dignified characters from aspiring to the office, would take away the principal motive to the faithful discharge of its duties--the hope of being rewarded with a reappointment, would stimulate ambition to violent efforts for holding over the constitutional term--and

instead of producing an independent administration, and a firmer defence of the constitutional rights of the department, would render the officer more indifferent to the importance of a place which he would soon be obliged to quit for ever, and more ready to yield to the incroachmts. of the Legislature of which he might again be a member. The questions concerning the degree of power turned chiefly on the appointment to offices, and the controul on the Legislature. An*absolute* appointment to all offices--to some offices--to no offices, formed the scale of opinions on the first point. On the second, some contended for an absolute negative, as the only possible mean of reducing to practice, the theory of a free Government which forbids a mixture of the Legislative & Executive powers. Others would be content with a revisionary power to be overruled by three fourths of both Houses. It was warmly urged that the judiciary department should be associated in the revision. The idea of some was that a separate revision should be given to the two departments--that if either objected two thirds; if both three fourths, should be necessary to overrule.

In forming the Senate, the great anchor of the Government, the questions as they came within the first object turned mostly on the mode of appointment, and the duration of it. The different modes proposed were, 1. by the House of Representatives 2. by the Executive, 3. by electors chosen by the people for the purpose. 4. by the State Legislatures. On the point of duration, the propositions descended from good-behavior to four years, through the intermediate terms of nine, seven, six, & five years. The election of the other branch was first determined to be triennial, and afterwards reduced to biennial.

The second object, the due partition of power, between the General & local Governments, was perhaps of all, the most nice and difficult. A few contended for an entire abolition of the States; some for indefinite power of Legislation in the Congress, with a negative on the laws of the States: some for such a power without a negative: some for a limited power of legislation, with such a negative: the majority finally for a limited power without the negative. The question with regard to the Negative underwent repeated discussions, and was finally rejected by a bare majority. As I formerly intimated to you my opinion in favor of this ingredient, I will take this occasion of explaining myself on the subject. Such a check on the States appears to me necessary 1. to prevent encroachments on the General authority. 2. to prevent instability and injustice in the legislation of the States.

1. Without such a check in the whole over the parts, our system involves the evil of imperia in imperio. If a compleat supremacy some where is not necessary in every Society, a controuling power at least is so, by which the general authority may be defended against encroachments of the subordinate authorities, and by which the latter may be restrained from encroachments on each other. If the supremacy of the British Parliament is not necessary as has been contended, for the harmony of that Empire; it

is evident I think that without the royal negative or some equivalent controul, the unity of the system would be destroyed. The want of some such provision seems to have been mortal to the antient Confederacies, and to be the disease of the modern. Of the Lycian Confederacy little is known. That of the Amphyctions is well known to have been rendered of little use whilst it lasted, and in the end to have been destroyed by the predominance of the local over the federal authority. The same observation may be made, on the authority of Polybius, with regard to the Achaean League. The Helvetic System scarcely amounts to a Confederacy, and is distinguished by too many peculiarities, to be a ground of comparison. The case of the United Netherlands is in point. The authority of a Statholder, the influence of a Standing army, the common interest in the conquered possessions, the pressure of surrounding danger, the guarantee of foreign powers, are not sufficient to secure the authority and interests of the generality, agst. the antifederal tendency of the provincial sovereignties. The German Empire is another example. A Hereditary chief with vast independent resources of wealth and power, a federal Diet, with ample parchment authority, a regular Judiciary establishment, the influence of the neighbourhood of great & formidable Nations, have been found unable either to maintain the subordination of the members, or to prevent their mutual contests & encroachments. Still more to the purpose is our own experience both during the war and since the peace. Encroachments of the States on the general authority, sacrifices of national to local interests, interferences of the measures of different States, form a great part of the history of our political system. It may be said that the new Constitution is founded on different principles, and will have a different operation. I admit the difference to be material. It presents the aspect rather of a feudal system of republics, if such a phrase may be used, than of a Confederacy of independent States. And what has been the progress and event of the feudal Constitutions? In all of them a continual struggle between the head and the inferior members, until a final victory has been gained in some instances by one, in others, by the other of them. In one respect indeed there is a remarkable variance between the two cases. In the feudal system the sovereign, though limited, was independent; and having no particular sympathy of interests with the great Barons, his ambition had as full play as theirs in the mutual projects of usurpation. In the American Constitution The general authority will be derived entirely from the subordinate authorities. The Senate will represent the States in their political capacity; the other House will represent the people of the States in their individual capac[it]y. The former will be accountable to their constituents at moderate, the latter at short periods. The President also derives his appointment from the States, and is periodically accountable to them. This dependence of the General, on the local authorities, seems effectually to guard the latter against any dangerous encroachments of the former: Whilst the latter, within their respective limits, will be continually sensible of the abridgment of their power, and be stimulated by ambition to resume the surrendered portion of it. We find the representatives of Counties and

corporations in the Legislatures of the States, much more disposed to sacrifice the aggregate interest, and even authority, to the local views of their Constituents: than the latter to the former. I mean not by these remarks to insinuate that an esprit de corps will not exist in the national Goverment or that opportunities may not occur, of extending its jurisdiction in some points. I mean only that the danger of encroachments is much greater from the other side, and that the impossibility of dividing powers of legislation, in such a manner, as to be free from different constructions by different interests, or even from ambiguity in the judgment of the impartial, requires some such expedient as I contend for. Many illustrations might be given of this impossibility. How long has it taken to fix, and how imperfectly is yet fixed the legislative power of corporations, though that power is subordinate in the most compleat manner? The line of distinction between the power of regulating trade and that of drawing revenue from it, which was once considered as the barrier of our liberties, was found on fair discussion, to be absolutely undefinable. No distinction seems to be more obvious than that between spiritual and temporal matters. Yet wherever they have been made objects of Legislation, they have clashed and contended with each other, till one or the other has gained the supremacy. Even the Boundaries between the Executive, Legislative & Judiciary powers, though in general so strongly marked in themselves, consist in many instances of mere shades of difference. It may be said that the Judicial authority under our new system will keep the States within their proper limits, and supply the place of a negative on their laws. The answer is, that it is more convenient to prevent the passage of a law, than to declare it void after it is passed; that this will be particularly the case, where the law aggrieves individuals, who may be unable to support an appeal agst. a State to the supreme Judiciary; that a State which would violate the Legislative rights of the Union, would not be very ready to obey a Judicial decree in support of them, and that a recurrence to force, which in the event of disobedience would be necessary, is an evil which the new Constitution meant to exclude as far as possible.

2. A constitutional negative on the laws of the States seems equally necessary to secure individuals agst. encroachments on their rights. The mutability of the laws of the States is found to be a serious evil. The injustice of them has been so frequent and so flagrant as to alarm the most stedfast friends of Republicanism. I am persuaded I do not err in saying that the evils issuing from these sources contributed more to that uneasiness which produced the Convention, and prepared the public mind for a general reform, than those which accrued to our national character and interest from the inadequacy of the Confederation to its immediate objects. A reform therefore which does not make provision for private rights, must be materially defective. The restraints agst. paper emissions, and violations of contracts are not sufficient. Supposing them to be effectual as far as they go, they are short of the mark. Injustice may be effected by such an infinitude of legislative expedients, that where the

disposition exists it can only be controuled by some provision which reaches all cases whatsoever. The partial provision made, supposes the disposition which will evade it. It may be asked how private rights will be more secure under the Guardianship of the General Government than under the State Governments, since they are both founded on the republican principle which refers the ultimate decision to the will of the majority, and are distinguished rather by the extent within which they will operate, than by any material difference in their structure. A full discussion of this question would, if I mistake not, unfold the true principles of Republican Government, and prove in contradiction to the concurrent opinions of theoretical writers, that this form of Goverment, in order to effect its purposes, must operate not within a small but an extensive sphere. I will state some of the ideas which have occurred to me on this subject. Those who contend for a simple Democracy, or a pure republic, actuated by the sense of the majority, and operating within narrow limits, assume or suppose a case which is altogether fictitious. They found their reasoning on the idea, that the people composing the Society, enjoy not only an equality of political rights; but that they have all precisely the same interests, and the same feelings in every respect. Were this in reality the case, their reasoning would be conclusive. The interest of the majority would be that of the minority also; the decisions could only turn on mere opinion concerning the good of the whole, of which the major voice would be the safest criterion; and within a small sphere, this voice could be most easily collected, and the public affairs most accurately managed. We know however that no Society ever did or can consist of so homogeneous a mass of Citizens. In the savage State indeed, an approach is made towards it; but in that State little or no Government is necessary. In all civilized Societies, distinctions are various and unavoidable. A distinction of property results from that very protection which a free Government gives to unequal faculties of acquiring it. There will be rich and poor; creditors and debtors; a landed interest, a monied interest, a mercantile interest, a manufacturing interest. These classes may again be subdivided according to the different productions of different situations & soils, & according to different branches of commerce, and of manufactures. In addition to these natural distinctions, artificial ones will be founded, on accidental differences in political, religious or other opinions, or an attachment to the persons of leading individuals. However erroneous or ridiculous these grounds of dissention and faction, may appear to the enlightened Statesman, or the benevolent philosopher, the bulk of mankind who are neither Statesmen nor Philosophers, will continue to view them in a different light. It remains then to be enquired whether a majority having any common interest, or feeling any common passion, will find sufficient motives to restrain them from oppressing the minority. An individual is never allowed to be a judge or even a witness in his own cause. If two individuals are under the biass of interest or enmity agst. a third, the rights of the latter could never be safely referred to the majority of the three. Will two thousand individuals be less apt to oppress onethousand, or two hundred thousand, one hundred thousand? Three

motives only can restrain in such cases. 1. a prudent regard to private or partial good, as essentially involved in the general and permanent good of the whole. This ought no doubt to be sufficient of itself. Experience however shews that it has little effect on individuals, and perhaps still less on a collection of individuals, and least of all on a majority with the public authority in their hands. If the former are ready to forget that honesty is the best policy; the last do more. They often proceed on the converse of the maxim: that whatever is politic is honest. 2. respect for character. This motive is not found sufficient to restrain individuals from injustice, and loses its efficacy in proportion to the number which is to divide the praise or the blame. Besides as it has reference to public opinion, which is that of the majority, the Standard is fixed by those whose conduct is to be measured by it. 3. Religion. The inefficacy of this restraint on individuals is well known. The conduct of every popular Assembly, acting on oath, the strongest of religious ties, shews that individuals join without remorse in acts agst. which their consciences would revolt, if proposed to them separately in their closets. When Indeed Religion is kindled into enthusiasm, its force like that of other passions is increased by the sympathy of a multitude. But enthusiasm is only a temporary state of Religion, and whilst it lasts will hardly be seen with pleasure at the helm. Even in its coolest state, it has been much oftener a motive to oppression than a restraint from it. If then there must be different interests and parties in Society; and a majority when united by a common interest or passion can not be restrained from oppressing the minority, what remedy can be found in a republican Government, where the majority must ultimately decide, but that of giving such an extent to its sphere, that no common interest or passion will be likely to unite a majority of the whole number in an unjust pursuit. In a large Society, the people are broken into so many interests and parties, that a common sentiment is less likely to be felt, and the requisite concert less likely to be formed, by a majority of the whole. The same security seems requisite for the civil as for the religious rights of individuals. If the same sect form a majority and have the power, other sects will be sure to be depressed. Divide et impera, the reprobated axiom of tyranny, is under certain qualifications, the only policy, by which a republic can be administered on just principles. It must be observed however that this doctrine can only hold within a sphere of a mean extent. As in too small a sphere oppressive combinations may be too easily formed agst. the weaker party; so in too extensive a one, a defensive concert may be rendered too difficult against the oppression of those entrusted with the administration. The great desideratum in Government is, so to modify the sovereignty as that it may be sufficiently neutral between different parts of the Society to controul one part from invading the rights of another, and at the same time sufficiently controuled itself, from setting up an interest adverse to that of the entire Society. In absolute monarchies, the Prince may be tolerably neutral towards different classes of his subjects, but may sacrifice the happiness of all to his personal ambition or avarice. In small republics, the sovereign will is controuled from such a sacrifice of the entire

Society, but is not sufficiently neutral towards the parts composing it. In the extended Republic of the United States, The General Government would hold a pretty even balance between the parties of particular States, and be at the same time sufficiently restrained by its dependence on the community, from betraying its general interests.

Begging pardon for this immoderate digression I return to the third object abovementioned, the adjustment of the different interests of different parts of the Continent. Some contended for an unlimited power over trade including exports as well as imports, and over slaves as well as other imports; some for such a power, provided the concurrence of two thirds of both House were required; Some for such a qualification of the power, with an exemption of exports and slaves, others for an exemption of exports only. The result is seen in the Constitution. S. Carolina & Georgia were inflexible on the point of the slaves.

The remaining object created more embarrassment, and a greater alarm for the issue of the Convention than all the rest put together. The little States insisted on retaining their equality in both branches, unless a compleat abolition of the State Governments should take place; and made an equality in the Senate a sine qua non. The large States on the other hand urged that as the new Government was to be drawn principally from the people immediately and was to operate directly on them, not on the States; and consequently as the States wd. lose that importance which is now proportioned to the importance of their voluntary compliances with the requisitions of Congress, it was necessary that the representation in both Houses should be in proportion to their size. It ended in the compromise which you will see, but very much to the dissatisfaction of several members from the large States.

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TO CALEB WALLACE

ORANGE, Augt 23d, 1785.

Dr Sir,—

Your favour of the 12th of July was safely delivered to me by Mr. Craig. I accept with pleasure your proposed exchange of Western for Eastern intelligence and though I am a stranger to parental ties can sufficiently conceive the happiness of which they are a source to congratulate you on your possession of two fine sons & a Daughter. I do not smile at the Idea of transplanting myself into your wilderness. Such a change of my abode is not indeed probable yet I have no Local partialities which can keep me from any place which promises the greatest real advantages, but if such a removal was not even possible I should nevertheless be ready to communicate as you desire my Ideas towards a constitution of Government for the State in embryo. I pass over the general policy of the measure which calls for such a provision. It has been unanimously embraced by those who being most interested in it must have best considered it, & will I dare say be with equal unanimity acceded to by the other party which is to be consulted. I will first offer some general remarks on the Subject, & then answer your several queries.

[167]

1. *The Legislative Department* ought by all means, as I think to include a Senate constituted on such principles as will give *wisdom* and *steadiness* to legislation. The want of these qualities is the grievance complained of in all our republics. The want of *fidelity* in the administration of power having been the grievance felt under most Governments, and by the American States themselves under the British Government, it was natural for them to give too exclusive an attention to this primary attribute. The Senate of Maryland with a few amendments is a good model. Trial has I am told verified the expectations from it. A Similar one made a part of our constitution as it was originally proposed but the inexperience & jealousy of our then Councils, rejected it in favor of our present Senate a worse could hardly have been substituted & yet, bad as it is, it is often a useful bit in the mouth of the house of Delegates. Not a single Session passes without instances of sudden resolutions by the latter of which they repent in time to intercede privately with the Senate for their Negative. For the other branch models enough may be found care ought however to be taken against its becoming too

numerous, by fixing the number which it is never to exceed. The quorum, wages, and privileges of both branches ought also to be fixed. A majority seems to be the natural quorum. The wages of the members may be made payable for — years to come in the medium value of wheat for years preceding as the same shall from period to period be rated by a respectable Jury appointed for [168] that purpose by the Supreme Court. The privileges of the members ought not in my opinion to extend beyond an exemption of their persons and equipage from arrests during the time of their actual service. If it were possible it would be well to define the extent of the Legislative power but the nature of it seems in many respects to be indefinite. It is very practicable however to enumerate the essential exceptions. The Constitution may expressly restrain them from medling with religion—from abolishing Juries—from taking away the Habeas corpus—from forcing a citizen to give evidence against himself—from controuling the press—from enacting retrospective laws at least in criminal cases, from abridging the right of suffrage, from taking private property for public use without paying its full Value from licensing the importation of Slaves, from infringing the confederation, &c &c.

As a further security against fluctuating & indigested laws the Constitution of New York has provided a Council of Revision. I approve much of such an institution & believe it is considered by the most intelligent citizens of that State as a valuable safeguard both to public interests & to private rights. Another provision has been suggested for preserving System in Legislative proceedings which to some may appear still better. It is that a standing committee composed of a few select & skilful individuals should be appointed to prepare bills on all subjects which they may judge proper to be submitted to the Legislature at their meetings & to draw bills for them [169] during their Sessions. As an antidote both to the jealousy & danger of their acquiring an improper influence they might be made incapable of holding any other Office Legislative, Executive, or Judiciary. I like this Suggestion so much that I have had thoughts of proposing it to our Assembly, who give almost as many proofs as they pass laws of their need of some such Assistance.

2 *The Executive Department*. Though it claims the 2d place is not in my estimation entitled to it by its importance all the great powers which are properly executive being transferred to the fœderal Government. I have made up no final opinion whether the first Magistrate should be chosen by the Legislature or the people at large or whether the power should be vested in one man assisted by a council or in a council of which the President shall be only primus inter pares. There are examples of each in the U. States and probably advantages & disadvantages attending each. It is material I think that the

number of members should be small & that their Salaries should be either unalterable by the Legislature or alterable only in such manner as will not affect any individual in place. Our Executive is the worst part of a bad Constitution. The Members of it are dependent on the Legislature not only for their wages but for their reputation and therefore are not likely to withstand usurpations of that branch; they are besides too numerous and expensive, their organization vague & perplexed & to crown the absurdity some of the members may without any new appointment continue in Office for life [170]contrary to one of the Articles of the Declaration of Rights.

3d *The Judiciary Department* merits every care Its efficacy is Demonstrated in G. Brittain where it maintains private Right against all the corruptions of the two other departments & gives a reputation to the whole Government which it is not in itself entitled to. The main points to be attended to are 1. that the Judges should hold their places during good behavior 2. that their Salaries should be either fixed like the wages of the Representatives or not be alterable so as to affect the Individuals in office. 3 that their Salaries be liberal. The first point is obvious; without the second the independence aimed at by the first will be ideal only; without the 3d the bar will be superior to the bench which destroys all security for a Systematick administration of Justice. after securing these essential points, I should think it unadvisable to descend so far into detail as to bar any future Modification of this department which experience may recommend. An enumeration of the Principal courts with Power to the Legislature to Institute inferior Courts may suffice. The Admiralty business can never be extensive in your situation and may be referred to one of the other Courts. With regard to a Court of Chancery as distinct from a Court of Law, the reasons of Lord Bacon on the affirmative side outweigh in my Judgment those of Lord Kaims on the other side. Yet I should think it best to leave this important question to be decided by future lights without tying the hands of the Legislature one way [171] or the other. I consider our county courts as on a bad footing and would never myself consent to copy them into another constitution.

All the States seem to have seen the necessity of providing for Impeachments but none of them to have hit on an unexceptionable Tribunal. In some the trial is referred to the Senate in others to the Executive, in others to the Judiciary department it has been suggested that a tribunal composed of members from each Department would be better than either and I entirely concur in that opinion. I proceed next to your queries.

1. “Whether is a representation according to numbers, or property, or in a joint proportion to both, the most Safe? or is a representation by counties preferable to a more equitable mode that will be difficult to adjust?” Under this question may be considered 1. the right of Suffrage. 2 the mode of suffrage. 3 the Plan of representation. As to the 1. I think the extent which ought to be given to this right a matter of great delicacy and of critical importance. To restrain it to the land holders will in time exclude too great a proportion of citizens; to extend it to all citizens without regard to property, or even to all who possess a pittance may throw too much power into hands which will either abuse it themselves or sell it to the rich who will abuse it. I have thought it might be a good middle course to narrow this right in the choice of the least popular, & to enlarge it in that of the more popular branch of the Legislature. There is an example of this [172] Distinction in N. Carolina if in none of the other States. How it operates or is relished by the people I cannot say. It would not be surprising if in the outset at least it should offend the sense of equality which reigns in a free Country. In a general view I see no reason why the rights of property which chiefly bears the burden of Government & is so much an object of Legislation should not be respected as well as personal rights in the choice of Rulers. It must be owned indeed that property will give influence to the holder though it should give him no legal privileges and will in general be safe on that as well as on other Accounts especially if the business of legislation be guarded with the provisions hinted at 2 As to the mode of suffrage I lean strongly to that of the ballot, notwithstanding the objections which lie against it. It appears to me to be the only radical cure for those arts of Electioneering which poison the very fountain of Liberty. The States in which the Ballott has been the Standing mode are the only instances in which elections are tolerably chaste and those arts in disgrace. If it should be thought improper to fix this mode by the constitution I should think it at least necessary to avoid any constitutional bar to a future adoption of it.[1] 3 By the Plan of representation I mean 1. the classing of the Electors 2 the proportioning of the representatives to each class. The first cannot be otherwise done than by geographical description as by Counties. The second may [173] easily be done in the first instance either by comprising within each county an equal number of electors; or by proportioning the number of representatives of each county to its number of electors. The difficulty arises from the disproportionate increase of electors in different Counties. There seem to be two methods only by which the representation can be equalized from time to time. The 1 is to change the bounds of the counties; the 2d. to change the number of representatives allotted to them respectively, as the former would not only be most troublesome & expensive but would involve a variety of other adjustments the latter method is evidently the best. Examples

of a Constitutional provision for it exists in several of the States. In some it is to be executed periodically in others, pro re nata. The latter seems most accurate and very practicable I have already intimated the propriety of fixing the number of representatives, which ought never to be exceeded I should suppose 150 or even 100, might safely be made the ne plus ultra for Kentucky.

2. "Which is to be preferred an Annual, Triennial, or Septennial Succession to Offices or frequent elections without limitations in choice or that officers when chosen should continue quamdiu se bene gesserint?" The rule ought no doubt to be different in the different Departments of power. For one part of the Legislature Annual Elections will I suppose be held indispensably though some of the ablest Statesmen & soundest Republicans in the U. States are in favor of triennial. The great Danger in [174]departing from annual elections in this case lies in the want of some other natural term to limit the departure. For the other branch 4 or 5 years may be the period. For neither branch does it seem necessary or proper to prohibit an indefinite re-eligibility. With regard to the Executive if the elections be frequent & particularly if made as to any member of it by the people at large a re-eligibility cannot I think be objected to, if they be unfrequent, a temporary or perpetual incapacitation according to the degree of unfrequency at least in the case of the first Magistrate may not be amiss. As to the Judiciary department enough has been said & as to the Subordinate officers civil & Military nothing need be said more than that a regulation of their appointments may under a few restrictions be safely trusted to the Legislature.

3. "How far may the same person with propriety be employed in the different departments of Government in an infant country where the counsel of every individual may be needed?" Temporary deviations from fundamental principles are always more or less dangerous. When the first pretext fails, those who become interested in prolonging the evil will rarely be at a loss for other pretexts. The first precedent too familiarises the people to the irregularity, lessens their veneration for those fundamental principles, & makes them a more easy prey to ambition & self Interest. Hence it is that abuses of every kind when once established have been so often found to perpetuate themselves. In this caution [175] I refer chiefly to an improper mixture of the three great Departments within the State. A Delegation to Congress is I conceive compatible with either.

4. "Should there be a periodical review of the Constitution?" Nothing appears more elegible in theory nor has sufficient trial perhaps been yet made to condemn it in

practice. Pennsylvania has alone adopted the expedient. Her citizens are much divided on the subject of their Constitution in general & probably on this part of it in particular. I am inclined to think though am far from being certain, that it is not a favorite part even with those who are fondest of their Constitution. another plan has been thought of which might perhaps Succeed better and would at the same time be a safeguard to the equilibrium of the constituent Departments of Government. This is that a Majority of any two of the three departments should have authority to call a plenipotentiary convention whenever they may think their constitutional powers have been Violated by the other Department or that any material part of the Constitution needs amendment. In your situation I should think it both imprudent & indecent not to leave a door open for at least one revision of your first Establishment, imprudent because you have neither the same resources for supporting nor the same lights for framing a good establishment now as you will have 15 or 20 Years hence, indecent because an handful of early settlers ought not to preclude a populous Country from a choice of the Government under which they & their posterity are to live. [176]Should your first Constitution be made thus temporary the objections against an intermediate union of offices will be proportionably lessened. Should a revision of it not be made thus necessary & certain there will be little probability of its being ever revised. Faulty as our Constitution is as well with regard to the Authority which formed it as to the manner in which it is formed the Issue of an experiment has taught us the difficulty of amending it: & although the issue might have proceeded from the unseasonableness of the time yet it may be questioned whether at any future time the greater depth to which it will have stricken its roots will not counterbalance any more auspicious circumstances for overturning it.

5 & 6 “Or will it be better unalterably to fix some leading Principles in Government and make it consistant for the Legislature to introduce such changes in lesser matters as may become expedient? can censors be provided that will impartially point out deficiencies in the Constitution & the Violations that may happen.”

Answers on these points may be gathered from what has been already said.

I have been led to offer my sentiments in this loose form rather than to attempt a delineation of such a Plan of government as would please myself not only by my Ignorance of many local circumstances & opinions which must be consulted in such a work but also by the want of sufficient time for it. At the receipt of your letter I had other employment and what I now write is in the midst of preparations [177]for a Journey of

business which will carry me as far as Philadelphia at least & on which I shall set out in a day or two.

I am sorry that it is not in my power to give you some satisfactory information concerning the Mississippi. A Minister from Spain has been with Congress for some time & is authorised as I understand to treat on whatever subjects may concern the two nations. If any explanations or propositions have passed between him & the Minister of Congress, they are as yet in the list of Cabinet Secrets. as soon as any such shall be made Public & come to my knowledge, I shall take the first opportunity of transmitting them. Wishing you & your family all happiness,

I am, Dr Sir,
Your friend & servant.

The Constitutions of the several States were printed in a small Volume a year or two ago by order of Congs a perusal of them need not be recommended to you. Having but a single copy I cannot supply you It is not improbable that you may be already possessed of one. The revisal of our laws by Jefferson, Wythe & Pendleton beside their Value in improving the legal code may suggest something worthy of being attended to in framing a Constitution.

James Madison, The Writings of James Madison, comprising his Public Papers and his Private Correspondence, including his numerous letters and documents now for the first time printed, ed. Gaillard Hunt (New York: G.P. Putnam's Sons, 1900). Vol. 2. 4/13/2015. http://oll.libertyfund.org/titles/1934#lf1356-02_head_057