

NOVANGLUS;  
OR, A HISTORY  
OF THE DISPUTE  
WITH AMERICA

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**UPON HIS RETURN FROM THE CONTINENTAL CONGRESS** in the fall of 1774, Adams was met with a series of powerful and lucid essays in the *Massachusetts Gazette* defending the principles and policies of British officialdom and challenging the claims of the American Whigs. Writing over the pseudonym Massachusettensis, Daniel Leonard argued that the constitutional authority of Parliament did and must extend to the colonies. Theoretically, the colonies must be under the sovereignty of Parliament, Leonard insisted, because “two supreme or independent authorities cannot exist in the same state.” Such an *imperium in imperio* was absurd and a contradiction in terms. According to Leonard, there could be “no possible medium between absolute independence” on the one hand, and “subjection to the authority of Parliament” on the other.

Historians have long recognized the importance of Adams’s Novanglus letters to the Revolutionary cause. They were not only a close, point-by-point refutation of Leonard’s argument, but they represent the most advanced Patriot argument against British imperial policy. The “Novanglus” letters were a systematic attempt by Adams to describe the origins, nature, and jurisdictional boundaries of the imperial British constitution. The central question that sparked Adams to write was clear and simple: Does the authority of Parliament extend to the colonies? In exhaustive and sometimes painstaking detail, Adams plumbs the depths of English and colonial legal history to demonstrate that the provincial legislatures are fully sovereign over their own internal affairs, and that the colonies are connected to Great Britain only through a modified feudal allegiance with the person of the King.

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NOVANGLUS;  
OR, A HISTORY OF  
THE DISPUTE WITH AMERICA,  
FROM ITS ORIGIN, IN 1754,  
TO THE PRESENT TIME

ADDRESSED TO THE INHABITANTS OF  
THE COLONY OF MASSACHUSETTS BAY

No. I

MY FRIENDS, —A writer, under the signature of *Massachusettensis*, has addressed you, in a series of papers, on the great national subject of the present quarrel between the British administration and the Colonies. As I have not in my possession more than one of his essays, and that is in the Gazette of December 26, I will take the liberty, in the spirit of candor and decency, to bespeak your attention upon the same subject.

There may be occasion to say very severe things, before I shall have finished what I propose, in opposition to this writer, but there ought to be no reviling. *Rem ipsam dic, mitte male loqui*, which may be justly translated, speak out the whole truth boldly, but use no bad language.

It is not very material to inquire, as others have done, who is the author of the speculations in question. If he is a disinterested writer, and has nothing to gain or to lose, to hope or to fear, for himself more than other individuals of your community; but engages in this controversy from the purest principles, the noblest motives of benevolence to men, and of love to his country, he ought to have no influence with you, further than truth and justice will support his argument. On the other hand, if he hopes to acquire or preserve

a lucrative employment, to screen himself from the just detestation of his countrymen, or whatever other sinister inducement he may have, so far as the truth of facts and the weight of argument are in his favor, he ought to be duly regarded.

He tells you, "that the temporal salvation of this province depends upon an entire and speedy change of measures, which must depend upon a change of sentiment respecting our own conduct and the justice of the British nation."

The task of effecting these great changes, this courageous writer has undertaken in a course of publications in a newspaper. *Nil desperandum* is a good motto, and *nil admirari* is another. He is welcome to the first, and I hope will be willing that I should assume the last. The public, if they are not mistaken in their conjecture, have been so long acquainted with this gentleman, and have seen him so often disappointed, that if they were not habituated to strange things, they would wonder at his hopes, at this time, to accomplish the most unpromising project of his whole life. In the character of *Philanthrop*, he attempted to reconcile you to Mr. Bernard. But the only fruit of his labor was, to expose his client to more general examination, and consequently to more general resentment and aversion. In the character of *Philalethes*, he essayed to prove Mr. Hutchinson a patriot, and his letters not only innocent but meritorious. But the more you read and considered, the more you were convinced of the ambition and avarice, the simulation and dissimulation, the hypocrisy and perfidy of that destroying angel.

This ill-fated and unsuccessful, though persevering writer, still hopes to change your sentiments and conduct, by which it is supposed that he means to convince you, that the system of colony administration which has been pursued for these ten or twelve years past is a wise, righteous, and humane plan; that Sir Francis Bernard and Mr. Hutchinson, with their connections, who have been the principal instruments of it, are your best friends; and that those gentlemen, in this province, and in all the other colonies, who have been in opposition to it, are, from ignorance, error, or from worse and baser causes, your worst enemies.

This is certainly an inquiry that is worthy of you; and I promise to accompany this writer in his ingenious labors to assist you in it. And I earnestly entreat you, as the result of all shall be, to change your sentiments or persevere in them, as the evidence shall appear to you, upon the most dispassionate and impartial consideration, without regard to his opinion or mine.

He promises to avoid personal reflections, but to "penetrate the arcana" and "expose the wretched policy of the whigs." The cause of the whigs is not

conducted by intrigues at a distant court, but by constant appeals to a sensible and virtuous people; it depends entirely on their good-will, and cannot be pursued a single step without their concurrence, to obtain which, all their designs, measures, and means, are constantly published to the collective body. The whigs, therefore, can have no arcana; but if they had, I dare say they were never so left, as to communicate them to this writer; you will therefore be disappointed, if you expect from him any thing which is true, but what has been as public as records and newspapers could make it.

I, on my part, may, perhaps, in a course of papers, penetrate arcana too; show the wicked policy of the tories; trace their plan from its first rude sketches to its present complete draught; show that it has been much longer in contemplation than is generally known,—who were the first in it—their views, motives, and secret springs of action, and the means they have employed. This will necessarily bring before your eyes many characters, living and dead. From such a research and detail of facts, it will clearly appear, who were the aggressors, and who have acted on the defensive from first to last; who are still struggling, at the expense of their ease, health, peace, wealth, and preferment, against the encroachments of the tories on their country, and who are determined to continue struggling, at much greater hazards still, and, like the Prince of Orange, are resolved never to see its entire subjection to arbitrary power, but rather to die fighting against it in the last ditch.

It is true, as this writer observes, “that the bulk of the people are generally but little versed in the affairs of state;” that they “rest the affairs of government in the hands where accident has placed them.” If this had not been true, the designs of the tories had been many years ago entirely defeated. It was clearly seen by a few, more than ten years since, that they were planning and pursuing the very measures we now see executing. The people were informed of it, and warned of their danger; but they had been accustomed to confide in certain persons, and could never be persuaded to believe, until prophecy became history. Now, they see and feel that the horrible calamities are come upon them, which were foretold so many years ago, and they now sufficiently execrate the men who have brought these things upon them. Now, alas! when perhaps it is too late. If they had withdrawn their confidence from them in season, they would have wholly disarmed them.

“The same game, with the same success, has been played in all ages and countries,” as *Massachusettensis* observes. When a favorable conjuncture has presented, some of the most intriguing and powerful citizens have conceived the design of enslaving their country, and building their own greatness on its ruins. Philip and Alexander are examples of this in Greece; Caesar in Rome; Charles V. in Spain; Louis XII. in France; and ten thousand others.

“There is a latent spark in the breasts of the people, capable of being kindled into a flame, and to do this has always been the employment of the disaffected.” What is this latent spark? The love of liberty. *A Deo hominis est indita naturae*. Human nature itself is evermore an advocate for liberty. There is also in human nature a resentment of injury and indignation against wrong; a love of truth, and a veneration for virtue. These amiable passions are the “latent spark” to which those whom this writer calls the “disaffected” apply. If the people are capable of understanding, seeing, and feeling the difference between true and false, right and wrong, virtue and vice, to what better principle can the friends of mankind apply, than to the sense of this difference? Is it better to apply, as this writer and his friends do, to the basest passions in the human breast—to their fear, their vanity, their avarice, ambition, and every kind of corruption? I appeal to all experience, and to universal history, if it has ever been in the power of popular leaders, uninvested with other authority than what is conferred by the popular suffrage, to persuade a large people, for any length of time together, to think themselves wronged, injured, and oppressed, unless they really were, and saw and felt it to be so.

“They,” the popular leaders, “begin by reminding the people of the elevated rank they hold in the universe, as men; that all men by nature are equal; that kings are but the ministers of the people; that their authority is delegated to them by the people, for their good, and they have a right to resume it, and place it in other hands, or keep it themselves, whenever it is made use of to oppress them. Doubtless, there have been instances when these principles have been inculcated to obtain a redress of real grievances; but they have been much oftener perverted to the worst of purposes.”

These are what are called revolution principles. They are the principles of Aristotle and Plato, of Livy and Cicero, and Sidney, Harrington, and Locke; the principles of nature and eternal reason; the principles on which the whole government over us now stands. It is therefore astonishing, if any thing can be so, that writers, who call themselves friends of government, should in this age and country be so inconsistent with themselves, so indiscreet, so immodest, as to insinuate a doubt concerning them.

Yet we find that these principles stand in the way of Massachusetts and all the writers of his class. The Veteran, in his letter to the officers of the army, allows them to be noble and true; but says the application of them to particular cases is wild and utopian. How they can be in general true, and not applicable to particular cases, I cannot comprehend. I thought their being true in general, was because they were applicable in most particular cases.

Gravity is a principle in nature. Why? Because all particular bodies are

found to gravitate. How would it sound to say, that bodies in general are heavy; yet to apply this to particular bodies, and say, that a guinea or a ball is heavy, is wild? “Adopted in private life,” says the honest amiable veteran, “they would introduce perpetual discord.” This I deny; and I think it plain, that there never was a happy private family where they were not adopted. “In the state, perpetual discord.” This I deny; and affirm, that order, concord, and stability in this state, never was nor can be preserved without them. “The least failure in the reciprocal duties of worship and obedience in the matrimonial contract would justify a divorce.” This is no consequence from these principles. A total departure from the ends and designs of the contract, it is true, as elopement and adultery, would by these principles justify a divorce; but not the least failure, or many smaller failures in the reciprocal duties, &c. “In the political compact, the smallest defect in the prince, a revolution.” By no means; but a manifest design in the prince, to annul the contract on his part, will annul it on the part of the people. A settled plan to deprive the people of all the benefits, blessings, and ends of the contract, to subvert the fundamentals of the constitution, to deprive them of all share in making and executing laws, will justify a revolution.

The author of a “Friendly Address to all reasonable Americans” discovers his rancor against these principles in a more explicit manner; and makes no scruples to advance the principles of Hobbes and Filmer boldly, and to pronounce damnation, *ore rotundo*, on all who do not practise implicit, passive obedience to an established government, of whatever character it may be. It is not reviling, it is not bad language, it is strictly decent to say, that this angry bigot, this ignorant dogmatist, this foul-mouthed scold, deserves no other answer than silent contempt. Massachusettensis and the Veteran—I admire the first for his art, the last for his honesty.

Massachusettensis is more discreet than any of the others; sensible that these principles would be very troublesome to him, yet conscious of their truth, he has neither admitted nor denied them. But we have a right to his opinion of them, before we dispute with him. He finds fault with the application of them. They have been invariably applied, in support of the revolution and the present establishment, against the Stuarts, the Charleses, and the Jameses, in support of the Reformation and the Protestant religion; and against the worst tyranny that the genius of toryism has ever yet invented; I mean the Roman superstition. Does this writer rank the revolution and present establishment, the Reformation and Protestant religion, among his worst of purposes? What “worse purpose” is there than established tyranny? Were these principles ever inculcated in favor of such tyranny? Have they not always been used against such tyrannies, when the people have had knowl-



edge enough to be apprized of them, and courage to assert them? Do not those who aim at depriving the people of their liberties, always inculcate opposite principles, or discredit these?

“A small mistake in point of policy,” says he, “often furnishes a pretence to libel government, and persuade the people that their rulers are tyrants, and the whole government a system of oppression.” This is not only untrue, but inconsistent with what he said before. The people are in their nature so gentle, that there never was a government yet in which thousands of mistakes were not overlooked. The most sensible and jealous people are so little attentive to government, that there are no instances of resistance, until repeated, multiplied oppressions have placed it beyond a doubt, that their rulers had formed settled plans to deprive them of their liberties; not to oppress an individual or a few, but to break down the fences of a free constitution, and deprive the people at large of all share in the government, and all the checks by which it is limited. Even Machiavel himself allows, that, not ingratitude to their rulers, but much love, is the constant fault of the people.

This writer is equally mistaken, when he says, the people are sure to be losers in the end. They can hardly be losers if unsuccessful; because, if they live, they can but be slaves, after an unfortunate effort, and slaves they would have been, if they had not resisted. So that nothing is lost. If they die, they cannot be said to lose, for death is better than slavery. If they succeed, their gains are immense. They preserve their liberties. The instances in antiquity which this writer alludes to are not mentioned, and therefore cannot be answered; but that in the country from whence we are derived, is the most unfortunate for his purpose that could have been chosen. No doubt he means, the resistance to Charles I. and the case of Cromwell. But the people of England, and the cause of liberty, truth, virtue, and humanity, gained infinite advantages by that resistance. In all human probability, liberty, civil and religious, not only in England, but in all Europe, would have been lost. Charles would undoubtedly have established the Romish religion, and a despotism as wild as any in the world. And as England has been a principal bulwark, from that period to this, of civil liberty and the Protestant religion in all Europe, if Charles's schemes had succeeded, there is great reason to apprehend that the light of science would have been extinguished, and mankind drawn back to a state of darkness and misery like that which prevailed from the fourth to the fourteenth century. It is true, and to be lamented, that Cromwell did not establish a government as free as he might and ought; but his government was infinitely more glorious and happy to the people than Charles's. Did not the people gain by the resistance to James II.? Did not the Romans gain by the resistance to Tarquin? Without that resistance,

No. II

and the liberty that was restored by it, would the great Roman orators, poets, and historians, the great teachers of humanity and politeness, the pride of human nature, and the delight and glory of mankind for seventeen hundred years, ever have existed? Did not the Romans gain by resistance to the Decemvirs? Did not the English gain by resistance to John, when *Magna Charta* was obtained? Did not the Seven United Provinces gain by resistance to Philip, Alva, and Granvelle? Did not the Swiss Cantons, the Genevans, and Grisons gain by resistance to Albert and Gessler?

No. II

I HAVE HERETOFORE INTIMATED my intention of pursuing the tories through all their dark intrigues and wicked machinations, and to show the rise and progress of their schemes for enslaving this country. The honor of inventing and contriving these measures is not their due. They have been but servile copiers of the designs of Andros, Randolph, Dudley, and other champions of their cause towards the close of the last century. These latter worthies accomplished but little; and their plans had been buried with them for a long course of years, until, in the administration of the late Governor Shirley, they were revived by the persons who are now principally concerned in carrying them into execution. Shirley was a crafty, busy, ambitious, intriguing, enterprising man; and, having mounted, no matter by what means, to the chair of this province, he saw, in a young, growing country, vast prospects of ambition opening before his eyes, and conceived great designs of aggrandizing himself, his family, and his friends. Mr. Hutchinson and Mr. Oliver, the two famous letter-writers, were his principal ministers of state; Russell, Paxton, Ruggles, and a few others, were *subordinate* instruments. Among other schemes of this junto, one was to have a revenue in America, by authority of parliament.

In order to effect their purpose, it was necessary to concert measures with the other colonies. Dr. Franklin, who was known to be an active and very able man, and to have great influence in the province of Pennsylvania, was in Boston in the year 1754, and Mr. Shirley communicated to him the profound secret,—the great design of taxing the colonies by act of parliament. This sagacious gentleman, this eminent philosopher and distinguished patriot, to his lasting honor, sent the Governor an answer in writing, with the following remarks upon his scheme, remarks which would have discouraged any honest man from the pursuit. The remarks are these:—

“That the people always bear the burden best, when they have, or think they have, some *share* in the direction.

“That when public measures are generally distasteful to the people, the wheels of government must move more heavily.

“That excluding the people of America from all share in the choice of a grand council for their own defence, and taxing them in parliament, where they have no representative, would probably give extreme dissatisfaction.

“That there was no reason to doubt the willingness of the colonists to contribute for their own defence. That the people themselves, whose all was at stake, could better judge of the force necessary for their defence, and of the means for raising money for the purpose, than a British parliament at so great distance.

“That natives of America would be as likely to consult wisely and faithfully for the safety of their native country, as the governors sent from Britain, whose object is generally to make fortunes, and then return home, and who might therefore be expected to carry on the war against France, rather in a way by which themselves were likely to be gainers, than for the greatest advantage of the cause.

“That compelling the colonies to pay money for their own defence, without their consent, would show a suspicion of their loyalty, or of their regard for their country, or of their common sense, and would be treating them as conquered enemies, and not as free Britons, who hold it for their undoubted right, not to be taxed but by their own consent, given through their representatives.

“That parliamentary taxes, once laid on, are often continued, after the necessity for laying them on ceases; but that if the colonists were trusted to tax themselves, they would remove the burden from the people as soon as it should become unnecessary for them to bear it any longer.

“That if parliament is to tax the colonies, their assemblies of representatives may be dismissed as useless.

“That taxing the colonies in parliament for their own defence against the French, is not more just, than it would be to oblige the cinque-ports, and other parts of Britain, to maintain a force against France, and tax them for this purpose, without allowing them representatives in parliament.

“That the colonists have always been indirectly taxed by the mother country, (besides paying the taxes necessarily laid on by their own assemblies); inasmuch as they are obliged to purchase the manufactures of Britain, charged with innumerable heavy taxes, some of which manufactures they could make, and others could purchase cheaper at markets.

“That the colonists are besides taxed by the mother country, by being obliged to carry great part of their produce to Britain, and accept a lower

price than they might have at other markets. The difference is a tax paid to Britain.

“That the whole wealth of the colonists centres at last in the mother country, which enables her to pay her taxes.

“That the colonies have, at the hazard of their lives and fortunes, extended the dominions and increased the commerce and riches of the mother country; that therefore the colonists do not deserve to be deprived of the native right of Britons, the right of being taxed only by representatives chosen by themselves.

“That an adequate representation in parliament would probably be acceptable to the colonists, and would best raise the views and interests of the whole empire.”

The last of these propositions seems not to have been well considered; because an adequate representation in parliament is totally impracticable; but the others have exhausted the subject.\*

Whether the ministry at home, or the junto here, were discouraged by these masterly remarks, or by any other cause, the project of taxing the colonies was laid aside; Mr. Shirley was removed from this government, and Mr. Pownall was placed in his stead.

Mr. Pownall seems to have been a friend to liberty and to our constitution, and to have had an aversion to all plots against either; and, consequently, to have given his confidence to other persons than Hutchinson and Oliver, who, stung with envy against Mr. Pratt and others, who had the lead in affairs, set themselves, by propagating slanders against the Governor among the people, and especially among the clergy, to raise discontents, and make him uneasy in his seat. Pownall, averse to wrangling, and fond of the delights of England, solicited to be recalled, and after some time Mr. Bernard was removed from New Jersey to the chair of this province.

Bernard was the man for the purpose of the junto. Educated in the highest principles of monarchy; naturally daring and courageous; skilled enough in law and policy to do mischief, and avaricious to a most infamous degree; needy, at the same time, and having a numerous family to provide for, he was an instrument suitable in every respect, excepting one, for this junto to employ. The exception I mean was blunt frankness, very opposite to that cautious cunning, that deep dissimulation, to which they had, by long practice, disciplined themselves. However, they did not despair of teaching

\* If any one should ask what authority or evidence I have of this anecdote, I refer to the second volume of the *Political Disquisitions*, pp. 276–9. A book which ought to be in the hands of every American who has learned to read.

him this necessary artful quality by degrees, and the event showed that they were not wholly unsuccessful in their endeavors to do it.

While the war lasted, these simple provinces were of too much importance in the conduct of it, to be disgusted by any open attempt against their liberties. The junto, therefore, contented themselves with preparing their ground, by extending their connection and correspondencies in England, and by conciliating the friendship of the crown-officers occasionally here, and insinuating their designs as necessary to be undertaken in some future favorable opportunity, for the good of the empire, as well as of the colonies.

The designs of Providence are inscrutable. It affords conjunctures, favorable for their designs, to bad men, as well as to good. The conclusion of the peace was the most critical opportunity for our junto that could have presented. A peace, founded on the destruction of that system of policy, the most glorious for the nation that ever was formed, and which was never equalled in the conduct of the English government, except in the interregnum, and perhaps in the reign of Elizabeth; which system, however, by its being abruptly broken off, and its chief conductor discarded before it was completed, proved unfortunate to the nation, by leaving it sinking in a bottomless gulf of debt, oppressed and borne down with taxes.

At this lucky time, when the British financier was driven out of his wits, for ways and means to supply the demands upon him, Bernard is employed by the junto, to suggest to him the project of taxing the colonies by act of parliament.

I do not advance this without evidence. I appeal to a publication made by Sir Francis Bernard himself, the last year, of his own Select Letters on the Trade and Government of America; and the Principles of Law and Polity applied to the American Colonies. I shall make use of this pamphlet before I have done.

In the year 1764, Mr. Bernard transmitted home to different noblemen and gentlemen, four copies of his Principles of Law and Polity, with a preface, which proves incontestably, that the project of new-regulating the American Colonies was not first suggested to him by the ministry, but by him to them. The words of this preface are these: "The present expectation, that a new regulation of the American governments will soon take place, probably arises more from the opinion the public has of the abilities of the present ministry, than from any thing that has transpired from the cabinet. It cannot be supposed that their penetration can overlook the necessity of such a regulation, nor their public spirit fail to carry it into execution. But it may be a question, whether the present is a proper time for this work; more urgent business may stand before it; some preparatory steps may be required to precede it; but

these will only serve to postpone. As we may expect that this reformation, like all others, will be opposed by powerful prejudices, it may not be amiss to reason with them at leisure, and endeavor to take off their force before they become opposed to government.”

These are the words of that arch-enemy of North America, written in 1764, and then transmitted to four persons, with a desire that they might be communicated to others.

Upon these words, it is impossible not to observe: First, that the ministry had never signified to him any intention of new-regulating the colonies, and therefore, that it was he who most officiously and impertinently put them upon the pursuit of this *will-with-a-wisp*, which has led him and them into so much mire; secondly, the artful flattery with which he insinuates these projects into the minds of the ministry, as matters of absolute necessity, which their great penetration could not fail to discover, nor their great regard to the public omit; thirdly, the importunity with which he urges a speedy accomplishment of his pretended reformation of the governments; and, fourthly, his consciousness that these schemes would be opposed, although he affects to expect from powerful prejudices only, that opposition, which all Americans say, has been dictated by sound reason, true policy, and eternal justice. The last thing I shall take notice of is, the artful, yet most false and wicked insinuation, that such new regulations were then generally expected. This is so absolutely false, that, excepting Bernard himself, and his junto, scarcely anybody on this side the water had any suspicion of it,—insomuch that, if Bernard had made public, at that time, his preface and principles, as he sent them to the ministry, it is much to be doubted whether he could have lived in this country; certain it is, he would have had no friends in this province out of the junto.

The intention of the junto was, to procure a revenue to be raised in America by act of parliament. Nothing was further from their designs and wishes, than the drawing or sending this revenue into the exchequer in England, to be spent there in discharging the national debt, and lessening the burdens of the poor people there. They were more selfish. They chose to have the fingering of the money themselves. Their design was, that the money should be applied, first, in a large salary to the governor. This would gratify Bernard's avarice; and then, it would render him and all other governors, not only independent of the people, but still more absolutely a slave to the will of the minister. They intended likewise a salary for the lieutenant-governor. This would appease in some degree the gnawings of Hutchinson's avidity, in which he was not a whit behind Bernard himself. In the next place, they intended a salary to the judges of the common law, as well as admiralty. And

thus, the whole government, executive and judicial, was to be rendered wholly independent of the people, (and their representatives rendered useless, insignificant, and even burthensome,) and absolutely dependent upon, and under the direction of the will of the minister of state. They intended, further, to new-model the whole continent of North America; make an entire new division of it into distinct, though more extensive and less numerous colonies; to sweep away all the charters upon the continent with the destroying besom of an act of parliament; and reduce all the governments to the plan of the royal governments, with a nobility in each colony, not hereditary indeed at first, but for life. They did indeed flatter the ministry and people in England with distant hopes of a revenue from America, at some future period, to be appropriated to national uses there. But this was not to happen, in their minds, for some time. The governments must be new-modelled, new-regulated, reformed, first, and then the governments here would be able and willing to carry into execution any acts of parliament, or measures of the ministry, for fleecing the people here, to pay debts, or support pensioners on the American establishment, or bribe electors or members of parliament, or any other purpose that a virtuous ministry could desire.

But, as ill luck would have it, the British financier was as selfish as themselves, and, instead of raising money for them, chose to raise it for himself. He put the cart before the horse. He chose to get the revenue into the exchequer, because he had hungry cormorants enough about him in England, whose cawings were more troublesome to his ears than the croaking of the ravens in America. And he thought, if America could afford any revenue at all, and he could get it by authority of parliament, he might have it himself, to give to his friends, as well as raise it for the junto here, to spend themselves, or give to theirs. This unfortunate, preposterous improvement, of Mr. Grenville, upon the plan of the junto, had wellnigh ruined the whole.

I will proceed no further without producing my evidence. Indeed, to a man who was acquainted with this junto, and had any opportunity to watch their motions, observe their language, and remark their countenances, for these last twelve years, no other evidence is necessary; it was plain to such persons what this junto were about. But we have evidence enough now, under their own hands, of the whole of what was said of them by their opposers through the whole period.

Governor Bernard, in his letter of July 11, 1764, says, "that a general reformation of the American governments would become not only a desirable but a necessary measure." What his idea was, of a general reformation of the American governments, is to be learned from his Principles of Law and Polity, which he sent to the ministry in 1764. I shall select a few of them in his own

words; but I wish the whole of them could be printed in the newspapers, that America might know more generally the principles, and designs, and exertions of our junto.

His 29th proposition is: "The rule that a British subject shall not be bound by laws, or liable to taxes, but what he has consented to by his representatives, must be confined to the inhabitants of Great Britain only; and is not strictly true even there.

"30. The Parliament of Great Britain, as well from its rights of sovereignty, as from occasional exigencies, has a right to make laws for, and impose taxes upon, its subjects in its external dominions, although they are not represented in such Parliament. But,

"31. Taxes imposed upon the external dominions ought to be applied to the use of the people from whom they are raised.

"32. The Parliament of Great Britain has a right and a duty to take care to provide for the defence of the American colonies; especially as such colonies are unable to defend themselves.

"33. The Parliament of Great Britain has a right and a duty to take care that provision be made for a sufficient support of the American governments." Because,

"34. The support of the government is one of the principal conditions upon which a colony is allowed the power of legislation." Also, because,

"35. Some of the American colonies have shown themselves deficient in the support of their several governments, both as to sufficiency and independency."

His 75th proposition is: "Every American government is capable of having its constitution altered for the better.

"76. The grants of the powers of government to the American colonies, by charters, cannot be understood to be intended for other than their infant or growing states.

"77. They cannot be intended for their mature state, that is, for perpetuity; because they are in many things unconstitutional, and contrary to the very nature of a British government. Therefore,

"78. They must be considered as designed only as temporary means, for settling and bringing forward the peopling the colonies; which being effected, the cause of the peculiarity of their constitution ceases.

"79. If the charters can be pleaded against the authority of parliament, they amount to an alienation of the dominions of Great Britain, and are, in effect, acts of dismembering the British empire, and will operate as such, if care is not taken to prevent it.

"83. The notion which has heretofore prevailed, that the dividing Amer-



ica into many governments, and different modes of government, will be the means to prevent their uniting to revolt, is ill-founded; since, if the governments were ever so much consolidated, it will be necessary to have so many distinct states, as to make a union to revolt impracticable." Whereas,

"84. The splitting America into many small governments, weakens the governing power and strengthens that of the people; and thereby makes revolting more probable and more practicable.

"85. To prevent revolts in future times, (for there is no room to fear them in the present,) the most effectual means would be, to make the governments large and respectable, and balance the powers of them.

"86. There is no government in America at present, whose powers are properly balanced; there not being in any of them a real and distinct third legislative power mediating between the king and the people, which is the peculiar excellence of the British constitution.

"87. The want of such a third legislative power adds weight to the popular, and lightens the royal scale, so as to destroy the balance between the royal and popular powers.

"88. Although America is not now, (and probably will not be for many years to come) ripe enough for a hereditary nobility, yet it is now capable of a nobility for life.

"89. A nobility appointed by the king for life, and made independent, would probably give strength and stability to the American governments as effectually as a hereditary nobility does to that of Great Britain.

"90. The reformation of the American governments should not be controlled by the present boundaries of the colonies, as they were mostly settled upon partial, occasional, and accidental considerations, without any regard to the whole.

"91. To settle the American governments to the greatest possible advantage, it will be necessary to reduce the number of them; in some places to unite and consolidate; in others to separate and transfer; and in general to divide by natural boundaries instead of imaginary lines.

"92. If there should be but one form of government established for all the North American provinces, it would greatly facilitate the reformation of them; since, if the mode of government was everywhere the same, people would be more indifferent under what division they were ranged.

"93. No objections ought to arise to the alteration of the boundaries of provinces from proprietors, on account of their property only; since there is no occasion that it should in the least affect the boundaries of properties.

"94. The present distinctions of one government being more free or more

popular than another, tends to embarrass and to weaken the whole, and should not be allowed to subsist among people subject to one king and one law, and all equally fit for one form of government.

“95. The American colonies, in general, are at this time arrived at that state, which qualifies them to receive the most perfect form of government which their situation and relation to Great Britain make them capable of.

“96. The people of North America, at this time, expect a revisal and reformation of the American governments, and are better disposed to submit to it than ever they were, or perhaps ever will be again.

“97. This is, therefore, the proper and critical time to reform the American governments, upon a general, constitutional, firm, and durable plan; and if it is not done now, it will probably every day grow more difficult, till at last it becomes impracticable.”

My friends, these are the words, the plans, principles, and endeavors of Governor Bernard, in the year 1764. That Hutchinson and Oliver, notwithstanding all their disguises, which you well remember, were in unison with him in the whole of his measures, can be doubted by no man. It appeared sufficiently in the part they all along acted, notwithstanding their professions. And it appears incontestably from their detected letters; of which more hereafter.

Now, let me ask you, if the Parliament of Great Britain had all the natural foundations of authority, wisdom, goodness, justice, power, in as great perfection as they ever existed in any body of men since Adam's fall; and if the English nation was the most virtuous, pure, and free that ever was; would not such an unlimited subjection of three millions of people to that parliament, at three thousand miles distance, be real slavery? There are but two sorts of men in the world, freemen and slaves. The very definition of a freeman is one who is bound by no law to which he has not consented. Americans would have no way of giving or withholding their consent to the acts of this parliament, therefore they would not be freemen. But when luxury, effeminacy, and venality are arrived at such a shocking pitch in England; when both electors and elected are become one mass of corruption; when the nation is oppressed to death with debts and taxes, owing to their own extravagance and want of wisdom, what would be your condition under such an absolute subjection to parliament? You would not only be slaves, but the most abject sort of slaves, to the worst sort of masters! at least this is my opinion.

Judge you for yourselves between Massachusetts and Novanglus.

## No. III

THE HISTORY OF THE TORIES, begun in my last, will be interrupted for some time; but it shall be resumed, and minutely related in some future papers. Massachusetts, who shall now be pursued in his own serpentine path, in his first paper complains that the press is not free; that a party, by playing off the resentment of the populace against printers and authors, has gained the ascendancy so far as to become the licenser of it; that the press is become an engine of oppression and licentiousness, much devoted to the partisans of liberty, who have been indulged in publishing what they pleased, *fas vel nefas*, while little has been published on the part of government.

The art of this writer, which appears in all his productions, is very conspicuous in this. It is intended to excite a resentment against the friends of liberty, for tyrannically depriving their antagonists of so important a branch of freedom; and a compassion towards the tories, in the breasts of the people, in the other colonies and in Great Britain, by insinuating that they have not had equal terms. But nothing can be more injurious, nothing farther from the truth. Let us take a retrospective view of the period since the last peace, and see whether they have not uniformly had the press at their service, without the least molestation to authors or printers. Indeed, I believe, that the Massachusetts Spy, if not the Boston Gazette, has been open to them as well as to others. The Evening Post, Massachusetts Gazette, and Boston Chronicle have certainly been always as free for their use as the air. Let us dismiss prejudice and passion, and examine impartially whether the tories have not been chargeable with at least as many libels, as much licentiousness of the press, as the whigs? Dr. Mayhew was a whig of the first magnitude,—a clergyman equalled by very few of any denomination in piety, virtue, genius, or learning, whose works will maintain his character as long as New England shall be free, integrity esteemed, or wit, spirit, humor, reason, and knowledge admired. How was he treated from the press? Did not the reverend tories, who were pleased to write against him, the missionaries of defamation, as well as bigotry and passive obedience, in their pamphlets and newspapers, bespatter him all over with their filth? Did they not, with equal falsehood and malice, charge him with every thing evil? Mr. Otis was in civil life, and a senator, whose parts, literature, eloquence, and integrity proved him a character in the world equal to any of the time in which he flourished of any party in the province. Now, be pleased to recollect the Evening Post. For a long course of years, that gentleman, his friends and connections, of whom the world has, and grateful posterity will have, a better opinion than Massachusetts will acknowledge, were pelted with the most infernally mali-

cious, false, and atrocious libels that ever issued from any press in Boston. I will mention no other names, lest I give too much offence to the modesty of some, and the envy and rancor of others.

There never was before, in any part of the world, a whole town insulted to their faces, as Boston was by the Boston Chronicle. Yet the printer was not molested for printing. It was his mad attack upon other printers with his clubs, and upon other gentlemen with his pistols, that was the cause, or rather the pretence, of his flight. The truth was, he became too polite to attend to his business; his shop was neglected; procurations were coming for more than two thousand pounds sterling, which he had no inclination to pay.

Printers may have been less eager after the productions of the tories than of the whigs, and the reason has been, because the latter have been more consonant to the general taste and sense, and consequently more in demand. Notwithstanding this, the former have ever found one press, at least, devoted to their service, and have used it as licentiously as they could wish. Whether the revenue-chest has kept it alive, and made it profitable against the general sense, or not, I wot not. Thus much is certain, that two, three, four, five, six, eight, fifteen hundred pounds sterling a-year, have been the constant reward of every scribbler who has taken up the pen on the side of the ministry with any reputation, and commissions have been given here for the most wretched productions of dulness itself; whereas, the writers on the side of liberty have been rewarded only with the consciousness of endeavoring to do good, with the approbation of the virtuous, and the malice of men in power.

But this is not the first time that writers have taken advantage of the times. Massachusetts knows the critical situation of this province; the danger it is in, without government or law; the army in Boston; the people irritated and exasperated in such a manner as was never before borne by any people under heaven. Much depends upon their patience at this critical time; and such an example of patience and order this people have exhibited, in a state of nature, under such cruel insults, distresses, and provocations, as the history of mankind cannot parallel. In this state of things, protected by an army, the whole junto are now pouring forth the torrents of their billingsgate; propagating thousands of the most palpable falsehoods, when they know that the writers on the other side have been restrained by their prudence and caution from engaging in a controversy that must excite heats, lest it should have unhappy and tragical consequences.

There is nothing in this world so excellent that it may not be abused. The abuses of the press are notorious. It is much to be desired, that writers on all sides would be more careful of truth and decency; but, upon the most

impartial estimate, the tories will be found to have been the least so of any party among us.

The honest Veteran, who ought not to be forgotten in this place, says: "If an inhabitant of Bern or Amsterdam could read the newspapers, &c., he would be at a loss how to reconcile oppression with such unbounded license of the press, and would laugh at the charge, as something much more than a paradox,—as a palpable contradiction." But, with all his taste and manly spirit, the Veteran is little of a statesman. His ideas of liberty are quite inadequate; his notions of government very superficial. License of the press is no proof of liberty. When a people are corrupted, the press may be made an engine to complete their ruin; and it is now notorious, that the ministry are daily employing it, to increase and establish corruption, and to pluck up virtue by the roots. Liberty can no more exist without virtue and independence, than the body can live and move without a soul. When these are gone, and the popular branch of the constitution is become dependent on the minister, as it is in England, or cut off, as it is in America, all other forms of the constitution may remain; but if you look for liberty, you will grope in vain; and the freedom of the press, instead of promoting the cause of liberty, will but hasten its destruction, as the best cordials taken by patients in some distempers become the most rancid and corrosive poisons.

The language of the Veteran, however, is like the style of the minister and his scribblers in England,—boasting of the unbounded freedom of the press, and assuring the people that all is safe while that continues; and thus the people are to be cheated with libels, in exchange for their liberties.

A stronger proof cannot be wished, of the scandalous license of the tory presses, than the swarms of pamphlets and speculations, in New York and Boston, since last October. "Madness, folly, delusion, delirium, infatuation, frenzy, high treason, and rebellion," are charged in every page, upon three millions of as good and loyal, as sensible and virtuous people as any in the empire; nay, upon that congress, which was as full and free a representative as ever was constituted by any people; chosen universally, without solicitation, or the least tincture of corruption; that congress which consisted of governors, counsellors, some of them by mandamus too, judges of supreme courts, speakers of assemblies, planters and merchants of the first fortune and character, and lawyers of the highest class, many of them educated at the temple, called to the bar in England, and of abilities and integrity equal to any there.

Massachusetts, conscious that the people of this continent have the utmost abhorrence of treason and rebellion, labors to avail himself of the magic in these words. But his artifice is vain. The people are not to be intimidated by hard words from a necessary defence of their liberties. Their

attachment to their constitution, so dearly purchased by their own and their ancestors' blood and treasure; their aversion to the late innovations; their horror of arbitrary power and the Romish religion, are much deeper rooted than their dread of rude sounds and unmannerly language. They do not want "the advice of an honest lawyer, if such an one could be found," nor will they be deceived by a dishonest one. They know what offence it is to assemble armed, and forcibly obstruct the course of justice. They have been many years considering and inquiring; they have been instructed by Massachusettensis and his friends, in the nature of treason, and the consequences of their own principles and actions. They know upon what hinge the whole dispute turns; that the *fundamentals* of the government over them are disputed; that the minister pretends, and had the influence to obtain the voice of the last parliament in his favor, that parliament is the only supreme, sovereign, absolute, and uncontrollable legislative over all the colonies; that, therefore, the minister and all his advocates will call resistance to acts of parliament by the names of treason and rebellion. But, at the same time, they know that, in their own opinions, and in the opinions of all the colonies, parliament has no authority over them, excepting to regulate their trade, and this not by any principle of common law, but merely by the consent of the colonies, founded on the obvious necessity of a case which was never in contemplation of that law, nor provided for by it; that, therefore, they have as good a right to charge that minister, Massachusettensis, and the whole army to which he has fled for protection, with treason and rebellion. For, if the parliament has not a legal authority to overturn their constitution, and subject them to such acts as are lately passed, every man who accepts of any commission, and takes any steps to carry those acts into execution, is guilty of overt acts of treason and rebellion against his majesty, his royal crown and dignity, as much as if he should take arms against his troops, or attempt his sacred life. They know that the resistance against the Stamp Act, which was made through all America, was, in the opinion of Massachusettensis and George Grenville, high treason; and that Brigadier Ruggles and good Mr. Ogden pretended at the congress of New York to be of the same mind, and have been held in utter contempt and derision by the whole continent for the same reason ever since; because, in their own opinion, that resistance was a noble stand against tyranny, and the only opposition to it which could have been effectual; that if the American resistance to the act for destroying your charter, and to the resolves for arresting persons here and sending them to England for trial, is treason, the lords and commons, and the whole nation, were traitors at the revolution. They know that all America is united in sentiment, and in the plan of opposition to the claims of administration and parliament. The junto,

in Boston, with their little flocks of adherents in the country, are not worth taking into the account; and the army and navy, though these are divided among themselves, are no part of America.

In order to judge of this union, they begin at the commencement of the dispute, and run through the whole course of it. At the time of the Stamp Act, every colony expressed its sentiments by resolves of their assemblies, and every one agreed that parliament had no right to tax the colonies. The house of representatives of the Massachusetts Bay then consisted of many persons who have since figured as friends to government; yet every member of that house concurred most cheerfully in the resolves then passed. The congress which met that year at New York expressed the same opinion in their resolves, after the paint, paper, and tea act was passed. The several assemblies expressed the same sentiments; and when your colony wrote the famous circular letter, notwithstanding all the mandates and threats and cajoling of the minister and the several governors, and all the crown-officers through the continent, the assemblies, with one voice, echoed their entire approbation of that letter, and their applause to your colony for sending it. In the year 1768, when a non-importation was suggested and planned by a few gentlemen at a private club in one of our large towns, as soon as it was proposed to the public, did it not spread through the whole continent? Was it not regarded like the laws of the Medes and Persians in almost all the colonies? When the paint and paper act was repealed, the southern colonies agreed to depart from the association in all things but the dutied articles; but they have kept strictly to their agreement against importing them, so that no tea worth the mentioning has been imported into any of them from Great Britain to this day. In the year 1770, when a number of persons were slaughtered in King Street, such was the brotherly sympathy of all the colonies, such their resentment against a hostile administration, that the innocent blood then spilt has never been forgotten, nor the murderous minister and governors, who brought the troops here, forgiven by any part of the continent, and never will be. When a certain masterly statesman invented a committee of correspondence in Boston, which has provoked so much of the spleen of Massachusettensis, (of which much more hereafter) did not every colony, nay, every county, city, hundred, and town, upon the whole continent, adopt the measure, I had almost said, as if it had been a revelation from above, as the happiest means of cementing the union and acting in concert?

What proofs of union have been given since the last March? Look over the resolves of the several colonies, and you will see that one understanding governs, one heart animates the whole body. Assemblies, conventions, congresses, towns, cities, and private clubs and circles, have been actuated by

one great, wise, active, and noble spirit, one masterly soul animating one vigorous body. The congress at Philadelphia have expressed the same sentiments with the people of New England; approved of the opposition to the late innovations; unanimously advised us to persevere in it; and assured us, that if force is attempted to carry these measures against us, all America ought to support us. Maryland and the lower counties on Delaware have already, to show to all the world their approbation of the measures of New England and their determination to join in them, with a generosity, a wisdom, and magnanimity which ought to make the tories consider, taken the power of the militia into the hands of the people, without the governor or minister, and established it by their own authority, for the defence of Massachusetts, as well as of themselves. Other colonies are only waiting to see if the necessity of it will become more obvious. Virginia and the Carolinas are preparing for military defence, and have been for some time. When we consider the variety of climate, soil, religion, civil government, commercial interests, &c. which were represented at the congress, and the various occupations, education, and characters of the gentlemen who composed it, the harmony and unanimity which prevailed in it can scarcely be paralleled in any assembly that ever met. When we consider that, at the revolution, such mighty questions, as whether the throne was vacant or not, and whether the Prince of Orange should be king or not, were determined in the convention of parliament by small majorities of two or three, and four or five only, the great majorities, the almost unanimity with which all great questions have been decided in your house of representatives and other assemblies, and especially in the continental congress, cannot be considered in any other light than as the happiest omens, indeed as providential dispensations, in our favor, as well as the clearest demonstrations of the cordial, firm, radical, and indissoluble union of the colonies.

The grand aphorism of the policy of the whigs has been to unite the people of America, and divide those of Great Britain. The reverse of this has been the maxim of the tories, namely,—to unite the people of Great Britain, and divide those of America. All the movements, marches, and countermarches of both parties, on both sides of the Atlantic, may be reduced to one or the other of these rules. I have shown, in opposition to Massachusetts, that the people of America are united more perfectly than the most sanguine whig could ever have hoped, or than the most timid tory could have feared. Let us now examine whether the people of Great Britain are equally united against us. For, if the contending countries were equally united, the prospect of success in the quarrel would depend upon the comparative wisdom, firmness, strength, and other advantages of each. And if such a comparison was made, it would not appear to a demonstration that



Great Britain could so easily subdue and conquer. It is not so easy a thing for the most powerful state to conquer a country a thousand leagues off. How many years time, how many millions of money, did it take, with five-and-thirty thousand men, to conquer the poor province of Canada? And, after all the battles and victories, it never would have submitted, without a capitulation which secured to them their religion and properties.

But we know that the people of Great Britain are not united against us. We distinguish between the ministry, the house of commons, the officers of the army, navy, excise, customs, &c., who are dependent on the ministry, and tempted, if not obliged, to echo their voices, and the body of the people. We are assured, by thousands of letters from persons of good intelligence, by the general strain of publications in public papers, pamphlets, and magazines, and by some larger works written for posterity, that the body of the people are friends to America, and wish us success in our struggles against the claims of parliament and administration. We know, that millions in England and Scotland will think it unrighteous, impolitic, and ruinous to make war upon us; and a minister, though he may have a marble heart, will proceed with a diffident, desponding spirit. We know that London and Bristol, the two greatest commercial cities in the empire, have declared themselves, in the most decisive manner, in favor of our cause,—so explicitly, that the former has bound her members under their hands to assist us; and the latter has chosen two known friends of America, one attached to us by principle, birth, and the most ardent affection, the other an able advocate for us on several great occasions. We know that many of the most virtuous and independent of the nobility and gentry are for us, and among them, the best bishop that adorns the bench, as great a judge as the nation can boast, and the greatest statesman it ever saw. We know that the nation is loaded with debts and taxes, by the folly and iniquity of its ministers, and that, without the trade of America, it can neither long support its fleet and army, nor pay the interest of its debt.

But we are told that the nation is now united against us; that they hold they have a right to tax us and legislate for us, as firmly as we deny it; that we are a part of the British empire; that every state must have an uncontrollable power coextensive with the empire; that there is little probability of serving ourselves by ingenious distinctions between external and internal taxes; that if we are not a part of the state, and subject to the supreme authority of parliament, Great Britain will make us so; that if this opportunity of reclaiming the colonies is lost, they will be dismembered from the empire; and, although they may continue their allegiance to the king, they will own none to the imperial crown.

To all this I answer, that the nation is not so united; that they do not so universally hold they have such a right. And my reasons I have given before; that the terms “British Empire” are not the language of the common law, but the language of newspapers and political pamphlets; that the dominions of the king of Great Britain have no power coextensive with them. I would ask, by what law the parliament has authority over America? By the law of God, in the Old and New Testament, it has none; by the law of nature and nations, it has none; by the common law of England, it has none, for the common law, and the authority of parliament founded on it, never extended beyond the four seas; by statute law it has none, for no statute was made before the settlement of the colonies for this purpose; and the declaratory act, made in 1766, was made without our consent, by a parliament which had no authority beyond the four seas. What religious, moral, or political obligations then are we under to submit to parliament as a supreme legislative? None at all. When it is said, that if we are not subject to the supreme authority of parliament, Great Britain will make us so, all other laws and obligations are given up, and recourse is had to the *ratio ultima* of Louis XIV. and the *suprema lex* of the king of Sardinia,—to the law of brickbats and cannon balls, which can be answered only by brickbats and balls.

This language, “the imperial crown of Great Britain,” is not the style of the common law, but of court sycophants. It was introduced in allusion to the Roman empire, and intended to insinuate that the prerogative of the imperial crown of England was like that of the Roman emperor, after the maxim was established, *quod principi placuit legis habet vigorem*; and, so far from including the two houses of parliament in the idea of this imperial crown, it was intended to insinuate that the crown was absolute, and had no need of lords or commons to make or dispense with laws. Yet even these court sycophants, when driven to an explanation, never dared to put any other sense upon the words *imperial crown* than this, that the crown of England was independent of France, Spain, and all other kings and states in the world.

When he says, that the king’s dominions must have an uncontrollable power coextensive with them, I ask whether they have such a power or not? and utterly deny that they have, by any law but that of Louis XIV. and the king of Sardinia. If they have not, and it is necessary that they should have, it then follows that there is a defect in what he calls the British empire; and how shall this defect be supplied? It cannot be supplied consistently with reason, justice, policy, morality, or humanity, without the consent of the colonies and some new plan of connection. But if Great Britain will set all these at defiance, and resort to the *ratio ultima*, all Europe will pronounce

her a tyrant, and America never will submit to her, be the danger of disobedience as great as it will.

But there is no need of any other power than that of regulating trade, and this the colonies ever have been, and will be, ready and willing to concede to her. But she will never obtain from America any further concession while she exists. We are then asked, "for what she protected and defended the colonies against the maritime powers of Europe, from their first settlement to this day?" I answer, for her own interest; because all the profits of our trade centred in her lap. But it ought to be remembered, that her name, not her purse, nor her fleets and armies ever protected us, until the last war, and then the minister who conducted that war informed us that the annual millions from America enabled her to do it.

We are then asked, for what she purchased New York of the Dutch? I answer, she never did. The Dutch never owned it, were never more than trespassers and intruders there, and were finally expelled by conquest. It was ceded, it is true, by the treaty of Breda, and it is said in some authors, that some other territory in India was ceded to the Dutch in lieu of it. But this was the transaction of the king, not of parliament, and therefore makes nothing to the argument.

But admitting, for argument sake, (since the cautious Massachusettensis will urge us into the discussion of such questions,) what is not a supposable case, that the nation should be so sunk in sloth, luxury, and corruption, as to suffer their minister to persevere in his mad blunders, and send fire and sword against us, how shall we defend ourselves? The colonies south of Pennsylvania have no men to spare, we are told. But we know better; we know that all those colonies have a back country, which is inhabited by a hardy, robust people, many of whom are emigrants from New England, and habituated, like multitudes of New England men, to carry their fuzees or rifles upon one shoulder, to defend themselves against the Indians, while they carry their axes, scythes, and hoes upon the other, to till the ground. Did not those colonies furnish men the last war, excepting Maryland? Did not Virginia furnish men, one regiment particularly, equal to any regular regiment in the service? Does the soft Massachusettensis imagine, that in the unnatural, horrid war he is now supposing, their exertions would be less? If he does, he is very ill informed of their principles, their present sentiments and temper.

But, "have you arms and ammunition?" I answer, we have; but if we had not, we could make a sufficient quantity of both. What should hinder? We have many manufacturers of fire-arms now, whose arms are as good as any in the world. Powder has been made here, and may be again, and so may saltpetre. What should hinder? We have all the materials in great abundance,

and the process is very simple. But if we neither had them nor could make them, we could import them.

But “the British navy!” ay, there’s the rub. Let us consider, since the prudent Massachusettensis will have these questions debated, how many ships are taken to blockade Boston harbor! How many ships can Britain spare to carry on this humane and political war, the object of which is a peppercorn! Let her send all the ships she has round her island; what if her ill-natured neighbors, France and Spain, should strike a blow in their absence? In order to judge what they could all do when they arrived here, we should consider what they are all able to do round the island of Great Britain. We know that the utmost vigilance and exertions of them, added to all the terrors of sanguinary laws, are not sufficient to prevent continual smuggling into their own island. Are there not fifty bays, harbors, creeks, and inlets upon the whole coast of North America, where there is one round the island of Great Britain? Is it to be supposed, then, that the whole British navy could prevent the importation of arms and ammunition into America, if she should have occasion for them to defend herself against the hellish warfare that is here supposed?

But what will you do for discipline and subordination? I answer, We will have them in as great perfection as the regular troops. If the provincials were not brought, in the last war, to a proper discipline, what was the reason? Because regular generals would not let them fight, which they ardently wished, but employed them in cutting roads. If they had been allowed to fight, they would have brought the war to a conclusion too soon. The provincials did submit to martial law, and to the mutiny and desertion act the last war, and such an act may be made here by a legislature which they will obey with much more alacrity than an act of parliament.

“The new-fangled militia,” as the specious Massachusettensis calls it, is such a militia as he never saw. They are commanded through the province, not by men who procured their commissions from a governor as a reward for making themselves pimps to his tools, and by discovering a hatred of the people, but by gentlemen, whose estates, abilities, and benevolence have rendered them the delight of the soldiers; and there is an esteem and respect for them visible through the province, which has not been used in the militia. Nor is there that unsteadiness that is charged upon them. In some places, where companies have been split into two or three, it has only served, by exciting an emulation between the companies, to increase the martial spirit and skill. The plausible Massachusettensis may write as he will, but in a land war, this continent might defend itself against all the world. We have men enough, and those men have as good natural understandings, and as much

natural courage as any other men. If they were wholly ignorant now, they might learn the art of war.

But at sea we are defenceless. A navy might burn our seaport towns. What then? If the insinuating Massachusettensis has ever read any speculations concerning an agrarian law, and I know he has, he will be satisfied that three hundred and fifty thousand landholders will not give up their rights, and the constitution by which they hold them, to save fifty thousand inhabitants of maritime towns. Will the minister be nearer his mark, after he has burned a beautiful town and murdered thirty thousand innocent people? So far from it, that one such event would occasion the loss of all the colonies to Great Britain forever. It is not so clear that our trade, fishery, and navigation could be taken from us. Some persons, who understand this subject better than Massachusettensis, with all his sprightly imaginations, are of a different opinion. They think that our trade would be increased. But I will not enlarge upon this subject, because I wish the trade of this continent may be confined to Great Britain, at least as much of it as it can do her any good to restrain.

The Canadians and savages are brought in to thicken the horrors of a picture with which the lively fancy of this writer has terrified him. But, although we are sensible that the Quebec act has laid a foundation for a fabric, which, if not seasonably demolished, may be formidable, if not ruinous, to the colonies, in future times, yet we know that these times are yet at a distance; at present we hold the power of the Canadians as nothing. But we know their dispositions are not unfriendly to us.

The savages will be more likely to be our friends than enemies; but if they should not, we know well enough how to defend ourselves against them.

I ought to apologize for the immoderate length of this paper; but general assertions are only to be confuted by an examination of particulars, which necessarily fills up much space. I will trespass on the reader's patience only while I make one observation more upon the art, I had almost said chicanery, of this writer.

He affirms that we are not united in this province, and that associations are forming in several parts of the province. The association he means has been laid before the public, and a very curious piece of legerdemain it is. Is there any article acknowledging the authority of parliament, the unlimited authority of parliament? Brigadier Ruggles himself, Massachusettensis himself, could not have signed it if there had been, consistent with their known declared opinions. They associate to stand by the king's laws, and this every whig will subscribe. But, after all, what a wretched fortune has this association made in the world! The numbers who have signed it would appear so in-

NO. IV

considerable, that I dare say the Brigadier will never publish to the world their numbers or names. But, “has not Great Britain been a nursing-mother to us?” Yes, and we have behaved as nurse-children commonly do,—been very fond of her, and rewarded her all along tenfold for all her care and expense in our nurture.

But “is not our distraction owing to parliament’s taking off a shilling-duty on tea and imposing threepence, and is not this a more unaccountable frenzy, more disgraceful to the annals of America, than the witchcraft?”

Is the threepence upon tea our only grievance? Are we not in this province deprived of the privilege of paying our governors, judges, &c.? Are not trials by jury taken from us? Are we not sent to England for trial? Is not a military government put over us? Is not our constitution demolished to the foundation? Have not the ministry shown, by the Quebec bill, that we have no security against them for our religion, any more than our property, if we once submit to the unlimited claims of parliament? This is so gross an attempt to impose on the most ignorant of the people, that it is a shame to answer it.

*Obsta principiis*, nip the shoots of arbitrary power in the bud, is the only maxim which can ever preserve the liberties of any people. When the people give way, their deceivers, betrayers, and destroyers press upon them so fast, that there is no resisting afterwards. The nature of the encroachment upon the American constitution is such, as to grow every day more and more encroaching. Like a cancer, it eats faster and faster every hour. The revenue creates pensioners, and the pensioners urge for more revenue. The people grow less steady, spirited, and virtuous, the seekers more numerous and more corrupt, and every day increases the circles of their dependents and expectants, until virtue, integrity, public spirit, simplicity, and frugality, become the objects of ridicule and scorn, and vanity, luxury, foppery, selfishness, meanness, and downright venality swallow up the whole society.

NO. IV

MASSACHUSETTENSIS, whose pen can wheedle with the tongue of King Richard III., in his first paper, threatens you with the vengeance of Great Britain; and assures you, that if she had no authority over you, yet she would support her claims by her fleets and armies, Canadians and Indians. In his next, he alters his tone, and soothes you with the generosity, justice, and humanity of the nation.

I shall leave him to show how a nation can claim an authority which they have not by right, and support it by fire and sword, and yet be generous

and just. The nation, I believe, is not vindictive, but the minister has discovered himself to be so in a degree that would disgrace a warrior of a savage tribe.

The wily Massachusettensis thinks our present calamity is to be attributed to the bad policy of a popular party, whose measures, whatever their intentions were, have been opposite to their profession, the public good. The present calamity seems to be nothing more nor less than reviving the plans of Mr. Bernard and the junto, and Mr. Grenville and his friends, in 1764. Surely this party are, and have been, rather unpopular. The popular party did not write Bernard's letters, who so long ago pressed for the demolition of all the charters upon the continent, and a parliamentary taxation to support government and the administration of justice in America. The popular party did not write Oliver's letters, who enforces Bernard's plans; nor Hutchinson's, who pleads with all his eloquence and pathos for parliamentary penalties, ministerial vengeance, and an abridgment of English liberties.

There is not in human nature a more wonderful phenomenon, nor in the whole theory of it a more intricate speculation, than the *shiftings, turnings, windings*, and *evasions* of a guilty conscience. Such is our unalterable moral constitution, that an internal inclination to do wrong is criminal; and a wicked thought stains the mind with guilt, and makes it tingle with pain. Hence it comes to pass, that the guilty mind can never bear to think that its guilt is known to God or man, no, nor to itself.

“Cur tamen hos tu

Evasisse putes, quos diri conscia facti  
Mens habet attonitos, et surdo verbere caedit  
Occultum quatiente animo tortore flagellum?  
Poena autem vehemens ac multo saevior illis,  
Quas et Caeditius gravis invenit aut Rhadamanthus,  
Nocte dieque suum gestare in pectore testem.”\*

Massachusettensis and his friends the tories are startled at the calamities they have brought upon their country; and their conscious guilt, their smarting, wounded mind, will not suffer them to confess, even to themselves, what they have done. Their silly denials of their own share in it, before a people who, they know, have abundant evidence against them, never fail to remind me of an ancient *fugitive*, whose conscience could not bear the recollection of what he had done. “I know not; am I my brother's keeper?” he replies,

\* Juv. Sat. xiii. 192.

with all the apparent simplicity of truth and innocence, to one from whom he was very sensible his guilt could not be hid. The still more absurd and ridiculous attempts of the whigs, to throw off the blame of these calamities from themselves to the whigs, remind me of another story, which I have read in the Old Testament. When Joseph's brethren had sold him to the Ishmaelites for twenty pieces of silver, in order to conceal their own avarice, malice, and envy, they dip the coat of many colors in the blood of a kid, and say that an evil beast had rent him in pieces and devoured him. However, what the sons of Israel intended for ruin to Joseph, proved the salvation of the family; and I hope and believe that the whigs will have the magnanimity, like him, to suppress their resentment, and the felicity of saving their ungrateful brothers.

This writer has a faculty of insinuating errors into the mind almost imperceptibly, he dresses them so in the guise of truth. He says, that "the revenue to the crown from America amounted to but little more than the charges of collecting it," at the close of the last war. I believe it did not to so much. The truth is, there never was a pretence of raising a revenue in America before that time, and when the claim was first set up, it gave an alarm like a warlike expedition against us. True it is, that some duties had been laid before by parliament, under pretence of regulating our trade, and, by a collusion and combination between the West India planters and the North American governors, some years before, duties had been laid upon molasses &c. under the same pretence; but, in reality, merely to advance the value of the estates of the planters in the West India Islands, and to put some plunder, under the name of thirds of seizures, into the pockets of the governors. But these duties, though more had been collected in this province than in any other, in proportion, were never regularly collected in any of the colonies. So that the idea of an American revenue, for one purpose or another, had never, at this time, been formed in American minds.

Our writer goes on: "She (Great Britain) thought it as reasonable that the colonies should bear a part of the national burden, as that they should share in the national benefit."

Upon this subject Americans have a great deal to say. The national debt, before the last war, was near a hundred millions. Surely America had no share in running into that debt. What is the reason, then, that she should pay it? But a small part of the sixty millions spent in the last war was for her benefit. Did she not bear her full share of the burden of the last war in America? Did not the province pay twelve shillings in the pound in taxes for the support of it; and send a sixth or seventh part of her sons into actual service? And, at the conclusion of the war, was she not left half a million sterling in debt?



Did not all the rest of New England exert itself in proportion? What is the reason that the Massachusetts has paid its debt, and the British minister, in thirteen years of peace, has paid none of his? Much of it might have been paid in this time, had not such extravagance and speculation prevailed, as ought to be an eternal warning to America, never to trust such a minister with her money. What is the reason that the great and necessary virtues of simplicity, frugality, and economy cannot live in England, Scotland, and Ireland, as well as America?

We have much more to say still. Great Britain has confined all our trade to herself. We are willing she should, so far as it can be for the good of the empire. But we say, that we ought to be allowed as credit, in the account of public burdens and expenses, so much, paid in taxes, as we are obliged to sell our commodities to her cheaper than we could get for them at foreign markets. The difference is really a tax upon us for the good of the empire. We are obliged to take from Great Britain commodities that we could purchase cheaper elsewhere. This difference is a tax upon us for the good of the empire. We submit to this cheerfully; but insist that we ought to have credit for it in the account of the expenses of the empire, because it is really a tax upon us.

Another thing; I will venture a bold assertion,—let Massachusettensis or any other friend of the minister confute me,—the three million Americans, by the tax aforesaid, upon what they are obliged to export to Great Britain only, what they are obliged to import from Great Britain only, and the quantities of British manufactures which, in these climates, they are obliged to consume more than the like number of people in any part of the three kingdoms, ultimately pay more of the taxes and duties that are apparently paid in Great Britain, than any three million subjects in the three kingdoms. All this may be computed and reduced to stubborn figures by the minister, if he pleases. We cannot do it; we have not the accounts, records, &c. Now let this account be fairly stated, and I will engage for America, upon any penalty, that she will pay the overplus, if any, in her own constitutional way, provided it is to be applied for national purposes, as paying off the national debt, maintaining the fleet, &c., not to the support of a standing army in time of peace, placemen, pensioners, &c.

Besides, every farthing of expense which has been incurred, on pretence of protecting, defending, and securing America, since the last war, has been worse than thrown away; it has been applied to do mischief. Keeping an army in America has been nothing but a public nuisance.

Furthermore, we see that all the public money that is raised here, and have reason to believe all that will or can be raised, will be applied, not for

public purposes, national or provincial, but merely to corrupt the sons of America, and create a faction to destroy its interest and happiness.

There are scarcely three sentences together, in all the voluminous productions of this plausible writer, which do not convey some error in fact or principle, tinged with a coloring to make it pass for truth. He says, "the idea that the stamps were a tax, not only exceeding our proportion, but beyond our utmost ability to pay, united the colonies generally in opposing it." That we thought it beyond our proportion and ability is true; but it was not this thought which united the colonies in opposing it. When he says that at first, we did not dream of denying the authority of parliament to tax us, much less to legislate for us, he discovers plainly either a total inattention to the sentiments of America, at that time, or a disregard of what he affirms.

The truth is, the authority of parliament was never generally acknowledged in America. More than a century since, Massachusetts and Virginia both protested against even the act of navigation, and refused obedience, for this very reason, because they were not represented in parliament and were therefore not bound; and afterwards confirmed it by their own provincial authority. And from that time to this, the general sense of the colonies has been, that the authority of parliament was confined to the regulation of trade, and did not extend to taxation or internal legislation.

In the year 1764, your house of representatives sent home a petition to the king against the plan of taxing them. Mr. Hutchinson, Oliver, and their relations and connections were then in the legislature, and had great influence there. It was by their influence that the two houses were induced to wave the word *rights* and an express denial of the right of parliament to tax us, to the great grief and distress of the friends of liberty in both houses. Mr. Otis and Mr. Thacher labored in the committee to obtain an express denial. Mr. Hutchinson expressly said, he agreed with them in opinion, that parliament had no right, but thought it ill policy to express this opinion in the petition. In truth, I will be bold to say, there was not any member of either house who thought that parliament had such a right at that time. The house of representatives, at that time, gave their approbation to Mr. Otis's Rights of the Colonies, in which it was shown to be inconsistent with the right of British subjects to be taxed but by their own representatives.

In 1765, our house expressly resolved against the right of parliament to tax us. The congress at New York resolved:

"3. That it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no tax be imposed on them, but with their own consent, given personally, or by their representatives.

“4. That the people of the colonies are not, and from their local circumstances cannot, be represented in the house of commons of Great Britain.

“5. That the only representatives of the people of the colonies are the persons chosen therein by themselves; and that no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures.”

Is it not a striking disregard to truth, in the artful Massachusettensis, to say, that, at first, we did not dream of denying the right of parliament to tax us? It was the principle that united the colonies to oppose it, not the *quantum* of the tax. Did not Dr. Franklin deny the right in 1754, in his remarks upon Governor Shirley’s scheme, and suppose that all America would deny it? We had considered ourselves as connected with Great Britain, but we never thought parliament the supreme legislature over us. We never generally supposed it to have any authority over us, but from necessity, and that necessity we thought confined to the regulation of trade, and to such matters as concerned all the colonies together. We never allowed them any authority in our internal concerns.

This writer says, “acts of parliament for regulating our internal polity were familiar.” This I deny. So far otherwise, that the Hatter’s Act was never regarded; the act to destroy the Land Bank scheme raised a greater ferment in this province than the Stamp Act did, which was appeased only by passing province laws directly in opposition to it. The act against slitting-mills and tilt-hammers never was executed here. As to the postage, it was so useful a regulation, so few persons paid it, and they found such a benefit by it, that little opposition was made to it. Yet every man who thought about it, called it a usurpation. Duties for regulating trade we paid, because we thought it just and necessary that they should regulate the trade which their power protected. As for duties for a revenue, none were ever laid by parliament for that purpose, until 1764, when, and ever since, its authority to do it has been constantly denied. Nor is this complaisant writer near the truth when he says, “We knew that in all those acts of government, the good of the whole had been consulted.” On the contrary, we know that the private interest of provincial governors and West India planters had been consulted in the duties on foreign molasses, &c., and the private interest of a few Portugal merchants, in obliging us to touch at Falmouth with fruit, &c., in opposition to the good of the whole, and in many other instances.

The resolves of the house of burgesses of Virginia upon the Stamp Act did great honor to that province, and to the eminent patriot, Patrick Henry, who composed them. But these resolves made no alteration in the opinion of the colonies, concerning the right of parliament to make that act. They expressed the universal opinion of the continent at that time; and the alacrity

with which every other colony, and the congress at New York, adopted the same sentiment in similar resolves, proves the entire union of the colonies in it, and their universal determination to avow and support it. What follows here,—that it became so popular, that his life was in danger who suggested the contrary, and that the press was “open to one side only,”—are direct misrepresentations and wicked calumnies.

Then we are told by this sincere writer, that when we obtained a partial repeal of the statute imposing duties on glass, paper, and teas, “this was the lucky moment when to have closed the dispute.” What? with a board of commissioners remaining, the sole end of whose creation was to form and conduct a revenue? With an act of parliament remaining, the professed design of which, expressed in the preamble, was to raise a revenue, and appropriate it to the payment of governors’ and judges’ salaries; the duty remaining, too, upon an article which must raise a large sum, the consumption of which would constantly increase? Was this a time to retreat? Let me ask this sincere writer a simple question,—does he seriously believe that the designs of imposing other taxes, and of new-modelling our governments, would have been laid aside by the ministry or by the servants of the crown here? Does he think that Mr. Bernard, Mr. Hutchinson, the commissioners, and others would have been content then to have desisted? If he really thinks so, he knows little of the human heart, and still less of those gentlemen’s hearts. It was at this very time that the salary was given to the governor, and an order solicited for that to the judges.

Then we are entertained with a great deal of ingenious talk about whigs and tories, and at last are told, that some of the whigs owed all their importance to popularity. And what then? Did not as many of the tories owe their importance to popularity? And did not many more owe all their importance to unpopularity? If it had not been for their taking an active part on the side of the ministry, would not some of the most conspicuous and eminent of them have been unimportant enough? Indeed, through the two last administrations, to despise and hate the people, and to be despised and hated by them, were the principal recommendations to the favors of government, and all the qualification that was required.

“The tories,” says he, “were for closing the controversy.” That is, they were for contending no more; and it was equally true, that they never were for contending at all, but lying at mercy. It was the very end they had aimed at from the beginning. They had now got the governor’s salary out of the revenue, a number of pensions and places; they knew they could at any time get the judges’ salaries from the same fountain; and they wanted to get the

people reconciled and familiarized to this, before they went upon any new projects.

“The whigs were averse to restoring government; they even refused to revive a temporary Riot Act which expired about this time.” Government had as much vigor then as ever, excepting only in those cases which affected this dispute. The Riot Act expired in 1770, immediately after the massacre in King Street. It was not revived, and never will be in this colony; nor will any one ever be made in any other, while a standing army is illegally posted here to butcher the people, whenever a governor or a magistrate, who may be a tool, shall order it. “Perhaps the whigs thought that mobs were a necessary ingredient in their system of opposition.” Whether they did or not, it is certain that mobs have been thought a necessary ingredient by the tories in their system of administration, mobs of the worst sort, with red coats, fuzees, and bayonets; and the lives and limbs of the whigs have been in greater danger from these, than ever the tories were from others.

“The scheme of the whigs flattered the people with the idea of independence; the tories’ plan supposed a degree of subordination.” This is artful enough, as usual, not to say jesuitical. The word independence is one of those which this writer uses, as he does treason and rebellion, to impose upon the undistinguishing on both sides of the Atlantic. But let us take him to pieces. What does he mean by independence? Does he mean independent of the crown of Great Britain, and an independent republic in America, or a confederation of independent republics? No doubt he intended the undistinguishing should understand him so. If he did, nothing can be more wicked, or a greater slander on the whigs; because he knows there is not a man in the province among the whigs, nor ever was, who harbors a wish of that sort. Does he mean that the people were flattered with the idea of total independence on parliament? If he does, this is equally malicious and injurious; because he knows that the equity and necessity of parliament’s regulating trade has always been acknowledged; our determination to consent and submit to such regulations constantly expressed; and all the acts of trade, in fact, to this very day, much more submitted to and strictly executed in this province than any other in America.

There is equal ambiguity in the words “degree of subordination.” The whigs acknowledge a subordination to the king, in as strict and strong a sense as the tories. The whigs acknowledge a voluntary subordination to parliament, as far as the regulation of trade. What degree of subordination, then, do the tories acknowledge? An absolute dependence upon parliament as their supreme legislative, in all cases whatever, in their internal polity, as well as taxation? This would be too gross, and would lose Massachusettensis all his

readers; for there is nobody here who will expose his understanding so much, as explicitly to adopt such a sentiment. Yet it is such an absolute dependence and submission that these writers would persuade us to, or else there is no need of changing our sentiments and conduct. Why will not these gentlemen speak out, show us plainly their opinion, that the new government they have fabricated for this province is better than the old, and that all the other measures we complain of are for our and the public good, and exhort us directly to submit to them? The reason is, because they know they should lose their readers.

“The whigs were sensible that there was no oppression that could be seen or felt.” The tories have so often said and wrote this to one another, that I sometimes suspect they believe it to be true. But it is quite otherwise. The castle of the province was taken out of their hands and garrisoned by regular soldiers. This they could see, and they thought it indicated a hostile intention and disposition towards them. They continually paid their money to collectors of duties; this they could both see and feel. A host of placemen, whose whole business it was to collect a revenue, were continually rolling before them in their chariots. These they saw. Their governor was no longer paid by themselves, according to their charter, but out of the new revenue, in order to render their assemblies useless, and indeed contemptible. The judges’ salaries were threatened every day to be paid in the same unconstitutional manner. The dullest eyesight could not but see to what all this tended, namely,—to prepare the way for greater innovations and oppressions. They knew a minister would never spend his money in this way, if he had not some end to answer by it. Another thing they both saw and felt. Every man, of every character, who, by voting, writing, speaking, or otherwise, had favored the Stamp Act, the Tea Act, and every other measure of a minister or governor, who they knew was aiming at the destruction of their form of government, and introducing parliamentary taxation, was uniformly, in some department or other, promoted to some place of honor or profit for ten years together; and, on the other hand, every man who favored the people in their opposition to those innovations, was depressed, degraded, and persecuted, so far as it was in the power of the government to do it.

This they considered as a systematical means of encouraging every man of abilities to espouse the cause of parliamentary taxation and the plan of destroying their charter privilege, and to discourage all from exerting themselves in opposition to them. This they thought a plan to enslave them; for they uniformly think that the destruction of their charter, making the council and judges wholly dependent on the crown, and the people subject to the unlimited power of parliament as their supreme legislative, is slavery. They

were certainly rightly told, then, that the ministry and their governors together had formed a design to enslave them, and that when once this was done, they had the highest reason to expect window-taxes, hearth-taxes, land-taxes, and all others; and that these were only paving the way for reducing the country to lordships. Were the people mistaken in these suspicions? Is it not now certain, that Governor Bernard, in 1764, had formed a design of this sort? Read his Principles of Polity. And that Lieutenant-Governor Oliver, as late as 1768, or 9, enforced the same plan? Read his letters. Now, if Massachusetts will be ingenuous, avow this design, show the people its utility, and that it ought to be done by parliament, he will act the part of an honest man. But to insinuate that there was no such plan, when he knows there was, is acting the part of one of the junto.

It is true, that the people of this country in general, and of this province in special, have a hereditary apprehension of and aversion to lordships, temporal and spiritual. Their ancestors fled to this wilderness to avoid them; they suffered sufficiently under them in England. And there are few of the present generation who have not been warned of the danger of them by their fathers or grandfathers, and enjoined to oppose them. And neither Bernard nor Oliver ever dared to avow before them, the designs which they had certainly formed to introduce them. Nor does Massachusetts dare to avow his opinion in their favor. I do not mean that such avowal would expose their persons to danger, but it would their character and writings to universal contempt.

When you were told that the people of England were depraved, the parliament venal, and the ministry corrupt, were you not told most melancholy truths? Will Massachusetts deny any of them? Does not every man who comes from England, whig or tory, tell you the same thing? Do they make any secret of it, or use any delicacy about it? Do they not most of them avow that corruption is so established there as to be incurable, and a necessary instrument of government? Is not the British constitution arrived nearly to that point where the Roman republic was when Jugurtha left it, and pronounced it, "a venal city, ripe for destruction, if it can only find a purchaser?" If Massachusetts can prove that it is not, he will remove from my mind one of the heaviest loads which lie upon it.

Who has censured the tories for remissness, I know not. Whoever it was, he did them great injustice. Every one that I know of that character has been, through the whole tempestuous period, as indefatigable as human nature will admit, going about seeking whom he might devour, making use of art, flattery, terror, temptation, and allurements, in every shape in which human wit could dress it up, in public and private; but all to no purpose. The people

have grown more and more weary of them every day, until now the land mourns under them.

Massachusettensis is then seized with a violent fit of anger at the clergy. It is curious to observe the conduct of the tories towards this sacred body. If a clergyman, of whatever character, preaches against the principles of the revolution, and tells the people that, upon pain of damnation, they must submit to an established government, the tories cry him up as an excellent man and a wonderful preacher, invite him to their tables, procure him missions from the society and chaplainships to the navy, and flatter him with the hopes of lawn sleeves. But if a clergyman preaches Christianity, and tells the magistrates that they were not distinguished from their brethren for their private emolument, but for the good of the people; that the people are bound in conscience to obey a good government, but are not bound to submit to one that aims at destroying all the ends of government,—oh sedition! treason!

The clergy in all ages and countries, and in this in particular, are disposed enough to be on the side of government as long as it is tolerable. If they have not been generally in the late administration on that side, it is a demonstration that the late administration has been universally odious. The clergy of this province are a virtuous, sensible, and learned set of men, and they do not take their sermons from newspapers, but the Bible; unless it be a few, who preach passive obedience. These are not generally curious enough to read Hobbes. It is the duty of the clergy to accommodate their discourses to the times, to preach against such sins as are most prevalent, and recommend such virtues as are most wanted. For example,—if exorbitant ambition and venality are predominant, ought they not to warn their hearers against those vices? If public spirit is much wanted, should they not inculcate this great virtue? If the rights and duties of Christian magistrates and subjects are disputed, should they not explain them, show their nature, ends, limitations, and restrictions, how much soever it may move the gall of Massachusettensis?

Let me put a supposition. Justice is a great Christian, as well as moral, duty and virtue, which the clergy ought to inculcate and explain. Suppose a great man of a parish should, for seven years together, receive six hundred pounds sterling a year, for discharging the duties of an important office, but, during the whole time, should never do one act or take one step about it. Would not this be great injustice to the public? And ought not the parson of that parish to cry aloud and spare not, and show such a bold transgressor his sin; show that justice was due to the public as well as to an individual; and that cheating the public of four thousand two hundred pounds sterling is at least as great a sin as taking a chicken from a private hen-roost, or perhaps a watch from a fob?



Then we are told that newspapers and preachers have excited "outrages disgraceful to humanity." Upon this subject, I will venture to say, that there have been outrages in this province which I neither justify, excuse, nor extenuate; but these were not excited, that I know of, by newspapers or sermons; that, however, if we run through the last ten years, and consider all the tumults and outrages that have happened, and at the same time recollect the insults, provocations, and oppressions which this people have endured, we shall find the two characteristics of this people, religion and humanity, strongly marked on all their proceedings. Not a life, nor, that I have ever heard, a single limb, has been lost through the whole. I will take upon me to say, there is not another province on this continent, nor in his majesty's dominions, where the people, under the same indignities, would not have gone greater lengths. Consider the tumults in the three kingdoms; consider the tumults in ancient Rome, in the most virtuous of her periods; and compare them with ours. It is a saying of Machiavel no wise man ever contradicted, which has been literally verified in this province, that "while the mass of the people is not corrupted, tumults do no hurt." By which he means, that they leave no lasting ill effects behind.

But let us consider the outrages committed by the tories; half a dozen men shot dead in an instant in King Street; frequent resistance and affronts to civil officers and magistrates; officers, watchmen, citizens, cut and mangled in a most inhuman manner; not to mention the shootings for desertion, and the frequent cruel whippings for other faults, cutting and mangling men's bodies before the eyes of citizens, spectacles which ought never to be introduced into populous places. The worst sort of tumults and outrages ever committed in this province were excited by the tories. But more of this hereafter.

We are then told, that the whigs erected a provincial democracy, or republic, in the province. I wish Massachusettensis knew what a democracy or a republic is. But this subject must be considered another time.

### No. v

WE ARE AT LENGTH ARRIVED at the paper on which I made a few strictures some weeks ago; these I shall not repeat, but proceed to consider the other part of it.

We are told: "It is a universal truth, that he that would excite a rebellion, is at heart as great a tyrant as ever wielded the iron rod of oppression." Be it so. We are not exciting a rebellion. Opposition, nay, open, avowed resistance

by arms, against usurpation and lawless violence, is not rebellion by the law of God or the land. Resistance to lawful authority makes rebellion. Hampden, Russell, Sidney, Somers, Holt, Tillotson, Burnet, Hoadly, &c. were no tyrants nor rebels, although some of them were in arms, and the others undoubtedly excited resistance against the tories. Do not beg the question, Mr. Massachusetts, and then give yourself airs of triumph. Remember the frank Veteran acknowledges, that “the word rebel is a convertible term.”

This writer next attempts to trace the spirit of opposition through the general court and the courts of common law. “It was the policy of the whigs, to have their questions upon high matters determined by yea and nay votes, which were published in the gazettes.” And ought not great questions to be so determined? In many other assemblies, New York particularly, they always are. What better can be devised to discover the true sense of the people? It is extremely provoking to courtiers, that they cannot vote as the cabinet direct them, against their consciences, the known sense of their constituents, and the obvious good of the community, without being detected. Generally, perhaps universally, no unpopular measure in a free government, particularly the English, ought ever to pass. Why have the people a share in the legislature, but to prevent such measures from passing, I mean such as are disapproved by the people at large? But did not these yea and nay votes expose the whigs, as well as tories, to the impartial judgment of the public? If the votes of the former were given for measures injurious to the community, had not the latter an equal opportunity of improving them to the disadvantage of their adversaries in the next election? Besides, were not those few persons in the house, who generally voted for unpopular measures, near the governor, in possession of his confidence? Had they not the absolute disposal in their towns and counties of the favor of government? Were not all the judges, justices, sheriffs, coroners, and military officers in their towns made upon their recommendation? Did not this give them a prodigious weight and influence? Had the whigs any such advantage? And does not the influence of these yea and nay votes, consequently, prove to a demonstration the unanimity of the people against the measures of the court?

As to what is said of “severe strictures, illiberal invectives, abuse, and scurrility, upon the dissentients,” there was quite as much of all these published against the leading whigs. In truth, the strictures, &c. against the tories were generally nothing more than hints at the particular place or office, which was known to be the temptation to vote against the country. That “the dissentient was in danger of losing his bread and involving his family in ruin,” is equally injurious. Not an instance can be produced of a member losing his bread or injuring his business by voting for unpopular measures. On the

contrary, such voters never failed to obtain some lucrative employment, title, or honorary office, as a reward from the court.

If "one set of members in committee had always prepared the resolves," &c., which they did not, what would this prove, but that this set was thought by the house the fittest for the purpose? Can it ever be otherwise? Will any popular assembly choose its worst members for the best services? Will an assembly of patriots choose courtiers to prepare votes against the court? No resolves against the claims of parliament or administration, or the measures of the governor, (excepting those against the Stamp Act, and perhaps the answers to Governor Hutchinson's speeches upon the supremacy of parliament,) ever passed through the house without meeting an obstacle. The governor had, to the last hour of the house's existence, always some seekers and expectants in the house, who never failed to oppose, and offer the best arguments they could, and were always patiently heard. That "the lips of the dissentients were sealed up;" that "they sat in silence, and beheld with regret measures they dared not oppose," are groundless suggestions, and gross reflections upon the honor and courage of those members. The debates of this house were public, and every man who has attended the gallery, knows there never was more freedom of debate in any assembly.

Massachusetts, in the next place, conducts us to the agent, and tells us "there cannot be a provincial agent without an appointment by the three branches of the assembly. The whigs soon found that they could not have such services rendered them from a provincial agent as would answer their purposes."

The treatment this province has received respecting the agency, since Mr. Hutchinson's administration commenced, is a flagrant example of injustice. There is no law which requires the province to maintain any agent in England; much less is there any reason which necessarily requires that the three branches should join in the appointment. In ordinary times, indeed, when a harmony prevails among the branches, it is well enough to have an agent constituted by all. But in times when the foundations of the constitution are disputed, and certainly attacked by one branch or the other, to pretend that the house ought to join the governor in the choice, is a palpable absurdity. It is equivalent to saying, that the people shall have no agent at all; that all communication shall be cut off; and that there shall be no channel through which complaints and petitions may be conveyed to the royal ear. Because a governor will not concur in an agent whose sentiments are not like his; nor will an agent of the governor's appointment be likely to urge accusations against him with any diligence or zeal, if the people have occasion to complain against him.

Every private citizen, much more, every representative body, has an undoubted right to petition the king, to convey such petition by an agent, and to pay him for his service. Mr. Bernard, to do him justice, had so much regard to these principles, as to consent to the payment of the people's agents while he staid; but Mr. Hutchinson was scarcely seated in the chair, as lieutenant-governor, before we had intelligence from England, that my Lord Hillsborough told Dr. Franklin, he had received a letter from Governor Hutchinson against consenting to the salary of the agent. Such an instruction was accordingly soon sent, and no agent for the board or house has received a farthing for services since that time, though Dr. Franklin and Mr. Bollan have taken much pains, and one of them expended considerable sums of money. There is a meanness in this play that would disgrace a gambler,—a manifest fear that the truth should be known to the sovereign or the people. Many persons have thought that the province ought to have dismissed all agents from that time, as useless and nugatory; this behavior amounting to a declaration, that we had no chance or hopes of justice from a minister.

But this province, at least as meritorious as any, has been long accustomed to indignities and injustice, and to bear both with unparalleled patience. Others have pursued the same method before and since; but we have never heard that their agents are unpaid. They would scarcely have borne it with so much resignation.

It is great assurance to blame the house for this, which was both their right and duty; but it is a stain in the character of his patron which will not be soon worn out. Indeed this passage seems to have been brought in chiefly for the sake of a stroke or two, addressed to the lowest and meanest of the people; I mean the insinuation, that the two agents doubled the *expense*, which is as groundless as it is contracted; and that the ostensible agent for the province was only agent for a few individuals that had got the art of wielding the house; and that several hundred sterling a year, for attending levees and writing letters, were worth preserving. We, my friends, know that no members have the art of wielding us or our house, but by concurring in our principles, and assisting us in our designs. Numbers in both houses have turned about, and expected to wield us round with them, but they have been disappointed, and ever will be. Such apostates have never yet failed of our utter contempt, whatever titles, places, or pensions they might obtain.

The agent has never echoed back, or transmitted to America, any sentiments which he did not give in substance to Governor Shirley, twenty years ago; and, therefore, this insinuation is but another slander. The remainder of what is said of the agency is levelled at Dr. Franklin, and is but a dull appendix to Wedderburn's ribaldry, having all his malice, without any of his

wit or spirit. Nero murdered Seneca, that he might pull up virtue by the roots; and the same maxim governs the scribblers and speechifiers on the side of the minister. It is sufficient to discover that any man has abilities and integrity, a love of virtue and liberty, he must be run down at all events. Witness Pitt, Franklin, and too many others.

My design in pursuing this malicious slanderer, concealed as he is under so soft and oily an appearance, through all the doublings of his tedious course, is to vindicate this colony from his base aspersions; that strangers now among us, and the impartial public, may see the wicked arts, which are still employed against us. After the vilest abuse upon the agent of the province, and the house that appointed him, we are brought to his majesty's council, and are told that the "whigs reminded them of their mortality. If any one opposed the violent measures, he lost his election the next May. Half the whole number, mostly men of the first families, note, and abilities, attached to their native country, wealthy, and independent, were tumbled from their seats in disgrace. Thus the board lost its weight, and the political balance was destroyed."

It is impossible for any man acquainted with this subject to read this zealous rant without smiling, until he attends to the wickedness of it, which will provoke his utmost indignation. Let us, however, consider it soberly.

From the date of our charter to the time of the Stamp Act, and indeed since that time, (notwithstanding the misrepresentations of our charter constitution, as too popular and republican,) the council of this province have been generally on the side of the governor and the prerogative. For the truth of this, I appeal to our whole history and experience. The art and power of governors, and especially the negative, have been a stronger motive on the one hand, than the annual election of the two houses on the other. In disputes between the governor and the house, the council have generally adhered to the former, and in many cases have complied with his humor, when scarcely any council by mandamus, upon this continent, would have done it.

But in the time of the Stamp Act, it was found productive of many mischiefs and dangers, to have officers of the crown, who were dependent on the ministry, and judges of the superior court, whose offices were thought incompatible with a voice in the legislature, members of council.

In May, 1765, Lieutenant-Governor Hutchinson, Secretary Oliver, and Mr. Belcher, officers of the crown, the judges of the superior court, and some other gentlemen, who held commissions under the governor, were members of council. Mr. Hutchinson was chief justice, and a judge of probate for the first county, as well as lieutenant-governor, and a counsellor; too many offices for the greatest and best man in the world to hold, too much business for

any man to do; besides, that these offices were frequently clashing and interfering with each other. Two other justices of the superior court were counsellors, and nearly and closely connected with him by family alliances. One other justice was judge of admiralty during pleasure. Such a jumble of offices never got together before in any English government. It was found, in short, that the famous triumvirate, Bernard, Hutchinson, and Oliver, the ever-memorable, secret, confidential letter-writers, whom I call the *junto*, had, by degrees, and before the people were aware of it, erected a tyranny in the province. Bernard had all the executive, and a negative on the legislative; Hutchinson and Oliver, by their popular arts and secret intrigues, had elevated to the board such a collection of crown-officers and their own relations, as to have too much influence there; and they had three of a family on the superior bench, which is the supreme tribunal in all causes, civil and criminal, vested with all the powers of the king's bench, common pleas, and exchequer, which gave them power over every act of this court. This *junto*, therefore, had the legislative and executive in their control, and more natural influence over the judicial than is ever to be trusted to any set of men in the world. The public, accordingly, found all these springs and wheels in the constitution set in motion to promote submission to the Stamp Act, and to discountenance resistance to it; and they thought they had a violent presumption, that they would forever be employed to encourage a compliance with all ministerial measures and parliamentary claims, of whatever character they might be.

The designs of the *junto*, however, were concealed as carefully as possible. Most persons were jealous; few were certain. When the assembly met, in May, 1766, after the Stamp Act was repealed, the whigs flattered themselves with hopes of peace and liberty for the future. Mr. Otis, whose abilities and integrity, whose great exertions, and most exemplary sacrifices of his private interest to the public service, had entitled him to all the promotion which the people could bestow, was chosen speaker of the house. Bernard negatived the choice. It can scarcely be conceived by a stranger what an alarm this manoeuvre gave to the public. It was thought equivalent to a declaration that, although the people had been so successful as to obtain a repeal of the Stamp Act, yet they must not hope to be quiet long; for parliament, by the Declaratory Act, had asserted its supreme authority, and new taxations and regulations should be made, if the *junto* could obtain them; and every man who should dare to oppose such projects, let his powers or virtues, his family or fortune, be what they would, should be surely cut off from all hopes of advancement. The electors thought it high time to be upon their guard. All the foregoing reasons and motives prevailed with the electors; and the crown officers and justices of the supreme court were left out of council in the new

choice. Those who were elected in their places were all negatived by Bernard, which was considered as a fresh proof, that the junto still persevered in their designs of obtaining a revenue to divide among themselves.

The gentlemen elected anew were of equal fortune and integrity, at least, and not much inferior in abilities, to those left out; and indeed, in point of fortune, family, note, or abilities, the councils which have been chosen from that time to this, taken on an average, have been very little inferior, if any, to those chosen before. Let Massachusettensis descend, if he will, to every particular gentleman by name through the whole period, and I will make out my assertion.

Every impartial person will not only think these reasons a full vindication of the conduct of the two houses, but that it was their indispensable duty to their country, to act the part they did; and the course of time, which has developed the dark intrigues of the junto, before and since, has confirmed the rectitude and necessity of the measure. Had Bernard's Principles of Polity been published and known at that time, no member of the house, who should have voted for any of the persons then left out, if it was known to his constituents, would ever have obtained another election.

By the next step we rise to the chair. "With the board, the chair fell likewise," he says. But what a slander is this! Neither fell; both remained in as much vigor as ever. The junto, it is true, and some other gentlemen who were not in their secret, but however, had been misled to concur in their measures, were left out of council. But the board had as much authority as ever. The board of 1766 could not have influenced the people to acknowledge the supreme, uncontrollable authority of parliament, nor could that of 1765 have done it. So that, by the chair and the board's falling, he means no more, if his meaning has any truth in it, than that the junto fell; the designs of taxing the colonies fell, and the schemes for destroying all the charters on the continent, and for erecting lordships fell. These, it must be acknowledged, fell very low indeed in the esteem of the people, and the two houses.

"The governor," says our wily writer, "by the charter, could do little or nothing without the council. If he called upon a military officer to raise the militia, he was answered, they were there already," &c. The council, by the charter, had nothing to do with the militia; the governor alone had all authority over them. The council, therefore, are not to blame for their conduct. If the militia refused obedience to the captain-general, or his subordinate officer, when commanded to assist in carrying into execution the Stamp Act, or in dispersing those who were opposing it, does not this prove the universal sense and resolution of the people not to submit to it? Did not a regular army do more to James II.? If those, over whom the Governor had the most

absolute authority and decisive influence, refused obedience, does not this show how deeply rooted in all men's minds was the abhorrence of that unconstitutional power which was usurping over them? "If he called upon the council for their assistance, they must first inquire into the cause." An unpardonable crime, no doubt! But is it the duty of a middle branch of legislature to do as the first shall command them implicitly, or to judge for themselves? Is it the duty of a privy council to understand the subject before they give advice, or only to lend their names to any edict, in order to make it less unpopular? It would be a shame to answer such observations as these, if it was not for their wickedness. Our council, all along however, did as much as any council could have done. Was the mandamus council at New York able to do more to influence the people to a submission to the Stamp Act? Was the chair, the board, the septennial house, with the assistance of General Gage and his troops, able to do more in that city, than our branches did in this province? Not one iota. Nor could Bernard, his council, and house, if they had been unanimous, have induced submission. The people would have spurned them all, for they are not to be wheedled out of their liberties by their own representatives, any more than by strangers. "If he wrote to government at home to strengthen his hands, some officious person procured and sent back his letters." At last, it seems to be acknowledged, that the governor did write for a military force to strengthen government. For what? To enable it to enforce stamp acts, tea acts, and other internal regulations, the authority of which the people were determined never to acknowledge.

But what a pity it was, that these worthy gentlemen could not be allowed, from the dearest affection to their native country, to which they had every possible attachment, to go on in profound confidential secrecy, procuring troops to cut our throats, acts of parliament to drain our purses, destroy our charters and assemblies, getting estates and dignities for themselves and their own families, and all the while most devoutly professing to be friends to our charter, enemies to parliamentary taxation, and to all pensions, without being detected! How happy if they could have annihilated all our charters, and yet have been beloved, nay, deified by the people, as friends and advocates of their charters! What masterly politicians, to have made themselves nobles for life, and yet have been thought very sorry, that the two houses were denied the privilege of choosing the council! How sagacious, to get large pensions for themselves, and yet be thought to mourn that pensions and venality were introduced into the country! How sweet and pleasant, to have been the most popular men in the community, for being staunch and zealous dissenters, true blue Calvinists, and able advocates for public virtue and popular government, after they had introduced an American episcopate, universal cor-



ruption among the leading men, and deprived the people of all share in their supreme legislative council! I mention an episcopate, for, although I do not know that Governors Hutchinson and Oliver ever directly solicited for bishops, yet they must have seen, that these would have been one effect, very soon, of establishing the unlimited authority of parliament!

I agree with this writer, that it was not the persons of Bernard, Hutchinson, or Oliver, that made them obnoxious; but their principles and practices. And I will agree that, if Chatham, Camden, and St. Asaph, (I beg pardon for introducing these reverend names into such company, and for making a supposition which is absurd,) had been here, and prosecuted such schemes, they would have met with contempt and execration from this people. But when he says, "that had the intimations in those letters been attended to, we had now been as happy a people as good government could make us," it is too gross to make us angry. We can do nothing but smile. Have not these intimations been attended to? Have not fleets and armies been sent here whenever they requested? Have not governor's, lieutenant-governor's, secretary's, judge's, attorney-general's, and solicitor-general's salaries been paid out of the revenue, as they solicited? Have not taxes been laid and continued? Have not English liberties been abridged, as Hutchinson desired? Have not "penalties of another kind" been inflicted, as he desired? Has not our charter been destroyed, and the council put into the king's hands, as Bernard requested? In short, almost all the wild mock pranks of this desperate triumvirate have been attended to and adopted, and we are now as miserable as tyranny can well make us. That Bernard came here with the affections of New Jersey, I never heard nor read but in this writer. His abilities were considerable, or he could not have done such extensive mischief. His true British honesty and punctuality will be acknowledged by none, but such as owe all their importance to flattering him.

That Hutchinson was amiable and exemplary in some respects, and very unamiable and unexemplary in others, is a certain truth; otherwise he never would have retained so much popularity on one hand, nor made so pernicious a use of it, on the other. His behavior, in several important departments, was with ability and integrity, in cases which did not affect his political system; but he bent all his offices to that. Had he continued steadfast to those principles in religion and government, which, in his former life, he professed, and which alone had procured him the confidence of the people and all his importance, he would have lived and died, respected and beloved, and have done honor to his native country. But, by renouncing these principles and that conduct, which had made him and all his ancestors respectable, his character is now considered by all America, and the best part of the three

kingdoms, notwithstanding the countenance he receives from the ministry, as a reproach to the province that gave him birth; as that of a man who by all his actions aimed at making himself great at the expense of the liberties of his native country. This gentleman was open to flattery in so remarkable a degree, that any man who would flatter him was sure of his friendship, and every one who would not was sure of his enmity. He was credulous in a ridiculous degree, of every thing that favored his own plans, and equally incredulous of every thing which made against them. His natural abilities, which have been greatly exaggerated by persons whom he had advanced to power, were far from being of the first rate. His industry was prodigious. His knowledge lay chiefly in the laws and politics and history of this province, in which he had a long experience. Yet, with all his advantages, he never was master of the true character of his native country, not even of New England and the Massachusetts Bay. Through the whole troublesome period, since the last war, he manifestly mistook the temper, principles, and opinions of this people. He had resolved upon a system, and never could or would see the impracticability of it.

It is very true, that "all his abilities, virtues, interests, and connections were insufficient." But for what? To prevail on the people to acquiesce in the mighty claim of parliamentary authority. "The constitution was" *not* "gone." The suggestion that it was is a vile slander. It had as much vigor as ever, and even the governor had as much power as ever, excepting in cases which affected that claim. "The spirit," says this writer, "was truly republican." It was not so in any one case whatever, any further than the spirit of the British constitution is republican. Even in the grand fundamental dispute, the people arranged themselves under their house of representatives and council, with as much order as ever, and conducted their opposition as much by the constitution as ever. It is true, their constitution was employed against the measures of the junto, which created their enmity to it. However, I have not such a horror of republican spirit, which is a spirit of true virtue and honest independence; I do not mean on the king, but on men in power. This spirit is so far from being incompatible with the British constitution, that it is the greatest glory of it; and the nation has always been most prosperous, when it has most prevailed and been most encouraged by the crown. I wish it increased in every part of the world, especially in America; and I think the measures the tories are now pursuing will increase it to a degree that will insure us, in the end, redress of grievances, and a happy reconciliation with Great Britain.

"Governor Hutchinson strove to convince us, by the principles of gov-

ernment, our charters, and acknowledgments, that our claims were inconsistent with the subordination due to Great Britain," &c., says this writer.

Suffer me to introduce here a little history. In 1764, when the system of taxing and new-modelling the colonies was first apprehended, Lieutenant-Governor Hutchinson's friends struggled, in several successive sessions of the general court, to get him chosen agent for the province at the court of Great Britain. At this time, he declared freely, *that he was of the same sentiment with the people, that parliament had no right to tax them; but differed from the country party only in his opinion of the policy of denying that right in their petitions,* &c. I would not injure him; I was told this by three gentlemen, who were of the committee of both houses, to prepare that petition, that he made this declaration explicitly before that committee. I have been told by other gentlemen, that he made the same declaration to them. It is possible that he might make use of expressions studied for the purpose, which would not strictly bear this construction. But it is certain that they understood him so, and that this was the general opinion of his sentiments until he came to the chair.

The country party saw that this aspiring genius aimed at keeping fair with the ministry, by supporting their measures, and with the people, by pretending to be of our principles, and between both, to trim himself up to the chair. The only reason why he did not obtain an election at one time, and was excused from the service at another, after he had been chosen by a small majority, was because the members knew he would not openly deny the right, and assure his majesty, the parliament, and ministry, that the people never would submit to it. For the same reason he was left out of council. But he continued to cultivate his popularity, and to maintain a general opinion among the people that he denied the right in his private judgment, and this idea preserved most of those who continued their esteem for him.

But upon Bernard's removal, and his taking the chair as lieutenant-governor, he had no further expectations from the people, nor complaisance for their opinions. In one of his first speeches he took care to advance the supreme authority of parliament. This astonished many of his friends. They were heard to say, we have been deceived. We thought he had been abused, but we now find what has been said of him is true. He is determined to join in the designs against this country. After his promotion to the government, finding that the people had little confidence in him, and knowing that he had no interest at home to support him, but what he had acquired by joining with Bernard in kicking up a dust, he determined to strike a bold stroke, and, in a formal speech to both houses, became a champion for the unbounded authority of parliament over the colonies. This, he thought, would

lay the ministry under obligation to support him in the government, or else to provide for him out of it, not considering that starting that question before that assembly, and calling upon them, as he did, to dispute with him upon it, was scattering firebrands, arrows, and death in sport. The arguments he then advanced were inconclusive indeed; but they shall be considered, when I come to the feeble attempt of Massachusettensis to give a color to the same position.

The house, thus called upon either to acknowledge the unlimited authority of parliament, or confute his arguments, were bound, by their duty to God, their country, and posterity, to give him a full and explicit answer. They proved incontestably that he was out in his facts, inconsistent with himself, and in every principle of his law he had committed a blunder. Thus the fowler was caught in his own snare; and although this country has suffered severe temporary calamities in consequence of this speech, yet I hope they will not be durable; but his ruin was certainly in part owing to it. Nothing ever opened the eyes of the people so much, as to his designs, excepting his letters. Thus it is the fate of Massachusettensis to praise this gentleman for those things which the wise part of mankind condemn in him, as the most insidious and mischievous of actions. If it was out of his power to do us any more injuries, I should wish to forget the past; but, as there is reason to fear he is still to continue his malevolent labors against this country, although he is out of our sight, he ought not to be out of our minds. This country has every thing to fear, in the present state of the British court, while the lords Bute, Mansfield, and North have the principal conduct of affairs, from the deep intrigues of that artful man.

To proceed to his successor, whom Massachusettensis has been pleased to compliment with the epithet of “amiable.” I have no inclination to detract from this praise; but have no panegyrics or invectives for any man, much less for any governor, until satisfied of his character and designs. This gentleman’s conduct, although he came here to support the systems of his two predecessors, and contracted to throw himself into the arms of their connections, when he has acted himself, and not been teased by others much less amiable and judicious than himself, into measures which his own inclination would have avoided, has been in general as unexceptionable as could be expected, in his very delicate, intricate, and difficult situation.

We are then told, “that disaffection to Great Britain was infused into the body of the people.” The leading whigs have ever, systematically and upon principle, endeavored to preserve the people from all disaffection to the king, on the one hand, and the body of the people of England, on the other; but to lay the blame, where it is justly due, on the ministry and their instruments.

We are next conducted into the superior court, and informed “that the judges were dependent on the annual grants of the general court; that their salaries were small, in proportion to the salaries of other officers of less importance; that they often petitioned the assembly to enlarge them, without success, and were reminded of their dependence; that they remained unshaken amid the raging tempests, which is to be attributed rather to their firmness than situation.”

That the salaries were small must be allowed; but not smaller in proportion than those of other officers. All salaries in this province have been and are small. It has been the policy of the country to keep them so; not so much from a spirit of parsimony, as an opinion, that the service of the public ought to be an honorary, rather than a lucrative employment; and that the great men ought to be obliged to set examples of simplicity and frugality before the people.

But, if we consider things maturely, and make allowance for all circumstances, I think the country may be vindicated. This province, during the last war, had such overbearing burdens upon it, that it was necessitated to use economy in every thing. At the peace she was half a million sterling in debt, nearly. She thought it the best policy to get out of debt before she raised the wages of her servants; and if Great Britain had thought as wisely, she would not now have had one hundred and forty millions to pay; and she would never have thought of taxing America. Low as the wages were, it was found that, whenever a vacancy happened, the place was solicited with much more anxiety and zeal than the kingdom of heaven.

Another cause which had its effect was this. The judges of that court had almost always enjoyed some other office. At the time of the Stamp Act the chief justice was lieutenant-governor, which yielded him a profit; and a judge of probate for the county of Suffolk, which yielded him another profit; and a counsellor, which, if it was not very profitable, gave him an opportunity of promoting his family and friends to other profitable offices, an opportunity which the country saw he most religiously improved. Another justice of this court was a judge of admiralty, and another was judge of probate for the county of Plymouth. The people thought, therefore, that as their time was not wholly taken up by their offices, as judges of the superior court, there was no reason why they should be paid as much as if it had been.

Another reason was this. Those justices had not been bred to the bar, but taken from merchandise, husbandry, and other occupations; had been at no great expense for education or libraries, and therefore, the people thought that equity did not demand large salaries.

It must be confessed that another motive had its weight. The people

were growing jealous of the chief justice, and two other justices at least, and therefore thought it imprudent to enlarge their salaries, and, by that means, their influence.

Whether all these arguments were sufficient to vindicate the people for not enlarging their salaries, I shall leave to you, my friends, whose right it is to judge. But that the judges petitioned “often” to the assembly I do not remember. I knew it was suspected by many, and confidently affirmed by some, that Judge Russell carried home with him, in 1766, a petition to his majesty, subscribed by himself and Chief Justice Hutchinson at least, praying his majesty to take the payment of the judges into his own hands; and that this petition, together with the solicitations of Governor Bernard and others, had the success to procure the act of parliament, to enable his majesty to appropriate the revenue to the support of the administration of justice, &c., from whence a great part of the present calamities of America have flowed.

That the high whigs took *care* to get themselves chosen of the grand juries, I do not believe. Nine tenths of the people were high whigs; and therefore it was not easy to get a grand jury without nine whigs in ten, in it. And the matter would not be much mended by the new act of parliament. The sheriff must return the same set of jurors, court after court, or else his juries would be, nine tenths of them, high whigs still. Indeed the tories are so envenomed now with malice, envy, revenge and disappointed ambition, that they would be willing, for what I know, to be jurors for life, in order to give verdicts against the whigs. And many of them would readily do it, I doubt not, without any other law or evidence than what they found in their own breasts. The suggestion of legerdemain, in drawing the names of petit jurors out of the box, is scandalous. Human wisdom cannot devise a method of obtaining petit jurors more fairly, and better secured against a possibility of corruption of any kind, than that established by our provincial law. They were drawn by chance out of a box in open town meeting, to which the tories went, or might have gone, as well as the whigs, and have seen with their own eyes, that nothing unfair ever did or could take place. If the jurors consisted of whigs, it was because the freeholders were whigs, that is honest men. But now, it seems, if Massachusetts can have his will, the sheriff, who will be a person properly qualified for the purpose, is to pick out a tory jury, if he can find one in ten, or one in twenty, of that character among the freeholders; and it is no doubt expected, that every newspaper that presumes to deny the right of parliament to tax us, or destroy our charter, will be presented as a libel, and every member of a committee of correspondence, or a congress, &c. &c. &c., is to be indicted for rebellion. These would be

pleasant times to Massachusettensis and the junto, but they will never live to see them.

“The judges pointed out seditious libels on governors, magistrates, and the whole government to no effect.” They did so; but the jurors thought some of these no libels, but solemn truths. At one time, I have heard that all the newspapers for several years, the Massachusetts Gazette, Evening Post, Boston Chronicle, Boston Gazette, and Massachusetts Spy, were laid before a grand jury at once. The jurors thought there were multitudes of libels written by the tories, and they did not know whom they should attack, if they presented them; perhaps Governor Bernard, Lieutenant-Governor Hutchinson, Secretary Oliver—possibly, the Attorney-General. They saw so many difficulties they knew not what to do.

As to the riots and insurrections, it is surprising that this writer should say,—“Scarce one offender was indicted, and I think not one convicted.” Were not many indicted, convicted, and punished too, in the counties of Essex, and Middlesex, and indeed, in every other country? But, perhaps he will say, he means such as were connected with politics. Yet this is not true; for a large number in Essex were punished for abusing an informer, and others were indicted and convicted in Boston for a similar offense. None were indicted for pulling down the stamp office, because this was thought an honorable and glorious action, not a riot. And so it must be said of several other tumults. But was not this the case in royal as well as charter governments? Nor will this inconvenience be remedied by a sheriff’s jury, if such a one should ever sit. For if such a jury should convict, the people will never bear the punishment. It is in vain to expect or hope to carry on government against the universal bent and genius of the people; we may whimper and whine as much as we will, but nature made it impossible when she made men.

If “causes of *meum* and *tuum* were not always exempt from party influence,” the tories will get no credit by an examination into particular cases. Though I believe there was no great blame on either party in this respect, where the case was not connected with politics.

We are then told,—“The whigs once flattered themselves they should be able to divide the province between them.” I suppose he means, that they should be able to get the honorable and lucrative offices of the province into their hands. If this was true, they would be chargeable with only designing what the tories have actually done; with this difference, that the whigs would have done it by saving the liberties and the constitution of the province, whereas the tories have done it by the destruction of both. That the whigs have ambition, a desire of profit, and other passions, like other men, it would

be foolish to deny. But this writer cannot name a set of men, in the whole British empire, who have sacrificed their private interest to their nation's honor and the public good in so remarkable a manner, as the leading whigs have done in the two last administrations.

As to "cutting asunder the sinews of government, and breaking in pieces the ligament of social life," so far as this has been done, I have proved by incontestable evidence from Bernard's, Hutchinson's, and Oliver's letters, that the tories have done it, against all the endeavors of the whigs to prevent them from first to last.

The public is then amused with two instances of the weakness of our government, and these are, with equal artifice and injustice, insinuated to be chargeable upon the whigs. But the whigs are as innocent of these as the tories. Malcolm was injured as much against the inclinations and judgment of the whigs as the tories. But the real injury he received is exaggerated by this writer. The cruelty of his whipping and the danger of his life, are too highly colored.

Malcolm was such an oddity as naturally to excite the curiosity and ridicule of the lowest class of people wherever he went; had been active in battle against the regulators in North Carolina, who were thought in Boston to be an injured people. A few weeks before, he had made a seizure at Kennebec River, a hundred and fifty miles from Boston, and by some imprudence had excited the wrath of the people there in such a degree that they tarred and feathered him over his clothes. He comes to Boston to complain. The news of it was spread in town. It was a critical time, when the passions of the people were warm. Malcolm attacked a lad in the street, and cut his head with a cutlass, in return for some words from the boy, which I suppose were irritating. The boy ran bleeding through the street to his relations, of whom he had many. As he passed the street, the people inquired into the cause of his wounds; and a sudden heat arose against Malcolm, which neither whigs nor tories, though both endeavored it, could restrain, and produced the injuries of which he justly complained. But such a coincidence of circumstances might at any time, and in any place, have produced such an effect; and therefore it is no evidence of the weakness of government. Why he petitioned the general court, unless he was advised to it by the tories, to make a noise, I know not. That court had nothing to do with it. He might have brought his action against the trespassers, but never did. He chose to go to England, and get two hundred pounds a year, which would make his tarring the luckiest incident of his life.

The hospital at Marblehead is another instance, no more owing to the politics of the times than the burning of the temple at Ephesus. This hospital



was newly erected, much against the will of the multitude. The patients were careless, some of them wantonly so; and others were suspected of designing to spread the smallpox in the town, which was full of people who had not passed through the distemper. It is needless to be particular; but the apprehension became general; the people arose and burnt the hospital. But the whigs are so little blamable for this, that two of the principal whigs in the province, gentlemen highly esteemed and beloved in the town, even by those who burnt the building, were owners of it. The principles and temper of the times had no share in this, any more than in cutting down the market in Boston, or in demolishing mills and dams in some parts of the country, in order to let the alewives pass up the streams, forty years ago. Such incidents happen in all governments at times; and it is a fresh proof of the weakness of this writer's cause, that he is driven to such wretched shifts to defend it.

Towards the close of this long speculation, *Massachusettensis* grows more and more splenetical, peevish, angry, and absurd.

He tells us, that in order to avoid the necessity of altering our provincial constitution, government at home made the judges independent of the grants of the general assembly. That is, in order to avoid the hazard of taking the fort by storm, they determined to take it by sap. In order to avoid altering our constitution, they changed it in the most essential manner; for, surely, by our charter, the province was to pay the judges as well as the governor. Taking away this privilege, and making them receive their pay from the crown, was destroying the charter so far forth, and making them dependent on the minister. As to their being dependent on the leading whigs, he means they were dependent on the province. And which is fairest to be dependent on, the province or the minister? In all this troublesome period, the leading whigs had never hesitated about granting their salaries, nor ever once moved to have them lessened; nor would the house have listened to them if they had. "This was done," he says, "to make them steady." We know that very well. Steady to what? Steady to the plans of Bernard, Hutchinson, Oliver, North, Mansfield, and Bute, which the people thought was steadiness to their ruin; and therefore it was found that a determined spirit of opposition to it arose in every part of the province, like that to the Stamp Act.

The chief justice, it is true, was accused by the house of representatives, of receiving a bribe,—a ministerial, not a royal bribe. For the king can do no wrong, although he may be deceived in his grant. The minister is accountable. The crime of receiving an illegal patent is not the less for purchasing it even of the king himself. Many impeachments have been for such offences.

He talks about "attempts to strengthen government and save our char-

ter." With what modesty can he say this, when he knows that the overthrow of our charter was the very object which the junto had been invariably pursuing for a long course of years? Does he think his readers are to be deceived by such gross arts? But he says, "the whigs subverted the charter constitution, abridged the freedom of the house, annihilated the freedom of the board, and rendered the governor a doge of Venice." The freedom of the house was never abridged; the freedom of the board was never lessened. The governor had as much power as ever. The house and board, it is true, would do nothing in favor of parliamentary taxation. Their judgments and consciences were against it; and if they ever had done any thing in favor of it, it would have been through fear and not freedom. The governor found he could do nothing in favor of it, excepting to promote, in every department in the state, men who hated the people, and were hated by them. Enough of this he did in all conscience; and, after filling offices with men who were despised, he wondered that the officers were not revered. "They, the whigs, engrossed all the power of the province into their own hands." That is, the house and board were whigs; the grand juries and petit juries were whigs; towns were whigs; the clergy were whigs; the agents were whigs; and wherever you found people, you found all whigs; excepting those who had commissions from the crown or the governor. This is almost true; and it is to the eternal shame of the tories that they should pursue their *ignis fatuus* with such ungovernable fury as they have done, after such repeated and multiplied demonstrations, that the whole people were so universally bent against them. But nothing will satisfy them still but blood and carnage. The destruction of the whigs, charters, English liberties, and all, they must and will have, if it costs the blood of tens of thousands of innocent people. This is the benign temper of the tories.

This influence of the whigs he calls a democracy or republic, and then a despotism; two ideas incompatible with each other. A democratical despotism is a contradiction in terms.

He then says, that "the good policy of the act for regulating the government in this province will be the subject of some future paper." But that paper is still to come, and I suspect ever will be. I wish to hear him upon it, however.

With this, he and the junto ought to have begun. Bernard and the rest, in 1764, ought to have published their objections to this government, if they had been honest men, and produced their arguments in favor of the alteration, convinced the people of the necessity of it, and proposed some constitutional plan for effecting it. But the same motives which induced them to take another course, will prevail with Massachusettensis to wave the good

policy of the act. He will be much more cunningly employed in laboring to terrify women and children with the horrors of a civil war, and the dread of a division among the people. There lies your forte, Massachusettensis; make the most of it.

#### NO. VI

SUCH EVENTS as the resistance to the Stamp Act, and to the Tea Act, particularly the destruction of that which was sent by the ministry, in the name of the East India Company, have ever been cautiously spoken of by the whigs, because they knew the delicacy of the subject, and they lived in continual hopes of a speedy restoration of liberty and peace. But we are now thrown into a situation, which would render any further delicacy upon this point criminal.

Be it remembered, then, that there are tumults, seditions, popular commotions, insurrections, and civil wars, upon just occasions as well as unjust.

Grotius B. 1, c. 3, § 1, observes, "that some sort of private war may be lawfully waged. It is not repugnant to the law of nature, for any one to repel injuries by force."

§ 2. "The liberty allowed before is much restrained since the erecting of tribunals. Yet there are some cases wherein that right still subsists; that is, when the way to legal justice is not open; for the law which forbids a man to pursue his right any other way, ought to be understood with this equitable restriction, that one finds judges to whom he may apply," &c.

"\*It is in vain to seek a government in all points free from a possibility of civil wars, tumults, and seditions; that is a blessing denied to this life, and reserved to complete the felicity of the next. Seditions, tumults, and wars do arise from mistake or from malice; from just occasions or unjust. . . . Seditions proceeding from malice are seldom or never seen in popular governments; for they are hurtful to the people, and none have ever willingly and knowingly hurt themselves. There may be, and often is, malice in those who excite them; but the people is ever deceived, and whatever is thereupon done, ought to be imputed to error, &c. But in absolute monarchies, almost all the troubles that arise proceed from malice; they cannot be reformed; the extinction of them is exceeding difficult, if they have continued long enough to corrupt the people; and those who appear against them seek only to set up themselves or their friends. The mischiefs designed are often dissembled or denied, till they are past all possibility of being cured by any other way

\* Sidney's *Discourses upon Government*, c. 2, § 24.

than force; and such as are by necessity driven to use that remedy, know they must perfect their work or perish. He that draws his sword against the prince, say the French, ought to throw away the scabbard; for though the design be never so just, yet the authors are sure to be ruined if it miscarry. Peace is seldom made, and never kept, unless the subject retain such a power in his hands as may oblige the prince to stand to what is agreed; and, in time, some trick is found to deprive him of that benefit.

“It may seem strange to some that I mention seditions, tumults, and wars, upon just occasions; but I can find no reason to retract the terms. God, intending that men should live justly with one another, does certainly intend that he or they, who do no wrong, should suffer none; and the law that forbids injuries were of no use if no penalty might be inflicted on those that will not obey it. If injustice, therefore, be evil, and injuries be forbidden, they are also to be punished; and the law instituted for their prevention must necessarily intend the avenging of such as cannot be prevented. The work of the magistracy is to execute this law; the sword of justice is put into their hands to restrain the fury of those within the society who will not be a law to themselves; and the sword of war to protect the people against the violence of foreigners. This is without exception, and would be in vain if it were not. But the magistrate who is to protect the people from injury, may, and is often known not to have done it; he renders his office sometimes *useless by neglecting to do justice*, sometimes *mischievous by overthrowing it*. This strikes at the root of God’s general ordinance, that there should be laws; and the particular ordinances of all societies, that appoint such as seem best to them. *The magistrate, therefore, is comprehended under both, and subject to both, as well as private men.*

“The ways of preventing or punishing injuries, are judicial or extrajudicial. Judicial proceedings are of force against those who submit, or may be brought to trial, but are of no effect against those who resist, and are of such power that they cannot be constrained. It were absurd to cite a man to appear before a tribunal, *who can awe the judges, or has armies to defend him*; and impious to think that he who has added treachery to his other crimes, and usurped a power above the law, should be protected by the enormity of his wickedness. Legal proceedings, therefore, are to be used when the delinquent submits to the law; *and all are just, when he will not be kept in order by the legal.*

“The word *sedition* is generally applied to all numerous assemblies without or against the authority of the magistrate, or of those who assume that power. Athaliah and Jezebel were more ready to cry out treason than David, &c. Tumult is from the disorderly manner of those assemblies, where things

can seldom be done regularly; and war is that "*decertatio per vim*," or trial by force, to which men come when other ways are ineffectual.

"If the laws of God and men are therefore of no effect when the magistracy is left at liberty to break them, and if the lusts of those who are too strong for the tribunals of justice, cannot be otherwise restrained than by sedition, tumults, and war; those seditions, tumults, and wars, are justified by the laws of God and man.

"I will not take upon me to enumerate all the cases in which this may be done; but content myself with three, which have most frequently given occasion for proceedings of this kind. The first is, when one or more men take upon them the power and name of a magistracy to which they are not justly called. The second, when one or more, being justly called, continue in their magistracy longer than the laws by which they are called do prescribe. And the third, when he, or they, who are rightly called, do assume a power, though within the time prescribed, that the law does not give, or turn that which the law does give, to an end different and contrary to that which is intended by it.

"The same course is justly used against a legal magistrate who takes upon him to exercise a power which the law does not give; for in that respect he is a private man,—"*Quia*," as Grotius says, "*eatenus non habet imperium*,"—and may be restrained as well as any other; because he is not set up to do what he lists, but what the law appoints for the good of the people; and as he has no other power than what the law allows, so the same law limits and directs the exercise of that which he has."

"\*When we speak of a tyrant that may lawfully be dethroned by the people, we do not mean by the word *people*, the vile populace or rabble of the country, nor the cabal of a small number of factious persons, but the greater and more judicious part of the subjects, of all ranks. Besides, the tyranny must be so notorious, and evidently clear, as to leave nobody any room to doubt of it, &c. Now, a prince may easily avoid making himself so universally suspected and odious to his subjects; for, as Mr. Locke says in his Treatise of Civil Government, c. 18, §209,—'It is as impossible for a governor, if he really means the good of the people, and the preservation of them and the laws together, not to make them see and feel it, as it is for the father of a family not to let his children see he loves and takes care of them.' And therefore the general insurrection of a whole nation does not deserve the name of a rebellion. We may see what Mr. Sidney says upon this subject in his Discourse concerning Government:—'Neither are subjects bound to stay

\* Pufendorf's *Law of Nature and Nations*, i. vii. c. viii. § 5, 6. Barbeyrac's note on section 6.

till the prince has entirely finished the chains which he is preparing for them, and put it out of their power to oppose. It is sufficient that all the advances which he makes are manifestly tending to their oppression, that he is marching boldly on to the ruin of the State.' In such a case, says Mr. Locke, admirably well,—'How can a man any more hinder himself from believing, in his own mind, which way things are going, or from casting about to save himself, than he could from believing the captain of the ship he was in was carrying him and the rest of his company to Algiers, when he found him always steering that course, though cross winds, leaks in his ship, and want of men and provisions, did often force him to turn his course another way for some time, which he steadily returned to again, as soon as the winds, weather, and other circumstances would let him?' This chiefly takes place with respect to kings, whose power is limited by fundamental laws.

"If it is objected that the people, being ignorant and always discontented, to lay the foundation of government in the unsteady opinion and the uncertain humor of the people, is to expose it to certain ruin; the same author will answer you, that 'on the contrary, people are not so easily got out of their old forms as some are apt to suggest. England, for instance, notwithstanding the many revolutions that have been seen in that kingdom, has always kept to its old legislative of king, lords, and commons; and whatever provocations have made the crown to be taken from some of their princes' heads, they never carried the people so far as to place it in another line.' But it will be said, this hypothesis lays a ferment for frequent rebellion. 'No more,' says Mr. Locke, 'than any other hypothesis. For when the people are made miserable, and find themselves exposed to the ill usage of arbitrary power, cry up their governors as you will for sons of Jupiter; let them be sacred and divine, descended or authorized from heaven; give them out for whom or what you please, the same will happen. The people generally ill treated, and contrary to right, will be ready upon any occasion to ease themselves of a burden that sits heavy upon them. 2. Such revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty will be borne by the people without mutiny and murmur. 3. This power in the people of providing for their safety anew by a legislative, when their legislators have acted contrary to their trust by invading their property, is the best fence against rebellion, and the probablest means to hinder it; for rebellion being an opposition, not to persons, but authority, which is founded only in the constitutions and laws of the government; those, whoever they be, *who by force break through, and by force justify the violation of them, are truly and properly rebels.* For when men, by entering into society and civil

government, have excluded force, and introduced laws for the preservation of property, peace, and unity, among themselves; those who set up force again, in opposition to the laws, do *rebellare*, that is, do bring back again the state of war, and are properly, rebels,' as the author shows. In the last place, he demonstrates that there are also greater inconveniences in allowing all to those that govern, than in granting something to the people. But it will be said, that ill affected and factious men may spread among the people, and make them believe that the prince or legislative act contrary to their trust, when they only make use of their due prerogative. To this Mr. Locke answers, that the people, however, is to judge of all that; because nobody can better judge whether his trustee or deputy acts well, and according to the trust reposed in him, than he who deputed him. 'He might make the like query,' (says Mr. Le Clerc, from whom this extract is taken) 'and ask, whether the people being oppressed by an authority which they set up, but for their own good, it is just that those who are vested with this authority, and of which they are complaining, should themselves be judges of the complaints made against them. The greatest flatterers of kings dare not say, that the people are obliged to suffer absolutely all their humors, how irregular soever they be; and therefore must confess, that when no regard is had to their complaints, the very foundations of society are destroyed; the prince and people are in a state of war with each other, like two independent states, that are doing themselves justice, and acknowledge no person upon earth, who, in a sovereign manner, can determine the disputes between them,' &c.

If there is any thing in these quotations, which is applicable to the destruction of the tea, or any other branch of our subject, it is not my fault; I did not make it. Surely Grotius, Pufendorf, Barbeyrac, Locke, Sidney, and Le Clerc, are writers of sufficient weight to put in the scale against the mercenary scribblers in New York and Boston, who have the unexampled impudence and folly, to call these, which are revolution principles, in question, and to ground their arguments upon passive obedience as a corner stone. What an opinion must these writers have of the principles of their patrons, the lords Bute, Mansfield, and North, when they hope to recommend themselves by reviving that stupid doctrine, which has been infamous so many years. Dr. Sacheverel himself tells us that his sermons were burnt by the hands of the common hangman, by the order of the king, lords, and commons, in order to fix an eternal and indelible brand of infamy on that doctrine.

In the Gazette of January the 2d, Massachusettensis entertains you with an account of his own important self. This is a subject which he has very much at heart, but it is of no consequence to you or me, and therefore little

need be said of it. If he had such a stand in the community, that he could have seen all the political manoeuvres, it is plain he must have shut his eyes, or he never could have mistaken so grossly, causes for effects, and effects for causes.

He undertakes to point out the principles and motives upon which the Blockade Act was made, which were, according to him, the destruction of the East India Company's tea. He might have said more properly, the ministerial tea; for such it was, and the company are no losers; they have received from the public treasury compensation for it.

Then we are amused with a long discourse about the nature of the British government, commerce, agriculture, arts, manufactures, regulations of trade, custom-house officers, which, as it has no relation to the subject, I shall pass over.

The case is shortly this,—the East India Company, by their contract with government, in their charter and statute, are bound, in consideration of their important profitable privileges, to pay to the public treasury a revenue annually, of four hundred thousand pounds sterling, so long as they can hold up their dividends at twelve per cent., and no longer.

The mistaken policy of the ministry, in obstinately persisting in their claim of right to tax America, and refusing to repeal the duty on tea, with those on glass, paper, and paint, had induced all America, except a few merchants in Boston, most of whom were closely connected with the junto, to refuse to import tea from Great Britain; the consequence of which was a kind of stagnation in the affairs of the company, and an immense accumulation of tea in their stores, which they could not sell. This, among other causes, contributed to affect their credit, and their dividends were on the point of falling below twelve per cent., and consequently the government was upon the point of losing four hundred thousand pounds sterling a year of revenue. The company solicited the ministry to take off the duty in America; but they, adhering to their plan of taxing the colonies and establishing a precedent, framed an act to enable the company to send their tea directly to America. This was admired as a masterpiece of policy. It was thought they would accomplish four great purposes at once,—establish their precedent of taxing America; raise a large revenue there by the duties; save the credit of the company, and the four hundred thousand pounds to the government. The company, however, were so little pleased with this, that there were great debates among the directors, whether they should risk it, which were finally determined by a majority of one only; and that one, the chairman, being unwilling, as it is said, to interfere in the dispute between the minister and the colonies, and uncertain what the result would be; and this small majority



was not obtained, as it is said, until a sufficient intimation was given, that the company should not be losers.

When these designs were made known, it appeared that American politicians were not to be deceived; that their sight was as quick and clear as the minister's; and that they were as steady to their purpose as he was to his. This was thought by all the colonies to be the precise point of time when it became absolutely necessary to make a stand. If the tea should be landed, it would be sold; if sold, the duties would amount to a large sum, which would be instantly applied to increase the friends and advocates for more duties, and to divide the people; and the company would get such a footing, that no opposition afterwards could ever be effectual. And as soon as the duties on tea should be established, they would be ranked among post-office fees and other precedents, and used as arguments both of the right and expediency of laying on others, perhaps on all the necessaries, as well as conveniences and luxuries of life. The whole continent was united in the sentiment, that all opposition to parliamentary taxation must be given up forever, if this critical moment was neglected. Accordingly, New York and Philadelphia determined that the ships should be sent back; and Charleston, that the tea should be stored and locked up. This was attended with no danger in that city, because they are fully united in sentiment and affection, and have no junto to perplex them. Boston was under greater difficulties. The consignees at New York and Philadelphia most readily resigned. The consignees at Boston, the children, cousins, and most intimate connections of Governor Hutchinson, refused. I am very sorry that I cannot stir a single step in developing the causes of my country's miseries without stumbling upon this gentleman. But so it is. From the near relation and most intimate connection of the consignees with him, there is great cause of jealousy, if not a violent presumption, that he was at the bottom of all this business; that he had planned it in his confidential letters with Bernard, and both of them joined in suggesting and recommending it to the ministry. Without this supposition, it is difficult to account for the obstinacy with which the consignees refused to resign, and the governor to let the vessel go. However this might be, Boston is the only place upon the continent, perhaps in the world, which ever breeds a species of misanthropes, who will persist in their schemes for their private interest with such obstinacy, in opposition to the public good; disoblige all their fellow-citizens for a little pelf, and make themselves odious and infamous, when they might be respected and esteemed. It must be said, however, in vindication of the town, that this breed is spawned chiefly by the junto. The consignees would not resign; the custom-house refused clearances; Governor Hutchinson refused passes by the castle. The question then

was with many, whether the governor, officers, and consignees should be compelled to send the ships hence? An army and navy was at hand, and bloodshed was apprehended. At last, when the continent, as well as the town and province, were waiting the issue of this deliberation with the utmost anxiety, a number of persons, in the night, put them out of suspense, by an oblation to Neptune. I have heard some gentlemen say, "this was a very unjustifiable proceeding," — "that if they had gone at noon-day, and in their ordinary habits, and drowned it in the face of the world, it would have been a meritorious, a most glorious action; but, to go in the night, and, much more, in disguise, they thought very inexcusable."

"The revenue was not the consideration before parliament," says Massachusetts. Let who will believe him. But if it was not, the danger to America was the same. I take no notice of the idea of a monopoly. If it had been only a monopoly, (though in this light it would have been a very great grievance) it would not have excited, nor, in the opinion of any one, justified the step that was taken. It was an attack upon a fundamental principle of the constitution, and upon that supposition was resisted, after multitudes of petitions to no purpose, and because there was no tribunal in the constitution, from whence redress could have been obtained.

There is one passage so pretty, that I cannot refuse myself the pleasure of transcribing it. "A smuggler and a whig are cousin germans, the offspring of two sisters, avarice and ambition. They had been playing into each other's hands a long time. The smuggler received protection from the whig; and he in his turn received support from the smuggler. The illicit trader now demanded protection from his kinsman; and it would have been unnatural in him to have refused it; and, besides, an opportunity presented of strengthening his own interest."

The wit and beauty of the style in this place, seem to have quite enraptured the lively juvenile imagination of this writer.

The truth of the fact he never regards, any more than the justice of the sentiment. Some years ago, the smugglers might be pretty equally divided between the whigs and the tories. Since that time, they have almost all married into the tory families, for the sake of dispensations and indulgences. If I were to let myself into secret history, I could tell very diverting stories of smuggling tories in New York and Boston. Massachusetts is quarrelling with some of his best friends. Let him learn more discretion.

We are then told that "the consignees offered to store the tea, under the care of the selectmen, or a committee of the town." This expedient might have answered, if none of the junto, nor any of their connections had been in Boston. But is it a wonder, that the selectmen declined accepting such a

deposit? They supposed they should be answerable; and nobody doubted that tories might be found who would not scruple to set fire to the store, in order to make them liable. Besides, if the tea was landed, though only to be stored, the duty must be paid, which, it was thought, was giving up the point.

Another consideration, which had great weight, was, that the other colonies were grown jealous of Boston, and thought it already deficient in point of punctuality, against the dutied articles; and if the tea was once stored, artifices might be used, if not violence, to disperse it abroad. But if through the continual vigilance and activity of the committee and the people, through a whole winter, this should be prevented, yet one thing was certain, that the tories would write to the other colonies, and to England, thousands of falsehoods concerning it, in order to induce the ministry to persevere, and to sow jealousies, and create divisions among the colonies.

Our acute logician then undertakes to prove the destruction of the tea unjustifiable, even upon the principle of the whigs, that the duty was unconstitutional. The only argument he uses is this,—that “unless we purchase the tea, we shall never pay the duty.” This argument is so frivolous, and has been so often confuted and exposed, that if the party had any other, I think they would relinquish this. Where will it carry us? If a duty was laid upon our horses, we may walk; if upon our butcher’s meat, we may live upon the produce of the dairy; and if that should be taxed, we may subsist as well as our fellow slaves in Ireland, upon Spanish potatoes and cold water. Were a thousand pounds laid upon the birth of every child, if children are not begotten none will be born; if upon every marriage, no duties will be paid if all the young gentlemen and ladies agree to live bachelors and maidens.

In order to form a rational judgment of the quality of this transaction, and determine whether it was good or evil, we must go to the bottom of this great controversy. If parliament has a right to tax us, and legislate for us in all cases, the destruction of the tea was unjustifiable; but if the people of America are right in their principle, that parliament has no such right, that the act of parliament is null and void, and it is lawful to oppose and resist it, the question then is, whether the destruction was necessary; for every principle of reason, justice, and prudence, in such cases, demands that the least mischief shall be done, the least evil, among a number, shall always be preferred.

All men are convinced that it was impracticable to return it, and rendered so by Mr. Hutchinson and the Boston consignees. Whether to have stored it would have answered the end, or been a less mischief than drowning it, I shall leave to the judgment of the public. The other colonies, it seems, have

no scruples about it; for we find that whenever tea arrives in any of them, whether from the East India Company or any other quarter, it never fails to share the fate of that in Boston. All men will agree that such steps ought not to be taken but in cases of absolute necessity, and that such necessity must be very clear. But most people in America now think the destruction of the Boston tea was absolutely necessary, and therefore right and just. It is very true, they say, if the whole people had been united in sentiment, and equally stable in their resolution not to buy or drink it, there might have been a reason for preserving it; but the people here were not so virtuous or so happy. The British ministry had plundered the people by illegal taxes, and applied the money in salaries and pensions, by which devices they had insidiously attached to their party no inconsiderable number of persons, some of whom were of family, fortune, and influence, though many of them were of desperate fortunes, each of whom, however, had his circle of friends, connections, and dependants, who were determined to drink tea, both as evidence of their servility to administration, and their contempt and hatred of the people. These it was impossible to restrain without violence, perhaps bloodshed, certainly without hazarding more than the tea was worth. To this tribe of the *wicked*, they say must be added another, perhaps more numerous, of the *weak*; who never could be brought to think of the consequences of their actions, but would gratify their appetites if they could come at the means. What numbers are there in every community, who have no providence or prudence in their private affairs, but will go on indulging the present appetite, prejudice, or passion, to the ruin of their estates and families, as well as their own health and characters! How much larger is the number of those who have no foresight for the public, or consideration of the freedom of posterity! Such an abstinence from the tea as would have avoided the establishment of a precedent, dependent on the unanimity of the people, was a felicity that was unattainable. Must the wise, the virtuous and worthy part of the community, who constituted a very great majority, surrender their liberty, and involve their posterity in misery, in complaisance to a detestable, though small, party of knaves, and a despicable, though more numerous, company of fools?

If Boston could have been treated like other places, like New York and Philadelphia, the tea might have gone home from thence, as it did from those cities. That inveterate, desperate junto, to whom we owe all our calamities, were determined to hurt us in this, as in all other cases, as much as they could. It is to be hoped they will one day repent and be forgiven; but it is very hard to forgive without repentance. When the news of this event arrived in England, it excited such passions in the minister as nothing could restrain;

his resentment was enkindled into revenge, rage, and madness; his veracity was piqued, as his masterpiece of policy proved but a bubble. The bantling was the fruit of a favorite amour, and no wonder that his natural affection was touched, when he saw it despatched before his eyes. His grief and ingenuity, if he had any, were affected at the thought that he had misled the East India Company so much nearer to destruction, and that he had rendered the breach between the kingdom and the colonies almost irreconcilable. His shame was excited because opposition had gained a triumph over him, and the three kingdoms were laughing at him for his obstinacy and his blunders; instead of relieving the company, he had hastened its ruin; instead of establishing the absolute and unlimited sovereignty of parliament over the colonies, he had excited a more decisive denial of, and resistance to it. An election drew nigh, and he dreaded the resentment even of the corrupted electors.

In this state of mind, bordering on despair, he determines to strike a bold stroke. Bernard was near, and did not fail to embrace the opportunity to push the old systems of the junto. By attacking all the colonies together, by the Stamp Act, and the Paint and Glass Act, they had been defeated. The charter constitution of the Massachusetts Bay, had contributed greatly to both these defeats. Their representatives were too numerous, and too frequently elected, to be corrupted; their people had been used to consider public affairs in their town meetings; their counsellors were not absolutely at the nod of a minister or governor, but were once a year equally dependent on the governor and the two houses. Their grand jurors were elective by the people; their petit jurors were returned merely by lot. Bernard and the junto rightly judged, that by this constitution the people had a check on every branch of power, and, therefore, as long as it lasted, parliamentary taxations, &c. could never be enforced.

Bernard publishes his select letters, and his principles of polity; his son writes in defence of the Quebec bill; hireling garreteers are employed to scribble millions of lies against us, in pamphlets and newspapers; and setters employed in the coffee-houses, to challenge or knock down all the advocates for the poor Massachusetts. It was now determined, instead of attacking the colonies together, though they had been all equally opposed to the plans of the ministry and the claims of parliament, and therefore, upon ministerial principles, equally guilty, to handle them one by one, and to begin with Boston and the Massachusetts. The destruction of the tea was a fine event for scribblers and speechifiers to declaim upon; and there was a hereditary hatred of New England in the minds of many in England, on account of their non-conforming principles. It was likewise thought there was a similar jealousy and animosity in the other colonies against New England; that they

would, therefore, certainly desert her; that she would be intimidated and submit; and then the minister, among his own friends, would acquire immortal honor, as the most able, skilful and undaunted statesman of the age.

The port bill, charter bill, murder bill, Quebec bill, making altogether such a frightful system, as would have terrified any people, who did not prefer liberty to life, were all concerted at once; but all this art and violence have not succeeded. This people, under great trials and dangers, have discovered great abilities and virtues, and that nothing is so terrible to them as the loss of their liberties. If these arts and violences are persisted in, and still greater, concerted and carried on against them, the world will see that their fortitude, patience, and magnanimity will rise in proportion.

“Had Cromwell,” says our—what shall I call him? “had the guidance of the national ire, your proud capital had been levelled with the dust.” Is it any breach of charity to suppose that such an event as this would have been a gratification to this writer? Can we otherwise account for his indulging himself in a thought so diabolical? Will he set up Cromwell as a model for his deified lords, Bute, Mansfield, and North? If he should, there is nothing in the whole history of him so cruel as this. All his conduct in Ireland, as exceptionable as any part of his whole life, affords nothing that can give the least probability to the idea of this writer. The rebellion in Ireland was most obstinate, and of many years duration; one hundred thousand Protestants had been murdered in a day, in cold blood, by papists, and therefore Cromwell might plead some excuse, that cruel severities were necessary in order to restore any peace to that kingdom. But all this will not justify him; for, as has been observed by a historian, upon his conduct in this instance, “men are not to divest themselves of humanity, and turn themselves into devils, because policy may suggest that they will succeed better as devils than as men!” But is there any parity or similitude between a rebellion of a dozen years standing, in which many battles had been fought, many thousands fallen in war, and one hundred thousand massacred in a day; and the drowning three cargoes of tea? To what strains of malevolence, to what flights of diabolical fury, is not tory rage capable of transporting men?

“The whigs saw their ruin connected with a compliance with the terms of opening the port.” They saw the ruin of their country connected with such a compliance, and their own involved in it. But they might have easily voted a compliance, for they were undoubtedly a vast majority, and have enjoyed the esteem and affection of their fellow-slaves to their last hours. Several of them could have paid for the tea and never have felt the loss. They knew they must suffer vastly more than the tea was worth; but they thought they acted for America and posterity; and that they ought not to take such

a step without the advice of the colonies. They have declared our cause their own; that they never will submit to a precedent in any part of the united colonies, by which parliament may take away wharves and other lawful estates, or demolish charters; for if they do, they have a moral certainty that, in the course of a few years, every right of Americans will be taken away, and governors and councils, holding at the will of the minister, will be the only legislatives in the colonies.

A pompous account of the addressers of Mr. Hutchinson then follows. They consisted of his relations, his fellow-laborers in the tory vineyard, and persons whom he had raised in the course of four administrations, Shirley's, Pownal's, Bernard's, and his own, to places in the province. Considering the industry that was used, and the vast number of persons in the province who had received commissions under government upon his recommendation, the small number of subscribers that was obtained, is among a thousand demonstrations of the unanimity of this people. If it had been thought worth while to have procured a remonstrance against him, fifty thousand subscribers might have been easily found. Several gentlemen of property were among these addressers, and some of fair character; but their acquaintance and friendships lay among the junto and their subalterns entirely. Besides, did these addressers approve the policy or justice of any one of the bills, which were passed the last session of the late parliament? Did they acknowledge the unlimited authority of parliament? The Middlesex magistrates remonstrated against taxation; but they were flattered with hopes, that Mr. Hutchinson would get the Port Bill, &c. repealed; that is, that he would have undone all, which every one but themselves knew he has been doing these fifteen years.

But these patriotic endeavors were defeated. By what? By "an invention of the fertile brain of one of our party agents, called a committee of correspondence. *This is the foulest, subtlest, and most venomous serpent that ever issued from the eggs of sedition.*"

I should rather call it the *ichneumon*, a very industrious, active, and useful animal, which was worshipped in Egypt as a divinity, because it defended the country from the ravages of the crocodiles. It was the whole occupation of this little creature to destroy those wily and ravenous monsters. It crushed their eggs, wherever they laid them, and, with a wonderful address and courage, would leap into their mouths, penetrate their entrails, and never leave until it destroyed them.

If the honor of this invention is due to the gentleman who is generally understood by the "party agent" of Massachusettensis, it belongs to one to whom America has erected a statue in her heart, for his integrity, fortitude,

and perseverance in her cause. That the invention itself is very useful and important, is sufficiently clear, from the unlimited wrath of the tories against it, and from the gall which this writer discharges upon it. Almost all mankind have lost their liberties through ignorance, inattention, and disunion. These committees are admirably calculated to diffuse knowledge, to communicate intelligence, and promote unanimity. If the high whigs are generally of such committees, it is because the freeholders who choose them are such, and therefore prefer their peers. The tories, high or low, if they can make interest enough among the people, may get themselves chosen, and promote the great cause of parliamentary revenues, and the other sublime doctrines and mysteries of toryism. That these committees think themselves "amenable to none," is false; for there is not a man upon any one of them who does not acknowledge himself to hold his place at the pleasure of his constituents, and to be accountable to them, whenever they demand it. If the committee of the town of Boston was appointed for a special purpose, at first, their commission has been renewed from time to time; they have been frequently thanked by the town for their vigilance, activity, and disinterested labors in the public service. Their doings have been laid before the town, and approved of by it. The malice of the tories has several times swelled open their bosoms, and broken out into the most intemperate and illiberal invectives against it; but all in vain. It has only served to show the impotence of the tories, and increase the importance of the committee.

These committees cannot be too religiously careful of the exact truth of the intelligence they receive or convey; nor too anxious for the rectitude and purity of the measures they propose or adopt; they should be very sure that they do no injury to any man's person, property, or character; and they are generally persons of such worth, that I have no doubt of their attention to these rules; and therefore, that the reproaches of this writer are mere slanders.

If we recollect how many states have lost their liberties, merely from want of communication with each other, and union among themselves, we shall think that these committees may be intended by Providence to accomplish great events. What the eloquence and talents of negotiation of Demosthenes himself could not effect, among the states of Greece, might have been effected by so simple a device. Castile, Arragon, Valencia, Majorca, &c. all complained of oppression under Charles V., flew out into transports of rage, and took arms against him. But they never consulted or communicated with each other. They resisted separately, and were separately subdued. Had Don Juan Padilla, or his wife, been possessed of the genius to invent a committee of correspondence, perhaps the liberties of the Spanish nation might have remained to this hour, without any necessity to have had recourse to arms.



Hear the opinion of Dr. Robertson:—"While the spirit of disaffection was so general among the Spaniards, and so many causes concurred in precipitating them into such violent measures in order to obtain the redress of their grievances, it may appear strange that the malecontents in the different kingdoms should have carried on their operations without any mutual concert, or even any intercourse with each other. By uniting their councils and arms, they might have acted both with greater force and with more effect. The appearance of a national confederacy would have rendered it no less respectable among the people, than formidable to the crown; and the emperor, unable to resist such a combination, must have complied with any terms which the members of it should have thought fit to prescribe."

That it is owing to those committees that so many persons have been found to recant and resign, and so many others to fly to the army, is a mistake; for the same things would have taken place if such a committee had never been in being, and such persons would probably have met with much rougher usage. This writer asks,—“Have not these persons as good a right to think and act for themselves as the whigs?” I answer, yes. But if any man, whig or tory, shall take it into his head to think for himself, that he has a right to take my property without my consent, however tender I may be of the right of private judgment and the freedom of thought, this is a point in which I shall be very likely to differ from him, and to think for myself, that I have a right to resist him. If any man should think ever so conscientiously, that the Roman Catholic religion is better than the Protestant, or that the French government is preferable to the British constitution in its purity, Protestants and Britons will not be so tender of that man’s conscience as to suffer him to introduce his favorite religion and government. So, the well-bred gentlemen, who are so polite as to think that the charter constitution of this province ought to be abolished, and another introduced, wholly at the will of a minister or the crown, or that our ecclesiastical constitution is bad, and high church ought to come in; few people will be so tender of these consciences, or complaisant to such polite taste, as to suffer the one or the other to be established. There are certain prejudices among the people so strong as to be irresistible. Reasoning is vain, and opposition idle. For example, there are certain popular maxims and precepts called the ten commandments. Suppose a number of fine gentlemen, superior to the prejudices of education, should discover that these were made for the common people, and are too illiberal for gentlemen of refined taste to observe, and accordingly, should engage in secret, confidential correspondences to procure an act of parliament to abolish the whole decalogue, or to exempt them from all obligation to observe it; if they should succeed, and their letters be detected, such is the force of prej-

udice and deep habits among the lower sort of people, that it is much to be questioned whether those refined geniuses would be allowed to enjoy themselves in the latitude of their sentiments. I once knew a man who had studied Jacob Behmen, and other mystics, until he conscientiously thought the millennium commenced, and all human authority at an end; that the saints only had a right to property, and to take from sinners any thing they wanted. In this persuasion, he very honestly stole a horse. Mankind pitied the poor man's infirmity, but thought it, however, their duty to confine him, that he might steal no more.

The freedom of thinking was never yet extended in any country so far as the utter subversion of all religion and morality, nor as the abolition of the laws and constitution of the country.

But "are not these persons as closely connected with the interest of their country as the whigs?" I answer, they are not; they have found an interest in opposition to that of their country, and are making themselves rich and their families illustrious by depressing and destroying their country. But "do not their former lives and conversations appear to have been regulated by principles, as much as those of the whigs?" A few of them, it must be acknowledged, until seduced by the bewitching charms of wealth and power, appeared to be men of principle. But taking the whigs and tories on an average, the balance of principle, as well as genius, learning, wit, and wealth, is infinitely in favor of the former. As to some of these fugitives, they are known to be men of no principles at all, in religion, morals, or government.

But the "policy" is questioned, and you are asked if you expect to make converts by it? As to the policy or impolicy of it, I have nothing to say; but we do not expect to make converts of most of those persons by any means whatever, as long as they have any hopes that the ministry will place and pension them. The instant these hopes are extinguished, we all know they will be converted of course. Converts from places and pensions are only to be made by places and pensions; all other reasoning is idle; these are the *penultima ratio* of the tories, as field-pieces are the *ultima*.

That we are "not unanimous" is certain. But there are nineteen on one side to one on the other, through the province; and ninety-nine out of a hundred of the remaining twentieth part, can be fairly shown to have some sinister private view, to induce them to profess his opinion.

Then we are threatened high, that "this is a changeable world, and time's rolling wheel may ere long bring them uppermost, and, in that case, we should not wish to have them fraught with resentment."

To all this we answer, without ceremony, that they always have been uppermost, in every respect, excepting only the esteem and affection of the

people; that they always have been fraught with resentment, (even their cunning and policy have not restrained them,) and we know they always will be; that they have indulged their resentment and malice, in every instance in which they had power to do it; and we know that their revenge will never have other limits than their power.

Then this consistent writer begins to flatter the people; he “appeals to their good sense; he knows they have it;” the same people whom he has so many times represented as mad and foolish.

“I know you are loyal, and friends to good order.” This is the same people that, in the whole course of his writings, he has represented as continuing for ten years together in a continual state of disorder, demolishing the chair, board, supreme court, and encouraging all sorts of riots, insurrections, treason, and rebellion. Such are the shifts to which a man is driven, when he aims at carrying a point, not at discovering truth!

The people are then told that “they have been insidiously taught to believe, that Great Britain is rapacious, cruel, and vindictive, and envies us the inheritance purchased by the sweat and blood of our ancestors.” The people do not believe this; they will not believe it. On the contrary, they believe, if it was not for scandals constantly transmitted from this province by the tories, the nation would redress our grievances. Nay, as little as they reverence the ministry, they even believe that the lords North, Mansfield, and Bute, would relieve them, and would have done it long ago, if they had known the truth. The moment this is done, “long live our gracious king, and happiness to Britain,” will resound from one end of the province to the other; but it requires very little foresight to determine, that no other plan of governing the province and the colonies will ever restore a harmony between two countries, but desisting from the plan of taxing them and interfering with their internal concerns, and returning to that system of colony administration, which nature dictated, and experience for one hundred and fifty years found useful.

#### NO. VII

**OUR RHETORICAL MAGICIAN**, in his paper of January the 9th, continues to *wheedle*: You want nothing but “to know the true state of facts, to rectify whatever is amiss.” He becomes an advocate for the poor of Boston! is for making great allowance for the whigs. “The whigs are too valuable a part of the community to lose. He would not draw down the vengeance of Great Britain. He shall become an advocate for the leading whigs,” &c. It is in vain

for us to inquire after the *sincerity* or *consistency* of all this. It is agreeable to the precept of Horace:

Irritat, mulcet, falvis terroribus implet,  
Ut magus,

And that is all he desires.

After a long discourse, which has nothing in it but what has been answered already, he comes to a great subject indeed, the British constitution; and undertakes to prove, that “the authority of parliament extends to the colonies.”

Why will not this writer state the question fairly? The whigs allow that, from the necessity of a case not provided for by common law, and to supply a defect in the British dominions, which there undoubtedly is, if they are to be governed only by that law, America has all along consented, still consents, and ever will consent, that parliament, being the most powerful legislature in the dominions, should regulate the trade of the dominions. This is founding the authority of parliament to regulate our trade, upon *compact* and *consent* of the colonies, not upon any principle of common or statute law; not upon any original principle of the English constitution; not upon the principle that parliament is the supreme and sovereign legislature over them in all cases whatsoever. The question is not, therefore, whether the authority of parliament extends to the colonies in any case, for it is admitted by the whigs, that it does in that of commerce; but whether it extends in all cases.

We are then detained with a long account of the three simple forms of government; and are told, that “the British constitution, consisting of king, lords, and commons, is formed upon the principles of monarchy, aristocracy, and democracy, in due proportion; that it includes the principal excellences, and excludes the principal defects of the other kinds of government,—the most perfect system that the wisdom of ages has produced, and Englishmen glory in being subject to, and protected by it.”

Then we are told, “that the colonies are a part of the British empire.” But what are we to understand by this? Some of the colonies, most of them, indeed, were settled before the kingdom of Great Britain was brought into existence. The union of England and Scotland was made and established by act of parliament in the reign of Queen Anne, and it was this union and statute which erected the kingdom of Great Britain. The colonies were settled long before, in the reigns of the Jameses and Charleses. What authority over them had Scotland? Scotland, England, and the colonies were all under one king before that; the two crowns of England and Scotland united on the

head of James I., and continued united on that of Charles I., when our first charter was granted. Our charter, being granted by him, who was king of both nations, to our ancestors, most of whom were *post nati*, born after the union of the two crowns, and consequently, as was adjudged in Calvin's case, free, natural subjects of Scotland, as well as England,—had not the king as good a right to have governed the colonies by his Scottish, as by his English parliament, and to have granted our charters under the seal of Scotland, as well as that of England?

But to wave this. If the English parliament were to govern us, where did they get the right, without our consent, to take the Scottish parliament into a participation of the government over us? When this was done, was the American share of the democracy of the constitution consulted? If not, were not the Americans deprived of the benefit of the democratical part of the constitution? And is not the democracy as essential to the English constitution as the monarchy or aristocracy? Should we have been more effectually deprived of the benefit of the British or English constitution, if one or both houses of parliament, or if our house and council, had made this union with the two houses of parliament in Scotland, without the king?

If a new constitution was to be formed for the whole British dominions, and a supreme legislature coextensive with it, upon the general principles of the English constitution, an equal mixture of monarchy, aristocracy, and democracy, let us see what would be necessary. England has six millions of people, we will say; America had three. England has five hundred members in the house of commons, we will say; America must have two hundred and fifty. Is it possible she should maintain them there, or could they at such a distance know the state, the sense, or exigencies of their constituents? Ireland, too, must be incorporated, and send another hundred or two of members. The territory in the East Indies and West India Islands must send members. And after all this, every navigation act, every act of trade must be repealed. America, and the East and West Indies, and Africa too, must have equal liberty to trade with all the world, that the favored inhabitants of Great Britain have now. Will the ministry thank Massachusettensis for becoming an advocate for such a union, and incorporation of all the dominions of the King of Great Britain? Yet, without such a union, a legislature which shall be sovereign and supreme in all cases whatsoever, and coextensive with the empire, can never be established upon the general principles of the English constitution which Massachusettensis lays down, namely,—an equal mixture of monarchy, aristocracy, and democracy. Nay, further, in order to comply with this principle, this new government, this mighty colossus, which is to bestride the narrow world, must have a house of lords, consisting of Irish,

East and West Indian, African, American, as well as English and Scottish noblemen; for the nobility ought to be scattered about all the dominions, as well as the representatives of the commons. If in twenty years more America should have six millions of inhabitants, as there is a boundless territory to fill up, she must have five hundred representatives. Upon these principles, if in forty years she should have twelve millions, a thousand; and if the inhabitants of the three kingdoms remain as they are, being already full of inhabitants, what will become of your supreme legislative? It will be translated, crown and all, to America. This is a sublime system for America. It will flatter those ideas of independency which the Tories impute to them, if they have any such, more than any other plan of independency that I have ever heard projected.

“The best writers upon the law of nations tell us, that when a nation takes possession of a distant country, and settles there, that country, though separated from the principal establishment, or mother country, naturally becomes a part of the state, equal with its ancient possessions.” We are not told who these “best writers” are. I think we ought to be introduced to them. But their meaning may be no more, than that it is best they should be incorporated with the ancient establishment by contract, or by some new law and institution, by which the new country shall have equal right, powers, and privileges, as well as equal protection, and be under equal obligations of obedience, with the old. Has there been any such contract between Britain and the colonies? Is America incorporated into the realm? Is it a part of the realm? Is it a part of the kingdom? Has it any share in the legislative of the realm? The constitution requires that every foot of land should be represented in the third estate, the democratical branch of the constitution. How many millions of acres in America, how many thousands of wealthy landholders, have no representatives there?

But let these “best writers” say what they will, there is nothing in the law of nations, which is only the law of right reason applied to the conduct of nations, that requires that emigrants from a state should continue, or be made, a part of the state.

The practice of nations has been different. The Greeks planted colonies, and neither demanded nor pretended any authority over them; but they became distinct, independent commonwealths. The Romans continued their colonies under the jurisdiction of the mother commonwealth; but, nevertheless, they allowed them the privileges of cities. Indeed, that sagacious city seems to have been aware of difficulties similar to those under which Great Britain is now laboring. She seems to have been sensible of the impossibility of keeping colonies planted at great distances, under the absolute control of

her *senatus-consulta*. Harrington tells us, that “the commonwealth of Rome, by planting colonies of its citizens within the bounds of Italy, took the best way of propagating itself and naturalizing the country; whereas, if it had planted such colonies without the bounds of Italy, it would have alienated the citizens, and given a root to liberty abroad, that might have sprung up foreign, or savage, and hostile to her; *wherefore it never made any such dispersion of itself and its strength* till it was under the yoke of the emperors, who, disburdening themselves of the people, as having less apprehension of what they could do abroad than at home, took a contrary course.”\* But these Italian cities, although established by decrees of the senate of Rome, to which the colonist was always party, either as a Roman citizen about to emigrate, or as a conquered enemy treating upon terms, were always allowed all the rights of Roman citizens, and were governed by senates of their own. It was the policy of Rome to conciliate her colonies by allowing them equal liberties with her citizens. Witness the example of the Privernates. This people had been conquered, and, complaining of oppressions, revolted. At last they sent ambassadors to Rome to treat of peace. The senate was divided in opinion. Some were for violent, others for lenient measures. In the course of the debate, a senator, whose opinion was for *bringing them to his feet*, proudly asked one of the ambassadors what punishment he thought his countrymen deserved. “*Eam, inquit, quam merentur, qui se libertate dignos censent.*” That punishment which those deserve who think themselves worthy of liberty. Another senator, seeing that the *ministerial members* were exasperated with the honest answer, in order to divert their anger, asks another question:—What if we remit all punishment? What kind of a peace may we hope for with you? “*Si bonam dederitis, inquit, et fidam et perpetuam; si malam, haud diuturnam.*” If you give us a just peace, it will be faithfully observed, and perpetually; but if a bad one, it will not last long. The *ministerial* senators all on fire at this answer, cried out sedition and rebellion; but the wiser majority decreed,—“*Viri et liberi, vocem auditam; an credi posse ullum populum, aut hominem denique, in ea conditione, cujus eum paeniteat, diutius quam necesse sit mansurum? Ibi pacem esse fidam, ubi voluntarii pacati sint; neque eo loco, ubi servitutem esse velint, fidem sperandam esse.*” That they had heard the voice of a man, and a son of liberty; that it was not natural or credible that any people, or any man, would continue longer than necessity should compel him in a condition that grieved and displeased him. A faithful peace was to be expected from men whose affections were conciliated; nor was any kind of fidelity to be expected from slaves. The consul exclaimed,—

\* Oceana, p. 43.

“*Eos demum, qui nihil praeterquam de libertate cogitent, dignos esse qui Romani fiant.*” That they who regarded nothing so much as their liberty, deserved to be Romans. “*Itaque et in senatu causam obtinuerunt; et ex auctoritate patrum, latum ad populum est, ut Privernatibus civitas daretur.*” Therefore the Privernates obtained their cause in the senate; and it was, by the authority of those fathers, recommended to the people, that the privileges of a city should be granted them. The practice of free nations only can be adduced, as precedents of what the law of nature has been thought to dictate upon this subject of colonies. Their practice is different. The senate and people of Rome did not interfere commonly by making laws for their colonies, but left them to be ruled by governors and senates. Can Massachusettensis produce from the whole history of Rome, or from the Digest, one example of a *senatus-consultum*, or a *plebiscitum*, laying taxes on the colony?

Having mentioned the wisdom of the Romans, for not planting colonies out of Italy, and their reasons for it, I cannot help recollecting an observation of Harrington:—“For the colonies in the Indies,” says he, “they are yet babes, that cannot live without sucking the breasts of their mother cities, but such as I mistake, if, when they come of age, they do not wean themselves, which causes me to wonder at princes that delight to be exhausted in that way.” This was written one hundred and twenty years ago; the colonies are now nearer manhood than ever Harrington foresaw they would arrive in such a period of time. Is it not astonishing, then, that any British minister should ever have considered this subject so little as to believe it possible for him to new-model all our governments, to tax us by an authority that never taxed us before, and subdue us to an implicit obedience to a legislature that millions of us scarcely ever thought any thing about?

I have said, that the practice of free governments alone can be quoted with propriety to show the sense of nations. But the sense and practice of nations is not enough. Their practice must be reasonable, just, and right, or it will not govern Americans.

Absolute monarchies, whatever their practice may be, are nothing to us; for, as Harrington observes, “Absolute monarchy, as that of the Turks, neither plants its people at home nor abroad, otherwise than as tenants for life or at will; wherefore, its national and provincial government is all one.”

I deny, therefore, that the practice of free nations, or the opinions of the best writers upon the law of nations, will warrant the position of Massachusettensis, that, “when a nation takes possession of a distant territory, that becomes a part of the state equally with its ancient possessions.” The practice of free nations and the opinions of the best writers are in general on the contrary.



I agree, that “two supreme and independent authorities cannot exist in the same state,” any more than two supreme beings in one universe; and, therefore, I contend, that our provincial legislatures are the only supreme authorities in our colonies. Parliament, notwithstanding this, may be allowed an authority supreme and sovereign over the ocean, which may be limited by the banks of the ocean, or the bounds of our charters; our charters give us no authority over the high seas. Parliament has our consent to assume a jurisdiction over them. And here is a line fairly drawn between the rights of Britain and the rights of the colonies, namely, the banks of the ocean, or low-water mark; the line of division between common law, and civil or maritime law. If this is not sufficient,—if parliament are at a loss for any principle of natural, civil, maritime, moral, or common law, on which to ground any authority over the high seas, the Atlantic especially, let the colonies be treated like reasonable creatures, and they will discover great ingenuity and modesty. The acts of trade and navigation might be confirmed by provincial laws, and carried into execution by our own courts and juries, and in this case, illicit trade would be cut up by the roots forever. I knew the smuggling tories in New York and Boston would cry out against this, because it would not only destroy their profitable game of smuggling, but their whole place and pension system. But the whigs, that is, a vast majority of the whole continent, would not regard the smuggling tories. In one word, if public principles, and motives, and arguments were alone to determine this dispute between the two countries, it might be settled forever in a few hours; but the everlasting clamors of prejudice, passion, and private interest drown every consideration of that sort, and are precipitating us into a civil war.

“If, then, we are a part of the British empire, we must be subject to the supreme power of the state, which is vested in the estates in parliament.”

Here, again, we are to be conjured out of our senses by the magic in the words “British empire,” and “supreme power of the state.” But, however it may sound, I say we are not a part of the British empire; because the British government is not an empire. The governments of France, Spain, &c. are not empires, but monarchies, supposed to be governed by fixed fundamental laws, though not really. The British government is still less entitled to the style of *an empire*. It is a limited monarchy. If Aristotle, Livy, and Harrington knew what a republic was, the British constitution is much more like a republic than an empire. They define a republic to be a *government of laws, and not of men*. If this definition be just, the British constitution is nothing more nor less than a republic, in which the king is first magistrate. This office being hereditary, and being possessed of such ample and splendid prerogatives, is no objection to the government’s being a republic, as long as it is

bound by fixed laws, which the people have a voice in making, and a right to defend. An empire is a despotism, and an emperor a despot, bound by no law or limitation but his own will; it is a stretch of tyranny beyond absolute monarchy. For, although the will of an absolute monarch is law, yet his edicts must be registered by parliaments. Even this formality is not necessary in an empire. There the maxim is *quod principi placuit legis habet rigorem*, even without having that will and pleasure recorded. There are but three empires now in Europe, the German or Holy Roman, the Russian, and the Ottoman.

There is another sense, indeed, in which the word *empire* is used, in which it may be applied to the government of Geneva, or any other republic, as well as to monarchy or despotism. In this sense it is synonymous with *government*, *rule*, or *dominion*. In this sense we are within the dominion, rule, or government of the King of Great Britain.

The question should be, whether we are a part of the kingdom of Great Britain. This is the only language known in English laws. We are not then a part of the British kingdom, realm, or state; and therefore the supreme power of the kingdom, realm, or state is not, upon these principles, the supreme power of us. That "supreme power over America is vested in the estates in parliament," is an affront to us; for there is not an acre of American land represented there; there are no American estates in parliament.

To say, that we "must be" subject, seems to betray a consciousness that we are not by any law, or upon any principles but those of mere power; and an opinion that we ought to be, or that it is necessary that we should be. But if this should be admitted for argument's sake only, what is the consequence? The consequences that may fairly be drawn are these; that Britain has been imprudent enough to let colonies be planted, until they are become numerous and important, without ever having wisdom enough to concert a plan for their government, consistent with her own welfare; that now it is necessary to make them submit to the authority of parliament; and, because there is no principle of law, or justice, or reason, by which she can effect it, therefore she will resort to war and conquest—to the maxim, *delenda est Carthago*. These are the consequences, according to this writer's idea. We think the consequences are, that she has, after one hundred and fifty years, discovered a defect in her government, which ought to be supplied by some just and reasonable means, that is, by the consent of the colonies; for metaphysicians and politicians may dispute forever, but they will never find any other moral principle or foundation of rule or obedience, than the consent of governors and governed. She has found out that the great machine will not go any longer without a new wheel. She will make this herself. We think she is making it of such materials and workmanship as will tear the whole

machine to pieces. We are willing, if she can convince us of the necessity of such a wheel, to assist with artists and materials in making it, so that it may answer the end. But she says, we shall have no share in it; and if we will not let her patch it up as she pleases, her Massachusettensis and other advocates tell us, she will tear it to pieces herself, by cutting our throats. To this kind of reasoning, we can only answer, that we will not stand still to be butchered. We will defend our lives as long as Providence shall enable us.

“It is beyond doubt, that it was the sense both of the *parent country* and *our ancestors*, that they were to remain subject to parliament.”

This has been often asserted, and as often contradicted and fully confuted. The confutation may not, however, have come to every eye which has read this newspaper.

The public acts of kings and ministers of state, in that age when our ancestors emigrated, which were not complained of, remonstrated and protested against by the commons, are looked upon as sufficient proof of the “sense” of the parent country.

The charter to the treasurer and company of Virginia, 23 May, 1609, grants ample powers of government, legislative, executive, and judicial, and then contains an express covenant, “to and with the said treasurer and company, their successors, factors, and assigns, that they, and every of them, shall be free from all taxes and impositions forever, upon any goods or merchandises, at any time or times hereafter, either upon importation thither, or exportation from thence, into our realm of England, or into any other of our realms or dominions.”

I agree with this writer, that the authority of a supreme legislature includes the right of taxation. Is not this quotation, then, an irresistible proof, that it was not “the sense of King James or his ministers, or of the ancestors of the Virginians, that they were to remain subject to parliament as a supreme legislature?”

After this, James issued a proclamation recalling the patent, but this was never regarded. Then Charles issued another proclamation, which produced a remonstrance from Virginia, which was answered by a letter from the lords of the privy council, 22 July, 1634, containing the royal assurance, that “all their estates, trade, freedom, and privileges should be enjoyed by them in as extensive a manner as they enjoyed them before those proclamations.”

Here is another evidence of the sense of the king and his ministers.

Afterwards, parliament sent a squadron of ships to Virginia; the colony rose in open resistance, until the parliamentary commissioners granted them conditions, that they should enjoy the privileges of Englishmen; that their assembly should transact the affairs of the colonies; that they should have a

free trade to all places and nations, as the people of England; and fourthly, that "Virginia shall be free from all *taxes*, customs, and impositions whatever, and none to be imposed on them without consent of the grand assembly; and so that neither forts nor castles be erected, or garrisons maintained, without their consent."

One would think this was evidence enough of the sense both of the parent country and our ancestors.

After the acts of navigation were passed, Virginia sent agents to England, and a remonstrance against those acts. Charles, in answer, sent a declaration under the privy seal, 19 April, 1676, affirming "that taxes ought not to be laid upon the inhabitants and proprietors of the colony, but by the common consent of the general assembly; except such impositions as the parliament should lay on the commodities imported into England from the colony." And he ordered a charter under the great seal, to secure this right to the Virginians.

What becomes of the "sense of the parent country and our ancestors"? for the ancestors of the Virginians are our ancestors, when we speak of ourselves as Americans.

From Virginia let us pass to Maryland. Charles I., in 1633, gave a charter to the Baron of Baltimore, containing ample powers of government, and this express covenant: "to and with the said Lord Baltimore, his heirs and assigns, that we, our heirs and successors, shall at no time hereafter, set or make, or cause to be set, any imposition, custom, or other taxation, rate, or contribution whatsoever, in and upon the dwellings and inhabitants of the aforesaid province, for their lands, tenements, goods, or chattels within the said province; or to be laden or unladen, within the ports or harbors of the said province."

What, then, was the "sense of the parent country and the ancestors" of Maryland? But if, by "our ancestors," he confines his idea to New England, or this province, let us consider. The first planters of Plymouth were "our ancestors" in the strictest sense. They had no charter or patent for the land they took possession of; and derived no authority from the English parliament or crown to set up their government. They purchased land of the Indians, and set up a government of their own, on the simple principle of nature; and afterwards purchased a patent for the land of the council at Plymouth; but never purchased any charter for government, of the crown or the king, and continued to exercise all the powers of government, legislative, executive, and judicial, upon the plain ground of an original contract among independent individuals for sixty-eight years, that is, until their incorporation with Massachusetts by our present charter. The same may be said of the

colonies which emigrated to Say-Brook, New Haven, and other parts of Connecticut. They seem to have had no idea of dependence on parliament, any more than on the conclave. The Secretary of Connecticut has now in his possession an original letter from Charles II. to that colony, in which he considers them rather as friendly allies, than as subjects to his English parliament; and even requests them to pass a law in their assembly relative to piracy.

The sentiments of your ancestors in the Massachusetts, may be learned from almost every ancient paper and record. It would be endless to recite all the passages, in which it appears that they thought themselves exempt from the authority of parliament, not only in the point of taxation, but in all cases whatsoever. Let me mention one. Randolph, one of the predecessors of Massachusettsensis, in a representation to Charles II., dated 20 September, 1676, says, "I went to visit the governor at his house, and, among other discourse, I told him, I took notice of several ships that were arrived at Boston, some since my being there, from Spain, France, Straits, Canaries, and other parts of Europe, contrary to your majesty's laws for encouraging navigation and regulating the trade of the plantations. He freely declared to me, that the law made by your majesty and your parliament, obligeth them in nothing but what consists with the interest of that colony; that the legislative power is and abides in them solely to act and make laws by virtue of a charter from your majesty's royal father." Here is a positive assertion of an exemption from the authority of parliament, even in the case of the regulation of trade.

Afterwards, in 1677, the general court passed a law which shows the sense of our ancestors in a very strong light. It is in these words:—

"This court being informed, by letters received this day from our messengers, of his majesty's expectation, that the acts of trade and navigation be exactly and punctually observed by this his majesty's colony, his pleasure therein not having before now been signified unto us, either by express from his majesty or any of his ministers of state:

"It is therefore hereby ordered, and by the authority of this court enacted, that henceforth, all masters of ships, ketches, or other vessels, of greater or lesser burthen, arriving in, or sailing from any of the ports in this jurisdiction, do, without coven or fraud, yield faithful and constant obedience unto, and observation of, all the said acts of navigation and trade, on penalty of suffering such forfeitures, loss, and damage, as in the said acts are particularly expressed. And the governor and council, and all officers commissioned and authorized by them, are hereby ordered and required to see to the strict observation of the said acts."

As soon as they had passed this law, they wrote a letter to their agent, in which they acknowledge they had not conformed to the acts of trade; and

they say, they “apprehended them to be an invasion of the rights, liberties, and properties of the subjects of his majesty in the colony, they not being represented in parliament; and, according to the usual sayings of the learned in the law, *the laws of England were bounded within the four seas, and did not reach America*. However, as his majesty had signified his pleasure that these acts should be observed in the Massachusetts, they had made provision, by a law of the colony, that they should be strictly attended to from time to time, although it greatly discouraged trade, and was a great damage to his majesty’s plantation.”

Thus, it appears, that the ancient Massachusettians and Virginians had precisely the same sense of the authority of parliament, namely,—that it had none at all; and the same sense of the necessity that, by the voluntary act of the colonies—their free, cheerful consent—it should be allowed the power of regulating trade; and this is precisely the idea of the late congress at Philadelphia, expressed in the fourth proposition in their Bill of Rights.

But this was the sense of the parent country, too, at that time; for King Charles II., in a letter to the Massachusetts, after this law had been laid before him, has these words: “We are informed that you have lately made *some good provision* for observing the acts of trade and navigation, which is well pleasing unto us.” Had he or his ministers an idea that parliament was the sovereign legislative over the colony? If he had, would he not have censured this law, as an insult to that legislative?

I sincerely hope we shall see no more such round affirmations, that “it was the sense of the parent country and our ancestors, that they were to remain subject to parliament.” So far from thinking themselves subject to parliament, it is clear that, during the interregnum, it was their desire and design to have been a free commonwealth, an independent republic; and after the restoration, it was with the utmost reluctance that, in the course of sixteen or seventeen years, they were brought to take the oaths of allegiance; and for some time after this, they insisted upon taking an oath of fidelity to the country, before that of allegiance to the king.

That “it is evident, from the charter itself, that they were to remain subject to parliament,” is very unaccountable, when there is not one word in either charter concerning parliament.

That the authority of parliament “has been exercised almost ever since the first settlement of the country,” is a mistake; for there is no instance, until the first Navigation Act, which was in 1660, more than forty years after the first settlement. This act was never executed nor regarded until seventeen years afterwards, and then it was not executed as an act of parliament, but as a law of the colony, to which the king agreed.

This “has been expressly acknowledged by our provincial legislatures.” There is too much truth in this. It has been twice acknowledged by our house of representatives, that parliament was the supreme legislative; but this was directly repugnant to a multitude of other votes, by which it was denied. This was in conformity to the distinction between taxation and legislation, which has since been found to be a distinction without a difference.

When a great question is first started, there are very few, even of the greatest minds, which suddenly and intuitively comprehend it, in all its consequences.

It is both “our interest and our duty to continue subject to the authority of parliament,” as far as the regulation of our trade, if it will be content with that, but no longer.

“If the colonies are not subject to the authority of parliament, Great Britain and the colonies must be distinct states, as completely so as England and Scotland were before the union, or as Great Britain and Hanover are now.” There is no need of being startled at this consequence. It is very harmless. There is no absurdity at all in it. Distinct states may be united under one king. And those states may be further cemented and united together by a treaty of commerce. This is the case. We have, by our own express consent, contracted to observe the Navigation Act, and by our implied consent, by long usage and uninterrupted acquiescence, have submitted to the other acts of trade, however grievous some of them may be. This may be compared to a treaty of commerce, by which those distinct states are cemented together, in perpetual league and amity. And if any further ratifications of this pact or treaty are necessary, the colonies would readily enter into them, provided their other liberties were inviolate.

That “the colonies owe no allegiance to any imperial crown,” provided such a crown involves in it a house of lords and a house of commons, is certain. Indeed, we owe no allegiance to any crown at all. We owe allegiance to the person of his majesty, King George III., whom God preserve. But allegiance is due universally, both from Britons and Americans to the person of the king, not to his crown; to his natural, not his politic capacity, as I will undertake to prove hereafter, from the highest authorities, and the most solemn adjudications, which were ever made within any part of the British dominions.

If his majesty’s title to the crown is “derived from an act of parliament, made since the settlement of these colonies,” it was not made since the date of our charter. Our charter was granted by King William and Queen Mary, three years after the revolution; and the oaths of allegiance are established by a law of the province. So that our allegiance to his majesty is not due by

virtue of any act of a British parliament, but by our own charter and province laws. It ought to be remembered that there was a revolution here, as well as in England, and that we, as well as the people of England, made an original, express contract with King William.

If it follows from thence, that he appears "King of Massachusetts, King of Rhode Island, King of Connecticut, &c." this is no absurdity at all. He will appear in this light, and does appear so, whether parliament has authority over us or not. He is King of Ireland, I suppose, although parliament is allowed to have authority there. As to giving his majesty those titles, I have no objection at all; I wish he would be graciously pleased to assume them.

The only proposition in all this writer's long string of pretended absurdities, which he says follows from the position that we are distinct states, is this:—That "as the king must govern each state by its parliament, those several parliaments would pursue the particular interest of its own state; and however well disposed the king might be to pursue a line of interest that was common to all, the checks and control that he would meet with would render it impossible." Every argument ought to be allowed its full weight; and therefore candor obliges me to acknowledge, that here lies all the difficulty that there is in this whole controversy. There has been, from first to last, on both sides of the Atlantic, an idea, an apprehension, that it was necessary there should be some superintending power, to draw together all the wills, and unite all the strength of the subjects in all the dominions, in case of war, and in the case of trade. The necessity of this, in case of trade, has been so apparent, that, as has often been said, we have consented that parliament should exercise such a power. In case of war, it has by some been thought necessary. But in fact and experience, it has not been found so. What though the proprietary colonies, on account of disputes with the proprietors, did not come in so early to the assistance of the general cause in the last war as they ought, and perhaps one of them not at all? The inconveniences of this were small, in comparison of the absolute ruin to the liberties of all which must follow the submission to parliament, in all cases, which would be giving up all the popular limitations upon the government. These inconveniences fell chiefly upon New England. She was necessitated to greater exertions; but she had rather suffer these again and again than others infinitely greater. However, this subject has been so long in contemplation, that it is fully understood now in all the colonies; so that there is no danger, in case of another war, of any colony's failing of its duty.

But, admitting the proposition in its full force, that it is absolutely necessary there should be a supreme power, coextensive with all the dominions,



will it follow that parliament, as now constituted, has a right to assume this supreme jurisdiction? By no means.

A union of the colonies might be projected, and an American legislature; for, if America has three millions of people, and the whole dominions, twelve millions, she ought to send a quarter part of all the members to the house of commons; and, instead of holding parliaments always at Westminster, the haughty members for Great Britain must humble themselves, one session in four, to cross the Atlantic, and hold the parliament in America.

There is no avoiding all inconveniences in human affairs. The greatest possible, or conceivable, would arise from ceding to parliament power over us without a representation in it. The next greatest would accrue from any plan that can be devised for a representation there. The least of all would arise from going on as we began, and fared well for one hundred and fifty years, by letting parliament regulate trade, and our own assemblies all other matters.

As to "the prerogatives not being defined, or limited," it is as much so in the colonies as in Great Britain, and as well understood, and as cheerfully submitted to in the former as the latter.

But "where is the British constitution, that we all agree we are entitled to?" I answer, if we enjoy, and are entitled to more liberty than the British constitution allows, where is the harm? Or if we enjoy the British constitution in greater purity and perfection than they do in England, as is really the case, whose fault is this? Not ours.

We may find all the blessings of this constitution "in our provincial assemblies." Our houses of representatives have, and ought to exercise every power of the house of commons. The first charter to this colony is nothing to the present argument; but it did grant a power of taxing the people, implicitly, though not in express terms. It granted all the rights and liberties of Englishmen, which include the power of taxing the people.

"Our council boards" in the royal governments, "are destitute of the noble independence and splendid appendages of peerage." Most certainly, they are the meanest creatures and tools in the political creation, dependent every moment for their existence on the tainted breath of a prime minister. But they have the authority of the house of lords, in our little models of the English constitution; and it is this which makes them so great a grievance. The crown has really two branches of our legislature in its power. Let an act of parliament pass at home, putting it in the power of the king to remove any peer from the house of lords at his pleasure, and what will become of the British constitution? It will be overturned from the foundation. Yet we are perpetually insulted by being told, that making our council by mandamus

brings us nearer to the British constitution. In this province, by charter, the council certainly hold their seats for the year, after being chosen and approved, independent of both the other branches. For their creation, they are equally obliged to both the other branches; so that there is little or no bias in favor of either; if any, it is in favor of the prerogative. In short, it is not easy, without an hereditary nobility, to constitute a council more independent, more nearly resembling the house of lords, than the council of this province has ever been by charter.

But perhaps it will be said, that we are to enjoy the British constitution in our supreme legislature, the parliament, not in our provincial legislatures. To this I answer, if parliament is to be our supreme legislature, we shall be under a complete oligarchy or aristocracy, not the British constitution, which this writer himself defines a mixture of monarchy, aristocracy, and democracy. For king, lords, and commons, will constitute one great oligarchy, as they will stand related to America, as much as the decemvirs did in Rome; with this difference for the worse, that our rulers are to be three thousand miles off. The definition of an oligarchy is a government by a number of grandees, over whom the people have no control. The States of Holland were once chosen by the people frequently, then chosen for life; now they are not chosen by the people at all. When a member dies, his place is filled up, not by the people he is to represent, but by the States. Is not this depriving the Hollanders of a free constitution, and subjecting them to an aristocracy, or oligarchy? Will not the government of America be like it? Will not representatives be chosen for them by others, whom they never saw nor heard of? If our provincial constitutions are in any respect imperfect, and want alteration, they have capacity enough to discern it, and power enough to effect it, without the interposition of parliament. There never was an American constitution attempted by parliament before the Quebec bill, and Massachusetts bill. These are such *samples* of what they may, and probably will be, that few Americans are in love with them. However, America will never allow that parliament has any authority to alter their constitution at all. She is wholly penetrated with a sense of the necessity of resisting it at all hazards. And she would resist it, if the constitution of the Massachusetts had been altered as much for *the better* as it is for the worse. The question we insist on most is, not whether the alteration is for the better or not, but whether parliament has any right to make any alteration at all. And it is the universal sense of America, that it has none.

We are told, that “the provincial constitutions have no principle of stability within themselves.” This is so great a mistake, that there is not more order or stability in any government upon the globe, than there ever has been

in that of Connecticut. The same may be said of the Massachusetts and Pennsylvania; and, indeed, of the others very nearly. "That these constitutions, in turbulent times, would become wholly monarchical, or wholly republican," they must be such times as would have a similar effect upon the constitution at home. But in order to avoid the danger of this, what is to be done? Not give us an English constitution, it seems, but make sure of us at once, by giving us constitutions wholly monarchical, annihilating our houses of representatives first, by taking from them the support of government, &c., and then making the council and judges wholly dependent on the crown.

That a representation in parliament is impracticable, we all agree; but the consequence is, that we must have a representation in our supreme legislatures here. This was the consequence that was drawn by kings, ministers, our ancestors, and the whole nation, more than a century ago, when the colonies were first settled, and continued to be the general sense until the last peace; and it must be the general sense again soon, or Great Britain will lose her colonies.

"This is apparently the meaning of that celebrated passage in Governor Hutchinson's letter, that rung through the continent, namely,—'There must be an abridgment of what is called English liberties.'" But all the art and subtlety of Massachusettensis will never vindicate or excuse that expression. According to this writer, it should have been, "there is an abridgment of English liberties, and it cannot be otherwise." But every candid reader must see that the letter-writer had more than that in his *view* and in his *wishes*. In the same letter, a little before, he says, "what marks of resentment the parliament will show, whether they will be upon the province in general, or particular persons, is extremely uncertain; but that they will be placed somewhere is most certain; and I add, *because I think it ought to be so*." Is it possible to read this, without thinking of the Port Bill, the Charter Bill, and the resolves for sending persons to England, by the statute of Henry VIII., to be tried? But this is not all: "This is most certainly a crisis," says he, &c. "If no measure shall have been taken to secure this dependence, (that is, the dependence which a colony ought to have upon the parent state,) it is all over with us." "The friends of government will be utterly disheartened; and the friends of anarchy will be afraid of nothing, be it ever so extravagant." But this is not all: "I never think of the measures necessary for the peace and good order of the colonies without pain." "There must be an abridgment of what are called English liberties." What could he mean? Any thing less than depriving us of trial by jury? Perhaps he wanted an act of parliament to try persons here for treason, by a court of admiralty. Perhaps an act, that the province should be governed by a governor and a mandamus council, without a house

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of representatives. But to put it out of all doubt, that his meaning was much worse than Massachusettensis endeavors to make it, he explains himself in a subsequent part of the letter: "I wish," says he, "the good of the colony, *when I wish to see some further restraint of liberty.*" Here it is rendered certain, that he is pleading for a further restraint of liberty, not explaining the restraint he apprehended the constitution had already laid us under.

My indignation at this letter has sometimes been softened by compassion. It carries on the face of it evident marks of *madness*. It was written in such a transport of passions, *ambition* and *revenge* chiefly, that his reason was manifestly overpowered. The vessel was tost in such a hurricane, that she could not feel her helm. Indeed, he seems to have had a confused consciousness of this himself. "Pardon me this excursion," says he; "it really proceeds from the state of mind into which our perplexed affairs often throw me."

"It is our highest interest to continue a part of the British empire; and equally our duty to remain subject to the authority of parliament," says Massachusettensis.

We are a part of the British dominions, that is, of the King of Great Britain, and it is our interest and duty to continue so. It is equally our interest and duty to continue subject to the authority of parliament, in the regulation of our trade, as long as she shall leave us to govern our internal policy, and to give and grant our own money, and no longer.

This letter concludes with an agreeable flight of fancy. The time may not be so far off, however, as this writer imagines, when the colonies may have the balance of numbers and wealth in their favor. But when that shall happen, if we should attempt to rule her by an American parliament, without an adequate representation in it, she will infallibly resist us by her arms.

## NO. VIII

**IT HAS OFTEN BEEN OBSERVED BY ME**, and it cannot be too often repeated, that *colonization* is *casus omissus* at common law. There is no such title known in that law. By common law, I mean that system of customs written and unwritten, which was known and in force in England in the time of King Richard I. This continued to be the case down to the reign of Elizabeth and King James I. In all that time, the laws of England were confined to the realm, and within the four seas. There was no provision made in this law for governing colonies beyond the Atlantic, or beyond the four seas, by authority of parliament; no, nor for the king to grant charters to subjects to settle in foreign countries. It was the king's prerogative to prohibit the emigration of any of his subjects, by issuing his writ *ne exeat regno*. And, therefore, it was

in the king's power to permit his subjects to leave the kingdom. "It is a high crime to disobey the king's lawful commands or prohibitions, as not returning from beyond sea upon the king's letters to that purpose; for which the offender's lands shall be seized until he return; and when he does return, he shall be fined, &c.; or going beyond sea against the king's will, expressly signified, either by the writ *ne exeat regno*, or under the great or privy seal, or signet, or by proclamation." When a subject left the kingdom by the king's permission, and if the nation did not remonstrate against it, by the nation's permission too, at least connivance, he carried with him, as a man, all the rights of nature. His allegiance bound him to the king, and entitled him to protection. But how? Not in France; the King of England was not bound to protect him in France. Nor in America. Nor in the dominions of Louis. Nor of Sassacus, or Massachusetts. He had a right to protection and the liberties of England, upon his return there, not otherwise. How, then, do we New Englandmen derive our laws? I say, not from parliament, not from common law, but from the law of nature, and the compact made with the king in our charters. Our ancestors were entitled to the common law of England when they emigrated, that is, to just so much of it as they pleased to adopt, and no more. They were not bound or obliged to submit to it, unless they chose it. By a positive principle of the common law they were bound, let them be in what part of the world they would, to do nothing against the allegiance of the king. But no kind of provision was ever made by common law for punishing or trying any man, even for treason committed out of the realm. He must be tried in some county of the realm by that law, the county where the overt act was done, or he could not be tried at all. Nor was any provision ever made, until the reign of Henry VIII., for trying treasons committed abroad, and the acts of that reign were made on purpose to catch Cardinal Pole.

So that our ancestors, when they emigrated, having obtained permission of the king to come here, and being never commanded to return into the realm, had a clear right to have erected in this wilderness a British constitution, or a perfect democracy, or any other form of government they saw fit. They, indeed, while they lived, could not have taken arms against the King of England, without violating their allegiance; but their children would not have been born within the king's allegiance, would not have been natural subjects, and consequently not entitled to protection, or bound to the king.

Massachusetts seems possessed of these ideas, and attempts in the most awkward manner to get rid of them. He is conscious that America must be a part of the realm, before it can be bound by the authority of parliament; and, therefore, is obliged to suggest that we are annexed to the realm, and

to endeavor to confuse himself and his readers, by confounding the realm with the empire and dominions.

But will any man soberly contend, that America was ever annexed to the realm? to what realm? When New England was settled, there was a realm of England, a realm of Scotland, and a realm of Ireland. To which of these three realms was New England annexed? To the realm of England, it will be said. But by what law? No territory could be annexed to the realm of England but by an act of parliament. Acts of parliament have been passed to annex Wales, &c. &c. to the realm; but none ever passed to annex America. But if New England was annexed to the realm of England, how came she annexed to the realm of, or kingdom of Great Britain? The two realms of England and Scotland were, by the act of union, incorporated into one kingdom, by the name of Great Britain; but there is not one word about America in that act.

Besides, if America was annexed to the realm, or a part of the kingdom, every act of parliament that is made would extend to it, named or not named. But everybody knows, that every act of parliament, and every other record, constantly distinguishes between this kingdom and his majesty's other dominions. Will it be said that Ireland is annexed to the realm, or a part of the kingdom of Great Britain? Ireland is a distinct kingdom, or realm, by itself, notwithstanding British parliament claims a right of binding it in all cases, and exercises it in some. And even so, the Massachusetts is a realm, New York is a realm, Pennsylvania another realm, to all intents and purposes, as much as Ireland is, or England or Scotland ever were. The King of Great Britain is the sovereign of all these realms.

This writer says, "that in denying that the colonies are annexed to the realm, and subject to the authority of parliament, individuals and bodies of men subvert the fundamentals of government, deprive us of British liberties, and build up absolute monarchy in the colonies."

This is the first time that I ever heard or read that the colonies are annexed to the realm. It is utterly denied that they are, and that it is possible they should be, without an act of parliament and acts of the colonies. Such an act of parliament cannot be produced, nor any such law of any one colony. Therefore, as this writer builds the whole authority of parliament upon this fact, namely,—that the colonies are annexed to the realm, and as it is certain they never were so annexed, the consequence is, that his whole superstructure falls.

When he says, that they subvert the fundamentals of government, he begs the question. We say, that the contrary doctrines subvert the fundamentals of government. When he says, that they deprive us of British lib-

erties, he begs the question again. We say, that the contrary doctrine deprives us of English liberties; as to British liberties, we scarcely know what they are, as the liberties of England and Scotland are not precisely the same to this day. English liberties are but certain rights of nature, reserved to the citizen by the English constitution, which rights cleaved to our ancestors when they crossed the Atlantic, and would have inhered in them if, instead of coming to New England, they had gone to Otaheite or Patagonia, even although they had taken no patent or charter from the king at all. These rights did not adhere to them the less, for their purchasing patents and charters, in which the king expressly stipulates with them, that they and their posterity should forever enjoy all those rights and liberties.

The human mind is not naturally the clearest atmosphere; but the clouds and vapors which have been raised in it by the artifices of temporal and spiritual tyrants, have made it impossible to see objects in it distinctly. Scarcely any thing is involved in more systematical obscurity than the rights of our ancestors, when they arrived in America. How, in common sense, came the dominions of King Philip, King Massachusetts, and twenty other sovereigns, independent princes here, to be within the allegiance of the Kings of England, James and Charles? America was no more within the allegiance of those princes, by the common law of England, or by the law of nature, than France and Spain were. Discovery, if that was incontestable, could give no title to the English king, by common law, or by the law of nature, to the lands, tenements, and hereditaments of the native Indians here. Our ancestors were sensible of this, and, therefore, honestly purchased their lands of the natives. They might have bought them to hold allodially, if they would.

But there were two ideas, which confused them, and have continued to confuse their posterity; one derived from the feudal, the other from the canon law. By the former of these systems, the prince, the general, was supposed to be sovereign lord of all the lands conquered by the soldiers in his army; and upon this principle, the King of England was considered in law as sovereign lord of all the land within the realm. If he had sent an army here to conquer King Massachusetts, and it had succeeded, he would have been sovereign lord of the land here upon these principles; but there was no rule of the common law that made the discovery of the country by a subject a title to that country in the prince. But conquest would not have annexed the country to the realm, nor have given any authority to the parliament. But there was another mist cast before the eyes of the English nation from another source. The pope claimed a sovereign propriety in, as well as authority over, the whole earth. As head of the Christian church, and vicar of God, he claimed this authority over all Christendom; and, in the same character, he claimed

a right to all the countries and possessions of heathens and infidels; a right divine to exterminate and destroy them at his discretion, in order to propagate the Catholic faith. When King Henry VIII. and his parliament threw off the authority of the pope, stripped his holiness of his supremacy, and invested it in himself by an act of parliament, he and his courtiers seemed to think that all the rights of the holy see were transferred to him; and it was a union of these two, (the most impertinent and fantastical ideas that ever got into a human pericranium, namely,—that, as feudal sovereign and supreme head of the church together, a king of England had a right to all the land his subjects could find, not possessed by any Christian state or prince, though possessed by heathen or infidel nations,) which seems to have deluded the nation about the time of the settlement of the colonies. But none of these ideas gave or inferred any right in parliament, over the new countries conquered or discovered; and, therefore, denying that the colonies are a part of the realm, and that as such they are subject to parliament, by no means deprives us of English liberties. Nor does it “build up absolute monarchy in the colonies.” For, admitting these notions of the common and feudal law to have been in full force, and that the king was absolute in America, when it was settled; yet he had a right to enter into a contract with his subjects, and stipulate that they should enjoy all the rights and liberties of Englishmen forever, in consideration of their undertaking to clear the wilderness, propagate Christianity, pay a fifth part of ore, &c. Such a contract as this has been made with all the colonies, royal governments, as well as charter ones. For the commissions to the governors contain the plan of the government, and the contract between the king and subject in the former, as much as the charters in the latter.

Indeed, this was the reasoning, and upon these feudal and *catholic* principles, in the time of some of the predecessors of Massachusetts. This was the meaning of Dudley, when he asked, “Do you think that English liberties will follow you to the ends of the earth?” His meaning was, that English liberties were confined to the realm, and, out of that, the king was absolute. But this was not true; for an English king had no right to be absolute over Englishmen out of the realm, any more than in it; and they were released from their allegiance, as soon as he deprived them of their liberties.

But “our charters suppose regal authority in the grantor.” True, they suppose it, whether there was any or not. “If that authority be derived from the British (he should have said English) crown, it presupposes this territory to have been a part of the British (he should have said English) dominion, and as such subject to the imperial sovereign.” How can this writer show this authority to be derived from the English crown, including in the idea of it



lords and commons? Is there the least color for such an authority, but in the popish and feudal ideas before mentioned? And do these popish and feudal ideas include parliament? Was parliament, were lords and commons, parts of the head of the church; or was parliament, that is, lords and commons, part of the sovereign feudatory? Never. But why was this authority derived from the English, any more than the Scottish or Irish crown? It is true, the land was to be held in socage, like the manor of East Greenwich; but this was compact, and it might have been as well to hold, as they held in Glasgow or Dublin.

But, says this writer, "if that authority was vested in the person of the king in a different capacity, the British constitution and laws are out of the question, and the king must be absolute as to us, as his prerogatives have never been limited." Not the prerogatives limited in our charters, when in every one of them all the rights of Englishmen are secured to us? Are not the rights of Englishmen sufficiently known? and are not the prerogatives of the king among those rights?

As to those colonies which are destitute of charters, the commissions to their governors have ever been considered as equivalent securities, both for property, jurisdiction, and privileges, with charters; and as to the power of the crown being absolute in those colonies, it is absolute nowhere. There is no fundamental or other law that makes a king of England absolute anywhere, except in conquered countries; and an attempt to assume such a power, by the fundamental laws, forfeits the prince's right even to the limited crown.

As to "the charter governments reverting to absolute monarchy, as their charters may happen to be forfeited by the grantees not fulfilling the conditions of them," I answer, if they could be forfeited, and were actually forfeited, the only consequence would be, that the king would have no power over them at all. He would not be bound to protect the people, nor, that I can see, would the people here, who were born here, be, by any principle of common law, bound even to allegiance to the king. The connection would be broken between the crown and the natives of the country.

It has been a great dispute, whether charters granted within the realm can be forfeited at all. It was a question debated with infinite learning, in the case of the charter of London. It was adjudged forfeited in an arbitrary reign; but afterwards, after the revolution, it was declared in parliament not forfeited, and by an act of parliament made incapable of forfeiture. The charter of Massachusetts was declared forfeited too. So were other American charters. The Massachusetts alone were tame enough to give it up. But no American charter will ever be decreed forfeited again; or if any should, the decree will

be regarded no more than a vote of the lower house of the Robinhood society. The court of chancery has no authority without the realm; by common law, surely it has none in America. What! the privileges of millions of Americans depend on the discretion of a lord chancellor? God forbid! The passivity of this colony in receiving the present charter in lieu of the first, is, in the opinion of some, the deepest stain upon its character. There is less to be said in excuse for it than the witchcraft, or hanging the Quakers. A vast party in the province were against it at the time, and thought themselves betrayed by their agent. It has been a warning to their posterity, and one principal motive with the people never to trust any agent with power to concede away their privileges again. It may as well be pretended that the people of Great Britain can forfeit their privileges, as the people of this province. If the contract of state is broken, the people and king of England must recur to nature. It is the same in this province. We shall never more submit to decrees in chancery, or acts of parliament, annihilating charters, or abridging English liberties.

Whether Massachusettensis was born, as a politician, in the year 1764, I know not; but he often writes as if he knew nothing of that period. In his attempt to trace the denial of the supreme authority of the parliament, he commits such mistakes as a man of age at that time ought to blush at. He says, that "when the Stamp Act was made, the authority of parliament to impose external taxes, or, in other words, to lay duties upon goods and merchandise, was admitted," and that when the Tea Act was made, "a new distinction was set up, that parliament had a right to lay duties upon merchandise for the purpose of regulating trade, but not for the purpose of raising a revenue." This is a total misapprehension of the declared opinions of people at those times. The authority of parliament to lay taxes for a revenue has been always generally denied. And their right to lay duties to regulate trade has been denied by many, who have ever contended that trade should be regulated only by prohibitions.

The act of parliament of the 4th George III., passed in the year 1764, was the first act of the British parliament that even was passed, in which the design of raising a revenue was expressed. Let Massachusettensis name any statute, before that, in which the word revenue is used, or the thought of raising a revenue is expressed. This act is entitled "an act for granting certain duties in the British colonies and plantations in America," &c. The word revenue, in the preamble of this act, instantly ran through the colonies, and rang an alarm, almost as much as if the design of forging chains for the colonists had been expressed in words. I have now before me a pamphlet, written and printed in the year 1764, entitled "The Sentiments of a British American," upon this act. How the idea of a revenue, though from an ac-

knowledgeed external tax, was relished in that time, may be read in the frontispiece of that pamphlet.

Ergo quid refert mea  
Cui serviam? clitellas dum portem meas.—PHAEDRUS.

The first objection to this act, which was made in that pamphlet, by its worthy author, OXENBRIDGE THACHER, who died a martyr to that anxiety for his country which the conduct of the junto gave him, is this:—"that a tax is thereby laid on several commodities, to be raised and levied in the plantations, and to be remitted home to England. This is esteemed a grievance, inasmuch as the same are laid without the consent of the representatives of the colonists. It is esteemed an essential British right, that no person shall be subject to any tax, but what in person, or by his representative, he hath a voice in laying." Here is a tax, unquestionably external, in the sense in which that word is used in the distinction that is made by some between external and internal taxes, and unquestionably laid in part for the regulation of trade, yet called a grievance, and a violation of an essential British right, in the year 1764, by one who was then at the head of the popular branch of our constitution, and as well acquainted with the sense of his constituents as any man living. And it is indisputable, that in those words he wrote the almost universal sense of this colony.

There are so many egregious errors in point of fact, and respecting the opinions of the people, in this writer, which it is difficult to impute to wilful misrepresentation, that I sometimes think he is some smart young gentleman, come up into life since this great controversy was opened; if not, he must have conversed wholly with the junto, and they must have deceived him respecting their own sentiments.

This writer sneers at the distinction between a right to lay the former duty of a shilling on the pound of tea, and the right to lay the threepence. But is there not a real difference between laying a duty to be paid in England upon exportation, and to be paid in America upon importation? Is there not a difference between parliament's laying on duties within their own realm, where they have undoubted jurisdiction, and laying them out of their realm, nay, laying them on in our realm, where we say they have no jurisdiction? Let them lay on what duties they please in England, we have nothing to say against that.

"Our patriots most heroically resolved to become independent states, and flatly denied that parliament had a right to make any laws whatever, that should be binding upon the colonies."

Our scribbler, more heroically still, is determined to show the world, that he has courage superior to all regard to modesty, justice, or truth. Our patriots have never determined or desired to be independent states, if a voluntary cession of a right to regulate their trade can make them dependent even on parliament; though they are clear in theory that, by the common law and the English constitution, parliament has no authority over them. None of the patriots of this province, of the present age, have ever denied that parliament has a right, from our voluntary cession, to make laws which shall bind the colonies, so far as their commerce extends.

“There is no possible medium between absolute independence and subjection to the authority of parliament.” If this is true, it may be depended upon, that all North America are as fully convinced of their independence, their absolute independence, as they are of their own existence; and as fully determined to defend it at all hazards, as Great Britain is to defend her independence against foreign nations. But it is not true. An absolute independence on parliament, in all internal concerns and cases of taxation, is very compatible with an absolute dependence on it, in all cases of external commerce.

“He must be blind indeed, that cannot see our dearest interest in the latter, (that is, in an absolute subjection to the authority of parliament,) notwithstanding many pant after the former,” (that is, absolute independence.) The man who is capable of writing, in cool blood, that our interest lies in an absolute subjection to parliament, is capable of writing or saying any thing for the sake of his pension. A legislature that has so often discovered a want of information concerning us and our country; a legislature interested to lay burdens upon us; a legislature, two branches of which, I mean the lords and commons, neither love nor fear us! Every American of fortune and common sense, must look upon his property to be sunk downright one half of its value, the moment such an absolute subjection to parliament is established.

That there are any who pant after “independence,” (meaning by this word a new plan of government over all America, unconnected with the crown of England, or meaning by it an exemption from the power of parliament to regulate trade,) is as great a slander upon the province as ever was committed to writing. The patriots of this province desire nothing new; they wish only to keep their old privileges. They were, for one hundred and fifty years, allowed to tax themselves, and govern their internal concerns as they thought best. Parliament governed their trade as they thought fit. This plan they wish may continue forever. But it is honestly confessed, rather than become subject to the absolute authority of parliament in all cases of taxation

and internal polity, they will be driven to throw off that of regulating trade.

“To deny the supreme authority of the state, is a high misdemeanor; to oppose it by force, an overt act of treason.” True; and therefore, Massachusetts, who denies the king represented by his governor, his majesty’s council by charter, and house of representatives, to be the supreme authority of this province, has been guilty of a high misdemeanor; and those ministers, governors, and their instruments, who have brought a military force here, and employed it against that supreme authority, are guilty of —, and ought to be punished with —. I will be more mannerly than Massachusetts.

“The realm of England is an appropriate term for the ancient realm of England, in contradistinction to Wales and other territories that have been annexed to it.”

There are so many particulars in the case of Wales analogous to the case of America, that I must beg leave to enlarge upon it.

Wales was a little portion of the island of Great Britain, which the Saxons were never able to conquer. The Britons had reserved this tract of land to themselves, and subsisted wholly by pasturage among their mountains. Their princes, however, during the Norman period, and until the reign of King Edward I., did homage to the crown of England, as their feudal sovereign, in the same manner as the prince of one independent state in Europe frequently did to the sovereign of another. This little principality of shepherds and cowherds had, however, maintained its independence through long and bloody wars against the omnipotence of England, for eight hundred years. It is needless to enumerate the causes of the war between Lewellyn and Edward I. It is sufficient to say, that the Welsh prince refused to go to England to do homage, and Edward obtained a new aid of a fifteenth from his parliament, to march with a strong force into Wales. Edward was joined by David and Roderic, two brothers of Lewellyn, who made a strong party among the Welsh themselves, to assist and second the attempts to enslave their native country. The English monarch, however, with all these advantages, was afraid to put the valor of his enemies to a trial, and trusted to the *slow effects of famine* to subdue them. Their pasturage, with such an enemy in their country, could not subsist them, and Lewellyn at last submitted, and bound himself to pay a reparation of damages, to do homage to the crown of England, and almost to surrender his independence as a prince, by permitting all the other barons of Wales, excepting four, to swear fealty to the same crown. But fresh complaints soon arose. The English grew insolent on their bloodless victory, and oppressed the inhabitants; many insults were offered, which at last raised the indignation of the Welsh, so that they de-

terminated again to take arms, rather than bear any longer the oppression of the haughty victors. The war raged some time, until Edward summoned all his military tenants, and advanced with an army too powerful for the Welsh to resist. Lewellyn was at last surprised by Edward's General, Mortimer, and fighting at a great disadvantage, was slain, with two thousand of his men. David, who succeeded in the principality, maintained the war for some time, but at last was betrayed to the enemy, sent in chains to Shrewsbury, brought to a formal trial before the peers of England, and, although a sovereign prince, ordered by Edward to be hanged, drawn, and quartered, as a traitor, for defending by arms the liberties of his native country! All the Welsh nobility submitted to the conqueror. The laws of England, sheriffs, and other ministers of justice were established in that principality.

Now Wales was always part of the dominions of England. "Wales was always feudatory to the kingdom of England." It was always held of the crown of England, or the kingdom of England: that is, whoever was King of England had a right to homage, &c. from the Prince of Wales. But yet Wales was not parcel of the realm or kingdom, nor bound by the laws of England. I mention and insist upon this, because it shows that, although the colonies are bound to the crown of England; or, in other words, owe allegiance to whosoever is King of England; yet it does not follow that the colonies are a parcel of the realm or kingdom, and bound by its laws. As this is a point of great importance, I must beg pardon, however unentertaining it may be, to produce my authorities.

"Wales was always feudatory to the kingdom of England."\*

Held of the crown, but not parcel;† and, therefore, the Kings of Wales did homage and swore fealty to Henry II. and John and Henry III.

And 11 Edward I. Upon the conquest of Lewellyn, Prince or King of Wales, that principality became a part of the dominion of the realm of England. And by the statute Walliae, 12 Edward I., it was annexed and united to the crown of England, *tanquam partem corporis ejusdem*, &c. Yet, if the statute Walliae, made at Rutland, 12 Edward I., was not an act of parliament, (as it seems that it was not,) the incorporation made thereby was only a union *jure feudali, et non jure proprietatis*."

"Wales, before the union with England, was governed by its proper laws," &c.

By these authorities it appears, that Wales was subject, by the feudal law,

\* Comyn's Digest, vol. v. p. 626.

† Per Cook. 1 Roll. 247; 2 Roll. 29.

to the crown of England before the conquest of Lewellyn, but not subject to the laws of England; and indeed, after this conquest, Edward and his nobles did not seem to think it subject to the English parliament, but to the will of the king, as a conqueror of it in war. Accordingly, that instrument which is called *Statutum Walliae*, and to be found in the appendix to the statutes, although it was made by the advice of the peers, or officers of the army more properly, yet it never was passed as an act of parliament, but as an edict of the king. It begins, not in the style of an act of parliament: "*Edwardus Dei gratia Rex Angliae, Dominus Hyberniae, et Dux Aquitaniae, omnibus fidelibus suis, &c. in Wallia. Divina Providentia, quae in sui dispositione, says he, non fallitur, inter alia dispensationis suae munera, quibus nos et Regnum nostrum Angliae decorare dignata est, terram Walliae, cum incolis suis prius nobis jure feudali subjectam, jam sui gratia, in proprietatis nostrae dominium, obstaculis quibuscumque cessantibus, totaliter et cum integritate convertit, et coronae regni praedicti, tanquam partem corporis ejusdem annexuit et univit.*"

Here is the most certain evidence,—1. That Wales was subject to the kings of England by the feudal law before the conquest, though not bound by any laws but their own. 2. That the conquest was considered, in that day, as conferring the property, as well as jurisdiction of Wales, to the English crown. 3. The conquest was considered as annexing and uniting Wales to the English crown, both in point of property and jurisdiction, as a part of one body. Yet, notwithstanding all this, parliament was not considered as acquiring any share in the government of Wales by this conquest. If, then, it should be admitted that the colonies are all annexed and united to the crown of England, it will not follow that lords and commons have any authority over them.

This *statutum Walliae*, as well as the whole case and history of that principality, is well worthy of the attention and study of Americans, because it abounds with evidence, that a country may be subject to the crown of England, without being subject to the lords and commons of that realm, which entirely overthrows the whole argument of Governor Hutchinson and of Massachusettsensis, in support of the supreme authority of parliament over all the dominions of the imperial crown. "*Nos itaque,*" &c. says King Edward I., "*volentes praedictam terram, &c. sicut et caeteras ditioni nostrae subjectas, &c. sub debito regimine gubernari, et incolas seu habitatores terrarum illarum, qui alto et basso se submiserunt voluntati nostrae, et quos sic ad nostram recepimus voluntatem, certis legibus et consuetudinibus &c. tractari, leges et consuetudines partium illarum hactenus usitatas coram nobis et proceribus regni nostri fecimus recitari, quibus diligenter auditis, et plenius intellectis, quasdam ipsarum de concilio procerum praedictorum delevimus, quasdam permisimus, et*

*quasdam correximus, et etiam quasdam alias adjiciendas et statuendas decrevimus, et eas &c. observari volumus in forma subscripta.*"

And then goes on to prescribe and establish a whole code of laws for the principality, in the style of a sole legislature, and concludes:

*"Et ideo vobis mandamus, quod praemissa de cetero in omnibus firmiter observetis. Ita tamen quod quotiescunque, et quandocunque, et ubicunque, nobis placuerit, possimus praedicta statuta et eorum partes singulas declarare, interpretari, addere sive diminuere, pro nostrae libito voluntatis, et prout securitati nostrae et terrae nostrae praedictae viderimus expedire."*

Here is then a conquered people submitting to a system of laws framed by the mere will of the conqueror, and agreeing to be forever governed by his mere will. This absolute monarch, then, might afterwards govern this country with or without the advice of his English lords and commons.

To show that Wales was held, before the conquest of Lewellyn, of the King of England, although governed by its own laws, hear Lord Coke, in his commentary on the statute of Westminster. "At this time, namely, in 3 Edward I., Lewellyn was a Prince or King of Wales, who held the *same of the King of England as his superior lord, and owed him liege homage, and fealty*; and this is proved by our act, namely, that the King of England was *superior dominus*, that is, sovereign lord of the kingdom or principality of Wales."

Lord Coke says, "Wales was sometime a realm, or kingdom, (realm, from the French word *royaume*, and both *a regno*,) and governed *per suas regulas*;" and afterwards, "but, *jure feodali*, the kingdom of Wales was holden of the *crown of England*, and thereby, as Bracton saith, was *sub potestate regis*. And so it continued until the eleventh year of King Edward I., when he subdued the Prince of Wales, rising against him, and executed him for treason. The next year, namely, in the twelfth year of King Edward I., by authority of parliament, it is declared thus, speaking in the person of the king, (as ancient statutes were wont to do) *Divina Providentia*," &c. as in the statute *Walliae*, before recited. But here is an inaccuracy; for the *statutum Walliae* was not an act of parliament, but made by the king, with the advice of his officers of the army, by his sole authority, as the statute itself sufficiently shows. "Note," says Lord Coke, "divers monarchs hold their kingdoms of others *jure feodali*, as the Duke of Lombardy, Sicill, Naples, and Bohemia of the empire, Grano, Leons of Aragon, Navarre, Portugal of Castile; and so others."

After this, the Welsh seem to have been fond of the English laws, and desirous of being incorporated into the realm, to be represented in parliament, and enjoy all the rights of Englishmen, as well as to be bound by the English laws. But kings were so fond of governing this principality by their discretion alone, that they never could obtain these blessings until the reign



of Henry VIII., and then they only could obtain a statute which enabled the king to alter their laws at his pleasure. They did, indeed, obtain, in the 15 Edward II., a writ to call twenty-four members to the parliament at York from South Wales, and twenty-four from North Wales; and again, in the 20 Edward II., the like number of forty-eight members for Wales, at the parliament of Westminster. But Lord Coke tells us, "that this wise and warlike nation was, long after the *statutum Walliae*, not satisfied nor contented, and especially for that they truly and constantly took part with their rightful sovereign and liege lord, King Richard II.; in revenge whereof, they had many severe and invective laws made against them in the reigns of Henry IV., Henry V., &c., all which, as unjust, are repealed and abrogated. And, to say the truth, this nation was never in quiet, until King Henry VII., their own countryman, obtained the crown. And yet not so really reduced in his time as in the reign of his son, Henry VIII., in whose time, by certain just laws, made at the humble suit of the subjects of Wales, the principality and dominion of Wales was incorporated and united to the realm of England; and enacted that every one born in Wales should enjoy the liberties, rights, and laws of this realm, as any subjects naturally born within this realm should have and inherit, and that they should have knights of shires and burgesses of parliament." Yet we see they could not obtain any security for their liberties, for Lord Coke tells us, "in the act of 34 Henry VIII. it was enacted, that the king's most royal majesty should, from time to time, change, &c. all manner of things before in that act rehearsed, as to his most excellent wisdom and discretion should be thought convenient; and also to make laws and ordinances for the commonwealth of his said dominion of Wales at his majesty's pleasure. Yet for that the subjects of the dominion of Wales, &c. had lived in all dutiful subjection to the crown of England, &c., the said branch of the said statute of 34 Henry VIII. is repealed and made void, by 21 Jac. c. 10."

But if we look into the statute itself, of 27 Henry VIII. c. 26, we shall find the clearest proof, that being subject to the imperial crown of England did not entitle Welshmen to the liberties of England, nor make them subject to the laws of England. "Albeit the dominion, principality, and country of Wales *justly and righteously is, and ever hath been incorporated, annexed, united and subject to and under the imperial crown of this realm, as a very member and joint of the same*, wherefore the King's most royal majesty, of mere *droit*, and very right, is very head, king, lord, and ruler; yet notwithstanding, because that in the same country, principality and dominion, diverse *rights, usages, laws, and customs*, be far discrepant from the laws and customs of this realm, &c." Wherefore it is enacted by king, lords, and commons, "that

his" (that is, the king's) "said country or dominion of Wales, shall be, stand, and continue forever from henceforth, incorporated, united, and annexed to and with this his realm of England, and that all and singular person and persons, born and to be born in the said principality, country, or dominion of Wales, shall have, enjoy, and inherit, all and singular freedoms, liberties, rights, privileges, and laws within this his realm, and other the king's dominions, as other the king's subjects naturally born within the same, have, enjoy, and inherit." Section 2 enacts that the laws of England shall be introduced and established in Wales, and that the laws, ordinances, and statutes of this realm of England forever, and none other, shall be used and practised forever thereafter, in the said dominion of Wales. The 27th section of this long statute enacts, that commissioners shall inquire into the laws and customs of Wales, and report to the king, who with his privy council are empowered to establish such of them as they should think proper. The twenty-eighth enacts that in all future parliaments *for this realm*, two knights for the shire of Monmouth, and one burgess for the town, shall be chosen, and allowed such fees as other knights and burgesses of parliament were allowed. Section twenty-nine enacts that one knight shall be elected for every shire within the country or dominion of Wales, and one burgess for every shire town, to serve in that and every future parliament to be holden for this realm. But by section thirty-six, the king is empowered to revoke, repeal, and abrogate that whole act, or any part of it, at any time within three years.

Upon this statute, let it be observed,—1. That the language of Massachusetts, "imperial crown," is used in it; and Wales is affirmed to have *ever* been annexed and united to that imperial crown, as a very member and joint; which shows that being annexed to the imperial crown does not annex a country to the realm, or make it subject to the authority of parliament; because Wales certainly, before the conquest of Lewellyn, never was pretended to be so subject, nor afterwards ever pretended to be annexed to the realm at all, nor subject to the authority of parliament any otherwise than as the king claimed to be absolute in Wales, and therefore to make laws for it by his mere will, either with the advice of his proceres or without. 2. That Wales never was incorporated with the realm of England, until this statute was made, nor subject to any authority of English lords and commons. 3. That the king was so tenacious of his exclusive power over Wales, that he would not consent to this statute, without a clause in it to retain the power in his own hands of giving it what system of law he pleased. 4. That knights and burgesses, that is, representatives, were considered as *essential* and *fundamental* in the constitution of the new legislature which was to govern Wales. 5. That since this statute, the distinction between the realm of England and

the realm of Wales has been abolished, and the realm of England, now and ever since, comprehends both; so that Massachusettensis is mistaken when he says, that the realm of England is an appropriate term for the ancient realm of England, in contradistinction from Wales, &c. 6. That this union and incorporation were made by the consent and upon the supplication of the people of Wales, as Lord Coke and many other authors inform us; so that here was an express contract between the two bodies of people. To these observations let me add a few questions:—

1. Was there ever any act of parliament, annexing, uniting, and consolidating any one of all the colonies to and with the realm of England or the kingdom of Great Britain?

2. If such an act of parliament should be made, would it, upon any principles of English laws and government, have any validity without the consent, petition, or supplication of the colonies?

3. Can such a union and incorporation ever be made, upon any principles of English laws and government, without admitting representatives for the colonies in the house of commons, and American lords into the house of peers?

4. Would not representatives in the house of commons, unless they were numerous in proportion to the numbers of people in America, be a snare rather than a blessing?

5. Would Britain ever agree to a proportionable number of American members; and if she would, could America support the expense of them?

6. Could American representatives possibly know the sense, the exigencies, &c. of their constituents, at such a distance, so perfectly as it is absolutely necessary legislators should know?

7. Could Americans ever come to the knowledge of the behavior of their members, so as to dismiss the unworthy?

8. Would Americans in general ever submit to septennial elections?

9. Have we not sufficient evidence, in the general frailty and depravity of human nature, and especially the experience we have had of Massachusettensis and the junto, that a deep, treacherous, plausible, corrupt minister would be able to seduce our members to betray us as fast as we could send them?

To return to Wales. In the statute of 34 and 35 Henry VIII. c. 26, we find a more complete system of laws and regulations for Wales. But the king is still tenacious of his absolute authority over it. It begins, “Our sovereign lord the king’s majesty, of his tender zeal and affection, &c. towards his obedient subjects, &c. of Wales, &c. *hath devised and made* divers sundry good and necessary ordinances, which his majesty of his most abundant

goodness *at the humble suit and petition of his said subjects of Wales*, is pleased and contented to be enacted by the assent of the lord spiritual and temporal, and the commons," &c.

Nevertheless, the king would not yet give up his unlimited power over Wales; for by the one hundred and nineteenth section of this statute, the king, &c., may at all times hereafter, from time to time, change, add, alter, order, minish, and reform, all manner of things afore rehearsed, as to his most excellent wisdom and discretion shall be thought convenient; and also to make laws and ordinances for the commonwealth and good quiet of his said dominion of Wales, and his subjects of the same, from time to time, at his majesty's pleasure.

And this last section was never repealed until the 21 Jac. 1, c. 10, s. 4.

From the conquest of Lewellyn to this statute of James, is near three hundred and fifty years, during all which time the Welsh were very fond of being incorporated, and enjoying the English laws; the English were desirous that they should be; yet the crown would never suffer it to be completely done, because it claimed an authority to rule it by discretion. It is conceived, therefore, that there cannot be a more complete and decisive proof of any thing, than this instance is that a country may be subject to the crown of England, the imperial crown, and yet not annexed to the realm, nor subject to the authority of parliament.

The word *crown*, like the word *throne*, is used in various figurative senses; sometimes it means the kingly office, the head of the commonwealth; but it does not always mean the political capacity of the king; much less does it include in the idea of it, lords and commons. It may as well be pretended that the house of commons includes or implies a king. Nay, it may as well be pretended that the mace includes the three branches of the legislature.

By the feudal law, a person or a country might be subject to a king, a feudal sovereign, three several ways.

1. It might be subject to his person; and in this case it would continue so subject, let him be where he would, in his dominions or without. 2. To his crown; and in this case subjection was due to whatsoever person or family wore that crown, and would follow it, whatever revolutions it underwent. 3. To his crown and realm of state; and in this case it was incorporated as one body with the principal kingdom; and if that was bound by a parliament, diet, or cortes, so was the other.

It is humbly conceived, that the subjection of the colonies by compact and law, is of the second sort.

Suffer me, my friends, to conclude by making my most respectful compliments to the gentlemen of the regiment of royal Welsh fusileers. In the

celebration of their late festival, they discovered that they are not insensible to the feelings of a man for his native country. The most generous minds are the most exquisitely capable of this sentiment. Let me entreat them to recollect the history of their brave and intrepid countrymen, who struggled at least eleven hundred years for liberty. Let them compare the case of Wales with the case of America, and then lay their hands upon their hearts and say whether we can in justice be bound by all acts of parliament without being incorporated with the kingdom.

#### NO. IX

MASSACHUSETTENSIS, in some of his writings, has advanced, that our allegiance is due to the political capacity of the king, and therefore involves in it obedience to the British parliament. Governor Hutchinson, in his memorable speech, laid down the same position. I have already shown, from the case of Wales, that this position is groundless, and that allegiance was due from the Welsh to the king, *jure feudali*, before the conquest of Lewellyn, and after that to the crown, until it was annexed to the realm, without being subject to acts of parliament any more than to acts of the king without parliament. I shall hereafter show from the case of Ireland, that subjection to the crown implies no obedience to parliament. But before I come to this, I must take notice of a pamphlet entitled "A Candid Examination of the Mutual Claims of Great Britain and the Colonies, with a Plan of Accommodation on Constitutional Principles." This author says,—“To him, (that is, the king,) in his representative capacity, and as supreme executor of the laws made by a joint power of him and others, the oaths of allegiance are taken;” and afterwards,—“Hence, these professions (that is, of allegiance) are not made to him either in his legislative or executive capacities; but yet, it seems, they are made to the king. And into this distinction, *which is nowhere to be found*, either in the constitution of the government, in reason, or common sense, the ignorant and thoughtless have been deluded ever since the passing of the Stamp Act; and they have rested satisfied with it, without the least examination.” And, in page 9, he says,—“I do not mean to offend the inventors of this refined distinction, when I ask them, is this acknowledgment made to the king in his politic capacity as king of Great Britain? If so, it includes a promise of obedience to the British laws.” There is no danger of this gentleman’s giving offence to the inventors of this distinction; for they have been many centuries in their graves. This distinction is to be found everywhere,—in the case of Wales, Ireland, and elsewhere, as I shall show most abundantly before I have done. It is to be found in two of the greatest

cases, and most deliberate and solemn judgments, that were ever passed. One of them is Calvin's case, which, as Lord Coke tells us, was as elaborately, substantially, and judiciously argued as he ever heard or read of any. After it had been argued in the court of king's bench by learned counsel, it was adjourned to the exchequer chamber, and there argued again, first by counsel on both sides, and then by the lord chancellor and all the twelve judges of England; and among these were the greatest men that Westminster Hall ever could boast. Ellesmere, Bacon, Hyde, Hobart, Crook, and Coke, were all among them; and the chancellor and judges were unanimous in resolving. What says the book?\* "Now, seeing the king hath but one person, and several capacities, and one politic capacity for the realm of England, and another for the realm of Scotland, it is necessary to be considered to which capacity *ligeance* is due. *And it was resolved* that it was due to the *natural person* of the king, (which is ever accompanied with the politic capacity, and the politic capacity as it were appropriated to the natural capacity,) and it is not due to the politic capacity only, that is, to the crown or kingdom distinct from his natural capacity." And further on,—“But it was clearly resolved by all the judges, that presently by the descent his majesty was completely and absolutely king, &c. and that coronation was but a royal ornament. . . . In the reign of Edward II., the Spencers, to cover the treason hatched in their hearts, invented this damnable and damned opinion, that homage and oath of allegiance was more by reason of the king's crown (that is, of his politic capacity) than by reason of the person of the king, upon which opinion they inferred execrable and detestable consequences.” And afterwards,—“Where divers books and acts of parliament speak of the *ligeance* of England, &c., all these, speaking briefly in a vulgar manner, are to be understood of the *ligeance* due by the people of England to the king; for no man will affirm that England itself, taking it for the continent thereof, doth owe any *ligeance* or faith, or that *any faith or ligeance should be due to it*; but it manifestly appeareth that the *ligeance* or faith of the subject is *proprium quarto modo* to the king, *omni, soli, et semper*. And oftentimes in the reports of our book cases, and in acts of parliament also, the crown or kingdom is taken for the king himself, &c. . . . Tenure *in capite* is a tenure of the crown, and is a *seigniorie in grosse*, that is, of the person of the king.” And afterwards,—“For special purposes *the law makes him a body politic, immortal and invisible, whereunto our allegiance cannot appertain*.” I beg leave to observe here that these words in the foregoing adjudication, that “the natural person of the king is ever accompanied with the politic capacity, and the politic capacity

\* 7 Rep. 19.

as it were appropriated to the natural capacity," neither imply nor infer allegiance or subjection to the politic capacity; because in the case of King James I. his natural person was "accompanied" with three politic capacities at least, as king of England, Scotland, and Ireland; yet the allegiance of an Englishman to him did not imply or infer subjection to his politic capacity as king of Scotland.

Another place in which this distinction is to be found is in Moore's Reports.\* "The case of the union of the realm of Scotland with England." And this deliberation, I hope, was solemn enough. This distinction was agreed on by commissioners of the English lords and commons, in a conference with commissioners of the Scottish parliament, and after many arguments and consultations by the lord chancellor and all the judges, and afterwards adopted by the lords and commons of both nations. "The judges answered with one assent," says the book, "that allegiance and laws were not of equiparation, for six causes;" the sixth and last of which is, "allegiance followeth the *natural person*, not the politic. . . If the king go out of England, with a company of his servants, allegiance remaineth among his subjects and servants, although he be out of his own realm, *whereto his laws are confined*, &c.; . . . and to prove the allegiance to be tied to the body natural of the king, not to the body politic, the Lord Coke cited the phrases of divers statutes, &c. And to prove that allegiance extended further than the laws national, they (the judges) showed, that every king of diverse kingdoms, or dukedoms, is to command every people to defend any of his kingdoms, without respect of that nation where he is born; as, if the king of Spain be invaded in Portugal, he may levy for defence of Portugal armies out of Spain, Naples, Castile, Milan, Flanders, and the like; as a thing incident to the allegiance of all his subjects, to join together in defence of any one of his territories, without respect of extent of the laws of that nation where he was born; whereby it manifestly appeareth that allegiance followeth the natural person of the king, and is not tied to the body politic respectively in every kingdom." There is one observation, not immediately to the present point, but so connected with our controversy that it ought not be overlooked. "For the matter of the great seal, the judges showed, that the seal was alterable by the king at his pleasure, and he might make one seal for both kingdoms; for seals, coin, and leagues are of absolute prerogative to the king without parliament, not restrained to any assent of the people. But for further resolution of this point, how far the great seal doth command out of England, they made this distinction, that the great seal was current for remedials, which

\* Page 790.

groweth upon complaint of the subjects, and thereupon writs are addressed under the great seal of England, which writs are limited, their precinct to be within the places of the jurisdiction of the court that must give the redress of the wrong. And therefore writs are not to go into Ireland, nor the Isles, nor Wales, nor the counties palatine, because the king's courts here have not power to hold plea of lands or things there. But the great seal hath a power preceptory to the person, which power extendeth to any place where the person may be found." Ludlow's case, &c. who "being at Rome, a commandment under the great seal was sent to him to return. So, Bertie's case in Queen Mary's time, and Inglefield's case in Queen Elizabeth's, the privy seal went to command them to return into the realm; and for not coming, their lands were seized," &c. But to return to the point: "And as to the objection," says the book, "that none can be born a natural subject of two kingdoms, they denied that absolutely; for although locally he can be born but in one, yet effectually the allegiance of the king extending to both, his birthright shall extend to both." And afterwards,—"But that his kingly power extendeth to divers nations and kingdoms, all owe him equal subjection, and are equally born to the benefit of his protection; and although he is to govern them by *their distinct laws*, yet any one of the people coming into the other, is to have the benefit of the laws, wheresoever he cometh; . . . but living in one, or for his livelihood in one, he is not to be taxed in the other; because laws ordain taxes, impositions, and charges, as a discipline of subjection particularized to every particular nation." Another place where this distinction is to be found is in Foster's Crown Law. "There have been writers who have carried the notion of natural, perpetual, unalienable allegiance much farther than the subject of this discourse will lead me. They say, very truly, that it is due to the *person* of the king, &c. . . It is undoubtedly due to the person of the king; but in that respect natural allegiance differeth nothing from that we call local. For allegiance, considered in every light, is alike due to the person of the king, and is paid, and in the nature of things must be constantly paid, to that prince who, for the time being, is in the actual and full possession of the regal dignity."

Indeed, allegiance to a sovereign lord is nothing more than fealty to a subordinate lord, and in neither case has any relation to or connection with laws or parliaments, lords or commons. There was a reciprocal confidence between the lord and vassal. The lord was to protect the vassal in the enjoyment of his land. The vassal was to be faithful to his lord, and defend him against his enemies. This obligation, on the part of the vassal, was his fealty, *fidelitas*. The oath of fealty, by the feudal law, to be taken by the vassal or tenant, is nearly in the very words of the ancient oath of allegiance. But



neither fealty, allegiance, or the oath of either implied any thing about laws, parliaments, lords, or commons.

The fealty and allegiance of Americans, then, is undoubtedly due to the person of King George III., whom God long preserve and prosper. It is due to him in his natural person, as that natural person is intitled to the crown, the kingly office, the royal dignity of the realm of England. And it becomes due to his natural person because he is intitled to that office. And because, by the charters, and other express and implied contracts made between the Americans and the kings of England, they have bound themselves to fealty and allegiance to the natural person of that prince, who shall rightfully hold the kingly office in England, and no otherwise.

“With us, in England,” says Blackstone, “it becoming a settled principle of tenure, that all lands in the kingdom are holden of the king, as their sovereign and lord paramount, &c. the oath of allegiance was necessarily confined to the person of the king alone. By an easy analogy, the term of allegiance was soon brought to signify all other engagements which are due from subjects, as well as those duties which were simply and merely territorial. And the oath of allegiance, as administered for upwards of six hundred years, contained a promise ‘to be true and faithful to the king and his heirs, and truth and faith to bear of life and limb and terrene honor, and not to know or hear of any ill or damage intended him, without defending him therefrom.’ But at the revolution, the terms of this oath being thought, perhaps, to favor too much the notion of non-resistance, the present form was introduced by the convention parliament, which is more general and indeterminate than the former, the subject only promising ‘that he will be faithful, and bear true allegiance to the king,’ without mentioning ‘his heirs,’ or specifying in the least wherein that allegiance consists.”

Thus, I think that all the authorities in law coincide exactly with the observation which I have heretofore made upon the case of Wales, and show that subjection to a king of England does not necessarily imply subjection to the crown of England; and that subjection to the crown of England does not imply subjection to the parliament of England; for allegiance is due to the person of the king, and to that alone, in all three cases; that is, whether we are subject to his parliament and crown, as well as his person, as the people in England are; whether we are subject to his crown and person, without parliament, as the Welsh were after the conquest of Lewellyn and before the union; or as the Irish were after the conquest and before Poyning’s law; or whether we are subject to his person alone, as the Scots were to the King of England, after the accession of James I., being not at all subject to the parliament or crown of England.

We do not admit any binding authority in the decisions and adjudications of the court of king's bench or common pleas, or the court of chancery, over America; but we quote them as the opinions of learned men. In these we find a distinction between a country conquered and a country discovered. Conquest, they say, gives the crown an absolute power; discovery only gives the subject a right to all the laws of England. They add, that all the laws of England are in force there. I confess I do not see the reason of this. There are several cases in books of law which may be properly thrown before the public. I am no more of a lawyer than Massachusettensis, but have taken his advice, and conversed with many lawyers upon our subject, some honest, some dishonest, some living, some dead, and am willing to lay before you what I have learned from all of them. In Salkeld, 411, the case of Blankard and Galdy: "In debt on a bond, the defendant prayedoyer of the condition, and pleaded the statute E. 6, against buying offices concerning the administration of justice; and averred, that this bond was given for the purchase of the office of provost-marshal in Jamaica, and that it concerned the administration of justice, and *that Jamaica is part of the revenue and possessions of the crown of England.* The plaintiff replied, that Jamaica is an island *beyond the seas*, which was conquered from the Indians and Spaniards in Queen Elizabeth's time, and the inhabitants are governed by their own laws, and not by the laws of England. The defendant rejoined, that, before such conquest, they were governed by their own laws; but since that, by the laws of England. Shower argued for the plaintiff, that, on a judgment in Jamaica, no writ of error lies here, but only an appeal to the council; *and as they are not represented in our parliament, so they are not bound by our statutes*, unless specially named.\* Pemberton, contra, argued that, *by the conquest of a nation, its liberties, rights, and properties are quite lost*; that by consequence, their laws are lost too, for the law is but the rule and guard of the other; those that conquer cannot, by their victory, lose their laws and become subject to others.† That error lies here upon a judgment in Jamaica, which could not be, if they were not under the same law. Et per Holt, C. J. and Cur. 1st. In case of an uninhabited country, newly found out by English subjects, all laws in force in England are in force there; so it seemed to be agreed. 2. Jamaica being conquered, and not pleaded to be parcel of the kingdom of England, but part of the possessions and revenue of the crown of England, the laws of England did not take place there, until declared so by the conqueror or his successors. The Isle of Man and Ireland are part of the *possessions* of the crown

\* And. 115.

† Vaugh. 405.

of England, yet retain their ancient laws; that, in Davis, 36, it is not pretended that the custom of tanistry was determined by the conquest of Ireland, but by the new settlement made there after the conquest; that it was impossible the laws of this nation, by mere conquest, without more, should take place in a conquered country; because, for a time, there must want officers, without which our laws can have no force; that if our law did take place, yet they, in Jamaica, having power to make new laws, our general laws may be altered by theirs in particulars; also, they held that in case of an infidel country, their laws, by conquest, do not entirely cease, but only such as are against the law of God; and that in such cases, where the laws are rejected or silent, the conquered country shall be governed according to the rule of natural equity. Judgment *pro quer*.”

Upon this case I beg leave to make a few observations:—

1. That Shower's reasoning, that we are not bound by statutes, because not represented in parliament, is universal, and, therefore, his exception, “unless specially named,” although it is taken from analogy to the case of Ireland, by Lord Coke and others, yet is not taken from the common law, but is merely arbitrary and groundless, as applied to us; because, if the want of representation could be supplied by “expressly naming” a country, the right of representation might be rendered null and nugatory. But of this, more another time.

2. That, by the opinion of Holt and the whole court, the laws of England, common and statute, are in force in a vacant country, discovered by Englishmen. But America was not a vacant country; it was full of inhabitants; our ancestors purchased the land; but, if it had been vacant, his lordship has not shown us any authority at common law, that the laws of England would have been in force there. On the contrary, by that law, it is clear they did not extend beyond seas, and therefore could not be binding there, any further than the free will of the discoverers should make them. The discoverers had a right by nature to set up those laws if they liked them, or any others that pleased them better, provided they were not inconsistent with their allegiance to the king.

3. The court held, that a country must be parcel of the kingdom of England, before the laws of England could take place there; which seems to be inconsistent with what is said before, because discovery of a vacant country does not make it parcel of the kingdom of England, which shows that the court, when they said, that all laws in *force* in England are in *force* in the discovered country, meant no more than that the discoverers had a right to all such laws, if they chose to adopt them.

4. The idea of the court, in this case, is exactly conformable to, if not

taken from, the case of Wales. They consider a conquered country as Edward I. and his successors did Wales, as by the conquest annexed to the crown, as an absolute property, possession, or revenue, and, therefore, to be disposed of at its will; not entitled to the laws of England, although bound to be governed by the king's will, in parliament or out of it, as he pleased.

5. The Isle of Man and Ireland are considered, like Wales, as conquered countries, and part of the possessions (by which they mean property or revenue) of the crown of England, yet have been allowed by the king's will to retain their ancient laws.

6. That the case of America differs totally from the case of Wales, Ireland, Man, or any other case which is known at common law or in English history. There is no one precedent in point in any English records, and, therefore, it can be determined only by eternal reason and the law of nature. But yet that the analogy of all these cases of Ireland, Wales, Man, Chester, Durham, Lancaster, &c. clearly concur with the dictates of reason and nature, that Americans are entitled to all the liberties of Englishmen, and that they are not bound by any acts of parliament whatever, by any law known in English records or history, excepting those for the regulation of trade, which they have consented to and acquiesced in.

7. To these let me add, that, as the laws of England and the authority of parliament were by common law confined to the realm and within the four seas, so was the force of the great seal of England. "The great seal of England is appropriated to England, and what is done under it has relation to England, and to no other place."\* So that the king, by common law, had no authority to create peers or governments, or any thing out of the realm, by his great seal; and, therefore, our charters and commissions to governors, being under the great seal, gives us no more authority, nor binds us to any other duties, than if they had been given under the privy seal, or without any seal at all. Their binding force, both upon the crown and us, is wholly from compact and the law of nature.

There is another case in which the same sentiments are preserved.† "It was said by the master of the rolls to have been determined by the lords of the privy council, upon an appeal to the king in council from the foreign plantations; 1st. That if there be a new and uninhabited country, found out by English subjects, as the law is the birthright of every subject, so, wherever they go, they carry their laws with them, and, therefore, such new found country is to be governed by the laws of England; though after such country

\* Salkeld, 510.

† It is in 2 P. Williams, 75, Memorandum, 9th August, 1722.

is inhabited by the English, acts of parliament made in England, without naming the foreign plantations, will not bind them; for which reason it has been determined, that the statute of frauds and perjuries, which requires three witnesses, and that these should subscribe in the testator's presence in the case of a devise of land, does not bind Barbadoes; but that, 2dly. Where the King of England conquers a country, it is a different consideration; for there the conqueror, by saving the lives of the people conquered, gains a right and property in such people! In consequence of which, he may impose upon them what laws he pleases; but, 3dly. Until such laws, given by the conquering prince, the laws and customs of the conquered country shall hold place; unless where these are contrary to our religion, or enact any thing that is *malum in se*, or are silent; for in all such cases the laws of the conquering country shall prevail."

### No. x

**GIVE ME LEAVE**, now, to descend from these general matters to Massachusettsensis. He says, "Ireland, who has perhaps the greatest possible subordinate legislature, and sends no members to the British parliament, is bound by its acts when expressly named." But if we are to consider what ought to be, as well as what is, why should Ireland have the greatest possible subordinate legislature? Is Ireland more numerous and more important to what is called the British empire than America? Subordinate as the Irish legislature is said to be, and a conquered country, as undoubtedly it is, the parliament of Great Britain, although they claim a power to bind Ireland by statutes, have never laid one farthing of tax upon it. They knew it would occasion resistance if they should. But the authority of parliament to bind Ireland at all, if it has any, is founded upon entirely a different principle from any that takes place in the case of America. It is founded on the consent and compact of the Irish by Poyning's law to be so governed, if it have any foundation at all; and this consent was given, and compact made, in consequence of a conquest.

In the reign of Henry II. of England, there were five distinct sovereignties in Ireland,—Munster, Leinster, Meath, Ulster, and Connaught, besides several small tribes. As the prince of any one of these petty states took the lead in war, he seemed to act, for the time being, as monarch of the island. About the year 1172, Roderic O'Connor, King of Connaught, was advanced to this preëminence. Henry had long cast a wishful eye upon Ireland; and now, partly to divert his subjects from the thoughts of Becket's murder, partly to appease the wrath of the pope for the same event, and partly to gratify his own ambition, he lays hold of a pretence, that the Irish had taken some

natives of England and sold them for slaves, and applies to the pope for license to invade that island. Adrian III., an Englishman by birth, who was then pontiff, and very clearly convinced in his own mind of his right to dispose of kingdoms and empires, was easily persuaded, by the prospect of Peter's pence, to act as emperor of the world, and make an addition to his ghostly jurisdiction of an island which, though converted to Christianity, had never acknowledged any subjection to the see of Rome. He issued a bull, premising that Henry had ever shown an anxious care to enlarge the church, and increase the saints on earth and in heaven; that his design upon Ireland proceeded from the same pious motives; that his application to the holy see was a sure earnest of success; that it was a point incontestable, that all Christian kingdoms belonged to the patrimony of St. Peter; that it was his duty to sow among them the seeds of the gospel, which might fructify to their eternal salvation. He exhorts Henry to invade Ireland, exterminate the vices of the natives, and oblige them to pay yearly, from every house, a penny to the see of Rome; gives him full right and entire authority over the whole island; and commands all to obey him as their sovereign.

Macmorrogh, a licentious scoundrel, who was king of Leinster, and had been driven from his kingdom for his tyranny by his own subjects, in conjunction with Oronic, king of Meath, who made war upon him for committing a rape upon his queen, applied to Henry for assistance to restore him, and promised to hold his kingdom in vassalage of the crown of England. Henry accepted the offer, and engaged in the enterprise. It is unnecessary to recapitulate all the intrigues of Henry, to divide the Irish kingdoms among themselves, and set one against another, which are as curious as those of Edward I. to divide the kingdom of Wales, and play Lewellyn's brothers against him, or as those of the ministry, and our junto, to divide the American colonies, who have more sense than to be divided. It is sufficient to say, that Henry's expeditions terminated, altogether by means of those divisions among the Irish, in the total conquest of Ireland, and its annexation forever to the English crown. By the annexation of all Ireland to the English crown, I mean that all the princes and petty sovereigns of Ireland agreed to become vassals of the English crown. But what was the consequence of this? The same consequence was drawn, by the kings of England in this case, as had been drawn in the case of Wales after the conquest of Lewellyn; namely,—that Ireland was become part of the *property, possession, or revenue* of the English crown, and that its authority over it was absolute and without control.

That matter must be traced from step to step. The First monument we find in English records concerning Ireland, is a mere *rescriptum principis*,

entitled *statutum Hiberniae de coheredibus*, 14 Hen. III. A.D. 1229. "In the old abridgment, Title, Homage, this is said not to be a statute."\* Mr. Cay very properly observes, that it is not an act of parliament.† In this rescript, the king informs certain *militēs*, (adventurers, probably, in the conquest of Ireland, or their descendants,) who had doubts how lands holden by knights' service, descending to copartners within age, should be divided,—what is the law and custom in England with regard to this.

But the record itself shows it to be a royal rescript only. "*Rex dilecto et fideli suo Gerardo fil' Mauricii Justic' suo Hiberniae salutem. Quia tales milites, de partibus Hiberniae nuper ad nos accedentes, nobis ostenderunt, quod, &c. Et a nobis petierunt, inde certiorari qualiter in regno nostro Angliae, in casu consimili, hactenus usitatum sit, &c.*" He then goes on, and certifies what the law in England was, and then concludes:—"Et ideo vobis mandamus, quod praedictas consuetudines in hoc casu, quas in regno nostro Angliae habemus, ut praedictum est, in terra nostra Hiberniae proclamari et firmiter teneri, fac, &c."

Here again we find the king conducting himself exactly as Edward I. did in Wales, after the conquest of Wales. Ireland had now been annexed to the English crown many years, yet parliament was not allowed to have obtained any jurisdiction over it; and Henry ordained laws for it by his sole and absolute authority, as Edward I. did by the statute of Wales. Another incontestable proof that annexing a country to the crown of England does not annex it to the realm, or subject it to parliament. But we shall find innumerable proofs of this.

Another incontestable proof of this, is the *Ordinatio pro statu Hiberniae* made 17 Edward I. 1288.

This is an ordinance made by the king, by advice of his council, for the government of Ireland. "Edward, by the grace of God, King of England, Lord of Ireland, &c., to all those who shall see or hear these letters, doth send salutation." He then goes on, and ordains many regulations, among which the seventh chapter is,—“That none of our officers shall receive an original writ pleadable at the common law, but such as be sealed by the great seal of Ireland,” &c. This ordinance concludes,—“In witness whereof, we have caused these our letters-patents to be made. Dated at Nottingham, 24th November, 17th year of our reign.”

This law, if it was passed in parliament, was never considered to have any more binding force than if it had been made only by the king. By Poyning's law, indeed, in the reign of Henry VII., all precedent English

\* *Vide Ruffhead's Statutes at Large*, v. i. 15.

† *Vide Barrington's Observations on the Statutes*, p. 34.

statutes are made to bind in Ireland, and this among the rest; but until Poyning's law it had no validity as an act of parliament, and was never executed but in the English pale; for, notwithstanding all that is said of the total conquest by Henry II., yet it did not extend much beyond the neighborhood of Dublin, and the conqueror could not enforce his laws and regulations much further.

“There is a note on the roll of 21 Edward I. in these words:—‘*Et memorandum quod istud statutum, de verbo ad verbum, missum fuit in Hiberniam, teste rege apud Kenynton, 14 die Augusti, anno regni sui vicesimo septimo; et mandatum fuit Johanni Wogan, Justiciario Hiberniae, quod praedictum statutum per Hiberniam, in locis quibus expedire viderit, legi et publicè proclamari ac firmiter teneri faviat.*’

“This note most fully proves, that it was supposed the king, by his sole authority, could then introduce any English law; and will that authority be lessened by the concurrence of the two houses of parliament? . . . There is also an order of Charles I., in the third year of his reign, to the treasurers and chancellors of the exchequer, both of England and Ireland, by which they are directed to increase the duties upon Irish exports; which shows that it was then imagined the king could tax Ireland by his prerogative, without the intervention of parliament.”\*

Another instance to show, that the king, by his sole authority, whenever he pleased, made regulations for the government of Ireland, notwithstanding it was annexed and subject to the crown of England, is the *ordinatio facta pro statu terrae Hiberniae*, in the 31 Edward I., in the appendix to Ruffhead's statutes. This is an extensive code of laws, made for the government of the Irish church and state, by the king alone, without lords or commons. The kings “*volumus et firmiter praecipimus,*” governs and establishes all; and, among other things, he introduces, by the eighteenth chapter, the English laws for the regimen of persons of English extract settled in Ireland.

The next appearance of Ireland in the statutes of England is in the 34 Edward III. c. 17. This is no more than a concession of the king to his lords and commons of England, in these words: “*Item*, it is accorded, that all the merchants, as well aliens as denizens, may come into Ireland with their merchandises, and from thence freely to return with their merchandises and victuals, without fine or ransom to be taken of them, saving always to the king his ancient customs and other duties.” And, by chapter 18: “*Item*, that the people of England, as well religious as other, which have their heritage and possessions in Ireland, may bring their corn, beasts, and victuals to the

\* *Observations on the Statutes*, p. 127.



said land of Ireland, and from thence to re-carry their goods and merchandises into England, freely without impeachment, paying their customs and devoirs to the king.”

All this is no more than an agreement between the king and his English subjects, lords, and commons, that there should be a free trade between the two islands and that one of them should be free for strangers. But it is no color of proof, that the king could not govern Ireland without his English lords and commons.

The 1 Henry V. c. 8: “All Irishmen and Irish clerks, beggars, shall depart this realm before the first day of November, except graduates, sergeants, &c.” is explained by 1 Henry VI. c. 3, which shows “what sort of Irishmen only may come to dwell in England.” It enacts, that all persons born in Ireland shall depart out of the realm of England, except a few; and that Irishmen shall not be principals of any hall, and that Irishmen shall bring testimonials from the lieutenant or justice of Ireland, that they are of the king’s obeisance. By the 2d Henry VI. c. 8, “Irishmen resorting into the realm of England, shall put in surety for their good abearing.”

Thus, I have cursorily mentioned every law made by the King of England, whether in parliament or out of it, for the government of Ireland, from the conquest of it by Henry II., in 1172, down to the reign of Henry VII., when an express contract was made between the two kingdoms, that Ireland should, for the future, be bound by English acts of parliament in which it should be specially named. This contract was made in 1495; so that, upon the whole, it appears beyond dispute, that, for more than three hundred years, though a conquered country, and annexed to the crown of England, yet, it was so far from being annexed to, or parcel of the realm, that the king’s power was absolute there, and he might govern it without his English parliament, whose advice concerning it he was under no obligation to ask or pursue.

The contract I here alluded to, is what is called Poyning’s law, the history of which is briefly this: Ireland revolted from England, or rather adhered to the partisans of the house of York; and Sir Edward Poyning was sent over about the year 1495, by King Henry VII., with very extensive powers *over the civil as well as military administration*. On his arrival, he made severe inquisition about the disaffected, and in particular attacked the Earls of Desmond and Kildare. The first stood upon the defensive, and eluded the power of the deputy; but Kildare was sent prisoner to England; *not to be executed, it seems, nor to be tried upon the statute of Henry VIII.*, but to be dismissed, as he actually was, to his own country, with marks of the King’s esteem and favor; Henry judging that, at such a juncture, he should gain more by clemency

and indulgence, than by rigor and severity. In this opinion, he sent a commissioner to Ireland with a formal amnesty in favor of Desmond and all his adherents, whom the tools of his ministers did not fail to call traitors and rebels, with as good a grace and as much benevolence, as Massachusettensis discovers.

Let me stop here and inquire, whether Lord North has more wisdom than Henry VII., or whether he took the hint from the history of Poyning, of sending General Gage, with his civil and military powers. If he did, he certainly did not imitate Henry, in his blustering menaces against certain “ringleaders and forerunners.”

While Poyning resided in Ireland, he called a parliament, which is famous in history for the acts which it passed in favor of England and Englishmen settled in Ireland. By these, which are still called Poyning’s laws, all the former laws of England were made to be of force in Ireland, and no bill can be introduced into the Irish parliament unless it previously receive the sanction of the English privy council; and by a construction, if not by the express words, of these laws, Ireland is still said to be bound by English statutes in which it is specially named. Here, then, let Massachusettensis pause, and observe the original of the notion, that countries might be bound by acts of parliament, if “specially named,” though without the realm. Let him observe, too, that this notion is grounded entirely on the voluntary act, the free consent of the Irish nation, and an act of an Irish parliament, called Poyning’s law. Let me ask him, has any colony in America ever made a Poyning’s act? Have they ever consented to be bound by acts of parliament, if specially named? Have they ever acquiesced in, or implicitly consented to any acts of parliament, but such as are *bonâ fide* made for the regulation of trade? This idea of binding countries without the realm “by specially naming” them, is not an idea taken from the common law. There was no such principle, rule, or maxim, in that law. It must be by statute law, then, or none. In the case of Wales and Ireland, it was introduced by solemn compact, and established by statutes to which the Welsh and Irish were parties, and expressly consented. But in the case of America there is no such statute; and therefore Americans are bound by statutes in which they are “named,” no more than by those in which they are not.

The principle upon which Ireland is bound by English statutes, in which it is named, is this, that being a conquered country, and subject to the mere will of the king, it voluntarily consented to be so bound. This appears in part already, and more fully in Blackstone, who tells us “that Ireland is a distinct, though a dependent, subordinate kingdom.” But how came it dependent and subordinate? He tells us, that “King John, in the twelfth year

of his reign, after the conquest, went into Ireland, carried over with him many able sages of the law; and there by his letters-patent, in right of the dominion of conquest, is said to have ordained and established that Ireland should be governed by the laws of England; which letters-patent Sir Edward Coke apprehends to have been there confirmed in parliament. . . . By the same rule, that no laws made in England between King John's time and Poyning's law were then binding in Ireland, it follows, that no acts of the English parliament, made since the tenth of Henry VII., do now bind the people of Ireland, unless specially named, or included under general words. And on the other hand, it is equally clear, that where Ireland is particularly named, or is included under general words, they are bound by such acts of parliament. For this follows from the very nature and constitution of a dependent state; dependence being very little else but an obligation to conform to the will or law of that superior person or state upon which the inferior depends. The original and true ground of this superiority in the present case, is what we usually call, though somewhat improperly, the right of conquest; a right allowed by the law of nations, if not by that of nature; but which in reason and civil policy can mean nothing more than that, in order to put an end to hostilities, a compact is either expressly or tacitly made between the conqueror and the conquered, that if they will acknowledge the victor for their master, he will treat them for the future as subjects, and not as enemies."

These are the principles upon which the dependence and subordination of Ireland are founded. Whether they are just or not is not necessary for us to inquire. The Irish nation have never been entirely convinced of their justice, have been ever discontented with them, and ripe and ready to dispute them. Their reasonings have been ever answered by the *ratio ultima* and *penultima* of the tories; and it requires, to this hour, no less than a standing army of twelve thousand men to confute them, as little as the British parliament exercises the right, which it claims, of binding them by statutes, and although it never once attempted or presumed to tax them, and although they are so greatly inferior to Britain in power, and so near in situation.

But thus much is certain, that none of these principles take place in the case of America. She never was conquered by Britain. She never consented to be a state dependent upon, or subordinate to the British parliament, excepting only in the regulation of her commerce; and therefore the reasonings of British writers upon the case of Ireland are not applicable to the case of the colonies, any more than those upon the case of Wales.

Thus have I rambled after Massachusettensis through Wales and Ireland, but have not reached my journey's end. I have yet to travel through Jersey, Guernsey, and I know not where. At present, I shall conclude with one

observation. In the history of Ireland and Wales, though undoubtedly conquered countries, and under the very eye and arm of England, the extreme difficulty, the utter impracticability of governing a people who have any sense, spirit, or love of liberty, without incorporating them into the state, or allowing them in some other way equal privileges, may be clearly seen. Wales was forever revolting, for a thousand years, until it obtained that mighty blessing. Ireland has been frequently revolting, although the most essential power of a supreme legislature, that of imposing taxes, has never been exercised over them; and it cannot now be kept under but by force. And it would revolt forever if parliament should tax them. What kind of an opinion, then, must the ministry entertain of America,—when her distance is so great, her territory so extensive, her commerce so important; not a conquered country, but dearly purchased and defended; when her trade is so essential to the navy, the commerce, the revenue, the very existence of Great Britain as an independent state? They must think America inhabited by three millions of fools and cowards.

## NO. XI

**THE CASES OF WALES AND IRELAND** are not yet exhausted. They afford such irrefragable proofs, that there is a distinction between the crown and realm, and that a country may be annexed and subject to the former, and not to the latter, that they ought to be thoroughly studied and understood.

The more these cases, as well as those of Chester, Durham, Jersey, Guernsey, Calais, Gascogne, Guienne, &c. are examined, the more clearly it will appear, that there is no precedent in English records, no rule of common law, no provision in the English constitution, no policy in the English or British government, for the case of the colonies; and, therefore, that we derive our laws and government solely from our own compacts with Britain and her kings, and from the great Legislator of the universe.

We ought to be cautious of the inaccuracies of the greatest men, for these are apt to lead us astray. Lord Coke\* says: "Wales was some time a kingdom, as it appeareth by 19 Henry VI. fol. 6, and by the act of parliament of 2 Henry V. cap. 6; but while it was a kingdom, the same was holden and within the fee of the King of England; and this appeareth by our books, Fleta, lib. 1, cap. 16; 1 Edward III. 14; 8 Edward III. 59; 13 Edward III., tit. Jurisdict.; 10 Henry IV. 6; Plow. Com. 368. And in this respect, in divers ancient charters, kings of old time styled themselves in several manners, as King

\* 7 Rep. 21 b.

Edgar, Britanniae Basileus; Etheldredus, Totius Albionis Dei providentia Imperator; Edredus, magnae Britanniae Monarcha, which, among many others of like nature, I have seen. But, by the statute of 12 Edward I. Wales was united and incorporated into England, and made parcel of England in possession; and, therefore, it is ruled, in 7 Henry IV. fol. 13, that no protection doth lie, *quia moratur in Wallia*, because Wales is within the realm of England. And where it is recited, in the act of 27 Henry VIII., *that Wales was ever parcel of the realm of England*, it is true in this sense, namely,—that before 12 Edward I. it was parcel in tenure, and since, *it is parcel of the body of the realm*. And whosoever is born within the fee of the King of England, though it be in another kingdom, is a natural-born subject, and capable and inheritable of lands in England, as it appeareth in Plow. Com. 126. And, therefore, those that were born in Wales before 12 Edward I., whilst it was only holden of England, were capable and inheritable of lands in England.”

Where my Lord Coke, or any other sage, shows us the ground on which his opinion stands, we can judge for ourselves, whether the ground is good and his opinion just. And, if we examine by this rule, we shall find in the foregoing words, several palpable inaccuracies of expression: 1. By the 12 E. I., (which is the *statutum Walliae* quoted by me before,) it is certain “that Wales was not united and incorporated into England, and made parcel of England.” It was annexed and united to the crown of England only. It was done by the king’s sole and absolute authority; not by an act of parliament, but by a mere *constitutio imperatoria*, and neither Edward I. nor any of his successors ever would relinquish the right of ruling it by mere will and discretion, until the reign of James I. 2. It is not recited in the 27 H. VIII., that Wales was ever parcel of the realm of England. The words of that statute are, “incorporated, annexed, united, and subject to, and under the imperial crown of this realm,” which is a decisive proof, that a country may be annexed to the one without being united with the other. And this appears fully in Lord Coke himself: \* “Ireland originally came to the kings of England by conquest; but who was the first conqueror thereof hath been a question. I have seen a charter made by King Edgar, in these words: *Ego Edgarus Anglorum Basileus, omniumque insularum oceani, quae Britanniam circumjacent, imperator et dominus, gratias ago ipsi Deo omnipotenti regi meo, qui meum imperium sic ampliavit et exaltavit super regnum patrum meorum, &c. Mihi concessit propitia divinitas, cum anglorum imperio omnia regna insularum oceani, &c., cum suis ferocissimis regibus usque Norvegiam, maximamque partem Hiberniae, cum sua nobilissima civitate de Dublina, Anglorum regno subjugare, quapropter et ego*

\* 7 Rep. 22 b.

*Christi gloriam et laudem in regno meo exaltare, et ejus servitium amplificare devotus disposui, &c.* Yet for that it was wholly conquered in the reign of Henry II., the honor of the conquest of Ireland is attributed to him. That Ireland is a dominion separate and divided from England it is evident from our books, 20 H. VI. 8; Sir John Pilkington's case, 32 H. VI. 25; 20 Eliz.; Dyer, 360; Plow. Com. 360, and 2 R. 3, 12: *Hibernia habet parliamentum, et faciunt leges, et statuta nostra non ligant eos quia non mittunt milites ad parliamentum*, (which is to be understood, unless they be specially named,) *sed personae eorum sunt subjecti regis, sicut inhabitantes in Calesia, Gasconia, et Guyan*. Wherein it is to be observed, that the Irishman (as to his subjection) is compared to men born in Calice, Gascoin, and Guienne. Concerning their laws, *Ex rotulis petentium, de anno 11 Regis H. III.*, there is a charter which that king made, beginning in these words: *Rex Baronibus, Militibus et omnibus libere tenentibus L. salutem. Satis, ut credimus vestra audivit discretio, quod quando bonae memoriae Johannes quondam rex Angliae, pater noster venit in Hiberniam, ipse duxit secum viros discretos et legis peritos, quorum communi consilio et ad instantiam Hibernensium statuit et praecepit leges Anglicanas in Hibernia, ita quod leges easdem in scripturas redactas reliquit sub sigillo suo ad saccarium Dublin.* So, as now, the laws of England became the proper laws of Ireland; and, therefore, because they have parliaments holden there, whereat they have made diverse particular laws concerning that dominion, as it appeareth in 20 Henry VI. 8, and 20 Elizabeth, Dyer, 360, and for that they retain unto this day divers of their ancient customs, the book in 20 Henry VI. 8, holdeth that Ireland is governed by laws and customs separate and diverse from the laws of England. A voyage royal may be made into Ireland. *Vid.* 11 Henry IV. 7, and 7 Edward IV. 4, 27, which proveth it a distinct dominion. And in anno 33 Elizabeth, it was resolved by all the judges of England, in the case of O'Rurke, an Irishman, who had committed high treason in Ireland, that he, by the statute of 23 Henry VIII. c. 23, might be indicted, arraigned, and tried for the same in England, according to the purview of that statute; the words of which statute be, 'that all treasons, &c. committed by any person out of the realm of England, shall be from henceforth inquired of, &c.' And they all resolved, (as afterwards they did also in Sir John Perrot's case,) that Ireland was out of the realm of England, and that treasons committed there were to be tried within England by that statute. In the statute of 4 Henry VII. c. 24, of fines, provision is made for them that be out of this land; and it is holden in Plow. Com., in Stowell's case, 375, that he that is in Ireland is out of this land, and consequently within that proviso. Might not, then, the like plea be devised as well against any person born in Ireland as (this is against Calvin, that is, a *Postnatus*) in Scotland?

For the Irishman is born *extra ligeantiam regis, regni sui Angliae, &c.*, which be *verba operativa* in the plea. But all men know that they are natural born subjects, and capable of and inheritable to lands in England.”

I have been at the pains of transcribing this long passage, for the sake of a variety of important observations that may be made upon it.

1. That exuberance of proof that is in it, both that Ireland is annexed to the crown, and that it is not annexed to the realm, of England.

2. That the reasoning in the year book, that Ireland has a parliament, and makes laws, and our statutes do not bind them, because they do not send knights to parliament, is universal, and concludes against those statutes binding in which Ireland is specially named, as much as against those in which it is not; and therefore Lord Coke’s parenthesis “(which is to be understood, unless they be specially named)” is wholly arbitrary and groundless, unless it goes upon the supposition that the king is absolute in Ireland, it being a conquered country, and so has power to bind it at his pleasure, by an act of parliament, or by an edict; or unless it goes upon the supposition of Blackstone, that there had been an express agreement and consent of the Irish nation to be bound by acts of the English parliament; and in either case it is not applicable even by analogy to America; because that is not a conquered country, and most certainly never consented to be bound by all acts of parliament in which it should be named.

3. That the instance, request, and consent of the Irish is stated, as a ground upon which King John, and his discreet law-sages, first established the laws of England in Ireland.

4. The resolution of the judges in the cases of O’Rurke and Perrot, is express, that Ireland was without the realm of England; and the late resolutions of both houses of parliament, and the late opinion of the judges, that Americans may be sent to England upon the same statute to be tried for treason, is also express that America is out of the realm of England. So that we see what is to become of us, my friends. When they want to get our money by taxing us, our privileges by annihilating our charters, and to screen those from punishment who shall murder us at their command, then we are told that we are within the realm; but when they want to draw, hang, and quarter us, for honestly defending those liberties which God and compact have given and secured to us,—oh! then we are clearly out of the realm.

5. In Stowell’s case, it is resolved that Ireland is out of the land, that is, the land of England. The consequence is, that it was out of the reach and extent of the law of the land, that is, the common law. America surely is still further removed from that land, and therefore is without the jurisdiction of that law, which is called the law of the land in England. I think it must

appear by this time, that America is not parcel of the realm, state, kingdom, government, empire, or land of England, or Great Britain, in any sense which can make it subject universally to the supreme legislature of that island.

But for the sake of curiosity, and for the purpose of showing, that the consent even of a conquered people has always been carefully conciliated, I beg leave to look over Lord Coke's 4 Inst. p. 12. "After King Henry II." says he, "had conquered Ireland, he fitted and transcribed this *modus*," meaning the ancient treatise called *modus tenendi parliamentum*, which was rehearsed and declared before the conqueror at the time of the conquest, and by him approved for England, "into Ireland, in a parchment roll, for the holding of parliaments there, which, no doubt, H. II. did by advice of his judges, &c. This *modus*, &c. was, *anno* 6, H. IV., in the custody of Sir Christopher Preston, which roll H. IV., in the same year, *de assensu Johannis Talbot, Chevalier*, his lieutenant there, and of his council of Ireland, exemplified, &c."

Here we see the original of a parliament in Ireland, which is assigned as the cause or reason why Ireland is a distant kingdom from England; and in the same, 4 Inst. 349, we find more evidence that all this was done at the instance and request of the people in Ireland. Lord Coke says,—“H. II., the father of King John, did ordain and command at the instance of the Irish, that such laws as he had in England should be of force and observed in Ireland. Hereby Ireland, being of itself a distinct dominion, and no part of the kingdom of England, (as it directly appeareth by many authorities in Calvin's case,) was to have parliaments holden there, as England, &c.” See the record, as quoted by Lord Coke in the same page, which shows that even this establishment of English laws was made *de communi omnium de Hibernia consensu*.

This whole chapter is well worth attending to; because the records quoted in it show how careful the ancients were to obtain the consent of the governed to all laws, though a conquered people, and the king absolute. Very unlike the minister of our era, who is for pulling down and building up the most sacred establishments of laws and government, without the least regard to the consent or good-will of Americans. There is one observation more of Lord Coke that deserves particular notice. "Sometimes the king of England called his nobles of Ireland to come to his parliament of England, &c.; and by special words the parliament of England may bind the subjects of Ireland;" and cites the record, 8 E. II., and subjoins "an excellent precedent to be followed whensoever any act of parliament shall be made in England concerning the state of Ireland, &c." By this, Lord Coke seems to intimate an opinion, that representatives had been, and ought to be, called from Ireland



to the parliament of England, whenever it undertook to govern it by statutes in which it should be specially named.

After all, I believe there is no evidence of any express contract of the Irish nation, to be governed by the English parliament, and very little of an implied one; that the notion of binding it by acts in which it is expressly named is merely arbitrary; and that this nation, which has ever had many and great virtues, has been most grievously oppressed. And it is to this day so greatly injured and oppressed, that I wonder American committees of correspondence and congresses have not attended more to it than they have. Perhaps in some future time they may. But I am running beyond my line.

We must now turn to Burrow's Reports.\* Lord Mansfield has many observations upon the case of Wales, which ought not to be overlooked. He says,—“Edward I. conceived the great design of annexing all other parts of the island of Great Britain to the realm of England. The better to effectuate his idea, as time should offer occasion, he maintained, ‘that all the parts thereof not in his own hands or possession, were holden of his crown.’ The consequence of this doctrine was, that by the feudal law supreme jurisdiction resulted to him, in right of his crown, as sovereign lord, in many cases which he might lay hold of; and when the said territories should come into his hands and possession, they would come back as parcel of the realm of England, from which (by fiction of law at least) they had been originally severed. This doctrine was literally true as to the counties palatine of Chester and Durham. But (no matter upon what foundation) he maintained that the principality of Wales was holden of the imperial crown of England: he treated the Prince of Wales as a rebellious vassal, subdued him, and took possession of the principality. Whereupon, on the fourth of December, in the ninth year of his reign, he issued a commission to inquire ‘*per quas leges, et per quas consuetudines antecessores nostri reges regere consueverant principem Walliae et barones Wallenses Walliae et pares suos et alios in priores et eorum pares, &c.*’ If the principality was feudatory, the conclusion necessarily followed, that it was under the government of the king's laws, and the king's courts, in cases proper for them to interpose, though (like counties palatine) they had peculiar laws and customs, *jura regalia*, and complete jurisdiction at home.” There was a writ at the same time issued to all his officers in Wales, to give information to the commissioners; and there were fourteen interrogatories, specifying the points to be inquired into. The statute of Rutland, 12 E. I., refers to this inquiry. By that statute he does not annex Wales to England, but recites it as a consequence of its coming into his hands:—“Divina pro-

\* Vol. ii. 834. Rex v. Cowle.

videntia terram Walliae, prius nobis jure feudali subjectam, jam in proprietatis nostrae dominium convertit, et coronae regni Angliae, tanquam partem corporis ejusdem, annexuit et univit." The 27 H. VIII. c. 26, adheres to the same plan, and recites that "Wales ever hath been incorporated, annexed, united, and subject to, and under, the imperial crown of this realm, as a very member and joint of the same." Edward I., having succeeded as to Wales, maintained likewise that Scotland was holden of the crown of England. This opinion of the court was delivered by Lord Mansfield in the year 1759. In conformity to the *system* contained in these words, my Lord Mansfield and my Lord North, together with their little friends, Bernard and Hutchinson, have "conceived the great design of annexing" all North America "to the realm of England;" and "the better to effectuate this idea, they all maintain that North America is holden of the crown."

And, no matter upon what foundation, they all maintained, that America is dependent on the imperial crown and parliament of Great Britain; and they are all very eagerly desirous of treating the Americans as rebellious vassals, to subdue them, and take possession of their country. And when they do, no doubt America will come back as parcel of the realm of England, from which, by fiction of law at least, or by virtual representation, or by some other dream of a shadow of a shade, they had been originally severed.

But these noblemen and ignoblemen ought to have considered, that Americans understand the laws and the politics as well as themselves, and that there are six hundred thousand men in it, between sixteen and sixty years of age; and therefore it will be very difficult to chicane them out of their liberties by "fictions of law," and "no matter upon what foundation."

Methinks I hear his lordship, upon this occasion, in a soliloquy somewhat like this: "We are now in the midst of a war, which has been conducted with unexampled success and glory. We have conquered a great part, and shall soon complete the conquest of the French power in America. His majesty is near seventy years of age, and must soon yield to nature. The amiable, virtuous, and promising successor, educated under the care of my nearest friends, will be influenced by our advice. We must bring the war to a conclusion; for we have not the martial spirit and abilities of the great commoner; but we shall be obliged to leave upon the nation an immense debt. How shall we manage that? Why, I have seen letters from America, proposing that parliament should bring America to a closer dependence upon it, and representing that if it does not, she will fall a prey to some foreign power, or set up for herself. These hints may be improved, and a vast revenue drawn from that country and the East Indies, or at least the people here may be flattered and quieted with the hopes of it. It is the duty of a judge to declare law; but

under this pretence, many, we know, have given law or made law, and none in all the records of Westminster Hall more than of late. Enough has been already made, if it is wisely improved by others, to overturn this constitution. Upon this occasion, I will accommodate my expressions to such a design upon America and Asia, and will so accommodate both law and fact, that they may hereafter be improved to admirable effect in promoting our design." This is all romance, no doubt, but it has as good a moral as most romances. For, first,—it is an utter mistake, that Edward I. conceived the great design of annexing all to England, as one state, under one legislature. He conceived the design of annexing Wales, &c. to his crown. He did not pretend that it was before subject to the crown, but to him. "*Nobis jure feodali*" are his words. And when he annexes it to his crown, he does it by an edict of his own, not an act of parliament; and he never did, in his whole life, allow that his parliament, that is, his lords and commons, had any authority over it, or that he was obliged to take or ask their advice, in any one instance, concerning the management of it, nor did any of his successors for centuries. It was not Edward I., but Henry VII., who first conceived the great design of annexing it to the realm; and by him and Henry VIII. it was done in part, but never completed until James I. There is a sense, indeed, in which annexing a territory to the crown is annexing it to the realm, as putting a crown upon a man's head is putting it on the man, but it does not make it a part of the man. Second,—his lordship mentions the statute of Rutland; but this was not an act of parliament, and therefore could not annex Wales to the realm, if the king had intended it; for it never was in the power of the king alone to annex a country to the realm. This cannot be done but by act of parliament. As to Edward's treating the Prince of Wales as a "rebellious vassal," this was arbitrary, and is spoken of by all historians as an infamous piece of tyranny.

Edward I. and Henry VIII. both considered Wales as the property and revenue of the crown, not as a part of the realm; and the expressions "*coronae regni Angliae, tanquam partem corporis ejusdem*," signified "as part of the same body," that is, of the same "crown," not "realm" or "kingdom;" and the expressions in 27 H. VIII., "under the imperial crown of this realm, as a very member and joint of the same," mean as a member and joint of the "imperial crown," not of the realm. For the whole history of the principality, the acts of kings, parliaments, and people show, that Wales never was entitled, by this annexation, to the laws of England, nor was bound to obey them. The case of Ireland is enough to prove that the crown and realm are not the same. For Ireland is certainly annexed to the crown of England, and it certainly is not annexed to the realm.

There is one paragraph in the foregoing words of Lord Mansfield, which was quoted by his admirer, Governor Hutchinson, in his dispute with the house, with a profound compliment; "He did not know a greater authority," &c. But let the authority be as great as it will, the doctrine will not bear the test.

"If the principality was feudatory, the conclusion necessarily follows, that it was under the government of the king's laws." Ireland is feudatory to the crown of England; but would not be subject to the king's English laws without its consent and compact. An estate may be feudatory to a lord, a country may be feudatory to a sovereign lord, upon all possible variety of conditions; it may be, only to render homage; it may be to render a rent; it may be to pay a tribute; if his lordship by *feudatory* means the original notion of feuds, it is true that the king, the general imperator, was absolute, and the tenant held his estate only at will, and the subject, not only his estate, but his person and life, at his will. But this notion of feuds had been relaxed in an infinite variety of degrees; in some, the estate is held at will, in others for life, in others for years, in others forever, to heirs, &c.; in some to be governed by the prince alone, in some by princes and nobles, and in some by prince, nobles, and commons, &c. So that being feudatory by no means proves that English lords and commons have any share in the government over us. As to counties palatine, these were not only holden of the king and crown, but were erected by express acts of parliament, and, therefore, were never exempted from the authority of parliament. The same parliament which erected the county palatine, and gave it its *jura regalia* and complete jurisdiction, might unmake it, and take away those regalia and jurisdiction. But American governments and constitutions were never erected by parliament; their *regalia* and jurisdiction were not given by parliament, and, therefore, parliament have no authority to take them away.

But, if the colonies are feudatory to the kings of England, and subject to the government of the king's laws, it is only to such laws as are made in their general assemblies, their provincial legislatures.

## NO. XII

WE NOW COME to Jersey and Guernsey, which Massachusettensis says, "are no part of the realm of England, nor are they represented in parliament, but are subject to its authority." A little knowledge of this subject will do us no harm; and, as soon as we shall acquire it, we shall be satisfied how these islands came to be subject to the authority of parliament. It is either upon the principle that the king is absolute there, and has a right to make laws for

them by his mere will, and, therefore, may express his will by an act of parliament, or an edict, at his pleasure; or it is an usurpation. If it is an usurpation, it ought not to be a precedent for the colonies; but it ought to be reformed, and they ought to be incorporated into the realm by act of parliament and their own act. Their situation is no objection to this. Ours is an insurmountable obstacle.

Thus, we see, that in every instance which can be found, the observation proves to be true, that, by the common law, the laws of England, the authority of parliament, and the limits of the realm, were confined within seas. That the kings of England had frequently foreign dominions, some by conquest, some by marriage, and some by descent. But, in all those cases, the kings were either absolute in those dominions, or bound to govern them according to their own respective laws, and by their own legislative and executive councils. That the laws of England did not extend there, and the English parliament pretended no jurisdiction there, nor claimed any right to control the king in his government of those dominions. And, from this extensive survey of all the foregoing cases, there results a confirmation of what has been so often said, that there is no provision in the common law, in English precedents, in the English government or constitution, made for the case of the colonies. It is not a conquered, but a discovered country. It came not to the king by descent, but was explored by the settlers. It came not by marriage to the king, but was purchased by the settlers of the savages. It was not granted by the king of his grace, but was dearly, very dearly earned by the planters, in the labor, blood, and treasure which they expended to subdue it to cultivation. It stands upon no grounds, then, of law or policy, but what are found in the law of nature, and their express contracts in their charters, and their implied contracts in the commissions to governors and terms of settlement.

The cases of Chester and Durham, counties palatine within the realm, shall conclude this fatiguing ramble. Chester was an earldom and a county; and in the 21st year of King Richard II. A.D. 1397, it was, by an act of parliament, erected into a principality, and several castles and towns were annexed to it, saving to the king the rights of his crown. This was a county palatine, and had *jura regalia* before this erection of it into a principality. But the statute which made it a principality, was again repealed by 1 Henry IV. c. 3, and in 1399, by the 1 Henry IV. c. 18. Grievous complaints were made to the king, in parliament, of murders, manslaughters, robberies, batteries, riots, &c. done by people of the county of Chester in divers counties of England. For remedy of which it is enacted, "that if any person of the county of Chester commit any murder or felony in any place out of that county,

process shall be made against him by the common law, till the exigent, in the county where such murder or felony was done; and if he flee into the county of Chester, and be outlawed and put in exigent for such murder or felony, the same outlawry or exigent shall be certified to the officers and ministers of the same county of Chester, and the same felon shall be taken, his lands and goods within that county shall be seized as forfeit into the hands of the prince, or of him that shall be lord of the same county of Chester for the time, and the king shall have the year and day, and the waste; and the other lands and goods of such felon, out of said county, shall remain wholly to the king, &c. as forfeit." And a similar provision, in case of battery or trespass, &c.

Considering the great seal of England and the process of the king's courts did not run into Chester, it was natural that malefactors should take refuge there, and escape punishment, and, therefore, a statute like this was of indispensable necessity; and, afterwards, in 1535, another statute was made, 27 Henry VIII. c. 5, for the making of justices of the peace within Chester, &c. It recites, "the king, considering the manifold robberies, murders, thefts, trespasses, riots, routs, embraceries, maintenances, oppressions, ruptures of his peace, &c., which have been daily done within his county palatine of Chester, &c., by reason that common justice hath not been indifferently ministered there, like and in such form as it is in other places of this his realm, by reason whereof the said crimes have remained unpunished; for redress whereof, and to the intent that one order of law should be had, the king is empowered to constitute justices of peace, quorum, and gaol delivery in Chester," &c.

By the 32 Henry VIII. c. 43, another act was made concerning the county palatine of Chester, for shire days.

These three acts soon excited discontent in Chester. They had enjoyed an exemption from the king's English courts, legislative and executive, and they had no representatives in the English parliament, and, therefore, they thought it a violation of their rights, to be subjected even to those three statutes, as reasonable and absolutely necessary as they appear to have been. And, accordingly, we find, in 1542, 34 and 35 Henry VIII. c. 13, a zealous petition to be represented in parliament, and an act was made for making of knights and burgesses within the county and city of Chester. It recites a part of the petition to the king, from the inhabitants of Chester, stating, "that the county palatine had been excluded from parliament, to have any knights and burgesses there; 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 mainte-

nance of the commonwealth of their said country; and, forasmuch as the said inhabitants have always hitherto been bound by the acts and statutes, made by your highness and progenitors in said court," (meaning when expressly named, not otherwise,) "as far forth as other counties, cities, and boroughs, which have had knights and burgesses, and yet have had neither knight nor 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 unto the common weal, quietness, rest, and peace of your subjects, &c." For remedy whereof, two knights of the shire and two burgesses for the city are established.

I have before recited all the acts of parliament which were ever made to meddle with Chester, except the 51 Henry III. stat. 5, in 1266, which only provides that the justices of Chester and other bailiffs shall be answerable in the exchequer, for wards, escheats, and other bailiwicks; yet Chester was never severed from the crown or realm of England, nor ever expressly exempted from the authority of parliament; yet, as they had generally enjoyed an exemption from the exercise of the authority of parliament, we see how soon they complain of it as grievous, and claim a representation as a right; and we see how readily it was granted. America, on the contrary, is not in the realm; never was subject to the authority of parliament by any principle of law; is so far from Great Britain that she never can be represented; yet, she is to be bound in all cases whatsoever!

The first statute which appears in which Durham is named, is 27 Henry VIII. c. 24, § 21; Cuthbert, Bishop of Durham, and his successors, and their temporal chancellor of the county palatine of Durham, are made justices of the peace. The next is 31 Elizabeth, c. 9, and recites, that "Durham is, and of long time hath been, an ancient county palatine, in which the Queen's writ hath not, nor yet doth run." It enacts that a writ of proclamation upon an exigent against any person dwelling in the bishopric shall run there for the future. And § 5 confirms all the other liberties of the bishop and his officers.

And after this, we find no other mention of that bishopric in any statute until 25 Charles II. c. 9. This statute recites, "whereas, the inhabitants of the county palatine of Durham have not hitherto had the liberty and privilege of electing and sending any knights and burgesses to the high court of parliament, although the inhabitants of the said county palatine are liable to all payments, rates, and subsidies granted by parliament, equally with the inhabitants of other counties, cities, and boroughs, in this kingdom, who have

their knights and burgesses in the parliament, and are therefore concerned equally with others, the inhabitants of this kingdom, to have knights and burgesses in the said high court of parliament, of their own election, to represent the condition of their county, as the inhabitants of other counties, cities, and boroughs of this kingdom have." It enacts two knights for the county, and two burgesses for the city. Here, it should be observed, that, although they acknowledge that they had been liable to all rates, &c. granted by parliament, yet none had actually been laid upon them before this statute.

Massachusettensis then comes to the first charter of this province; and he tells us, that in it we shall find irresistible evidence, that our being a part of the empire, subject to the supreme authority of the state, bound by its laws, and subject to its protection, were the very terms and conditions by which our ancestors held their lands and settled the province. This is roundly and warmly said, but there is more zeal in it than knowledge. As to our being part of the empire, it could not be the British empire, as it is called, because that was not then in being, but was created seventy or eighty years afterwards. It must be the English empire, then; but the nation was not then polite enough to have introduced into the language of the law, or common parlance, any such phrase or idea. Rome never introduced the terms Roman empire until the tragedy of her freedom was completed. Before that, it was only the republic or the city. In the same manner, the realm, or the kingdom, or the dominions of the king, were the fashionable style in the age of the first charter. As to being subject to the supreme authority of the state, the prince who granted that charter thought it resided in himself, without any such troublesome tumults as lords and commons; and before the granting that charter, had dissolved his parliament, and determined never to call another, but to govern without. It is not very likely, then, that he intended our ancestors should be governed by parliament, or bound by its laws. As to being subject to its protection, we may guess what ideas king and parliament had of that, by the protection they actually afforded to our ancestors. Not one farthing was ever voted or given by the king or his parliament, or any one resolution taken about them. As to holding their lands, surely they did not hold their lands of lords and commons. If they agreed to hold their lands of the king, this did not subject them to English lords and commons, any more than the inhabitants of Scotland, holding their lands of the same king, subjected them. But there is not a word about the empire, the supreme authority of the state, being bound by its laws, or obliged for its protection in that whole charter. But "our charter is in the royal style." What then? Is that the parliamentary style? The style is this: "Charles, by the grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith," &c. Now, in which



capacity did he grant that charter; as King of France, or Ireland, or Scotland, or England? He governed England by one parliament, Scotland by another. Which parliament were we to be governed by? And Ireland by a third; and it might as well be reasoned, that America was to be governed by the Irish parliament, as by the English. But it was granted “under the great seal of England.” True; but this seal runneth not out of the realm, except to mandatory writs, and when our charter was given, it was never intended to go out of the realm. The charter and the corporation were intended to abide and remain within the realm, and be like other corporations there. But this affair of the seal is a mere piece of imposition.

In Moore’s Reports, in the case of the union of the realm of Scotland with England, it is resolved by the judges, that “the seal is alterable by the king at his pleasure, and he might make one seal for both kingdoms (of England and Scotland); for seals, coin, and leagues, are of absolute prerogative to the king without parliament, not restrained to any assent of the people;” and in determining how far the great seal doth command out of England, they made this distinction: “That the great seal was current for remedials, which groweth on complaint of the subject, and thereupon writs are addressed under the great seal of England; which writs are limited, their precinct to be within the places of the jurisdiction of the court that was to give the redress of the wrong. And therefore writs are not to go into Ireland, or the Isles, nor Wales, nor the counties palatine, because the king’s courts here have not power to hold pleas of lands or things there. But the great seal hath a power preceptory to the person, which power extendeth to any place where the person may be found,” &c. This authority plainly shows, that the great seal of England has no more authority out of the realm, except to mandatory or preceptory writs, (and surely the first charter was no preceptory writ,) than the privy seal, or the great seal of Scotland, or no seal at all. In truth, the seal and charter were intended to remain within the realm, and be of force to a corporation there; but the moment it was transferred to New England, it lost all its legal force, by the common law of England; and as this translation of it was acquiesced in by all parties, it might well be considered as good evidence of a contract between the parties, and in no other light; but not a whit the better or stronger for being under the great seal of England. But “the grants are made by the king, for his heirs and successors.” What then? So the Scots held their lands of him who was then king of England, his heirs and successors, and were bound to allegiance to him, his heirs and successors; but it did not follow from thence that the Scots were subject to the English parliament. So the inhabitants of Aquitain, for ten descents, held their lands,

and were tied by allegiance to him who was king of England, his heirs and successors, but were under no subjection to English lords and commons.

Heirs and successors of the king are supposed to be the same persons, and are used as synonymous words in the English law. There is no positive artificial provision made by our laws, or the British constitution, for revolutions. All our positive laws suppose that the royal office will descend to the eldest branch of the male line, or, in default of that, to the eldest female, &c., forever, and that the succession will not be broken. It is true that nature, necessity, and the great principles of self-preservation, have often overruled the succession. But this was done without any positive instruction of law. Therefore, the grants being by the king, for his heirs and successors, and the tenures being of the king, his heirs and successors, and the reservation being to the king, his heirs and successors, are so far from proving that we were to be part of an empire, as one state, subject to the supreme authority of the English or British state, and subject to its protection, that they do not so much as prove that we are annexed to the English crown. And all the subtilty of the writers on the side of the ministry, has never yet proved that America is so much as annexed to the crown, much less to the realm. "It is apparent the king acted in his royal capacity, as king of England." This I deny. The laws of England gave him no authority to grant any territory out of the realm. Besides, there is no color for his thinking that he acted in that capacity, but his using the great seal of England; but if the king is absolute in the affair of the seal, and may make or use any seal that he pleases, his using that seal which had been commonly used in England is no certain proof that he acted as king of England; for it is plain he might have used the English seal in the government of Scotland, and in that case it will not be pretended that he would have acted in his royal capacity as king of England. But his acting as king of England "necessarily supposes the territory granted to be a part of the English dominions, and holden of the crown of England." Here is the word "dominions" systematically introduced instead of the word "realm." There was no English dominions but the realm. And I say, that America was not any part of the English realm or dominions. And therefore, when the king granted it, he could not act as king of England, by the laws of England. As to the "territory being holden of the crown, there is no such thing in nature or art." Lands are holden according to the original notices of feuds, of the natural person of the lord. Holding lands, in feudal language, means no more than the relation between lord and tenant. The reciprocal duties of these are all personal. Homage, fealty, &c., and all other services, are personal to the lord; protection, &c. is personal to the tenant. And therefore no homage, fealty, or other services, can ever be rendered to the body politic, the

political capacity, which is not corporated, but only a frame in the mind, an idea. No lands here, or in England, are held of the crown, meaning by it the political capacity; they are all held of the royal person, the natural person of the king. Holding lands, &c. of the crown, is an impropriety of expression; but it is often used; and when it is, it can have no other sensible meaning than this, that we hold lands of that person, whoever he is, who wears the crown; the law supposes he will be a right, natural heir of the present king forever.

Massachusettensis then produces a quotation from the first charter, to prove several points. It is needless to repeat the whole; but the parts chiefly relied on are italicized. It makes the company a body politic in fact and name, &c., and enables it "to sue and be sued." Then the writer asks, "whether this looks like a distinct state or independent empire?" I answer, no. And that it is plain and uncontroverted, that the first charter was intended only to erect a corporation within the realm; and the governor and company were to reside within the realm; and their general courts were to be held there. Their agents, deputies, and servants only were to come to America. And if this had taken place, nobody ever doubted but they would have been subject to parliament. But this intention was not regarded on either side; and the company came over to America, and brought their charter with them. And as soon as they arrived here, they got out of the English realm, dominions, state, empire, call it by what name you will, and out of the legal jurisdiction of parliament. The king might, by his writ or proclamation, have commanded them to return; but he did not.

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