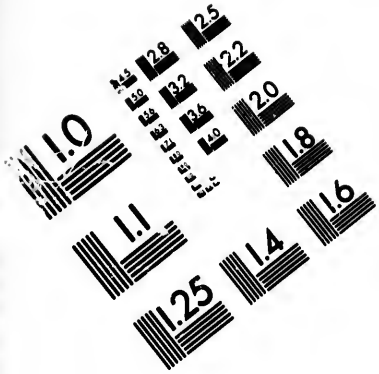

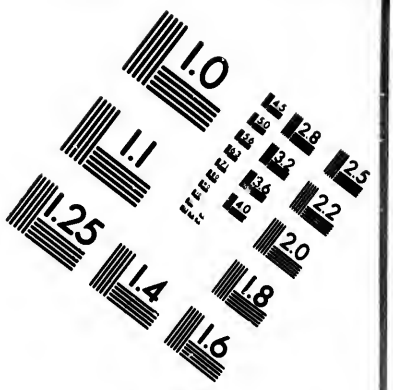

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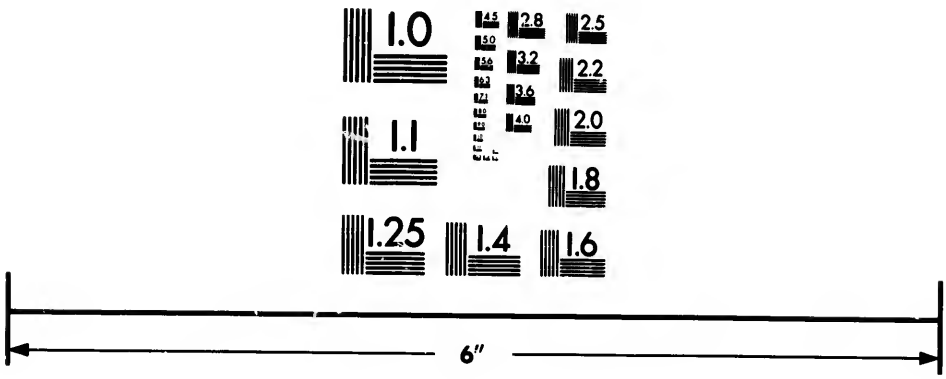

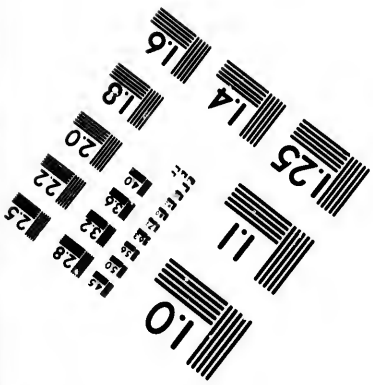

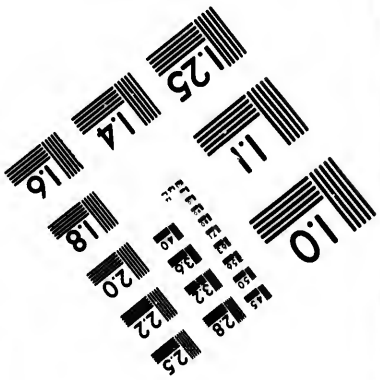

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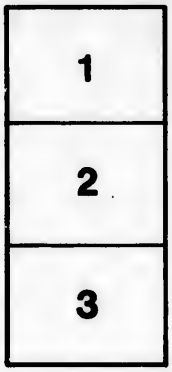

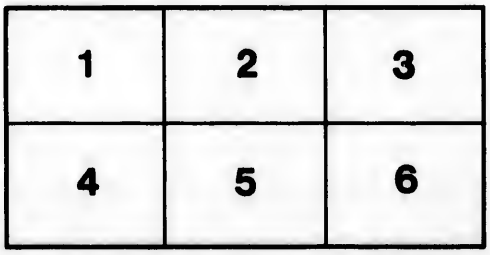

A

VIEW

OF THE

ENGLISH CONSTITUTION.

By the late Baron DE MONTESQUIEU.

BEING

A Tranſlation of the Sixth Chapter of the Eleventh Book of his celebrated Treatiſe, intitled

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AN

ACCOUNT

OF THE

ENGLISH

CONSTITUTION.

Of the three Powers of Government that muſt exiſt in every Civil Society, the Legiſlative, Executive, and Judicial Powers.

I. IN every civil government there muſt neceſſarily exiſt theſe three ſorts of power; the legiſlative power, or power of making laws; the executive power with reſpect to thoſe acts of ſtate which relate to the law of nations; and the executive power with reſpect to the internal government of the country, or to thoſe domeſtic exertions of authority which are directed by the civil, or municipal, laws eſtabliſhed in it.

II. By virtue of the firſt of theſe powers the prince, or other ſovereign magiſtrate, makes laws for the ſtate, and ordains them to be in force either for a limited time, or for ever, as he thinks fit; and by the ſame power he amends, or aboliſhes, the laws already in being, as he ſees occaſion. By virtue of the ſecond power he makes peace or war, ſends ambaſſadors to foreign ſtates, or receives ambaſſadors from them, takes the neceſſary meaſures for ſecuring the dominions of the ſtate from armed violence, and for preventing and repelling any invaſions of them by foreign enemies. By virtue of the third power he puniſhes the crimes that are committed in his dominions, and decides the civil diſputes that ariſe in them, or, in other words, adminiſters juſtice both criminal and civil. This latter part I ſhall henceforth call *the power of judging* or *the judicial power*, and the other branch of executive power I ſhall call ſimply *the executive power of the ſtate*.

The true notion of political liberty.

III. True political liberty in a member of any civil community, is that eaſe and ſerenity of mind which is the conſequence of a firm opinion in the ſeveral members of the ſtate that, ſo long as they abſtain from offending againſt the

the laws, they ſhall be perfectly ſafe and have nothing to fear from any body. It is therefore neceſſary to the general enjoyment of liberty, underſtood in this its true ſenſe, that the ſeveral powers above-mentioned (which muſt neceſſarily exiſt ſomewhere in the ſociety) ſhould be ſo diſtributed and parcelled out into different hands that no member of the ſtate may, by means of them, become formidable to any other member of it.

Of the union of the executive and legiſlative powers.

IV. When the legiſlative power and the executive power are both veſted in the ſame perſon, or perſons, whether it be in a king, or other ſingle perſon, or in a ſenate, or council, conſiſting of ſeveral perſons, the people at large cannot be free: becauſe there is reaſon to fear that the king, or ſenate, who are poſſeſſed of both theſe powers, may make uſe of both to the prejudice of the people, by, firſt, making oppreſſive laws concerning them, and then executing thoſe laws in an oppreſſive manner.

Of the union of the judicial power with either the legiſlative or the executive power.

V. Secondly, the people can enjoy no liberty in a ſtate, unleſs the *judicial power* is ſeparated from both the legiſlative power and the executive power. For, if it was united to the legiſ-

lative power, that is, if the ſame perſons were to be both legiſlators and judges, they would have an arbitrary authority over the lives and liberties of the other members of the ſtate. For, if they paſſed judgements that were contrary to the laws, thoſe judgements would nevertheleſs be conſidered as being agreeable to the laws, becauſe the judges themſelves in their other capacity of legiſlators, or makers of the laws, and conſequently interpreters of them, would have a right to declare that they were ſo. And, on the other hand, if the judicial power was united to the executive power, or the perſon, or perſons, who had the latter power, (which involves in it the command of all the military force in the ſtate,) were likewiſe to have the power of judging, ſuch judges would be ſo extreamly powerful that there would be no hope of obtaining any redreſs againſt them in caſe they paſſed unjuſt and oppreſſive judgements.

Of the union of all the three powers aforeſaid.

VI. And therefore, thirdly, there would be no ſhadow of liberty left in a ſtate, if all theſe three great powers, "of making laws, carrying into execution the publick meaſures of the community, and deciding criminal and civil ſuits," were to be united in the ſame perſons, wheher

whether it were in the hands of one man, or of a ſingle body of hereditary nobles, or other eminent perſons in the ſtate, or even, of a ſingle body of inferiour perſons ſelected from the people at large.

Of the Européan monarchies.

VII. In moſt of the kingdoms of Europe the government, though not perfectly free, is yet moderate, becauſe the ſovereigns have kept in their own hands only the legiſlative and executive powers, and have given up to their ſubjects the exerciſe of the judicial power. Whereas in Turkey, where all the three powers are united in the perſon of the Grand Seignior, we ſee a moſt dreadful degree of arbitrary power pervades the whole country.

Of the government of Turkey.

Of the modern commonwealths of Italy.

VIII. In the modern commonwealth governments in Italy, in which theſe three powers are united in the ſame bodies of men, the people enjoy a leſs degree of liberty than in our European monarchies. And accordingly the governing powers in ſome commonwealths, in order to maintain their authority and prevent the ill conſequences of the diſſatisfaction of the people, are obliged to have recourſe to methods that are nearly as violent as thoſe which are uſed

in

in the Turkiſh government. Witneſs the State-Inquiſitors at Venice, and the public box, or trunk, in which any informer has a right at any time to put a written accuſation againſt any member of the ſtate.

IX. Let us conſider a little what the condition of a private member of one of thoſe commonwealths is. One and the ſame body of magiſtrates in theſe ſtates exerciſes in particular caſes, as judges or executors of the laws, thoſe powers with which, in their other capacity of legiſlators, they have choſen to inveſt themſelves. They may, firſt, oppreſs the people by their general reſolutions, or laws, and afterwards may ruin particular members of the community by their particular reſolutions, or determinations as judges.

X. All the different powers of government are in theſe ſtates combined together under the ſame direction; and, though there are no circumſtances of outward ſhew and ſplendour to point out to the people *who* their maſters are, yet every man feels, at almoſt every inſtant of his life, that he *has* ſuch maſters, to whom it is abſolutely neceſſary he ſhould ſubmit, and over whoſe

whoſe actions, in the ordinary courſe of things, the body of the people have no controul.

XI. Accordingly we find that thoſe princes, or other eminent and ambitious men, who have aimed at making themſelves abſolute maſters of the ſtates they lived in, have always begun the execution of that deſign by drawing to themſelves, and uniting in their own perſons, the ſeveral different great magiſtracies of the ſtate: as ſeveral kings in Europe have taken to themſelves the ſeveral great offices in their reſpective kingdoms.

XII. I believe, however, that the pure hereditary ariſtocracy that is eſtabliſhed in the ſeveral commonwealths of Italy may not make thoſe governments quite ſo abſolute as thoſe of the Turkiſh and other Aſiatic monarchies. The greatneſs of the number of the magiſtrates, who are inveſted with the powers of government in thoſe republicks, may probably ſomewhat ſoften the exerciſe of the powers belonging to the magiſtracies themſelves; all the nobles are not always engaged in the ſame deſigns; and different tribunals, though formed of the ſame body of the nobility, are compoſed of different members

of

of that great body, and are inveſted with different authorities: ſo that they in ſome degree ſerve as a check and reſtraint upon each other. Thus, in the government of Venice, the *Great Council* are inveſted with the legiſlative power, the *Pregady* has the executive power, and the *Council of Forty* has the judicial power. But the misfortune is, that theſe ſeveral tribunals, though they are inveſted with diſtinct authorities, yet are compoſed of magiſtrates who are, all of them, members of the ſame body in contra-diſtinction to the body of the people at large: and *that* degree of connection with each other makes them too much *one power* for the people who are governed by them to be truely free.

Of

Of the Judicial Power.

XIII. THE power of judging ought not to be veſted in a permanent ſenate, or council, conſiſting always of the ſame members, but ſhould be exerciſed by perſons taken from the body of the people at certain appointed times of the year in a manner preſcribed by the laws, ſo as to form *an occaſional tribunal* that ſhall exiſt no longer than the cauſe which gives riſe to its creation. This was the practice formerly at Athens, and is ſo at this day in England by means of the excellent mode of trial by juries which is there eſtabliſhed.

XIV. By means of this precaution the power of judging, (which is in its own nature ſo formidable to mankind,) not being annexed either to perſons of any particular rank, or order, in the ſtate, or to the members of any particular profeſſion

feſſion in it, becomes in a manner inviſible and, as it were, non-exiſtent: —the people have not before their eyes the conſtant and alarming view of perſons who are authorized, if they ſhould be charged with the commiſſion of any crimes, to ſit in judgement upon them; and ſo they become exempt from all fear of *particular men* on that account, and retain only a general dread of the magiſtracy itſelf in the abſtract, by which they may be brought to puniſhment.

XV. And in ſome caſes it is proper to take even further meaſures than this "of making the tribunals of juſtice occaſional," in order to abate the terrors which naturally follow the exerciſe of the judicial power. It is fit that in trials for offences of the higher claſſes, which are attended with the ſeverer puniſhments, ſo as to affect men's lives or limbs; — it is fit, I ſay, that in theſe trials the criminal himſelf ſhould have ſome ſhare, in conjunction with the law, in chuſing the judges by whom he is to be tried; or, at leaſt, that he ſhould be allowed to reject and ſet aſide at his pleaſure ſo many of thoſe perſons who ſhall be appointed by the officers of juſtice, according to the known directions

of

of the law, to be his judges, that he may be reaſonably conſidered as having given his conſent to the nomination of the remaining perſons who have been appointed for his judges and have not been rejected by him. And this is the caſe in England in all trials for treaſon or felony; the priſoner being allowed in theſe trials to reject or *challenge*, (as they expreſs it,) at his diſcretion and without aſſigning any reaſon, a great number of the perſons nominated by the ſheriffs to be members of the jury that is to try him,—in trials for high treaſon no leſs than 35 perſons.

XVI. The other two great political powers, the legiſlative and executive, might with much leſs danger to publick liberty, be veſted in a ſingle perſon or in a permanent body of magiſtrates, compoſed always of the ſame perſons; becauſe thoſe powers do not affect the condition of particular members of the ſtate; the firſt of them being the declaration of the general will, or reſolutions, of the community, and the latter the power of carrying ſuch general will, or reſolutions, into execution.

XVII. But,

XVII. But, though the tribunals of juſtice ought not to conſiſt of fixed and permanent bodies of men, the deciſions they make upon the perſons, or matters, brought before them ought to be as fixed and uniform as poſſible, ſo as to conſtitute a preciſe and clear body of known law. For, if they were to vary from each other, or different judges were in ſimilar caſes to make different determinations, according to their ſeveral different opinions concerning them, and without regard to the deciſions of their predeceſſors, the people would live in ſuch a ſociety without knowing with certainty the extent of the obligations and engagements they entered into, and the duties they were expected to perform.

XVIII. Another thing requiſite to ſoften the terrors of the judicial power is the rule (which is alſo obſerved in the trials by jury in England,) "that the judges, by whom a criminal is to be tried, ſhall be of the ſame claſs, or order of men, as the criminal himſelf, or (as they expreſs it in England,) ſhall be *his peers*." This rule is neceſſary to prevent the criminal, and at the ſame time all other perſons of the ſame rank

rank and condition as the criminal, from entertaining a ſuſpicion that he is fallen into the hands of perſons who are inclined, from the difference of their rank and condition in life, to treat him with unjuſt ſeverity.

Of the Security of Perſonal Liberty.

XIX. IF the legiſlative body in a ſtate was to entruſt with the executive magiſtrates a right of impriſoning men at their pleaſure upon ſuſpicion of ſome intended mal-practices, or even a power of detaining them in priſon upon a charge of a ſmall offence, or miſdemeanour, when the parties accuſed were able and willing to give reaſonable bail for their appearance to ſtand a trial for their offences, there would be an end of all liberty. But this obſervation muſt be confined to the leſſer crimes. For, if a man is charged upon oath, and arreſted, for a capital crime; it is no breach of liberty to refuſe to admit ſuch a perſon to bail, provided he be detained in priſon only for a ſhort time and then brought to his trial, without any unneceſſary delay, to anſwer the accuſation brought againſt him. In ſuch

ſuch a caſe the priſoner might juſtly be ſaid, though detained in priſon, to be ſtill a free man; ſince his detention in priſon would not be the effect of the mere will and pleaſure of another man, but of the directions of the law itſelf, in a perfect ſubmiſſion to which true liberty conſiſts.

XX. But, if the legiſlative body ſhould apprehend its own exiſtence to be in danger, either from ſome ſecret conſpiracy againſt the ſtate by domeſtic traitors, or from the intelligence, or other encouragement, given by ſuch wicked members of the ſtate to its foreign enemies; it would be reaſonable and prudent, in ſuch a caſe of extraordinary danger, for the legiſlative body of the nation to veſt in the executive magiſtrates, for ſome very ſhort and limited time, a power of cauſing ſuſpected perſons to be apprehended and detained in priſon, without being admitted to bail, at their diſcretion. For, though this, it muſt be owned, would be an invaſion of the publick liberty, it would be only a temporary invaſion of it, and would be ſufficiently compenſated to all true lovers of their country by the tendency it would have to prevent

vent the ſucceſs of thoſe wicked deſigns by which the publick liberty might otherwiſe be deſtroyed for ever. And this is the method taken by the Engliſh Parliament, when they ſometimes, in a great criſis of w[illegible] or rebellion, ſuſpend, for about ſix months, the operation of their famous *Habeas Corpus* act, which was paſſed in the 31ſt year of the reign of king Charles II. for the more effectual preſervation of perſonal liberty.

XXI. And this is the only reaſonable method by which the government of a ſtate can, upon great occaſions, ſupply the want of ſuch a tyrannical magiſtracy as that of the Ephori at Sparta, or that of the State-Inquiſitors at Venice, which is no leſs arbitrary than the other.

Of

Of the Legiſlative Power.

XXII. IN the next place it is neceſſary to inquire in what hands the legiſlative power ought to be placed, that the publick liberty may not be endangered by it. And here it ſeems natural to conceive that, in a free ſtate, every man who may be ſuppoſed to have a free mind, or a will of his own, and not to be dependant upon the will of another (as ſlaves are upon the will of their maſter,) ought to be governed according to his own will and conſent; and conſequently that, in order thereunto, the power of making laws ought to be exerciſed by the people themſelves aſſembled in a body for that purpoſe. But this, it is eaſy to ſee, is abſolutely impracticable in a large ſtate, ſuch as England or France, or the other great monarchies of Europe, on ac-

count of the prodigious numbers of people they contain, which are much too great to meet together in one place and tranſact any common buſineſs. And it has been found liable to very great inconveniences in leſſer ſtates, where it has not been impoſſible for them ſo to aſſemble. It ſeems neceſſary therefore that the people ſhould give up their claim of exerciſing this authority in their own perſons, and ſhould content themſelves with doing the ſame thing in a ſecondary and indirect manner by means of their choſen delegates or repreſentatives.

Of

Of the Election of Repreſentatives of the People.

XXIII. THE next thing therefore to be conſidered, is the manner in which theſe repreſentatives ought to be choſen.

Upon this ſubject it may be obſerved, that men are always better acquainted with the conditions and circumſtances of the towns or diſtricts they inhabit, and with the regulations neceſſary to be made concerning them for their further improvement or for the removal of any inconveniences they may labour under, than they are with the condition and circumſtances of other towns, and diſtricts, which are ſituated at a diſtance from them. They are alſo better able to judge of the character and qualifications of the gentlemen, or other perſons of note, who live in their neighbourhood, than of thoſe

of perſons who live at a diſtance from them. And from hence it ſeems reaſonable to conclude, that the members of the legiſlative body of the nation, who are choſen to that office by the people, ought not to be choſen at one grand election by the people aſſembled together in one body for that purpoſe, (if ſuch an aſſembly of them were poſſible,) nor even by the inhabitants of large diſtricts of the country aſſembled together for that purpoſe, but by the inhabitants of ſingle towns, or diſtricts of moderate extent, who ſhould meet together and chuſe a ſingle repreſentative.*

XXIV. The great advantage of veſting the legiſlative authority in the hands of a ſet of repreſentatives choſen by the people, ariſes from its being eaſily practicable for ſuch repreſenta-

* Upon the principle of this obſervation it would, perhaps, be an improvement in the manner of electing the Britiſh parliament, if the members were choſen for the moſt part by the freeholders of thoſe diviſions of the counties of England, called *hundreds*, each hundred ſending one member. Such a regulation would alſo be attended with the further advantages of preventing the tumults that ſometimes happen in elections for counties, and the ruinous expences of them when they are conteſted.

tives,

tives, (partly from the ſmallneſs of their number, compared with that of their conſtituents, the people at large, and partly from their ſuperiour abilities and education,) to diſcuſs and manage publick buſineſs;—which is what the people at large are, (from a variety of cauſes,) utterly incapable of doing. This incapacity is very much felt in pure democracies, where the people attempt to exerciſe the legiſlative power in their own perſons; and it is one of the greateſt inconveniences that are found to reſult from that too ſimple mode of government.

Of the powers of the repreſentatives of the people, when they have been elected.

XXV. It is not neceſſary that the people's repreſentatives, after they have received from their conſtituents a general power to act for them, and general directions concerning the conduct they are to purſue, ſhould receive their particular inſtructions upon every publick meaſure that is the ſubject of their deliberations, as is practiſed in the Diets of Germany. It muſt be owned, indeed, that, if this were done, the votes of the repreſentatives would be a more certain indication of the ſenſe of the whole nation, as they always ought, and are ſuppoſed, to be. But this advantage would be more than

counter-balanced by the inconveniences with which ſuch a method of proceeding would be attended: for it would be the occaſion of infinite delays, and would put it in the power of every individual repreſentative to ſtop the reſolutions of all the reſt, under pretence of waiting for inſtructions from his conſtituents; ſo that on the moſt preſſing emergencies it might happen that the exertion of the whole national force might be prevented by the caprice and obſtinacy of only one man.

XXVI. When the repreſentatives of the people, ſays Mr. Algernoon Sidney very truely, are choſen to repreſent the inhabitants of a whole ſeparate and independant province that is united with other provinces only by a confederacy, (as is the caſe with the ſeven united provinces of Holland,) they ought to give a particular account of every thing that occurs in their deliberations to their conſtituents, and take their inſtructions how to act upon the occaſion. But it is otherwiſe when they are deputed by the inhabitants of different towns, or ſmall diſtricts in the country, which are all parts of one and the ſame intire ſtate, as is the caſe in England.

Of

Of the Electors of the Repreſentatives of the People.

XXVII. IN order to extend the benefits of this free mode of government as far as poſſible, it is fit that all the inhabitants of the country ſhould have votes in the election of the repreſentatives of their reſpective diſtricts, except only ſuch of them as are in ſo very low and dependant a condition as not to be ſuppoſed to have a will of their own.

XXVIII. There was one very capital defect in the conſtitutions of moſt of the ancient republicks; which was, that the people exerciſed in their own perſons a right of taking active reſolutions, and which required an exertion of

No part of the executive authority of the ſtate ought ever to be exerciſed by the people at large:

executive authority. Now this is a branch of government for which the people are ſingularly unfit. They cannot, with propriety and ſafety to the ſtate, exerciſe any branch of government but that of electing their repreſentatives. But to *that* they are fully competent. For, though few men have opportunities of knowing others well enough to take an exact meaſure of their talents and qualifications for publick buſineſs, yet every man is able to diſtinguiſh in a general manner whether the perſon he is inclined to vote for as his repreſentative, is, or is not, a man of better abilities than the greater part of the other candidates for the ſame honour. And that is all the knowledge and ſkill that is required for the buſineſs of electing a proper repreſentative.

Nor even by the body of their repreſentatives.

XXIX. And it may further be obſerved, that, not only the people at large, but even the body of repreſentatives choſen by them, is unfit for the exerciſe of the executive authority of the ſtate. And therefore they ought not to be inveſted with it, but ſhould be authorized only to make laws, and to ſuper-intend the execution

cution of thoſe which are already in being by the magiſtrates who are appointed for that purpoſe. This is a duty which the repreſentative body is perfectly capable of performing, and which indeed cannot be performed effectually by any other perſons in the ſtate.

Of

Of the Nobility.

Expedience of creating a body of *nobles* with peculiar powers and privileges.

XXX. THERE are in every ſtate ſome perſons who are diſtinguiſhed from the reſt by a ſuperiority of birth, or riches, or honours. Theſe perſons it will be fit and prudent to entruſt with a greater ſhare of the publick authority of the ſtate than is allowed to the reſt of the people, who are ſo much their inferiours. For, if the privileges and powers beſtowed on them do not, in ſome meaſure, keep pace with the other advantages they enjoy, but they are placed upon a level with the reſt of the community in theſe reſpects, and allowed only a common vote in the election of repreſentatives, and a capacity, in common with others, of being themſelves elected to that office by the people, they will be apt to think themſelves hardly treated, and will conſider

conſider this plan of general liberty and equality as an unjuſt degradation of their dignity and an infringement of thoſe rights which they will eſteem to be natural appendages to the other advantages they poſſeſs. And they will not be intereſted in the preſervation of ſuch a form of government; becauſe they will, with reaſon, apprehend that many of the publick reſolutions that will be adopted under ſuch a conſtitution will be levelled againſt themſelves and the advantages by which they are diſtinguiſhed. In order therefore that they may be able to preſerve theſe advantages, it is proper that they ſhould be inveſted with a greater ſhare of the legiſlative authority than is allowed to the other members of the community: and, with this view, it will be convenient to permit them to form a diſtinct legiſlative body in the ſtate, with a power of rejecting, and rendering ineffectual, the reſolutions of the other legiſlative body above-mentioned, which is compoſed of repreſentatives choſen by the people; as the body of the people's repreſentatives ought in like manner to have ſuch *a negative*, or power of rejection, with reſpect to the reſolutions of their body.

The body of nobles ought to be inveſted with a part of the legiſlative authority of the ſtate.

XXXI. And

XXXI. And thus the legiſlative power of the ſtate will be veſted in two diſtinct bodies of men, namely, a body of nobles, and a body of the choſen deputies, or repreſentatives, of the people; which will have ſeparate places of meeting for the diſpatch of the publick buſineſs, and will alſo be influenced by different views and aims, and have, in ſome reſpects, different intereſts from each other, though equally concerned in the general welfare of the ſtate. And ſuch bodies are the two houſes of Lords and Commons that compoſe the Parliament of England.

XXXII. Of the three great powers, which we have mentioned above, as neceſſarily belonging to every civil ſociety, the judicial power is, by the arrangement above-deſcribed; removed ſo far out of ſight, and rendered ſo incapable of inſpiring the perſons in whom it is veſted with ambitious or dangerous deſigns, that it may almoſt be ſaid to be annihilated. For its exiſtence is only temporary and occaſional in the juries which are ſummoned, at ſtated times of the year, to try offenders againſt the laws, and which are compoſed, in part at leaſt, of different perſons at almoſt every

every different ſeſſion of the courts of juſtice, or occaſion on which they are ſummoned. Such uncertain and, if I may ſo ſay, unidentical tribunals can never be ſuppoſed to aſpire to a domination over their country-men, and therefore can never become objects of ſuſpicion or jealouſy to the other members of the community. There remain therefore only the two other great powers in the ſtate, the legiſlative and executive, which may be ſuppoſed to inſpire their poſſeſſors with deſigns againſt the common liberty. Now the poſſeſſors of theſe two powers, (who, we have before obſerved, ought to be perfectly diſtinct from each other,) may naturally be ſuppoſed to be ſometimes at variance with each other. And therefore it will be convenient that there ſhould be ſome perſon, or ſome body of men, in the ſtate, who may be able to mediate between them, and prevent them from making encroachments on the powers they, each reſpectively, poſſeſs. Now this is a province which the body of nobles above-mentioned, (to whom we have already aſſigned a diſtinct ſhare of the legiſlative authority,) will be ſingularly well qualified, and alſo naturally inclined, to undertake. And this will be an additional advantage.

Of the utility of the body of nobles in preſerving the balance of power between the executive magiſtrates and the body of the repreſentatives of the people.

advantage ariſing from the eſtabliſhment of ſuch a body of nobles with a diſtinct ſhare of the legiſlative power of the ſtate, or a negative upon the reſolutions of the aſſembly of the people's elected repreſentatives.

The privileges of the nobles ought to be hereditary.

XXXIII. This body of nobles ought to be hereditary, or their privileges ſhould be tranſmiſſible to their children in the ſame manner as their property is. This ſeems to be a natural conſequence of the eſtabliſhment of a body of nobility, or of the privileges allotted to them. For, ſince theſe privileges are allotted to them on account of their being more diſtinguiſhed by their birth, and poſſeſſed of greater riches, than the other members of the ſociety, there will be the very ſame reaſon for allowing thoſe privileges to their children, whoſe birth will be at leaſt equally honourable, and to whom their property will of courſe deſcend. For I muſt always be underſtood to be ſpeaking of countries in which the hereditary ſucceſſion of children to the lands and other property of their parents is, by the ancient and deep-rooted cuſtoms of of the people, univerſally eſtabliſhed. In theſe countries therefore, I ſay, the diſtinctions and privileges of the nobility, as well as the property which

which is the foundation of them, ought naturally to be deſcendible to their children.

And there is this further reaſon why they ſhould be ſo. Since it is uſeful (for the reaſons already mentioned,) that ſuch a body of nobles, with diſtinct powers and privileges, ſhould exiſt in the ſtate, it is, of conſequence, to be deſired that the ſaid nobles ſhould be ſo ſtrongly attached to theſe privileges as to be always ready to exert themſelves with ſpirit, and ſtruggle hard, for the preſervation of them. For otherwiſe theſe diſtinctions and privileges (which are naturally odious in a free ſtate, and apt to excite the envy of the other members of the community,) will be in continual danger of being loſt; becauſe the reſt of the people, being jealous of them, will be often endeavouring, as opportunities ſhall offer, to get them leſſened or aboliſhed. To counter-act, therefore, theſe endeavours of the people to deſtroy the privileges of the nobles, it will be neceſſary that the nobles themſelves ſhould be as eager and zealous on the other ſide in the defence of them: and this zeal and attachment to the diſtinctions and privileges they enjoy will evidently be much increaſed

creaſed by making thoſe privileges hereditary in their families, as well as the riches which are the cauſe and ground of them.

There are ſome particular laws, ſuch as thoſe for raiſing money on the people, which ought not to take their riſe in the aſſembly of the nobility, but only to be conſented to, or rejected, by them.

XXXIV. But, as a body of hereditary nobles, that are inveſted with a diſtinct ſhare of the legiſlative authority of the ſtate in the manner above ſuppoſed, might be tempted, in the uſe of that authority, to attend too much to their own particular intereſts, and to neglect thoſe of the people, it would be neceſſary to reſtrain them in the uſe of this legiſlative authority, as to the *manner* only in which they ſhould uſe it, with reſpect to ſome of the more important acts of legiſlation, in the procurement of which the executive magiſtrates would be deeply intereſted, and would therefore be likely to endeavour to obtain the conſent of the legiſlature to their eſtabliſhment by bribery or ſome other kind of corruption. Such, in a more eſpecial manner, are the laws which are paſſed for raiſing money upon the people. In theſe and, perhaps, ſome other very important acts of legiſlation, the body of the nobles ought not to be permitted to take the lead, but only to conſent to, or reject,

reject, the propoſitions that are ſent to them from the other branch of the legiſlature, which conſiſts of the people's repreſentatives: or, in other words, they ought not to exerciſe their *enactive power*, but only that which we may call their *right of negation*.

XXXV. By the words *enactive power* I underſtand a right of poſitively ordaining, or eſtabliſhing, any thing by one's own authority and of one's own accord and free motion, or of altering, or amending, that which has been ſo ordained, or eſtabliſhed, by another. And by *the right of negation* I underſtand the right of annulling, or making void, a reſolution taken by another: which was the right that belonged to the tribunes of antient Rome. And, though it may ſeem at firſt ſight that he who has the power of rejecting a reſolution made by another muſt neceſſarily have likewiſe a right of approving it, yet, if we conſider the matter carefully, we ſhall find that an approbation ſo given is nothing more than a declaration made by the giver of it that he does not on that occaſion chuſe to make uſe of his *right of rejection, or negation*, with re-

ſpect to the matter in queſtion, from which it is evident that ſuch approbation is derived from, and grounded on, the ſaid *right of rejection, or negation*, inſtead of being the effect of an original and poſitive right of approbation.

Of

Of the Executive Power.

XXXVI. THE executive power ought to be veſted in a king: becauſe this branch of civil authority, which there is almoſt always a neceſſity of exerting on a ſudden and without deliberation, can be exerciſed with more convenience, and more efficaciouſly, by one perſon than by ſeveral. The reverſe of this takes place in matters of legiſlation: for they are of a nature to be managed with more ability and ſucceſs by the joint deliberations of ſeveral perſons than by the will of only one man.

This power ought to be veſted in a king.

XXXVII. And, if, inſtead of veſting the executive power in a king, the nation were to place it in the hands of an executive council

Inconvenience of veſting it in a body of men, or an executive council.

conſiſting of perſons taken out of the legiſlative body of the ſtate, they would thereby deſtroy the general liberty; becauſe the two great powers of government, the executive and the legiſlative, would then be united in the ſame hands, as the ſame individuals would ſometimes actually be, and always be capable of becoming, members of both the legiſlative and executive bodies of the ſtate.

The legiſlative body of the ſtate ought to be frequently aſſembled.

XXXVIII. If the legiſlative body of the ſtate was to continue for any conſiderable length of time without aſſembling for the purpoſes of its eſtabliſhment, there would be an end of the publick liberty. For, if ſuch a ſuſpenſion, or intermiſſion, of the exerciſe of this neceſſary authority by the body of men in which it was legally veſted, were to take place, the conſequence of it would be one of theſe two fatal events: either the legiſlative authority would not be exerciſed at all, and no new laws, or regulations, would be made, notwithſtanding the publick exigencies which might require them; which would be a ſtate of anarchy; or theſe neceſſary laws, or regulations, would be made by the executive magiſtrate:

giſtrate: and in that caſe the executive magiſtrate would become the abſolute ſovereign of the ſtate. The latter of theſe events took place, in a great degree, in England in the former part of the reign of king Charles I. when, after diſſolving his third parliament in the year 1629, he forbore to call another till April, 1640, and governed the nation in the mean while by his royal edicts and proclamations, to which he gave the force of laws, even ſo far as to raiſe money upon his people by virtue of them, which is the higheſt and moſt difficult exertion of the legiſlative authority.

Yet it ought not to continue always aſſembled without any intermiſſion.

XXXIX. On the other hand it would not be of advantage to the publick that the aſſemblies of the legiſlative body ſhould never be intermitted. Such a continual attendance would be inconvenient to the people's repreſentatives by taking them too much from the care of their private concerns: and it would alſo too much engroſs the attention of the executive magiſtrate, who would be apt to neglect the important duties of his own department, in order to watch the motions of the legiſlative body, and defend his own pre-

rogatives, and his right of exerciſing the executive authority, againſt its encroachments.

XL. And farther, if the legiſlative body was to continue always aſſembled, there would be ſome danger of its becoming a permanent council, whoſe members, when once choſen, would keep their ſeats for life, without any further dependance on the people at large, and that there would be no more elections of new members except upon the vacancies cauſed by the death of the old ones. And if this were to be the caſe, and the legiſlative body ſhould once grow corrupt, ſo as to purſue a private intereſt of its own diſtinct from that of their conſtituents, the miſchief would be abſolutely incurable. When the whole legiſlative body is elected anew from time to time, and the period of its continuance is not very long, the people, if they diſlike the proceedings of one ſuch body, may reaſonably hope for a different line of conduct from the next, and, in that hope, may bear their preſent hardſhips with patience: but, if the very ſame body of men was always to continue in poſſeſſion of the legiſlative authority, and their temper and meaſures

And it ought to be elected anew by the people from time to time, and with only moderate intervals of continuance.

meaſures were once to become corrupt, or unfriendly to the intereſts of the people*, the people could never entertain any hope that they would change them; and, in conſequence of this gloomy ſituation, they would either break out into violence to procure redreſs, or ſink into a ſtate of indolent ſubmiſſion, and loſe all ſenſe of liberty and publick intereſt.

The power of *convening* the legiſlative body ought to be veſted in the king.

XLI. The legiſlative body ought not, when choſen, to meet of its own accord. This is a conſequence of its being a political body, it being the nature of ſuch bodies to act only in a joint manner when they are legally aſſembled for that purpoſe. They cannot therefore expreſs their reſolution to be aſſembled before they actually are aſſembled. And, if they could be ſuppoſed to have a right to aſſemble of their own accord, it might be attended with great inconvenience and confuſion. For, let us ſuppoſe that ſome of the members of this

* This inconvenience was complained of in England with reſpect to the ſecond parliament of king Charles the II. called the *Penſioner Parliament*, which was called in the year 1661, and continued in being till the year 1679.

body, and even a conſiderable number of them, but leſs than a majority of the whole body, were to aſſemble at any time in this manner, or of their own accord: could this aſſembly be conſidered as the whole legiſlative body, or as legally poſſeſſed of the powers of the whole body, while the greater part of it choſe to ſtay away? certainly it could not. And even if the members ſo met were a majority of the whole body, they ought not to be ſo conſidered, unleſs there were ſome known and eſtabliſhed, legal, method of informing the other members, that ſuch a meeting was intended to be held, and that they were deſired to be preſent at it; that is, unleſs there were ſome method appointed by the law, or by ſomething elſe than the preſent inclinations of the individual members of the body, to procure ſuch an aſſembly of it. Without ſuch a proviſion it muſt be perfectly uncertain whether the part of the legiſlative body *that was* aſſembled, or the other *that was not*, ought to be conſidered as being legally veſted with the powers of the whole body, or rather it might be juſtly concluded that neither of them was ſo.

This

This obſervation, however, relates only to the firſt meeting of the members of the legiſlative body, but does not extend to their ſubſequent meetings. For theſe might well enough be determined by their own reſolutions at the cloſe of their firſt and every following meeting without either the abſurdity or the inconvenience above-mentioned; or, in the language uſually employed in ſpeaking of the Engliſh parliament, the power of *proroguing* the legiſlative body from one time of meeting to another might be exerciſed by themſelves. But, if they had this power of proroguing themſelves, it would be attended with another very great and dangerous inconvenience. For it might happen that they would not chuſe to prorogue themſelves at all, but would continue their meetings without any intermiſſion, which would increaſe their importance in the eyes of the people, and give them an opportunity, if they entertained ſuch a deſign, of encroaching on the prerogatives of the executive magiſtrate. An example of this danger has been ſeen in the hiſtory of England, when king Charles the 1ſt conſented to make the parliament that had met

The power of *proroguing* the legiſlative body, after it has been convened, ought alſo to be veſted in the king.

met on the 3d of November, 1640, incapable of being diſſolved, or prorogued, without their own conſent. They from that moment were continually making thoſe freſh demands and encroachments on the royal authority, which, in little more than a year's time, brought on the great civil war between the king and the parliament.

And, beſides this great danger that might ariſe to the prerogatives of the crown from ſuch a power in the legiſlative aſſembly of appointing their own times of meeting, there is another inconvenience that might reſult from it. There are ſome times and ſeaſons which are much more convenient than others for the quiet and ſober buſineſs of legiſlation;—when neither domeſtick diſcontents and diſſenſions have too much inflamed the minds of the people, nor the neceſſary preparations againſt the attempts of foreign enemies have too much engaged their attention and concern to leave them at liberty to deliberate concerning the improvement of the laws. And of theſe times and ſeaſons the executive magiſtrate, from the intimate and exact knowledge

of

of all the circumstances of the state with which the exercise of the executive authority must necessarily furnish him, is a better judge than the legislative body. It is therefore proper that the executive magistrate, or king, should be entrusted with the power both of appointing the meetings of the legislative body, and of determining how long they shall continue, or, in other words, *of both convening and proroguing* it.

Of the Negative of the King or Executive Magiſtrate.

The king ought to have *a negative* on the reſolutions of the legiſlative body.

XLII. THE executive magiſtrate ought to have a negative on the reſolutions of the legiſlative body. For, if he has not, the authority of that body will be abſolute: becauſe, if they are thus inveſted with the whole power of making laws, they may make a law that ſhall aboliſh all the other magiſtracies in the ſtate, and veſt their ſeveral authorities in themſelves; which, according to what has been already obſerved, would be attended with the immediate ruin of publick liberty.

XLIII. But, though it is neceſſary that the king, or executive magiſtrate, ſhould have a negative

negative on the reſolutions of the legiſlative body, it is by no means true on the other hand that the legiſlative body ought in like manner to have a negative on the acts of the executive magiſtrate. For the legiſlative and executive powers are eſſentially different from each other in that very circumſtance that makes it neceſſary to give the poſſeſſors of the latter a negative upon thoſe who are entruſted with the former. For the legiſlative power is in its nature abſolute and unlimited, and thoſe who poſſeſs the whole of it may make what changes they think proper in the conſtitution of the government, whenever they pleaſe, and thence ariſes the neceſſity of diſtributing it into different hands, and particularly of allotting one ſhare of it to the executive magiſtrate. But the executive power is naturally limited in its extent; as it can only be employed in executing thoſe laws which have been enacted by the legiſlative authority, and in conducting thoſe departments of the government which the legiſlative authority has committed to the care and management of the executive magiſtrate. Beyond this it cannot proceed a ſtep without a manifeſt breach of the

But the legiſlative body ought not to have a negative on the reſolutions taken by the king as executive magiſtrate.

the conſtitution. And conſequently there is no neceſſity that it ſhould be further limited and ſhackled, in every particular exertion of it, by an application to the legiſlative body for their concurrence. And further, if it was to be ſo limited, it would thereby be rendered incapable of performing the acts of government which properly belong to it, which are for the moſt part neceſſary to be done with ſpirit and diſpatch upon the ſudden emergences that call for them. And therefore it muſt be left free to exert itſelf without any interruption from the legiſlative branches of the government.

A remark on the too great power of the tribunes of the people in antient Rome.

And here we may take occaſion to obſerve that the powers veſted in the tribunes of the people in the Roman commonwealth were therefore too extenſive, becauſe they not only enabled thoſe magiſtrates to prevent the paſſing of new laws which they might think pernicious, but likewiſe to controul the acts of executive power attempted by the other magiſtrates and by the ſenate; by doing which they often brought the ſtate into a very dangerous ſituation.

XLIV. But

XLIV. But, though in a free ſtate it is not fit that the legiſlative body ſhould have a right to impede the executive magiſtrate in the exerciſe of his lawful authority, it is fit they ſhould have a right to review and inquire into the manner in which that authority has been exerciſed, and whether the laws which they have enacted have been faithfully put in execution, and, if they have not, to cenſure and puniſh the perſons who ſhall appear to have been deficient in their duty with reſpect to them. This is a right which has often been aſſerted and exerciſed with good effect by the Engliſh parliament; inſomuch that the Houſe of Commons has frequently, from the exerciſe of it, been ſtiled *the Grand Inqueſt* of the nation. And in this reſpect the Engliſh form of government has greatly the advantage of the antient governments of Crete and Lacedæmon, in which the executive magiſtrates called *Coſmi* and *Ephori* were not liable to be called to account for the wrong things they had done in their adminiſtration.

But the legiſlative body ought to have a right of inquiring into, and puniſhing, abuſes in the exerciſe of the executive power.

XLV. But, though the legiſlative body of the ſtate ought thus to be inveſted with a power

power of examining the conduct of the executive officers of government, and of puniſhing the abuſes of authority which thoſe officers ſhall be found to have been guilty of, yet this muſt be underſtood to relate only to the inferiour officers of that branch of the government, and not to extend to the king, or ſupream executive magiſtrate himſelf. His *perſon* muſt be conſidered as ſacred and placed above the reach of all puniſhment or coercion; and conſequently his *conduct* muſt be ſo too. This exemption (which at firſt ſight may appear to be unjuſt,) is neceſſary to the preſervation of the conſtitution. For, as the exiſtence of an executive magiſtrate, that is not dependant on the legiſlative body, has been ſhewn to be eſſential to the eſtabliſhment of publick liberty,—that the legiſlative body may not become all-powerful in the ſtate, and, in conſequence, oppreſſive,—it is evident that from the moment the king, or ſupream executive magiſtrate, was either condemned, or called to anſwer for his miſconduct before the legiſlative aſſembly, (if ſuch a proceeding were allowed,) there would be an end of all check and controul upon the latter, and conſequently of all publick liberty.

But with an exception of the conduct and perſon of the king himſelf, which muſt be conſidered as *ſacred*, or not liable to cenſure or puniſhment.

XLVI.

XLVI. If ſuch a proceeding were to be authorized by the laws of any ſtate, ſuch a ſtate would not really be *a monarchy*, by whatever name the ſupream executive magiſtrate of it might be called: but it would be a republick without liberty; ſuch as are ſome of the modern commonwealths of Italy, as we have already obſerved in the former part of this diſcourſe. Yet, notwithſtanding this neceſſary *ſacredneſs of the royal perſon*, it muſt not be imagined that the people would be abſolutely unable to procure redreſs for the injuries they had ſuffered from the abuſes of the executive authority. There are other, and fitter, victims that may be ſacrificed to their reſentment. When a king abuſes his power, he has always ſome accomplices in his miſgovernment, who either adviſe or execute the wrong meaſures he purſues. Theſe men are the proper objects againſt whom the people ſhould direct their vengeance by means of their repreſentatives in the legiſlative body; and there is no maxim of government that requires that the perſons of ſuch offenders ſhould be exempt from puniſhment. And this is more eſpecially true of thoſe wicked

The miniſters of ſtate, or other perſons, who have aſſiſted the king in any breaches of the laws, or other pernicious meaſures, are the proper objects of the reſentment of the legiſlative body.

men who *adviſe* the evil meaſures of government, and, preferring the temporary, but ſplendid, advantages which they enjoy from the king's favour as miniſters of ſtate, to the more durable privileges which belong to them, as members of a free government, in common with their fellow-ſubjects, puſh on their ſovereign to overleap the bounds of the conſtitution and encroach upon the publick liberty. And in this reſpect the Engliſh government has the advantage of that which was formerly eſtabliſhed in the iſland of Cnidus.

A remark on the ancient government of the iſland of Cnidus, with reſpect to the miſconduct of the executive magiſtrates.

In that government the people choſe every year certain magiſtrates to govern them, who were known by the name of *Amymones:* but the law forbad them to call theſe magiſtrates to account for their conduct in their magiſtracies, even after their time of office was expired. The conſequence was, that the conduct of theſe magiſtrates, while in office, was often in the higheſt degree licentious and unjuſt; and yet the people could never obtain any redreſs for the injuries they had received from them. See upon this ſubject Stephen of Byzantium.

The

The government of Rome was more reasonable in this respect. For there it was allowable to call a magistrate to an account for his misconduct, after the time of his magistracy was expired. See the account of the affair of Genucius, the tribune of the people, in Dionysius of Halicarnassus, book 9.

Of the Roman government in that respect

Of the Judicial Authority veſted in the Body of Nobles.

here are ree caſes in hich it is fit at a judicial thority ould be veſt- in the body nobles.

XLVII. ALTHOUGH it be true in general that the judicial power ought not to be veſted in either of two bodies that poſſeſs the legiſlative authority, yet there are three exceptions to be made to that maxim; two of which are grounded on the dignity, and other peculiar circumſtances, of the perſon who is accuſed as a criminal and brought to trial.

the firſt ce, they ould have a minal juriſdiction to offences mmitted by mbers of ir own bo-

XLVIII. Men of ſuperiour rank and fortune in a ſtate are naturally the objects of envy to their inferiours; in conſequence of which, if, when they are accuſed of crimes, they were to be brought to trial for them before judges of a much inferiour condition, they would be more

more in danger of being found guilty of the crimes charged upon them than if their rank had been leſs diſtinguiſhed; and they would not enjoy the privilege, which, in a free government, is allowed to the meaneſt of the people, of being tried by their peers. To avoid therefore this injuſtice, it is proper that, when a nobleman commits a crime, he ſhould not be tried by the ordinary tribunals of the nation, or by juries of men who are not noble, but by that part of the legiſlative body of the nation which is compoſed of nobles. This is the firſt exception to the general maxim above-mentioned, "that the judicial authority ought not to be united with the legiſlative."

Secondly, they ought to be a court of appeal in civil matters from the deciſions of the ordinary courts of law.

XLIX. In the ſecond place, it will ſometimes happen that the letter of the law, (which may be ſaid to be at the ſame time both clear-ſighted and blind,) is too ſtrict and harſh in its deciſions, ſo that every body ſhall wiſh that in thoſe particular caſes it could be relaxed. But this cannot be done by the judges of the nation. For they, being (as we have already obſerved,) only the mouths that pronounce the words, or deciſions, of the law,

(like mere inanimate inſtruments, or conduit-pipes, through which it paſſes,) have no power to relax or modify it. And hence ariſes a kind of neceſſity for veſting this power in other hands. And no body of men in the ſtate ſeems ſo fit to be truſted with it as that part of the legiſlative body of the nation which is compoſed of the nobles, and which we have juſt now ſeen to be a neceſſary tribunal of juſtice for another purpoſe. They will be better qualified than any other ſet of men in the nation, to exerciſe this uſeful, but delicate, branch of judicial power, of relaxing the law in favour of the law itſelf, or departing with caution from *the letter* of it in order the more fully to preſerve *its ſpirit*.

Thirdly, they ought to have a criminal juriſdiction to puniſh ſtate offenders, upon accuſations, or impeachments brought by the other legiſlative body conſiſting of the people's repreſentatives, even though ſuch offenders ſhould not be members of the body of nobles.

L. And, in the third place, it may happen that ſome eminent ſubject in the ſtate who ſhall have been employed by the king in the management of publick affairs, ſhall have made breaches on the publick liberty or other rights of the people, and committed crimes of a dangerous and uncommon nature, which the ordinary courts of juſtice eſtabliſhed in the nation ſhall not know how, or not dare, to take

take cognizance of. In this caſe therefore, as well as in the two former, we muſt have recourſe to the legiſlative body of the nation. And here it will be proper to employ both parts of that body for this important purpoſe; but in diſtinct capacities. The body of elected deputies of the people ought not to be employed as judges on this occaſion, becauſe they are the repreſentatives of the people, who are the parties injured and the plaintiffs in the ſuit; and juſtice will not permit the ſame perſons to be both parties and judges. They muſt therefore act only as accuſers. And the other branch of the legiſlature, which is compoſed of nobles, muſt be the judges on theſe occaſions. This will be neceſſary for theſe two reaſons. For, in the firſt place, it would be below the dignity of the great legiſlative body, which is compoſed of the repreſentatives of the people, to appear as plaintiffs in the ordinary courts of juſtice, and bring their important accuſations to be heard and determined by a few jurymen. And, ſecondly, ſuch a tribunal, if it were inveſted with this power, being compoſed of perſons who, as well as the houſe of repreſentatives, are choſen

The reaſons of this proviſion.

out of the body of the people, would be apt to entertain the ſame popular prejudices and diſguſts againſt the accuſed perſon as the ſaid repreſentatives do, who are his accuſers; and even, if, upon hearing the evidence, they ſhould be inclined to think him innocent, they would hardly dare to give a verdict in his favour in oppoſition to ſo powerful a body of accuſers. For both theſe reaſons therefore, to preſerve the dignity of the people, and to ſecure a fair trial to the perſon accuſed, it is neceſſary that, on theſe occaſions of offences committed againſt the ſtate, the legiſlative body that is compoſed of the repreſentatives of the people ſhould bring their accuſation before the other legiſlative body, which is compoſed of nobles, who have neither the ſame intereſts to byaſs them, nor the ſame paſſions to miſlead them.

LI. This is an advantage which the Engliſh government has over moſt of the antient common-wealths, which were liable to this great abuſe, "that the body of the people acted both as accuſers and judges."

Of

Of the Manner in which the King, or Executive Magiſtrate, ought to take a Part in the Exerciſe of the Legiſlative Authority.

LII. THE executive magiſtrate ought, as we have already obſerved, to take a part in the framing of new laws by virtue of what we have called above his power of rejection or negation, or, as it is called in Engliſh writers, his *royal negative*; without which prerogative he would be in danger of being ſoon deprived, by the legiſlative body of the nation, of all his other prerogatives. But the legiſlative body muſt not in like manner take a part in the exerciſe of the executive power: for, if it did, the independence and free agency of the executive magiſtrate would be thereby deſtroyed, and, with them, his activity and utility to the publick.

The king ought only to aſſent to, or reject, the laws propoſed to him by the legiſlative body, without making any alterations in them.

LIII. If

Inconveniences that would arise from a contrary way of proceeding in this matter.

LIII. If the king were to take a more active part in the framing of new laws than that of merely aſſenting to them, when prepared by the legiſlative body, without making any alteration in them, there would be an end of publick liberty. For, if he were either to propoſe the laws themſelves at firſt to the legiſlative body, or to make alterations or amendments in them, when they had been firſt prepared by that body, his great dignity and authority would over-awe the legiſlative body, and induce them to give their aſſent to the laws, or alterations, ſo recommended, even though they ſhould not really approve them: and thus the legiſlative authority would come to be united *in fact*, though not *in form*, with the executive power, or to be veſted, ſubſtantially, in the crown; which we obſerved in the beginning of this diſcourſe to be incompatible with publick liberty. Yet it is neceſſary that the king ſhould take ſome part in the framing of new laws, in order to defend his prerogatives againſt the encroachments of the legiſlative body. And therefore it is proper that he ſhould act in that matter by means of his *royal negative*, or by ſimply, either

either rejecting, or aſſenting to, the laws which are propoſed to him.

LIV. In antient Rome the executive power of the ſtate was lodged partly in the ſenate and partly in the conſuls and other magiſtrates. But neither the ſenate nor thoſe magiſtrates had a negative on the legiſlative reſolutions of the people, though the people had ſuch a negative on the reſolutions of the ſenate. This was a fatal defect in that government, and was the cauſe of its final ruin. The people's power of legiſlation, being under no controul from the ſenate, came at laſt to be ſo outrageouſly abuſed that it produced thoſe violent commotions which brought on the civil wars, and ended in the eſtabliſhment of a military and abſolute monarchy in the perſon, firſt of Julius Cæſar and afterwards of Octavius, or Auguſtus, and the ſucceeding Roman emperors.

The want of a right in the executive magiſtrates at Rome to put a negative on the legiſlative reſolutions of the people was productive of great evils in that commonwealth, and, at laſt, of its total ruin.

LV. This therefore is the fundamental conſtitution of the government of which we are ſpeaking. The legiſlative power being lodged in two ſeparate bodies of men, each of

A ſummary view of the manner in which the legiſlative authority of the ſtate is to be exerciſed in the Engliſh government.

of theſe bodies will be a check upon the other by its right of rejecting and annulling the other's reſolutions; and both, when they agree with each other, will be controuled by the negative of the executive magiſtrate, as the executive magiſtrate will, in his legiſlative capacity, be controuled by the legiſlative body.

An objection that may, perhaps, be made to ſuch a diſtribution of the legiſlative authority.

LVI. As theſe three powers will mutually counter-act and balance each other, it may be thought, perhaps, that they will produce a ſtate of reſt, or inaction, in the political ſociety that is governed by them; juſt as, in the doctrine of the mechanical powers, it is found that three weights, that draw a body in three different directions, will, if they are properly proportioned to each other, exactly defeat each other's operation, and preſerve the body in a ſtate of reſt. And in both inſtances this will really happen, ſo far as relates to any *relative* motion in the direction of any one of the three powers or weights: no motion will be produced in ſuch a direction. But it is poſſible in both caſes that the whole ſyſtem may be carried forwards by a motion common to all its parts, occaſioned by ſome external force.

The anſwer to the ſaid objection.

And

And this will really happen in the caſe of our threefold political ſociety from the neceſſity which the natural courſe of things will impoſe upon its conſtituent parts to make *ſome* motions, or adopt *ſome* publick meaſures. Such motions will be made, or ſuch publick meaſures adopted, with the joint conſent and concurrence of all the three parts, and without any change in their mutual relations to, and dependance on, each other.

The king, or executive magiſtrate, ought not to take any ſhare in the debates of either of the legiſlative bodies concerning any new laws.

LVII. As the executive magiſtrate, in this government, takes no part in the buſineſs of making new laws any other way than by the uſe of his negative, or power of rejecting, or aſſenting to, them, he cannot with propriety take any ſhare in the debates of the other branches of the legiſlature concerning them. And it is not even neceſſary that he ſhould ever propoſe any new laws to thoſe other branches of the legiſlature. It is ſufficient that he has the power of rejecting, or diſallowing, the reſolutions taken by thoſe other branches, when he diſapproves them and wiſhes they had not been taken.

LVIII. In

Difference of England in this reſpect from ſome of the commonwealths of antiquity.

LVIII. In ſome of the commonwealths of antiquity, in which the people did not chuſe a body of repreſentatives to exerciſe the legiſlative power for them, but exerciſed that power themſelves in a body, it was neceſſary that the executive magiſtrates ſhould have a right of propoſing the matters that were to be the ſubjects of their diſcuſſion, and of debating them with the people; as, from the great numbers of men that were aſſembled on thoſe occaſions, and the extreme unfitneſs of much the greater part of them for the diſcuſſion of publick affairs, there would otherwiſe have ariſen a dreadful degree of confuſion in their proceedings every time they had met. But this neceſſity can have no place in a government, like that of England, in which the people have delegated their power of legiſlation to a body of repreſentatives.

Of

Of the Laws made for impoſing Taxes on the People.

LIX. IF the executive magiſtrate were to take an active part in the impoſition of taxes on the people, or to do any thing more in that buſineſs than ſimply to give his aſſent to ſuch laws as are made for that purpoſe by the people's repreſentatives, there would be an end of publick liberty; becauſe the executive magiſtrate would thereby become poſſeſſed of the legiſlative authority of the ſtate in that which is the moſt important branch of that authority. The encroachments therefore of the executive magiſtrate in this particular ought to be guarded againſt by all lovers of publick liberty with a ſingular degree of jealouſy.

It is more eſpecially improper that the king, or executive magiſtrate, ſhould take an active part in the framing of any laws that are made for the impoſition of taxes.

LX. If

And the taxes raiſed by the legiſlative body for the ſupport of government, ought to be raiſed only from year to year.

LX. If the legiſlative body of the ſtate was to provide the neceſſary taxes for the ſupport of government once for all by a perpetual law, inſtead of doing ſo by new acts every year, they would be in great danger of loſing their ſhare of authority in the government, and of thereby ruining publick liberty. For they would thereby make the executive magiſtrate independant of them with reſpect to this very important article: and, when the executive magiſtrate once found himſelf permanently poſſeſſed of this great power of levying money on the people during his life, he would be pretty indifferent about the manner in which he had acquired it, and would be little reſtrained in his attempts to gain ſtill more authority by the reflection that this great power had not been originally inherent in him, but had been conferred upon him by the legiſlative body of the nation. The legiſlative body of the nation ought therefore to be cautious not to grant to the Crown the revenue requiſite for the ſupport of government for any longer time than one year, leſt they reduce themſelves to contempt and inſignificance.

LXI. The

LXI. The ſame obſervation may be made concerning the military forces by ſea and land, with which the legiſlative body of the nation entruſts the executive magiſtrate. Theſe ought, in point of prudence, to be eſtabliſhed only from year to year, leſt the executive magiſtrate ſhould become independant of the other branches of the legiſlature.

And the military forces of the ſtate, both by ſea and land, ought in like manner to be raiſed only from year to year.

LXII. And other precautions are neceſſary to be taken againſt the dangers ariſing from the eſtabliſhment of an army; which will otherwiſe prove a ready and powerful inſtrument in the hands of the executive magiſtrate to oppreſs the people withall and deſtroy the publick liberty. To prevent theſe dangers it is neceſſary that the armies which are committed to the government of the executive magiſtrate ſhould entertain the ſame ſentiments, and be actuated by the ſame ſpirit, as the reſt of the people; as was the caſe at Rome till the time of Marius. And to effect this important purpoſe there are only theſe two methods to be taken; either, in the firſt place, to compoſe the army, ſoldiers as well as officers, intirely of perſons who have ſuch

Other precautions neceſſary to be taken againſt the dangers ariſing from an army.

a quantity of property in the country as may place them above the temptation of ſetting up a ſeparate intereſt of their own, diſtinct from that of their fellow-ſubjects, and may make them zealous for the preſervation of the laws and liberties of their country, by which alone their property can be effectually ſecured; and to eſtabliſh even ſuch an army only from year to year, ſo that they may never be induced to conſider themſelves as a permanent body, independant of the civil authority of the ſtate; which was a precaution long obſerved at Rome, where the ſoldiers were inliſted only for a year: —or, in the ſecond place, if the ſoldiers are inliſted for an indefinite time of ſervice, and are men of little or no property, taken from the loweſt claſs of the people, it will be neceſſary to reſerve to the legiſlative body of the ſtate a power of diſbanding the army whenever it thinks fit; and it will likewiſe be neceſſary to take care that the ſoldiers ſhall always, except in time of actual ſervice, be quartered among the other ſubjects of the ſtate, ſo as to live in the ſame manner as they do, and to form alliances and other connections with them, and to contract, as far as poſſible, the ſame habits and ways of thinking.

ing as they are governed by: in order to which they ought never to be encamped in time of peace, nor ſtationed in barracks or in fortified towns.

LXIII. Theſe precautions are neceſſary to prevent, or leſſen, the prodigious dangers to publick liberty which ariſe from the eſtabliſhment of an army: which are indeed ſo great that one would be tempted to wiſh that an army ſhould never be eſtabliſhed. But it will ſometimes happen that the publick exigencies make it neceſſary to run this riſk, and venture upon the eſtabliſhment of an army. Now, when this unhappy neceſſity ariſes, and the army is once raiſed, it muſt not be governed by the orders of the legiſlative body of the ſtate, but by the executive magiſtrate. This ariſes from the very nature of an army, as its uſe and excellence depend chiefly on the vigour of the counſels by which it is governed, which requires ſpeed more than deliberation, and therefore can better be exerted by the executive magiſtrate than by a numerous aſſembly of men, ſuch as the legiſlative body of the ſtate.

When an army is raiſed, it muſt be governed ſolely by the king, or executive magiſtrate.

LXIV. But there is another and a ſtronger reaſon to be given for this manner of diſpoſing

Otherwiſe there will be reaſon to fear that the army will uſurp the whole power of the ſtate.

of the command of the army; which is, that it is the only means of preventing the government from becoming wholly military, or the army from aſſuming to themſelves the whole power of the ſtate. This is a conſequence that, without ſuch a precaution, would neceſſarily follow from a way of thinking that is natural to the generality of mankind. They have commonly more reſpect for qualities of an active kind, ſuch as courage, a ſpirit of enterprize, and bodily ſtrength, than for thoſe of a contrary nature, ſuch as caution, prudence, and wiſdom in deliberation. The ſoldiers of the army, therefore, under the influence of this general way of thinking, will reſpect their own officers, who may be ſuppoſed, for the moſt part, to poſſeſs the former qualities, more than they will a ſenate, or aſſembly of civil magiſtrates, who excel only in the latter. Nay, they will probably deſpiſe ſuch an aſſembly, as being compoſed of a parcel of helpleſs, timorous, old men, unworthy to command them, and will conſequently neglect and diſobey any orders they ſhall receive from them, and regard only thoſe they ſhall receive from their own officers. And thus by veſting the command of the army immediately and ſolely in the legiſlative

lative body of the ſtate, the very contrary effect to that which would have been intended by ſuch a regulation, would be produced; the liberties of the nation, inſtead of being preſerved, would be inſtantly loſt, and the army would become the abſolute maſters of the ſtate.

LXV. It is true indeed that there have been ſome common-wealths in the world in which this event has not taken place in conſequence of the cauſe above-mentioned, but the army of the ſtate has continued to pay obedience to the orders of its legiſlative aſſembly. But wherever this has been the caſe, it has been the effect of ſome very extraordinary and peculiar circumſtances which have prevented the other and more natural event. In ſome of theſe inſtances the governing ſenate, or council of the common-wealth, has taken care to keep the different bodies of which the army has been compoſed, quite ſeparate from each other, without any convenient opportunities of conferring or communicating with each other; by which means it has become difficult for them to unite in a common cauſe againſt their employers: and, further, the ſeveral bodies of which it has been compoſed, have been

Some exceptions may be found to the laſt obſervation concerning the danger of the army's uſurping the whole power of the ſtate.

Peculiar circumſtances, by which ſuch exceptions may be accounted for.

been raiſed in different provinces, and have been made dependant on, or ſubject to, the civil powers of the ſeveral different provinces to which they reſpectively belonged; by which means the men who have compoſed theſe different bodies have had as little original acquaintance with each other as poſſible, and have been under leſs temptation to aſſociate together and engage in any common deſign than if they had been connected together by a long and familiar intercourſe and a ſubjection to the ſame governing body: and, laſtly, theſe commonwealths have been poſſeſſed of capital cities whoſe ſituations have been ſo advantageous and ſtrong by nature that there has been no danger of their being ſurprized by a ſudden attempt of an enemy, and conſequently no neceſſity to admit garriſons into them for their defence in time of peace. The republicks of Venice and Holland are inſtances of commonwealths that have poſſeſſed theſe advantages; and particularly that of Holland. For there the ſituation of the places in which the troops are quartered is ſuch that, if the troops were to rebel againſt the ſtate, the government would have it in their power to drown them by laying thoſe places under water, or to ſtarve them by cutting

cutting off the means of ſupplying them with proviſions, they being never quartered in any towns which, by their ſituation in fertile diſtricts of land, command a ſufficient quantity of proviſions for the ſupport of their inhabitants. So that thoſe garriſons depend intirely upon the governing powers of the country for their ſubſiſtence.

LXVI. I have now finiſhed the ſketch I propoſed to give of the conſtitution of the Engliſh government; the leading principles of which have been borrowed from the practice of the ancient inhabitants of Germany, as any one will be eaſily convinced who ſhall read with attention the excellent account, given by Tacitus, of the manners of the ancient Germans. This noble ſyſtem was, therefore, diſcovered in the woods.*

The principles of the Engliſh conſtitution are derived from the manners of the ancient Germans.

LXVII. As all the productions of human wiſdom and contrivance are liable to decay in courſe of time, this admirable government, of which we have been treating, will, one day or other, come to an end, and the liberty of England will be loſt. This has been the fate of all the other

Of the future deſtruction of the free conſtitution of England.

* *De minoribus rebus*, ſays this judicious author, *principes conſultant, de majoribus omnes; ita tamen ut ea quoque quorum penes plebem arbitrium eſt, apud principes prætractentur.*

govern-

governments that have hitherto appeared in the world, the wiſeſt and moſt powerful not excepted. Thoſe of Rome, Lacedæmon, and Carthage, are no more. How then can it be ſuppoſed that the government of England will not, in ſome future period, experience the ſame cataſtrophe? But at what time, and in conſequence of what previous accidents, this melancholy event will take place, cannot be determined with certainty. I am, however, inclined to be of opinion that it will happen whenever the legiſlative aſſembly of the nation ſhall become more corrupt, or regardleſs of the publick welfare, than the king, or executive magiſtrate, and the perſons whom he employs as his delegates and aſſiſtants in the adminiſtration of publick buſineſs. Whenever this ſhall be the caſe, the people at large will loſe their reſpect for, and confidence in, their own elected repreſentatives, and repoſe themſelves, for the protection of their perſons and property, on the honour, and wiſdom, and moderation, of their ſovereign.

Of the circumſtances that are likely to produce this fatal event.

LXVIII. Whether, or no, the Engliſh do at this time enjoy this high degree of liberty which I have deſcribed, may, perhaps with ſome

ſome people, be matter of doubt. Nor will I undertake to determine whether they do, or do not, enjoy it. It is ſufficient for my purpoſe that this degree of liberty is eſtabliſhed among them by their laws, and conſequently that, *ſo far* as their laws are put in force, *ſo far* they muſt enjoy it. How far that is, or in what degree their laws are put in execution, and in what inſtances they are violated or neglected, I ſhall not inquire.

LXIX. I do not mean, by this deſcription of the advantages of the Engliſh government, to throw any contempt upon the other governments which we ſee eſtabliſhed in Europe, nor to inſinuate that the view of this very high degree of political liberty ought to mortify the ſubjects of other ſtates who enjoy but a moderate ſhare of that liberty. Such an intention would be very inconſiſtent with my principles, who have always been of opinion that exceſſive advantages of any kind are not calculated to make men happy, inſomuch that even a very uncommon ſhare of underſtanding and mental ability is not deſirable, but that mankind always find their account beſt in the poſſeſſion of moderate advantages of all kinds, whether

whether they be perſonal endowments, or the gifts of fortune, or the bleſſings ariſing from ſociety or civil government.

A remark on Mr. Harrington's *Oceana*.

LXX. Mr. Harrington in his famous treatiſe on government, called *Oceana*, has examined, with great attention and at great length, the ſubject that has been conſidered in the foregoing pages, or the nature and limitations of that form of government which is beſt calculated for the preſervation of political liberty; and, in particular, he has endeavoured to find out, what is the higheſt degree of political liberty which it is poſſible to eſtabliſh in a civil ſociety, and by what means it may be eſtabliſhed. But we may truly ſay of him, that he has ſought for this high degree of liberty in a viſionary common-wealth of his own creating, after having ſeen it, without knowing it, in the limited monarchy of England, of which he was a ſubject. His conduct in this reſpect may be compared to that of a founder of a new city, who, having the delightful and moſt convenient ſituation of Byzantium before his eyes, ſhould nevertheleſs chuſe to build his new city in the neighbouring, but much leſs advantageous, ſituation of Chalcedon.

FINIS.