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EXPERIENCE

THE

TEST OF GOVERNMENT:

In Eighteen Essays.

WRITTEN

DURING THE YEARS 1805 AND 1806.

TO AID THE INVESTIGATION OF PRINCIPLES, AND OPERATION OF THE EXISTING

CONSTITUTION AND LAWS

OF

PENNSYLVANIA.

Experience is a *dear school*, but fools will learn in no other
....and scarce in that. POOR RICHARD.

PHILADELPHIA:
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.....
1807.

ADVERTISEMENT.

THE remarks which compose the following papers, were written without regard to system or style; and, as the objects presented themselves, in a situation favorable for dispassionate observation, and out of the vortex of party passions. They are not personal, therefore cannot give offence. They develope the actual operations of governments generally, but more immediately point out the enormous abuses which flow from the exorbitant power vested in the executive. There are repetitions, but they will be found useful, as they are intended to place the same object in different points of view, and thereby render the facts more clear; and, what is of importance in discussion, familiar to the reader. They inculcate the principle, that it is necessary for the people, to keep alive the spirit of investigation—to have frequent recurrence to first principles; and thereby guard against that tendency so natural to the mind of man, of accumulating and perpetuating power; which commences by degrees, grows bulky and formidable in its progress, and if not timeously prevented in its effects, must end in subverting every free government, and terminate in a hideous and tyrannic aristocracy.

EXPERIENCE

THE

TEST OF GOVERNMENT

AND

LAWS.

ESSAY I.

ON THE NATURE OF GOVERNMENT AND LEGAL POWER.

DESPOTIC government has many adherents, who never reason until after they act. They decide first and enquire afterwards. There are none however, who refuse their assent to the principle that—governments are instituted for the benefit of man, and although their burthen be a comparative evil, it is borne to prevent greater, which must exist without them. Were all men moderately well educated, informed, wise, and virtuous, each would have correct views and useful pursuits: each would undersand better than is usual, what best promotes happiness; and having his own felicity in prospect, would so wisely combine with the happiness of others, that government would be divested of a great part of that occupation required, as it is now conducted.

But such is the situation of man, that the wants created by society itself, and kept up by example, together with the gratification of unruly passions, raise anxieties which too frequently impel to improper pursuits: hence, injuries, injustice, and vice, render restraint necessary, lest the corrupt and powerful should unjustly convert the produce of the industry of others to their exclusive benefit. To the wise and virtuous, these would be greater evils than the burthen of government; men therefore associate for mutual security and good, and for these ends only, submit to being governed. They surrender into the political stock of the community a few powers to delegates, who make what are called laws, and each contributes a part of the produce of his industry, that the remainder of each may be secured, and that, in its enjoyment, placed out of the reach of interruption or violence. A system of government must be the best, which at the least expence most effectually secures these ends to the community so associated.

The institutions of society, are generally denominated LAWS; but it may be fit before we proceed farther, to explain the term

more clearly; for if there were not different species of institution, the ordinary meaning of the term, which signifies something written or published as a rule, by which the members of society are required to act, and forbid to transgress, would be competent for common use. But as there are varieties, and as they are sometimes confounded, or mistaken one for the other; the confusion produces doubt, and doubt always has a tendency to injure that which the doubt concerns.

On the formation of societies or nations, either before the discovery of the art of writing, or before the application of letters to legislation—the laws consisted in certain obvious maxims or principles to which all agreed, because they concerned the security of each member, against wrong from some other member; or a whole society from injury meditated by some other society. The introduction of letters, and their progress, produced more enlarged ideas and embraced a more comprehensive scope. Laws came to be written, but cunning evaded or perverted them; tyranny violated them; a revision was necessary; and soon after limits were fixed to the power of those who were entrusted to manage public affairs; or to execute the laws formed by the will of the society. The experience of every day pointed out some new want of provisions for the common protection; some guard for the weak against the strong; some limitation of authority, some prohibition of abuse. These gave rise to declaratory laws, or laws declaring certain great rules, which were to govern other inferior branches of regulation or law; from the same sources arose great charters, as they have been called and bills of rights. But the greatest improvement of all, has been a CONSTITUTION, which is in other words, a *written law*, which is to remain inviolate, and by the spirit and principles of which all other laws are to be regulated, and contrary to which in any part, no act of legislation can be valid or obligatory; so long as those who made the *constitution* think proper to preserve it unaltered.

Hence a *constitution* appears to be a law of a superior nature; and to be held as the basis of all other laws, while it remains unaltered. This constitution or supreme law, is the frame by which society is kept together; and its concerns regulated; for it is at once the law of all the people, and the rule by which the ordinary legislature and all other branches of public authority is guided and governed.

The laws of a free state therefore consist of the supreme law, or constitution, which defines the limits of ordinary legislation; the acts of the legislative conformable to the constitution is the ordinary law. That branch of government which is intended to be expressed by the judiciary, or juridical department, is still subordinate to the legislative authority, in as much as it is bound by the acts of the legislative body; in this department exists a great monster in what is called *common law*; that is, a pretended law which was neither proposed, digested nor written, nor deliberated upon, either by the constituting power of the state, nor by the ordinary legislature, which

remains still *unwritten*, which every body is presumed to know, and punishable for violating; and yet it is acknowleged to be unknown in all its branches to any one man; this indefinite scheme of subtelty we shall leave out of the discussion, in order to pursue those branches of government which are understood, are written, and which we can approach and touch and examine without difficulty or much effort at investigation; we investigate the system, but leave the *common law* for other pens.

Much has been said on the subject of checks and balances in government; but *experience* proves, that, as a check or balance, it is no matter of what number of branches, powers, or authorities an original system is constituted; for when once they are filled with *officers*, unless *otherwise* checked than by *each other*, there is such a tendency in men to serve themselves, that the different authorities, or deputed officers, too frequently unite, and form a preponderance contrary to the original designs of their government.

Experience proves that there is *no check*—there *can be none*, but the *people*; and when ever they give up their power absolutely to any set of men, under any modification, without reserving to themselves a short periodical resumption of their power, there is an end to liberty, as far as the resignation extends.

Although we can have no doubt of the virtue of a majority of the officers in any new society, in the first instance, if taken fairly from the people, in so enlightened a country as ours, yet a political institution should be so formed, as effectually to secure fidelity, to discourage corruption, and in the most easy manner to provide for the removal of unprincipled officers.

All men naturally love power, the virtuous as well as the vicious; they love wealth also; as well on account of the ease and comfort which it procures, as of the power which is attendant on its possession; hence there is an inducement for officers to do well, if they are well paid, under a periodical resumption, independent of virtue; in order that through their faithfulness to the interest of the people, the power and compensation may be continued.

Experience proves that nothing else secures the community any length of time against tyranny and corruption, but this resumption of power; or, in other words, a political system, which places *every officer* at certain reasonable periods, according to the nature of the trust reposed in him, precisely in the same situation in which he was before he was elected or appointed, as a private citizen, to be again submitted to the ordeal of public opinion, and elected or appointed, or rejected, upon the true principle of democracy—*utility to the people.*

If a person who had been in public employment should have been useful, and remains virtuous, there will be two chances to one, that he will either be placed again where he was, or raised higher than before. But if he should have made an evil use of power, or discovered imbecility of mind; so long as wisdom and

virtue predominate in the community, so long he will be necessitated to mix with the people, without putting them to the expence of a trial. Human wisdom is not competent to contrive so powerful an auxiliary of virtue, so imperious a check upon vice as—PUBLIC OPINION.

Under all political systems hitherto adopted, which have carried with them the idea of freedom, and a security of rights, the powers and duties have been divided, and partially committed to different assemblages of men, under different names, and for different purposes; in order that each might form a check on the others, and all on each. But independent of the idea of checks, there can be no doubt, that in thus distributing duties among several classes of officers, under the same system; *provided they are not uselessly numerous*, advantages result; more talents and virtue may be called into action; duties, by being simplified, are better understood, and may be better performed: more time is required to corrupt, and where corruption arises, more wealth is necessary to influence men to base purposes. The history of government, however, sorrowfully evinces the necessity of other checks, than *officers checked by officers*, or officers checked under an idea of virtue, except as it exists in a community, or nation. It is in public life as it is in private agency; there is no perfect safety, without frequent accountability; and no accountability can be safe, but that which is directly or indirectly to the people, because they alone are interested.

Human nature being fond of acquiring power, and seldom willing to relinquish it; in almost every instance where power has been unlimited in extent or duration, it has been abused. And although this abuse may have arisen from weak heads, as well as from corrupt minds, yet it requires a corrective to secure the community against its evil consequences in either case. This furnishes a sound reason, why every officer in government should have all his duties defined, and be limited to a certain portion of time. With some it might be for a longer, with others for a shorter period. But they should always be elected by the people themselves, when practicable; but if inconvenient, then by faithful agents to whom that power had been previously delegated for the express purpose.

When the people delegate this power, it is much safer for them to place it in the hands of a *large body*, than a *small one*; or than in the hands of *one man!* For thereby patronage and its consequences favoriteism and corruption, will be proportionably prevented.

Mankind are too generally selfish, and will sometimes be warped from principle by interest; but in a large body, there will be a diversity of interests, and a number of leading members differently engaged in those interests; some of whom would be corrupt enough to secure their friends at the expence of their country, if an opportunity offered; but the private interest of others, nay envy itself, vicious as it is, in the absence of virtue,

might be forced to supply its place, and would have a strong tendency to prevent improper appointments.

Under such circumstances, from the large number of electors, there would be less chance of bargaining, and a greater probability that the result would be, the selection of suitable characters.

Periodical accountability should be so frequent as to produce circumspection; but there should not be so many officers elected or appointed, at any one period, as to endanger public tranquillity, through the anxiety which might be excited, on the failure of their favorite measures, when the most obnoxious were driven by the people from office.

ESSAY II.

ON THE DISTRIBUTION OF POWER AMONG THE DELAGATES OF THE PEOPLE.

IN Pennsylvania a constitution or system of government has been formed and adopted, consisting of three branches, legislative, executive and judicial.

The legislature is divided into senate and house of representatives. The first a small body of 26 persons; one fourth of the members go out annually, and those elected in their places continue in office four years. The other a larger body, of 106 persons elected annually. These two bodies by a concurrent vote pass bills, which if approved by the executive, become *law*.

The executive is a single person, elected by the people triennially; he is denominated *governor*, elected for three years, but is eligible nine years in succession. His general powers and duties are—1. *Negative* legislation:—2. Making appointments—and, 3. Seeing the laws faithfully executed.

The judiciary or courts of law, under the direction of judges differently named, and with different powers, from a single justice of the peace, up to the judges of the supreme or state court. All these officers receive their appointments from the governor, hold their commissions without limitation of time, under the vague and futile terms, *during good behaviour;* and except in the cases of address or impeachment by the legislature; (both of which modes of address and control are now considered fallacious,) are independent of the governor who appointed them, and of the people also, under the present constitution—or form of government.

These various principles descend minutely in their detail, into various branches, and when viewed together, shew plainly, that the leading men in the convention, who framed it, had nothing more constantly in their view, than the British system of king lords, commons, and the court of king's bench as their model. It

may be saying too much, that they were corrupt; but it may be said, without danger of error, that they were either very ignorant, or very adverse to the principles of free and equal government; they wanted to retain the essence of monarchy and aristocracy; they had neither a king nor a nobility; and happily, it must require more than an age or two of corruption, before public opinion could be so much debauched as to suffer any to be established.

The basis of our constitution, nevertheless, is good, so far as it relates to periodical elective representation, but no farther. The form could have been better, the checks more fitly adapted to the safety and the interests of the people, so that they would have operated more strongly against the intrigue and corruption of incidental rulers.

The theory of the constitution is, that the senate, the least body in number but most permanent, is made a check on the representatives; and the executive a check on both. But were not all three checked periodically by new elections from the people (for herein is all our safety) there can be no doubt but their decrees would become as tyrannical as if made by one branch, or even by *one man*.

According to the theory, the house of representatives is pre-supposed to partake more of the passions and versatility of the people, than the senate; but surely it has shewn a more sensible feeling of their wants and necessities, and represents more truly their recent state. If therefore liberty be safe in any part of our system, it must be in such a numerous body, selected so largely and lately from among their constituents.

Both branches have equal controul over the treasury, except in the joint vote at the treasurer's election; then the house of representatives, from their greater number, have it in their power to elect whom they please.

It is true, it is a principle establised that revenue bills must originate in the house of representatives; this is a very absurd and totally inapplicable imitation of the supposed right of the English house of commons; yet, if money is to be raised, it is not material in which house a bill originates; for although the senate is farther removed from the people, by the difference of one and four years tenure of office, yet it can check any money bill in its passage, or carry it through; which is all the house of representatives can do, after its first stage; their persons and property are alike involved in the burthen and their property in the measure.

In England, from whence this principle was imported with others that are even worse, the house of lords represents the hereditary nobility; that is they represent *themselves*, and several of them are either members or dependants on the royal family. There it prevents the commons from being uselessly teased by repeated propositions for raising money, when they do not intend to grant any. It has some application there, where elections are influenced by the ministry; it is a privilege wrested from the nobility, who nevertheless contend for it still; but here it is useless, tho' perfectly harmless.

Two branches unequally constituted are calculated to retard legislation; they are expensive on that account; but bills by being retarded, may be perfected they say; and when pernicious, are more likely to fail than to be compleated. There is more time allowed for exposing errors, and correcting mistakes, where there is a double legislature. The senate is never to be more than one third, nor less than one fourth of the number of members in the house of representatives. But this number is too large and expensive for a mere revisory body. It cannot produce talents and virtue superior to the other chamber, because it is composed of persons taken by the same persons from the same source, partly for the same purposes. It is too small to be out of the reach of corruption; especially while such unbounded patronage rests in the executive. It deliberates at the same time, under the same roof, and mixing frequently with the members of the other branch, must partially partake of the same passions and be exposed from its small number to intrigues. By being too far removed from the power of the people, it has a portion more of aristocracy, and arrogates to itself *a little more* consequence; pays a *little less* attention to the public will, and is from these causes an unsafe and improper body for the true ends of legislation.

In order to have the compleat expression of the public will in the legislation, executive patronage either should not be suffered to exist, or the power of appointment should be placed in other hands; or members of the legislature should not be competent for any office. Under an intriguing governor, so small a body will be dangerous from the common frailty of man. For if a bill were about to pass, to check useless power; or a law to be repealed, which was more favourable to the patronage of the executive, than to the liberty of the people; the senate being small, and a majority on the question smaller; if two or three members should be corrupt, and any office of emolument within the gift of the executive, it could easily, and without any commitment, be held out as an inducement, as a price for their votes, when opposed to the executive, and would frequently destroy the measure.

Without the total alteration of the power of appointment which would place the legislature out of the way of temptation; it would be better to have a senate as numerous as the house of representatives; for it is safer to trust the warmth and even passions of a large body taken annually from the people, guarded as they ever will be by their virtue, than to the wisdom of a small body *(not a very great deal wiser than the others)* whose opinions can easily be known before a vote is passed.

The senate or first branch of a double legislature to be safe and useful, should be as numerous as the house of representatives. Its members should be elected annually, in common with the members of the other branch, and selected by lot, when the whole convened for the purpose of legislation. If small aristocracies or selfish fac-

tions should have been formed, in the former houses, or become formed among the members before the annual meeting, their weight and influence would be effectually broken by the separation of the influential members by lot into different houses, where they would probably receive a new and better bias, their attention would be directed from partial and selfish plans; and finally, when private interest could not be served, their minds would be more strongly drawn with the virtuous members to the public good; and then public virtue would supercede the prevailing avarice of office and lust for public money.

These observations will not be relished by those who believe rulers *less selfish* than the history of all governments prove too many of them to be; and those concerned in unfair practices would drive propositions for a reform, from the community; but experience annually evinces, that man comes into the legislature, and into every department of government with the frailties of human nature about him. Such as he has been at home, in private life, such will he be there; and every possible temptation to abuse ought to be avoided in the original system, and removed from having any chance of operation upon his mind.

The most virtuous and honest politician meets public life by the aid of his friends, to whom he must feel a certain portion of gratitude, which the system should render him unable to discharge, at the public expense or in any other way, than in faithfully attending to the public good, in the honest discharge of the duties of his office.

But now he is no sooner in the leigislature, then he sees the executive clothed with such ample powers, that he knows he can fully recompense his particular friends by recommending them for appointments, provided he can anchor in the port of executive grace. This never will be difficult, while a governor, *six years* out of *nine* needs reciprocal aid.

A new member of the legislature not fully understanding the principles of democracy; not perceiving that public characters must fill important offices, or public confidence in the goverment will diminish; innocently believes, that offices may as well be filled by one set of men as by another, so far as respects the state, if the duties are but well performed; but as it respects himself, it will become genial with his feelings, entirely to serve those friends, who have hitherto served him; and reconciles its justice to his mind, by endeavouring to believe, that the state is well served.

A citizen on his first entrance into the legislature, before his mind becomes acquainted with the corrupting nature of patronage, is, before he perceives it, fast progressing into a labyrinth of executive influence, without suspecting himself of impropriety; and without strictly examining the tendency of his actions; until one commitment after another, renders it difficult for him to make a safe and honorable retreat. It is only after he has committed errors that he discovers, the cause and the progress in which he fell; and nine times

in ten, he has too much false pride, or too little resolution to trace back his steps or correct his course.

The members of the legislature, notwithstanding, have as good a right, under the present system, as other men have, to receive commissions from the executive; the same right to procure them for the public characters who are their friends; but the evil lies in their being tempted by the hope of office, to give such votes as unnecessarily augment the already enormous power and patronage of the officer to whom the duties of appointment is entrusted; to serve a host of his creatures, who always surround the legislature, read his will, and whisper his wishes to the members.

Under such circumstances, the senate composed of but few members, some of them neither armed against intrigue nor always sufficiently conversant with the world to suspect it; of others perhaps, designedly pursuing every executive measure from selfish motives, must always be dangerous.

But suppose, for a moment, that executive patronage were done away; still that small body, from the very weakness of human nature, would be unsafe. The weaker members would be assailed by the cunning and wealthy, and pursued from house to house, for the purpose of influencing a majority in the carrying of some sinister measures; or with design to defeat some laudable and useful principle, which had passed the house of representatives. It is no uncommon saying that a *good dinner has often carried a bad measure*.

But if there be danger in thus forming an avenue to power, and leaving it in the hands of a few, who will naturally be disposed to serve themselves and their friends, in preference to discharging their duty; how much more dangerous must it be, to place that power in the hands of *one man*, and in addition thereto, giving him a *negative* on every law about to pass, that might be unfavourable to the gratification of his ambition, or likely to blast the avaricious pursuits of a surrounding class of designing men.

The absurdity in a free government, of an executive negative, is not common to all the states of the union. In several of the states, for example Jersey, the executive has no share affirmative or negative in the legislative power; and with good reason; for the principle is a total subversion of the principles of a free government and of reason itself. The will of the majority is the supreme law, according to the principles of our natural and equal rights. But here the will of one man, is put in competition with the will of 150 men; and he is authorised to render nugatory all that they have done.

But this is not the whole of the absurdity, the two bodies of men composing the legislature, deliberate and debate upon all measures; and every measure brought before each house must be read, and open to debate and objection if required at each time; and the concurrence of a majority of each house is requisite to its passage.

While the executive who neither hears the arguments nor has them reported to them; and who from the mere constitution of human nature, cannot be presumed to know every thing, or any thing, as well as 150 men combined and deliberating—this one man can undo at a dash of caprice, or under the operation of selfishness or passion, all that they have deliberately done.

ESSAY III.

IS THE TENURE OF THE JUDICIARY—COMPATIBLE WITH REPRESENTATIVE GOVERNMENT?

WHEN we view the officers in the judiciary system, stand independent of the people, out of the controul of their constituents; *not responsible*, but *uncontroled and independent*, the prospect is unfavorable to liberty.

In following the British institutions, the convention lost sight of *representative democracy*, and a periodical responsibility, that just easy, and rational mode, of removing obnoxious or useless officers, or of rewarding by restoring the worthy and faithful, without danger to the government, or expence to the people.

The juridical portion of the constitution, appears as if it was purposely formed for the convenience of the judges, rather than for utility to the people; from a contemplation of it, a stranger might suspect that the society was instituted for the benefit of the judiciary alone; affording evidence, that legal characters influenced the convention; that *each lawyer* supposed, the day must come which would elevate him on the bench of the supreme court; or that *his merit* would raise him to the chair of *chief justice of the state.*

The phrase *independence of the judges*, is borrowed from Britain; in antient times the judges were removable at the pleasure of their king; that is like officers of the army, they held their commissions during the king's pleasure; the judges in those days were found too subservient to their *creator* and the *disposer of their fortunes;* great tyranny was exercised over the people, through the influence of the executive power over the judges; and at a favorable occasion, when the popular voice had some influence, the judges were made by law, *independent of the executive*, not of the people; for they never were since the Norman conquest dependent on the people. Their tenure of office by the modern law, was *during good behavior;* but of this good behavior, there is no explanation in what it consists, nor what is bad behavior. This imitation of the British system, therefore is in no shape applicable to free government; the first principle of which is *responsibility* to and not *independence* of the people. The experience we have had also shews that the practice is as absurd as the theory was false, inapplicable, and delusive.

The judges ought to be independent of the individuals over whose causes they preside, but not of the community who created them. They now form a government within a government; they may represent the executive, what they call the bar, or themselves, but they do not represent or even duly regard the people.

A community must be depraved, if respect for virtue, do not so far predominate, as that a judge would be the more beloved and esteemed, for every act of impartial justice done between individuals, although the individuals themselves might be offended. Virtue in the person of an elective judge, would have nothing more to fear, than it now has in an elective legislature. If they mean to be unfaithful or tyrannic, the people ought to make them afraid.

There are wrong ways of doing right things. A judge may be just and impartial, yet another may be tyrannical and overbearing; one may despise and insult the suitors; to whom in other respects he deals impartial justice. Such judges as the latter ought justly to fear a periodical resumption of power; a being called to give an account of his stewardship; he ought never to have been a judge among a free people.

It is possible also—*barely possible*, that in some instances, a judge every way qualified as a man and officer, might be left out of office; and a worse, elected or appointed to serve the people in his place. This although an evil, is of less magnitude in government, and if the act come directly from the people themselves, the consequence would be easier, and more peaceably borne by them, than if it had resulted from any other source; and in a periodical resumption, a remedy presently presents itself; if they had made a wrong choice, they only would feel it; and the remedy would follow the discovery.

To be a good judge, it is not only necessary that a man should be wise and impartial, but the people must think him so. He who never had, or who loses the public confidence, ought not to be a judge; his decisions will not be satisfactory; he cannot be useful; and then the first principle of government recurs, "*For whose good was the man appointed?*" If for the people's good, surely he ought to be removed, because instead of a good, as was intended for them he has become an evil.

In England the case is different; government there, is only professedly intended for the good of the people, and even that in a subordinate degree; for their good is held to be subservient to a good that is esteemed greater; that of the nobility and royalty. The king is in fact at the head of the nobility, for in all cases where the crown or nobility becomes a party in a suit, it is right *in British policy*, that the judge should be independent of the people—for says Blackstone "He is the mirror by which the king's image is reflected" in order that if there should be a departure from justice, what to the nobility appears to be the least interest, the interest of the people,—should be sacrificed.

It is a sacrifice of liberty to place the judges independent of the community, whose minister they are, and who pay them for their service, and for whose benefit they were instituted; and to whom, by election or re-appointment, they ought to be periodically accountable.

Under this view, our judiciary system appears pregnant with evil, from the chief justice down to the most paltry justice of peace. These officers might have been legally appointed under the present constitution, and many of them are good men; but where they are not, they must nevertheless be justices, or judges during life; the evil under the present system must remain, without any effectual remedy. Their accountability by impeachment or address through the legislature, has been proved to be much worse than ideal; it is so far removed from the people, that many will bear insult and injury, rather than be at the expence and anxiety of a regular hearing before that body. And it is melancholy to state, that men who have had public virtue enough to complain of hideous injuries, have, instead of justice, entailed on them and their families new persecutions, amounting, as far as public feeling and justice would admit, to a proscription in the midst of society.

This independence of the judges; this appointment during good behaviour, is one of the greatest absurdities in a democracy that can possibly be imagined; and in many instances operates exactly the reverse of what was expected by the people. In many instances it is a continuance during bad behaviour. It is truly the counterpart of hereditary government; for though the sons of rulers are not rulers by descent, yet by descent thousands are ruled under an indirect ancestral choice, in the aristocratic appointment and continuance of the judges and justices of the peace; and consequently by men, whom neither directly by themselves, nor indirectly by their agents, have they ever had, or ever can have a vote in appointing.

The judiciary is composed of a numerous body of men; they form an aristocracy which has nothing to check its growth, but public opinion and public virtue. While this security lasts, they cannot do much evil, but the moment these fail,—and they will ebb and flow like other things,—our situation will be gradually growing worse, and unless the principle be amended, the consequences to be expected, are incalculable evils to ourselves, and our latest posterity.

ESSAY IV.

DOES THE JUDICIARY SYSTEM PRODUCE A REAL REDRESS OF WRONGS?

THE judiciary forms an aristoracy which has nothing to check its growth, but public opinion and public virtue; these operate but very slightly; yet they must, under the present public impression, in due time provide a better system as a remedy that will remove the evil. It is an evil which to be proved needs only to be mentioned; it comes home to the door of every man; good or bad, wise or ignorant; almost all see the effects and thousands feel them.

Allusion is now more particularly made to the justices of the peace. There are many good men among them, but a great number, some way or other, are bad Some of them were orignally bad men, both avaricious and immoral. They entered the office by another door than that which democracy points out; they entered through favoriteism and intrigue. Others have become bad officers by their improper independence of the people. Weak heads have become intoxicated with power, and they have entered warmly with the adherents to British institutions, into the idea that an office appointed for public use and convenience, when an individual is invested with its authority, constitutes a *freehold estate*—or estate in *fee simple*.

No doubt many of these men once supposed government was made for the good of the people; but being seduced by an improper independence, *they now act*, as if they believed that the people were made for the good of the magistrates, and are willing to turn them to their own convenience and aggrandizement. By this means the people by their very institutions establish premiums for enmity and and treachery to their rights and interests.

The governor has power to appoint a competent number of magistrates, of which number also he is the sole judge; and no law can be made under this constitution to restrain him, from appointing any number he may think necessary to promote his influence. The number has encreased ever since 1790, with an accelerated progress, and the more it encreases, the more it must encrease, to satisfy the minions of power.

When one dies or leaves his district, frequently two are appointed, because one could not be had central. Sometimes the former has returned and again officiated; and thus from one—have arisen three. Nay sometimes an elopement has taken place, and continued for more than a year, when the officer has again returned to his station of public business without public confidence, and remained independent of the people to the disgrace of the community.

If a remedy be asked for these evils under the present system, the answer must be, that *there is none; there can be none*, but a recurrence to the principles of reformation.

The number of justices is great; we find them in all places, but too seldom find them respectable;—because the office has become so cheap, that many of our best citizens are not willing to accept it; and we have no evidence nor security that every new governor will not think it his interest to make it still cheaper. For if he should be corrupt, he may count on the encrease of justices as an encrease of popularity, and calculate on their gratitude to support his re-election.

Although the justices of peace are of no expence to the people, in the first instance, yet they are costly in the sequel. The weak and vain officers, as well as the corrupt and vicious, have much in their power, either to manage the disputes of their neighbours to their own advantage; to encrease them for vain purposes, or mercenary ends, or to quiet them for the good of the community. Corruption and design can raise several actions out of one, and when there is no periodical check, a bad heart will too often indulge in the evil.

With some justices this is frequently the case; and why is it so, but because they belong to the executive who appoints them, and not to the people of whom they are independent; or because they belong to themselves, under the present constitution, rather than to either, being independent of both.

Impeachment and address are the only modes pointed out by the constitution for removal, and yet when considered in their application, they are found to be completely delusive.

A justice one hundred miles from the legislature, though he should frequently do wrong in his office, insult the citizens, and even practice extortion, is in no great danger of being brought before the legislature, unless he should be met with by a man of uncommon spirit, who will not be imposed upon; and who will spend more time and money than ten times his loss by the justice, merely for the sake of the public good.

It is said by the enemies of equal rights, that the people are turbulent, uneasy under wholesome restraint, and could not be supposed to suffer a justice to abuse them. But experience proves, that they are too peaceable to carry every grievance to the legislature, and therefore very improper acts of their justices pass with impunity.

Men ought to complain of evil when they feel it, and if to resist oppression with a manly energy deserve that name, who is to blame, the authors of oppression or those who resist. But the people frequently bear the abuse of power too long; even until their rulers have filled the measure of their iniquity; and it is no wonder, if in the hour of desperation, they proceed to acts of extravagance, which every good man in his cooler moments must deplore.

These are some of the many evils resulting from the justices being independent of the people. They are evils which arise from the people's having resigned their power to these officers, without reserving to themselves a periodical resumption of that power. By

their having abandoned the exercise of sovereignty to the executive, in a case where, without any inconvenience, they could have exercised it themselves. In a case where he cannot have correct information, although he is obliged to act; and where they have all the means necessary to form a correct opinion, as to the characters which they ought to select.

The judicial aristocracy will not favour these ideas, although the wise and good men among them may. The selfish and evil disposed, will unite to oppose what they believe to be contrary to their interest as officers. Having become obnoxious to the people by their abuse of power; having received their offices in many instances, without the knowledge of the people, and in others contrary to their wishes, they dread any improvement of the present system, because it would put them on the back ground of the community, where many of them would ever remain.

It is a principle in democracy, and it is a just one, that whatever power the people in their individual capacity can conveniently exercise in an orderly way, should never be delegated to officers; and as they can conveniently and orderly elect their justices of peace in such districts as are or may be formed, they ought not to delegate that power to a governor or to an assembly, but exercise it themselves.

The most domestic among the people, are generally acquainted with each other, through their townships and districts; and all the most active characters especially, who would be likely to be elected justices of the peace, would be well known to every citizen; it is, therefore, not possible that in any district whatever, they would be so uninformed of each other, as not to choose the best men for public officers.

But suppose them, by choice, to be deceived, and make mistakes; as the evil arose among themselves under a system, that puts the power again into their own hands, in a few years, they would patiently bear the consequences, wait that period, and take care not to place it a second time, where it had once been abused.

Although the justice were not the best of men, yet, under such a system, if he loved power, the design of retaining it would operate so as to correct many of the less evils that might arise out of a bad disposition.

Under this mode, the justices of the peace must retain the confidence of the people, or they could not long retain the office, which would then be founded upon confidence. The people would cease to be uneasy; they could remove the cause of any uneasiness themselves; they could do it without any loss of time, or any expence, at the expiration of the period for which their justices were elected.

If, by chance, they injured themselves by leaving out a worthy man, *he* would have no right to complain; he would have known that he had been elected for the good of the people, to continue until a certain period; and afterwards at their will to be re-elected or rejected. He would have known the tenure of his office, its period had been fulfilled, and he could not legally ask for more.

This mode of election by the people, would preclude midnight appointments: every thing would be done at a fair open township or district election. It would check the unprincipled intriguer, and bring to candid investigation, the character of every man who became a candidate for office.

Were the justices thus elected, within districts formed of a convenient size, without being so small as to create too many officers; the office would soon rise in importance, many of our best citizens who have leisure, would accept the place as an honorable trust, in which they would have every inducement to act respectably for the sake of their own continuance, as well as the good of their fellow men. A bad man would scarcely be elected a second time; his bad conduct the few years of his period in office, would assuredly consign him to perpetual oblivion.

The best criterion to judge of the future is by the past; the justices that were formerly elected by the people, many of them were among the first characters; there was always a sufficient number of them in every county, to conduct the business of the courts with decency and ability. It is impossible to help contrasting them with the present. In this the people have shewn more dignity and a better understanding of their own true interest, than all the wisdom of two governors, aided by those who surrounded, and shaded them from the unhallowed touch of the swinish multitude. Upon the whole, the present system is calculated rather to prevent redress than to obtain it; and to add to, instead of diminishing, the evils of society.

ESSAY V.

OF DECEITS ON THE PEOPLE CONCERNING JUSTICE.

THE abuses of judicial proceedings in this state have been strongly contested between the bench and the bar on one side, and the people on the other for many years. The two former are incidentally in the exercise of the judicial power, and until lately, felt themselves independent of the people. They now indeed see there must at last be a reform; the idea goads them, and from anticipated defeat, they are the more inflamed for domination. They see that finally they will be reduced to the ranks of equality with the people.

The principle of arbitration has been developed, and successfully contended for; even the most thoughtless have only to be put in mind of their interest in it, to know and understand it; and this has been done by able pens skilfully exerted. But they have partly contended on bad ground. The principle though good abstracted from the constitution will always be lame under it.

It is evident to the bar, that the words, "trial by jury as heretofore" will always, to the generality, afford a field for argument, on which they can perpetually dilate; that it affords them pretext to argue in favor of a system which gives emolument and influence to

an exclusive sect, veiled under their cant in technicals: and even to minds uncontaminated with court cant will, like *the glorious uncertainty of the common law*, leave a doubt, whether the convention intended to preserve every part of the form without trusting the people's ordinary representatives to alter the minutest part, however inconvenient. It will leave a doubt; for from the features of the constitution itself, it is plainly deducible, that the majority of its framers doubted the wisdom and virtue of the people; and conceived themselves of a superior order, able to regulate their concerns, and therefore might have intended to leave nothing for posterity to do. Having no errors in their view to correct, though *the form* of the trial is evidently one, they provided no remedy, no means to remove them. They wished to make the people believe, what the aristocracy still inculcate, that the instrument is sacred from the unhallowed touch; that it is an eulogium upon the wisdom of man, and might be polluted by vulgar hands.

Under this idea of PERFECTABILITY, *the form* of the trial is so designedly interwoven with the trial itself, that difficulties in a reform stare the reformer in the face. A reform is absolutely and evidently necessary, but the difficulty is to effect it, without infringing the letter of the constitution, perhaps its spirit also; and when effected consistently with that instrument drags too much expence and delay for the citizens who are destitute of property and leisure.

These evils are unavoidable; they are the effect of early habits, and prejudices, and of artful subtelties which operated in the convention, and cannot be removed but by a revision. Not by a radical change of the excellent principles of the trial by jury, which ought always to remain inviolate; but by modifying the expression, so as to make the trial by jury consist in a dispassionate and incorrupt selection, an open candid investigation and decision; not to be made under less than a specific number of respectable citizens, with unbiassed minds, out of the reach of dependence and fear; and who would have no inducement to do wrong. Such a jury trial ought to be as fixed as the base of the Alleghany, but the improvement of the form, and the prevention of abuse, should be left to the ordinary powers of legislation.

It is weakness or wickedness to contend, that under the legal idea, the words "trial by jury as heretofore" are adapted to the present state and wishes of society. The people have been petitioning for a revision of this very form from time to time, under the idea of extending the powers of the justices of the peace. The legislature in almost every instance, have attempted to gratify them, but insurmountable difficulties presented themselves. They were afraid of infracting the constitution on one side, or restricting the rights of the people on the other; and every thing produced, has been short of the public wish; and ever will be so, until the hostility which impedes the improvement, be removed from the constitution. That being done, the people will emancipate themselves from the clamour of the aristocracy, save much of the expence

and drudgery of courts, and secure the advantages of a cheap and easy mode of arbitration and jury trial.

There is no necessity in numerous cases for *the present form* of jury trial, in contentions about property. Even the bench and bar are willing to dispense with it in contentions for small sums, and the people might do it in all.

The bench and bar dispense at present with not only *the form* of jury trial, but even with the trial itself, if the property in dispute is not worthy the attention of the wealthy, nor profitable to the attorney; but when it is to a larger amount, disputes with them assume importance, become sacred, and must be consecrated by the bench and the bar. Every claim in dispute, above ten pounds value, they believe should be tried by a court and jury, under the operation of a mystic science, which like Alchemy of old, had no other value than the technical absurdity under which it was concealed; every suit under that amount, may be tried by any body; even by arbitrators. What absurdity! The claims of the poor, of the people who earn their bread by the sweat of their brow, under this system, are not worth regarding; but the claims of *the few*, the rights of wealth, are to be guarded by the eagle eye of a lawyer. But the most serious part of the evil is, that when the difference arises between a poor man and a rich man, the lattter has all the advantage which large fees hold over the priests of justice.

There is not a single reason in favor of a jury trial, but what will apply to property of small, as well as large amount, when held by persons of corresponding circumstances; and before one court as well as before another; then why is it not generally applied; and in chancery as well as in other courts?

I know but little of technicals; I have never renounced common sense to learn them; but in common with others, I know that a trial about the *right* of property, is a trial *about property* in any court; and if the jury trial in all its forms, be essential to its security, I can see but one reason why it is dispensed with in chancery, and in that the bench and the bar already having the power, consider themselves capable of transacting the business, without the aid of the people.

The noise about *jury trial* is therefore a cheat, it is raised merely to keep the people's interest out of their own hands. The bench and bar of this state, have long struggled for *chancery powers*, where no jury is admitted, and have always been prevented by the people; and always will be.

In land disputes at present, where the board of property decide who has the right of patenting; so far as they are uninfluenced by the *executive* and the *bar*, decide as arbitrators; they decide as both court and jury. Their decisions are far removed from the people; subject indirectly and improperly to the control of the executive, and open at all times to the sophistry of the bar; and, therefore, the want of a jury trial any more than the want of legal knowledge in that court, has never given any umbrage, to those who were

making so much noise about the people destroying themselves, by a revision of the constitution, and reform of the judiciary.

It appears improbable, that a compleat reform in the judiciary will take place agreeably to the general wish, previous to a reform in the constitution. Like the jury trial, the supreme court is so interwoven with the system, and the other courts so much connected with it, that to amend the detail under the leading principles and connection, will be found like pouring water through the wrong end of a funnel.

The present existing system is derived from monarchy and aristocracy—the court of *king's bench*, and partakes of the spirit of the monarch and his nobles; but is badly adapted to the habits of men under any genuine democracy. The court like the monarch seems to dictate, but its dictates would be inoperative, were they not aided by the bar, as the wishes of the king are aided by his nobility. These two persons willingly unite when they can, they would be every thing and let the people be nothing—nothing but the machinary to be wound to any purpose and to any point. They must be sworn to give a true verdict, and starved till they comply with the wishes of the court. If they agree among themselves, the court may differ from them, set their verdict aside, destroy all they have done, *and this is the boasted jury trial!!*

The circuit court held by the supreme judges, within the several counties, may be useful at present, but if ever we should have a democratic court—a representative court within each county, in which the people will have confidence, its use except in criminal cases, will be totally superceded.

The general opinion, until lately, seems to have given the circuit court only the trial of the most important cases, to which the knowlege of the inferior courts was not adequate. But if any knowlege be wanting, it cannot be that derived from common sense; that prevails as much in inferior courts, as in the superior; as much at the plough as at the bar. If it be a knowlege of the mode of proceedings, that consists mostly in the knowlege of technicals, a difficulty that will be removed, by a revision of the system. But it is now very well understood, that the circuit court is almost wholly used for delay—for a prevention of justice by the litigious.

When causes have been continued below, until they must be tried or removed; removal is resorted to, only to produce new delay, which, instead of ending knotty cases, prevents the trial of the most simple, sometimes double the usual time; and three times out of four, when the litigious can delay no longer, they will, if possible, *avoid a trial, by a compromise of justice.*

Man is the creature of habit, and truth has the greatest difficulty to root out error, or we should never, under a free government, have so long submitted to the evils of the judiciary, and rules of law which no two judges or lawyers know, or can agree upon.—We should have been guided by common sense to the cause of

actions for a knowlege of them, and a rational mode of termination would have followed.

If we resort to experience, all the actions which have arisen, are from very simple causes; mostly from angry men whose passions darken their understandings from a knowlege of justice, or from avaricious men who, unjustly, covet the property of others: both could have been ended fairly, while they were new enough to be understood by dispassionate men of common sense, not interested on either side. Here is the use and benefit of arbitration, the most rational mode of settling disputes; but it does not suit the interest of the bench and bar. They wish to legalize every valuable suit, and lard it with the technicals of a few courts below, and a few courts above, and end it to their own advantage. They study to encrease the variance and intricacy to their profit, without which they could not be enriched. They speak loud about jury trial, but are always ready to dispense with the people's services therein, when they can be court and jury themselves.

If we had not followed too closely the form of the English judiciary, a much more simple plan of courts and juries would have been devised; better adapted to our habits as a free people, and almost infinitely preferable to the one used at present.

When we view Pennsylvania as an independent state, every part connected with the whole; we see it united principally for defence, and presently discover all the unity that is absolutely necessary for judicial purposes; so much in extent, as produces a physical power, sufficient when aided by public opinion, to ensure internal order under the operation of law.

When a nation, or people, are settled on an extensive soil, and connected for their defence, utility soon points out the necessity of small divisions. Scarcely any thing, but defence, relative to society, requires much extent. Were the state a plain, about thirty miles square, is the space which, if not very populous, might be conveniently allotted for a county, and about five for a township; and this extent would answer all the purposes for which they were originally designed, without inconvenience or burthen to the people.

Every county is acquainted with the nature of its own disputes; and in this enlightened country, where nine tenths of the people can read and write, and one tenth though following the plough or throwing the shuttle, are scriveners, can settle their own disputes among themselves in the most beneficial manner; either by arbitration in its first or second stage; or in their county court, with the principle extended to a reformed jury trial, before judges chosen from among themselves; but further than this, an action ought never to go.

It is absurd to suppose that a citizen of Northumberland should understand the concerns of the people of Alleghany better than themselves, or that a judge of Berks could assist the wisdom of Philadelphia in settling disputes. But all this may be necessary,

when suits are carried from court to court, and continued from year to year, until they become so intricate that even a court of lawyers cannot comprehend them.

A county court composed of five judges, to be chosen by the people, to serve for five years, going out by rotation, one annually, and re-eligible—districts composed of from three to six counties—superintended by presidents to be chosen for the same time, either by the people at large in the manner that senators are now chosen, if not too inconvenient; or to be appointed by the executive and approbated by the assembly————a triennial state court to be held at the seat of government by the supreme judges and presidents, in order that uniformity might be kept in view through the state, would answer all the purposes with less expence, and abundantly less fatigue to the people, of the supreme—circuit court—quarter sessions, &c. &c. now in use through the state. If any error or mistake appeared, it might be rectified——discretion might be used as at present to order a new trial.

It will be alledged that these courts would not be adequate to determine difficult cases; that ignorance would operate injustice.

Let it be supposed, (though it is not admitted) that this would sometimes be the case; yet will a few instances, of that kind, happening rarely (not more frequently than at present) be as great an evil, as the delay and expence which now take place in the most trifling cases, to the prevention of justice and ruin of families?

But cases are not difficult in their first stage; we know they are not; they are made so for the purposes of avarice.

Every enlightened man knows, that near to himself, at his own door, among the many disputes he has seen arise, he has never known one, but what could have been fairly ended upon the principles of equity, by a few disinterested intelligent men within the vicinity of the parties, soon after it had happened; provided the angry or fraudulant had been obliged to submit before it had been rendered difficult by technical obscurity. And when a large proportion of the suits were sifted away by arbitration, the courts proposed would be competent to the final ending of all disputes to any amount, that it might be thought proper to exempt from the first tribunal. Mostly at the first court, but generally at the second, the parties could be prepared, if they knew they must, with the best, and worst evidence their cases admitted.

The bench and bar will lift their hands with affected surprise and indignation, on hearing a proposition for so simple and speedy a mode, and speak of the consequences of precipitancy, and want of legality, without wishing to remember, that when a man is charged with felony or murder, under the present system, unless he should have abundance of money, he will be obliged to be ready for trial the first term, although in some instances it might be possible to prove absence and innocence of the crime. But if it be a contention about property—the value of a horse or two or three cows, the action can be delayed for years.

The present incorrect system is evidently calculated to oppress every class of citizens destitute of wealth and leisure; those who are possessed of both, may be armed to meet its evils.

There is no necessity for the subsisting solemn mockery, of the *mere form* of a jury trial about property, provided the substance of *a candid trial* be strictly attended to; and the courts proposed, would answer the purposes of a technical court, which is now surrounded by lawyers quoting authorities and splitting cases for hours, to prevent honest suitors from coming directly to the point of decision.

But in criminal cases, for capital offences, where life is at stake, there is something disagreeable in a decision, which may take a fellow creature away from the community, and send him to eternity. There is then something attached to the office of judge, that should not be called odious, but it is disagreeable to such an extent, that it would be better, that the officer who unfolds such a scene, should reside at a distance from the kindred, the friends, the associates of the amputated member of the gloomy circle.

The form of the trial could not be too simple; but without unnecessary delay, it should be slow and solemn; evidencing that the laws in a democracy have the greatest regard for the life of man; for the life of its citizens. For it has become a question among wise and good men, as well christians as other philosophers, "Whether a community having a refractory member, a heinous offender against the laws of order and morality in custody, within their power, have a right to take his life away for offences; if without the infliction of such punishment, they could render him safe and useful by labour?" Or in other words, "whether the community have a right to put any man to death in cold blood, when it would be dastardly cruel and criminal, for the soldier to do it in the field of battle after his enemy is vanquished?"

Although no odium should attach to the office of judge, while the laws of the commonwealth punish with death, yet if the doubt of its propriety become prevalent, an alteration will take place, and however worthy, mild, and amiable may have been the disposition of the court in the operation of sanguinary laws, the solemn scenes of execution, will never cease presenting themselves to the minds of the vicinity during the present age; and the judge will continue a perpetual abhorrence to the connections of the wretched sufferer, and an object disagreeable to thousands of prudent men.

The utility of executions on offenders, or to the offended community, and their effects are delicate questions, that must coolly ripen; and although it would be right to take a robber or murderer, or disturber of the public peace dead or alive, that would not yield to be tried by the laws, for crimes alledged; yet so soon as he should be safely in custody, would it not be better to be at the expence of his subsistance, than to see his life taken away for the offence?

If the community could be safe from his evil disposition, if reparation could be made for the offence, would not the conscience of every individual concerned, feel perfectly at ease, in avoiding a use-

less sacrifice, by leaving the life of the offender in the hands of its omnipotent creator, to be required at his pleasure.

ESSAY VI.

ON THE PERNICIOUS INFLUENCE OF VARIOUS POWERS IN THE EXECUTIVE.

IN Pennsylvania, the governor or executive officer, has a negative on the passage of laws, almost equal to two thirds of both branches of the legislature. This legislative negative has always been useless, sometimes worse, and might at critical periods be injurious to the state.

But he has other powers which are extremely pernicious under the best governors; that is, the absolute power of filling offices, where in many instances it is impossible for him to know the men.

His information may be through corrupt or selfish channels; sometimes from men who wish to have their friends appointed.

Under a corrupt governor it will still be worse; every son, every kinsman, his favorites and theirs, whether capable or not; with or without the public confidence, will be brought from obscurity; even from other states ————not by the people—and placed over the people, to bask in the sunshine of royal patronage; and those excluded in whom the people, have every reasonable confidence.

Our government is a democracy; it is founded on public opinion; and whether good or defective, rises out of the people; the system therefore should have been so framed as that no door could be open to such abuses.

The constitution ought to have been such, that when evils arise, the people at certain periods by election or otherwise, should be able constitutionally to check them.

But the evils of absolute appointments *without limitation of time*, have no check, they are both the origin and result of despotism: they arise from power in the first and second instance, perniciously placed, and are the source of permanent evil.

The governor is the legitimate organ of the government; the head or the executive; as soon therefore as the people legitimately say a man should receive any important appointment or office, there would be no evil in directing the executive to commission him; thereby expressing the public will. But in no instance should he have absolute power to appoint to office except immediately under himself, where from the nature of the duties to be performed, the officers were directly to be accountable to him as the head of the executive department: where he would be acquainted with their qualifications and faithfulness, and immediately answerable for their conduct to the people.

So many offices being in the gift of the executive; in the gift of any one man, however good he might be; however virtuous the minds of the applicants would consequently consume too great a portion of that time, which could be more rationally and usefully employed in seeing that the laws were faithfully executed through the state; and that speculations were prevented near the government.

But if he were bad, and it were possible more to corrupt him, the present powers and duties throw so much adulation at his feet; so many sycophants as well as honest citizens within his vision, that it is morally impossible, that the man to whom thousands bow, should not daily and hourly become worse, until in the midst of slavish minds, he should be worshipped into forgetfulness of law, of the rights of the people, and of a correct knowlege of himself.

In this despotic power, or triennial despotism given to the governor, the convention turned their eyes again to Britain. They mistook the executive for the fountain of honor, and supposed as the British suppose of their king—that *a governor could do no wrong*; when within a democracy, he is the mere emanation of sovereignty—a reflection of power from the people, and as accountable to them by a periodical resumption of their power, as any other officer.

The governor's election or appointment is entirely popular, it is democratic; but his powers are aristocratic, without any check, but a wide spread distant and ideal responsibility: his functions are absolutely *despotic*. The appointments are too numerous to come from any one department, they should be divided.

The governor is ignorant three times out of four, of the qualifications of the men whom he appoints to office. He may sometimes do wrong knowingly; but he must at other times do wrong necessarily, from the defect of the system, in vesting him with the absolute power of appointment of hundreds of men to office, with whom he never can have been acquainted. Here then is a greater evil than would result from elections; for at least those in a man's neighbourhood could judge of his character and qualifications.

Under a false idea of political perfection, the convention gave the executive unnatural, and in respect to appointments unlimited power; but they became alarmed with the idol they had set up—with their own idol—no wonder—and directly said, he shall in no instance, exercise this power longer than nine years in succession, though the people wish it. What an absurdity! The convention would neither trust their own idol, nor the wisdom of the people. What a sad situation! Had they only given him useful power and no more than one man could exercise consistently with the public safety, they would not have feared the despot, nor tied the hands of the people.

Under the present system, a governor once elected, is probably in every instance so powerfully entrenched in office behind his own creatures, many removeable at will, as to continue nine years; and

the idea of his triennial election, or impeachment for misdemeanor in office, practically delusive and ridiculous.

He that holds the breath of so many officers, let him be a good or evil governor, is likely, in every instance to be continued for nine years. Nay, drunkenness, dissipation, insolence or tyranny, will scarcely prevent him. He should have such moderate powers, so limited as to have left him less dangerous, or under the present system made eligible to office, after his first triennial period, at least for nine years. Thus with the greater tyrants, the people would have had the smaller ones removed that were insolent or evil, every third year, and prevented the executive growth of absolute power, by a rapid change of rulers.

This power thus placed in a governor, is necessarily pernicious, because he is bound to perform duties which he cannot understand, and he appoints men of whom he can have no opportunity of knowlege. He returns to private life, but leaves many of his creatures in the judiciary, lasting monuments of the imperfection of our political institutions. Without evil intention he might have men in power, in office, able to walk the serpentine path between law and justice, exercising petty tyranny during life, without coming within reach of detection so as to produce a removal.

ESSAY VII.

OF THE DANGEROUS POWER OF THE EXECUTIVE OVER THE PUBLIC PURSE.

IN a democracy the executive should have as little influence over the treasury, as is consistent with his general powers of seeing the laws faithfully executed; for fear it should become, in his hands, an engine of corruption, and under colour of facilitating the execution of the laws, be indirectly used to debase and corrupt the people.

The purse of the people, in the hands of their officers, should be used as carefully as the blood of a patient by a prudent physician. For, although it is not the soul of democracy, yet, if it be drawn improperly, and lavished away on a set of unprincipled intriguers, under colour of law, it will have a strong tendency to injure the body politic; and by weakening public confidence in democratic institutions, eventually destroy the very vitals of our political existence.

The treasury ought to be kept as near to the people as is consistent with their scattered situation; hence, by a wise constitutional regulation, although not sufficiently extensive, the state treasurer is elected annually, by a joint vote of the members of both houses. If his integrity be doubted, although there be no proof of embezzle-

ment of the public money, he can be left out of office the year following, without the expence of an impeachment.

Formerly the treasurer was possessed of the power, in part, of an accountant officer. To this power, as well as the safe keeping of the money, undoubtedly the convention turned their attention when his election was instituted; but that power is now chiefly vested in the register and comptroller, where no doubt it would be as safe, were the same check, annual election extended. But instead of that, they are appointed by the executive under law during pleasure; and not accountable to the people through the annual representatives, as the convention seem to have intended the officer holding the purse of the state should always be.

The governor's constitutional power over the treasury, is only to see the laws faithfully executed; but under the laws now in force, when a difference of opinion arises between the register and the comptroller, on the settlement of accounts, which is either withholding or drawing money from the treasury, the governor is to be the umpire and shall decide.

As these officers are appointed by him and removable at pleasure, he has from their dependence an improper influence over them, when they are passing *particular* accounts; for there are but few men who accept offices, that would persevere in saving money to the state, at the risk of losing comfortable livings.

Indeed this risk, this very idea of doing their duty, should convince every mind, that the system which puts virtue to such a test in a democracy is defective. For instead of a temptation to do wrong, every officer from a correct distribution of powers, should have the greatest inducement to do right. This would be effected, were their appointments to be approbated and sustained, by a large body to be delegated immediately from the people; and where as has heretofore been shewn, from the number of members, while the majority of the people remained virtuous, there would be but very little chance of favoritism; or any probability that improper influence over the minds of these officers would take place.

It is true that the constitution declares, that no money shall be drawn from the treasury, but in consequence of appropriations made by law; yet as there will be vague expressions in the laws themselves, it may at times be difficult to know what species of accounts the legislature intended should be paid. This gives a latitude, a discretion which the accountant officers may fairly use to the benefit of the state, or if they want integrity, sadly abuse for the benefit of individuals.

The governor having these men in his fingers, should he be selfish, should *one man* be evil, will be likely to have all accounts passed and paid, to which his interest, or the interest of his friends or dependants under any connection, has the most remote relation; under some law, or *the construction of law.*

The expression in the constitution is defective; it only secures the annual election of the treasurer, without explicitly securing the election, or approbation by the assembly of the officers in the trea-

sury department ; without securing the election or approbation of all the principal men, who either handle or draw money from the treasury ; or admit and settle accounts having that tendency.

From the revolutionary war down to 1792, when the intrigues of the few were creating patronage ; when the few and their friends were making hasty strides to all the posts of profit and honour, in a way more congenial with their wishes, than through the confidence of the people ; then not even the skeleton, nothing but *the shadow of a shade*, the name of a treasurer was left in the hands of the people's nearest representatives ; and the sole discretion of the treasury committed to the safekeeping of the executive.

Two of the governor's creatures, however good or bad the men, whether known or unknown to the people, now settle all accounts, and he by his warrants draws the money, without any check, but through these very men, who know they can be removed the moment they give their patron offence.

It can be no question whether the governor be wise and virtuous enough safely to be trusted with the appointment of the officers who are to open and shut the public purse at pleasure ; nor whether treasury powers, as to receipts and payments should on any occasion, be put into the hands of the executive ; the question has been settled by the convention, and the principle fixed in the constitution. And although the words are not so explicit as they ought to have been, yet their spirit is evident. For as the head of the treasury department is to be annually chosen by the legislature, and other officers in the same department to be appointed as may be directed by law, it cannot be understood, that a law could be constitutional, that would derive those subordinate officers from another source, and give them powers superior to the treasurer. It must be a violation of the constitutional principle to vary the power of withholding or paying safely, from the officer so carefully named in the instrument, and so solemnly elected by the votes of the whole legislature.

Every law that either negatively or positively, gives that responsibility to executive officers, and takes away the money check from the officer of the legislature, named in the constitution, under any idea or notion, is absolutely unconstitutional.

The executive is clothed with many powers by the constitution, but this is reserved ; and designedly reserved to prevent him from having the opportunity of using the purse of the people, if he became corrupt, in aid of his other power, for the purposes of subverting the principles of liberty.

If the convention intended any thing, they intended to keep the purse from the executive ; and by the words in the constitution, which say that " all other officers in the treasury department shall be appointed in such manner as is or shall be directed by law," mean, that the legislature might chuse, whether these officers should also be elected by the members ; or consider the responsibility of the annually elected treasurer sufficient to ensure fidelity

throughout the department, when the whole were derived from him as their head, he from the members, and they directly from the people in too large a body, hastily to admit of corruption.

On the death of the state treasurer, there is no provision in the constitution, to continue the duties of the office until the ensuing year, neither has any hitherto been made by law upon the subject: hence on the death of two treasurers, one in the recess of the legislature, and the other during their sitting, the state was partially paralized. In the former case, the transaction of the business by the clerk without law, was indirectly approbated until the legislature convened; and in the latter case, a special law passed for the election of another, while the business of the state was at a stand.

These two instances plainly point out the necessity of a law, making such provision, that the business should meet no impediment on the death of the officer.

The legislature have long since provided, that there should be a deputy secretary of state, although entirely useless and unnecessary; for on the death of the secretary, the executive could appoint another and no evil arise; yet they have neglected to direct the appointment of a deputy treasurer, when it would be absolutely useful on the death of a treasurer; the executive having no power to touch the office, nor appoint another; and where there should always be such an officer appointed by the treasurer, and approbated by the legislature. He should be the responsible officer in case of the treasurer's death, and without distraction continue the business of the state, in the treasury office until a succeeding election.

ESSAY VIII.

THE SYSTEM OF THE TREASURY NUGATORY, AND DESTRUCTIVE OF ITS INTENTION.

VARIOUS have been the modes hitherto adopted, to render the money of the state safe in the hands of the treasurer, and prevent him from embezzling it. They have all failed, and the evidence of sundry facts incontestibly proves, that from the earliest periods to the present day, the most effectual guard has been the virtue of the treasurer; and when this has failed, the money of the state has been wasted.

Under the present treasury system, the surplus money must be deposited in bank; the bank book therefore at settlement will exhibit the balance nearly of the money in the treasury.

The official check upon the treasurer, is his exhibiting to the register general a monthly report, containing the balance at the end of the preceding month, the receipts and payments during the present, and the balance remaining at the end. This, although a ve-

ry imperfect check, may be of some use to deter timorous knaves but cannot prevent capital mischief, nor check even slight errors.

For as but one receipt in many instances is given for cash received, and that sometimes carried to a remote part of the state, it follows, that no public notice of some payments is given, but by the treasurer himself, or payor when he comes to make a final settlement, which may be several years afterwards.

The act of 1803 enables the accountants to inspect the treasurer's account with the bank of Pennsylvania and its branches; and the act of 1804 to investigate the office and chest; and had the state no interest in the Philadelphia bank, the information derived from these sources, would furnish evidence, that the money was safe, or that it was not, but could never prevent any misapplication; and is better adapted as security to the character of an honest treasurer, who may be unjustly calumniated, than to the purse of the people in the hands of a man who is corrupt and dares to defraud. In fact, the two last provisions seem unfortunately to form a back door, by which an artful and designing treasurer may legally discharge his sureties, and make himself alone responsible for designed delinquencies.

For it has been decided in the supreme court against the state, that the treasurer's sureties being bound for one year only, are not answerable for money that is wasted after its expiration; hence if after a re-election, and before security be entered, the treasury be investigated, and evidence given of the safety of the money, the former sureties are discharged, all the money of the state is in the power of the treasurer, and he alone responsible.

However plausible those checks may have appeared, when instituted, such might be their operation; and the treasurer after his re-election, and while the legislature was sitting, might artfully delay giving security, draw out all the money from the banks, under the plausible pretext of paying the expence of the session (which no accountant could prevent) then privately and hastily spread his drafts (payable at the bank) over the state, and receive value from persons ignorant of the fraud [the state would have to pay them] and designedly become insolvent, bringing loss and confusion on the state.

The accountant officers, in such cases, could do no more; *they never have done more*, than give information of delinquencies after they happened, recollect the money, or state the improbability of its recovery.

But if on the contrary, the accountants themselves were to become so corrupt, as boldly to advocate the right of the treasurer, after entering security, " to make what use he pleased of the public money while it was in his power, provided it was ready when called for;" could it be understood to mean any thing else, but an invitation to enter the current of speculation, whereby he might be sacrificed to their avarice; and instead of their being a guard to the interest of the people, betray the cause that virtue and duty would bid them support.

But now let us pause, and view the provisions of 1803 and 1804, in respect to the investigation of the treasury, by two of the governor's creatures. The governor before that period, was really the treasury, and drew what money he pleased from the treasury; but since, even the idea of holding the money for others safely by the treasurer is totally taken away; no dependence, not even of honesty without wisdom, to be placed in the officer of the assembly; the incompetency of the legislature to make a prudent choice acknowleged, and the infallibility of the executive admitted.

The first law directs the investigation of the bank books, the second obliges the treasurer to open the chest, and have the money counted, for fear he should do without law, what others can do under it—*waste the money*. How excellent, disinterested, and pure are the governor's officers! How suspicious even to the members, the treasurer just chosen by themselves!

This operation being contrary to common sense, evidences an exterior influence. That is the assembly vote as if they believed (what the mind continually repels) that they were incapable of choosing one man from the whole state fit to be trusted. And then follows the consequence, that the governor must take care of him, and of the treasury until the subsequent year.

In the assembly, as well as in every other place, some of the members who have weak minds and but little delicacy, have more assurance and fluency of speech, than some others who possess sound judgment and clear heads. Such are more active than prudent, in bringing forward business, by which from a certain quarter they obtain celebrity. This gives them consequence. Their talents are extolled, their vanity flattered, and they are made to believe, they possess all the wisdom of the body—that were it not for them, ignorance would ruin the state.

Attempts are not wanting to inculcate the false idea, "That in large bodies, the responsibility is so divided that it is lost, and the members care not what they do; that the executive is single and alone responsible, therefore careful. That under such circumstances, while the wiser few, have it in their power, it is better to have just principles fixed by law, which cannot easily be repealed; let the executive have full power, he will do right; it is uncertain who will be in the legislature hereafter, and now is the time to effect these objects." Should improper attempts be made under such ideas, and virtue in the popular body repel the insult, the hint is improved, all the members but *the few* are blockheads, without common sense, unfit to be trusted.

Here are instantly two parties. Call them what you please, you neither alter their nature nor pursuits. *Tory* and *whig*, *federal* and *anti-federal*, *aristocratic* and *democratic*, *court* and *country*—their objects are always different. The one believes in executive infallibility, and evidences a pleasure in hearing, and sometimes in giving the legislature abuse. The other, votes to lessen executive power, believing that the spread of the members over the whole

state, brings a knowlege of the wants and wishes of the people effectually to one point.

Perhaps the two parties should now be denominated the *executive* and *legislative* parties, or *prorogative* and *popular;* for one gives all power to the governor, the other would rather trust a numerous body, which from its very number, cannot so easily be interested in error.

Formerly, when the treasurer was elected, the assembly took the security; but they are not now believed to be capable of judging of security! The governor must do it for them, and thereby, *has it in his power* to embarrass the treasurer elect by refusing good men.

But more than this is in his power under the present constitution. If business of a certain kind, is to be done in a certain way, that needs but little explanation, the treasurer perhaps can be made a creature. He may be adjutant general, an office in the gift of the executive worth six or eight hundred dollars a year. He may be made a clerk of a court, or even a justice of the peace, as well as a treasurer; or he may receive any other office in the gift of the executive that would have a tendancy to produce a disposition of accommodation.

The principal risk the state now runs of money being lost, after receiving it into the treasury, is on account of the possibility of the banks or treasurer failing; when either could be made the sole place of deposit, and two risks reduced to one.

No money has hitherto been lost through the errors or misapplication of the banks; the institutions are answerable for the embezzlement or errors of individuals: but large sums have been lost or embezzled through the neglect of the state, by the treasurers and comptroller; the banks are therefore, certainly the safest place of deposit for public money, into which, in the first instance it should always be paid, and so secured by law, as not to be liable to be drawn by the treasurer, except in the payment of legal demands on the state; settled by the register, and checked by himself.

Were such a mode adopted, it would lessen both the risk of the state and of the treasurer; and he as an honest man, would be better satisfied. Not needing to use, nor intending to abuse power, he would not wish to possess it.

A check to the bank could be instituted, by giving two tickets or receipts for each sum received; with directions, one to be deposited directly or indirectly with the treasurer, and the other for the use of the person paying money to the state.

The treasurer being thus relieved from immediately holding and paying the money, might be more usefully employed, in acting the part of a comptroller of accounts to the register, and render the present comptroller's office useless.

On the settlement of an account, the treasurer should have the power of checking abuses, and errors; and where any impropriety appeared, as an officer responsible to the people through the legi-

slature, stop the payment of the money until a re-examination and proper adjustment took place.

Instead of the governor being treasurer, and signing blank warrants to be filled with any sum at the pleasure of two of his creatures, and paid over the head of the legislative check, the treasurer, without handling a cent should pay the claim, at bank, after settlement by the register. He would then be responsible to the members for its propriety or impropriety at the annual election.

The constitution, though defective in many of its parts, would admit of an improvement under law of the treasury system; for doubtless the intention was to keep the money in the power of the assembly; but the treasurer is now become no more than a nose of wax, liable to be twisted whether he will or not, to suit the purposes of corruption, and to the prejudice of the state.

The people must judge by the payments heretofore made, whether this power has ever been abused. The design here is only to shew, that such is the tendency of the present system; that it can be abused, almost with impunity; and that under this constitution, it could and should be amended, so as to make the treasurer's election of some use to the people, and to answer the end of its institution.

Money should be drawn in no other way from the banks, than by the treasurer's draft, or warrant attached to and corresponding with the register's authenticated report of a specific debt, admitted and settled to be due from the state. The treasurer as usual, should give the legislature an annual account of receipts and payments, and the banks should deliver them an abstract also from their state account, in form of a bank book or short ledger, shewing the money received and paid, and the balance in the bank at the end of the year.

If these documents corresponded with the register's report, they would form evidence of the safety of the money, and the treasurer not being permitted to receive money, nor make payments in any other way, no embezzlement could take place, except by collusion of the banks; which from the vigilance of the directors of those institutions, is never likely to take place.

ESSAY IX.

OF CHECKS AND BALANCES IN THE LAND DEPARTMENT.

IT is not difficult to know the difference between men and measures; nor to learn that the detail and operation of our system, is as imperfect as the constitution out of which it arises.

Among the minor defects, none present themselves more strongly, than the arrangements made in the land department; nor do any produce more complaints from those who have the fatigue and perplexity of doing their business therein.

The governor in the plenitude of his power is at the head of the department, and all grants of land made to the citizens are in—— his name. Every man who obtains a patent must do it by *trotting* to the four land offices; and probably in order that something very mysterious—very profound, may appear to the farmer in the transaction of public business, he is made to perform a second tour, to the same offices, with a ticket in his hand, which he has not leisure to investigate; and thus to obtain a patent, has become by its *small mystery*, a money making job to a few triflers about the seat of government; when the applicant ought to be able to obtain it at two offices alone; the surveyor general's and the secretary's.

It is impossible that the governor, unless he reside at the seat of government, could attend to the individual call of every man, who wants a patent or warrant; he signs blanks to be filled at the secretary's or surveyor's offices with proper quantities of land at the stated prices. Here then is a *political foolery* (like the governor's commission, *under the idea of confidence* to every drunken gin retailer) played off to make the farmer suppose, that while *he* was in waiting, the *great governor* was attending to *his* business; when his parchment or paper, probably had been signed, among hundreds of other blanks, more than a year before his application, and filled by a subaltern clerk, known by nothing perhaps better, than his insolence to those who furnish his bread.

To assign duties to any officer, more than he has time to perform, is as absurd as to assign him duties, without the requisite information upon which he ought to act. The proper officer might as well sign the governor's name, or his own, to the paper, as to do the essential part, direct the quantity of land, and what money ought to be paid. All this is done under the idea of checks and balances, or *wheels within wheels*, and *held up*, as security for the fidelity of the officers, and a prevention of errors. But ever since the year ninety-nine, when delinquencies happened by way of speculation (by men, one of whom met with elevation for his aid to criminality, and his unfaithfulness therein to his patron) the public are aware, that all these offices furnish no check to the officer, nor guard against embezzlement of the property of the state. The failings and detection of one, may induce more secrecy, but is no proof of more honesty nor more safety.

The idea of their making quarterly returns upon oath, is a criterion by which to judge, that other checks are wanting; and it is doubtful whether this, solemn and sacred as it is, has always been sufficient. But as measures and not men are here the principal object, personality is avoided, as far as justice to the public will permit; greater forbearance would border on criminality, and cannot be expected, though a development should excite detestation against men in power, debased by more than their insignificance.

When the republicans obtained the power in ninety-nine, it was expected that a new arrangement would be made; that a consolidation of the land officers would take place—that they would be re-

duced to one or two at most, and the applicant saved the trouble and degradation of dancing attendance in imitation of the European courts, several days, after four heads of departments, and twelve or fifteen clerks, merely to obtain a patent—but this was not done. As soon as the people, had by their exertions, ousted or subverted the prevailing aristocracy, the public mind in its exultations forgot to compleat the object of the change, which was measures; and a few courtiers under the present system of patronage, found means to quiet the fears of the legislature, and procure individual standing at the expence of the community; a new aristocracy was formed. Hence it has become doubtful whether there will be a land office reform, without being preceded by a constitutional reform, so as to place characters in office, who would virtuously lend their aid to divest government of useless practices and unnecessary expence. They are now *useful;* they encrease patronage, and extend the governor's influence, and it would *uncreate* any of his creatures to give that information to the legislature, which would tend to lessen their number, or reduce their perquisites.

It is as true as it is expensive, that there can be no use, nor any good reason assigned for so many officers in the land department. There is not half so much use for a receiver general at the seat of government, where the treasurer resides, as there is, for two or three deputy treasurers in different parts of the state (which can also be done without) to receive public money, and save the expence to the distant citizens of carrying it to the seat of government. But when it is carried there, to pay it to one, that he may pay it to another—to pay it to a less treasurer, the receiver general, that he may pay it to a greater receiver general, that is the state treasurer —is absurd—it borders on the ridiculous.

It is true that the receiver general's books are not all posted, notwithstanding that officer, in 1799, received more than one thousand dollars for having performed, what it is since evident, he had scarcely touched. Posting is desirable, but in these books, the difference is small to clerks, and the applicants know no inconvenience—there is no detention. The account is so simple that, by its date, it is found by inspection, and as but one or two entries are included in the most intricate, it is settled with ease. It would be better that the accounts were posted, because the state has more than once paid the expence; but as their present situation has the advantage of upholding sinecures, and the payment of clerk hire is held in aid of a subordinate phalanx, if the future should be judged of by the past, there is no probabilty of their being completed for a century to come.

The receiver general appears to be no more in finance than a subaltern treasurer, or under receiver, taking the trouble of the detail of the receipts of money for land sold, from his principal the treasurer; when the money could be paid to the treasurer, or, in the first instance, into the bank, and the receiver's salary and contingencies saved to the state.

When the patent is written under the direction of the secretary of the land office, and signed by him or the governor, it could be enrolled by an additional clerk in the same office, where the patent books should be kept; and the fees of the roll's-officer also saved.

Under this reform, and the abolishment of the comptroller's office, which is totally useless, there would be but *five heads* of department left, including the treasurer, instead of the present *eight;* and if necessary, which is doubtful, the two remaining land officers could have one of the other heads of department associated with them, to continue the board of property, or court of equity, for the decision of land disputes.

The duties to be performed in the land offices, are necessary duties, but they can be performed in two, as well as in twenty. This is not all, to pay two unnecessary heads of department under the idea of a check, that *checks nothing but money from the treasury*, requires a little explanation.

The receiver general according to the register's report of finance, receives annually for lands sold by the state, from forty to sixty thousand dollars. He produces an account quarterly to the register general; the secretary and surveyor general do the same as to the fees, and all swear they make a true return of all the money received, to the best of *their* knowledge; when their *clerks have received nearly all* that has been received, and *swear nothing about the business.* According to their several returns they are settled with, exhibiting what, and only what books they please; yet if they produced all, that which occupies the time of two or three offices, could not be re-settled so as to correct errors, not to notice omissions, with all the extra attention he would be able to give.

This check amounts to no more, than the oath of the officer for the fidelity of his clerk! What a check—*what a balance!* hanging all on one side; the oath of the man who directs another to receive the money, and give a true account of the sums received!!!

Although the legislature by the act of April 20, 1795, provides that no clerks in the land offices shall receive fees, gratuities, or monies for transacting business relating to said offices while acting as clerks therein, have honestly endeavoured to root out bribery and corruption; yet *under good natured complacence*, it would be morally impossible to prevent overgrown speculators from sliding a few dollars occasionally through the lid of a *pliable desk*, or leaving a few hundreds of the tail of a handsome deposit, *without ever being called for.*

Under these idle, these visionary checks, would it be any wonder, if such clerks should trifle with their subordinate confidence, and amass wealth by all evil ways and means? Would it be any thing mysterious, if in half a dozen years, they should rise from needy obscurity into opulence; should have their weak heads turned with their own consequence, and with their equipages, figure in the circles of luxury and shew?

Were it not for turning officers out of doors, who as they are judges in a court of equity, may begin to think themselves (under the legal idea) possessed of a *freehold estate in the salary*, the calculations of the price of land, and interest could be made with the secretary of the land office, where the land is applied for; and the patent enrolled there also, where it is written, as well as to continue the other two offices, to the manifest disadvantage of applicants, no safety by way of check, and a loss to the state of several thousands a year; beside the omissions made up of *negatives* too difficult to explain or calculate.

ESSAY X.

MORE OF THE GREAT MASTER CHECK, AND THE LITTLE CHECKS AND BALANCES.

THE governor of Pennsylvania has a power by way of check, to *the weakness and caprice of the people* in legislation, nearly equal to two thirds of both branches. He can negative bills and prevent them from becoming law, unless re-passed by two thirds of each house. Men who are fond of other checks and balances beside the people; and who believe it essential to free government, to keep the branches distinct and independent of each other; cannot contend for this power in the executive, on any other principle, than that of the people being *their own worst enemies*, and requiring this triennial pendulum, which, by its vibrations, is to keep them from destroying themselves.

But this check absurd as it is; absurd as must ever be the idea of one man's wisdom, being equal to the deliberate wisdom of two thirds of the members of two branches, taken by the same persons from the same source; still this legislative power incidental to the executive, is neither more dangerous, nor less extraordinary, than a judicial power arising from the same source; the appointment of the board of property, under the tenure by which the officers hold their commissions.

The governor has no power to continue them longer than his own triennial period; but as the constitution is silent on the subject, they are only commissioned during his pleasure; although they constitute, what ought from its own nature, to be considered a respectable court of equity.

Let it be supposed, that like any other officer, the governor might be corrupt: he is the principal mover or main spring of this court, and although he does not sit therein, he can have an influence over it. For if he can instantly annihilate the political existence of the officers; if he can take away their offices and their salaries, without shadow of corruption, without trial or complaint, it cannot be doubted, but he can have an improper influence over them, and sooner or later, at one time or another,

there will be a pernicious effect produced by their dependence upon *the will of one man.*

Has not an executive vested with so much patronage as many followers as any other officer? May they not be speculators? Many among such have hitherto been, and themselves or friends have suits before the board of property where original titles are tried? Cannot foul play be used under the idea of seeing the laws faithfully executed, *without any commitment?* And by the eloquence of five hundred pounds a year, could not the governor have as fair a chance of silencing the whisperings of conscience in the breasts of the land officers as corrupt nature could afford?

These things may never have taken place, yet a slight investigation of the system will flash conviction to every intelligent mind, that such consequences may naturally result; that abuses might pass for years without detection, even though suspicions arose of executive corruption.

Why should the governor hold these offices at his will? What nearer connection can there be between the executive and the board of property, than between him and other courts, except in the minds of those who discern no wisdom but that which emanates from the executive fountain? What relation can exist but that which relates to patronage, and the security of the public servants from the reach and responsibility of the people? This has always been the aim of tyrants, and of those who profited by their injustice. Hence the judges independence of the people, has been clamoured for by the aristocracy from one end of the state to the other, without a single idea being thrown out, that the judges in the board of property—of this court of equity, should be independent of the executive. Not a murmur that they should be legal characters, while the governor holds their breath; while every possibility exists of legal tricks being played off upon them through the executive.

Would abuses be likely to take place, if the land officers held their offices by the approbation of the people's annual representatives, either annually or triennially? By the approbation of the only men to whom the proceedings in the offices are completely open—by the men who would be able to give them a salutary check, and very few of whom, have ever been concerned in land speculations?

Were their appointments to be approbated by a numerous body, favoritism as has been elsewhere shewn, would be excluded, and persons to fill these offices, selected from the state at large; whose characters moral and political could not be questioned.

If they became bad, complaints they could not obviate would be exhibited against them, and none be found able to screen them from the ordeal of representative democracy.

There would not then be the least chance for an open or concealed confederacy taking place in any of these offices, and extending through the state, by means of clerks and deputy surveyors, so as to procure the surveying of the best tracts of land as the

price of deputy corruption, which might enable the head of any department in the course of eight or ten years, to rise by speculation, from insolvency to the possession of a landed estate, worth one hundred thousand dollars.

These are not the dreams of theorists, they are the result of observation, and *experience*, without which no system can be understood. Such means are within the power of intelligent members in the legislature, if they act without fear of the magnitude of the task, or permitting the diversion of their minds to other objects by the interested few, who endeavour to profit by their ignorance of human cullibility.

Perfection will never result from imperfection ; but it is to be hoped, that the people will remain wise and virtuous enough, to correct imperfections which are evident, without being alarmed by the ill-founded fears of the timid, or terrified into silence by those who a few years ago—a few years before they rose from obscurity into office, were the loudest for a reform of abuses ; but who since their elevation, have by their conduct evinced, that the struggles in Pennsylvania in 1799, have terminated only in placing a new set of men in office, whose morals and politics were equally detestable, and many of them not possessing *half the dignity* of their *corrupt predecessors.*

ESSAY XI.

ON THE DANGER OF EXCESSIVE CONFIDENCE.

THE love of glory or a desire of fame, as well as virtue, has a powerful effect upon the mind : none who are enlightened can be totally divested of this principle.

A wish of perpetuating a name, by acts of virtue, disinterestedness, and public spirit, and of handing it down conspicuously to posterity, when accompanied by a sound mind, and splendid talents, is capable of producing the greatest good.

When mankind are so fortunate, as to find an union of such virtues in one or more individuals, and feel their happy effects emanating from an exalted station ; gratitude consigns almost unlimited confidence to them, but freemen are too apt to forget every precautionary check, and too frequently make the man stronger than the government itself, in which he is placed.

As every good, has attendant evils ; so sometimes hath despotism occasional good ; but embarrassment is always the consequence of this *unbounded* confidence.

Washington through a course of unwearied and patriotic services, justly gained the confidence of an enlightened and grateful people. His early earned fame united to virtue, spurred him on at the revolution, to the most generous actions ; his patience and perseverance, his coolness and decision, will never be forgotten ; they will be remembered while happiness and freedom are

enjoyed. The people could have trusted him with all their rights and privileges, without resriction or restraint.

But what has been the consequence? Where Washington left off, others stopt short; or took up an adverse course. The power acquired through confidence justly obtained, has since been enjoyed with little more than a shadow of claim to merit, to the sinister advancement of families; the interest of their particular friends; and has invited attempts at many high-toned measures, to the great disadvantage of the people.

Washington as well as Cincinnatus was a farmer; one of the men who laboured in the earth; the chosen people of God (says a celebrated writer) if ever he had a chosen people, in whose breasts is kept alive the sacred fire of liberty. So great was the people's confidence in him, that many who did not approve of all the provisions of the federal constitution, said they would nevertheless acquiesce under it, because they believed it was so formed, on purpose to provide a place adapted to his greatness of mind. These people forgot that Washington could not live for ever.

These observations are made to shew, that however good, however virtuous the people, power should always be conferred with a sparing hand, guarded with a watchful eye; the avenues to corruption and despotism closed, and principles and measures, not men, should be the aim of politicians.

Instead of extending the period of reform, the proper time to remove unnecessary power, is when virtue and wisdom are in office; there is scarcely any other time.

It is villanous, weak, or vain in officers to make objections and say, "we do not intend to abuse the public confidence." The power if necessary, should be well guarded; if useless annihilated. The officer who will not aid the public by his exertions is a tyrant, and plotting treason against liberty. He will take it into his own safekeeping and exclusive occupancy, when opportunity offers.

Rulers should be men of moderate desires, hating covetousness. They should be men who would be satisfied with useful power and a reasonable compensation for their services, which would afford them a comfortable living; and if much time were spent in the public service, they should be enabled to lay so much aside, as would prevent want in the evening of life.

But the men who seek more; who seek to accumulate wealth by the opportunity an office affords for speculation, in order that their friends may roll in luxury, and follow useless occupations, degrade their station, injure democracy, and should be spurned into obscurity.

Since Pennsylvania has been a government, either aristocratic or democratic; both under the Penns and the Commonwealth, great and reiterated complaints have been made of the rapacity of the men near its government. Their cupidity for wealth, their combinations in speculation—their putting themselves in the way of the needy soldier, some to depreciate and some to purchase—their ingrossing Wyoming rights—their speculations in the North American Insurance Company, and five million loan, not to mention new loans, purparts, &c. &c. have been so much agitated; so

much complained of; so frequently brought before the public, that they should long ago have been sifted by the executive, who is solemnly sworn to see the laws faithfully executed, and if evils existed proper remedies applied.

Officers should not only be virtuous; not only innocent; but in a democracy, so totally devoid of suspicion, that envy could not blast their reputation.

Whatever is obtained by speculation must be taken from the community, and it would be the height of baseness, as well as injustice, that those who are near the government, who are paid for their services, should take from the needy. It would be abominable to send the war-worn veteran, to sell his land at the door, where a centinel had been previously placed to undervalue it; who would recommend him to a second, instructed to despise it; and to a third who would purchase it out of *mere charity*, at seventy-five per cent. less than its real value. This would indeed be the abomination of desolation, and in time destroy the people's confidence in democracy.

Is human nature thus corrupt! Is it possible that under a democracy as well as under an aristocracy, we find instances of the same evils! That we find complaints of the designing, filling their coffers at the public expence, as well as at the expence of virtue! If the complaints be well founded, it proves, that on our democracy, we have engrafted the features, the principles, the habits of aristocracy. That the system is defective—that although frequently changing men, we have been neglecting principles and rights. That because the virtuous have acted correctly, we have wholly neglected to correct the system, so as to restrain the vicious. The people have thrown off the yoke of masters, and become free, but have nevertheless suffered themselves to be imposed upon by many of their own servants.

A method should be devised, that would in an effectual manner, prevent every opportunity that an office affords, of the officer turning his attention to speculation. He should not be starved; the labourer is worthy of his hire; but servants should not be too numerous. Make public business worth the attention of public characters, but after that is done, prevent them from battening upon the labour of the poor.

The blustering officer, inflated by a few hastily accumulated thousands, will spurn the idea of being treated as a suspicious character, who, in the exercise of public duties, would need a check, or should be laid under the restraint of a penal code.

But the surest method of reasoning is, from the past to the future. If officers have frequently departed from their duty heretofore, others will be as likely to do it hereafter; and like the community at large, who, under law, are all alike restrained from doing evil, because some are corrupt, they should have laws so adapted, as to prevent every chance of corruption.

The officers of the federal government are, in some respects, prohibited from trading, for fear their public spirit should be lost, and

from patriots, their minds become mercenary, and unfit for their stations; but the heads of departments in Pennsylvania, are left as free as air, to purchase, by themselves or friends, any kind of public securities, or disputed titles to lands, and as part, or the whole, of the board of property, have the priviledge of deciding upon their own claims.

These evils are so repugnant to common sense, so productive of the most serious consequences, that it is wonderful they have never been corrected under either constitution, though the people have been loud in their complaints under both.

Would there be any impropriety, in the state saying that in its important offices, "We will give the men employed a living; they shall have no anxiety about the necessaries of life, but they shall conscientiously devote their time to the public service with an undivided attention; We shall not accept it upon any other terms; of this they shall make the most solemn appeal, and should they be faithless, we will punish them as criminals." Would this be unjust? Would it be wrong to exact from public servants, highly responsible, all their attention?

Under a democracy, where the government rests upon public virtue, there should be none but public characters of tried wisdom and virtue introduced into the more important offices. For the duty of office is not a business of favoriteism, it is a solemn agency, in which the people can never be satisfied, except in the services of men whom they know to be faithful to their interests. Such could be found, and would be willing to serve the people upon these terms; and the people should not be prevented from receiving the benefit of their services through the influence of favoriteism corruptly or blindly flowing from one man.

Public characters are as likely to be virtuous, at least, as private individuals. They enjoy the public confidence, while their actions are satisfactory to the people. Character would aid their virtue, and be a greater security in future. The union of these in any individual, having cost years in acquiring, would be dearer to part with, than life itself, and a future security to the public, equal to any that it is possible they can ever obtain of man.

ESSAY XII.

ON THE OFFICE OF SECRETARY OF THE COMMONWEALTH AND ITS PERVERSION.

IN a former essay it is observed, that the secretary of state is intended to be a check to the executive; and that the assembly can investigate the official conduct of the governor through him: his appointment, therefore, should have been otherwise derived, in order that the legislature might receive information of executive conduct, through a channel void of suspicion.

The secretary is literally independent of the governor for three years, yet, as the governor can hold under three triennial elections; then six years out of nine, the secretary's subsequent appointments are pending with him; from the disposition of human nature, it is not likely that he can act a very independent part, while he knows that in future he is liable to be left out for the most trifling offence. He is, therefore, to be considered an executive creature, subordinate to the governor. His appointment under the present system, should have been periodically by the assembly, the body to whom the governor in amenable for misbehaviour in office; or else he should be continued until the nine years expired, or the governor were removed.

But worse than that has happened. The governor's office has twisted itself under usage, connected with law, into the secretary's office, and appears to have absorbed nearly all its powers. So much so, that the idea of any other office for governor seems to be almost lost. The two offices have become one in practice, under the apparent control of the governor himself; partly by inattention in framing laws, prescribing duties to the executive; and partly by accidental habits or interested views.

The governor, by being vested with many of the powers naturally belonging to the office of state treasurer, as well as having nearly all the discretion of making contracts through the agency of the secretary, has also had the secretary's office converted into a kind of left-handed accountant department. He issues warrants from that office, on the treasury, to pay the contracts; and even to pay quarterly salaries, so low as thirty five dollars to an associate judge, which meet with very little investigation afterwards, except a formal entry by two of his own accountant officers, and a draft which the treasurer *is bound by law to give*, until it is paid at bank.

These warrants are prepared, printed, and then mostly signed in the form of other blanks, and filled in the secretary's office as if it belonged to the governor.

Would not a *fac simile*—a stamp to be used by the waiter in the office, and applied to warrants after they were filled with the dates, and sums desired, be equal, at least, to a blank warrant, signed by the governor, and afterwards filled with any sum, at the pleasure of the secretary, deputy secretary, or clerk; and as good and valid in common sense, if not in common law?

The warrants are entered with the register, and left at the comptroller's after entry, for the applicants, and then paid at the treasury, *by a check on the bank*.

But the treasurer, with one-fourth of the expence and trouble, could pay the money at bank, without handling it himself; as stated in Essay VIII. by his draft attached to the register's certificate of a settled account.

Issuing warrants at the secretary's office, opens a door for several useless clerks and runners, unless their use be sought in the scurrility of ministerial papers, published in aid of triennial

exertions, for the support of an executive master, who would save the people from their worst enemies, themselves; or the neat packages of well boxed papers and pamphlets spread at certain periods, through the complacency of stage owners and drivers, to the most remote corners of the state.

The useless formality of warrants, if done at all, should be issued by the governor, through a private clerk in an office of his own; and a simple entry thereof, made at the secretary's office, as a constitutional record; that the offices might be kept as distinct as the constitution designed. This would give time for recording the acts of assembly, which properly belongs to the secretary's office.

The secretary of state, is not intended by the constitution, to be the governor's secretary; he is a state officer at the head of a department, over whom the executive ought to have no control.

If the secretary be remiss in his duty, or act corruptly in the department, the governor might, as in other cases recommend an impeachment.

The enrollment of the laws belong to the secretary of state, as naturally as the enrollment of the patents belongs to the secretary of the land office. The rolls office and the receiver general's appear to be appendages of the landed estate; when all were tenants under the proprietary aristocracy, in the time of the province, and altogether useless under the commonwealth.

There was then a receiver general, as well as a province treasurer, because the proprietary had an interest separate from the people of the province. The money arising from the sale of lands, as well as quit-rents was his own, and never to go into the treasury, to mix with the money of the people.

There is but one interest, the interest of the people under the commonwealth; and the secretary of the land office who writes the patent, should be the officer to enroll it. They are all in one form; and the patent, and the enrollment book, both printed blank and filled. They should be done at one place (for each would take but a few minutes) to avoid inconvenience to applicants. The price of the land, the interest and fees should be ascertained at the same place, and paid at bank before the patent issues. The ticket or receipt for the money, should entitle the bearer named, to the receipt of the warrant or patent, and should be finally deposited with the treasurer as a check to the bank.

The secretary has always collected and arranged the laws, and should enroll them as soon as they are put into his hands.

The partial payment of fees to different officers, arose from the officers being formerly supported by those fees. They were then their means of living; but the officers all except one, are now salary officers, and should have nothing to do with illegal perquisites.

It is remarkable, but no way marvellous, that this money in its passage to the treasury, has always had a contrary motion from the land speculations. If the latter were rapid, the former was slow. If the speculations were slow, the progress of the money seemed faster and sometimes even direct.

ESSAY XIII.

OF THE EXECUTIVE INFLUENCE.

IN Essay VII. it is said, that the state treasurer, since the close of the revolutionary war, has been reduced to *the shadow of a shade.* He is truly now rendered an unnecessary officer, who has no duties to perform. He forms no kind of check to the exorbitant power of the executive, which comes in, by such indirect and unexpected modes, that very few have a knowlege, that his power is absolute over the money of the state.

It has been heretofore shewn, that the whole power of the treasury department is in the hands of the governor. He can directly or indirectly, under law or the construction of law, draw out every cent of money, and if he chuses, legally trifle in this manner with the principle of the constitution, which secures to the people the election of the treasurer annually, by their annual representatives.

Of what use can it be to elect a treasurer with so much formality, to take care of the money, which the laws direct to be constantly deposited in bank; and then oblige him by another law, immediately to draw it out, to pay the orders of the governor's accountants (signed by the governor) whenever they wish it should be drawn?

The governor's orders might as well be directed at once to the bank where the money is deposited, without uselessly passing through the hand of the treasurer, who cannot check an improper payment.

But *the shadow of a shade*, has in it another meaning *under this constitution*, quite as applicable to the assembly that produces the treasurer, as to the treasurer that is produced.

If some few members of the general assembly, say nine senators out of twenty-five, or more than one third out of the present ratio, be partially diverted from a firm attitude; if these nine can be brought fairly, or unfairly seduced, to subserve the executive will; ought we not, after the example of the *worshipful* judge, to call them *an executive negative pregnant*, able to control (with the governor's aid) the legislative will of sixteen other senators, and the whole number of members in the house of representatives?

Here the negative wisdom of nine senators, with a little executive aid, is too heavy for the possitive wisdom of sixteen other senators, and the whole house of representatives. This system should be styled an eulogium upon the weakness, folly, *or cunning* of human nature.

On a view of these things, is it not a fair conclusion that legislative proceedings may be so marred, as that nothing important will be supported, that counteracts the opinions and wishes of a cunning, intriguing, executive magistrate?

'Tis true, a governor may be so vain, and hold the people and their representatives in such compleat contempt, that a spirit of

opposition will sometimes be roused, so as to bear down the natural tendency of the principles of aristocracy; and carry important measures in an extraordinary manner over the head of the executive.

Perhaps this has been done in a few instances, but it has happened rarely; and when it did happen, it only served as a signal to provoke contempt and arrogance, to proceed more effectually by the tempting influence of patronage, upon the principles of the court of St. James's, and thereby render the representative body (notwithstanding the virtue of a majority) completely *a political shade*, producing little more than shadows of measures of protection, security, or justice.

How many principles are brought forward at the seat of government for legislative investigation (suited to the interest of a certain class) which have been warped into one or other of the houses, or palmed through the committee of ways and means, that cannot be traced to a greater extent? Where do these things come from? The new members and less influential, being unsuspecting, seldom know where they originate. Some of the old members, with all the dignity and virtue becoming public servants, as well as a few of the new, when they detect these spurious impositions, make all the head they are able against them; yet it frequently happens that these illegitimates progress through both houses, are advocated by executive echo in and out of doors, and often pass into laws, before the people are aware, or a majority of their members discover their pernicious tendency.

If baseness is sometimes discovered near the assembly, the authors are covered from investigation, either by their insignificance; or under sub-appointments, and their acts too soon forgotten. Every session opens a new scene of intrigue, and produces new and inexperienced members to be intrigued with; some of whom are imposed upon as their predecessors were, so that nine may be obtained out of twenty-five, for particular purposes, by a diminutive set of stationary intriguers void of talents and principle.

If all the evils that are wanted, cannot be obtained, yet much of the good naturally arising from a legislature will be industriously prevented; and the *probationary body* thereby proved to be too light, an undermatch for the stationary host, and legislation under the present system little more than a shade producing shadows.

If it were proposed to the people of Pennsylvania to vest the executive directly with legislative powers, and to relieve them from the expence of an assembly, they would justly spurn the idea. But if the executive *can* frequently procure such laws indirectly as he wishes, and out of one hundred and eleven members, induce nine senators to be of his opinion, and *prevent laws* that are obnoxious to him from passing; it brings legislative power as near to annihilation as the most abject sycophant could wish; this advantage is also on the side of the executive, that the idea of legislative authority goes out to the people, and adds a sanction to measures, which without it would be scouted from the community.

If to these considerations be added, the weight of official influence at the annual election, exerted in the different counties through the prothonotaries, registers, and recorders, deputy and sub-deputy surveyors, sub-states attorneys and brigade inspectors, who mostly look for re-appointment, or continuance; a weight that under this system, naturally falls into the scale in favour of the candidates that are known to be pursuing the measures of the executive; and afterwards add to all this, a few brigade inspectors, and deputy surveyors who (holding commissions under the executive) are improperly sent to the assembly; few will be so confident as to affirm, that an aristocratic governor has it not in his power directly or indirecly to give laws to the state, prejudicial to their interests, pernicious to their liberties, and destructive of free government.

This was not seen, scarcely suspected by many for some time, under the early operation of the present constitution; but now nothing seems better understood, nor is perhaps better managed by the few who cling to power, who are even busily employed in under drudgery, too despicable even for vicious minds of a more capacious make.

ESSAY XIV.

REFORM THE VITAL PRINCIPLE OF FREE GOVERNMENT.

A political system approaching towards perfection, must like the animal system, have a rennovating principle within itself, by which the evils arising, as they are discovered, may be removed, and the body politic brought to a sound and healthy state.

The most perfect of the works of creation known to man, is man. And in every instance when he is attacked by disease, he finds a principle within his system, tending to remove the evil, restore order, and produce that regularity which nature intended should reign.

In every system that can be formed, there will be imperfection; but the mind of man is incapable of standing still. It is either progressing in knowlege, or declining into ignorance. It is either advancing in virtue, or by imperceptible degrees, sinking into corruption. When the people neglect their interest, they afford their rulers an opportunity of retreating from freedom back towards despotism. Though the system remain literally the same, the officers take advantage of its defects, and mostly by gradual abuses, entrench themselves and friends in office, until the general interest, as much as possible is put out of view.

Hence the necessity, that every original form of free government, like the federal constitution, should have a conventional article, providing a mode of correction for its weak, inconvenient, and defective parts. And then so long as the vigilance of the peo-

ple remained, so long as they would have as good a form of government, as it is possible for the limited wisdom of man to obtain.

If the people became inattentive and depraved, a constitution would not, could not, be of any avail, long to secure them in the enjoyment of liberty. It is therefore idle to fear a revision—to fear that an amendment to the constitution, would set every thing or any thing afloat, that was not afloat before; or that it would evidence such versatility in the people, as finally to destroy the credit of democracy, the confidence they have in their government, and induce them to enlist for their safety and ease under a despotism.

Vigilance and a love of freedom, lead to an examination of the conduct of officers; and if unfaithfulness be evident, under a difficulty of removal, it is a proof of defects in the constitution or laws; but it would answer no valuable purpose to stop there; attempts should be made to displace corrupt men; and by amendments, as far as possible, prevent an opportunity of similar evils arising.

A difinition of rights, a restriction of powers, and a specification of duties, have many advantages; but *the keystone of liberty*, is the annual convention of the people, by their representatives, to consult upon their own affairs, and to pursue thereby their own interests and happiness.

Without this annual meeting, the servants of the people would soon become their masters. The laws, the constitution, and every thing that is valuable to freemen, would be prostrated lower than the earth itself.

This annual meeting of the people, by their annual representatives, under all governments where it has been established, has been the dread of aristocrats, made tyrants to tremble, and been hateful to all the proud oppressors of man.

Rewards or bribes, in a numerous assembly will be vain. Members will sometimes err; individuals may be influenced or corrupted; but it will be morally impossible for the majority of a large body taken annually from the people to be corrupted and wilfully stray from their duty. They will remain the willing defenders of liberty, moved by nothing but the interests and wishes of their constituents, which they will pursue as their own. In so enlightened a state as Pennsylvania; the period must be short, that they may not forget their own dignity, and lose sight of their principles of liberty, so as to adulate a tyrant or rally round a despot.

This annual meeting of the people, is the great security of equal rights; it ought never to be dispensed with at any time, nor on any occasion; nor ought any power or office be held for a longer tenure. But it need not always be confined to legislation; the people ought to act periodically as a revisory body. Once in ten years, there should be elected a convention solely for that purpose, and in that year ordinary legislation to be omitted.

Defects in the constitution could be examined and corrected; and if very great caution were necessary, in order that all might

have information upon so important a subject, any alteration or amendment which might be made, should be submitted to the adoption or rejection, of the ordinary members of the next succeeding legislature.

Delegates coming together as a convention, once in ten years, would be as great a guard to the liberties of the people that year, as the ordinary legislature could be other years, and no additional expence thereby would be brought upon the people.

Had such a principle as this, been engrafted in the constitution, the clamour about anarchy and self destruction would not have been made. Evils as they became evident would have been removed.

The servants of the people would not have made such strides towards becoming their masters; and we should have been progressing gradually towards a state of unexampled rational liberty; not the envy, but the desirable object of imitation for other states.

The enemies of mankind always wish to meet them single, that may be able to defeat them when their strengh is divided. They are always afraid of the people coming together to consult upon their common good. They are willing to call it riot, sedition, and insurrection whenever they can, and if possible scare the people with themselves. They are well assured that every amendment to constitutions as well as every revolution in government, however unhappily some have been conducted, has taken place in consequence of the abuse of power, and stands as a monument censuring the conduct of public officers.

As the weak and defective parts of law, are the gain of dishonesty, and the advantage of the bar, so the defects in the constitution, are converted to the benefit of the corrupt, who administer the government. As soon therefore as any attempt is made to remedy defects, and remove abuses, no wonder that a clamour is raised against the reformers. The necessity of a reform having arisen from the corruption and abuse of officers, they and their parasites justly anticipate a removal, on being spurned from their elevation and degraded.

They revile the ignorance of the *swinish multitude*, but really dread the wisdom, virtue, and vigilance of the people, which alive to the subject, will hurl them from their once fancied security.

Though they predict destruction to pursue the heels of every improvement, they believe nothing in danger, but themselves, their offices, and their salaries.

They are careful of the public money, when a convention is about to be called, but anxiously support the bench and the bar, though the consequence of that independence, in the trial of the judges and justices by the legislature, within a few years, has cost the state more than fifty thousand dollars.

They know that a revision of the constitution, would remove the cause of such enormous expences, but they are also certain, that themselves and adherents would forever be removed, entirely from political life, unless they reform their lives and their political principles to due respect for elective government.

ESSAY XV.

THE EXECUTIVE POWER AS IT IS ABSURD, DESPOTIC IN FACT.

ON a perusal of the foregoing essays, it will be evident, that the executive, under such a system, as is contemplated, would not have that exorbitant power, that the executive now possesses. In democratic institutions but little should fall, in times of peace, to to the share of any one officer. When it is otherwise, there cannot be a fair and useful distribution.

The governor at present is well chosen. Every citizen who has resided two years in the state, and within that time paid a state or county tax, has a voice; poor and rich alike; but the error lies in committing too much power into his hands. He has more than the wisdom of any one man, united to the strictest virtue, should be entrusted with.

As there ought to be but one operative will in a democracy, the will of a majority, as soon as that is ascertained in an enlightened community needs no check; else it would be no longer a democracy; but a suspicious aristocracy, vain, delusive, and dangerous.

If it be checked at all, it should be by a superior intelligence, derived from a higher source than man; such as no individual in any community can possess.

If there is a fair expression of the public will, it should not afterwards be checked, by a part of that will, existing in a few selfish or vain individuals.

When Mifflin sat in a former assembly and in convention, he had but one vote, like any other member; and in 1790 when he was elected governor, it may be asked, if he had more wisdom by virtue of that election, than he formerly possessed? Had it encreased so much as to make it a just balance, equal to two thirds, less one, of both houses of assembly?

M'Kean was in the convention of ninety; and let his law-knowledge have been what it might before, his vote in that body, was neither more nor less, than the vote of Pedan of York or lawyer Lewis of Philadelphia. But in the year 1799, by being elected governor, under the magic of the present constitution, it instantaneously became equal to two thirds, less one, of the whole legislature.

Mifflin when governor in December ninety-nine, had power equal to two thirds less one, of both houses; but in the very same month, the same man under his election to the assembly in the house of representatives, had no more power, *nor wisdom of course*, than its seventy-eighth part.

Can a mere change of situation, from the assembly to the executive chair, give a man wisdom and virtue, equal to the additional power he immediately receives, when he is elected governor? Or can a subsequent election to the assembly, take away his understanding?

Mifflin and M'Kean, became no wiser on being elected governors. They remained the same in respect of knowledge, or they declined. Any alteration neither made them more useful, nor respectable. They were neither more easy of access, nor their passions nor appetites more strictly subjugated. They were still men of like passions with other men, and comparatively not possessing superior merit or knowledge to thousands of other men in the state. They were still men; and let the people elect to the same office whom they may, they never will be better men for being clothed with useless, exorbitant, or dangerous power.

When the democratic will is obtained, it should be operative. The executive should be so designed, as to produce so desirable an effect. This cannot be done while the system arrays one branch in hostility to another, as the legislature and governor are now placed; nor while one man in one branch has so much power, who may have little wisdom or prudence, and other men in other branches so little weight.

All the power necessary to an executive in a democracy, is merely to be the organ, the central point to further not frustrate the legislative will, and when that will shall be known, to bring it into operation.

But even in this, it should not be single; the governor should have the assistance of persons deriving power seperately, in another way from the people, in two or three years, arrogance and vanity, of which we find plenty about every man, might build him up so as to check or prevent the will of a majority.

He should have a council derived from the legislature. Each house as soon as organized might elect two or three members to continue one year; to associate with the govenor, who together should possess the executive power.

The governor should be the organ or head, and on an equal division, besides his own, have the casting vote.

The infallibility of a governor, and his despotic power are in government precisley as pernicious, as the infaliibility in any church, of one of its members, when clothed with absolute power, and placed over others

Laws passed by a majority of the members elected to serve in each house; or by a majority elected to serve in both (when the two disagree) executed and carried into effect by such an executive, could not fail of being an expression of the public will, and would give general satisfaction.

As the executive duties would be lessened, by the people's election of the justices and county judges; and the court appointment of prothonotaries and recorders there would be few appointments for the executive to make, except the four heads of departments, and some of the most important judicial and military officers, which could be approbated by one or both houses of the assembly.

If the powers and duties were thus lessened, the executive could attend to the operations at the seat of government, where the principal officers would perform their duty. And the council being annual, would not be likely to enter into the speculations which have so after prevailed to the injury of the state.

Yet it would be better to have an annual treasurer with controlling powers directly responsible to the assembly; and the reasonableness and propriety of whose payments should annually be investigated by a committee of accountants appointed from their own body.

Under such a system the assembly would have but little to do, but guard the liberties of the people and legislate, the sessions would not be near so long as hearing the complaints against judges and justices now make them, and the public expence thereby would be considerably lessened.

ESSAY XVI.

PROJECT FOR A REFORMATION OF THE CONSTITUTION.

THE preminent amendments proposed to the constitution are, —1st. The legislature to be elected annually, without distinction, and vested solely with the law-making power. When met, to be divided by lot, equally into two houses. Bills to pass by a majority of the members elect in each house, or on a disagreement of the two houses, by a majority of the members elect of both houses, convened in one house, and then to become law.

2d. The executive power to be vested in a governor chosen by the people for three years; to be aided by a small annual council.

3d. The judicial power to be vested in justices of the peace elected by the people in townships or districts and to serve three years. In county courts consisting of the justices of the peace; or county judges to be chosen by the people, one annually, and to serve five years. Presidents of districts, over from three to six counties, to be chosen by the people if convenient; or nominated by the executive, and approbated by the legislature, to serve five years. Supreme judges for the trial of capital offences, over the whole state; to be nominated by the executive, and approbated by a vote of the legislature, and not to continue in office more than seven years.

4th. The officers of militia, to be elected within their companies, by the members of each;—of regiments, by the members of each;—of brigades by the field officers of regiments;—and of division, by the majority of commanders of regiments; and to be commissioned for five years only.

5th. The holding offices under the United States, to be incompatible with holding of offices under this state; and the holding of any office except in the militia, where no salary or perquisite is annexed, incompatible with holding a seat in the legislature.

6th. Prothonotaries, recorders, and other court officers to be appointed by the respective courts for five years.

7th. Sheriff's to be elected as at present. The highest in vote to enter security in court and be preferred. On failure of giving security by the first, the second or third, on compliance to be received; or on the death of the sheriff, to serve during the

year. No coroners necessary; their duties transferred in case of casual death to the justices, and court business for or against the sheriff performed under deputations from the court.

8th. The state treasurer to be elected annually as at present; and all the other officers in the receipt of public money, to derive their appointments from him, or from the legislature; and to be kept distinct from the executive.

9th. The governor, heads of departments, supreme judges, and presidents of districts to have salaries, which shall neither be encreased nor diminished, during the period for which they shall have been elected to serve. But salaries may be altered, and the law operate immediately after the expiration of their period.

10th. No officer to be commissioned for a greater length of time than five years; and liable to be impeached for misbehaviour, or removed for incompetency.

11th. County judges to have daily pay but no salaries.

12th. A convention instead of the legislature to sit every tenth year.

ESSAY XVII.

PROJECT OF A REFORM IN LEGISLATION AND ADMINISTRATION.

THE laws may be amended in the following manner, so as to save a large sum of money annually to the state.

1st. All public money received in the first instance at bank, and the treasurer without handling it in any instance, pay it out by a check attached to the register's certificate of a settled account; with power to stop payment, until convinced of its propriety.

2d. The treasurer vested with controlling powers, and prevented from holding any office under the executive; and the comptroller's office abolished.

3d. The secretary's office kept distinct from the governor's office, and bound to record his acts.

4th. The governor to draw money from the treasury as others draw it; and no warrants for the payment thereof to pass through his office.

5th. The receiver general's office abolished, and the duties of calculation, and settlement of land accounts, transferred to the secretary of the land office.

6th. The rolls office abolished. The duties of enrolling patents transferred to the secretary of the land office, and of enrolling laws to the secretary of state.

7th. The land officers to receive no money, except for copies and searches; but to direct the applicant to deposit the price of land and patent in the bank, and he or they to leave the bank ticket or receipt with the treasurer.

8th. The office of deputy secretary of the state abolished, and a deputy treasurer established; to assist while living, and transact business on the death of the treasurer.

9th. The officers of government and clerks prohibited directly or indirectly from trading in land or public securities under severe penalties. And all the real estate held by them, when they entered business, together with what they might purchase while in office, held as security for the property, private and public, which passed through their hands.

10th. The mode, of granting tavern licences, changed from the governor, to the county courts, and the county treasurer checked, by the annual report of the prothonotary under oath to the register-general.

Under the foregoing reform of law, there would be a large sum annually saved. And if the responsibility of payment were placed upon the treasurer, where the constitution designed it should rest, it is much easier to conceive, by a view of the annual payments heretofore made, and an examination into the data, upon which they are founded, than pleasant to say, how much money might be saved by the treasurer paying it away, as governors would do their own.

The salaries, perquisites, and contingencies of the secretary of state's office, now annually amount to about $6,136; which under a reform of law, would be lessened, by striking off most of the printing, the deputy's salary, and the salaries of all the clerks but one; so that if the secretary were to be allowed his present salary of $2,000, for which no good reason can be given, while other heads of department receive but $1333 33, the expences of that office would amount to no more than $2,000 for himself, $1,000 for a clerk, and $500 for rent and contingencies, in all say $3,500, which deducted from $6,136, leaves a saving of - $2,636

Comptroller's salary, clerk hire, &c, save as per register general's report of December, 1806, -	4,379
Receiver's ditto ditto per ditto	2,933
.....rent, fuel, stationary, &c. *out of view* (supposed)	400
Rolls office fees, contingencies, and rent (supposed)	3,000
Deduct the salaries of two additional clerks given to the secretary of the land office, - - -	1,000
Annually saved under reform of law, -	12,348

If the constitution were amended, so as that the judiciary officers should hold their commissions for limited periods, then impeachments would scarcely be known; the meeting of the legislature might be put off until the holidays were over, which some of the members celebrate; say until about the middle of January; one third of the time the session now generally consumes, would be cut off, and consequently one third of the expence saved.

The legislative expence for about four months, amounts annually to - - - - - - - $60,000

Say of that sum under reform—of the constitution, saved, - - - - - - - - -	20,000
—And under reform of law, about -	12,339
—Under both, annually saved - -	$32,339

ESSAY XVIII.

THE DUTY OF THE PEOPLE TO THEMSELVES.

CAN we find reasonable men in the state, who are against a reform under law, that would annually save $12,000, and the public business be as well done, or better than at present. This reform might be made without touching the constitution—without agitating *our minds* with *the fear of ourselves*. All classes that are honest could unite; it is the interest of the people. The democrats want a constitutional reform; but a reform under law, would remove part of the existing evils, and in nine or ten years save at least $100,000. Those of any party who will oppose it, must either be blind partizans, or themselves or friends interested in the salaries or abuses, and care not how much the people are ground by taxes, which will some time have to be collected to support an expensive system.

For the funds of the state consisting of dividends from bank stock, produce of the land offices; auction duties, &c. which all fluctuate, and in case of war the most material might fail; the people must then be saddled with a tax of one hundred and fifty thousand dollars annually, besides the cost of collection, to keep the government in motion.

Although many are anxious for a constitutional reform, yet it ought not to take place, until a majority of the people shall be convinced of its utility.

It must have its first operation in the legislative body, being a legitimate delegation from all parts of the state, and the only place under the present system, where the people can originate it; they therefore should elect such members as are of their own opinion, to bring it about in as moderate, easy, and prudent a manner as possible.

That it will be done without noise cannot be expected. There are too many who have wormed themselves into power, without principle, that would draw the last cent from the public, to support themselves there. Such will make a noise to the last, rather than suffer any improvement. But many honest and disinterested men who cling to the constitution for fear the people by a convention would destroy themselves, ought on their own principles to exert themselves, to reform the laws, so as to remove some of the prevailing evils, and thereby prevent a convention as long as they can.

When the convention was called in 1790, it was done too hastily. It was not done in the manner pointed out by the constitution of seventy-six; neither were the majority of the people satisfied with the change. They acquiesced. It has answered the expectation of its friends; it has founded an aristocracy. It has exceeded the expectation of its enemies; it has produced greater evils than they conjectured.

The aristocrats raised the cry of perjury against the assembly for expressing an opinion as assemblymen—for saying that the constitution was defective, and intimating that as soon as a sufficient number of the citizens petitioned for a reform, steps might be taken to call a convention to alter it.

What is perjury? It is swearing falsely, knowingly, and wilfully. This definition is short, but correct.

The assembly of 1790 as well as of 1804, had sworn to support the constitution—that is, whenever they were to make laws under it, the laws should correspond with the principles it contained. But in both instances they believed that the constitutions were inconvenient and ought to be amended.

In 1790 they invited their constituents to send delegates to convention to rectify the evils. They did not violate the provisions, by passing laws in hostility knowingly; this would have been perjury.

They were sworn—how? Not to support the constitution for ever, *good* or *bad*. They never swore they would be silent as to its defects; it would have been absurd; it would have been swearing to be false to themselves, and to the people.

Swearing to things as facts which never took place, is perjury. Swearing to support an opinion, even that the constitution is good, and afterward discovering its defects, and endeavouring to alter it, is not perjury. The constitution, as to its perfection, being founded on opinion, and that opinion changing; an oath founded upon both must fall; it has no foundation in virtue, on which it can stand, and falls without crime. If there be crime, it cannot be in a release from an improper obligation; but consists in having entered into it, without consideration.

An oath is a solemnity that should be warily entered into and when it is used to establish the belief of facts which never took place, it is perjury and an abominable crime. But if an oath be taken to support a principle founded on opinion, as soon as that opinion is charged, a recantation becomes necessary; it would be criminality to continue in error a single moment.

Sundry men bound themselves under oath, neither to eat nor to drink until they had killed Paul. Was it perjury, if after they saw the evil of the obligation, they released themselves from its performance.

The members of assembly in 1805, saw defects in the constitution—evils had been experienced for years, and they candidly expressed an opinion. Had they been corrupt, they would not have acted openly and so modestly. They expressed an opinion, and

left it as an inoperative principle upon record, to be brought into operation, when the people should think proper.

Perjury always implies an oath in support of known falshood, or unknown facts, independent of opinion. To know a fact, and confirm it solemnly upon oath is not perjury; but to swear to facts not known, whether true or false, is perjury in conscience, because they are sworn to be true, without any knowlege of the fact.

In mere matters of opinion, as it respects the future; when opinions change, the obligation ceases; for it would be criminal to act contrary to conscience. How else could the revolutionary patriots, many of whom were virtuous and religious, who had been sworn to support the king before independence, have afterwards opposed his measures and the measures of his ministry, and revolted from under his government? How else could the officers and the people, who were bound on oath to support the constitution of seventy-six, have set it aside, and established the constitution of 1790, and continued innocent? The tories and the disaffected attached to the crown, to aid the king, cried perjury in seventy-six, just as the enemies of reform have lately done.

An oath is indeed solemn and sacred. It is calling the father of the universe—the great Jehovah, on whom we depend for protection and salvation, to witness our honesty in the declaration of truth, in relation to facts we affirm; and resting salvation upon our veracity. But in not properly considering the difference between *facts* and *opinions*, and the application of an oath to either or both, uneasiness in the minds of a few honest and good men has arisen, and given room for extending the clamours of the designing and vicious.

But every citizen should keep in mind, that the denial of the *right* to alter the constitution now is a denial of the right for ever. That if it is true now, it was true always, and that the revolution of 1776, was a *wrong* and a *disgrace*, and not a right and a glory.

To deny the right to reform or correct defects in the constitution, is in fact to say the people have no rights.

That the people are their own worst enemies.

That the sovereignty of the people is ideal, and not real, and goes at once to perpetuate and never to correct abuses.