THE NATURE AND INSTITUTION OF GOVERNMENT.

VOL. II.

THE NATURE AND INSTITUTION OF GOVERNMENT.

VOL. II.

THE NATURE AND INSTITUTION OF GOVERNMENT.

VOL. II.

THE NATURE AND INSTITUTION OF GOVERNMENT;

CONTAINING

AN ACCOUNT OF THE

Feudal and Engliſh Policy.

By WILLIAM SMITH, M. D.

——Juvat integros accedere fonteis
Atque haurire—— LUCRET.

VOLUME THE SECOND.

LONDON:
Printed for the AUTHOR;
And ſold by W. OWEN, in Fleet Street.
MDCCLXXI.

THE

NATURE AND INSTITUTION

OF

GOVERNMENT.

RESENTMENT is, as I already mentioned, the ſtrongeſt paſſion in the human breaſt. The perſon that feels an injury is ſtrongly impelled by nature, to take the vengeance due upon that act; but the permiſſion of that would have deſtroyed ſociety, and puniſhments would have known no bounds: for this reaſon, forms of trial were inſtituted, and the execution of the ſentence was committed to the magiſtrate.

THE ſame methods of trial, eſtabliſhed among the Germans and other northern nations, took place among the Anglo-

Saxons. Here we find the *Ordeal* or *Trial by hot Iron or Water*; *the consecrated Cake called Corsned*, &c.

The earliest and most simple punishment for crimes was retaliation: the offender forfeited limb for limb, life for life. The payment of a compensation to the person injured succeeded to the rigour of the former institution. Though it still continued an indispensable point of honour, for every person or clan to revenge the death of their fellow; yet the magistrate in time acquired a right of regulating in the quarrel, of accommodating the difference, and obliging the injured person to accept of a compensation for the injury received.

Edmund was the first king in England, who made this advance towards a more regular administration of justice: he ordered a stop to be put to private feuds and single combat; established compositions, as St. Lewis attempted to do in France, and these compositions were fixed by law, according to the quality of the person injured. The price of a king's head was 30,000 thrifthas,

and

and ſo of others in proportion; the price of a wound, an inch long under the hair, was paid with one ſhilling; thirty ſhillings for the loſs of an ear, and ſo forth. A perſon, who committed adultery with his neighbour's wife, was obliged to pay and buy him another wife.

In both theſe inſtitutions, the gratification of private revenge was the object of law, and he who ſuffered the wrong had an only right to purſue, to exact, and to remit the puniſhment.

Afterwards, crimes were looked upon in a two-fold light, not only as an injury to the party immediately concerned, but alſo to the ſtate or community: then the civil magiſtrate had a right to purſue, and the only right to exact and remit the puniſhment.

Under this notion criminal juſtice improved and refined itſelf: the civil magiſtrate, whoſe office it was to guard the public peace, and to ſuppreſs private animoſities, conceived himſelf to be injured by every injury done to any of his people;

and beſides the compenſation to the perſon who ſuffered, or to his clan, he thought himſelf entitled to exact a fine, called *fridwit*, or an attonement for the breach of the peace, as a reward for the pains, which he had taken in accommodating the quarrel. The numerous fines that were levied augmented the profits of the king, and made injuries leſs frequent.

The forms of trial were various, and ſeem to adapt themſelves to the age and genius of the people.

When any trial was to be decided by *combat*, the magiſtrate ordered all the relations of the party to retire, the people were commanded ſilence, and no aſſiſtance to be given to either party under pain of death, if either of the combatants ſhould happen to be vanquiſhed. The officers guarded the liſt or incloſure where the battle was fought; but, as there were a great many incapable either of offering or accepting battle, liberty was given them to chuſe a champion; and, that he might have the ſtrongeſt intereſt in defending the party,

party, for whom he appeared, his hand was cut off, if he loſt the battle.

From the cuſtom of judicial combat, in thoſe days of barbarity, aroſe what amongſt the moderns is called a point of honour, which is at preſent, for very good reaſons, moſt religiouſly obſerved among gentlemen, without which no more decency nor order would be preſerved amongſt them, than what we obſerve amongſt porters and watermen. Honour is a thing no perſon can define, nor laws preſerve unviolated: they only know it, who in their own breaſt contain it.

In judicial combat, the accuſer began by declaring before the judge, that ſuch a perſon had committed ſuch an action: the accuſed immediately anſwered he lied; upon which the judge gave orders for the duel. It then became an eſtabliſhed rule, that whenever a perſon had the lie given him, it was incumbent on him to fight; and, when a man declared he would fight, he could not afterwards depart from his word: if he did, he was condemned to a

penalty. Hence arose the rule, that whenever a person had engaged his word, honour forbad him to recal it.

Gentlemen, armed at all points, fought one another on horseback; villains fought on foot with a baston: hence a baston was looked upon as the instrument of insults and affronts; because to strike a man with it was treating him like a villain. None but villains fought with their faces uncovered, so that none but they could receive a blow on the face: therefore a box on the ear, or a pull by the nose, became an injury that must be expiated with blood; because the person who received it had been treated as a villain. A gentleman was not obliged to fight a villain, except he himself was the appellant. When a gentleman challenged a villain, he was obliged to present himself on foot with buckler and baston; but if he came on horseback, and armed like a gentleman, they took his horse and arms from him, stripped him to the shirt, and obliged him to fight in that condition with the villain.

The

The trial by water was highly ridiculous: the accuſed perſon was obliged to put his hand into boiling water, then put it into a bag or pocket made for the purpoſe, where it was to remain three days; and, if there appeared no marks of fire upon the hand, when it was taken out of the bag, the perſon was declared innocent: if the magiſtrate found the hand burnt, he pronounced the perſon guilty.

The trial by hot iron was another barbarous cuſtom, which however continued long in uſe here. The method was this: many red-hot bars of iron were put at proper diſtances: the ſuſpected perſon, blindfold, walked over that ground: if he touched one of the bars, he was guilty; if he eſcaped them all, it was looked upon as a ſufficient proof of his innocence. The other forms by conſecrated cake, &c. were equally abſurd and ſuperſtitious. St. Lewis aboliſhed the judicial combats in the courts of his own demeſne, but not in the courts of his barons, except in the caſe of appeal of falſe judgment; for he found

ſuch difficulty to eſtabliſh his inſtitutions, that at length he was forced to leave the lords at liberty to follow which way they pleaſed, either the king's eſtabliſhment, or the ancient practice; but when they had pitched upon one, in any caſe, they could not afterwards have recourſe to another. One inconvenience, and that a great one too, attended the diſuſe of judicial combat. Duels had introduced a public form of proceeding; ſo that the attack and the defence were equally known: but when people became more learned, writing more general, and the forms of proceeding according to St. Lewis were improved, and became more in practice, then a ſecret form of proceeding was introduced; and as every thing before had been public, every thing now became ſecret: the interrogatories, informations, re-examinations, confronting of witneſſes, recourſe to proceedings on record, &c. were introduced. Law in its commencement was not an intricate ſcience, and was more governed by maxims of equity, which ſeem obvious

to

to common ſenſe, than by numerous and ſubtile principles, applied to a variety of caſes by profound reaſonings from analogy; but the chicanery of law was ſoon introduced, and it became a ſcience, in which knaves have the greateſt intereſt. Then the world was filled with members and profeſſors of the law, who were often ſtrangers both to law and juſtice; then reaſon, juſtice, and common ſenſe, were loſt in volumes of writings; knavery found knaves to ſupport it, and law was made to approve what juſtice condemned; then what was deſigned for people of common underſtandings, like the plain inſtructions of a father to his family, became ſubtile, logical, quibbling or ſophiſtry, and men were reaſoned out of their property and ſenſes, by nice ſubtilties, fine ſounds, and well-turned periods.

THE genius of the feudal government, uniform in all its operations, produced the ſame effect in ſmall as in great ſocieties: the territory of a baron was in miniature the model of a kingdom. The caſe was the ſame with the

the barons in their courts, as with the king in the ſupreme council of the nation: change only a ſingle name, in the place of baron ſubſtitute king, and you behold a parliament in its firſt rudiments, and obſerve the firſt exertion of thoſe powers, which its members now poſſeſs as judges and legiſlators, and diſpenſers of the public revenues. Agreeable to this idea are the appellations of the king's courts, by which parliaments were anciently diſtinguiſhed; and ſuitable to this likewiſe were the conſtituent members, of which it was compoſed. The vaſſals, in all feudal kingdoms, were bound to pay ſuit and ſervice at the court of their baron; and the barons, who held immediately of the crown by military tenure, were bound by the condition of their tenure, and owed the ſame as a ſervice at the court of the king. When the king found it neceſſary to demand any ſervice of his barons or chief tenants, beyond what was due by their tenure, he aſſembled them, to make his will known unto them; and when it was neceſſary at

any

any time to determine any controverſy among themſelves, he called them together, and had the matter diſcuſſed in their preſence: ſeldom any momentous affair was tranſacted without their advice. Though the king had the ſupreme legiſlative power lodged in his own hands, and could, with or without his great council, determine all matters, we do not find, till king John's time, that he was obliged to conſult his great council; yet for his own convenience, and for the more effectual execution of his orders, he ſummoned the barons and great men. Indeed, the *magna charta* of king John provides, that no tax or ſcutage ſhall be impoſed, but by the conſent of the great council; and, for more ſecurity, it enumerates the perſons entitled to a ſeat in that council, the prelates and immediate tenants of the crown, without the ſmalleſt mention of the commons. The biſhops, abbots, and greater eccleſiaſtics, who held poſſeſſions immediately of the crown, were deemed ſubject to the burthen of attending the king's ſummons.

The

The prelates ſate by a double title: by preſcription, as having always poſſeſſed that privilege, through the whole Saxon period, from the firſt eſtabliſhment of Chriſtianity; and by their right of baronage, as holding of the king in capite by military ſervice. Theſe two titles of the prelates were never accurately diſtinguiſhed. When the uſurpations of the church had riſen to ſuch a height, as to make the biſhops affect a ſeparate dominion, and regard their ſeat in parliament as a degradation of their epiſcopal dignity, the king inſiſted that they were barons, and on that account obliged, by the general principles of the feudal law, to attend him in his great council.

When William the Conqueror invaded England, he found that the clergy had entirely thrown off their dependance on the civil magiſtrate; but he brought them again into ſubjection by their baronies to the ſame feudal ſervices with the other barons, and even ſet the Pope himſelf at defiance; for which they conſidered him

as

as the wickedeſt of all tyrants. The biſhops and abbots, when required, were obliged to furniſh the king, in time of war, with a number of knights or military men, proportioned to the extent of property poſſeſſed by each ſee or abby; and, in caſe of failure, he made them liable to the ſame penalties, which were enacted from the laity.

Parliamentary meetings had their beginning from this cuſtom. The great barons generally made a viſit at court, to pay their duty to the king, on the three great feſtivals of Chriſtmas, Eaſter, and Whitſuntide, more as a compliment to his majeſty, as the ceremony of the coronation was at theſe times repeated, than for any other reaſon; and thoſe, who did not voluntarily attend, the king, for the ſplendor of the ceremony, convened by ſummons. When the feaſting was over, they often uſed to aſſemble in a parliamentary way, to conſider any buſineſs that wanted to be diſpatched. *Poſt natale Domini, in feſto converſionis Sancti Pauli, venit dominus rex,*

rex, pater, usque Nottingham, & ibi celebravit magnum concilium de statutis regni, & coram rege, filio suo, & coram archiepiscopis, episcopis, comitibus, & baronibus regni sui, communi omnium concilio. After Christmas, in the feast of the conversion of St. Paul, king Henry the father came to Nottingham, or Northampton, and held a great council there, concerning the statutes of his kingdom, before the king, his son, and before the archbishops, bishops, earls, and barons of his kingdom. (Hoved. fol. 313. a. n. 50.)

Besides these grand festivals, the king, at other times, on any sudden emergency, when the affairs of the nation required the advice of the great men, or when he had a mind to have a splendid appearance at court, was accustomed to call them together. And this custom continued after the Norman conquest, till the reign of Henry II. from that time till the reign of Edward III. it was by degrees laid aside, at last entirely discontinued, except upon pressing occasions. As the king had a right

right to judge, whether there would be so often need for parliamentary meetings, seeing little benefit arising from them, but a certain expence, he discontinued both the custom of repeating the ceremony of his coronation, and the meeting of the parliaments, which were at first composed of barbarians, summoned from their fields and forests, uninstructed by study, conversation or travel; ignorant of their own laws and history, and unacquainted with the situation of all foreign nations: a parliament called precariously by the king, and dissolved at his pleasure, sitting a few days, debating a few points prepared for them, and whose members were impatient to return to their own castles, where alone they were great, and to their chace, which was their favourite amusement. Such a parliament was very little fitted to enter into a discussion of all the questions of government, and to share in the legal administration.

ANCIENTLY men were not anxious, nor at all desirous of a seat in the great

assembly. The barons, who were obliged to attend, were pleased on any pretext to excuse themselves from attendance, which they regarded as a burthen, not compensated by a return of profit or honour, proportioned to the trouble and expence. The premier, in those days, had no places to give, no pensions to bestow: there was no civil list for the minister to play at cups and balls with, no elections to be made, no board of excise, no board of trade and plantation: there was no national debt, and a standing army was needless and unknown to the constitution. The parliament was not then the road to honour and preferment; the talents of popular intrigue and eloquence were uncultivated and unknown: therefore, as they reaped no immediate profit from their attendance at court, but were exposed to great inconveniencies and charge by an absence from home, every one was pleased, that the call for that duty should seldom return upon him, and the assembly was never likely, on any occasion, to be very numerous.

The

The kings again, before they considered the expence they thereby laid upon their subjects, and in consideration thereof discontinued their frequent meetings, were anxious that the assembly of the barons should be full and frequent, as it was the chief badge of their subordination to the crown, and drew them from the independence which they affected in their own castles and manors. Barons sometimes denied their tenures, to be free of this burthen; and the anxiety with which our ancestors endeavoured to get free from the obligation of sitting in parliament, is surpassed by that only with which their posterity solicit to be admitted.

THE vassals of the crown were originally few in number; and the bounty of the duke of Normandy, in the distribution of the lands to his principal officers, being so immense, rather increased than diminished the power of the great barons.

The whole kingdom contained about seven hundred chief tenants, and sixty thousand two hundred and fifteen knights

fees; and as none of the native English were admitted into the first rank, the few who retained their landed property were glad to be received into the second, and to be under the protection of some powerful Norman. But as property is not fixed and permanent, these exorbitant estates remained not long intire and unimpaired; many of these possessions came gradually and by various methods of alienation, to be split, shared, and parcelled out into many different hands; either by provisions to younger children; by divisions among coheirs; by sale; by escheating to the king, who gratified a great number of other courtiers by dealing them out among them in smaller portions. And when the fashionable madness of croisades had involved the great barons in immense debts, in order to discharge the expences of these expeditions, they were allowed in Henry the second's reign to alienate their possessions: the consequence of which was, that the lesser military tenants in capite exceedingly multiplied.

tiplied. Hence arose the distinction between the greater and the lesser barons. The former were those that retained their original fiefs undivided; the latter were the new and less potent vassals of the crown. Such moderate estates, as the lesser barons possessed, required oeconomy, confined the proprietors at home, and were better calculated for duration. And the order of knights and small barons began to form a very respectable rank and order in the state; and an important innovation followed upon it.

As all of them were immediate vassals of the crown by military tenure; they were, by the principles of the feudal law, equally entitled with the greater barons to a seat in the national and general councils. For, doubtless, every individual lord of a manor in England, as a baron of the realm, was indisputably summonable *de proprio jure*. This right, which was at that time considered as a burthen, they to this day enjoy, and may put in practice, when they

pleaſe. And whenever a major part of theſe barons ſhall ſet their hands and hearts to work, in order to affect the reſumption of this their ancient right which they have only waved, but never formally granted away; doubtleſs no king of England will ever be ſo ill adviſed, as to riſk an attempt to withhold it from them one moment againſt their aſſent and will. Indeed there is no probability ſuch a reſumption ſhould take place, as long as the great men, whom for theſe three centuries and a half, we have by long habit, been accuſtomed to call the houſe of lords, ſhall act as uncorrupt ſenators, impartial judges, and unbiaſſed mediators between the king and people; for it is a known maxim *fruſtra fit per pleura, quod fiat per pautiora.* But if unmindful of their duty, they, by places, penſions, ribbons, or any other undue influence, degenerate into a ſtipendiary band of dependants on a miniſtry, whoſe mandates, right or wrong, they ſhall be ready to obey at the word of command; then will the reſumption become highly, if not indiſputably neceſſary.

THE

THE right of the leſſer barons to a ſeat in the ſupreme court of the realm, was at firſt looked upon as a burthen to which their ſmall eſtates were unequal: they deſired to be exempted as often as poſſible. In order therefore to accommodate the matter, and at once to ſecure to the king a ſufficient number of members, and to ſave his vaſſals from an unneceſſary burden, an eaſy expedient was found out; the obligation to perſonal attendance was continued upon the greater barons; from which the leſſer barons were exempted, on condition of their electing in each county a certain number of repreſentatives to appear in their name. The great barons were ſummoned to the general council, *ſingulatim*, by a particular writ, and the leſſer barons, under which appellation the knights and freeholders were comprehended, were only called, *aggregatim*, by a general ſummons of the ſheriffs; and as the ſheriffs, who were the vicegerents of the earls, were named by the king, and removable at his pleaſure, he found them more dependent upon him, and

endeavoured, in order to diminish the credit, and suppress the influence and exorbitant power of the great barons, to throw the whole authority and jurisdiction into their hands; who, by the confidence reposed in them by the king, being much superior to the earls, undermined their influence in their own jurisdiction. For the earls, as I mentioned before, like the barons, exercised jurisdiction within their county, and were at once both civil and military officers, and their dignity was territorial and official. But the king, in order to bring these haughty chiefs more under his power, invested the sheriffs, creatures of his own, with so much power. And as the earls had a right to a third of the fines in their different counties, the king in creating an earl gave a fixt salary, commonly about 20l. a year, in lieu of his third of the fines; and the diminution of the power kept pace with the retrenchment of their profit; and the dignity of an earl, instead of being territorial and official, dwindled into personal and titular; and as the great barons were

sum-

ſummoned to the general council by a particular writ, ſo the nomination of the ſmall barons and knights was at the diſcretion of the king's miniſter, the ſheriff. It was cuſtomary for the prince to require, by a particular ſummons, the attendance of a baron in one parliament, and to neglect him in future parliaments. Camden tells us, that the prudent king Edward the firſt, ſummoned to his parliament thoſe of antient families that were moſt wiſe, and omitted their ſons after their death, if they did not come up to their parents in underſtanding; nor was this uncertainty ever complained of as an injury. He attended when required, but was better pleaſed to be exempted from the burthen. As he was acknowledged to be of the ſame order with the greateſt barons, it gave them no ſurprize to ſee him take his ſeat in the great councils, whether he appeared of his own accord, or by a particular ſummons from the king.

In Richard the ſecond's time there were ſo few that came to parliament, that the

king was obliged to make a ſtatute willing and commanding all perſons, which ſhall have ſummons to parliament, to come from henceforth as they are bound, and have been accuſtomed within the realm of England of old times. He called up one John Beauchamp of Holt, to parliament; having created him a baron by his royal letters patent. In one parliament held at Shrewſbury, he created five dukes, one marquis, and four earls by letters patent. Theſe new created nobles called themſelves peers of parliament, and are the only nobility we now have, and conſtitute the houſe of peers, having juſtled out the barons, who are the hereditary houſe of peers of this realm, and have as much right to ſit in that houſe as the king has to St. James's. The barons by feudal tenure are now, in effect, excluded from having any ſhare in the legiſlature. Beauchamp was the firſt man ever known to have been created a baron by royal letter patent. It is true, indeed, our ancient Saxon kings did generally call

up

up to parliament, by ſome mode of creation, ſome few of their menial domeſtics; ſuch as the ſteward of the houſehold, the baker and the chamberlain; but then they did not call them up by the ſtyle and title of earls, which in the Saxon reigns was co-equal and congradual with that of the barons in the Norman reigns; but they called them up by the ſtyle and title of thanes; which in England, though not in Scotland, always carried with it the idea of meniality: for the word Thane then ſignified no more than menial ſervant. Of theſe thanes there were three orders. Every alderman did, or might appoint his thane; and this thane was one of the loweſt order. Every lord of a manor, or baron, had his thane, who was one of the ſecond order. The king alſo had his thane, who was the thane of the firſt order.

The barons by writ began gradually to intermix themſelves with the ancient barons from tenure. After the battle of Eveſham a poſitive law was enacted, prohibiting every baron to appear in parliament who

was

was not invited thither by a particular ſummons from the king. The whole baronage in England held thence-forward their ſeat by writ; and this important privilege of their tenures was in effect aboliſhed.

But though the introduction of the barons by writ, and of titular earls, gave ſome encreaſe to the royal authority, yet the alienation of crown lands, the diminution of the number of knights fees, had reduced the crown to poverty and a ſtate of dependance, and the conceſſion of the great charter had limited the royal prerogative and authority; and the barons, from a diſuſe of the feudal militia, began almoſt entirely to forget their dependance upon the crown.

In this ſituation, it was natural for the king to court the friendſhip of the leſſer barons and knights, whoſe influence was no ways dangerous to him, and who, being expoſed to oppreſſion by their powerful neighbours, ſought a regal protection under the ſhadow of the throne: he deſired therefore to have their preſence in parliament,

where they ſerved as a counter-balance to controul the turbulent reſolutions of the great.

To exact a regular attendance of the whole body would have produced confuſion, and would have impoſed too heavy a burthen upon a whole community. To ſummon only a few by writ, though it was practiſed and had a good effect, did not entirely ſerve the king's purpoſe, becauſe theſe members had no farther authority than attended their perſonal character, and were eclipſed by the appearance of the more powerful nobility: the king diſpenſed therefore with the attendance of moſt of the leſſer barons in parliament; and in return for this indulgence, required them to chooſe in each county a certain number of their own body, whoſe charges they bore, and who having gained the confidence, carried with them, of courſe, the authority of the whole order. The numbers ſent up by each county varied at the will of the prince. They took their ſeats among the other peers, becauſe by their tenures they belonged to that order, as the repreſenta-

tives

tives of the counties from the ſmaller barons and leſſer nobility.

But the king finding his power gradually declining, and his finances diminiſhing; and ſeeing the great barons become more and more powerful and dangerous, caſt his eyes upon the lower and more induſtrious orders of the ſtate; whoſe ingenuity and labour furniſhed commodities requiſite for the ornament of peace and ſupport of war; and promiſed fair to put it into his power to oppoſe his haughty barons. He therefore advanced another and more formidable power, little thought of, and at that time little ſuſpected, the power of the people. But as it would have been abſurd to impoſe ſuch a burthen upon every individual, every borough was permitted to chooſe one or two of its citizens to appear in the name of the corporation, and the idea of repreſentation was firſt introduced in this manner.

The king called the houſe of commons for no other intention than as a means of ſupply, to prevent his falling ſo much in the power of the great barons. But in pro-

portion

portion to the growth of arts and augmentation of commerce, and the ſecurity the nation found itſelf in from foreign wars; the ancient military eſtabliſhment, when the wealth of the nation made ſo great a part of the force of it, was not ſo much reſpected. When inſtead of a people of ſoldiers, the commercial ſpirit prevailed, and filled our towns with rich traders and merchants; that body of people, who before that time lived in abſolute ſlavery, expoſed to the arbitrary impoſitions and talliages of the barons, was then regarded as a uſeful body of the ſtate, and their power daily increaſed. Hence aroſe an important change in the legiſlature of this kingdom. From this period trade began to flouriſh, and arts and ſciences raiſed their head; and the potent barons began to abate of that cruel tyranny and oppreſſion which they exerciſed over their dependents. The retrenchment of the ancient hoſpitality, and the diminution of retainers, were favourable to the prerogative of the crown; and by diſabling the great nobles from reſiſtance, promoted the exe-

execution of the laws, and extended the authority of the courts of judicature. And as the riches of the aristocracy diminished, so their influence, anciently so formidable to the crown, proportionably diminished. The habits of luxury dissipated the immense fortunes of the ancient barons; and as trade increased, and new methods of expence gave subsistance to mechanics and merchants, they soon after lived in an independent manner on the fruits of their own industry. Money began to circulate, and was no longer monopolized and tossed from one rich baron to another; and a nobleman, instead of an unlimited ascendant, which he was wont to assume over those who were maintained at his board, or subsisted by salaries conferred on them, retained only that moderate influence which customers have over tradesmen, and which can never be dangerous to civil government. It was long, however, before the nation arrived at this state of perfection; the advances at first were slow and imperceptible, and many impediments

lay

lay in the way. In the ancient ſtate of Europe, as it has clearly been proved, every one that was not a nobleman was a ſlave; and peaſants were ſold and bought along with the land. The few inhabitants of cities were not in a better condition, and the gentry themſelves were ſubjected to a long train of ſubordination under the greater barons. The firſt incident which broke in upon the feudal ſyſtem, was the practice begun in France of creating communities and corporations endowed with privileges, and a ſeparate municipal government, which gave them protection againſt the tyranny of the barons, and beſtowed a ſort of independence on vaſſals; and the peaſants themſelves, though later than the other orders of the ſtate, made their eſcape from thoſe bonds of villainage or ſlavery in which they had formerly been retained. This plan of enfranchiſement was adopted here in England.

The lower ſort of people were well diſpoſed to obey the laws and civil magiſtrate, and ſought refuge under the ſhadow of the

crown

crown from the cruel oppreſſion of their imperious lords. The kings of England now began to ſee their advantage in encouraging, protecting, and giving more ſecurity and liberty to citizens, who from this time began gradually to enjoy, unmoleſted, the fruits of their induſtry. Boroughs were erected by royal patent within the demeſne lands; liberty of trade was conferred on them; the inhabitants were allowed to farm, at a fixed rent, their own tolls and cuſtoms; they were permitted to elect their own magiſtrates; juſtice was diſtributed to them by theſe magiſtrates without obliging them to attend the ſheriff or the county courts; and ſome ſhadow of independence was gradually acquired to the people by means of theſe equitable privileges.

The king however ſtill retained the power of levying talliage or taxes upon them at pleaſure. Their poverty, and the cuſtoms of the age, made theſe demands, at firſt, neither frequent or exorbitant; but when the multiplied neceſſities of the crown produced a greater demand for ſupply, the king,

king, whose prerogative entitled him to exact it, found that he had not power sufficient to enforce his edicts, and that it was requisite before he imposed taxes, to smooth the way for his demands, and to obtain the previous consent of the boroughs, by solicitation, remonstrance, and authority. The inconvenience of transacting this business with every particular borough was soon felt; and Edward, after he had made experiment of this mode of taxing, became sensible that the most expeditious way of obtaining supply, was to assemble together the deputies of all the boroughs, and to lay before them the necessities of the state, to discuss the matter in their presence, and to require their consent to the demands of their sovereign. For this reason Edward issued writs to the sheriffs, enjoining them to send to parliament, along with two knights of the shire, two deputies from each borough within their county, and these provided with sufficient powers from their community, to consent in their name, to what he and his council should require

of them. This happened A. D. 1295, the very year in which the houſe of commons regularly commenced; and a parliament from this epoch became compleat in all its members, and was compoſed of lords ſpiritual and temporal, of knights of the ſhire, and of burgeſſes. For in the year immediately preceding, the taxes were levied by the ſeeming, or forced, conſent of each particular borough, beginning with London. And in the writs of parliament the return of knights is there required, but not one word of the boroughs.

The great ſimplicity among all the feudal governments of Europe, is well known to everyone acquainted with ancient hiſtory; and all unbiaſſed antiquarians allow, that the commons were very late in being admitted to a ſhare in the legiſlative power. Their antiquity is certainly not ſo great as many would fain believe. Moſt certain it is, that during the heptarchy, the people could not elect knights of the ſhire, becauſe England was not then divided into ſhires. Until the time of the conqueſt there could be

no

no parliaments assembled of the general estates of the whole kingdom; which was before that time divided into several kingdoms, or governed by several laws. When Julius Cæsar landed, he found four kings in Kent. The Saxons divided us into seven kingdoms: the west-Saxons were confined to the Saxon laws: Essex, Norfolk, Suffolk, and some other places were subjected to the Danish laws. The Northumbrians had their own laws. So that till Edward the Confessor's reign, the laws were so uncertain that he was forced to collect a few of them, which were called St. Edward's laws.

Indeed we find, that before the conquest in the Anglo-Saxon times, their kings had their levee, high court or national council, called *wittenagemot*, or assembly of wise men: and it is agreed, that the barons, bishops, and abbots, were a part of the council; and by the tenor of the ancient laws it appears, that the comites in Latin, the aldermen or governors of counties in Saxon, and earls in Deno-Saxon were admitted; and besides these, there is mention

of the *whites*, or *wise men*, as members of the *wittenagemot*; but these were not representatives of boroughs, or what we call commons, but judges, or men learned in the law, *les gens des loix*. For the members are always called *principes*, *satrapæ*, *optimates*, *magnates*, *proceres*, &c. terms which evidently exclude the commons.

Sapientes wites or *witen*, mostly signify noblemen or great lawyers. *Wita* in Somner's Saxon dictionary, is first termed *optimas*, a nobleman; and then *sapiens*, a wise man. In the laws of king *Ina* it is ordained, that if any man fought, or struck another in the house of an alderman, or any other illustrious noble white, great man, or wise man, he was punished by a fine of sixty shillings. In the laws of Edward the Confessor, aldermen were called *seniores*, *non propter senectutem cum quidam adolescentes essent, sed propter sapientiam*, not for their age, seeing some of them were young men, but for their knowledge and wisdom. Hence from *sapientia*, the aldermen were called *sapientes*, knowing, or wise men. *Bede*, in his eccle-

ſiaſtical hiſtory, tells us, that Paulinus laboured with Edwin, king of Northumberland, to receive the chriſtian faith: but he reſolved firſt to conſult *cum amicis, principibus, & conciliariis ſuis*, with his friends, princes, and counſellors, &c. which in the Saxon verſion of Bede, done by king Alfred, is thus expreſſed; that he would with his friends, and with his aldermen or princes, with his *whites* or counſellors, ſpeak, and advice have. Here we ſee *principes* tranſlated by aldermen, and the kings counſellors by *whites*. Aſſer, in his life of king Alfred, reports, that he being accuſtomed to hear cauſes, which in his abſence had been heard and adjudged in his kingdom; admiring the ignorance of his earls, prefects, and miniſters, commanded them, either forthwith to lay down their places of judicature, or to apply themſelves, *ſapientiæ ſtudiis*, to the ſtudy of knowledge, or of the law. Here we again ſee who had the title of *ſapientes*; namely, the judges, that is, the *comites propoſiti & miniſtri*; for theſe laſt were the ſeminary of

nobility, of great officers, civil, military, and ecclesiastic, amongst the Saxons. In the auctuary to the thirty fifth law of Edward the Confessor, it is said *erant & aliæ potestates, & dignitates per provincias, & patrias universas & per singulos comitatus totius regni constitutæ: qui heretoches apud Anglos vocabantur, scilicet Barones Nobiles & insignes sapientes, &c.* and there were other offices and dignities established through all the provinces, and every county of the whole kingdom, which the English call heretoges, that is to say, noble barons, and illustrious whites or wise men; called in latin, *ductores exercitus*, generals, or great officers in the army. All antient and modern foreign lawyers mention the whites or *sapientes*, as lawyers, counsellors, and judges; not of an inferior rank to the Saxon *sapientes*, of which the wittenagemotes only consisted: they were the same as the judges, the king's council, and other great lawyers that now sit in the house of lords, and are assistant to the parliament when there is occasion.

Again,

Again, the commons are well known to have enjoyed no ſhare in the governments eſtabliſhed by the Franks, Burgundians, and other northern nations; and we may conclude that the Saxons, who remained longer barbarous and uncivilized than theſe tribes, would never think of conferring ſuch an extraordinary privilege on trade and induſtry. The commons, or the inhabitants of boroughs, had not ſoon reached ſuch a degree of conſideration as to deſire ſecurity againſt their prince, or to imagine that even if they were aſſembled in a repreſentative body, they had power or rank ſufficient to enforce it. The only protection which they aſpired to, was againſt the immediate violence and injuſtice of their fellow citizens, or from the authority of ſome great lord, to whom by law, or their own choice, they were attached. On the other hand, the ſovereign was ſufficiently aſſured of obedience in the whole community, if he procured the concurrence of the nobles: nor had he reaſon to apprehend that any order of the ſtate could reſiſt his

and their united authority. The military subvassals could entertain no idea of opposing both their prince and their superiors; the burgesses and tradesmen could much less aspire to such a thought. And thus, even if history were silent on that head, we have reason to conclude from the known situation of mankind in those ages, and the regular subordination in all feudal governments, that the commons were never admitted as members of the legislative body. Nothing can be more repugnant to all feudal ideas, and to that gradual subordination which was essential to those ancient institutions, than to imagine that the king would apply for the advice and consent of his subvassals, men who were of a rank and order so much inferior, and whose duty was immediately paid to the mesne lord that was interposed between him and the throne. Their land comprehended in the barony was represented in parliament by the baron himself; who was supposed, according to the principles of the feudal law, to possess the direct property of it; and it would

have

have been deemed incongruous to give it any other representation. And if it be unreasonable to think that the vassals of a barony, though their tenure was military, noble, and honourable, were never summoned to give their opinion in national councils, much less can it be supposed that the tradesmen and inhabitants of boroughs, whose condition was still so inferior, would be admitted to that privilege.

Even in the great charter we find no mention of the commons; an authority so full, certain, and explicit, that nothing but the zeal of party could ever have produced credit to any contrary system: and Sir Walter Raleigh says, that it was not originally granted regally and freely: It would have been more for the honour of parliaments, if a king who had a better title to the crown had been the author of the form of it: for Henry the first was an usurper, and therefore the better to secure himself against Robert his elder brother, he flattered the people with a grant of a few privileges. In this reign the knights of

the

the ſhire were called to parliament by writ; but burgeſſes were not then thought of. King John, who was likewiſe an uſurper, for Arthur D. of Britain was the undoubted heir of the crown upon whom John uſurped, confirmed Henry's charter with many additions which he found himſelf obliged to make. It ſays, that no ſcutage or aid *ponatur in regno noſtro, niſi per commune concilium regni noſtri, niſi ad corpus noſtrum redimendum, & ad primogenitum filium noſtrum militem faciendum, & ad filiam noſtram maritandam, & adhoc non fiet niſi rationale auxilium. Præterea volumus & concedimus quod omnes aliæ civitates & burgi & villæ & barones de cinque portibus, & omnes portus habeant omnes libertates & omnes liberas conſuetudines ſuas. Et ad habendum commune conſilium regni, de auxiliis aſſidendis, ſummoneri faciemus archiepiſcopos, epiſcopos, abbates, comites, & majores barones regni ſigillatim, per liberas noſtras. Et preterea faciemus ſummoneri in generali per vice comites & ballivos noſtros omnes illos qui in capite de nobis tenent, &c.* Theſe charters Henry

the

the third declared to be obtained by duresse, and therefore cancelled them in the eleventh or twelfth year of his reign. And after the battle of Evesham, when he was prevailed upon to grant charters of a like nature, he omitted several clauses of importance that were in the former; particularly that where it is stipulated that no aids should be granted but by the common council of the kingdom. These charters had their original from kings *de facto*, but not *de jure*, and parliaments from that time to this have prospered best under kings *de facto*, and have acquired fresh privileges at every revolution. The first charter had an obscure birth by usurpation, and was fostered and shewed to the people by rebellion. The king granted the people *Magna Charta*, and they settled him upon the throne.

The representatives from boroughs summoned by the rebellious earl of Leicester, which is the real and true epoch of the house of commons, and the first faint dawning of popular government in England, was long looked upon as the act of a violent usurpation;

usurpation: and if that measure had not been found necessary upon other accounts, this example would never have brought it into credit and use. It is surprising that a plant set by so inauspicious a hand could have attained to so vigorous a growth. Sir Robert Cotton says, the victory at Evesham, and the dear experience Henry the third made at Oxford, in the forty second year of his reign, and the memory of the many streights his father was driven to; especially at Runnemede near Stanes; brought this king wisely to begin what his successors fortunately finished, in lessening the strength and power of the great lords; and this was wrought by searching into the regality they had usurped over their several sovereigns, and by weakening that hand of power which they carried in parliaments; by commanding the services of many knights, citizens, and burgesses to the great council. These were the reasons why those kings followed Montfort's pattern, to secure themselves against the tumultuous, insolent, and seditious practices of the barons.

From

From this time the new constitution of parliaments received, from the kings authority, its perfection, and became exactly fitted for the government of these nations. Now the feudal system, and regal government began gradually to decline, and faction, democracy, and republicanism daily gained ground; for the great expences attending the wars in which Edward was engaged, obliged him to have frequent resource to parliamentary supplies, and introduced the lower orders of the state into the public councils, and laid the foundation for great and important changes in government; for new situations produced new laws and institutions; and the great alterations in the finances and military power of the crown, as well as in private property, were the source of equal innovations in every part of the legislative or civil government. King Edward was forced to confirm the great charter, and to add a clause to secure the nation for ever against all impositions and taxes without consent of parliament. In this king's reign there were considérable

siderable variations in the summons of knights of the shires; and we find, 34 Edward I. the prelates, earls, barons, and others, and also the knights of the shire being met, gave the king the thirtieth part of their goods. Brady observes in his introduction, that the variations in the number of knights in this king's reign, shews that the constitution of parliament was not yet fully fixed.

The usurper, John, being a weak, cowardly man, gave the licentious barons a favourable opportunity to raise themselves to independency, upon the ruins of the crown and regal constitution; accordingly they entered into a confederacy, and without any ceremony made war upon the king, whom they forced to submit at discretion, and to grant them whatever they required of him. He signed and sealed, 19th June 1215, the *Magna Charta*, or great charter, drawn, and imposed upon him, by his rebellious subjects. But the sense of his perpetual and total subjection under his rebellious vassals sunk deep in his mind, and this igno-

ignominious ſlavery made him gloomy, ſilent, and reſerved; however, the factious barons paid no regard to that, they obliged him to agree that London ſhould remain in their hands, and the Tower be conſigned to the cuſtody of the primate till the fifteenth of Auguſt next, or till the execution of the ſeveral articles of the great charter. And they further forced him to conſent to their chooſing twenty-five of their number, who were impowered, on occaſion, to enforce the obſervation of the charter; and all men throughout the kingdom were bound, under the penalty of confiſcation, to ſwear obedience to the twenty-five barons; and the freeholders of each county were to chooſe twelve knights, who were to make report of ſuch evil cuſtoms as required redreſs, conformable to the tenor of the great charter. This ſeems a certain proof that the houſe of commons was not then in being; otherwiſe the knights and burgeſſes from the ſeveral counties could have given into the lords a liſt of grievances without any new election.

As

As the burgesses were assembled and admitted to parliament by the king's grant and permission, it is no wonder that, in the writ for election, we find the lords only to be counsellors, and the commons are called only to perform and to consent to such things as should be ordained by the common council of the kingdom; there is not so much mentioned as a power to dissent: the writ says, "The king would have conference with the prelates, great men, and peers;" but not a word of conference with the commons.

Lest burgesses should fancy, that they constituted a part of the great parliamentary court of record, or supreme court of the nation, in full parliament, Nov. 3d, A. D. 1400, in the first year of Henry IV. it was formally enacted, "That the commons are petitioners, and not demanders; and that the king and the lords have, ever had, and of right shall have, the judgement in parliament, saving the statutes to be made, and in grants of subsidies, and the like; though to be

done

done for the common profit of the realm, the king will have especially their advice and assent; and this order to be held and kept at all times to come." The house of peers alone, and not the house of commons, is the parliamentary house of record.

They who do not minister an oath, or fine or imprison any but their own members, and that but of late, cannot be called a court at all, much less to be a part of the supreme court of the kingdom. The constant custom, to this very day, for the members of the house of commons to stand uncovered, with their hats in their hands, while the lords sit covered at all conferences, is a visible proof, that the lords and commons are not fellow counsellors of the kingdom; for none will imagine, that the commons, who are never wont to lose any of their privileges, would endure to stand now with their hats in their hands, where formerly they used to sit and vote. And indeed it most evidently appears, from the

testimony of all unbiassed historians, that there were no certain persons designed by law, whose concurrence was required to constitute a general council. From the peopling of England till the signing the great charter, neither the people nor the barons had any regular authority. The power of the government was solely lodged in the kings: they used only the advice of as many of those as they pleased to call unto themselves, who were always such as they thought most able to counsel and direct them in matters that were to be consulted of.

The supreme power is an indivisible beam of majesty, and cannot be divided among, or settled upon, a multitude. Moses, by chusing elders in small matters, did not thereby lose one inch of his authority, power and right to be judge himself, when he pleased, even in the smallest matters, much less in the greatest, which he reserved to himself: so kings, by delegating others to judge under them, do not thereby denude themselves of a power to judge when they think good. And indeed our common law to this purpose doth presume,

that the king hath all laws within the cabinet of his own breaſt. Certain it is, that before the commons were ever choſen to come to parliament, taxes and ſubſidies were raiſed and paid, without their gift, and all the liberties, powers, privileges, and immunities, that parliaments and every court of judicature enjoy, are all derivative and ſubſervient to the ſupreme power, which reſides in the king, and are grounded ſolely upon his mere grace and favour.

The gradual relaxations of the abſoluteneſs of our princes, for the greater eaſe of the ſubject, proceeded from the grants, benevolences, and gracious condeſcenſions of our kings. The *magna charta*, and many other ſtatutes about thoſe times, had only the form of the king's letters patent, or grants under the great ſeal, teſtifying theſe liberties to be the ſole act and bounty of the king. The privileges of parliament, which in the end enabled them to ſting the hand which fed them, were originally granted to render

them of some consequence, and to enable them more expeditiously to dispatch the king's business; and all the privileges that are claimed during the sitting of parliament, as freedom of speech, power of punishing their own members, &c. are the liberties of grace from the king, solely derived from his bounty and indulgence, and are not the liberties of nature, coming to the people by a natural right; for if these liberties were natural, it would give power to the multitude to assemble themselves when and where they pleased, to bestow sovereignty, and by pactions to limit and direct the exercise of it: whereas the liberties of favour and grace, which are claimed in parliament, and are solemnly recognised at the opening of every parliament, when the speaker is presented to the king, he in behalf, and in name of the whole house of commons, humbly craves of his majesty, that he would be pleased to grant them their accustomed liberties of freedom of speech; which petition of theirs is a plain proof, that they

enjoy

enjoy them out of the mere free grace and favour of the king; and the renewing this petition every parliament argues the grant to be only temporary, and during the present parliament, and is restrained both for time and place to the sole pleasure of the king. The people cannot assemble themselves; but the king by his writs, express commands and authority, calls them to sit in that council, and appoints what place he pleases for the meeting, and without whose call they cannot meet together; and then again he scatters them with the breath of his mouth, at an instant, without any other cause shewed than his will; and at his pleasure they are dissolved in law, and bound to depart to their houses; which shews very well, that the estates have no power of themselves to determine, command, or decree any thing, seeing they cannot so much as assemble themselves, nor being assembled depart without express commandment from the king.

In all points whatsoever, the govern-

ment of England, in and out of parliament, is expresly the same, and none can say that, while the parliament sits, the crown hath less power of government than in the vacation, nor in the latter more than when sitting.

The majesty of a sovereign prince is nothing altered or diminished by the calling together, or by the presence of the estates; but, on the contrary, there is nothing expresseth more the majesty and supreme power of a true sovereign prince, than such an assembly: for he becomes thereby much the greater and more honourable, in seeing all his subjects acknowledge him as their sovereign lord, and humbly present all their requests, supplications and addresses to him, by humble petition and supplication, without having any thing to command, determine, or consent to; but whatever pleases the king to like or dislike, to command or forbid, is holden for law. Their consent and approbation do indeed strengthen all the laws, which the king at their request,

and

and by their advice and miniſtry, ſhall ordain: thus they facilitate the government of the king, by making the laws unqueſtionable, either to the ſubordinate magiſtrates, or refractory multitude. But the parliament have no part in the legiſlature; for, though a bill hath paſſed both houſes of the lords and commons in parliament, yet, before it be a law, the royal aſſent muſt be aſked and obtained; for the houſes are called together, not to be dictators but counſellors, not to be partners in the legiſlature, but petitioners.

If the p——t had any part in the legiſlature, they muſt have it originally or radically veſted in themſelves, or by derivation; but they cannot have this power radically or originally in themſelves: for, as Bracton tells us, the earls and barons were not before the firſt kings; for, ſays he, the earls and barons are made by the king, and aſſumed for council: therefore inveſted with a long robe, and for defence they are girt with a ſword, which ſhews the power they have is not originally in them-

themselves, but proceeds from the king's grant and favour, and are mere concessions of grace. And it is well known, the house of commons had not existence for many years after the kings.

As the houses have no partnership in the supremacy originally in themselves, so neither have they it by way of derivation. If they had it derivatively, then it must proceed from the king, one of those two ways, either by way of grant, or by way of custom and prescription. They cannot have it by way of grant, for kings reign by a higher than any human law; and therefore no act of any king can divest himself of any essential attribute due to him, or to his successor. If kings actions obliged themselves or successors, then were this crown not free, but subject to the pope, because king John made it so. The reason we so frequently observe, in old acts of parliament, that general clause, that the statutes enacted by the king's progenitors shall be observed, is because kings do not think themselves obliged to observe the

laws

laws of their predeceſſors; but no king of England ever granted the parliament a fellowſhip of making laws with him. They cannot have it by way of preſcription; for no uſage, preſcription or cuſtom, can take place, where there are records and proofs enough to the contrary. The two houſes of parliament have a power to move for and give ſpring to new laws, by petition or otherwiſe, as the cuſtom is; and it is very proper, that their conſents ſhould be had in making laws: yet, for all that, we find many laws enacted after the conſtitution of parliaments, without their conſent. My lord chief juſtice Coke aſſures us, the 5th of Richard II. concerning hereſy, though proteſted againſt by the commons, was put in execution, and continued to be obſerved as a law, till it was repealed by Edward VI. and queen Elizabeth. The 2d of Henry IV. and 2d of Henry V. are more examples of the like kind. The force of theſe two ſtatutes was felt by the ſubjects, till Henry VIII. and Edward VIth's reign, and afterwards in

in that of queen Mary, till the final repeal by queen Elizabeth.

They are egregiously mistaken indeed, who reckon the king one of the three estates; for the three estates make the body, and the king is *caput, principium, & finis parliamentorum*, as confesseth Sir Ed. Coke: Every member, as well as both houses, have their right of sitting there from him.

Henry III. who succeeded his father John, confirmed the great charter granted by his father, with some additions and omissions, such as the obligation, to which John subjected himself, of having the consent of the great council, before he could levy aids and scutages.

This charter is the darling of the whole English nation, and is in a manner the basis of the English monarchy. It was in this reign, about the year 1222, that the great council began to receive the appellation of Parliament. This weak prince was the first king of England, since the conquest, who could fairly be said to lie under

under the restraint of law; for before this memorable period, the king's edicts had the full force of a law, and he regulated all matters with or without his great council of barons, as he pleased; but, from the time this great charter was granted, they had a right to be convened and consulted upon the great affairs of the nation, and the concession and confirmation of the great charter gave rise by degrees to a new species of government, and is a memorable epoch in the English annals. Henry was the first, who practised the dispensing power, and employed the famous clause of *non obstante*, in his grants and patents; and he is the first king of England, whose subjects dared to refuse supplies when demanded.

At this time, the king's authority was sunk so low, that when the pope applied to him for a large sum of money, for the conquest of Naples, he applied to the parliament for supply; and, that he might be sure of not meeting with opposition, he sent no writs to the refractory barons; but

even

even those who were summoned, sensible of the ridiculous cheat imposed by the pope, determined not to lavish their money on such chimerical projects, and making a pretext of the absence of their brethren, they refused to take the king's demands into consideration; and afterwards, when he desired a supply from parliament, the barons, complaining of the frequent breaches of the great charter, and of the many fruitless applications, which they had formerly made for the redress of this and other grievances, demanded in return, that he should give them the nomination of the great justiciary, and of the chancellor, to whom the administration of justice was chiefly committed; but the king would do no more than renew the old charter, and he received no other supply, except their consent to levy a scutage of twenty shillings on each knight's fee, for the marriage of his eldest daughter to the king of Scotland; a burthen, which was expressly annexed to their feudal tenures. And about fourteen years after, in

in a full parliament, when Henry demanded a new ſupply, he was openly reproached with the breach of his word and the frequent violations of the charter; and to get ſupplies, he was forced to make uſe of the pretence of taking the vow of a cruſade to the Holy Land.

The ſucceſsful revolt of the nobility from king John, and their impoſing on him, and his ſucceſſor, limitations of the royal power, had made them feel their own weight and importance, and had ſet a dangerous precedent of reſiſtance; and being followed by a long minority, had impoveriſhed as well as weakened that crown, which they were at laſt, from fear of worſe conſequences, forced to replace on the head of young Henry. The low eſtate into which the crown had now fallen, made it neceſſary to be attentive to the preſervation of the royal prerogatives, and not contemptuouſly to deſpiſe the popular clamours. In the king's ſituation, great abilities and vigour were neceſſary to ſuppreſs the unruly barons, and quench the ſpirit of rebellion, which

which had ſpread itſelf over all the kingdom. But this king had no qualification for government, which afforded a fair opportunity to the factious rebel, Montfort, earl of Leiceſter, to introduce many innovations in the government. He forced the king to conſent to have twenty-four barons elected, twelve from the king's council, and twelve from among the other barons, with unlimited authority to reform the ſtate: Leiceſter was at the head of this ſupreme council, and the firſt ſtep they took bore a ſpecious pretence, and ſeemed well calculated for the end which they hypocritically profeſſed to be the object of all their innovations. They ordered that four knights ſhould be choſen by each county to make enquiry into the grievances of their neighbours, and ſhould attend the next enſuing grand council, or parliament, in order to give information to that aſſembly of the ſtate of their particular counties. Theſe ſupreme barons ordered that three ſeſſions of parliament ſhould be regularly held every year, in the months of February, June, and

and October; for till then the king called them when he pleaſed, and diſmiſſed them when he thought proper. This new, unheard of committee of barons enacted, that a new high ſheriff ſhould be elected every year by the votes of the freeholders of each county; and that the ſheriffs ſhould have no power of fining the barons that did not attend at their courts. They likewiſe appointed, that the great council of the ſtate, moſtly compoſed of their creatures, ſhould chuſe a committee of twelve perſons, who, during the intervals of parliament, ſhould poſſeſs the authority of the whole parliament. Thus the whole government was overthrown, and monarchy totally ſubverted, without a poſſibility for the king to ſtrike a ſingle ſtroke in defence of the conſtitution againſt the newly erected oligarchy. None dared to withſtand their tyrannical authority; and all this for the greater glory of God, the honour of the church, the ſervice of the king, and the advantage of the kingdom. Every attempt the king made to reſcue himſelf, and recover his ſovereignty,

ſunk

ſunk him deeper in diſtreſſes. The arch rebel Leiceſter, getting the king into his hands, carried him from place to place, and iſſued out ſuch orders, as he thought fit, in the king's name, though againſt the royal authority: and that he might increaſe and turn to advantage his popularity, he ſummoned a new parliament in London, where he knew his power was uncontroulable; and he fixed this aſſembly on a more democratical baſis, than any which had been ſummoned ſince the foundation of the Engliſh monarchy.

Beſides the barons of his own party, and ſeveral eccleſiaſtics, who were not immediate tenants of the crown, he ordered returns to be made of two knights from every ſhire, and deputies from the boroughs.

Edward I. tallaged his demeſnes very heavily, by commiſſioners of his own, without any regard to the great charter; and alſo required military ſervice; obliged the people to arm more veſſels for his ſervice; took large quantities of proviſions without paying for them; and laid high impoſitions

upon the exportation of the chief commodities of the kingdom; and all this he did by his own authority. But about this time the ſpirit of republicaniſm began to blow very freſh; for, in the king's abſence, the earls of Hertford and Norfolk, with many of the citizens of London, formed a ſtrong oppoſition, and obtained a charter called the ſtatute *de tallagio non concedendo*, and cauſed the king to ſign a pardon to them and all their confederates.

In Edward the 2d's reign, the barons, headed by Thomas, earl of Lancaſter, couſin-german to the king, and prince of the blood, treading in the ſteps of Simon, earl of Leiceſter, came to parliament in defiance of the laws, and the king's prohibition, with a numerous retinue of armed followers; preſented a petition, requiring Edward to devolve on a choſen junto of twelve perſons, elected by the prelates and barons, the whole authority of the crown and parliament; with power to enact ordinances for the government of the kingdom, and the regulation of the king's

houſhold; and all this for the glory of God, the good of the church, and the honour and advantage of the king and kingdom. The king was obliged to unking himſelf, and to ſign a commiſſion impowering them to name twelve men to the government of the kingdom; and the barons, in return, ſigned a declaration, in which they acknowledged, that they owed their commiſſions intirely to the king's free bounty; and promiſed that this ſhould never be drawn into precedent. They made an ordinance for the removal of evil counſellors, and that all the conſiderable dignities in the houſehold, law, revenue, and army, ſhould be appointed by the baronage in parliament; and that the power of making war, or aſſembling the military tenants, ſhould no longer be ſolely veſted in the king, nor be exerciſed without the conſent of the nobility. This violent meaſure of the earl of Lancaſter the nation did not think proper to follow, as they did that of the earl of Leiceſter.

When the burgeſſes were firſt admitted into parliament, the writs are thus moſt frequently directed, as appears by bundles of original writs themſelves. *Edwardus, Dei gratia, rex Angliæ, &c. Ballivis villæ de ſancto Botho ſalutem.* Edward, by the grace of God, king of England, &c. To the bailiffs of the town of Boſton greeting.

After the election by the bailiffs, aldermen, and common council, they gave ſureties for their attendance before the king and parliament; their charges were born by the borough which ſent them, and they had ſo little idea of appearing as legiſlators, a character extremely wide of their low rank and condition, that no intelligence could be more diſagreeable to any borough, than to find that they muſt elect, or to any individual, than that he was elected to a truſt from which no profit or honour could be expected: they did not compoſe any eſſential part of the parliament; they met apart both from the barons and knights, who diſdained to mix with ſuch mean and contemptible people; the very ſcum of the

earth, as they would now be called. After they had given their conſent to the taxes required of them, their buſineſs being then finiſhed, they departed, even though the parliament ſtill continued to ſit and canvaſs the national buſineſs. And as they all conſiſted of men who were real burgeſſes of the place from which they were ſent, the ſheriff, when he found no perſon of abilities or wealth ſufficient for this office, often omitted particular boroughs in his returns; and as he received the thanks of the people for this indulgence, he gave no offence to the crown, which levied, without diſtinction, the tax agreed on by the majority of deputies from the boroughs, who were ſo far from looking upon their ſeat in that houſe as a privilege, that many of them renounced their right and obtained charters containing an exemption from attendance. This power, which the ſheriffs had, of omitting boroughs at pleaſure, remained with them till the reign of Richard the 2d. The union, however, of the repreſentatives from all the boroughs, gave

gradually

gradually, more weight to the whole order, and it became cuſtomary for them, in return for the ſupplies which they granted, to prefer petitions to the crown for the redreſs of any particular grievance of which they found reaſon to complain. The petitions received a verbal anſwer from the throne, very often without the conſent of the nobles; for no man then had a right, or indeed was diſpleaſed, that the king, at the deſire of any claſs of men, ſhould iſſue an order which only concerned that claſs. The king regulated the leſſer matters of ſtate, and what regarded the lower order of the people, by his edicts and proclamations.

The more the king's demands multiplied, the faſter their petitions increaſed both in number and authority; and the prince found it difficult to refuſe men, whoſe grants ſupported his crown. The commons, however, were ſtill much below the rank of legiſlators, and from their firſt commencement, to the acceſſion of the Stuart family, no redreſs of grievances was expected from theſe aſſemblies: they were

ſuppoſed to meet for no other purpoſe than to impoſe taxes; which was the original intention of theſe aſſemblies.

In the reign of Henry the 4th, the king told the commons that they were only petitioners; that is, they had not any legiſlative authority; and the commons were ſo little accuſtomed to tranſact public buſineſs, that they had no ſpeaker till the firſt of Richard the 2d, and they were very unwilling to meddle in affairs, and commonly referred themſelves to the lords, or deſired a ſelect committee of the lords to aſſiſt. But as the ſame cauſes which produced a partition of property continued ſtill to operate, the number of knights, or leſſer barons, or what is now called the gentry, perpetually increaſed, and ſunk into a rank ſtill more inferior to the great nobility. The equality of tenure was loſt in the great inferiority of power and property, and the houſe of repreſentatives, from the counties, was gradually ſeparated from that of the peers, and formed a diſtinct order in the ſtate. The growth of commerce, meanwhile,

while, augmented the private wealth and conſideration of the burgeſſes; the frequent demands of the crown increaſed their public importance; and as they reſembled the knights of the ſhires in one material circumſtance, that of repreſenting particular bodies of men, it no longer appeared unſuitable to unite them together in the ſame houſe, and ſo confounded their rights and privileges; but 'tis certain that this union was not final in Edward the 3d's reign; for in the year 1372 the burgeſſes acted by themſelves, and voted a tax after the knights were diſmiſſed. The taxes impoſed by the knights on the counties, were always higher than thoſe which the burgeſſes laid on the boroughs; and this difference of taxation voted by theſe ſeveral branches of the lower houſe, kept them naturally ſeparate; but as their petitions had moſtly the ſame object, *viz.* redreſs of grievances, and the ſupport of law and juſtice both againſt the crown and the barons, this cauſe as naturally united them, and was the reaſon why they at laſt formed into one houſe for the diſ-

patch of buſineſs. The barons had few petitions, their privileges were of more ancient date, grievances ſeldom affected them, for they were themſelves the chief oppreſſors. From theſe cauſes the diſtinction between the leſſer barons and knights of the counties, and the repreſentatives of boroughs, was entirely loſt, and the lower houſe, thence, aſſumed a greater acceſſion of right and importance in the kingdom; and the commons, or third eſtate, as they are commonly called, roſe by ſlow degrees to their preſent importance, and reached at laſt to their preſent form; and the gentlemen of the country then, made no ſcruple of appearing as deputies of the boroughs.

What ſufficiently proves that the commencement of the houſe of burgeſſes, who are the true commons, was not an affair of chance, but roſe from the neceſſities of the preſent ſituation, is, that Edward, at the very ſame time, ſummoned deputies from the inferior clergy, the firſt that ever met in England, and he required them to impoſe taxes on their conſtituents for the public

public ſervice. Formerly the eccleſiaſtical benefices bore no part of the burthen of the ſtate. The pope, indeed, had often levied impoſitions upon them: he had ſometimes granted this power to the ſovereigns. Edward himſelf had in the former year exacted, by menaces and violence, a very grievous tax of half the revenue of the clergy. But as this precedent was dangerous, and could not be eaſily repeated, Edward found it more prudent to aſſemble the lower houſe of convocation, to lay before them his neceſſities, and to aſk ſome ſupply. But on this occaſion he met with difficulties, for the clergy ſcrupled to meet on the king's writ; leſt by ſuch obedience they ſhould ſeem to acknowledge the authority of the temporal power: and this compromiſe was at laſt fallen upon, that the king ſhould iſſue his writ to the archbiſhop, and that the archbiſhop ſhould, in conſequence of it, ſummons the clergy. This was the cauſe why the eccleſiaſtics met in two houſes of convocation under their ſeveral biſhops.

The

The antiquity of the houſe of commons hath been diſputed with much acrimony; but ſuch is the force of time and evidence, that they can ſometimes prevail even over faction; and the queſtion ſeems with general conſent, even by their own, to be at laſt determined againſt the ruling party. It is agreed the commons were no part of the great council till ſome ages after the conqueſt; and that the military tenants alone, of the crown, compoſed that ſupreme legiſlative aſſembly, and were the king's counſellors when he pleaſed to make uſe of them.

BEFORE we proceed farther, we ſhall here give the reader an account of the Scottiſh conſtitution in the words of Dr. Robertſon. If the authority of the barons far exceeded its proper bounds in the other nations of Europe, we may affirm that the balance which ought to be preſerved between the king and his nobles, was entirely loſt in Scotland. The calamities which befel their kings, contributed more than any other thing to diminiſh the royal authority.

Never

Never was any race of monarchs ſo unfortunate as the Scottiſh. Of ſix ſucceſſive princes, from Robert 3d to James the 6th of Scotland and 1ſt of England, not one died a natural death; and their minorities during that time were long and more frequent than ever happened in any other kingdom. When the king himſelf came to aſſume the reins of government, he found his revenue waſted or alienated, the crown lands ſeized or given away, and the nobles ſo accuſtomed to independence, that after the ſtruggles of a whole reign he was ſeldom able to reduce them to the ſame ſtate in which they had been at the beginning of his minority, or to wreſt from them what they had uſurped during that time; ſo that the reigns of the Scottiſh kings, for many years, were ſpent in continual quarrels with the barons, whoſe power, by encroachment upon the rights of the crown, became quite intolerable.

Many years after the declenſion of the feudal ſyſtems in the other kingdoms of Europe, and when the arms or policy of princes

princes had, every where, ſhaken or laid it in ruins, the foundations of that ancient fabric remained, in a great meaſure, firm and untouched in Scotland. This was not owing to the inattention of their kings or to their want of ambition: they were abundantly ſenſible of the exorbitant power of the nobility, and extremely ſolicitous to humble that order. They did not, however, poſſeſs means ſufficient for accompliſhing that end; but all that was in their power they did to bring that haughty tribe to order, which was the cauſe that ſo many of the Scottiſh kings came to an untimely end. And as the adminiſtration of juſtice is one of the moſt powerful ties between a king and his ſubjects, all the Scottiſh monarchs were at the utmoſt pains to circumſcribe the juriſdiction of the barons, and to extend that of the crown. The external forms of ſubordination, natural to the feudal ſyſtem, favoured this attempt. An appeal lay from the judges and courts of the barons to thoſe of the king. The right, however, of judging in the firſt

inſtance

inſtance belonged to the nobles, and they eaſily found means to defeat the effect of appeals, as well as of many other feudal regulations. The royal juriſdiction was almoſt confined within the narrow limits of the king's demeſnes, beyond which his judges claimed indeed much authority, but poſſeſſed next to none. The kings were ſenſible of theſe limitations, and bore them with impatience; but it was impoſſible to overturn in a moment, what was ſo deeply rooted, or to ſtrip the nobles at once of privileges, which they had held ſo long, and which were wrought almoſt into the frame of the feudal conſtitution. To accompliſh this, however, was an object of uniform and anxious attention to all the princes of the Scottiſh line. James the Firſt led the way here, as well as in other inſtances, towards a more regular and perfect police. He made choice, amongſt the eſtates of parliament, of a certain number of perſons, whom he diſtinguiſhed by the name of the Lords of Seſſion, and appointed them to hold courts

courts for determining civil causes, three times in the year, and forty days at a time, in whatever place he pleased to name. Their jurisdiction extended to all matters, which formerly came under the cognizance of the king's council, and being a committee of parliament, their decisions were final. James II. made a law, annexing all regalities, which should be forfeited to the crown, and declaring the right of jurisdiction to be unalienable for the future. James III. imposed several penalties upon those judges appointed by the barons, whose decisions should be found, on a review, to be unjust, and, by many other regulations, endeavoured to extend the authority of his own court. James IV. upon pretence of remedying the inconveniencies arising from the short terms of the court of session, appointed other judges, called Lords of Daily Council. The session was an ambulatory court, and met seldom; the daily council was fixed and sat constantly at Edinburgh; and, though not composed of members of parliament,

liament, the ſame powers, which the lords of ſeſſion enjoyed, were inveſted in them. At laſt, James V. erected a new court that ſtill ſubſiſts, and which he named the College of Juſtice, the judges and ſenators of which were called Lords of Court and Seſſion. This court not only exerciſed the ſame juriſdiction, which formerly belonged to the ſeſſion and daily council, but new rights were added, privileges of great importance were granted to its members, its forms were preſcribed, its terms fixed, and regularity, power, and ſplendor, conferred upon it. The perſons, conſtituted judges in all theſe different courts, had in many reſpects the advantage of thoſe, who preſided in the courts of barons: they were more eminent for their ſkill in law, their rules of proceeding were more uniform, and their deciſions more conſiſtent. Such judicatories became the objects of confidence and veneration. Men willingly ſubmitted their property to their determination, and their encroachments on the judicatories of the nobles were popular,

popular, and for that reaſon ſucceſsful. By devices of a ſimilar nature, the juriſdiction of the nobles in criminal cauſes was reſtrained, and the authority of the court of juſticiary extended. Such were the efforts, ſays Dr. Robertſon, of the kings of Scotland towards reducing the exorbitant power of the nobles. If they were not attended with ſucceſs, we muſt not for that reaſon conclude, that they were not conducted with prudence. Every circumſtance ſeems to have combined againſt the crown: accidental events concurred with political cauſes, in rendering the beſt concerted meaſures abortive: the aſſaſſination of one king, the ſudden death of another, and fatal deſpair of a third, contributed to keep the king's power much circumſcribed in Scotland.

Amidſt thoſe ſtruggles, the influence that the Scottiſh kings poſſeſſed in parliament, is a circumſtance ſeemingly inexplicable, and which merits particular attention. As theſe aſſemblies were compoſed chiefly of the nobles, they, we are

apt to imagine, must have dictated all their decisions; but, instead of this, every king found them subservient to his will, and obtained such laws as he esteemed necessary for extending his authority. All things were conducted there with dispatch and unanimity, and we do not find an instance of opposition formed against the court in parliament, or any difficulty in carrying through the measures, which were agreeable to the king.

In order to account for this singular fact, it necessarily leads us to enquire into the origin and constitution of the Scottish parliament, which we shall do in the words of the above-mentioned historian.

As many causes contributed to bring government earlier to perfection in England than in Scotland, as the rigour of the feudal institutions abated sooner, and its defects were supplied with greater facility in one kindgdom than another. England led the way in all these changes, and burgesses and knights of the shire appeared in the parliaments of that nation, before they

were heard of in Scotland. Burgesses were first admitted in Scottish parliaments by Robert Bruce, and in the preamble to the laws of Robert III. they are ranked amongst the constituent members of that assembly. The lesser barons were indebted to James I. for a statute, exempting them from personal attendance, and permitting them to elect representatives. The exemption was eagerly laid hold on, but the privilege was so little valued, that, except one or two instances, it lay neglected for 160 years, and king James the Ist of England, and VIth of Scotland, first obliged them to send representatives regularly to parliament. A Scottish parliament then consisted of great barons, of ecclesiastics, and a few representatives of boroughs. Nor were these divided as in England, into two houses, but composed one assembly, in which the lord chancellor presided. And in rude ages, when the science of government was extremely imperfect, among a martial people, unacquainted with the arts of peace, strangers to the talents which make a figure in de-

bate,

bate, and despising them, parliaments were not held in the same estimation as at present, nor did haughty barons love those courts, in which they appeared with such evident marks of inferiority. Parliaments were often hastily assembled, and it was in the king's power, by the manner in which he issued his writs for that purpose, to exclude those who were averse to his measures. At a time, when deeds of violence were common, and the restraints of law and decency were little regarded, no man could venture with safety to oppose the king in his own court. The great barons, or lords of parliament, were extremely few; even so late as the beginning of the reign of James VI. they amounted only to fifty-three. The ecclesiastics equalled them in number, and, being implicitly devoted to the crown, rendered all hopes of victory in any struggle desperate. Nor were the nobles themselves so anxious as might be imagined, to prevent acts of parliament favourable to the royal prerogative; con-

ſcious of their own ſtrength, and the king's inability to carry theſe acts into execution, without their concurrence, they truſted either to elude or to contemn them. Revoking the king's property, and annexing a limited juriſdiction to the crown, which was repealed in every reign, and as often violated and deſpiſed by the nobles, is a ſtanding proof of the impotence of laws when oppoſed to power.

As far back as records enable us to trace the conſtitution of the parliament in Scotland, we find a committee, diſtinguiſhed by the name of Lords of Articles. It was their buſineſs to prepare and to digeſt all matters, which were to be laid before the parliament. Every motion for a new law was firſt made there, and approved of or rejected by them at pleaſure: what they approved was formed into a bill, and preſented to parliament; what they rejected could not be introduced into the houſe. This committee owed the extraordinary power veſted in them to the military genius of the ancient nobles, too impatient

patient to ſubmit to the drudgery of civil buſineſs, too impatient to obſerve the forms, or to enter into the details neceſſary in conducting it: they were glad to lay the burden upon a ſmall number, while they themſelves had no other labour than ſimply to give, or refuſe their ſanction to the bills, which were preſented to them. The lords of articles then not only directed the whole proceedings of parliament, but poſſeſſed a negative before debate. That committee was choſen and conſtituted in ſuch a manner, as put this valuable privilege entirely in the king's hands; and the king once had the ſole right of nominating the lords of articles. They came afterwards to be elected by the parliament, and conſiſted of an equal number out of each eſtate, and moſt commonly of eight temporal and eight ſpiritual lords, of eight repreſentatives of boroughs, and of other great officers of the crown. Of this body, the eight eccleſiaſtics, together with the officers of the crown, were entirely at the king's devotion, and it was ſcarce poſſible,

that the choice could fall upon such temporal lords and burgesses, as would unite in opposition to his measures. Capable either of influencing their election, or of gaining them when elected, the king commonly found the lords of articles not less obsequious to his will, than his own privy council; and, by means of his authority with them, he could put a negative upon his parliament before debate, as well as after it; and what may seem altogether incredible, the most limited princes in Europe actually possessed, in one instance, a prerogative, which the most absolute could never attain.

In England, the parliament rose into great consideration during the reign of Edward III. and acquired a more regular authority than in any former times; and even the house of commons, which, during turbulent and factious periods, was oppressed by the great power of the crown and barons, began to appear of some weight in the constitution. The king, in the latter part of his reign, took no steps

of

of moment without consulting his parliament; and he even suffered them to impeach his ministers, particularly Lord Latimer, who fell a sacrifice to their authority; and they even obliged the king to banish his mistress, by their remonstrances. Some attention was also paid to the elections of their members, and lawyers, in particular, who were at that time people of very inferior character, were totally excluded the house during several parliaments. It was also ordained, that a parliament should be held once a-year, or oftener, if need be; but this law, like many others, was not observed, and lost its authority by disuse.

The king openly avowed and maintained the power of levying taxes at pleasure, without consent of parliament; and when the parliament desired that a law might be enacted for the punishment of such as levied these arbitrary impositions, he refused compliance; and a few days before his death, when they desired him to give up that prerogative, he said he would levy no taxes without necessity, for the defence of the

realm, and where he might reasonably use that authority: these were in a manner his last words to his people.

In this reign, the use of the French language, in pleadings and public deeds, was abolished; for Edward's wars with France gave the English an antipathy to that nation; but yet it was still long before the use of the English tongue came into fashion.

The commons, from this time, slowly and silently raised their head; and while the king and barons were struggling who should be uppermost, the commons were courted by both sides, and thereby received still some accession to their privileges, or at least some confirmation of them. And as they had been rising into consideration, during the whole course of the late reign, they received an accession of power during the minority of Richard; and as the house of commons was now become a scene of business,

neſs, they choſe, for the firſt time, a *ſpeaker*, who might preſerve order in their debates, and maintain thoſe forms which are requiſite in all numerous aſſemblies, and *Peter de la Mare* was pitched upon.

The election of the commons now became a matter of government, not to be neglected; and Edward was even accuſed of uſing unwarrantable methods of procuring to his partizans a ſeat in the houſe.

The uſurper, Henry, though he treaded in Edward's ſteps himſelf, yet, through the influence and power of the commons, was forced to enact laws againſt all undue influence; and ſheriffs were puniſhable for an iniquitous return.

The commons, who took advantage of every uſurpation, during Henry's reign, became very ſenſible of their own importance, and began to exerciſe power, and to claim

claim privileges, unknown to their predeceſſors.

In the firſt ſeſſion of this reign, they procured a law, that no judge, in concurring with an iniquitous meaſure, ſhould be exculpated by pleading the king's orders. The next year, they inſiſted on not granting any ſupplies, before they received an anſwer to their petitions; and deſired the king to remove ſome officers, who were obnoxious to them. And when they voted ſupplies, they appointed their own treaſurers to ſee the money diſburſed for the purpoſes intended; they likewiſe required the treaſurers to deliver in the accounts to the houſe.

The ſpeaker of the houſe began to take unuſual liberties during this reign, and even petitioned Henry for liberty of ſpeech.

After the fall of the feudal ſyſtem, the diſtinction of tenures was, in a great meaſure,

ſure, loſt; and every freeholder, as well thoſe who held of meſne lords, as the immediate tenants of the crown, were by degrees admitted to give their votes at elections; and this practice was confirmed by a law made in this reign, which gave right to ſuch a multitude of electors, which proved the occaſion of great diſorder.

In the next reign, a great alteration was introduced into the ſyſtem of government. The military part of the feudal ſyſtem was ſo imperfectly kept up, that it could no longer ſerve for the defence of the nation; therefore, Henry 5th, as I obſerved in another place, changed the feudal militia into what we now have.

During the reigns of the *Lancaſtrian* princes, the authority and privileges of parliament ſeem to be more confirmed, than during any other period. Their bad title became ſo far of advantage to the conſtitution,

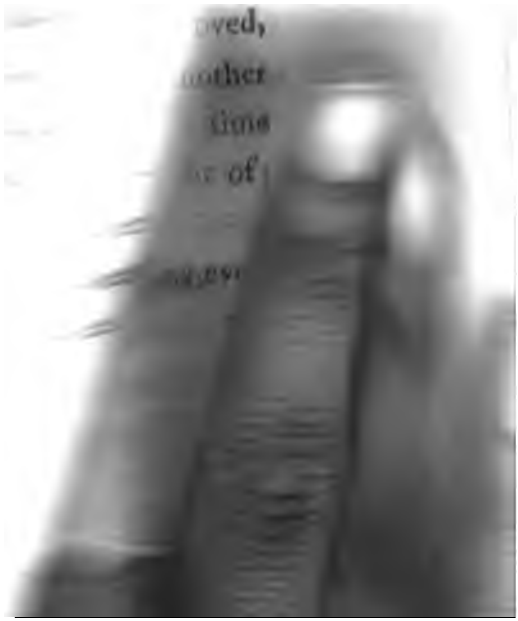
tion, that none of them attempted to impose taxes, without the consent of parliament; though weaker princes, whose titles were indisputed, were tempted to think that they might venture upon it with impunity.

The long minority of Henry 6th encouraged the lords and commons to extend their authority. The most remarkable law, which passed in this reign, was that which limited the electors to such as possessed forty shillings a-year in land, within the county, free of all burthen, to prevent the great disorders, which after happened at elections, from the multitude of electors; for the house of commons was beginning, in this period, to assume great authority, and a seat in the house of commons became now a wishful object.

Henry 7th exalted the royal prerogative above law, and often raised supplies without his parliament. This king was wise

.e

for



by the preceding wars, that the danger seemed entirely over from that quarter. The politic king was aware of his advantage, and improved it to admiration: one may even affirm, that this was the sole object of his government.

For the greater security and majesty of his person, he began with the institution of his *life-guard*; and, having thus set out with enlarging his own train, his next care was to diminish that of his nobles. Hence the law, or rather laws, against *retainers*. And with how jealous a severity he put those laws into execution, is sufficiently known from his treatment of one of his principal friends and servants, the earl of Oxford.

The star-chamber was established by act of parliament in this reign, to depress the nobility: and, to put them still lower in the public esteem, he affected to fill the

great offices with churchmen only; and, to prevent the poſſibility of a return, in any future period, of the patrician power, this politic prince provided, with great care, for the encouragement of trade, and the diſtribution of property: both which ends were effected at once, by that famous act, which was made to ſecure and facilitate the alienation of eſtates by fine and proclamation.

All theſe meaſures were evidently taken by the king, to diminiſh the credit, and ſuppreſs the influence and ſway of his nobles; and, of conſequence, as he thought, to preſerve the power of the crown above controul: and his policy had the effect for ſome time, though, in the end, it proved, beyond his expectation, to advance another and more formidable power, at that time little ſuſpected, or even much thought of; the power of the people.

The truth is, Henry's policy was every way

way much affiſted by the genius of the time. Trade was getting up; and Preſbyterian republicaniſm, or fanatical Lollardiſm, had ſecretly made its way into the hearts of the people; and, though republicaniſm was, in the end, to reap the benefit of each, prerogative was the immediate gainer.

In this reign, Chriſtopher Columbus, a Florentine, ſet out from Cadiz, on his memorable voyage for the diſcovery of the Weſtern world. Both Indies were diſcovered, and Conſtantinople was taken by the Turks. The growth of trade in Europe, by the diſcovery of America, and by finding a new and eaſy way to the Eaſt Indies by the Cape of *Good Hope*, and the great plenty of money ariſing in Europe from the wealth brought from thence, were the cauſes that very much haſtened the decay of the feudal power; as the wealth, ariſing from thence, came chiefly amongſt the

the commons, and the eſtates of the nobility, having been made alienable, many of their eſtates came, in a ſhort time, into the hands of the commons, whoſe power and dependances, as well as their ſpirits, were thereby much exalted. Trade introducing wealth, brought along with it luxury, and an expenſive way of living among all, but, particularly, among the trading, or lower ſort of people, in order to keep up ſome credit among the nobleſſe. And the greater the quantity of money grew, the revenues of the eſtates ſunk in proportion; becauſe moſt of them had before agreed to take their rents in certain payments of money, which was now become leſs conſiderable; ſo that the barons could no longer make the ſame figure, or preſerve the ſame weight and influence, which they formerly had; but gradually became like old decayed oaks, which afforded little fruit or ſhelter, while the

underwood about them was very thriving. Thus the commons waxed strong, not only at the expence of the barons or noblesse, but also of the king, who, though endowed with a very political genius, did not foresee the dangerous height to which they in time arrived.

The authority of the church, that other check on the sovereign, was gradually weakened by the prevailing spirit of reformation.

Under these circumstances, Henry found no difficulty to depress his great lords; and he did it so effectually, that his son had little left to do, to keep them in that weak and disabled state, to which his father had reduced them. From this time, the barons sunk lower and lower, even much beneath what the safety of the state required. But the effects of this policy did not appear till long afterwards; for the present, the crown

received

received a manifest advantage by this conduct.

There was, besides, another circumstance of great moment attending the government of the younger Henry. He was the first heir of the white and red roses, so that there was now an end of all disputes, and disaffection of the people. And they had so long and so violently contended about the title to the crown, that when that mighty point was once settled, they did not apprehend that any other consideration deserved, or could justify resistance to their sovereign.

With these advantages of situation, Henry 8th brought with him to the throne a spirit of that firm and steady temper, as was exactly fitted to break the edge of any rising opposition. He had a spirit of the largest size; and, as Nat. Bacon says, feared nothing but the falling of the heavens. This

reign was the great crisis and epoch of the English liberties; for that prince had great advantages for preserving, and for ever establishing the absolute power of the crown. Besides the confidence of youth, he was of a nature so elate and imperious, so resolved and fearless, that no resistance could succeed; hardly any thought of it could be entertained against him. The commons, who had been hitherto unaccustomed to treat with their kings, but by the mediation of the great lords, being now pushed into the royal presence, were dismayed and terrified at the eye of majesty, and durst scarcely look up to the throne, much less dispute the prerogatives with which so awful a prince was invested. And a singular event happened, which not only preserved his greatness, but, if possible, brought an increase to it; I mean, the famous rupture with the court of Rome; in consequence

of

of which, the yoke of papal usurpations, that yoke under which our kings had groaned for so many ages, was in a moment broken off, and the crown restored to its full and perfect independency. Nor was this all. The throne did not only stand by itself, as having no longer a dependence on the papal chair: it rose still higher, and was, in effect, erected upon it: for the ecclesiastical jurisdiction was not annihilated, but transferred, and all the powers of the Roman pontiff now centered in the king's person. Henceforth we are to regard him in a more awful point of view, as armed with both swords at once; and, as Nat. Bacon expresses it, in his way, as a strange kind of monster, a king with a pope in his belly. The high authority in spirituals, which he gained, enabled him to hold all men, who either feared, or desired a further reformation, in the most entire sub-

jection. The advantage of the reformation, and competition of the Protestants and Papists for the continuance and protection of the crown, threw all the abbey-lands into Henry's hand, without any condition; which, together with what he got from the hospitals, chantries, bishoprics, deans, chapters, &c. were certainly not less than a fourth part of all the lands in the kingdom. By the act of submission, &c. he brought all the clergy entirely under his power. And the parliament made an act, that his proclamations should have the power of a law.

In these circumstances, a prince, who had been a deep politician, and desirous of making his successors absolute, would have laid such a foundation for it as could not have failed. He had nothing to do, but to let the clergy have a great share of the land; which would have been a certain revenue

venue to him; and to have allowed all the regular prelates, abbots, and priors, who held of barons, to hold their seats in parliament, which would have secured him a certain majority of votes; and by the influence and management of the clergy, he would have found the common people very quiet and peaceable. Or, if he had kept the abbey and clergy-lands in the crown, and laid on taxes which should chiefly affect the trading part of the kingdom, and made an act to prevent the alienation of lands, he and his successors would have continued as absolute sovereigns as any in Europe. But, in place of that, he dissipated, by absolute gifts, the church-lands among his courtiers, of whom several were commoners, without reserving any considerable quit-rents or payments to the crown. He gave way to the clergy's being brought upon a very low footing, which was very probably

the means of hindering the inferior clergy from being received into the house of commons, as part of the legislature.

Henry's parliament granted him a *poll-tax*, which was paid in different proportions, according to the station and riches of the person, to support the expence of the war with France, in which he was engaged soon after his accession to the crown. But this king did not wait for the consent of parliament to raise money. He caused a general survey to be made of the kingdom, and then issued out privy seals to the most wealthy, demanding loans of particular sums, and published a royal edict for a general tax upon all his subjects, of 5 shillings in the pound from the clergy, and 2 shillings from the laity.

When he met with any opposition from his parliament, he so severely reprimanded the refractory members, that his requests

were

were always complied with. It is ſaid, when he heard that the commons made a great difficulty of granting the ſum required, he ſent for Edward Montegue, one of the members, who had conſiderable influence on the houſe, and ſpoke to him in theſe words: Ho! man! will they not ſuffer my bill to paſs? and, laying his hand on Montegue's head, who was then on his knees before him, Get my bill paſſed by to-morrow, or elſe to-morrow this head of yours ſhall be off. This cavalier manner of Henry ſucceeded, and the bill was paſſed.

He made no ſcruple to raiſe money at any time, by his prerogative royal alone; and the abſolute authority poſſeſſed by him, rendered his domeſtic government, both over his people and over his miniſters, eaſy and expeditious.

When the commons rejected the bill for

the

fast; that Queen Elizabeth saw that it would, some time or other, endanger the crown. During her time, however, she made them know their order; and the crown, on the head of her renowned Protestant princess, recovered what it had lost during the minority of Edward.

The parliament, during the reigns of Henry 7th and 8th, Edward 6th, and Mary, was the organ of royal will and pleasure; a tool in the hands of the king, whose will they were ready at all times to obey. And scarce any sovereign before Elizabeth, and none after her, carried higher, both in speculation and practice, the authority of the crown. The extent of the royal prerogative, during that age, was absolutely unlimited; and, in former periods of the English government, as we have already seen, the house of commons was of so small weight in the balance of the

consti-

constitution, that little attention had been given, either by the crown, the people, or the house itself, to the choice and continuance of the members.

It was usual, after parliaments were prolonged beyond one session, for the chancellor to exert a discretionary power of issuing new writs, to supply the place of any members whom he judged incapable of attending, either on account of their employment, sickness, or other impediment. This practice gave that minister, and, in consequence, the prince, an unlimited power of chusing and directing at pleasure the representatives of the nation. Yet so little jealousy had it created, that the commons, of themselves, without any court influence or intrigue, and contrary to some former votes of their own, confirmed it in the 23d of Elizabeth. At that time, though some members, whose place had been supplied

on

on account of sickness, having now recovered their health, appeared in the house, and claimed their seat; such was the authority of the chancellor, that, merely out of respect to him, his sentence was adhered to, and the new members were continued in their places. And, in a subsequent parliament, the absolute authority of the queen was exerted in a manner still more open. New writs having been issued by the chancellor, when there was no vacancy, and a controversy arising upon that incident, the queen sent a message to the house, informing them, that it was impertinent for them to deal in such matters. These questions, she said, belonged only to the chancellor; and she had appointed him to confer with the judges, in order to settle all disputes with regard to elections. She kept within very narrow limits that bold, daring, and uncontroulable spirit of enthusiasm, which

strongly disposes mens minds to adopt republican notions, and inclines them to arrogate, in their actions and conduct, the same liberty which they assumed in their rapturous flights and ecstasies.

The queen's authority over the two houses was absolutely uncontroulable: the faint dawnings of the spirit of republicanism were with ease subdued by this arbitrary princess.

The Lord Keeper, Bacon, after the speaker of the house of commons was elected, told the parliament, in the queen's name, that she enjoined them not to meddle with any matters of state: such was his expressions, by which he probably meant, the questions of the queen's marriage, and the succession, about which they had before given her some trouble; for, as to the other great points of government, alliances, peace and war, or foreign negociations, no parliament

liament in that age ever ventured to take them under consideration, or question, in these particulars, the conduct of their sovereign. When Stricland, a member, brought in a bill for the amendment of the liturgy, the queen was so highly offended at his presumption, that she sent for him to the council, and prohibited him thenceforth to appear in the house of commons. Notwithstanding this rebuke from the throne, the zeal of the commons still engaged them to continue the discussion of those other bills, which regarded religion; but they were interrupted by a still more arbitrary proceeding of the queen, in which she made the lords her instruments. That house sent a message to the commons, desiring that a committee might attend them. Some members were accordingly appointed for that purpose; and the upper house informed them, that the queen would not

allow

allow articles of religion to be treated of in parliament. When a motion was made by Robert Bell, a Puritan, against an exclusive patent, granted to the company of merchants at Bristol, the queen sent her orders, by the mouth of the speaker, commanding the house to spend little time in motions, and to avoid long speeches. All the members understood that she had been offended; because a matter had been moved, which seemed to touch her prerogative. Fleetwood observed, that the queen had a prerogative of granting patents, and to question the validity of any patent, was to invade the royal prerogative; that all foreign trade was entirely subjected to the pleasure of the sovereign; that even the statute which gave liberty of commerce, admitted of all prohibitions from the crown; and that the prince, when he granted an exclusive patent, only employed the power vested in

 him,

him, and prohibited all others from dealing in any particular branch of commerce. Sir Humphrey Gilbert carried these topics still farther; he desired them to beware, lest, if they meddled farther with these matters, the queen might look to her own power; and, finding herself able to suppress their challenged liberty, and to exert an arbitrary authority, might imitate the example of Lewis 11th of France, who, as he termed it, delivered the crown from wardship. Bell, the member who introduced the motion, was sent for by the council, and was severely reprimanded for his temerity, which struck the house with such terror for some time, that none durst rise to speak of any matter of importance, for fear of giving offence to the queen and the council. And though every thing which passed in the two houses was extremely respectful and submissive, yet, at

the

the conclusion of the session, the lord keeper told the commons, in her majesty's name, that though the majority of the lower house had shewed themselves, in their proceedings, discreet and dutiful, yet, a few of them had discovered a contrary character, and had justly merited the reproach of audacious, arrogant and presumptuous; and, since they will thus wilfully forget themselves, they are otherwise to be admonished; some other species of correction must be found for them, since neither the commands of her majesty, nor the example of their wiser brethren, can reclaim their audacious, arrogant, and presumptuous folly, by which they are thus led to meddle with what no ways belongs to them, and what lies not within the compass of their understanding.

And though monopolies and exclusive companies had already reached an enormous

height, and were every day increasing, to the destruction of all liberty, and extinction of all industry, it was criminal in a member to propose, in the most dutiful and regular manner, a parliamentary application against any of them.

She even treated her parliament, in her speeches and messages, with all the haughtiness and sometimes bitterness of expression, which the meanest servant could look for from his offended master.

Yet, notwithstanding this conduct, Elizabeth continued to be the most powerful sovereign that ever swayed the sceptre of England, because the maxims of her reign were conformable to the principles of the times, and to the opinion which was entertained with regard to the constitution. The continued encroachments of popular assemblies, on Elizabeth's successors, have so changed our ideas of things, that her

conduct

conduct now appears aſtoniſhing. But though the authority of the crown was in this reign abſolute, and though Elizabeth ruled with the ſpirit of her father, yet the Puritans, thoſe enthuſiaſts who were the cauſe of all our ſubſequent calamities, began to kindle the ſparks of republicaniſm, and at times forced the queen to pay court to the people. Actuated by that zeal which belongs to innovators, and by the courage which enthuſiaſm inſpires, they hazarded the utmoſt indignation of their ſovereign; and employing all their induſtry to be elected into parliament, a matter not difficult while a ſeat was rather regarded as a burthen than an advantage, they firſt acquired a majority in that aſſembly, and then obtained an aſcendant over the church and monarchy.

In the very next parliament, one Peter Wentworth, a Puritan, made uſe of ſome

unguarded expressions, which brought on him the anger of the queen, who imprisoned him for a whole month.

The majority of the house were Puritans, or inclined to that sect; but the severe reprimands which they met with from the throne, deterred them from introducing any bill concerning religion. They were contented to proceed by way of humble petition, which was seldom much regarded. For in so great awe did the commons stand of every courtier, as well as of the crown, that they durst use no freedom of speech, which they thought would give the least offence to any of them.

The queen undervalued their privileges, and treated them in so haughty a manner, that they became truly sensible of their own weakness. When the speaker, Sir Edward Coke, made the three usual demands, of freedom from arrests, of access to her person,

ſon, and of liberty of ſpeech; ſhe replied to him, by the mouth of Puckering, Lord Keeper, that liberty of ſpeech was granted the commons; but they muſt know what liberty they were entitled to, not a liberty for every one to ſpeak what he liſteth, or what cometh in his brain to utter; their privilege extended no farther than a liberty of *aye* and *no*: that ſhe enjoined the ſpeaker to refuſe any bills exhibited for the purpoſe of reforming the church, or innovating in the commonwealth, till they were examined by perſons that were fitter to judge of theſe matters; that ſhe would not impeach the freedom of their perſons, but they muſt beware, leſt, under colour of this privilege, they imagined, that any neglect of their duty could be covered or protected: and that ſhe would not refuſe them acceſs to her perſon, provided it was upon urgent and weighty cauſes, and at times convenient,

and when she might have leisure from other important causes of the realm.

Notwithstanding this menacing air of speech, the Puritans were so numerous, and so bold, that one Peter Wentworth ventured to transgress the imperial orders of Elizabeth, for which he was immediately sent to the Tower, and Sir Thomas Bromley, who seconded him, together with Stevens and Welsh, two members, to whom Sir Thomas had communicated his intentions, were committed to the Fleet prison; and some time after, when the house moved for the release of their members, the privy counsellors then present, answered, that her majesty had committed them for causes best known to herself, and to press her on that head would only tend to the prejudice of the gentlemen whom they meant to serve: she would release them whenever she thought proper, and would be better pleased

to

to do it of her own accord, than from their ſuggeſtion. The houſe willingly acquieſced in this reaſoning.

Yet the puritanie zeal, or bigotry, was ſo furious, that no human prudence or reaſon could reſtrain it. One Morrice, a Puritan, attorney of the court of Wards, made a motion for redreſſing the abuſes in the biſhops courts: upon which the queen ſent for the ſpeaker, and after requiring him to deliver Morrice's bill to her, ſhe told him, that it was in her power to call parliaments, in her power to diſſolve them, in her power to give aſſent or diſſent to any determination which they ſhould form; that her purpoſe in ſummoning this parliament was twofold, to have laws enacted for the farther enforcement of uniformity in religion, and to provide for the defence of the nation againſt the exorbitant power of Spain: that theſe two points ought to be the object of their deli-

deliberation: she had already enjoined them, by the mouth of the Lord Keeper, to meddle neither with matters of state, nor of religion; and she wondered that any one could be so assuming as to attempt a subject so expressly contrary to her prohibition: that she was highly offended with this presumption, and took the present opportunity to reiterate the commands given by the keeper, and to require, that no bill, regarding either state-affairs or reformation in religion, be exhibited in the house: and that, in particular, she charged the speaker, upon his allegiance, that if any such bills were offered, absolutely to refuse them a reading, and not so much as permit them to be debated by the members. This command from the queen was submitted to without further question. Morrice was seized in the house by a serjeant at arms, discharged from his office of chancellor of the duchy,

duchy, disabled from any practice in his profession as a common lawyer, and kept for some years prisoner in Tilbury castle. The commons were very obsequious to the queen's injunctions.

They passed a law against recusants, to obviate such inconveniencies and perils as might grow from the wicked practices of seditious sectaries and disloyal persons; for, in general, a sectary and a rebel are synonimous terms. It was enacted, that any person above sixteen years of age, who obstinately refused, during the space of a month, to attend the public worship, should be committed to prison; that, after being condemned for this offence, if he persisted three months in his refusal, he must abjure the realm; and that, if he either refused this condition, or return after banishment, he is to suffer capitally as a felon, without benefit of clergy. This law, though at first

sight

ſight it appears very ſevere, yet, whoever is verſant in the hiſtory of theſe times, knows that it was abſolutely neceſſary; for, whenever the Jeſuits were engaged in any plots, the Puritans, who, by the encouragement of their patron Leiceſter, were grown to an intolerable degree of inſolence, took that opportunity to renew their attacks, by their ſecret cabals and numerous libels, full of ſchiſmatical and ſeditious principles, againſt the eſtabliſhment both in church and ſtate, till at laſt they forced the government to reſtrain them by a ſtricter rein of diſcipline.

Some of them, for their heterodox doctrines, were proceeded againſt by the eccleſiaſtical commiſſioners, in the high commiſſary court, ſome in the ſtar-chamber, for miſbehaviour; others of them for ſeditious practices and rebellious principles, were proſecuted in the ſecular courts, ſome

of whom were racked and hanged, and many of them imprisoned or banished.

Our constitution has undergone many changes; indeed it has always been in a state of fluctuation; but four remarkable or cardinal changes it has suffered, which may be dated from these remarkable æras, *viz.* the signing of the great charter, and the institution of parliaments, the accession of the Stuart family, and the revolution.

Riches, commerce, and fanaticism, the triumvirate which introduced such mighty changes in the state in following reigns, began wonderfully to increase at this time. The landed proprietors having a greater demand for money than for men, endeavoured to turn their lands to the best account with regard to profit. They inclosed their grounds, joined small into large farms; dismissed their useless hands, which formerly were always at their call, in every

attempt

attempt to ſubvert government, or oppoſe a neighbour baron. And finding that great profits aroſe from trade, in place of laying out vaſt ſums of money in keeping open table, and ſupporting a multitude of retainers, they entered into trade, and many of the great men fitted out ſhips at their own expence, and performed naval expeditions for the improvement and enlargement of trade. The ſpirit of Elizabeth's reign ſeems to have been bent upon theſe purſuits; and, in ſpite of all the diſcouragements it met with, the ſpirit for trade diffuſed itſelf over all the kingdom.

By all theſe means the cities increaſed; the middle rank of people began to be rich and powerful; the prince, who was in fact the ſame with the law, was implicitly obeyed, and the ſovereign took advantage of the preſent ſituation, and exerciſed his authority

thority in the unlimited ſtate in which he originally had it.

But the farther progreſs of the ſame cauſes begat a new plan of politics, founded on the privileges of the commons. For when the nobility fell, the commons roſe, and proved a more dangerous enemy to the crown than ever the barons were.

The commencement of the privileges, power, and influence of the commons, may be dated from the acceſſion of the Stuart family, and it gradually increaſed, till it brought about the revolution; at which time they were in the zenith of their grandeur; and till then the kings of England were inveſted with unlimited authority, and no reign more evidently proves it than the reign of Queen Elizabeth, the idol of the Engliſh nation. She ſupported the prerogatives which were tranſmitted to her by her immediate predeceſſors. She believed

that

that her ſubjects were entitled to no more liberty than their anceſtors enjoyed; ſhe found that they entirely acquieſced in her arbitrary adminiſtration, and no one will ſay that England was ever happier under any king; and the great popularity which ſhe enjoyed proves, that ſhe did not infringe any eſtabliſhed liberty of the people; and the particular exertions of her power were ſeen in no other light than as the ordinary courſe of adminiſtration; and though ſhe was of an imperious temper, yet the people in former reigns ſeem rather to have been more ſubmiſſive than during the reign of Queen Elizabeth; for in her reign the Puritans and other ſectaries, who are always rebellious and troubleſome ſubjects, were numerous.

Many were the ancient prerogatives of the crown, and the ſources of that great power which the Engliſh monarchs formerly

merly enjoyed, after the will of the prince ceaſed to be the *primum mobile* and ſole director of all ſtate-affairs.

The court of Star-chamber was a moſt ancient and moſt eſtabliſhed inſtrument of power; this court, of which the king, when preſent, was the ſole and ſupreme judge, and the privy council and judges were only to interpoſe with their advice, had an unlimited diſcretionary power of fining, impriſoning, and inflicting corporal puniſhments; and its juriſdiction extended to all ſorts of offences, contempts, and diſorders, that did not lie within the reach of the common law. This was an abſolute and deſpotic tribunal, and where it is, there is no need for any other court.

The court of high commiſſion was another abſolute tribunal, where all eccleſiaſtical matters were tried.

But martial law went far beyond even

 theſe

theſe two courts, in an expeditious and arbitrary method of deciſion, and it was exerciſed not only over the ſoldiers, but over the whole people; nor did the kings of England always limit the exerciſe of this law to the times of war and rebellion, but even occaſionally, in times of the profoundeſt peace.

A ſecretary of ſtate, or the privy council, had an authority to impriſon any perſon, and for any time; nay, even to uſe the rack itſelf upon ſuſpicion, without any other authority than a warrant. In ſhort, the ſovereign poſſeſſed every power but that of impoſing taxes; and even this privilege, which proved in ſucceeding reigns the means by which the parliament extorted all their other privileges, was evaded and very much encroached on, and proved of very little conſequence to the nation during the

reign

reign of Elizabeth, as well as of her predeceſſors.

Elizabeth often exacted loans from her people, by an arbitrary and unequal kind of impoſition. The demand of benevolence, purveyance, wardſhip, embargoes on merchandize, &c. were inventions at that time legal for taxing the people. Indeed the methods were endleſs which the then indiſputable arbitrary power of the crown of England might legally employ for extorting money from the people.

The queen expreſsly prohibited the parliament from meddling with ſtate-matters or eccleſiaſtical cauſes. The eſtabliſhed principles of the times attributed to the prince an unlimited and indefeizable power, which was ſuppoſed to be the origin of all law, and could be bounded and circumſcribed by none.

In the laſt parliament of Queen Eliza-

beth, it was aſſerted, maintained, and declared, that the queen inherited both an enlarging and a reſtraining power; by her prerogative ſhe might ſet at liberty what was reſtrained by ſtatute or otherways, and by her prerogative ſhe might reſtrain what was otherways at liberty; that the royal prerogative was not to be canvaſſed, diſputed, or examined, and did not even admit of any limitation; that abſolute princes, ſuch as the ſovereigns of England, were a ſpecies of divinity; that it was in vain to attempt tying the queen's hands by laws or ſtatutes, ſince, by means of her *diſpenſing power*, ſhe could looſen herſelf at pleaſure; that even if a clauſe ſhould be annexed to the ſtatute, excluding her diſpenſing power, ſhe could firſt diſpenſe with that clauſe, and then with the ſtatute.

Francis Bacon declared in the houſe, that the queen, as ſhe is our ſovereign, hath

both-

both an enlarging and restraining power; for, by her authority, she may set at liberty things restrained by statute, law, or otherways; and, secondly, by her prerogative, she may restrain things which be at liberty. She may grant a *non obstante*, contrary to penal laws; and no man, says he, ought to deal, to judge, or meddle with her majesty's prerogative.

Mr. Davies said, God hath given that power to absolute princes, which he attributes to himself, *Dixi quod Dii estis.* This axiom he applied to the kings of England.

Secretary Cecil said, I am sure there were law-makers before there were laws, meaning, that the sovereign was above the laws. If you stand, continues he, upon law and dispute of the prerogative, hark ye what Bracton says; *Prærogativam nostram nemo audeat disputare.*

When they were disputing about a sub-

ſidy, Mr. Serjeant Heyle, an eminent lawyer and man of character, ſaid, I marvel much that the houſe ſhould ſtand upon granting a ſubſidy, when all we have is her majeſty's, and ſhe may lawfully, at her pleaſure, take it from us; yea, ſhe hath as much right to all our lands and goods, as to any revenue of her crown.

The homilies, publiſhed for the uſe of the clergy, and which they were enjoined to read every Sunday in all the churches, as I ſhall preſently ſhew, inculcate every where an unlimited paſſive obedience to the prince; on no account, and under no pretence, is it ever lawful for them, in the ſmalleſt articles, to depart from or infringe.

Theſe homilies, they ſuppoſed, were the expreſs doctrine of the holy Scriptures, and in that ſenſe underſtood by the primitive fathers; for example, Irenæus, in his 5th

book against heresies, has the following passage: "Regis enim cor in manu Dei est. Et per Solomenem ait verbum, Per me reges regnant, et potestates tenent justiciam: per me principes exaltabantur, et tyranni per me regnant terram. Paulus autem apostolus hoc ipsum ait, Potestatibus sublimioribus subditi estote, non est enim potestas nisi a Deo, quæ autem sunt, a Deo dispositæ sunt. Et etiam de ipsis ait; non enim sine causa gladium portat, Dei autem minister est, vindex in iram ei qui male operatur. Quoniam autem non hæc de angelicis principibus dixit, quo modo quidam audent exponere, sed de iis quæ secundum hominem sunt potestates. Ait, Propter hoc enim tributa penditis, ministri enim Dei sunt in hoc ipsum deservientes: hæc autem Dominus confirmavit, non faciens it quod diabolo suadebatur, tributorum autem exactoribus jubens pro se et pro Pe-

tro, dari tributum, quoniam miniſtri Dei ſunt in hoc ipſum deſervientes."

So thoroughly were the people perſuaded of the truth of theſe principles, during the reign of Elizabeth and her predeceſſors, that oppoſition to them was regarded as the moſt flagrant ſedition. It was only during the next generation, that other principles, directly oppoſite to theſe, ſpread themſelves, and became faſhionable, under the ſhelter of puritanical abſurdities and ſectarian rage and enthuſiaſm.

The farther we go back in hiſtory, the more abſolute we find the kings; and, though we now and then meet with a kind of licentious liberty among the barons, yet the commons continued long of no manner of authority. Till this time a ſimple unmixed monarchy was ſuppoſed to be the government of England, and the parliament formed only an ornament to it, without

out being in any degree eſſential to its being and exiſtence.

There is no writer before this great epoch, who ſpeaks of the Engliſh monarchy as limited, but an abſolute one, where the people have many privileges, all dependent on the will of the king.

Sir Walter Raleigh ſays, The Engliſh monarchy is entire, where the prince hath the power to make laws, league, and war, to create magiſtrates, to pardon life, &c. The three eſtates do only adviſe as the privy council doeth; which advice, if the king embrace it, becomes the king's own act in the one, and the king's law in the other.

The earl of Clare, in a letter to his ſon-in-law the earl of Stafford, ſays, We live under a prerogative government, where *book-law* ſubmits to *lex loquens*. He ſpoke from his own and all his anceſtors experience.

There

There was not a ſingle inſtance of power which a king of England might not at this time exert, on pretence of neceſſity or expediency; and in all ages before, the Engliſh monarchy was conſidered as abſolute and unlimited, ſacred and indefeaſible.

The faint dawnings of the ſpirit of republicaniſm, which were with eaſe ſubdued by former princes, we ſhall now find ſhooting out, and growing up apace. About this period, the minds of men, throughout all Europe, but eſpecially in England, ſeem to have undergone a general, but inſenſible revolution. Arts and ſciences began to ſpread themſelves more univerſally among men; Ambition, Wantonneſs, and Faction, attended as a waiting-maid. In conſequence of this univerſal fermentation, introduced, partly by the advancements learning had made, and partly by the riches individuals had acquired by trade and commerce;

merce; for the more riches a perſon has, the more conſequence he is, or thinks himſelf of to the ſtate; by theſe means, the general ſyſtem of politics in Europe was become very uncertain, and the ſeveral parts of the Gothic government began every where to operate and incroach upon each other. At this time the political ſyſtem of things was drawing to a criſis, to which it had been imperceptibly advancing for ſome conſiderable time; and as all nature is in a continued flux, ſo the waves of deſpotic rule began now to be daſhed upon, and beat backward by the foam and frequent ſurges of popular tumult and ſedition. On the continent, where the neceſſity of diſcipline had begot mercenary armies, the prince eſtabliſhed his unlimited authority, and overpowered and extinguiſhed that ſpirit of republicaniſm which ſprung up among the people. In England, it acquired new ſtrength, and

univer-

univerſally excited a paſſion for what is called a limited conſtitution. The ſtrict, though popular government of Elizabeth, had confined this riſing ſpirit within very narrow bounds; but when a new and foreign family ſucceeded to the throne, this riſing independent ſpirit immediately appeared; and James had either not a ſufficient degree of penetration to perceive its advances, and the dangerous conſequences that would flow from it, to the imperial crown of England, and to him and his family for ever; or, he had not ſufficient art and vigour to check it in its infancy: he certainly knew well where the weakneſs of the conſtitution lay, and how much the power of the crown declined; indeed the houſe of commons made him feel it: in order to prop it up, he endeavoured to repair the omiſſion of Henry 8th, by increaſing the power of the clergy, and to infuſe

the

the principles of reverence for it; and the clergy were active on their part to preach up the ſacredneſs of hereditary right, and the doctrine of paſſive obedience.

Paſſive obedience is expreſsly and zealouſly inculcated in the homilies compoſed and publiſhed by authority, in the reign of Queen Elizabeth. The convocation, which met in the very firſt year of the king's reign, voted as high monarchical principles as are contained in the decrees of the univerſity of Oxford, voted during the rule of the Tories.

Theſe principles, ſo far from being deemed a novelty, introduced by King James's influence, paſſed ſo ſmoothly, that no hiſtorian has taken notice of them: they were never the ſubject of controverſy, diſpute, or diſcourſe; and it is only by means of Biſhop Overall's convocation-book, printed near 70 years after, that we are acquainted

quainted with them. Would James, who was so cautious, and even timid, have ventured to begin his reign with a bold stroke, which would have given just ground of jealousy to his subjects? It appears from that monarch's Basilicon Doron, written while he was in Scotland, that the republican ideas of the origin of power from the people, were, at that time, esteemed puritanical novelties. The patriarchal scheme, it is remarkable, is inculcated in those votes of the convocation, preserved by Overall, nor was Filmer the first inventor of these notions.

But James began too late to repair the breach; and, in truth, he did not manage it with such address as to carry the point so far as might have been even at that time; the consequences of which were very sensibly felt in the reign of Charles 1st, and produced terrible effects.

At

At this period commenced a civil war between monarchy and republicaniſm; and at this time was laid a foundation for all the ruin, bloodſhed, and deſolation that followed. There never was a time in which England ſtood ſo much in need of a great, wiſe, and reſolute king as it now did.

When the magnanimous princeſs Elizabeth, as well by her vaſt ſpirit and perſonal political virtues, as by the conſtant ſucceſſes of her long reign, had ſuppreſſed the growing licentiouſneſs of the people, and had derived the higheſt dignity and honour on the Engliſh ſceptre, it paſſed into the hands of James, who brought ſomething more with him than a good will, the acceſſion of a great kingdom, and the opinion of great wiſdom, to enable him to wield it. But though James was a very wiſe and good king, and at any other time would have proved a moſt excellent one for an Engliſh

crown,

crown, yet, at this time, he was the most unfit person that could possibly be. He was wise, learned, penetrating, and judicious, yet slow, timid, and irresolute. It was natural for him to take the government as he found it, and to pursue Elizabeth's measures, which he heard so much applauded. He was naturally jealous of regal authority, and was desirous to hand down the government in the same state in which he found it. He had no idea of any system, but that of absolute government, which few of his subjects, he believed, and none but traitors and rebels, would make any scruple to admit; and on whatever side he cast his eyes, every thing concurred to confirm him in these notions. When he compared himself with other hereditary sovereigns of Europe, he thought, that as he bore the same rank with them, he had a just right to equal prerogatives; but in this comparison he deceived

ceived himſelf, not conſidering that they had a military force by which their authority was ſupported, which he had not; but he ſaw the unlimited power, which belonged to the royal birth and title, had been exerciſed by all his predeceſſors on the Engliſh throne; and in Scotland, the ſame reſiſtance which oppoſed regal authority, violated all law and order, and made way either for the ravages of a barbarous nobility, or for the more intolerable inſolence of ſeditious preachers. In his own perſon, therefore, he thought all legal power to be centered, by an hereditary and divine right. Here his learning deceived him; for having knowledge and reaſon himſelf, he expected to find it in others, which induced him to truſt ſolely to his right, without making the ſmalleſt proviſion either by force or politics, in order to ſupport it.

Such were the oppoſite diſpoſitions of the

prince and parliament at the commencement of the Scottish line; dispositions thoroughly established and openly avowed on the part of the king, but just beginning to exist and to appear in the parliament.

When James summoned his first parliament, he issued a proclamation, in which he strictly charges them not to chuse any outlaw for their representative. Here a proclamation was plainly put upon the same footing with a law, and that in so delicate a point as the rights of elections were now become. But had the privileges of parliament been at that time known, such an imagination could never have been entertained by him, as to think that his proclamation could regulate parliamentary elections. But in all periods of the English history, a strict obedience was paid to proclamations; and if James incurred blame on account of his edicts, it is only because

he

he iſſued them at a time when they began to be leſs regarded; not becauſe he firſt aſſumed or extended to any unuſual degree that exerciſe of authority.

Sir Francis Goodwin was choſen member for the county of Bucks; and his return, as uſual, was made into chancery. The chancellor pronouncing him an outlaw, vacated his ſeat, and iſſued writs for a new election: Sir John Fortiſcue was choſen in his place by the county. But the firſt act of the houſe was to reverſe the chancellor's ſentence, and reſtore Sir Francis to his ſeat; and told the king, by the mouth of their ſpeaker, that judging of elections belonged to the houſe itſelf, and not to the chancellor. James was not ſatisfied, and ordered a conference between the houſe and the judges, whoſe opinion in this caſe was oppoſite to that of the commons. This conference, he ſaid, he commanded as an

absolute king, an epithet then not very grateful to English ears, but one to which they had often been accustomed, from the mouth of Elizabeth. He added, that all their privileges were derived from his grant, and hoped they would not turn it against him.

Sir Charles Cornwallis, the king's ambassador at Madrid, when pressed by the duke of Lerma to enter into a league with Spain, said to that minister, Though his majesty was an absolute king, and therefore not bound to give an account to any, of his actions; yet, that so gracious and regardful a prince of the love and contentment of his own subjects, as I assured myself, he would not think it fit to do any thing of so great consequence, without acquainting them with his intentions.

Sir Walter Raleigh, in his preface to the History of the World, says, Philip 2d, by strong hand and main force, attempted

tempted to make himſelf not only an abſolute monarch over the Netherlands, like unto the kings and monarchs of England and France, but, Turk like, to tread under his feet all their natural and fundamental laws, privileges, and ancient rights.

The ideas of Engliſh government were very different then, from what they now are. Notwithſtanding this parliament diſcovered the ſtrongeſt ſymptoms of republicaniſm, yet deference for majeſty was at that time ſo great, that in the fourth ſeſſion of parliament they acquieſced in the baniſhment of Toby Mathews, a member, by order of the council, upon direction from his majeſty, and iſſued writs for a new election; ſuch novices were they as yet in the principles of liberty.

King James, in his firſt parliament, did more real good to England, by annulling all the numerous patents for monopolies, which had been granted by his predeceſſor,

than all the arbitrary acts of his reign could do hurt; but the restless and encroaching spirit of the puritanical party, and the malevolence with which they endeavoured to inspire the commons, increased in proportion as the king's tenderness and care of his subjects increased. He used every measure to render himself popular with the nation, and to appease the rising ill humour of their representatives. He voluntarily offered to the parliament, to circumscribe his own prerogative, and to abrogate his power of granting any monopolies for the future. He redressed every article of grievance to the number of 37, which had ever been complained of in the house of commons, but he gained not the end he proposed; they still continued sullen, and refused him all supplies, though the burthen of government lay surprisingly light upon the people. That very reason, which to us, at

this

this diſtance, may ſeem a motive for generoſity, was the very cauſe why the parliament was on all occaſions ſo remarkably frugal and reſerved. They were not yet accuſtomed to open their purſes in ſo liberal a manner, as their ſucceſſors, in order to ſupply the wants of their ſovereign. The ſmalleſt demand, however requiſite, appeared in their eyes unreaſonable and exorbitant.

The houſe of commons began now to feel themſelves of ſuch importance, that they now entered, for the firſt time, an order for the regular keeping of their journals; and the votes of the houſe ſhew, that the Puritans had acquired great authority among them, and who, together with religious prejudices, were continually ſuggeſting ideas more ſuitable to a popular, than a monarchical government.

The natural appetite for rule, made the

commons lend a willing ear to every doctrine which tended to augment their power and influence. And every session they were making fresh attacks upon the royal prerogative.

Among the many causes of disgust and quarrel, which daily multiplied, between the prince and parliament, the article of money is to be regarded as none of the least considerable.

After the discovery and conquest of the West Indies, gold and silver became every day more plentiful in England, as well as in the rest of Europe; and the price of all commodities and provisions rose to a pitch beyond what had ever been known, since the declension of the Roman empire. As the revenue of the crown rose not in proportion, the prince was insensibly reduced to poverty, amidst the general riches of his subjects, and required additional funds, in order

order to ſupport the ſame magnificence and force which had been maintained by former monarchs. But while money thus flowed into England, we may obſerve, that, at the ſame time, and probably from that very cauſe, arts and induſtry of all kinds received a mighty increaſe, and elegance in every enjoyment of life became better known, and more cultivated among all ranks of people. The king's ſervants, both civil and military, his courtiers, his miniſters, demanded more ample ſupplies from the impoveriſhed prince, and were not contented with the ſame ſimplicity of living, which had ſatiſfied their anceſtors. The prince himſelf began to regard an increaſe of pomp and ſplendor, as requiſite to ſupport the dignity of his character, and to preſerve the ſame ſuperiority above his ſubjects, which his predeceſſors had enjoyed. Some equality too, and proportion to the other ſovereigns

of

of Europe, it was natural for him to desire; and as they had universally enlarged their revenue, and multiplied their taxes, the king of England deemed it reasonable, that his subjects, who were generally as rich as theirs, should bear with patience some additional burthens and impositions. Unhappily for the king, those very riches, with the increasing knowledge of the age, bred opposite sentiments in his subjects, and, begetting a republican spirit of independency, disposed them to pay little regard either to the entreaties or menaces of their sovereign. While the barons possessed their former immense property, and extensive jurisdictions, they were apt, on every disgust, to endanger the monarch, and throw the whole government into confusion: but this very confusion, often, in its turn, proved favourable to the monarch, and made the nation again

submit

ſubmit to him, in order to re-eſtabliſh juſtice and tranquillity.

After that both the power of alienations, and the increaſe of commerce, had thrown the balance of property into the hands of the commons, the ſituation of affairs altered, and the diſpoſitions of the people became aſpiring, factious, and unruly, and every one ſtudied how to diſtreſs government, and weaken the royal prerogative, which was every moment invaded. A new ſpirit diſcovered itſelf every day. Every parliament ſhewed a greater ſpirit of republicaniſm than the former; and, towards the end of this reign, commenced the diſtinction of court and country party, which have ever ſince continued. In the laſt parliament except one, of this reign, the commons framed a remonſtrance, entreating his majeſty, that he would immediately undertake the defence of the Palatine, &c. but

the

the king being, at that time, at Newmarket, as ſoon as he heard of the intended remonſtrance of the commons, he wrote a letter to the ſpeaker, in which he ſharply rebuked the houſe for debating openly of matters far above their reach and capacity, and he ſtrictly forbad them to meddle with any thing that regarded his government, or deep matters of ſtate; but this letter, though he imitated the precedents of Elizabeth and her predeceſſors, inflamed the commons, who, in a new remonſtrance, ſtill inſiſted upon their former remonſtrance and advice. When the committee came to deliver it, he ordered twelve chairs to be brought, for there were ſo many kings a coming. His anſwer was ſharp; he told the houſe, That their remonſtrance was more like a declaration of war, than an addreſs of dutiful ſubjects; that their pretenſion to inquire into all ſtate-affairs, without exception, was ſuch

a

a plenipotence as none of their anceſtors, even during the reign of the weakeſt princes, had ever pretended to; that public tranſactions depended on a complication of views and intelligence, with which they were entirely unacquainted; that they could not better ſhew their wiſdom, as well as duty, than by keeping within their proper ſphere, *Ne ſutor ultra crepidam*; and that, in any buſineſs which depended upon his prerogative, they had no title to interpoſe with their advice, except when he was pleaſed to deſire it: and concluded, by telling them, that though we cannot allow of your ſtile, in mentioning your ancient and undoubted right and inheritance, but would rather have wiſhed that ye had ſaid, that your privileges were derived from the grace and permiſſion of our anceſtors and us, (for the moſt of them grew from precedents, which ſhews rather a toleration than inheritance);

ritance; yet we are pleafed to give you our royal affurance, that, as long as you contain yourfelves within the limits of your duty, we will be as careful to maintain and preferve your lawful liberties and privileges as ever any of our predeceffors were; nay, as to preferve our own royal prerogative. To this the commons framed a proteftation, where they claimed all their privileges as their inheritance and birth-right; and the king fent for the journal-book of the commons, and with his own hand tore out the proteftation; he foon after prorogued the parliament, and then diffolved it. But, in the recefs of the parliament, every man began to indulge himfelf in political reafonings and inquiries, and the fame factions, which commenced in parliament, were propagated throughout the nation: and, in every company or fociety, the late tranfactions became the fubject of argument and debate.

debate. All hiſtory, ſaid the partizans of the court, as well as the hiſtory of England, juſtify the king's poſition with regard to the origin of popular privileges; and every reaſonable man muſt allow, that, as monarchy is the moſt ſimple form of government, it muſt firſt have occurred to rude and uninſtructed mankind. The other complicated and artificial additions were the ſucceſſive invention of ſovereigns and legiſlators; or, if they were obtruded on the prince by ſeditious ſubjects, their origin muſt appear, on that account, ſtill more precarious and unfavourable. In England, the authority of the king, in all the exterior forms of government, and in the common ſtyle of law, appears totally abſolute and ſovereign; nor does the real ſpirit of the conſtitution, as it has ever diſcovered itſelf in practice, fall much ſhort of theſe appearances. The parliament is created by

his will; by his will it is diſſolved. 'Tis his will alone, though at the deſire of both houſes, which gives authority to laws. To all foreign nations, the majeſty of monarch ſeems to merit ſole attention and regard. And no ſubject, who has expoſed himſelf to royal indignation, can propoſe to live with ſafety in the kingdom; nor can he even leave it, according to law, without the conſent of his maſter. If a magiſtrate, invironed with ſuch power and ſplendor, ſhould conſider his authority as ſacred, and regard himſelf as the anointed of heaven, his pretenſions may bear a very favourable conſtruction. Or, allowing them to be merely pious frauds, we need not be ſurprized, that the ſame ſtratagem, which was practiſed by Minos, Numa, and the moſt celebrated legiſlators of antiquity, ſhould now, in theſe reſtleſs and inquiſitive times, be employed by the king of England.

land. Subjects are not raiſed above that quality, though aſſembled in parliament. The ſame humble reſpect and deference is ſtill due to their prince. Though he indulges them in the privilege of laying before him their domeſtic grievances, with which they are ſuppoſed to be beſt acquainted, this warrants not their bold intruſion into each province of government. And, to every judicious examiner, it muſt appear, " That the lines of duty are as much tranſgreſſed by a more independent and leſs reſpectful exerciſe of acknowleged powers, as by the uſurpation of ſuch as are new and unuſual."

The lovers of liberty, throughout the nation, reaſoned after a very different manner. " 'Tis in vain, ſaid they, that the king traces up the Engliſh government to its firſt origin, in order to repreſent the privileges of parliament as dependent and pre-

carious: The preſcription and practice of ſo many ages, muſt, long ere this time, have given a ſanction to theſe aſſemblies, even though they had been derived from an origin no more dignified, than that which he aſſigns them. If the written records of the Engliſh nation, as aſſerted, repreſent parliaments to have ariſen from the conſent of monarchs, the principles of human nature, when we trace government a ſtep higher, muſt ſhow us, that monarchs themſelves owe all their authority to the voluntary ſubmiſſion of the people. But, in fact, no age can be ſhown, when the Engliſh government was altogether an unmixed monarchy. And if the privileges of the nation have, at any particular period, been overpowered by violent irruptions of foreign force or domeſtic uſurpation; the generous ſpirit of the people has ever ſeized the firſt opportunity of re-eſta-

bliſhing the ancient government and conſtitution. Though in the ſtyle of the laws, and in the uſual forms of adminiſtration, the royal authority may be repreſented as ſacred and ſupreme; whatever is eſſential to the exerciſe of ſovereign and legiſlative power, muſt ſtill be regarded as equally divine and inviolable. Or, if any diſtinction be made in this reſpect, the preference is rather due to thoſe national councils, by whoſe interpoſition the exorbitancies of tyrannical power are reſtrained, and that ſacred liberty is preſerved, which heroic ſpirits, in all ages, have deemed more precious than life itſelf. Nor is it ſufficient to ſay, that the mild and equitable adminiſtration of James, affords little occaſion, or no occaſion, of complaint. However moderate the exerciſe of his prerogative, however exact his obſervance of the laws and conſtitution; "If he founds his authority on ar-

bitrary and dangerous principles, it is requiſite to watch him with equal care, and to oppoſe him with equal vigour, as if he had indulged himſelf in all the exceſſes of cruelty and tyranny."

About the time of the death of James, the political ſtate of England was entirely upon a new plan.

Formerly the kings even inſiſted, that none of their houſehold ſhould ever be elected members; and though the charter was afterwards declared void, Henry 6th, from his great favour to the city of York, conferred a particular privilege on its citizens, that they ſhould be exempted from this trouble. It is well known, as I have made appear, that, in ancient times, a ſeat in the houſe being conſidered as a burthen, attended neither with honour nor profit, it was requiſite for counties and boroughs to pay fees to their repreſentatives. About

this

this time, a ſeat began to be regarded an honour, and the country gentlemen contended for it; though the practice of levying wages for the payment of the parliament men was not altogether diſcontinued, till ſome years after the acceſſion of Charles 1ſt; and it was not till long after, that the members began to join profit to honour, and the crown found it neceſſary to diſtribute among them all the conſiderable offices of the kingdom. The towns which had formerly neglected their right of ſending members, now began to claim it.

The unfortunate Charles 1ſt, filled with what they called lofty notions of the original inherent rights of the crown, did not conſider that rights will do nothing without power to ſupport them; and the effective power was vaſtly againſt the crown, becauſe the bulk of the people, in whom is lodged the ſtrength of the nation, were againſt all

attempts to abſolute power; and the puritanical and republican ſpirit, once rouſed, could not be laid, till it ſubverted the monarchy, and covered the nation with blood.

Every parliament became more refractory, till the king was put under the neceſſity of being twelve years without a parliament; during all which time all his majeſty's dominions enjoyed the greateſt meaſure of peace and plenty that any people had ever ſeen, to the envy and wonder of all the other kingdoms of Europe. But theſe bleſſings were interrupted by the rebellious Scots, who raiſed an army to invade England. And no expedient appeared to the king to put a ſtop to theſe rebellious proceedings but a parliament. Accordingly writs were iſſued out, and both houſes met after an interruption of near twelve years. Though thoſe meetings had of late been attended with great diſorders, the effects of

mutinous

mutinous ſpirits, which occaſioned their diſſolution, and ſo much incenſed the king that he was leſs inclined to thoſe meetings, yet this long intermiſſion, and the general compoſure of mens minds in a happy peace, the univerſal plenty of the whole kingdom, made the king reaſonably believe, that ſober men, and ſuch as loved the peace and plenty they enjoyed, would be made choice of to ſerve in parliament; and eſpecially the opinion of the prejudice and general averſion over the whole kingdom to the Scots, and the indignation they had at their preſumption to invade England, made it believed that a parliament would expreſs a very great ſenſe of their inſolence towards the king, and provide a proportionable remedy; but ſorely was the good king diſappointed. For as ſoon as they met, the houſe of commons went upon their old trade of grievances, and diſcovered ſo factious a diſpoſi-

tion to perplex and clog the wheels of government, that the king was forced, much againſt his will, to diſſolve them. But the king being exceedingly deſirous to endear himſelf to his people, called another parliament, the famous long parliament, which finiſhed the glorious work. This parliament began with a holy zeal, unknown even to their predeceſſors. They impeached the earl of Strafford, Archbiſhop Laud, and moſt of his majeſty's faithful counſellors. Having rid themſelves of all thoſe they thought would give them oppoſition, they went on at a glorious rate. They paſſed bills for raiſing money, not for his majeſty's, but for their own ſervice. Acts were paſſed for triennial parliaments, for taking away the high commiſſion court, the ſtar-chamber, ſhip-money, for ſitting during pleaſure, &c. In ſhort, they ſat till they got all the regal and executive

power into their hands, overthrew the church and crown, murdered the beſt of kings, deprived their fellow-ſubjects of their true religion, liberty, property, and life itſelf, exerciſed arbitrary power beyond all example, to the diſgrace of that age and this iſland; and left an indelible ſtain of infamy and reproach upon the very name of a Britiſh parliament.

At the glorious revolution, A. D. 1660, for what acts paſſed before that period are unworthy of remembrance, an univerſal joy and feſtivity diffuſed throughout the nation. The parliament immediately entered into a good correſpondence with the king, and they treated him with the ſame dutiful regard, which had uſually been paid to his predeceſſors: And no requeſt of the parliament, during the preſent joy, could be refuſed them. The king gave up the tenures of wards and liveries, in room of

which

which the parliament granted him 100,000 *l.* a-year; and half of the excise was settled in perpetuity upon the crown, as the fund whence that revenue should be levied.

Tonnage and poundage, and the other half of the excise, was granted to the king during life.

The grievances complained of in the feudatory system were in part removed, in part moderated, by Henry 1st's and many other successive charters; yet the last blow was not given to the feudal servitudes, till after the restoration, when such of them as remained and were found prejudicial to the liberties of the subject, were finally abolished.

Though there was a very good understanding between the king and his parliament, yet they still seemed desirous to keep the crown dependent: Not one fourth of the sum which was necessary for the public

expences

expences could be levied without conſent of parliament; and any conceſſions, had they been thought neceſſary, might, even after the reſtoration, be extorted by the commons from their neceſſitous prince.

This parliament ſhewed no intention of employing at preſent that engine to any ſuch purpoſe; but they ſeemed ſtill determined not to part with it entirely, or to render the revenues of the crown fixed and independent. In all the temporary ſupplies which they voted, they diſcovered the ſame cautious frugality, and made their money-grants with a very ſparing hand. The claim of the two houſes to the militia, the firſt ground of the quarrel, however exorbitant an uſurpation, this parliament was never brought expreſsly to reſign. Great arrears being due by Cromwell to the fleet, the army, the navy-office, and every branch of ſervice; the whole debt they threw upon the

the crown, without eſtabliſhing funds ſufficient for its payment. In Charles's ſecond parliament, A. D. 1661, the act of uniformity was paſſed, which re-eſtabliſhed the church in the ſame condition in which it ſtood before the commencement of the civil wars. An act was paſſed for the ſecurity of the king's perſon and government. To intend or deviſe the king's impriſonment, bodily harm, depoſition, or levying war againſt him, was high treaſon. To affirm him to be a Papiſt or heretic, or to endeavour, by ſpeech or writing, to alienate the ſubjects affections from him, incapacitated the perſon guilty from holding any employment in church or ſtate. To maintain, that the long parliament is not diſſolved, or that either, or both houſes, without the king, are poſſeſſed of legiſlative authority, or that the covenant is binding, incurred a premunire. The abuſes of petitioning,

titioning, in the preceding reign, had been attended with the worſt conſequences; and to prevent ſuch irregularities for the future, it was enacted, that no more than 20 hands ſhould be ſubſcribed to any petition, unleſs with the ſanction of three juſtices, under the penalty of a fine of 100 *l.* and three months impriſonment. It was now thought proper to relinquiſh the violent pretenſion of former parliaments in Charles I.'s reign, and to acknowledge, agreeable to the old Engliſh principles, that neither one houſe, nor both houſes, independent of the king, were poſſeſſed of any military authority; and that neither the peers, nor commons, nor people, in or out of parliament, nor any other perſons whatſoever, have any coercive power over the king: That the ſole diſpoſition of the militia, and of all forts and places of ſtrength, is the undoubted right of his majeſty; and that it

is

is not lawful, upon any pretence whatſoever, to take up arms againſt the king. They renounced all right even of defenſive arms againſt his majeſty, which imply a total renunciation of limitations to monarchy, and of all privileges in the ſubject, independent of the will of the ſovereign. For if ſubjects muſt never reſiſt, it is certain, that every prince, without any effort, policy, or violence, is at once rendered abſolute and uncontroulable. The ſovereign needs only iſſue an edict, aboliſhing every authority but his own, and all liberty, from that moment, is in effect annihilated. During the grand uſurpation, all magiſtrates, liable to ſuſpicion, and who refuſed to ſubſcribe the covenant, were expelled the corporations. To leave all authority in ſuch hands ſeemed dangerous. Therefore it was alſo enacted, that all magiſtrates ſhould diſclaim the obligation of the covenant, and

ſhould

ſhould declare both their belief, that it was not lawful, upon any pretence whatſoever, to take arms againſt the king, and their abhorrence of the traiterous poſition of taking arms by the king's authority againſt his perſon, or againſt thoſe commiſſioned by him. This parliament voted a new impoſition of two ſhillings on each hearth, and this tax was ſettled on the king during life. After all buſineſs was diſpatched, the parliament was prorogued. In the next parliament, which was called 16th March 1664, the triennial act was repealed; and for the farther preſervation of the church, and diſcouragement of ſectaries, it was enacted, that where-ever five perſons above thoſe of the ſame houſehold, ſhould aſſemble in a religious congregation, every one of them was liable, for the firſt offence, to be impriſoned three months, or pay 5 *l.* for the ſecond, to be impriſoned ſix months,

or

or pay 10 *l.* and for the third, to be transported, or pay 100 *l.*

In the year 1665, the plague broke out in London, which obliged Charles to summon his parliament at Oxford, where the same good understanding subsisted. They unanimously voted him the supply demanded, and he, to gratify them, passed the famous five mile act, which prohibits, under a penalty of a fine of 5 *l.* and six months imprisonment, every dissenting teacher, who took not the non-resistance oaths, from coming within five miles of any corporation, or of any place where he had preached after the act of oblivion. And in the parliament held 14th February 1669, an act passed, by which the hearer in a conventicle, that is in a dissenting assembly, where more than five were present, besides the family, was fined five shillings for the first offence, ten for the second;

ſecond; the preacher 20 *l.* for the firſt offence, 40 *l.* for the ſecond. The perſon in whoſe houſe the conventicle met, forfeited a like ſum with the preacher. Charles was much diſpleaſed with theſe rigorous meaſures, and reſolved to make uſe of his ſupreme power in eccleſiaſtical matters, a power, he ſaid, which was not only inherent in him, but which had been recognized by ſeveral acts of parliament. By virtue of this authority, he iſſued a proclamation, ſuſpending the penal laws enacted againſt all non-conformiſts; and ſeveral other laws he diſpenſed with, and eſtabliſhed martial law in the army. Next parliament, however, he recalled the indulgence, and at the importunity of the commons, prompted to it by the wicked Shafteſbury, the king paſſed the teſt act, whereby it was appointed, that all who ſhould enjoy any office, beſides taking the oaths of allegiance

and ſupremacy, and receiving the ſacrament in the eſtabliſhed church, were obliged to abjure all belief in the doctrine of tranſubſtantiation. The parliament of 6th March 1679, paſſed the *habeas corpus* bill. By this act, it was prohibited to ſend any one to priſon beyond ſea. No judge, under ſevere penalties, muſt refuſe to any priſoner a writ of *habeas corpus*, by which the gaoler was directed to produce in court the body of the priſoner, whence the writ has its name, and to certify the cauſe of his detainer and impriſonment. If the gaol lay within twenty miles of the judge, the writ muſt be obeyed in three days; and ſo proportionably for greater diſtances. Every priſoner muſt be indicted the firſt term after his commitment, and brought to trial in the ſubſequent term. And no man, after being enlarged by order of court, can be remitted for the ſame offence.

The

The test act, which was established by Charles, after Monmouth's rebellion, was dispensed with by James, in favour of a few Popish officers, who had eminently distinguished themselves at that time of danger. The claim and exercise of the dispensing power is allowed to be very ancient in England. In the Gothic governments the practice had never been disputed, and the parliament itself had often acknowledged this prerogative of the crown, particularly during the reign of Henry 5th, when they enacted the law against aliens, and also when they passed the statute of provisors. In the reign of Henry 7th the case was brought to a trial before all the judges in the exchequer-chamber, that the king might dispense with a statute, and the opinion of the judges passed for undoubted laws. In the second of James the 1st, a new consultation of all the judges had been held in the exchequer-

chamber upon a like queſtion, and this prerogative of the crown was again unanimouſly confirmed. And it became an eſtabliſhed principle in Engliſh juriſprudence, that, though the king could not allow of what was morally unlawful, he could permit what was only prohibited by poſitive ſtatute. Even the jealous houſe of commons, which extorted the petition of right from Charles the 1ſt, made no ſcruple, by the mouth of Granville their manager, to allow of the diſpenſing power in its fulleſt extent: And, in the famous trial of ſhip-money, Holborne, the popular lawyer, had freely, and in the moſt expreſs terms, made the ſame conceſſion. Sir Edward Coke, the great oracle of Engliſh law, had not only concurred with all other lawyers in favour of this prerogative, but ſeems to believe it ſo inherent in the crown, that an act of parliament itſelf could not aboliſh it. And

it

it is remarkable, that the convention ſummoned by the prince of Orange did not, even when they had the making of their own terms in the declaration of rights, venture to condemn the diſpenſing power in general, which had been uniformly exerciſed by the former kings of England; they only condemned it in ſo far as it had been aſſumed and exerciſed of late. But, in the bill of rights, which paſſed about a twelvemonth after, the parliament took care to ſecure themſelves, and they excluded, in poſitive terms, all diſpenſing power in the crown. Yet, even then the houſe of lords rejected the clauſe of the bill, which condemned the exerciſe of this power in former kings, and obliged the commons to reſt contented with aboliſhing it for the future. Till this grand æra, the parliament had been acquiring powers, eſtabliſhing principles, and limiting the authority of the

crown in many important particulars; but, as long as the dispensing power, and some other acknowledged prerogatives remained in the crown, the limits of the crown, and privileges of the people, were not exactly ascertained. The revolution alone, which soon succeeded, put an end to all disputes; and the king and people, after many disputes and much struggle, were at last taught to know their proper limits and boundaries.

At the revolution, by an act of 12 and 13 William 3. entitled, An act for the limitation of the crown, sect. 14, the laws are declared to be the birth-right of the people of this realm; and all the kings, who shall ascend the throne of this realm, ought to administer the government of the same, according to the said laws; and all their officers and ministers ought to serve them respectively according to the same.

The

The exceptions taken to the unfortunate King James 2d's conduct, occasioned a declaration of rights which was made 1 William and Mary, where it is expressly declared, art. 4. "Que toute levée d'argent pour l'usage de la couronne sous pretexte de la prerogative royale, sans qu'elle ait été accordée par le parlement, ou pour un plus long temps, ou d'une autre maniere qu'elle a eté a accordée, est contraire aux loix." Accordingly there has never been since, nor can be for the future, according to the present constitution, any pretension formed by the crown to the contrary. The parliament is now incontestibly vested with the sole right of levying money. There is at present no way left for the crown to get money, but by the consent of the commons, and all bills for that purpose must take their rise there. The house of lords, though they can entirely reject any money-bill, or

any other bill; yet they cannot increase the sum given. And the parliament in granting money does, for the most part, appropriate it to particular services; which naturally tends to secure the right application of the money, and gives a right of enquiring whether the application had been duly made; and of making any alteration that may be afterwards found proper. This method of appropriation hath been generally introduced since the Revolution. And since that time, the power of naming commissioners for the land tax, is exercised only by the house of commons yearly, in the act, by which that aid is granted. The king has indeed the nomination of the commissioners of the customs and of the excise, and by them, or by the commissioners of the treasury, he can nominate all subordinate officers of each; and the commissioners of the excise have a judicial authority in all cases without any ap-

peal;

peal; but to the commiſſioners of appeals, nominated alſo by the king, or in the country, to the juſtices of peace, at their quarter ſeſſions, who are alſo named by the lord chancellor.

It does not appear that the nation is intitled to any more than one ſeſſion of parliament, and that as ſhort as the king pleaſes, once every three years. A ſtatute was made in Edward 3d's reign, that parliaments might be holden every year; but this ſtatute was ſo often neglected, that an act for triennial parliaments in Charles 2d's reign, declares, that the ſitting and holding of parliaments ſhall not be interrupted or diſcontinued, above three years at moſt. And the act for triennial parliaments, in 6th William and Mary, chap. 2. only enacts, that a parliament ſhall be holden once every three years at leaſt; and the act for ſeptennial parliaments, 1 George 1ſt, ſtat. 2. chap. 38. leaves the matter as it was before.

But

But the circumſtances of our nation at preſent, are ſuch, and are like to continue ſo for the future, that they will cauſe a neceſſity for a meeting of parliament, and ſitting to do buſineſs, ſome time every year. For the money neceſſary for paying the forces by ſea and land; for providing for the navy, the ordnance, and other emergent national charges, is now wholly dependent upon parliamentary proviſion; and proviſion is only made from year to year; ſo that before one year comes on, there will be a neceſſity for a ſeſſion of parliament to renew the proviſion.

Beſides, if any troops are kept on foot in time of peace, a legal authority of puniſhing, in a ſummary way, by martial law, for the preſervation of diſcipline, and preventing mutiny and deſertion among them, will be requiſite; as alſo an authority to diſpoſe of troops into fit quarters. And

to

to exercise these powers, unless they be given by parliament, is declared to be contrary to law, by the petition of right, 3d Ch. 1st, and by the declaration of rights, 1st William and Mary.

When the parliament is met, though the time of the session depends upon the king, yet they have in their own hands the means of engaging him to continue their session as long as the national interest appears to them to require it. For they are now at liberty to treat of what business they think proper; and to make whatever applications to the crown they please, before they grant any supply, or the other necessary powers.

In former times they were not only under restraint, as to the order in which they were to treat of business, but also as to the nature of it; for the crown prescribed to them both the order of their proceeding upon

 business,

buſineſs, and the nature of it. But now, though the king's ſpeech at the meeting of parliament, is commonly employed to ſuggeſt the chief matters which the crown thinks proper for their deliberation at that time; yet the parliament are not now confined only to thoſe matters; none of any ſort are exempted from their cognizance, in any order or method they pleaſe: and the king and they too are, by 13th Car. 2d. ſtat. 1. chap. 5. free from any tumultuous petitions, that may be made by the people, to hinder their freedom, unleſs the matter thereof has been firſt conſented to, and ordained by three or more juſtices of the peace, or by the major part of the grand jury of the county, at their aſſizes or quarter ſeſſions, or in London by the lord mayor, aldermen, and common council. And theſe petitions are not to be carried to the king

or

or parliament by any number above ten, under penalty.

Each member has a right to be at all times present, and to assist at all debates, that come before the house, and to speak in them, and vote as freely as he thinks proper, subject only to the judgment of the house, of which he is a member.

Our kings formerly took upon them to restrain some persons, with whom they were displeased, or apprehended opposition from them to their measures in parliament, from appearing there, for that purpose. It is now established as a right, that no member of either house can be detained from the service of it, or imprisoned, except he be charged with treason, felony, or breach of the peace, and will not, or cannot give sufficient sureties for his future good behaviour. There are also numerous precedents of their accounting it a breach of privilege, if any

ſubpœna, citation, or other proceſs, without attachment, was ſerved upon any of their members, or their body ſervant, or indeed any of their ſervants: or if any ſuit at law was carried on againſt any of them, the ſpeaker wrote letters to the judges to ſtay the trials, and committed the ſuitors againſt them. But as this extent of privilege was found inconvenient, by ſtopping the courſe of law, it was provided by a ſtatute 12th and 13th William 3d, that any peer or member of the houſe of commons, may be ſued in any court of law, after the diſſolution or prorogation of any parliament, till a new one ſhall meet, or the ſame ſhall be re-aſſembled: and likewiſe after the adjournment of both houſes for about 14 days, till they re-aſſemble. But no peer ſhall ever be arreſted or moleſted, or any member of the houſe of commons, during the time of the privilege, under pain of proſecution, by

diſtreſs

diſtreſs infinite, and the real or perſonal eſtate of the party may be ſequeſtered; and all violations of the privilege of the commons are puniſhable by their own ſole authority.

They have freedom of ſpeech in the houſe, can judge of the qualifications of their members, and determine in conteſted elections. And though the king and houſe of lords each of them have a full negative upon any bills paſſed in the houſe of commons, towards being a law; ſo they may reject it, even without debate, or giving any reaſon for ſo doing; and when it is thus rejected, the commons cannot offer it again the ſame parliament, yet they may offer it again in any or in every future ſeſſion, and refuſe to proceed till it is paſſed into a law; and when it has paſſed into a law, it is no longer liable to ſuffer any alteration.

At preſent likewiſe no changes except

what

what the commons, and in like manner the lords have approved, can be made in the bills that are to be passed into laws. For, as Mr. Glanvile said in a conference with the lords, ever since 2d Henry 4th, the right hath been, that the king taketh the whole, or leaveth the whole of the bills or petitions.

The dispensing power of kings, in suspending the force, or hindering the execution of the laws, is now laid aside; though many eminent lawyers, in different ages, have declared it to be a prerogative of the crown. But now that prerogative is given up, and the extinction of it is established by the laws of the land. For in the first and second articles of the declaration of rights, in 1st William and Mary, it was affirmed, that the pretended power of dispensing laws, or the execution of laws by illegal authority, without consent of parliament,

ment, is illegal; and particularly as those powers have been executed of late. And in the same year, session 2. chap. 2. it is enacted, that no dispensation by *non obstante* of or to any statute or part thereof, shall be allowed, but the same shall be held void and of none effect, except a dispensation is allowed in such statute.

The house of commons take care that the laws be duly executed, by complaining of any person in office, who does not his duty, or is guilty of corruption or oppression. None but the king is exempted from their censure. They can animadvert upon the conduct of any man, and can command any public records or papers to be made use of in evidence against him, and can oblige any commoner to appear at their bar; and if they think proper, can imprison him for the time of their session, in order to oblige him to give evidence against others; and though

they cannot examine upon oath, yet they can punish by imprisonment, any apparent prevarication.

This last branch of their power does not indeed extend to any member of the house of peers, who is not, I believe, obliged to appear at their bar, or give evidence there; nor are their houses liable to be searched, or their private papers seized, by their officers; yet they can impeach any person, whether lord or commoner, at the bar of the house of lords; and, in case of impeachment for treason, or for any other crime that deserves it, they can demand that the party be committed to safe custody by the house of lords.

Another privilege they enjoy, is a right of free access to the king, to acquaint him with any matters they think proper for him to know; and the royal pardon cannot be pleaded in any case in bar to an impeach-

ment

ment of the houſe of commons. Neither can the peers give judgment upon a perſon impeached by the commons, unleſs they demand it, and if they do ſo, judgment cannot be refuſed.

In ſhort, the weight of the commons is ſo great, and their privileges ſo many, that in all weighty matters, the principal point ſhould be, to know and attend to what the parliament think of it; and, happy for the nation, when they ſtudy nothing but the intereſt of king and country. But alas! how often have we ſeen the venerable houſe filled with a ſet of mercenary wretches, who would have diſgraced any ſociety; but thanks to God, better things are to be expected from the worthy members of the preſent parliament, who are zealous friends of their king and country, and hearty in the cauſe of liberty.

It is a prevailing opinion, that the people

have a right to instruct their members; yet, from the many inconveniencies attending it, sometimes from the utter impracticability of it, many learned men are of opinion, that the members are at liberty to follow their own judgment in parliament. For the people, in many cases that come before the house, are not competent judges; nay, have not often the means of being so; for the greatest natural sagacity and prudence, without having a due knowledge of circumstances, or proper materials on which to form a judgment; such as the custom-house acts, the state of imports and exports, the state of manufactures, any public papers, or foreign intelligence, &c. would find it impossible to judge aright. The choice of representatives is the right of the people; but when the choice is made, they are invested with a discretionary power,

to

to act as they think fit, within the bounds of the conſtitution.

Our conſtitution has excellently provided, that no city or borough can be repreſented by any perſons of very low circumſtances, except crafty fraudulent means are uſed; for, by the ſtatute of 9th Anne, cap. 5. it is enacted, That no perſon ſhall ſerve in parliament, for any city or burgh, who hath not £. 300 *per annum*, in freehold or copyhold lands, over and above what will ſatisfy all incumbrances, unleſs he be the eldeſt ſon of a peer, or of a perſon who has himſelf at leaſt £. 600 *per annum*, in freehold or copyhold lands beyond reprizes; which laſt reſerve is the qualification neceſſary in order to ſerve for knight of a ſhire; and every candidate is obliged to take an oath that he has ſuch an eſtate, and to ſhew where it lies.

The elections now are, or at leaſt by the

conſtitution ought to be, free. The crown had formerly the tenures, the free farms, and the foreſts; by which they could diſtreſs the electors in many places. The warden of the Cinque ports claimed a right to nominate one member in each of their ports. The ſheriffs could with impunity neglect ſome boroughs, and return whom they pleaſed, or rather whom the king pleaſed, for others; the king and the lords, and afterwards the chancellor, had an authority to judge of conteſted elections, and to iſſue new writs upon them. Now all theſe things are altered: the tenures, the free farms, and the foreſts, in a great meaſure, as to their influence, are gone. The warden of the Cinque ports' claim is taken away. No cuſtom or exciſe officer, or the like, can interpoſe their authority; no money, place, or penſion, or promiſe of any ſuch, or of any gratuity or reward whatſoever, can be

given to corrupt the votes; and if any ſuch means has been uſed, that perſon is thereby rendered incapable of ſitting in parliament; and the ſheriff, in caſe of a falſe return, is under great penalties; and ſo great is the care our conſtitution takes to have free elections, that no nobleman is allowed to interfere, or in the leaſt meddle in elections. And that the crown may not influence their votes when elected, by an act 4th Anne, cap. 8. that no perſon having any new office of truſt or benefit, under the crown, or penſion from the crown, for any number of years, in his own name, or in truſt for him, ſhall be capable of being choſen a member of the houſe of commons; and if he receives after his election any place, penſion, &c. he forfeits his right to ſit in the houſe, and his place becomes vacant; but he may be immediately re-elected for that or any other place.

Great are the advantages that both king and people may receive from a well-ordered parliament. The king is by their prayers and petitions drawn many times to redress the just grievances of the subjects; and, being overcome by their importunity, grants many things, which otherwise he would not yield unto. Many vexations of the people are without the knowledge of the king, who in the parliament seeth and heareth the people himself; for the houses have in the highest degree, been the greatest council, and most universal representative, that can be assembled legally in England. They have the privilege of counselling, petitioning, and representing the grievances of the people, but in virtue of the very words are excluded from acting; for no act of theirs is coercive, or will impeach any man at common law for disobedience.

Many and great blessings may subjects enjoy

enjoy by parliaments; they are thereby secured from having their estates wrongfully taken from them; and ought likewise by that means to be out of danger of being exhausted by exorbitant taxes at the will of the crown. The blessings are endless which subjects may enjoy from a well-constituted parliament; and I hope they do enjoy many, and I most heartily wish they may daily reap more. But when a Marius pours out bushels of corn in the Forum to buy votes, people are easily corrupted: they are impelled as we see in crowds, first one way, and then another, ebbing and flowing in their actions like the unconstant ocean. A man will, for a post, pension, or bribe, approve of a public measure, which in his conscience he condemns; and condemn those measures, which in his conscience he approves, in hopes thereby of procuring himself a post, pension, or bribe. Others will never give them-

themſelves the trouble of enquiring into the rectitude of any public meaſure, but conſider only by whom it is propoſed or countenanced; and accordingly approve or condemn. If he expects a poſt or penſion, he will vote as directed by the miniſters, and muſt be watchful of every wink of their eye; not his ſoul, dares he ſay, is his own, if they call for it: but if otherwiſe, he will vote in every caſe, as directed by the leaders of the oppoſition.

When it is generally believed that the members are paid for their voting in parliament, thoſe that chuſe them will follow their example; they will be paid for their votes at elections, either by the government, or by the members they chuſe: and if by the latter, it muſt inhance the price of his vote in parliament. To anſwer this expence, the miniſters, as I obſerved in the introduction, muſt create a great number of uſe-

leſs

leſs and unneceſſary poſts and employments on the executive part of government, and muſt increaſe the ſalaries and perquiſites of every one that is neceſſary. The high and profitable offices will ſerve to engage the miniſters and their chief friends, whilſt thoſe of a lower claſs, will be applied towards engaging the votes at elections; and the whole of the expence falls upon the people.

A thief deſerves to be hanged (ſays the Spaniard) who ſteals not enough for himſelf and the judge.

Thus the public expence will in every branch be monſtrouſly increaſed; and what is ſtill worſe, the public ſervice will be in every article ſacrificed to the gaining or preſerving a corrupt influence in parliament, or at elections; capacity, qualification, and eminent ſervices will be neglected; no merit but parliamentary or election merit, will be regarded: and as no man will expect pre-

ferment

ferment in the service of the government by any sort of merit, none will think of qualifying himself properly for the due execution of any public trust he sollicits or has obtained. Luxury and extravagance is encouraged, and vice and immorality connived at, in order to increase the number of the venal. The people every year must become more abandoned to every principle of religion, virtue, and public spirit; taxes follow taxes, debts heap upon debts, till national beggary comes on.

It was once made a question, whether a courtier could be a Christian or not: to which lord Stanhope answered, in a kind of agony, *Well, I am now satisfied, that a man cannot set his foot over the threshold of a court, but he must be as great a rogue as ever was hanged at Tyburn.*

If our common people knew what many of our politicians aimed at to compass their ends,

ends, they would ſtone them in the ſtreets: but, as an honourable perſon obſerves, any thing joined to the word Freedom will paſs. Which word, of all thoſe made up out of the twenty-four letters, is in common notion moſt abſurd. We may well ſay, with good Polycarp, Good God! for what times haſt thou reſerved us!

The common people are naturally fond of new things, querilous, and envious againſt their ſuperiors, apt to receive and ſpread calumnies, and are carried about with every wind and rumour; and a long ſeries of factious libels had bred falſe opinions in the minds of the common people, who are apt not only to ſwallow abſurdities, lies, and malicious reports, but alſo to cram it down the throats of thoſe that have leſs appetite to it. Men generally run from one extreme to another; and when the multitude take upon them to do what they pleaſe, they never

never fail to endanger and ruin all; and as the mode of the Engliſh is to reform, not by reſtoring or mending, but by kicking down all at once, whatever is abuſed, though in itſelf never ſo good. *Craig* ſays, changes are always attended with calamities; and the bait of liberty hath never better ingredients; in the word Liberty lies the wonderful maſtery of ſkill; and if ever the finger of old Nick was manifeſt in a ſtratagem, it is in this, of hood-winking and covering people with the dark and deceitful mantle of liberty, in order to puſh them upon the moſt horrid actions, which bring miſery upon themſelves, and entail it upon their poſterity. This kingdom affords us many ſad and lamentable relations of the fury and miſchief of mobs; and it is the nature of all changes to hurry people along with them againſt their will: and that kingdom which once begins to be drawn head-

headlong by mutations, cannot be ſtopt in that career by any, until it falls into ſome ſignal miſchief. Accordingly we ſee that the genius of this nation is ſo corrupted, that there is no kind of crimes, however unnatural or monſtrouſly wicked, but money is ſufficient to tempt men to commit them. For, as the poet ſays,

" The force of bribes both heaven and earth invade,
" Even Jove's diſpleaſure is by offerings laid."

Faith and religion are become ſo cheap, that gain only is thought worthy of notice; and there is nothing that covetous and ambitious men will ſtick at, ſo as that they may attain their ends: which the miſerable condition of this nation at preſent too plainly demonſtrates. But this melancholy ſubject I ſhall not at preſent dwell longer upon, but recommend the reader for further information of the condition of this nation, to a ſmall

book

book lately publiſhed, called the Groans of Old England, by a plain Dealer; and ſhall now proceed to ſhew, that all governments or monarchies are, or ought to be, hereditary; and that the Engliſh kingdom is, and always has been ſuppoſed to be, an hereditary monarchy; i. e. entailed on one family, and deſcending ſucceſſively to the lineal heirs of it, and hath been governed ſucceſſively for many years, by the ſame royal family; which, in point of antiquity, hath the advantage of any other in Europe, and probably in the world. For the preſent illuſtrious family hadtheir right through the Stuarts, and we are now to reckon them one; and if the moſt antient hereditary family in the world hath not a true right of inheritance, if preſcription of ſo many years is nothing, there is ſurely no right of government at all.

Coke

Coke ſays, No human law can create a human right; nor is the right of ſucceſſion from divine poſitive laws only, but is obſerved as well where God's revelation of himſelf is not received as where it is: and if, according to the reſolution of all the moſt learned and reverend judges, in Calvin's caſe, ſubjection is from no human law, but the law of nature; for no man ſuppoſeth ſubjection, where he doth not preſuppoſe power; and unleſs we will openly proclaim defiance unto all law, equity, and reaſon, we muſt acknowledge, that in kingdoms hereditary, as England, birth-right giveth right unto ſovereign dominion; and the death of the predeceſſor puts the ſucceſſor by blood in ſeiſin. Accordingly we ſee, that by the laws of this realm, there can be no *interregnum* in this kingdom; the next heir in blood by deſcent, is immediately, complete-

ly, and absolutely king, without any essential ceremonies.

The coronation is, as we have seen, only a regal ornament, and outward solemnization or testification of the descent, and of the inheritor's right, or belongs to the form of inducting him into possession of the thing he hath a right to. 'Tis a ceremony to shew the king unto the people; that is to say, coronation is only a ceremony, and such a ceremony as doth not any thing, but only declare what is done: the king was king before it, as much as he is after it, only by it he is declared to be what he was before, and what he should have been still, though he had not been so declared.

If coronation were sufficient to make a title, no king should be counted an usurper; but coronation, as it cannot make an usurper a rightful king, so the not being crowned, cannot prejudice a lawful king, so as that the

right

right and prerogative royal don't as much belong to him before, as they do after the coronation is performed.

'Tis most certain he is king before he takes the coronation oath, seeing his kingdom is patrimonial, from which he cannot be excluded, though he never takes such an oath.

Moreover, every hereditary king's right begins from the day of his predecessor's death, which is always before his coronation or inauguration; and the coronation is often delayed, and yet he is no less guilty of treason, who kills a king before his coronation, than he that does it after that solemnity is over; otherwise, what treason could have been objected to Richard the 3d? Neither coronation nor coronation oaths were introduced from necessity; but before their coronations, as I said before, they are as much kings as they are after it; and the corona-

tion with the oath is only declaratory, and an overt-act, with reſpect to the public right, and no way eſſential to the being of a king.

But ſome will have it, that a king at his coronation enters into a covenant with his people; and they are perſuaded, that in making a covenant ſomething is to be performed on both parts, by mutual ſtipulation. Both theſe propoſitions I deny. The king does not enter into a covenant with his people at his coronation; neither does it always happen, that in covenants ſomething is to be performed by both parties: for we find that God made a covenant with Noah and his ſeed, with all the fowls and cattle, not to deſtroy the earth any more by a flood. This covenant was to be kept on God's part; neither Noah, nor the fowls nor cattle, were to perform any thing by this covenant.

On

On the other hand, Gen. xvii. God covenants with Abraham, ſaying, Thou ſhalt keep my covenant, every male-child among you ſhall be circumciſed. There it is called God's covenant, though it is to be performed by Abraham.

So a covenant may be called the king's covenant, becauſe it is made to him, and yet to be performed by the people; for without any covenant, recognition, or coronation oath, by the fundamental laws of this realm, the crown goes to the next heir in blood, whether he is crowned or not: neither can it in any ways be diſpoſed of to his prejudice; no, nor any act or deed of the party can incapacitate him from ſucceeding. That treaſon itſelf cannot void a lawful ſucceſſion in blood, we have king Henry 7th for an example, who ſtood attainted of high treaſon, at the time of his coming into England; and yet, without reverſing the

attainder, the judges all agreed, that the king, *ipso facto*, the moment he took upon him the government, was discharged of all attainder, and every defect. And I may venture to say, that no kingdom in the world has declared more clearly and expressly in favour of the rightful heir out of possession; and consequently, against the authority of a king *de facto*, than this has done; and all attempts made by the right heir for recovering his inheritance, are justified by the laws of God and nature, and the constitution is found good and agreeable to both. The dispossessing the intruder is declared just and legal, and warranted by several acts of parliament. Coke tells us, that the king holdeth the kingdom of England by birthright inherent, by descent from the blood royal, whereupon succession doth attend.

In all grants and gifts that have their

 ori-

original from God or nature, as the power of the father hath, no inferior power of man can limit, nor make any law of prescription against them: upon this ground is builded that common maxim, that *nullum tempus occurrit regi*, no time bars a king; no continuation, no course of years, can possibly make that good and just, which is in its own nature bad and unjust.

Hereditary succession is a fundamental law of monarchy, which formerly invalidated all acts of parliament, that tended to the disinheriting or distracting of the crown; and particularly all those which limited and bound the succession. It was by this fundamental law, that king James was admitted to the crown, and the house of Suffolk excluded, contrary to many statutes against him. Notwithstanding all which, the high court of parliament declared, that the imperial crown of this realm did,

by inherent birth-right, and lawful and undoubted ſucceſſion, deſcend unto his majeſty, as being lineally, juſtly, and lawfully next and ſole heir of the royal blood. Here his ſucceſſion is owned for lawful and undoubted, againſt the foreſaid acts; lawful, not by any ſtatute, but contrary to ſtatutes, by the common law of this hereditary kingdom; which reſpects all limitations and excluſions, as tending to the diſinheriting and prejudice of the crown: for, as no act of parliament can ſo bind the king, but that he may, as king, diſpenſe with them, ſeeing all acts of juſtice and grace flow from him; ſo no preſcription or length of time can be pleaded againſt the king, in prejudice of his royal rights.

There have been interruptions in the lineal ſucceſſion, but right was always pretended; even thoſe who had it not did claim it; which ſeems an evident proof that our

king-

kingdom is hereditary: Never was there any king of England who would not have preferred hereditary right to all other titles; and all notorious violators of right were condemned at the time by all good men, and rejected after by the whole nation, which hath always reſtored the rightful heirs, as ſoon as it could ſhake off the yoke of the conquerors and intruders.

The tree of hereditary right hath been ſeveral times cut down to the ground, but the ſtump of the roots in the earth hath grown up again, and hath reached unto the heaven; the kingdom hath been ſure, and the nation hath been convinced that the Heavens do rule. For if at any time the nation, out of a fit of jealouſy, baniſhes or murders their king becauſe they think he is a tyrant, they generally remember, that an unnatural parent cannot acquit the child of its duty; under all circumſtances that

duty

duty which is due to a parent still subsists; therefore they do what in them lies to repair their fault, by turning their eyes upon his son, or next heir by blood, who being free from any defect, the right of the kingdom they declare to descend to him, because the inability of parents doth not prejudice the children, especially in regard to their natural rights. Neither is it any impediment wherefore they should not enjoy either privilege or dignity from the person of their father; it is fitter the son should receive profit by the dignity of the father, than prejudice by the father's chance.

Though it is in fact true, that several limitations of the succession have been made in factious parliaments, and persons who were entitled to the crown by primogeniture and blood have thereby been excluded, yet it is also evident, that no precedents have

hitherto

hitherto been met with, of ſuch parliamentary entails, that have been able long to prevail to exclude the next heir by proximity of blood, that claim the crown by common law, but ſooner or later Providence has hitherto, and always will ſo order it, that thoſe who are firſt in the line of deſcent, have at length gained the crown, notwithſtanding all proviſions of a factious parliament to the contrary.

We have indeed ſtatutes that make it treaſon to deny that an act of parliament can exclude the ſucceſſion in blood; but the monarchy of England has been time out of mind hereditary, by the known laws of the land; ſo that it was very difficult for many to join in the revolution, and many declared it a damnable unnatural rebellion, though ſome of them at that time thought their laws and religion in danger.

Some had the aſſurance and boldneſs to

ſay,

ſay, that to take away a man's private eſtate, or, which is more, his public inheritance, for his conſcience, by a new law, was like the inquiſition, that always takes what a man has of temporal eſtate or goods, together with his perſon, for his religion; or exactly the ſame as the popes pretended, and not ſeldom executed, a power of depoſing kings for hereſy.

It is, ſay they, againſt the laws of God and the land, and both arbitrary and popiſh, to deprive any man of his ſecular inheritance for his conſcience, that is, for his religion, let it be ſectarian or popiſh; to diſinherit a prince becauſe he differed from them in ſome points of faith, they boldly and impudently thought could never be juſtified by God, and meet with the approbation of any good man. They thought, that ſeeing they were bound to their former prince and his lawful heirs by the oath of God,

God, they could not, without horrid perjury, transfer their allegiance to another prince, or one of another family; ſo fooliſh were ſome at that time, that no account could they give, no coloured pretext could they think of for violating (as they called it) the oaths which they had given, and which they thought themſelves in gratitude obliged to give; nor could they think of binding themſelves by any tie to another.

However, thoſe that conſented to the revolution, have endeavoured, and I dare not ſay, without ſucceſs, ſeeing many eminent men have employed their pens to that purpoſe, to clear themſelves in the eyes of God and good men, of the horrid crimes of ingratitude, injuſtice, impiety, and perjury: but even after all, ſome had the boldneſs and aſſurance to ſay, that they had hurried themſelves headlong into the dreadful ſins of injuſtice and perjury. For if the

the heir, ſay they, of the royal family may be diſinherited, why may it not take place in private families? They can have no better right to ſucceed by birth, than the royal progeny have to ſucceed to and inherit the kingdom; and the true heirs may be as well and as juſtly excluded from their paternal eſtates and inheritance by their own family and domeſtics, as the heir of a crown by his ſubjects.

Theſe conſiderations weighed ſo ſtrongly with ſo many, that even when the prince of Orange had got poſſeſſion of the city with an army, and the king driven from the kingdom; even in thoſe circumſtances, I ſay, ſo much did divine indefeaſible hereditary right ſtick in their ſtomachs, that 49 lords voted againſt the prince of Orange being king, and there were but 51 for him; ſo that the prince of Orange, though at the head of an army, had but a majority

of

of two: And the archbiſhop of Canterbury, and ſome others, who were ſteady friends to King James, would not come to the convention, as thinking it an unlawful aſſembly; for they judged it to be the law of the land, and the opinion of the greateſt lawyers, that there is no power on earth that has any coercive power over the king, neither ſingle perſons, nor a community, neither the people collectively, nor repreſentatively; for, by the law of this nation, ſay they, no one houſe, nor both houſes of parliament, have any coercive power over the king. They thought they ſaw what the laws of their country were, what obligations they were under to preſerve the hereditary monarchy, and where their allegiance was due; therefore they would not come to the convention. But in order that the reader may form a juſt notion of the principles upon which thoſe that oppoſed the

the prince of Orange went upon, we ſhall here beg leave to preſent the reader with ſome of the ſpeeches of the lords at the convention, which contain the opinion and reaſons offered by the diſſenting lords for not joining with the houſe of commons, taken from a book entitled, "The debates at large between the houſe of lords and houſe of commons, at the free conference held in the painted chamber in the ſeſſion of convention, A. D. 1688, relative to the word Abdication, and the vacancy of the throne."

At the convention, when Mr. Hamden brought the houſe of commons reſolution, "that King James had abdicated the government, and that the throne was thereby vacant," the lords obſerved, that abdication is a voluntary expreſs act of renunciation, which King James had never made; and to ſay that the throne was thereby vacant,

was

was to make the crown elective; to neither of which they could agree.

1ſt, Becauſe, by the conſtitution of the government, the monarchy is hereditary, and not elective.

2dly, Becauſe no act of the king alone can bar or deſtroy the right of his heirs to the crown; and therefore, in anſwer to the third reaſon alledged by the houſe of commons, if the throne be vacant of King James the 2d, allegiance is due to ſuch perſon as the right of ſucceſſion doth belong to.

The lord biſhop of E—ly took notice, "If there be a yielding to times; if there be a going away, with a purpoſe of ſeeking to recover what is for the preſent left or forſaken: In plain Engliſh; if there were any thing of force or juſt fear in the caſe, that doth void the notion of abdication: but, ſays my Lord, if ſuch a thing was to happen as an abdication in a ſucceſſive

government, the abdication can only be a forfeiture as to the perſon himſelf, for without doubt the compact was made to the king, his heirs, and ſucceſſors: The diſpoſition of the crown cannot fall to us, till all the heirs do abdicate too; eſpecially ſince the ſtatutes of Queen Elizabeth and King James have eſtabliſhed the oath of allegiance to the king, his heirs and ſucceſſors. For theſe ſtatutes are obligatory till altered by the legiſlative power, which, ſingly or jointly, without the royal conſent, I ſuppoſe, the houſes of parliament do not pretend to."

The earl of C—n, who ſpoke next, ſaid, "All lexicons, law-books, and every inſtance that he ever read or heard of, declare the ſignification of the word *abdicated* to be a voluntary act; that is, there either was ſome formal deed of renunciation or reſignation, or ſome voluntary act done of the

the party's own; but it is apparent, that the king, in this caſe, hath done nothing of this nature. Breaking the original contract, is a language that hath not been long uſed in this place, nor known in any of our law-books, or public records; it is ſprung up, but as taken from ſome late authors, and thoſe none of the beſt received. The king is bound to obey the laws, but his obligation thereunto doth not proceed from his coronation-oath; for our law ſaith, *He is as much a king before he is crowned, as he is afterwards; and there is a natural allegiance due to him from the ſubjects, immediately upon the deſcent of the crown upon him.* And though it is a very requiſite ceremony to put him under a farther obligation by the conſcience of his oath, yet, I think it will not, nor can be denied, but that, as a king, he was bound to obſerve the laws before; and no body will make

that out to be the original. I cannot ſee, ſays he, that we are at liberty in this caſe to ſupply as we pleaſe, and break the line of ſucceſſion; for our breaking through the line now, by a choice out of the lineal courſe, is an alteration and a precedent: And why may not others take the ſame liberty we do? And will not that make the crown perpetually elective? But truly, I think, no act of ours can alter the lineal ſucceſſion; for, by all the laws we have now in being, our government appears to be hereditary, in a right line of deſcent, and upon any deſcent, when any one ceaſes to be king, allegiance is as much by law due to his lineal heir, as ſucceſſor, before coronation as after. The law declares, *That no act of the king's alone, can bar or deſtroy the right of his heir to the crown, which is hereditary, and not elective.* And then, if this matter goes no farther than

King

King James the 2d in his own perſon, how comes the vacancy and ſupply to be devolved upon the people? for, if he only be ſet aſide, then it is apparent whither the crown is to go, to the perſon that has the next right of ſucceſſion, conſequently there is no vacancy. But is the throne vacant as to him, and all or any of his poſterity, or any of thoſe that are in the remainder in the royal line of ſucceſſion? If it be as to them too, then it muſt neceſſarily follow, that the kingdom muſt thereby become elective ſtill, or the government turned into a commonwealth."

The earl of N—m was the next ſpeaker. "Gentlemen, *abdicate* is not a word known in our Engliſh law, becauſe we never had ſuch a caſe; therefore I would uſe no words, in a caſe that ſo much concerns our legal conſtitution, but what are fetched from thence. I hope I ſhall never ſee our old

laws altered, or if they be, God forbid that we ſhould be the voluntary agents in ſuch an alteration. But if every tranſgreſſion or violation of the law, by the prince's connivance or command, were ſuch a breach of the fundamental laws as would infer an abdication, then were it in vain to call any of his miniſters or officers accountable for any ſuch action, then the action is the king's, and not theirs; and then adieu to the maxim of *a king's not doing wrong*, and we may have recourſe to reſpondent ſuperior, or more effectual ſatisfaction; but God forbid that every violation of the law, or deviation from it, ſhould be reckoned an abdication of the government."

The earl of C—n. "Taking the throne to be vacant as to King James 2d, then you aſk us, Who it ſhould be ſupplied by? Muſt it not be ſupplied by thoſe that ſhould have come if he were dead? For, I pray, consider;

consider; I take this government, by all our laws, to be hereditary monarchy, and is to go in succession, by inheritance, in the royal line; if then you say this government is vacant, that would be to put all those by that should take by succession, and that will make the kingdom elective for that time. You say, that the throne is vacant; then I may very well ask you, Who hath the right of filling up that vacancy? We say, there is no vacancy; if there is, pray is there any body that has a right of filling it up?"

The earl of P—e said, "Sure, Mr. Serj. Maynard, you will agree there is one, and no more than one, to whom a right does belong of succeeding. Upon failure of King James, has he no heir known? You agree, that, notwithstanding King Charles the 2d was abroad at his father's death, and did not actually exercise the government, yet, in law, immediately upon his father's

deceaſe, he was not the leſs heir for that, nor was the throne vacant."

The earl of N—m. "I would know, if the next heir ſhould be ſet aſide, in this caſe, if the throne, the ancient lineal ſucceſſion, be altered? If that be ſo, then it is ſufficiently an elective kingdom, by taking it from the right heir. If it be not ſo, then I would aſk, whether ſuch a king as ſhall be put in, ſhall be king only during King James's life? That, I ſuppoſe, for many reaſons, is not the meaning of the houſe of commons; but at leaſt he muſt be made king during his own life, and then, if there be a diſtinction made as to the ſucceſſion between a natural and civil death, if King James ſhould die during the life of the new king, what would become of the hereditary monarchy? Where muſt the ſucceſſion come in, when the next heir to King James may not be next heir to the preſent ſucceſſor?

There-

Therefore we muſt reduce all to this point, whether this will not make the kingdom elective; for if you do once make it elective, I do not ſay that you are always bound to go to election, but it is enough to make it ſo, if by that precedent there be a breach in the hereditary ſucceſſion; for I would be bold to ſay, that you cannot make a ſtronger tie to obſerve that kind of ſucceſſion, than what lieth upon you to preſerve it in this caſe. If you are under an obligation to it, it is part of the conſtitution. I deſire any one to tell me what ſtronger obligation there can be, and that, I ſay, is reaſon enough for my lords to diſagree to it, it bringing in the danger of a breach upon the conſtitution. Next, Gentlemen, I would know of you, if the throne be vacant, whether we be obliged to fill it? If we be, we muſt fill it either by our old laws, or by the humour of thoſe that are to chuſe: if we fill it

by our own old laws, they declare it is an hereditary kingdom, and we are to take the next to whom the ſucceſſion would belong; and then there would be no need of ſtanding upon a vacancy. If we are to *fill it* according to the humour of the times, and of thoſe that are to make the choice, that diverts the courſe of inheritance, puts it into another line, and I cannot ſee by what authority we can do it, or change our ancient conſtitution, without committing the ſame fault we have laid upon the king."

The earl of R—r. "When King Charles the 2d died, I would fain know, whether, in our law, the throne was vacant. No, ſure; the next heir was immediately in the throne; and ſo it is in all hereditary ſucceſſive governments. Indeed, in Poland, when the king dies, there is a vacancy; becauſe there the law knows no certain ſucceſſor; ſo that the difference is plain, that

that wherever the monarchy is hereditary, upon the ceasing of him in possession, the throne is not vacant; where it is elective, it is vacant."

The earl of C—n. "In the case of Henry the 4th, it is plain, King Richard the 2d absolutely resigned, renounced, or abdicated, in writing, under his own hand. What is done then? After that, the parliament being then sitting, they did not think it sufficient to go upon, because that writing might be the effect of fear, and so not voluntary; thereupon they proceed to a formal deposition upon articles, and then comes in the claim of Henry the 4th. After all this, was not this an election? He indeed saith, that he was the next heir, and claimed it by descent from Henry the 3d, yet he that was really the next heir, did not appear, which was the earl of March; so that Henry the 4th claimed it as his indubitable right,

right, being the next heir that then appeared. But, Gentlemen, I pray consider what followed upon it; all the kings that were thus taken in, (we say, elected, but the election was not of God's approbation), scarce passed any one year in any of their reigns, without being disturbed in the possession. Yet, I say, he himself did not care to owe the crown to the election, but claimed it as his right: And it was a plausible pretence, and kept him and his son (though not without interruption) upon the throne. But, in the time of his grandson, Henry the 6th, there was an utter overthrow of all his titles and possession too. For, if you look into the parliament-roll, 1 Edw. 4. the proceedings against King Richard the 2d, as well as the rest of the acts during the usurpation, (as that record rightly calls it), are nulled, repealed, revoked, reversed, and all the words imaginable used

and

and put in to ſet thoſe proceedings aſide as illegal, unjuſt, and unrighteous. And pray what was treaſon? That act deduceth down the pedigree of the royal line from Henry the 3d to Richard the 2d, who died without iſſue, and then Henry the 4th (ſaith the act) uſurped; but that the earl of March, upon the death of Richard the 2d, and, conſequently, Edward the 4th from him, was undoubted king by conſcience, by nature, by cuſtom, and by law. And, after all this, (I pray conſider it well) the right line is reſtored, and the uſurpation condemned and repealed."

The earl of P—e. "We ought to put things in a legal method; and, in order to do it, I would have the legal ſucceſſor declared and proclaimed, and then the parliament ſummoned in the prince's name, and the whole matter ſettled there. An act made by a king *de facto*, is void as to the king

de jure; there I would have the constitution preserved, and would desire that all that is done in this matter may be again done in parliament."

The earl of C—n. "Sir R— H—d was pleased to say, *That by the same method that the throne now should be filled, by the same the successor should be declared, and the right line settled.* Is not that declaring the crown to be elective? Suppose you say nothing, but fill the throne; is it not to take away the right line of inheritance? And will not such successor claim it for his posterity? Truly I think if the right line be declared in the same way that the successor is, then we take upon us to dispose of the inheritance of the crown absolutely; which, by all the law I ever read, or could hear of, is out of our power; and that neither house, nor both houses together, have power to do any thing relating to the succession,

ſucceſſion, but by act of parliament, which the two houſes by themſelves cannot make."

The earl of N—m. "You of the houſe of commons have declared, that you do acknowledge the monarchy is hereditary and ſucceſſive in the right line; then I cannot ſee how ſuch an acknowledgment conſiſts with the throne's being vacant. For I cannot imagine how a kingdom can be an hereditary kingdom, and that a king who hath children now in being, can have the throne vacant both of him and his children. The courſe of inheritance, as to the crown of England, is, by our law, a great deal better provided for, and ſtronger in the right line of birth, than any other inheritance. No attainder of the heir of the crown will bar the ſucceſſion to the throne, as it doth the deſcent to any common perſon. The very deſcent by order of birth, will take away any ſuch defect. And ſo

was the opinion of the great lawyers in England in the caſe of Henry 7th. Then cannot I apprehend how any act of the father can bar the right of the child; ſince even an act of the ſon, which may endanger an attainder in him, cannot do it; ſo careful is the law of the royal line of ſucceſſion. This is declared by many acts of parliament, and very fully and particularly by that ſtatute 25 Henry 8th, cap. 22. intitled, "An act concerning the king's ſucceſſion." Where the ſucceſſion to the crown is limited to the king's iſſue, male firſt, then female, and the heirs of their bodies one after another, by courſe of inheritance, according to their ages, as the crown of England hath been accuſtomed, and ought to go in ſuch caſes. If then the king hath done any thing to diveſt himſelf of his own right, it doth not follow from thence, that that ſhall exclude the right of his iſſue, and then

the

the throne is not vacant, as long as there is any iſſue; for no act of the father can vacate for himſelf and his children too. Therefore if no more is meant than diveſting his own right, then ſuppoſing the right gone from him, yet if it deſcend to his lineal ſucceſſor, it is not vacant. And I told you, one reaſon my lords did ſtand upon againſt the agreeing to the vacancy, was, becauſe they thought that your votes might extend a great deal further than the king's own perſon. But your allowing it to be a lineal inheritance, and this vacancy, methinks, do not by any means conſiſt. You declare you never meant to alter the conſtitution; then you muſt preſerve the ſucceſſion in its antient courſe. But, by what methods can it be done in this caſe by us? I deſire to be ſatisfied in a few things about this very matter. I deſire firſt to know, whether the lords and com-

mons have power by themſelves to make a binding act or law? And then I deſire to know, whether, according to our antient legal conſtitution, every king of England, by being ſeated on the throne, and poſſeſſed of the crown, is not a king to him and his heirs. And without an act of parliament, which we alone cannot make, I know not what determination we can make of his eſtate. Our laws know no *inter regnum*, but upon the death of the predeceſſor, the next heir is *in uno et eodem inſtante* king. It was reſolved, even in Richard 2d's own caſe, that at his grandfather's death it was a queſtion, whether king Richard or the eldeſt ſon of the grandfather, then living, ſhould ſucceed; and it was reſolved that he ought to have it, becauſe of the right of inheritance. And when Richard 3d uſurped his crown, to make his claim good to the right of inheritance, he baſtardiſed his own nephews,

nephews. And ſo it was in all the inſtances of the breaches that were made upon the line of ſucceſſion, which were ſome ſeven, but all illegal; for ſuch was the force of the laws, that the uſurpers would not take the crown upon them, unleſs they had ſome ſpecious pretence of an hereditary title to it. That which I would have avoided by all means, is the miſchievous conſequences that, I fear, will enſue upon this vacancy of the throne, *viz.* the utter overthrow of the whole conſtitution and government. For if it be ſo, and the lords and commons only remain as parts of it, will not this make the king one of the three eſtates, then is he the head of the commonwealth, all united in one body under him; and if the head be taken away, and the throne vacant, by what laws or conſtitutions is it that we retain lords and commons? For they are knit together in their common

head; and if one part of the government be diſſolved, I ſee not any reaſon but that all muſt be diſſolved. Therefore it is of very great importance that we come to an explanation, how far you mean the throne to be vacant; and if it reach to the king and his heirs, notwithſtanding the acts of parliament about the ſucceſſion, we may conſider how the conſequences of that may affect the conſtitution; for I preſume to ſay, it may then be in our power, as well to ſay, we ſhall have no king at all."——

One would at firſt wonder, how ſo many of them came, after all this reaſoning, to comply with what has at leaſt the appearance of being contrary to it; but Mr. Secheverel, one of thoſe appointed by the commons to manage the conference with the lords, tells us; "If, ſays he, king James 2d, who has only left the exerciſe, continues in the office, and is king ſtill, then all the acts that

we

we have done in this convention, are wholly unjuſtifiable; you are in no place or ſtation to relieve yourſelves or the nation, in this exigence, unleſs you will think of ſettling another regency, by your own authority, without his conſent; which I conceive, by the laws of England you cannot do. What then follows upon all that we have done, we have drawn the nation into a ſnare, by the ſteps we have taken, and leave all in ſuch an intricacy, as we have no power by law to deliver them out of, nor can we anſwer for what we have done, unleſs the king ſhould die."

Here he acknowledges that they, *viz.* ſome of king James's own ſubjects, had drawn the nation into a ſnare; which laid them under a neceſſity, either of declaring the throne vacant, and having another king; or running the riſque of being hanged as rebels, for doing what they could

not anſwer for, or juſtify by the laws of the land. And under theſe circumſtances, it was no difficult matter to prognoſticate upon whom the choice would fall. And our tender and compaſſionate friends the Dutch, who are always ready to relieve and aſſiſt us, when in diſtreſs, had their prince of Orange at hand, with an army to ſtep into his father's throne. I will not ſay, that his being at the head of an army in the heart of the kingdom terrified the parliament (conſcious ſome of them, as people ſay, of giving him encouragement to come ſo far) to make choice of him for their king; who, good man, had no ſuch thought when he came over; as we ſee by his declarations: though I dare not ſay that his victorious army terrified the people into a choice of him for their king, yet I will ſay, and prove too, if required, that a R——n from that ſide of the water was

long

long before that time concerted, and would have been accomplished, if the extraordinary capacity, and great vigilance of king Charles the 2d, had not prevented it. Some think, not perhaps without good ground, that king James 2d's calling the Dutch to account, for their villainy to us at Amboina, had more influence with them in sending the prince of Orange hither, than any regard they had, either for our religion or liberties. King James most certainly was deceived by his council, and betrayed by his subjects; and for whatever he acted unconstitutionally, both himself and posterity have had sufficient time heartily to repent of, and to learn to be wise by experience; for wit bought, is worth twice as much for nought.

That family has long reigned kings in these islands, and therefore ought to be treated with great deference and respect,

however fallible they may have been; for none are infallible under the sun; and a foolish father may have a wise son; therefore they deserve some pity, especially in a country where infallibility is neither taught nor believed; and whose prime and distinguishing character is, that of pitying the distressed and unfortunate; but in place of that, the leopard has changed its spots, and the English have altered the very essence of their nature, *their bowels of compassion*, whereby they were eminently distinguished from all other nations; instead of condoling with the unfortunate, they triumphed over their misery.

King William was established in the throne of England, by act of parliament; but whether an act of parliament can be pleaded at the day of judgment, is more than I know; let the learned divines answer that doubt. The people, for certain reasons,

as

as difference in religion, think proper to withdraw their allegiance from their lawful king, and transfer it to another; then that perſon, who had no right before, becomes true and lawful king, and the right of the yeſterday's king and his heirs for ever, is utterly extinguiſhed; and this may be done every new year's-day, if the ſtates ſee as good and ſufficient reaſon as they thought they did at the Revolution: Iniquities we are ſure may be eſtabliſhed by a law; but as to the legality of an act of parliament, that eſtabliſhed the Revolution, I neither dare, nor will ſay any thing againſt it, as it was made by many ſage counſellors, and by one in particular, who has been long renowned as a deep, able, and long experienced counſellor; all that I ſay of the rights and powers of parliaments is to be underſtood, as applicable to thoſe of a much earlier date than that ever memorable convention,

vention, or parliament. I have sometimes thought that a parliament could not exist without a king or head; but let that be as it will, we shall now say two or three words of the antient power of parliaments to exclude the lineal successor: 'tis true, we have acts of parliament for it, but never otherwise made, than only for fear or flattery of the present prince, and were never observed. In the civil wars between the two houses of York and Lancaster, how many statutes have been made for the disinheriting of the title of the house of York? But they all vanished in smoke. The reasonings of those that deny the right of parliaments to exclude the lineal king, are as follow: Richard duke of York, in Henry 6th's time, after he had been declared heir apparent, was by another act of parliament declared incapable of succession; but all that can be inferred from that (say they) is, that acts

of

of parliament, when they are bottomed on private affections to party, in times of faction and civil war, are not to be looked upon with that veneration, as when they are regularly paſſed in times that are calm, when no potent perſons oppreſs juſtice, or uſurping powers hinder faithful judges from expounding the laws ſoundly. Therefore we find in the claim of the ſaid duke, that it is more agreeable to law expreſſed, that no act taketh place, or is of force againſt him, that is right inheritor of the crown, which is according to the laws of God and nature. And we may obſerve, that though there was a ſucceſſion of three kings of the houſe of Lancaſter, who had uſurped the crown for ſixty years, yet all our hiſtorians and laws call thoſe kings *de facto*, and not *de jure*.

Such a due ſenſe of juſt and right the unintereſted ages have had of that uſurpation ever ſince, though there were acts of parliament

liament carefully penned, to corroborate the title of the houſe of Lancaſter during that time, and means always uſed to have eſtabliſhed that line; yet by virtue of the right line of ſucceſſion, Edward 4th, ſon to the ſaid duke of York, came to be crowned lawful king of England, though the right of his family had been interrupted ever ſince Henry 4th uſurped the crown; which might have been a ſufficient document to all ages, not to have dared to attempt paſſing by the right heir: yet we find ſucceſsful attempts were made by Henry 8th, contrary to the fundamentals of ſucceſſion, which, when rightly conſidered, will, I hope, convince all, of how little validity ſuch acts are to be reputed. For all the acts made during an uſurpation, are to be looked upon as politic interims, to ſerve ſome preſent ends; and as we obſerve the trepidations, vibrations, and, as we may ſay, uneaſineſs

of

of things in all that have been displaced, till reseated again; so we may note the naturalness of hereditary right and succession, by the tragical conclusions and unsettledness of things in any state, where great force and policy have usurped the crown, till it hath returned to the right owner.

To innovate or alter the fundamental or antient laws of the kingdom, is of most dangerous consequence; but there can be no greater fundamental right than the succession of our monarch.

Hereditary succession is the sacred anchor, which only is sufficient to preserve and maintain the peace and quiet of a kingdom, and afford the people opportunities of prosperous and comfortable living.

Our monarchy being hereditary is the great basis upon which most of all the positions of the laws are established, which every where we meet with in the writings of lawyers; *that the king never dies, the next*

heir in blood is legally king from the very moment in which the last king dies; and that there is no need of coronation or recognition of the people, to intitle him to the exercise of the royal authority; that his commissions are valid, all men are liable and bound to do him honour, and hold their right of him and his heirs; he may call parliaments, dispose of the lands belonging to the crown, and all that oppose him are rebels.

This principle runs through all the veins of the laws, it is that which gives life and authority to our statutes, but receives none from them, which are undeniable marks and characters of a fundamental right in all nations.

Such further provision hath the law made to secure the succession in the direct line, that if the right heir of blood, or the father or mother of the right heir, be attainted of high treason by parliament, the attainder is

no

no obſtacle to the deſcent. If he who were to ſucceed had committed murder, or were declared traitor formerly to the crown, he need not be reſtored by act of parliament, but his very right of blood would purge all theſe imperfections; and the reaſons given are, that no man can rebel againſt himſelf, nor can the king have a ſuperior; for the king owns no ſuperior amongſt mortals; otherwiſe, as I have evidently made appear, he could not be ſaid to be a king, therefore none in his kingdom can be his judge; and conſequently, there can be none whom he can offend; and it is abſurd, that he who can reſtore all other men, ſhould need to be reſtored himſelf.

Yet in ſpite of all theſe proviſions in favour of the king and hereditary ſucceſſion, many ſucceſsful uſurpations have taken place in this kingdom; and thoſe that have got the longeſt ſword have never failed to be

choſen

choſen and recognized by the parliament; thoſe who doubt of this, may look into the hiſtory of England, where they will receive full ſatisfaction.

Tenets are found to vary with the times,
And power determines what are monſtrous crimes.
Who dares againſt reſiſtance (gentle name)
That darling doctrine of the whigs exclaim?
Oaths are but words, and words but wind,
Too feeble implements to bind mankind;
And ſaints may claim a diſpenſation,
To ſwear and forſwear on occaſion.

The laws muſt always be againſt the perſon that loſes poſſeſſion, for the poſſeſſor always has the command of the law, and therefore the law muſt extinguiſh the right of the diſpoſſeſſed upon the ſcore of treaſon, or elſe it is guilty of treaſon againſt the poſſeſſor.

But by ſo doing they deſtroy the very nature of right and wrong, and make the eternal rules of right and wrong vary with every

every turn of ſtate; and the ſtrict obligations of the precepts of Chriſt ſubſervient to every revolution, and to juſtify every uſurpation, though apparently never ſo wicked, from one Oliver to another, to all ſucceeding generations.

Since acts done without a lawful power, are null *ab origine*, then it muſt be allowed, that the three eſtates have a lawful power to place a king on the throne, as well as to recognize him, when he is placed; for if they have no ſuch power, their placing a king is nothing, and cannot give authority which they have not to give; then the neceſſary conſequence is, that the ſtates have a lawful power of depoſing rightful kings, to ſet up kings *de facto*; for they cannot place the one without diſplacing the other.

Thus one parliament ſet up Edward 3d by depoſing his father, and another Henry 4th by depoſing Richard.

 Theſe

These two powers have been always joined in fact, dethroning and advancing. Those that maintain the contrary, that the states have a lawful power to place a king on the throne, but not to depose a lawful king, maintain a manifest contradiction; for, if the deposition of a lawful king, for want of moral power, is unlawful and null, he remains as he was a lawful king, endowed with lawful authority; but he hath no authority, and is not lawful, if another king is lawfully placed in his throne, by the states, and invested with lawful authority; to create one king is to destroy the other. Therefore they that have not the power of destroying, have none of creating; and if they will create, say those men who formerly argued against the power of parliaments, the being they produce is morally nothing. 'Tis absurd and vain to make the same power null when it pulls

down, and valid when it sets up. Resistance, deposition, promotion, recognition, begin, advance and finish revolutions; consent of the states, legitimate all or nothing. If they have a moral power, by their own consent, to discharge themselves from their allegiance to one king, and to give regal authority to another, if their consent absolves them, they have a lawful power of deposing, if not, their consent is unlawful and void, and hath no moral operation, it can neither deprive one king of regal authority, nor confer it upon another. The obsolete laws have declared, that neither both, nor either of the houses of parliament, have a legislative power without the king; therefore it was hard when those notions were believed, to understand how the three estates can give a legislative authority which they have not, to a king, who hath it not; and that their consent, which is no law,

can make a lawgiver, and become a law to all ſubjects, by laying the obligation of allegiance on them; hitherto, ſay they, men have been perſuaded, that the effect can have no more power than the cauſe, and that none can give that which he hath not.

This kingdom has always been ſuppoſed to be an hereditary monarchy; but if the parliament may take it from one, and give it to another, then it is truly elective, and more elective than in any other elective kingdom; for in all others the elected have a right for life, in this a new one may be elected every ſeſſion. It is making a foot-ball of the crown, and turning an hereditary monarchy into an elective, if the parliament hath power to exclude the right heir; for, by the ſame reaſon that one parliament may diſinherit one prince for his religion, another parliament may diſin-

herit

herit another becauſe he hath none, or for other pretences. This certainly would be ſound reaſoning, if the parliament had not expreſly mentioned what alone incapacitates an Engliſh king. Another reaſon which ſeemed to make an act of excluſion unlawful, is the oath of ſupremacy, which moſt of the king's ſubjects are called to take, upon one occaſion or other; and which the repreſentatives of the commons of England are bound by law to take before they can ſit in the houſe. By this oath, every one that takes it ſwears, to their power, to aſſiſt and defend all juriſdictions, privileges, preheminences, and authorities, granted to belong to the king's highneſs, his heirs and lawful ſucceſſors, or united and annexed to the imperial crown of this realm. And I appeal to every honeſt and loyal Engliſhman, whether it be not one of the moſt undoubted, principal, tranſcen-

dant, and essential rights, privileges, and preheminencies belonging to the king's heirs, and united to the imperial crown of England, intended by those oaths, that they succeed unto the crown as it comes to their turn, according to proximity of blood.

Again; I desire to know, whether by lawful successors is not to be understood, such heirs as succeed, according to the common rules of hereditary succession, settled by the common law of England; and if so, how can any man, who is within the obligation of this oath, honestly consent to pass a bill which deprives the next heir, and in him virtually, the royal family, of the chief privilege and preheminence, which belongs to him by the common law of this realm, except he is, as we must say, unworthy of it by being a Papist? Otherwise, I cannot see how a man that has taken this oath, which is apparently designed for the

pre-

preſervation of the rights and privileges of the royal family, can deny faith and true allegiance to the next heir, from the moment of his predeceſſor's death, according to the common rights of hereditary ſucceſſion, which, by common law, belongs to him, and is annexed to the crown.

What oath ſoever is made for the behoof of and intereſt of the king's heirs and lawful ſucceſſors in general, muſt needs be made apparently in general, to ſecure the ſucceſſion to them, and therefore it is undoubtedly made to ſecure the ſucceſſion to every one of them, according to the common order of hereditary ſucceſſion, when it ſhall come to their turn to ſucceed.

I again appeal to the conſcience of every honeſt proteſtant, if he did not underſtand, when he took the oath of allegiance, that he was to bear faith and true allegiance to the king's heirs and ſucceſſors, and him and

them to defend to the utmoſt of his power, if he did not underſtand heirs and ſucceſſors, for ſuch as were hereafter to be kings by the ordinary courſe of hereditary ſucceſſion? Moſt certainly the oath of allegiance and fidelity, comprehend not only the king, but likewiſe all his heirs and lawful ſucceſſors (which word *lawful* is inſerted to cut off the pretences of ſuch as ſhould not ſucceed by an unconſtitutional law, and the inſolent arbitrarineſs of ſuch as, being but ſubjects themſelves, think they may chuſe their king) who are all reckoned to be crowned in and with him by that oath, which is promiſſory, as well to the ſucceſſors, when their right ſhall fall, as to the preſent king; they have every one of them, in their reſpective degrees and orders, an indiſpenſable right confirmed to them by this oath. So that the predeceſſor hath no legal right to deprive his ſucceſſor, much leſs, did ſome

people

people foolishly think, could the two houses do it, for they are all within the obligation of the oath; and it was thought unreasonable that men should dispense with their own promissory oaths for others, for this would destroy all faith and confidence amongst men, and pull up the very roots of society and government, and, by palpably violating their oaths, change the very essence of monarchy; and they who have sworn cannot be free from the obligation of it before God; the obligatory force of their oaths can never be cancelled or dissolved.

So that there is not an Englishman who does not make himself liable to the guilt and punishment of manifest perjury, in case he admits or owns any besides the true successor, for his sovereign lord, and the successor is vested with the kingdom from the death of his predecessor; so that the death of the one becomes the investiture of the

the other. And whoever wilfully forſwears himſelf, does utterly forſake God's mercy, goodneſs, truth, the merits of our Saviour's nativity, life, paſſion, death, reſurrection, and aſcenſion; they refuſe the forgiveneſs of ſins, promiſed to all penitent ſinners, the joys of heaven, the company of the ſaints for ever, and being forſworn, does betake himſelf to the devil's ſervice, the maſter and father of all lies, falſehoods, deceit and perjury. The nature of an oath being thus tremendous, it nearly concerns us to look that the matter of our oaths be lawful, elſe we run ourſelves into a woeful ſnare.

If I ſwear to give a man my whole eſtate, and afterwards ſwear to give all or part of that eſtate to another, it is certain I muſt break my oath to one of them, becauſe it is impoſſible to perform it to both, and ſo I muſt be under a neceſſity of being forſworn; and into this unhappy ſtrait, every man

man brings himſelf that takes any oath, which croſſes ſome other which he had formerly taken. Which ſhould make all that love either God or their own ſouls, reſolve never thus miſerably to entangle themſelves, by taking one oath croſs and thwarting to another; but if any perſon has brought himſelf into ſuch a condition, he muſt firſt heartily repent of the great ſin of taking the unlawful oath, and then ſtick only to the lawful; for an unlawful oath binds to nothing but repentance, this is all that is in his power towards the repairing his fault, and qualifying himſelf for God's pardon.

When Richard duke of York claimed the crown againſt Henry the 6th, king *de facto*, it was objected againſt the ſaid claim by Henry's council: "It is thought that the lords of the land muſt needs call to remembrance, the great oaths which they have made

made to the king our sovereign lord, the which may be laid to the said duke of York; and that the lords may not break through their oaths." To which he gave his answer as follows; which I beg may be attentively considered, as it is an answer which will hold good as long as truth is known from falsehood. "Every man under the pain of damnation, is bound to obey the law and commandments of God; by the which law and commandments, truth and justice ought to be preferred and observed, and untruth and injustice laid apart and repressed; and so it is that of this bond and duty of obedience to God's law, no man may discharge himself by his own deed or act, promise, or oath, for else the contrary would ensue innumerable inconveniencies: wherefore seeing it is so, that the matter of the title and claim of the said Richard Plantagenet is openly true and lawful, and grounded on

evident

evident truth and juſtice, it followeth, that man ſhould have rather conſideration to truth, right, and juſtice, in this matter, according to the will and law of God, than to any promiſe or oath made by him to the contrary, conſidered namely, that by the law and determination of the holy church, an oath made to one perſon, to the prejudice or hurt of another, contrary to truth, juſtice, and charity, in which ſtand the plenitude and perfection of God's law, is void and of none effect, neither in any ways obligatory; and that the virtue and nature of an oath is to confirm truth, and in no ways to impugn it; and over that by the oath of *feaute*, homage, and legiance, no man is bound to any inconvenient and unlawful thing."

And, in truth, if natural allegiance can be transferred lawfully by private perſons, or by any number of people, or by the

house of commons chosen by them, then it may be transferred from one to another every day, and there is an end of the duty of subjects, and safety of the prince, since the one is easily freed from all obligation to obedience, and the other as readily to be dispossessed of the crown, whenever an Oliver subject, or any other Oliver can get possession of it.

But those who sincerely regard the laws of God and the land, who truly love their country and its constitution, and firmly adhere to the king in his greatest distress, being sensible no usurpation, however successful, could take away his just authority, nor any length of time debar him of his right; and, though the royal party had been frequently unsuccessful, yet, supporting themselves with the assurance and conscience of so good a cause, they kept up their hopes and endeavours, with a very

singular

ſingular attention, obſerved thoſe wild alterations and inconſiſtencies of their enemies, hoping their giddineſs, by ſo many turnings round, would enforce their fall at laſt, which accordingly happened, and brought about the glorious reſtoration; and a little before it happened, there was ſo little hopes of it, that Cardinal Mazarin would not ſee the king; and he and the Spaniſh miniſters looked upon the parliament more ſecurely ſettled againſt all domeſtic diſturbances, and more formidable with reſpect to their neighbours, than under Oliver himſelf, thought of nothing more than how to make a firm and advantageous alliance with it; and yet, within a very few months, it pleaſed God to work a wonderful change; and this deſtroyed, forſaken, perſecuted, and abjured king, was reſtored to the throne of his anceſtors with all poſſible marks of the moſt dilated

joy

joy and gladneſs that ever had been ſeen in any nation in the world; God ſhewed his power in overturning the counſels of the mighty, and in confounding their devices, and he is ſtill in heaven.

A very learned author obſerves, ſpeaking of the power of parliaments, that a parliament cannot do more than any abſolute monarch in his own kingdom; for they, when joined, are but in place of the ſupreme power, ſitting in judgment. We muſt not think that our parliament has an unlimited power *de jure*, ſo as they may make forfeiture, or take away life without a cauſe, or paſs ſentence againſt ſubjects without citing or hearing them. If they had ſuch power, we ſhould be the greateſt ſlaves, and live under the moſt arbitrary government imaginable; therefore an abſolute prince cannot, in an hereditary kingdom, prejudice the ſucceſſor's right of ſucceſſion; for

for the ſame right the preſent king hath to the poſſeſſion, the next of blood hath to the ſucceſſion. Nay, I very much doubt if a king has a right or power to diveſt himſelf of the government, and confer it upon his apparent ſucceſſor, while he lives and has power to diſcharge his truſt; for a king is appointed by God, not for himſelf, but for the good of the people; he is God's vicegerent, his viſible repreſentative here on earth, and has a charge and truſt committed to him by God, for which he is accountable, neither can he diveſt himſelf of it, till he who gave it diſcharges him of it.

Again, it is undeniable, in the opinion of all lawyers, that a king cannot in law alienate his crown, but that the deed is void; nor can he in law conſent to an act of parliament, declaring that he ſhould be the laſt heir. He cannot legitimate a baſtard in prejudice of former children,

though they have only but a hope of ſucceſſion; much leſs can he baſtardize or diſinherit the right heir, who is made by God, and honoured from him with that character. If then kings, how abſolute ſoever, cannot *de jure* invert the natural order of ſucceſſion, there is no reaſon that the eſtates of parliament ſhould have ſuch a power. For, by the known laws, they have no legiſlative power, otherwiſe than by aſſenting to what the king does; and all that their aſſent could do, would be no more than that they and their ſucceſſors ſhould not oppoſe his adminiſtration, becauſe of their conſent; but that can never amount to a power of transferring. For, if the ſtates of parliament had this power originally in themſelves to beſtow, why might they not reſerve it for themſelves, and ſo perpetuate the government in their own hands? So judge Jenkin aſſerts, that, according to

law,

law, no king can be named, or in any time made in this kingdom by the people, kings being before there were parliaments; for there is no good reaſon for their having a power to make kings, for then the monarchy ſhould not be hereditary, but elective: The very eſſence of hereditary monarchy conſiſts in the right of ſucceſſion, whereas, if the parliament can prefer the next heir ſave one, they may prefer the laſt of all the line; and the ſame reaſon by which they can chuſe a ſucceſſor, (which can only be when they have power above him) ſhould likewiſe juſtify their depoſing of kings; as we ſaw in the laſt age, that ſuch reaſons as have been urged to incapacitate the children of King Charles from the ſucceſſion, *viz.* popery and arbitrary government, did embolden men to dethrone and murder the father, who was actually king. For if it were once yielded, that the

houſes had a right alone in themſelves to take care of the *ſalus populi*, that none but ſuch princes ſhould ſucceed, who were approved of by the prevailing faction in their body, nothing but confuſion would follow, one party having their votes ſeconded by force one time, and a quite contrary another, and yet all pretending the public weal; and ſo a large breach ſhould be made by pretending to ſtop one dangerous ſucceſſor, to the inflowing of ſucceſſive uſurpers, and thereby the crown ſhould not only be ambulatory, but unſtable upon every head that wore it, and always in danger of a bloody ſurpriſe; till at laſt the regalia being ſecured from the expectant heir, the factious would find a way to pillage them from the preſent ſovereign, and convert them into a mace for the houſe of commons.

A grave and learned author obſerves, that no parliament can, by a compleat act, legally alter

alter the ſucceſſion in an hereditary monarchy; but, if he had lived at this time, he muſt have ſaid, what we now ſay, Except for the heinous offence of Popery: His reaſons are,

1ſt, Becauſe all kings and parliaments are ſubordinate to the laws of God, the laws of nature, and the laws of nations; ſo that unleſs we give the inferior power and juriſdiction over the ſuperior, no act of parliament can be binding to overturn what thoſe laws have eſtabliſhed. It is the voice of God and nature, That he who is next in blood to the deceaſed, has a right to his inheritance. This is allowed to flow from the laws of Nature, which every man finds grafted in his own heart, and which is obeyed without any other law, and for which men neither ſee nor can give any other diſtinct reaſon; all which holds in this caſe, for who doubts, when he hears of

an hereditary monarchy, but that the next in blood muſt ſucceed, and for which we need no poſitive law? Nor does any man enquire for a further reaſon, being ſatisfied therein by the principles of his own heart. From this ground it is, that though a remoter kinſman did poſſeſs as heir, he would by no length of time preſcribe a valid right, becauſe no man (as lawyers conclude) can preſcribe a right againſt the law of Nature. The bonds of nature are ſtronger than to be broken by violence, or under any pretences or colours of law. For this is a natural juſtice, or the natural law which gives to every one their due, and can never be ſo much as doubted of, ſeeing there is no obſcurity, no doubtfulneſs in it, as in thoſe things which take their riſe, depend upon, and have their progreſs from errors, or the uncertain and ever changeable opinions of men; but it is derived from the moſt bright

light and ſplendor of the eternal Mind, the fountain of light.

What reaſon can be given why the children of kings ſhould be debarred from ſucceeding their parents, more than private men can be refuſed or deprived of their reſpective ſucceſſions? And, truly, if either a king, or the eſtates of a kingdom, deſtroy the natural law, or the right of ſucceſſion devolved from nature, by ſuch a deed they plainly oppugn and ſubvert the rights and laws of nature; and yet God almighty has engraven the ſame nature upon the minds of men, againſt which no written law, or any pontifical canon, no not any thing that can be ſaid or done by men, can take place; for the law of Nature is the firſt rule of morality, and is not to be reckoned the law of men, but of God himſelf, which we draw from Nature herſelf, and with life itſelf, by which alſo princes themſelves are

bound as well as their subjects: So that no statute or law, or any civil or positive ordinance, can annul the right of succession; for it is most certain, that succession is the right of blood, which is not subject to any civil bond. If then God himself, whose living image a king is, has commanded that the ancient boundaries, which our fathers have set, are not to be removed under a curse, how can it be lawful to take away the rights of succession, which have been received by our fathers, and handed down to us?

2dly, That the law of God gives right of succession to proximity of blood, is manifest, in that if a man hath no son or daughter, his inheritance shall descend upon his brother; and so God determines in the case of Zelophehad's daughters, Numb. xxxvi. and so Ahaziah was made king in his father's stead, though the youngest, because, says the

the text, the Arabians had ſlain all the eldeſt, 2 Chron. xxii. 1. which clearly ſhews, that, by God's law, he could not have ſucceeded, if the eldeſt had been alive. So we ſee the birth-right was owned in Eſau, but that he ſold it; the privilege of which is there fully diſcovered, not only by ſhewing the right of primogeniture, but likewiſe in the donation of parents to their children, that bleſſing like the laſt will and teſtament. If, therefore, hereditary ſucceſſion is eſtabliſhed by the divine law, I can ſcarce think that any man can be ſo bold as to imagine, that any mortal can derogate from the laws of God and divine right; for nothing is nearer to impiety than for any probable cauſes or arguments whatſoever, to call in queſtion or annul thoſe laws, which were given by God Almighty, the power and authority of which laws do ever bind and oblige us. For the teſtimonies

Charles the 1ſt) expired not, nor was left adhering to the bloody ax or block. It wandered not, like Adrian's ghoſt, nor hovered in an airy abſtraction. For the king, or rather the king's line, (ſaith another great lawyer) is a name of continuance, which, as the law preſumes, ſhall always remain as head and governor of the people. It is the known maxims and rules of our law, That the king never dies; that, on the deceaſe of the king, the crown immediately deſcends to the right heir, before he be either proclaimed or crowned; and it is high treaſon to attempt any thing againſt his perſon or royal authority, before his coronation, as much as after. For the Engliſh monarchy, as ſaid before, knows no *interregnum*, being ſucceſſive by inherent birthright, whereby infinite inconveniencies are avoided. So that the ſoul of royalty, by a kind of tranſmigration, paſſeth immediately

diately out of one body into another, and in the ſame manner will every right heir acquire the royalty after the predeceſſor ceaſeth to be; for the very moment the reigning king expires, the neareſt and lawful heir entereth in his place; and ſo to refuſe him, or intrude another, is not to hold out the ſucceſſor from coming in, but to expel and put out their righteous king. Sir Edward Coke affirms, that it is a known maxim of the laws, that in the moment of the deſcent of the crown, the perſon on whom it deſcends, (which is the next immediate heir only) becomes complete and abſolute king to all intents and purpoſes. It would be a tedious work to recite all the authorities that in this caſe may be produced from the ſtatutes and law-books; I ſhall at this time content myſelf, inſtead of all others, with the act of recognition, 1 Jac. 1. for, in James the 1ſt, all hereditary

reditary titles that were ever received in this iſland, were united. The three eſtates in parliament acknowledging this to be an ineſtimable and unſpeakable bleſſing; and enumerating the benefits by the conjunction of York and Lancaſter, and the uniting of England and Scotland in the king's perſon, with the ſacrifice of their unfeigned and hearty thanks to Almighty God, and upon the knees of their hearts, with this and much more preamble, they humbly agnize the king's indubitable right, and their own moſt conſtant faith, obedience, and loyalty to him and his royal progeny. The words of the act are; "In a moſt humble and lowly manner we do beſeech your moſt excellent majeſty, (as a memorial to all poſterity, among the records of your high court of parliament, for ever to endure, of our loyalty, obedience, and hearty humble affection) it may be publiſhed

and

and declared, in the high court of parliament, and enacted by authority of the ſame, that we (being bound thereto by the laws of God and man) do recognize and acknowledge, (and thereby expreſs our unſpeakable joys) that, immediately upon the diſſolution and deceaſe of Elizabeth, late queen of England, the imperial crown of the realm of England, &c. did by inherent birth-right, and lawful undoubted ſucceſſion, deſcend and come to your moſt excellent majeſty, as being lineally, juſtly, and lawfully next and ſole heir of the blood-royal of this realm, as is aforeſaid, &c. and thereunto we moſt humbly and faithfully do ſubmit, and oblige ourſelves, our heirs and poſterities for ever, until the laſt drop of our blood be ſpent; and do beſeech your majeſty to accept of the ſame, as the firſt fruits of this high court of parliament, of our loyalty and faith to your

majeſty,

majeſty, and your royal progeny and poſterity for ever." By which it appears, that the crown of England is an unalterable entail, and the reverſion in him only by whom kings reign, without any election or conſent of the people, otherwiſe than by acknowledging the lawful right of kings derived from God, by their blood, to them.

What law, for the declaration of right, can be found in all the world more expreſs, more full and comprehenſive? How could they bind more ſtrongly, themſelves to the king, their heirs to his heirs, their poſterity to his poſterity, for ever? They make the hereditary right, and the obligation of the ſubjects to it, as far as they can, immutable, and eternal; they affirm it is eſtabliſhed by law divine and human; the right of the crown is not poſſeſſion, with or without conſent; it deſcended to King James before poſſeſſion, at the inſtant the queen died; ſo

it

it is to deſcend by this law to his heirs for ever. The true right is not poſſeſſion, but inherent birth-right, lineal ſucceſſion. Other perſons were then living of the royal family; but the next is declared to be the ſole heir: The crown is appropriated to the next heirs of the royal family for ever: The three eſtates vow obedience and loyalty to the king, and his heirs, by lineal deſcent; they debar themſelves and their poſterity from paying it to others; they devote their own blood, the laſt drop of it, and all the blood of their heirs, to maintain the lawful ſucceſſion againſt all oppoſers; and to this eternal duty they are bound by the laws of God and man. So that this act, till it be revoked lawfully, lays the ſame obligation on every one now alive, as if he had perſonally conſented to it: After this law, there cannot be any reaſonable diſpute, to whom the true duty of allegiance

is due, by all laws, reason, and good conscience; for here it is declared, that the three estates, and all the realm, are bound by the laws of God and man, to pay it to the lawful heir in the order of succession. And here it may be remembered, that the right of inheritance, established so fully in this act of recognition, is again more briefly, but as effectually declared in the act of Charles 2d, wherein it is affirmed, in opposition to all usurpations, that the imperial crown of these realms appertains, by just and undoubted right, to the king, and to his heirs and lawful successors. As the undoubted right was in King Charles, so, after him, in his lawful heirs: As the crown appertained by law to him when he was out of possession, so it must be understood to belong to his heirs and lawful successors, if they should be out of possession also. By the act of James, birth-right is

declared

declared to be the perpetual right to the crown: in the act of King Charles 2d it is affirmed to be the undoubted right, even when others are in possession. Neither of these acts are expresly repealed, and both together seem to make an impregnable proof, that hereditary was by law the only right of the crown of England. Against the positive determination of law, it is in vain to object facts. Actions are not lawful because they are done and recorded, but because they are conformable to law. But yet there are such things as right and justice, which every one is obliged to adhere to under pain of eternal damnation.

He that hath not deposed reason, the king of his soul, and elected in its place prejudice and passion to govern there, or dare credit the universal experience of the world, must be convinced that a lineal succession is the best barrier against assaults

from abroad, and is the ſacred, perpetual, vital energy, which preſerves government from internal putrefaction. And peace, ſafety, quiet, wealth, and juſtice, the ineſtimable bleſſings to be deſired in a government, may be better expected and hoped for under a natural prince, than from a foreigner; for theſe are the effects of love and benevolence, which are rather found among them who are of the ſame language, than from foreigners, who, we may ſuppoſe, are ignorant of our language, laws, and conſtitution, manners, cuſtoms, and genius of the people; and they may juſtly ſay, with the ſong, *This is not my houſe, I know by the building of it.* But, bleſſed be God, we have now a native king of our own, whom God long preſerve in peace, quiet, and proſperity. For the expulſion of the rightful heir of any kingdom has always been, and always will be the

the parent of innumerable calamities in every kingdom that is guilty of it: and no part of the earth is ſo fruitful of ſuch examples as this iſland of Great Britain, in which the paſſing by the right heir, beſides many other unſpeakable calamities, has ſeveral times overthrown a moſt noble kingdom.

I ſhall here bring ſome few examples for a proof of the miſeries that have been brought upon kingdoms, and eſpecially upon this, by the disjointing the ſucceſſion, and deny them who can.

We read what dreadful miſchiefs aroſe from Philip's preferring his youngeſt ſon to the kingdom of Mycene; from Oedipus commanding that Polynices, his youngeſt ſon, ſhould reign interchangeably with the eldeſt; from Pariſalis, queen of Perſia, preferring her youngeſt ſon Cyrus to her eldeſt Artaxerxes; from Ariſtodamus ad-

mitting his two sons, Proclus and Euristhanes, to an equal share in the Lacedemonian throne.

The like observations are to be made in the succession of Sinesandus, who killed his brother Suintill, rightful heir of Spain; also in the succession of Sforza and Francis, duke of Milan, and in thousands more; in all which, either the usurpers, or the kingdoms that obeyed them, utterly perished, or were brought to great ruin; for God is righteous in all his ways, and holy in all his works.

In Britain, the whole nation of the Picts were extirpated, by the endeavour of the people to hinder Kenneth, son of Alpinus, from possessing the kingdom as right heir of Fergusiana, sister of Mordred their king: So that, at this day, the very name of that some time famous nation, well known to the Roman and British writers, is utterly

extirpated: there is not a remnant of it known in any country of the world. From whence other nations may learn from their example, to acknowledge the true heir and ſucceſſor of a kingdom.

In England, the uſurpation of Harold upon the right of Edgar, opened a paſſage to William the conqueror; and what direful calamities and deſtruction did that conqueſt bring upon England? What a ſad ſcene did that noble kingdom become? how univerſal were its miſeries?

The uſurpation of William Rufus and Henry the firſt, upon their brother Robert, and of King Stephen upon the empreſs Maud, were accompanied with great effuſion of blood: ſo that a great part of the ancient Norman nobility were ſlain, or grievouſly haraſſed: Many thouſands were deſtroyed, and innumerable plunderings and pillagings of the inhabitants by both

ſides. Now, there was no other cauſe of all thoſe evils, but the nation not acknowledging or receiving the rightful heir of the kingdom.

The uſurpation of King John upon his nephew Arthur cauſed great diſputes during his reign, and the effects laſted a great while after.

What ſlaughter and deſtruction, as well of Engliſh as Scots, was about the ſucceſſion to the kingdom of Scotland after the death of Alexander the 3d, when Baliol and Bruce were competitors, and ſtrove between themſelves about the ſucceſſion: No perſon can deny but this controverſy was the occaſion of innumerable evils to both kingdoms, as Polidore affirms: The war continued for the ſpace of ſixty-two years without intermiſſion; and, during that time, there were upwards of three hundred thouſand men killed. Theſe calamities, theſe

murders

murders and devaſtations, ſprung merely from the controverted ſucceſſion to Alexander the 3d.

The removal of king Richard the 2d by Henry the 4th, occaſioned thoſe laſting wars and moſt miſerable devaſtations betwixt the houſes of York and Lancaſter; during which uſurpation, before the crown was ſettled upon Edward the 4th, hiſtorians reckon no leſs than ſeventeen pitched battles, and eight kings and princes of the blood ſlain and put to death; and that forty-ſix dukes and earls, beſides innumerable barons and gentlemen, and above two hundred thouſand common people, were ſlain and deſtroyed, in the ſpace of ſixty years. To which we may add, the cruel death of Edward the 5th, and his brother, by their bloody uncle, and his own miſerable end; and the calamitous fall of lady Jane Gray and her noble relations.

All

All which princes, although for supporting their unjust claims, invasions, and usurpations of the crown, they procured parliamentary concurrence and popular establishments, yet after so great an effusion of blood, could not in reality transfer the right from the next heir of the blood, but at last all centered again in the right heir.

Seeing then what dire calamities, and horrid consequences, attend changes in government; and considering likewise, the awful and tremendous nature of oaths, which were exacted by every usurper; and having also in our view the great ties that subjects are under to their sovereign, we need not wonder to find some that scrupled taking the oaths at the Revolution, as they thought they were contrary to their former oaths; and indeed at any time, or to any king, whether *de facto* or *de jure*, state-oaths are of little advantage, but rather

prove

prove hurtful than beneficial to the poſſeſſor, as it keeps up a diſtinction in the kingdom, which weakens the power of any king; and a king *de facto*, if he has not armed for, will find little aid from oaths; for they that ſwear to him will ſwear to the next that comes with more power; and a king *de jure* does not need the aſſiſtance of oaths; his ſubjects, that know their duty, and his right to reign over them, will be faithful, quiet, and obedient, and avoid rebellion as they would do any other damnable ſin; thoſe that have not a ſenſe of duty will ſwear, but they will regard their oaths no longer, than they have a favourable opportunity of breaking them. And indeed, conſidering the many changes and revolutions that have happened in every kingdom, and particularly in Europe, ſince Noah's time, I ſhould not much like to take an oath, declaring that Bamfylde Moor Carew,

the

the famous beggar, had no claim, pretence, or title to a crown. And I cannot ſee how any abjuration oath can, with abſolute ſafety and certainty, be taken by any ſubject; for ſurely there is no abſolute, viſible, moral impoſſibility of the ſwearer being perjured. Therefore as the preſent illuſtrious family are firmly eſtabliſhed in the throne, and as the old Chevalier is now no more, the oath of abjuration ſeems to be of no farther uſe; and as the oath of ſupremacy excludes many of his preſent majeſty King George's moſt loyal ſubjects the papiſts, who are as hearty and ſteady friends as any this government has, a change which has happened ſince the death of the old Chevalier, owing, as I am credibly informed, to their thorough belief of the Chevalier's ſon being a proteſtant; they therefore think that it is as well for them to live under one heretic as another; and indeed the papiſts in general,

and

and thoſe of them in particular, who are politicians, have never been hearty friends ever ſince the Revolution, to the Steuart family, which Mr. Barkley, in a treatiſe upon the penal laws, has moſt evidently made appear; For, ſays he, if they had wiſhed the reſtoration of that family, what could they not have done in the fifteen and forty-five, conſidering their numbers? What ſtrength could they have added to the unſucceſsful ſide? Nay, ſo great is their numbers, that if they had all been hearty in the cauſe, they certainly could have turned the ſcales; but their true intereſt lies in ſupporting the preſent family, under which they certainly enjoy more liberty and indulgence, than they could poſſibly do if a Steuart was upon the throne; for popery is ſo well known in this country, and the dangerous and deſtructive principles which it teaches, have been ſo often and

learnedly

learnedly expoſed and confuted, that it is now become utterly contrary to the genius of the Engliſh nation, which will not be fettered and hoodwinked with ſuch prieſt-craft and ſuperſtition; popery is, I ſay, ſo odious to this nation, that the people would be very jealous and watchful over any Steuart. They have no ground to ſuſpect the preſent family with any intention or deſire to introduce popery, therefore the papiſts live in quiet, and enjoy great indulgences, becauſe the nation is in no fear of them; but if a Steuart was upon the throne, the people for ſome time would be in conſtant fear of ſome ſecret deſign of introducing popery, therefore a Steuart would be forced to abridge the papiſts of many of their preſent indulgences, and lay them under very cloſe reſtraints; for the moment the rod of ſeverity was ſuſpended, and the ſmalleſt indulgence either granted or connived

nived at, the nation would be alarmed with the cry of popery from preſs and pulpit. And a Steuart, unleſs he were deſperately mad, would not dare to give the leaſt indulgence to a papiſt; for it would be ſome conſiderable time before all the people would come to a belief of the king's being a proteſtant, becauſe King James being forced to fly from his country, and ſeek the protection abroad which his own ſubjects would not give him, was ſeduced, and became a papiſt by means of the rebellion of his father's ſubjects.

As matters now ſtand, if the oath of abjuration and ſupremacy were cancelled, the one as being intirely unneceſſary and ridiculous, the other as a gracious indulgence to ſome of his majeſty's loyal and dutiful ſubjects, who cannot think as we do, then there would be no diſtinction between jurors and non-jurors, and party and

jealouſy

jealouſy would be no more, but we ſhould all appear to be one flock under one ſhepherd.

I am well ſatisfied the ſcruples that the papiſts have to the oath of ſupremacy are ill-grounded; yet if they believe them to be otherwiſe, I doubt not of their being guilty of perjury by taking the oath.

Monteſquieu in his Spirit of Laws, ſpeaking of the effect of an oath among a virtuous people, has theſe words: "There is no nation, ſays Livy, that has been longer uncorrupted than the Romans; no nation where moderation and poverty have been longer reſpected. Such was the influence of an oath among theſe people, that nothing bound them ſtronger to the laws. They often did more for the obſervance of an oath, than they would ever have done for the thirſt of glory, or for the love of their country. When Quintus Cincinnatus

the

the conſul wanted to raiſe an army in the city againſt the *Æqui* and the *Volſci*, the tribunes oppoſed him: "Well, ſaid he, let all thoſe who have taken an oath to the conſul of the preceding year, march under my banners." In vain did the tribunes cry out, that this oath was no longer binding, and that when they made it, Quintus was but a private perſon. The people were more religious than thoſe who pretended to direct them, they would not liſten to the diſtinctions or equivocations of the tribunes. When the ſame people thought of retiring to the *ſacred mount*, they felt an inward check from the oath they had taken to the conſuls, that they would follow them into the field. They entered then into a deſign of killing the conſuls, but dropt it, when they were given to underſtand, that their oath would ſtill be binding. It is eaſy to judge of the notion they entertained of the vio-

lation of an oath, by the crime they intended to commit. After the battle of Cannæ, the people were ſeized with ſuch a pannic, that they wanted to retire to Sicily. But Scipio having prevailed upon them to ſwear they would not ſtir from Rome, the fear of violating this oath ſurpaſſed all other apprehenſions. Rome was a ſhip held by two anchors, religion and morality, in the midſt of a furious tempeſt."

As to the frequency of oaths, ſays the judicious Dean Tucker, were the arch Fiend himſelf, the grand enemy of mankind, to have ſtudied all means poſſible towards annihilating the good impreſſions of religion, he could not have deviſed a more effectual method than this, which is here ready contrived for him: there being ſcarce a conſiderable branch of duty either towards God or man, but what is directly counteracted by theſe inſtitutions. In regard to God,

God, the idea of him as an omnipotent Judge and almighty Avenger, is obliterated and loſt, by frequent appeals made to him, in ſuch caſes where the ſubject-matter is either amazingly trifling, or exceſſively improper. Trifling ſurely would many things appear, were one to give a formal detail of all the abſurd or inſignificant paſſages, which might be collected out of the ſtatutes of colleges and univerſities, out of the cuſtoms, charters, and by-laws of cities, boroughs, corporate companies, and legal ſocieties—or even out of the public ſtatutes of the realm. And yet young gentlemen at their admiſſion into the univerſity, elections upon foundations, or taking of degrees—alſo all citizens or burgeſſes, either upon receiving their freedoms, admittance unto the exerciſe of certain trades, or ſerving of offices in excluſive companies; —and in ſhort, civil magiſtrates of every

denomination, are respectively sworn to observe and enforce these articles, according to their rank and station. As to improper occasions, what shall we think of those oaths, which either in a manner require impossibilities, or unnecessarily lay the mind and conscience under the most distressful difficulties? And hundreds and thousands of such oaths are continually imposed every year. This is a fact, which alas! there is no necessity of proving, because those who are obliged to serve the office of churchwardens, constables, &c. &c. and those who must transact business in the several branches of the revenue, especially the excise and customs, know it but too well: and as to others, whose scenes of life lead them not into this fatal knowledge, there is no need of drawing them out of their happy state of ignorance. But if the duty towards God is thus intrenched upon, by such a multi-

plication

plication of uſeleſs or improper oaths, the duty towards man is not leſs affected by the malignant tendency of many of them. And by this I do not mean to ſay, that the obligations to ſocial virtue, juſtice, honeſty, and integrity, are neceſſarily relaxed, in proportion as the firſt principle of religion, *viz.* the idea of an omnipotent Judge and almighty Avenger, is become leſs aweful and affecting (though ſurely this itſelf is a moſt alarming conſideration) but what is here intended is, that the expreſs tenor, and almoſt the very words of many of theſe oaths, are altogether repugnant to the duties of univerſal benevolence and good-will; and that a man cannot poſſibly obſerve them, and at the ſame time obſerve the chriſtian maxim, of doing as he would be done by. For example, if the concealments of fraud and iniquity, under the ſpecious title of myſteries in trade; and if the

groſſeſt diſingenuity, and ſelfiſh ſordid views, as are diametrically oppoſite to the public good, are to be inforced by the ſanction of an oath, as moſt undoubtedly they daily are—what conſiderable aſſiſtance can we expect from religion, when it is thus employed to deſtroy itſelf? And if the light that is in us, is thus turned into darkneſs, how great muſt that darkneſs be? In ſhort, were all the ſeveral inſtances to be enumerated, wherein the natural efficacy of religion is unhappily counteracted by ſome poſitive inſtitution, it would perhaps appear a greater wonder that religion, under ſuch circumſtances, ſhould produce any good effects at all, than that it ſhould produce ſo few. But yet theſe evils, great and crying as they are, may moſt eaſily be removed, if heartily and ſincerely ſet about. And what is better ſtill, there is hardly a poſſibility that any bad conſequences ſhould attend

the

the alteration; for in ſuch a caſe, no mobs, no inſurrections, or even popular clamours, could be raiſed to oppoſe the reformation; no ſtruggles for power, or convulſions in the ſtate could be excited, nor any proſpect of a change in the ſyſtem of religion or government, could, in conſequence thereof, be wiſhed for by ſome, or feared by others. And now ſhould you aſk, what is the remedy propoſed, that can be ſo ſafely adminiſtered, and yet be adequate to ſo great an evil? The anſwer is plainly this, Let all common and private ſubjects, who are not called to eſpecial engagements of truſt and fidelity, in the diſcharge of ſome particular offices, or in accounting with the revenue, be ſuffered to live quietly under the laws of the reſpective ſocieties to which they belong, without previouſly requiring any expreſs covenant whatever. But let every other perſon, who is more immediately

called to some particular engagement, be expressly obliged, under large bonds and penalties, besides the usual legal punishments, to discharge it faithfully. And thus, by these two simple, easy reformations, at least a million of perjuries would be prevented every year. In short, daily experience shews us that oaths are of no security to the government, they only increase the number of perjuries. In what respect are the swearers observed to discharge their respective duties better than the non-swearers? Or did you ever discover, that the administering so many oaths was attended with any solid advantage in the one case, or the non-administering with any real disadvantage in the other? Nay, to go further, were your own clerk, bailiff, steward, or butler, groom, house-keeper, and all the menial servants in your house, now to take ever so many oaths, that they would behave

with

with honeſty, diligence, fidelity, and ſobriety in your ſervice, would you repoſe one jot more confidence in them upon that account? No; I am certain you would not. Why therefore ſhould ſuch oaths be continued any longer in ſimilar caſes, ſeeing it is as clear as the ſun, that they ſerve to no other purpoſe in the world, but to involve thouſands and millions in the guilt of perjury? That ſwearing, or a ſolemn appeal to the court of heaven, ſhould be the laſt reſource of all, and only to be uſed upon important occaſions, and where other methods cannot probably ſucceed; and therefore in proportion as you deviate from this rule, you proſtitute one of the moſt ſacred ordinances of religion; you counteract its deſign, and make religion a parricide to itſelf; you looſen the bands of human ſociety, and in every reſpect you take the name of God in vain.

STATE

STATE OATHS bring woful calamities upon a nation; *because of swearing the land mourneth*; for no king is absolutely sure of keeping his kingdom for ever; seldom many centuries pass without revolutions, and successful rebellions in a kingdom; as this nation can sadly declare. When these things happen, the nation is involved in perjury, for nothing but perjury can carry on faction, and begin rebellion; but perjury is a most damnable sin; for God solemnly professeth, he will not hold them guiltless that take his name in vain; and sure the adding that to this commandment, and to none of the rest, is the marking this out for a most heinous guilt. And if you look in Zech. v. you will there find the punishment is answerable, even to the utter destruction not only of the man, but his house also. Therefore let all men beware, as they love their temporal or eternal welfare, to keep

most

moſt ſtrictly from this ſin. And indeed one would imagine, nothing could tempt a rational man to ſuch an act (of breaking an oath) if the too frequent and ſad experience of oppoſite, yea, contradictory oaths, in this impious age of ours, did not convince us, that nothing is too monſtrous or unreaſonable for an ill man to do. If popiſh zealots, by aſſurances of diſpenſations, were the only perſons, who aſſumed the impudence to commit this crime, it would not be ſo very ſtrange; but thoſe who call themſelves of the church of England, which gives neither indulgence nor diſpenſation to perjure themſelves, is at once their ſhame, and the world's wonder; doubtleſs ſuch people deſerve the deteſtation of all good men, as they certainly are the bane of government, the ſcandal of religion, and enemies of God, till by ſorrow and repentance, they ſhall

own

own their faults, and return to a better mind.

When men have use for a sin, suppose the breaking of an oath, they will not be at a loss for distinctions, interpretations, and glosses, to serve the dear interest of this sin; but a man is never a whit the less forsworn, because his perjury is a little finer, and more artificial than ordinary. They rather increase their guilt, by adding to their iniquity the impudent folly of mocking God, and deceiving themselves. It is a very sad sign of the decay of the Christian religion among us, to see so many who call themselves Christians, make so little conscience of so great a sin, as even the light of nature would blush and tremble at.

They are guilty of perjury who make use of tricks and cheats, and subtile artifices, to evade and elude the obligation of their oath; who will not understand the words

words of an oath, in their aſſertions and promiſes, according to the plain, genuine, and common acceptation of them, but by faſtening a ſecret ſenſe of their own upon ſome ambiguous terms, or by ſome reſerves, exceptions, or additions within their minds, do quite alter the meaning of the words, and thereby intend neither to be obliged to ſpeak truth, nor perform their promiſes, but only to forſwear themſelves ingeniouſly, and according to art. But none of theſe tricks will exempt them; becauſe an oath ought to be taken, and kept too, in the moſt plain, free, open-hearted, and ingenuous way that can be, with all ſimplicity and ſincerity of mind, and in that ſenſe of the words, that they uſually bear, and are commonly kept in, and particularly in that ſenſe, that the parties to whom we ſwear, for whoſe ſatisfaction and information we

give

give our promiſe or teſtimony, do, or muſt be ſuppoſed to underſtand them in.

There is nothing but perjury can carry on faction, and begin a rebellion; nothing but the higheſt profanation of God's name, can ruin the monarchy.

All that are intruſted in any office or employment, either ſacred, civil, or military, have given the beſt aſſurance to the prince, that a promiſe can make, or an oath can bind, that they will bear faith and true allegiance to his majeſty, his heirs and ſucceſſors, and him and them to defend to the utmoſt, &c. But if theſe ſacred bonds muſt be broken in ſunder upon every ſham, and hold us no longer than ſome men pleaſe, then certainly do we incur the guilt of a moſt heinous and grievous ſin, or rather amaſs and heap up horrid crimes; we do not only violate the laws of God and man, but alſo become moſt

treacherous

treacherous and ungrateful to the prince that relies or depends upon our fidelity.

The univerſal form of ſwearing among us, that binds the oath, and makes the ſanction is, SO HELP ME GOD, a direct invocation; or, SO HELP YOU GOD, in adjuration; which contains and implies a moſt dreadful imprecation, and horrible curſe upon our own ſouls, if we ſwear falſely; for we then call upon God, to withdraw his help, his grace, his mercy from us; we utterly forfeit his favour, and devote ourſelves to the ſevereſt vengeance. Every man that takes an oath doth, in effect, addreſs himſelf to God, to this effect; "As far forth as I depoſe or promiſe truly or faithfully, ſo do thou help me (O God, I beſeech thee) and bleſs me, protect and proſper me; but if I ſwear falſely, if I teſtify a lye, if I promiſe deceitfully, if I prove treacherous to my word, then, O God, thou righteous

Judge,

Judge, thou God of vengeance, I disclaim and renounce all help, and all hopes of mercy; let thy vengeance pursue and haunt me, let all the judgments of thy wrath seize and fall upon me, mayest thou never help me, nor incline thy mercy toward me, but cast me away in thy displeasure, and suffer me to perish both here and hereafter." Oh! what a load must this be to the perjurer's conscience? What can the world afford that is able to relieve or support a soul so desperately guilty, so mortally wounded? To whom shall he flee for succour, when God has forsaken him, and all good men abhor him, and his own conscience doth gripe and tear him? And what will it be in the end thereof? What shall be the fatal doom of the perjured, but eternal ruin and damnation? His portion shall be with the hypocrite and with the traitor, with Architophel and Judas. Don't think, because

God does not lay him ſprawling with a thunder-bolt, or ſtrike him with a flaſh of lightening, that therefore he is ſafe, and ſhall eſcape the vengeance of the Almighty; no ſurely; though God doth ſuſpend the execution, he will one day reckon with, and take off this wicked and unfaithful ſervant. He will not be merciful unto them that offend thus, out of malicious wickedneſs, but leave them often in an incorrigible eſtate, and rarely vouchſafes them the grace of repentance.

If then the caſe of the perjured be ſo dangerous, and almoſt deſperate, is it not ſad to obſerve ſo many thouſands involved in this great guilt, hugging themſelves in the poſſeſſion and enjoyment of their perjury, and never expreſſing any reſentment and remorſe, for having taken their unlawful and impious oaths, and for having acted, by virtue of them, the greateſt villainies? It concerns

us all therefore, to be very careful and ſcrupulous in taking oaths, and thoroughly weigh and conſider the purport, meaning, and intention of them, leſt we thoughtleſly and inadvertently run ourſelves into everlaſting ruin and perdition.

When a man hath taken an oath to perform, that which by the law of God and nature he is bound to perform, as to obey his king, or honour his father and mother, this oath can never be abrogated or diſpenſed withal, nor can a man be abſolved from the duty of obſervance of it, by any power under heaven; and therefore if he ſhall, at any time, take any contradictory to the former oath of allegiance and duty to his king, which duty and allegiance belong to him from me, by the law of God and nature, that oath were utterly unlawful and falſe by the laws of God and nature, and againſt conſcience. I conclude therefore, that none

can

can take this negative oath by the rule of God's law, with a ſound and good conſcience; againſt the light whereof, if I ſhould take it, I ſhould thereby declare myſelf either to be an atheiſt, in thinking there was no God to puniſh for ſo great wickedneſs, or elſe to imagine, that he were either unjuſt, and would not puniſh, or unable, and could not, or elſe careleſs of the actions of men, that he either ſeeth not, or regardeth not their wicked acts; which opinion the very heathens confuted and rejected, as you may find at large in Tully's firſt book *de natura Deorum.*

Is not the violation through fear, ſelf-reſpect, and far more the wilful prevarication, perjurious repeal, abrogation, and abjuration of our ſacred lawful oaths, a moſt deteſtable, crying, ſcandalous, damning ſin, exceeding diſhonourable to God, and injurious to religion? Let any perſon of the moſt

ordinary capacity anſwer, and he muſt be forced to ſay *yes*. Would it not be a moſt impious, unchriſtian, execrable, if not atheiſtical practice, for any perſon or perſons whatſoever, to impoſe an oath diametrically repugnant to, and inconſiſtent with, their former oaths to their lawful ſovereign, to enſnare and wound their conſciences, and involve them in the guilt of inevitable and moſt apparent perjury? Do not the oaths of ſupremacy and allegiance, extending not only to the late King George's perſon, but his heirs and ſucceſſors, inviolably bind both them, their poſterities, and the whole three nations, in perpetuity, in point of law and conſcience, ſo long as there is any heir of the crown or royal line in being? Were not the late illegal oaths and engagements to the protector Cromwell, enforced on the people againſt their conſciences, being directly contrary to their former lawful

oaths

oaths to our kings, their heirs, and ſucceſſors, abſolutely void in conſcience, yea, mere profanings and abuſes of God's ſacred name, while King Charles or any of the family of Steuart was alive? And if theſe oaths were taken out of fear or weakneſs, were no ways to be obſerved, no more than David's oath or reſolution to deſtroy Nabal with all his poſterity, 1 Sam. xxv. or Herod's oath, which he had more juſtly violated than obſerved, in beheading St. John the Baptiſt, St. Matt. xiv. 6. The heinous ſin of perjury, was by the Egyptians accounted a double offence, in that it put the cheat upon God and man.

From what hath been ſaid, I may infer two things; *Firſt*, That it concerns us all to continue firm and loyal to the king, and true to the monarchy, to keep our old lawful oaths, and at all times to abhor all new and illegal ones. *Secondly*, That oaths are

no ſecurity to princes, but rather tend to weaken their power, and may ſome time or other involve the nation in perjury.

Hitherto I have been endeavouring to ſhow the divine and natural inſtitution of regal government, and to free it from ſubjection to any arbitrary election of the people; I have likewiſe enquired, whether human laws have a ſuperiority over princes, becauſe thoſe that maintain the acquiſition of royal juriſdiction from the people, do ſubject the exerciſe of it to poſitive laws, but in this they err; for, as kingly power is by the law of God, ſo it hath no ſuperior to limit it; for a father was originally an abſolute ſovereign, with power of life and death, and a great family, as to the right of ſovereignty, is a little monarchy. Ariſtotle ſays, At the beginning cities were, and now nations are, under the government of kings, the eldeſt in every houſe is king; and a perfect

perfect kingdom, ſays he, is that wherein the king rules all things according to his own will; for he that is called a king according to the law makes no kind of government. To majeſty or ſovereignty belongeth an abſolute power not ſubject to law; it behoveth him that is a ſovereign not to be in any ſort ſubject to the command of another, whoſe office it is to give laws unto his ſubjects, to abrogate laws unprofitable, and in their ſtead to eſtabliſh others, which he cannot do, that is himſelf ſubject to law, or to others which have the command over him; for the firſt mark of ſovereign majeſty is to be of power to give laws, and to command over them unto the ſubjects; and who ſhould thoſe ſubjects be that would yield their obedience to the law, if they had alſo power to make the laws? Who is it that ſhould give the law, being himſelf conſtrained to receive it from them, unto whom

himſelf gave it? But the law expreſsly tells us, that the prince is acquitted from the power of the law. This I have already proved from the nature and inſtitution of government; but that there may not remain the ſmalleſt doubt or heſitation upon this head, I ſhall, after curſorily mentioning the arguments and proofs I have already brought, endeavour to ſhew by the teſtimony of the moſt able lawyers and hiſtorians, by the ſtatutes, and fundamental laws of this kingdom, by the doctrines of the Old and New Teſtament, by the practice and precepts of the primitive Chriſtians, by the faith and profeſſion of the primitive church, by the decrees of both univerſities, by the homilies, injunctions, articles, canons and liturgy of the church of England, and by the doctrine of her moſt eminent divines, that neither the peers of this realm, nor the commons, nor both together, in parliament,

nor

nor out of parliament, nor the people collectively, or representatively, nor any other person whatsoever, ever had, have, or ought to have, any coercive power over the person of the kings of this realm, and that the people are bound not to resist them, or those commissioned by them, in any case, or upon any pretence whatsoever; and seeing they have the sovereignty not divided with their subjects, it is not lawful for any one of the subjects, in particular, or all of them in general, to attempt any thing, either by way of fact, or of justice, against the honour, life, or dignity of a sovereign, albeit he had committed all the wickedness, impiety, and cruelty, that could be spoke of; for, as to proceed against him by way of justice, the subject hath no such jurisdiction over a sovereign prince, on whom dependeth that power to command, and who may not only revoke all the power of his magistrates, but

even

even in whose presence the power of all magistrates, corporations, estates, and communities cease, and the law itself is dumb while he speaketh, who is a *lex loquens*. Now if it be not lawful for subjects, by way of justice, to proceed against a king, how should it then be lawful to proceed against him by way of fact or force? For the question is not here, what men are able to do by force, but what they ought of right to do; not whether a subject hath power and strength, but whether they have lawful power to condemn their sovereign prince; but the subject is not only guilty of treason in the highest degree, who hath slain his sovereign prince, but even he also who hath attempted the same, who hath given counsel, or consent thereto, yea, if he have concealed the same, or but so much as thought it; for it is a known maxim of English law, that the person of the sovereign is irresistible by force, and in the practicable

forms of proceeding, transgressions against this law are judged upon accusations after the form of high treason; to say that the people are bound only by the laws, is the same as to say there is no law but in active force, which force is not constant, for sometimes one, then another division or faction of the people, proves to be the strongest; and the laws, if such may be, are ambulatory, and that which men call right and wrong, is contingent as a weather-cock, which varies with the air; all which is ridiculous to affirm in discourse.

To make governors subject to the censures and sentences of their subjects, what is it else than to subvert government, and confound relations, to sap the foundation of all order and establishment? It is to invert the order of all law and reason. There must be an absolute, supreme, arbitrary, unlimited and uncontroulable power lodged somewhere

where in every government; for the last appeal in all government must still be to an arbitrary power, that hath no superior on earth, otherwise appeals would be *ad infinitum*; the legislative power is an arbitrary power; for they are *termini convertibilis*. The truth of this proposition is evident from the nature and end of political society; for where there is a government there must be some to command, and others to obey, else there could be no possibility of any government at all. Now those who are to obey, or are subjects, are either obliged to submit to the uncontroulable power of the governors, which is the thing asserted, or else they have a right to controul their governors; in that case, the supposed governors are really the subjects, and the subjects governors, which is a contradiction in terms; for it is impossible that all should command or govern each other mutually, since then

there would be no government at all, but every man would be independent of all the world; governors and ſubjects would become words of no meaning. Moreover, it is contrary to the ſtanding doctrine of Chriſtianity, which calls the ſupreme power the ordinance of God, and that the reſiſting of them renders a perſon liable to damnation; for it is evident, that if it be lawful to reſiſt the ſupreme power, there can be no obligation in conſcience to obey any government, every one being left at liberty to reſiſt thoſe higher powers, when and as often as he thinks proper; for an obligation in conſcience to obey, muſt ariſe from ſome authority ſuperior to man, which commands it, or from a man's own conſent to bind him to ſuch obedience, either of which muſt eſtabliſh the truth of the above propoſition; for to aſſert an obligation in conſcience to obey, and at the ſame inſtant a liberty not

to

to obey, are plainly inconsistent and contradictory. And if there be no irresistible power, which we are obliged to obey, every person may refuse subjection when he pleases, and set up any other form of government; for if there be a right reserved for every person to judge of his governors, which judgement would be superior to the whole power lodged in the government, he may resume that right when he pleases, which every other person has a right to do; the consequence of which then would be, the destruction of all civil societies, and the encouraging all disorders, changes of government, and usurpation. Let us now hear what our most eminent lawyers think in this affair.

Granvil, in his prologue before his Tractat. de leg. supposeth the power of the sword primarily necessary for the king. "The king's majesty ought to be fortified

not

not only with arms, but laws. With arms, in the first place, without which his laws would be little worth." So saith Fleta, lib. 1. cap. 17. *Habet rex in manu sua omnia jura.* So saith Bracton in the beginning of his first book.

And, if the sword be originally in the king's hand, and none can bear it without authority derived from him, it must needs follow from hence, that it must be free from all coercive and vindicative power, and that no man can lawfully resist him or his forces; because no man can lawfully bear the sword, but by commission from him. Now, I would fain know who can carry the people against their sovereign and his armies, or who hath authority to make a captain, or so much as a drummer of a company? And, as all commissions from any but the king are unauthoritative, how can any man either give or receive such

autho-

authoritative commissions, and oppose and resist the king and his armies, without being guilty of the two damnable sins of rebellion and murder.

Jenkins saith, All jurisdiction do, and of right ought to belong to the king; all commissions to levy men for war are awarded by the king; the power of war only belongs to the king: it belongs to the king to defend his people, and to provide arms and force.

Cambden tells us, that the king hath sovereign power and absolute command among us, neither holdeth he his empire in vassalage, nor receiveth the investiture or installing from another, nor yet acknowledgeth any superior but God alone.

Bracton saith, "The king hath no superior but God: No man can put a necessity upon the king to correct and amend his injury, unless he will himself,

since

ſince he hath no ſuperior but God; it will be ſufficient puniſhment for him to expect the Lord an avenger." The king is free from the coercive power of laws and counſellors; but the law and his courts may direct and adviſe him according to his own free grace and good will; God alone can compel him.

Bracton de leg. Angl. ſays, There are under the king free men, and ſervants are ſubject unto his power, and alſo whatſoever is under him; and he himſelf is ſubject unto no man, but only God. If there be any offence committed by the king, for as much as there is no breve, to enforce or conſtrain him, there may be ſupplication made, that he would correct and amend his faults; which, if he ſhould not do, it is abundantly ſufficient puniſhment for him that he is to expect God a revenger; for no man may preſume judicially to examine

his doings, much less to oppose him by violence and force. To depose the king, to take him by force, or imprison him, until he hath yielded to certain demands, is adjudged treason in the lord Cobham's case. It is high treason, by the laws of the land, to levy war against the king, to compass or imagine his death.

Coke's Instit. Peruse all our books, records, and histories, and you shall find a principle in law, a rule in reason, and a trial in experience, that treason doth ever produce fatal and final destruction to the offender, and never attained to the desired end, (two incidents inseparable thereto;) and therefore let all men abandon it, as the most poisonous bait of the devil, and follow the precept in holy scripture; Fear God, honour the king, and have no company with the seditious. "My son, saith Solomon, fear thou the Lord, and the king,

king, and meddle not with them that are given to change." And again, 5 Rep. By the ancient laws of this realm, this kingdom of England is an abſolute empire and monarchy, conſiſting of one head, which is the king, and of a body politic. Alſo the kingly head of this politic body is inſtituted and furniſhed with plenary and entire power, prerogative, and juriſdiction, to render juſtice and right to every part and member of this body. Report 7. It was clearly reſolved, ſays he, by all the judges of England, that preſently, by the deſcent, his majeſty (king James) was compleatly and abſolutely king, without any eſſential ceremony or act to be done *ex poſt facto*; and that coronation was but a royal ornament and outward ſolemnization of deſcent; and this appears evidently, by infinite precedents and book-caſes, as king Henry the 6th was not crowned till the eighth year of

his reign, and yet divers men, before his coronation, were attainted of treason, felony, &c. by which it manifestly appears, that, by the laws of England, there can be no *inter-regnum* within the same. Legiance, says he, or obedience of the subject to the sovereign, is due by the law of nature, which is part of the laws of England; was before any judicial or municipal laws in the world, and is immutable, and cannot be changed. Legiance, or faith of the subject, is *proprium quarto modo*, to the king, *omni*, *soli*, & *semper*. And as the king has two capacities, left we should mistake in that point, he says, Legiance is due only to the king. It is true, that the king has two capacities in him, one a natural body, being descended of the blood-royal of the realm, and this body is of the creation of the Almighty God, and is subject to death, infirmity, and such like; the

the other is a politic body or capacity, ſo called, becauſe it is formed by the policy of men; and in this capacity the king is eſteemed to be immortal, inviſible, not ſubject to death, infirmity, non-age, &c. Now, ſeeing the king hath but one perſon, and ſeveral capacities, it is neceſſary to be conſidered to which capacity legiance is due. It was reſolved, (in Calvin's caſe) that legiance was due to the natural perſon of the king, (which is ever accompanied with the political capacity, and the political capacity as it were appropriated to the natural capacity) and it is not due to the political capacity only, that is, to the crown or kingdom, diſtinct from his natural capacity.

Smith's Com. lib. 1. By old and ancient hiſtories that I have read, I do not underſtand that our nation hath uſed any other general authority in this realm, but

only the royal and kingly majeſty, which at the firſt was divided into many and ſundry kings, each abſolutely reigning in his country, not under the ſubjection of other, till by fighting the one with the other, the vanquiſhed always falling to the vanquiſher, at laſt the realm of England grew into one monarchy. Neither any one of thoſe kings, neither he who firſt had all, took any inveſtiture of the hands of the emperor of Rome, or any other ſuperior or foreign prince, but held of God to himſelf, and by his ſword, his people, and crown, acknowledging no prince on earth his ſuperior; and ſo it is kept and holden to this day.

Craig's Hiſt. of Suc. We contend that monarchy is of divine original, ordained of God, and that no other form of government obtained among his peculiar people; yea, that no other is ſo conducive to the

ſafety

ſafety of any nation, nor is ſo agreeable to the laws of God and nature: Yea, moreover, I undertake to prove, that it hath been received by the conſtant practice of all ages, and perpetual cuſtom of all nations. There is no mention of any other government in all the Scriptures: Our Saviour would never have borne that office of a king, unleſs he had been perfectly aſſured that kingdoms were of God's appointment. That order ought invariably to be kept which God himſelf inſtituted, *i. e.* that all other creatures are to be ſubject to, and obey man, men to honour their king, and the king to obey God, to whom he is accountable.

Warwick of Gover. Thoſe in whom the ſovereign power is lodged, are God's truſtees, and to God only they are to anſwer for their truſt.

Tryal Regicides. Sir Orl. Bridgman's ſp.

Gentlemen, let me tell you what our law-books ſay; for there is the ground out of which (and the ſtatutes together) we muſt draw all our concluſions for matter of government. How do they (the law-books, &c.) ſtyle the king? They call him the lieutenant of God. And the king is immediately from God, and hath no ſuperior. The ſtatutes ſay, that the crown of England is immediately ſubject to God, and to none other power. The king (ſay our books) is not only *caput populi*, the head of the people, but *caput reipublicæ*, the head of the commonwealth, the three eſtates. And truly thus our ſtatutes ſpeak very fully. Common experience tells you, that we ſpeak of the king, and ſo the ſtatutes of Edward the 3d; we call the king our ſovereign lord the king, that is, ſupreme. And when the lords and commons in parliament apply themſelves to the king, they

uſe this expreſſion, Your lords and commons, your faithful ſubjects, beſeech. Gentlemen, you ſee, if the king be immediate under God, he derives his authority from no body elſe; if the king have an imperial power, if the king be head of the commonwealth, head of the body politic, if the body politic owe him obedience, truly I think it an undenied conſequence, he muſt be ſuperior over them. What is an imperial crown? It is that which, as to the coercive part, is ſubject to no man under God, is not ſubject to any human tribunal or judicature whatſoever. The king is the ſupreme head, he is not puniſhable by any coercive powers; the laws provide for that. The king can do no wrong; it is a rule of law, it is in our law-books very frequent. If he can do no wrong, he cannot be puniſhed for any wrong. Now, the law, though it provide for the king, yet,

yet, if any of his miniſters do wrong, though by his command, they are puniſhable. Again; I muſt deliver to you for plain and true law, that no authority, no ſingle perſon, no community of perſons, nor the people collectively or repreſentatively, have any coercive power over the king of England. And again; Remember, that no power, no perſon, no community or body of men, not the people, either collectively or repreſentatively, have any coercive power over the perſon of the king by the fundamental laws.

Theſe are but a few of the very many teſtimonies I could produce from law-books, to prove that kings are ſubject to none but God, from whom they have their crowns in an hereditary ſucceſſion; and what hath been ſaid, I doubt not, will be ſufficient to ſatisfy any impartial and unprejudiced reader; but becauſe we live in an age,

wherein

wherein there are great numbers of diſaffected and deluded perſons, who are deaf to all reaſon and common law, which is nothing but common ſenſe, when it is urged in defence of the crown; I ſhall now ſhew that theſe eſſential rights of ſovereignty, which I have been diſcourſing of, are declared to belong to the perſon of the king by the expreſs ſtatutes of this realm.

Firſt then, he is declared to be not accountable to his ſubjects, or obnoxious to their coercive power, 12 Car. 2. c. 30. "We, your majeſty's dutiful and loyal ſubjects, the lords and commons in parliament aſſembled, beſeech your moſt excellent majeſty, that it may be declared, and be it hereby declared, that, by the undoubted and fundamental laws of this kingdom, neither the peers of this realm, nor the commons, nor both together, in parliament or out of parliament, nor the people collectively

lectively or repreſentatively, nor any other perſons whatſoever, ever had, have, or ought to have any coercive power over the perſons of the kings of this realm."

By 25 Ed. 3. c. 2. it is declared, without excepting any manner of caſes or pretences to the contrary, "That to levy war againſt our lord the king in his realm, or to be adherent to the king's enemies in his realm, giving them aid or comfort in the realm, or elſewhere, is treaſon." And Coke upon the place 3 Inſt. ſaith, that this was high treaſon before by the common law, for no ſubject can levy war within the realm without authority from the king. If any levy war, ſaith he, to expulſe ſtrangers, to deliver men out of priſons, to remove councillors, or againſt any ſtatute or to any other end, pretending reformation, of their own heads, without warrant, this is levying a war againſt the king, because

cauſe they take upon them royal authority.

The parliament, 16 Rich. 2. c. 5. affirms, that the crown of England hath been ſo free at all times, that it hath been in ſubjection to no realm, but immediately ſubject to God, (in all things touching the regality of the ſame crown) and to none other.

The ſtate of England is a kingdom, empire, monarchy, the head thereof a ſupreme head, a ſovereign, a king; his crown an imperial crown: 24 Hen. 8. c. 12. 25 Hen. 8. c. 22. and 26 Hen. 8. c. 8. 1 Eliz. 1. and 1 Jac. 1.

The people of England (lords and commons) do by law ſwear allegiance to him as to the only ſupreme governor, and to aſſiſt and defend all juriſdictions, privileges, preheminences, and authorities belonging to him, his heirs and ſucceſſors, or annexed

nexed to the imperial crown of the realm, 1 Eliz. 1. and 5 Eliz. 1.

Since the glorious and happy restoration, it was in general terms declared treason, to levy war against the king within this realm or without. The parliament, 14 Car. 2. c. 4. declares, that it is not lawful to take arms against the king upon any pretence whatsoever, no not upon the account of religion, and that the contrary opinion is traiterous.

And, to cut off all popular pretences of defensive war, it is declared, that the sole supreme government, command and disposition of the militia, and all forces by sea and land, and of all forts and places of strength, is, and by the law of England ever was, the undoubted right of his majesty, &c. And that both or either of the houses of parliament, cannot, nor ought to pretend to the same, nor can, nor lawfully

may

may raiſe or levy war, offenſive or defenſive, againſt his majeſty.

And 12 Car. 2. c. 11, & 30. and 14, c. 29. declares the long parliament a traiterous aſſembly; and the execrable murder of Charles the 1ſt, and all proceedings tending thereto, unparalleled treaſon. They call the exterminating Charles the 2d, traiterous conſpiracies of uſurping tyrants. They call the perfidious traitors, rebellious wicked traitors; and the uſurpations abominable uſurpations. See the proclamation for the 30th of January.

By all theſe ſtatutes cited, and many more that might be, it appears, that the king is accountable to none but God; that the ſword is ſolely his, and theirs to whom he commits it; that he can be ſubject to no coercive power, nor ought any way to be reſiſted by force. I now proceed to inquire how far the Scriptures have agreed with the

three

three estates. It will, I hope, be of considerable moment, and great weight to all into whose hands I wish this book to come, clearly to prove that subjects, according to the will of God, under the Old Testament, were not allowed to take arms against their sovereign; and if it was then unlawful, it is now much more so under the dispensation of the gospel. And I doubt not to put the matter out of all doubt by express testimonies from both Old and New Testament.

Josephus tells us, that the Jews knew nothing of the doctrine of resistance; they were, says he, trained to principles of obedience for conscience, without any regard to interest or power; and, in so doing, they followed the precepts of their Lord and Master, as is evident from many places of sacred writ. And the same author, (speaking of Saul and David) lib. 7. ch. 14. says, Saul is God's king, and his person sacred,

ſacred, let the man be never ſo wicked; and he is only accountable for the ill-management of his power, to him that gave him the power itſelf. In Scripture, governors, as having God's authority, are ſtiled Gods, and the children of the Moſt Higheſt, Pſalm lxxxii. 6. The reaſon that David ſo much reverenced Saul was his entire conviction that he was the anointed of the Lord. We are told, Prov. viii. 15, 16. By me kings reign, and princes decree juſtice. By me princes rule, and nobles, even all the judges of the earth. And God declared by Jeremiah, Jer. xxvii. 5, 6. I have made the earth, the man and the beaſt that are upon the ground, by my great power, and by my out-ſtretched arm, and have given it to whom it ſeemed meet unto me. And now have I given all theſe lands unto Nebuchadnezzar the king of Babylon, my ſervant, and the beaſts of the field have

I given him alſo, to ſerve him. And Cyrus alſo was called the Lord's ſhepherd, Iſa. xliv. 28. Princes being often ſtiled ſhepherds, becauſe their office and government is thereby much reſembled. He was called the Lord's anointed, Iſa. xlv. 11. And Daniel tells Nebuchadnezzar, That God ſetteth up kings, Dan. ii. 21, 37. Solomon perſuaded to that duty and reverence, which ſubjects owe to princes, Eccleſ. viii. 2, 3, 4. declareth, I counſel thee to keep the king's commandment, and that in regard of the oath of God. Be not haſty to go out of his ſight: ſtand not in any evil thing; for he doth whatſoever pleaſeth him. Where the word of a king is, there is power, and who may ſay unto him, What doſt thou? And Prov. xxx. 31. he ſpeaks of the king againſt whom there is no riſing up. When David declared, Pſalm li. 4. Againſt thee only have I ſinned; St. Ambroſe, apol. Dav. c. 10.

gives

gives this ſenſe thereof, That David being king, was not ſubject to the penalties of any human laws, but the whole puniſhment was in the hands of God alone. And accordingly we ſee, that though murder and adultery, in inferior perſons, by the law of Moſes, was puniſhed by the judges of Iſrael, yet David's judgment muſt be according as God himſelf would pronounce and execute. And though God ſo far pardoned David as to ſpare his life, 2 Sam. xii. 13. yet the child muſt die, even by the hands of God. And God denounced againſt him, that the ſword ſhould not depart from his houſe; whereby Amnon, Abſalom, and Adonijah were cut off. And the rebellion of Abſalom was part of the puniſhment of his ſin.

'Tis very remarkable, and worthy obſervation, that about the very time when David expreſſeth his high abhorrence of ſtretching out his hand againſt Saul, he

was under the extraordinary guidance of the Spirit of God, and then penned the liv. and lvii. Pſalms; as appears from the titles of thoſe Pſalms, compared with 1 Sam. xxiv. 3—8. chap. xxvi. 1.

The reaſon for not reſiſting the ſovereign, becauſe he is God's vicegerent, doth imply, that he hath all his power from God. This is very ancient divinity, as appears from what Daniel ſaid to Nebuchadnezzar, chap. ii. 37. and from what he ſaid to his grandſon Belſhazzar, chap. v. 18, 19. Now if, according to theſe expreſs texts of Scripture, the ſovereign have all power from God, he muſt, by conſequence, have the power of the ſword from him, as St. Paul particularly obſerves, "he beareth not the ſword in vain; for he is the miniſter of God;" and if he have the power of the ſword from him, it muſt follow, that the people have no right to bear it, neither for offence nor defence,

defence, or resistance, without commission from him. He may indeed abuse this, as well as any other branch of his power; he may bear the sword not for defence, but for the offence and destruction of his subjects; but if he do, they have no authority to resist him; they cannot without sinful usurpation oppose their swords to his; as it was written by the apostle in the time of a wicked tyrant, "He that resisteth the power, resisteth the ordinance of God, and they that resist shall receive to themselves damnation." But the general reason assigned for not resisting the sovereign, because he is God's vicegerent, doth imply, that to resist him is to resist God, who hath made him sovereign, and set him above all coertion and force. If the nature of sovereignty and of the crown imperial did not require, that he should not be violently resisted, yet the honour of God, whose image and substitute

he is, would require the subject not to do so, lest he should seem to resist God. Now to assert, that sovereign princes are the vicegerents, images, and anointed ones of God, is very agreeable to the holy Scriptures; "Thou shalt not revile the Gods, nor curse the ruler of thy people; God standeth in the congregation of the mighty, he judgeth among the Gods." God has honoured them with his own name, and called them Gods, and the sons of the Most High, "I have said ye are Gods, and all of you the children of the Most High." Accordingly saith Jesus, John x. 34. It is written in your law (of princes) I said ye are Gods, &c. These earthly gods, these vicegerents and images of the almighty Sovereign, these anointed of the Lord, must not be resisted, by those whom God hath subjected unto them: If they do wrong, if they tyrannize it over their subjects, he will punish them, and turn

their

their hearts, if he ſee fit; but their ſubjects muſt not defend themſelves by violence againſt them, they muſt not take up defenſive arms againſt them, becauſe they are in God's ſtead; for whoſo reſiſteth the power, reſiſteth the ordinance of God. To deny this is to deny the Bible, and contradict the doctrine and practice of Chriſt and all his followers. If the prince poſſeſſes the ſeat of judgment, not of men, but of God, Deut. i. If the king be the common father of the country, and is therefore to be honoured, that our days may be long in the land, Exod. xx. If we are expreſsly forbidden to revile the Gods, or to curſe the ruler of thy people, or to ſpeak evil of the ruler of thy people, Exod. xxii. much more are we bound not to do them evil. If any man who curſes his father is guilty of death, and his lamp is to be put out in obſcure darkneſs, Prov. xx. much more he who curſes the father of his country.

This doctrine was taught by our Saviour inviolably, and practised by the primitive Christians under ten famous persecutions, under pagan princes, and afterwards under one apostate, and two Arian emperors, within the first three hundred years. It has been the doctrine ever since Adam, and will continue to be so by every orthodox Christian as long as there is a Bible upon earth, till time shall be no more.

We shall find resistance to lawful authority, as plainly forbidden in the New Testament as adultery is prohibited in the commandments.

From what hath been said, to shew that non-resistance of subjects against their sovereigns, is a duty laid down in the Old Testament, we might make a reasonable inference, that the same must abide and continue a duty under the times of Christianity. For our Saviour intended to promote and establish righteousness, goodness,

and

and therefore would never give
late the great duties of ſub-
, which violation the peace of the
would be much diſturbed; the duties
meekneſs baniſhed, and the practice of humility and obedience rejected, which are ſo much aimed at in Chriſt's doctrine, which commands his followers to take up their croſs. Our bleſſed Saviour never intended to diminiſh or deſtroy the rights of ſovereigns, but on the contrary was very tender of them, commanding his diſciples to render unto Cæſar the things that were Cæſar's: And this was ſaid by him with reſpect to Tiberius, who was a man exceſſive in cruelty, drunkenneſs, and luſt. It was ſaid indeed upon the account of paying tribute; but holds as well to all the rights of ſovereignty, and particularly as to this of being maſter of the ſword; and therefore when St. Peter drew his ſword in his Maſter's defence,

against the officers of the cruel Sanhedrim, he sharply rebuked him, saying, Put up thy sword; for he that useth the sword, shall perish by the sword. This very text was ever understood by the primitive Christians, as an absolute prohibition to use any violence against the sovereign, and was applied by Mauritius, the commander of the Thebæan legion, when he charged his soldiers, in Christ's name, not to resist, under the specious pretext of self-defence.

And truly, if the Christian religion had given a right to the professors of it, to defend themselves and it against the illegal violence of the sovereign, it had not been a taking up the cross but the sword, not evangelical but Mahometan. One would never imagine, that Jesus, the founder of our faith, had said, If any man will come after me, let him deny himself, take up his cross, and follow me, if resistance was allowed;

lowed; but obedience to magiſtrates, and they that have rule over us, is not only a ſtate doctrine, but the doctrine of the holy Jeſus, and a neceſſary and indiſpenſable one too; as ſufficiently appears from theſe famous words of St. Paul, Rom. xiii. 1, 2. Let every ſoul be ſubject unto the higher powers. For there is no power but of God, the powers that be, are ordained of God. Whoſoever therefore reſiſteth the power, reſiſteth the ordinance of God, and they that reſiſt ſhall receive to themſelves damnation. And at the 4th verſe the apoſtle calls the rulers the miniſters of God. So that as long as this text ſtands in our Bibles, the doctrine of non-reſiſtance or paſſive obedience, muſt be of obligation to all Chriſtians. If we are commanded every where conjunctly, as they ſay, ſo as one anſwers the other, to fear God and honour the king: If we are obliged to obey magiſtrates

giſtrates for the Lord's ſake, that is, if we deſire to pleaſe God, we muſt be ſubject to the king as ſupreme, or governors ſent by him, 1 Pet. ii. 13, 14. whatever they are. If our Lord and Saviour owned the authority of Pilate, though a moſt unjuſt man, to be from God; if he approved of the empire of Tiberius Cæſar, who was alſo a moſt unjuſt man, by commanding tribute to be paid to him; nay, if they are reckoned ſenſual, deviliſh wretches, defiling the fleſh, who deſpiſe dominions, and ſpeak evil of dignities, Acts xxiii. and are ſaid to walk after the fleſh, who deſpiſe dominions, and ſpeak evil of dignities, 2 Pet. ii. then I reckon I have authority from Scripture to declare it a villainous crime in ſubjects to rebel, even againſt tyrants and wicked kings, far more againſt the righteous and juſt; for thereby they become guilty of a moſt grievous crime, the reward of which, if not timouſly,

timoufly, heartily, and fincerely repented of, will be eternal damnation. Whoever wifhes to fee more teftimonies of obedience from Scripture, may read Exod. xxii. 28. Ecclef. x. 20. 1 Pet. ii. 17, 23. Prov. xxiv. 21. Rom. xiii. 1—8. 1 Pet. ii. 13, 14, 15. Titus iii. 1. Ecclef. viii. 2, 4. Rom. xiii. 2. 4. 1 Sam. xxvi. 9, 11. Jer. xliii. 10. Ifa. xliv. 28. Prov. viii. 15, 16. Hof. viii. 4. Pfal. li. 4. Prov. xxx. 31. Ezek. xvii. 19. &c. &c.

Above the examples of any other fort of men, the fpirit of the primitive Chriftians deferve to be reverenced and regarded. We fhall find that they, even when they were under perfecution by the Roman emperors, did yet conftantly acknowledge their authority to be from God, and always anfwered thofe heathen emperors, "WE ONLY WORSHIP GOD, IN OTHER THINGS WE GLADLY SERVE YOU." Whilft they lived under

under pagan emperors, before the time of Constantine, there was no such thing heard of, as their undertaking to depose their kings or emperors, no, nor any pretence of power in any Christian bishop to absolve them from their allegiance; yet the heavy sufferings of the Christians were then very great. Eusebius Eccl. Hist. lib. 8. acquaints us, That in the Diocleſian perſecution, in Thebais, which was none of the greateſt countries of Africa, there were not only for ſome days, but for ſome whole years together, ſometimes ten or twenty, often thirty, other times ſixty, and ſometimes an hundred, with their wives and children, in one day ſlain by various methods of cruel death. And he himſelf had there ſeen ſome put to death by fire, and others the ſame days by the ax, even ſo many that the executioners were tired out, and the axes blunted. Such inſtances ſpeak the admirable patience, hope,

and obedience of thoſe holy men, and the wonderful power of God, that preſerved and propagated his church, notwithſtanding ſo great oppoſition.

In Perſia, Sozomen tells us, lett. 2. That under Sapores his reign, there were 16,000 martyrs, of whom account could be given by name, and that beſides them were ſo great a multitude, who died for the profeſſion of Chriſt, that they were more than could be numbered.

And in France, the Thebæan legion, of about 7000 Chriſtians, being all armed and valiant, became martyrs by the cruelty of Maximianus the Emperor, when they refuſed to join in the pagan worſhip. They told the emperor, that they ſubmitted their bodies to his power, that they could never be charged with cowardice, or deſerting his wars; but in this utmoſt peril, where deſperate circumſtances might make men more

reſolute,

resolute, they would not take arms against him; yea, though we have arms in our hands, we will not use them for resistance.

It was the undoubted practice of the primitive Christians, to receive the injuries and hardships under which their religion put them, without thought of defending themselves by resistance, since their religion stood condemned by the laws of the emperor, and so to have resisted the power would have been to resist the ordinance of God. For the sake of Christ and his religion, they were killed all the day long, and were counted as sheep for the slaughter, in so much that in the time of Trajan, Tiberius the president of Palestine, gives this account of their passive temper, in his letter to the emperor; "I am weary with punishing and destroying the Galilæans, who are called here Christians, according to your majesty's command, and yet they cease not to discover themselves, that they

may

may be ſlain. I have laboured both by intreaties and menaces, to make them conceal themſelves from being known to be Chriſtians, but I cannot make them put an end to their own perſecution."

Some have ſaid, that the reaſon why the ancient Chriſtians did not reſiſt or depoſe their emperors, was becauſe they wanted ſtrength to carry on ſuch an undertaking. But if this had been a method which God accounted fit for them to undertake, he who wrought ſo many miracles for the propagating Chriſtianity, and enabled apoſtles and other Chriſtians to prevail againſt the power of Satan in the world, would have made the undertaking of a few Chriſtians to have been ſucceſsful againſt the power of the empire, as well as he did the army of Gideon againſt the Midianites, and Jonathan and his armour-bearer againſt the Philiſtines. But this ſuggeſtion doth caſt an high diſ-

paragement upon the precepts of Chriſtianity: For this muſt ſpeak the apoſtles to diſſemble and deal hypocritically, when they command obedience, even for the Lord's ſake, and forbid reſiſting the power, as incurring damnation, and oppoſing the ordinance of God; if notwithſtanding all this, they would allow the Chriſtians to take arms againſt their rulers, whenſoever they ſhould have ſtrength enough to carry ſuch an enterprize. What is this but to undermine the ſimplicity of the goſpel, and to ſuppoſe the apoſtles under diſguiſe to pretend God and religion, where they had really no regard to them, but to the carrying on a politic deſign, and a contrivance of craftineſs. But there is no truth in that plea, that the Chriſtians in the primitive times always wanted ſtrength; for, though at the firſt planting of Chriſtianity their numbers were ſmall, yet they did in a ſhort time increaſe

to

to great and vaſt multitudes. If we enquire into the ſtate of Chriſtianity in the time of paganiſm, we ſhall find that it ſoon conſiſted of vaſt numbers of profeſſors. At the end of Nero's reign, Hermas, Clement, Tacitus, Lactantius, and Sulpicius Severus, call them, *i. e.* the Chriſtians, a great multitude; but at the end of Domitian's reign, moſt countries were full of Chriſtians. Oroſius calls the Chriſtian church at that time, lib. 7. cap. *ult.* a church firmly eſtabliſhed in the world. Pliny, not long after, ſhews that Pontus and Bithynia were full of Chriſtians. In the reign of Severus, when Tertullian wrote his Apology for the Chriſtians, nothing but their religion kept them from reſiſting the forces of the empire; he ſhews what miſchief Chriſtians might have done the Roman empire, merely by retiring out of it, ſo great were their numbers, that they would have left it in a manner deſti-

tute, yet they proceeded not even so far as that; they were more in number within the bowels of the empire, than the Moors, and Germans, and Parthians, and all its enemies without. Nay, he appeals unto their judges, if all places were not full of Christians? And tells them, that without rebelling they were able to destroy the empire, and lay it waste and solitary, by withdrawing into other parts of the world. And in his Address to Scapula, governor of Carthage, and the African provinces, he saith, That they were the greatest part of almost every city. If we, says he, Tertul. Apol. ch. 37. would act the part of open enemies, could we want numbers or armies? We have filled your cities, islands, castles, camps, &c. For what war should we be unfit, though our numbers were unequal, who can so readily lay down our lives, if our religion did not require us rather to die, than to draw our swords to

kill

kill others? This was 160 years before the time of Julian. And about fifty years after this, St. Cyprian writing to Demetrianus, tells him, That they let themſelves be apprehended without reſiſtance, nor did they endeavour to revenge the injuries they ſuffered, although they were very copious in their numbers, and more than enough for the heathens. Had the numbers of the Chriſtians been ſmall, St. Cyprian would never have written to the proconſul of Africa, that the company of Chriſtians were very great and numerous; yet they would not revenge themſelves againſt the unjuſt violence of their perſecutors. And the emperor Maximus, whoſe teſtimony cannot be ſuſpected of partiality to the Chriſtians, as he was the fierceſt enemy they ever had, ſays, Euſeb. Eccl. Hiſt. lib. 9. Almoſt all men have left the heathen wor-

ſhip, and joined themſelves to the ſociety of Chriſtians.

We have a proof how numerous the Chriſtians were by St. Cyprian's collection, which was made from his own church only, to relieve ſome African Chriſtians, taken captive by their barbarian neighbours: "Accordingly, ſays he, we have ſent you 100,000 ſiſterces;" which, as biſhop Fell ſays, by the niceſt calculation we can make, amounts in our money to 781 *l.* 5 *s.* a great ſum indeed it was, to be collected in thoſe days, when money had another value than now it has. The number of Chriſtians muſt have been very great, ſince they were not the richeſt, we may ſuppoſe, of the people, who generally were, and are too much afraid of their eſtates, to come into a perſecuted religion.

Again, in the reign of Diocleſian, about fifty years after Chriſtianity was become

the

the general religion of the empire, when the Chriſtians met every where in infinite numbers, and built large and ſpacious churches in all cities, and ſtill increaſed more and more, in ſo much that the temples of idols were very deſolate.

This was the ſtate of Chriſtianity before the Dioclesian perſecution, to which Conſtantine put an happy end. He reigned thirty years, and Conſtantius twenty-four, which makes up fifty-four years; in which time Chriſtianity became the religion both of the emperors and the empire: The croſs was made the imperial ſtandard, and Paganiſm lay every-where languiſhing in the cities, the country, and the camp: This conſideration made Gregory deride the deſign, which Julian had to extirpate the chriſtian religion, as former emperors had endeavoured to do; therefore if the Chriſtians in the former times of Severus, Decius, and

Diocleſian, who yet were enough to reſiſt the forces of the Roman empire, were counted by Gregory but a few, in compariſon to the Chriſtians who ſtood firm in the times of Julian, let any man of common ſenſe judge, whether the profeſſors of Chriſtianity in Julian's time, were a ſmall and defenceleſs number, not able to reſiſt. 'Tis abſurd to impute their peaceable and ſuffering behaviour, to want of ſtrength, numbers, or opportunity; had they thought reſiſtance lawful, 'tis difficult to imagine, but that, having all theſe advantages, they ſhould at leaſt have attempted to rebel; but they, inſtead of making the leaſt reſiſtance, or attempting to draw their ſwords againſt him, under the ſpecious pretence of defending their religion, and preventing the extirpation of it; they followed the example of the former Chriſtians, in patiently ſuffering as martyrs and confeſſors of Chriſt, and

practiſed that flaviſh doctrine of paſſive obedience, even then when they ſaw the execrable heathens rip up their fellow Chriſtians, and taſte their life's blood; when they ſaw them ſtuff their bodies with barley, and throw them to the ſwine to be devoured; when they ſaw their fellow Chriſtians anointed with oil and honey, and expoſed to bees, waſps, and hornets. There never was greater examples of paſſive obedience than in the ſhort reign of Julian, whoſe chriſtian ſubjects and ſoldiers, though far more numerous than in any age before them, not only patiently endured many grievous miſeries; but, what was the moſt provoking and grievous of all miſeries, they daily heard and ſaw themſelves, their religion, and their bleſſed Saviour, moſt blaſphemouſly ſcorned and reviled, yet for all that, by the principles of their ſuffering religion, which allowed ſubjects no other remedy againſt

perſecuting

perſecuting ſovereigns, but patience, prayers, and tears, they were as faithful and obedient to him, as ever they had been to their old maſters, Conſtantine and Conſtantius, although he was the firſt apoſtate tyrant.

Julian knew they would rather die than reſiſt him; he knew that paſſive obedience was their principle; and this made him ſo ſecure of them, and ſo bold to abuſe them, their religion, and their Saviour, though they were ſo numerous. Poor men, they had not learned the faſhionable doctrine of reſiſtance, they practiſed the doctrine of the croſs, like other doctrines of the goſpel, in goſpel-ſimplicity, and were contented to die martyrs for their religion, when they were not criminals in the eye of the law: Poor wretches, they were manacled and fettered with the ſlaviſh principles of paſſive obedience, which Chriſt and his apoſtles had taught them; they valued their eſtabliſhed religion

religion very much, but would not fight for it; they knew no medium between flying and ſuffering, nor as yet had they invented any diſtinction, to juſtify reſiſting of lawful princes, and this they were taught by their moſt eminent fathers.

St. Cyprian tells Demetrian, That we Chriſtians never make any reſiſtance, when your officers take us into cuſtody, becauſe we are ſervants of God and Chriſt, and our cauſe will be one day avenged. And though our numbers are great, and we are conſequently able to make our adverſaries very ſenſible of our reſentments, yet we bear all your violence and injuſtice without the leaſt return of it. Obſerve here the entire dependence upon God. In another place he ſays, We (meaning Chriſtians) muſt rather be killed than kill; though the ends of government were then the ſame as now, and Chriſtians had then as much natural

right

right to their lives and fortunes as they have since, yet they did not apprehend that they were at liberty to defend either, by resistance to the lawful powers. In another place he says, "They, *viz.* Christians, ought not to resist aggressors, it being a thing disagreeable to their innocence and sanctity to kill even a nocent person, but that they were ready to give us their own heart's blood, and to make their retreat, as soon as might be, out of a world so full of wickedness and barbarity."

Tertullian Apol. chap. 31. Thence is the emperor, whence he became man before he was emperor; thence he hath his authority from whence he hath his breath. And *ad Scap.* cap. 2. he declares, That the Christian knows that the emperor is constituted by God. Agreeable to which is that of Irenæus, Iren. lib. 6. chap. 24. By whose command

they

they are born men, by his command likewise they are ordained kings.

And Dionysius of Alexandria, in Euseb. lib. 7. acknowledged, that it was God that gave the empire to Valerian and Galienus; the same truth is asserted by St. Aug. *de Civ. Dei*, lib. 5. He also resolves that the emperor is not subject to laws, who hath power to make other laws. For indeed it is the rule of Solomon, that we must keep the king's commandment, and not to say, What dost thou? Because, where the word of a king is there is power, and all that he pleaseth he will do.

St. Ambrose, in his apology for David, expressly saith, He was a king, and therefore bound to no laws; because kings are free from the bounds of any fault.

St. Augustine saith, The christian soldiers under Julian, served their temporal lord, though an idolater and apostate, not for

lack

lack of force to resist, but for respect of their everlasting Lord in heaven: otherwise the christian soldiers had Julian, in his voyage against the Persians, far from home, and from help, and might have done with him what they would, and yet they chose rather to spend their lives for him, than to lift up their hands against him; and the christian world stirred not in his absence against him, but with patience endured his oppression, and with silence expected his return.

Let any equal reader now consider, whether the evidence of reason, Scripture, and antient fathers justify any person, in thinking that when he shall at any time suffer for loyalty, which is injoined by the gospel, that he suffers for the testimony of a good conscience, in fearing God, and honouring the king, that he suffers for righteousness' sake, for adhering to gospel-truths that require our fidelity and subjection to the higher

higher powers, not only for wrath, but for conſcience ſake. At this rate, whenever that ſhall be our lot, we may rejoice, becauſe great will be our reward in heaven.

I ſhall now proceed to produce authorities to ſhew, that paſſive obedience, ſince the Reformation downward, hath been the conſtant doctrine of the church of England, plainly and forcibly taught in her book of homilies, litany, and worſhip; and as it was always an apoſtolical, ſo it continued to be an epiſcopal doctrine, and the martyrs, confeſſors, and all true ſons of that church, have maintained, that ſubjects ought not to reſiſt, nor can be freed from their obedience to their ſovereign, upon any pretence whatſoever.

I ſhall begin with the neceſſary Doctrine and Erudition for any chriſtian man. A book ſet forth by king Henry 8th, with the advice of his reforming clergy, who

were

were the compilers of it; such as Cranmer, Ridley, &c. who on the fifth commandment write thus. "Subjects be bound not to withdraw their fealty, truth, love, and obedience toward their prince, for any cause whatever it be, ne for any cause they may conspire against his person, ne do any thing towards the hinderance or hurt thereof, nor of his estate." And afterwards they prove this out of Rom. xiii. "Whosoever resisteth the power, resisteth the ordinance of God, and they that resist shall get to themselves damnation." And upon the sixth commandment, "No subjects may draw their swords against their prince, for any cause whatsoever it be, or against any other (saving for lawful defence) without their prince's licence. And although princes, which be the supreme heads of their realms, do otherwise than they ought to do, yet God hath assigned no judges over them in this world,

but

but will have the judgment of them reſerved to himſelf, and will puniſh them, when he ſeeth his time." So much for the authority of theſe martyrs, from whence I paſs to the book of homilies.

In the fourth homily againſt wilful rebellion, it is ſaid, that though they ſhould move rebellions againſt their lawful prince, and that though they ſhould pretend ſundry cauſes, as the redreſs of the commonwealth, or reformation of religion, yet God allows neither the dignity of any perſon, nor the multitude of any people, nor the weight of any cauſe, as ſufficient for the which ſubjects may move rebellion againſt their princes.

In the ſecond part of the ſermon of obedience, ſubjects are bound to obey ſovereigns as God's miniſters, although they be evil, not only for fear, but alſo for conſcience ſake; and here, good people, let us all re-

mark diligently, that it is not lawful for inferiors and ſubjects, in any caſe to reſiſt, and ſtand againſt the ſuperior powers; for St. Paul's words be plain, that whoſoever withſtandeth ſhall get to themſelves damnation. Our Saviour Chriſt himſelf, and his apoſtles, received many and diverſe injuries of the unfaithful and wicked men in authority; yet we never read that they, or any of them, cauſed any ſedition or rebellion againſt authority. We read oft that they patiently ſuffered all troubles, vexations, ſlanders, pangs, and pains, and death itſelf, obediently, without tumult or reſiſtance. Chriſt taught us plainly, that even the wicked rulers have their power and authority from God, and therefore (mark the reaſon) it it not lawful for the ſubjects to withſtand them, although they abuſe their power. This homily further tells us, that the "vocation and calling of God's people is to be patient, and

of

of the ſuffering ſide; and that we ought to obey governors, although they be wicked and wrong doers: Afterwards it proves from the example of David, that we may not withſtand, nor in any wiſe hurt an anointed king (mark the reaſon) which is, God's lieutenant, vicegerent, and higheſt miniſter, in the country where he is king. He durſt not once lay hands upon God's high officer the king, whom he did know to be a perſon reſerved and kept only to God's puniſhment. A general rule and leſſon to all ſubjects in the world, for not withſtanding their leige lord the king, not to take ſword by their private authority againſt their king, God's anointed, who only beareth the ſword by God's authority, for the maintenance, &c. who only by God's law hath the uſe of the ſword at his command. It is an intolerable madneſs, ignorance, and wickedneſs for ſubjects to make any mur-

muring, rebellion, resistance, or withstanding commotion, or insurrection, against their sovereign lords. We may not in any wise stand violently, or rebel against rulers, or make any insurrection, sedition, or tumults, either by force of arms, or otherwise, against the anointed of the Lord, or his officers; but we must in such case, patiently suffer all wrongs and injuries, referring the judgment of our cause only to God."

Here we have line upon line, and precept upon precept for passive obedience; here we are taught that we must suffer all sorts of wrongs and injuries from our sovereign, without resistance and withstanding him. I might produce many more quotations, to shew that this was the standing doctrine of the church of England, to which all orders of the clergy have subscribed. It is asserted, can. 1. 1640. That the most high and sacred order of kings

is

is of divine right, being the ordinance of God himſelf, founded in the prime laws of nature, and clearly eſtabliſhed by expreſs texts, both of Old and New Teſtament.

The homily of obedience teacheth us, "That the high powers are ſet in authority by God, that they are God's lieutenants, God's preſidents, God's officers, God's commiſſioners, God's judges, ordained of God himſelf. And if preſidents and lieutenants of God, will tranſgreſs the bounds within which they ought to act, we muſt not forcibly reſiſt or repulſe them, but give place to their wrath, and ſuffering according to the will of God, committing our ſouls to him in well-doing, as unto a faithful Creator."

This is all the goſpel allows, or could indeed in reaſon allow, becauſe there muſt ſomewhere be fixed and acknowledged ſuch a ſovereign authority, which none have

power to resist, or against which none have power of taking arms; but had the gospel allowed resistance against the sovereign, it had unhinged all government, by putting the sword into private men's hands. But the church of England declared, not only in her homilies, but in her worship, particularly in the collect for the king, in the communion-service, that kings are God's ministers, and have his authority; "Thy chosen servant our king and governor, that he knowing whose minister he is——and that we and all his subjects, duly considering whose authority he hath."

Let us next see what the sense of the universities is upon this head.

The university of Oxford, in a convocation held 25 June 1622, decreed, with an unanimous consent, "That subjects, upon no account whatever, ought to resist their king or prince, by force of arms, and that

it

it is not lawful, for the ſake of religion, or any other cauſe whatſoever, to take up arms, offenſive or defenſive, againſt their king and prince. And they further decreed, that every doctor and maſter of the univerſity, and all bachelors of law and phyſic, ſhall ſubſcribe to it. And likewiſe that every one who ſhall hereafter take a degree in any faculty, ſhall, before admiſſion, firſt ſubſcribe to the above decree; and then, at the ſame time, take an oath, that they do not only from their heart, condemn and deteſt all republican, and anti-monarchical principles, but will alſo for ever condemn and deteſt them. To the ſame purpoſes, a judgment and decree of the ſame univerſity, paſt in convocation, 21 July 1683. See alſo the humble recognition, and addreſs of the univerſity of Oxford to the king (James 2d) 21 February 1684. Are theſe now the ſentiments of that famous and loyal univerſity?

The univerſity of Cambridge preſented an addreſs to king Charles 2d, Sept. 18, 1681, wherein they ſay, "We will ſtill believe and maintain, that our kings derive not their titles from the people, but from God, and to him only they are accountable; that it belongs not to ſubjects either to create or cenſure, but to honour and obey their ſovereign, who comes to be ſo by a fundamental, hereditary right of ſucceſſion, which no religion, no law, no fault, or forfeiture can alter or diminiſh." In their addreſs 25 July, 1683, They, from the bottom of their hearts, thankfully adore and bleſs that great goodneſs, which has been ſo watchful over your majeſty, its own image here on earth; ſo do we equally deteſt and abhor the ungodly principles and bloody practices of thoſe barbarous villains, who could imagine miſchief againſt ſo much mercy, and ſin againſt ſo great goodneſs.

In

In their addreſs to king James 2d, upon the death of his brother king Charles 2d, March 25, 1685, they ſay, We, your majeſty's moſt dutiful and loyal ſubjects (duly reflecting upon the many great bleſſings, which your univerſity of Cambridge enjoyed, during the reign of our late gracious ſovereign of ever bleſſed and glorious memory) do, with a deep ſenſe of our great loſs, heartily condole the deceaſe of that moſt excellent monarch: But withal, conſidering that (in deſpite of all the violence and treachery of turbulent men, who maliciouſly endeavoured to turn the ſtream of lineal ſucceſſion out of its proper and ancient channel) God has been pleaſed to provide for the laſting ſecurity of theſe nations, as well by preſerving the ſacred life and perſon of your majeſty, as alſo by your rightful and peaceable acceſſion to the imperial crown of theſe kingdoms: We do rejoice with all

our

homely ſtile. "When I was travelling in the Tower (ſaith he) my lord Perſy was telling me, of the faithful ſervice that he had done the king's majeſty, that dead is. Had I ſeen my ſovereign lord in the field (ſaid he) and had I ſeen his grace come againſt us, I would have lighted from my horſe, and taken my ſword by the point, and yielded it to his grace's hands. Marry (quoth I) but in the mean ſeaſon, you played not the part of a faithful ſubject, in holding with the people in a commotion and diſturbance. It hath been the caſt of all traitors to pretend nothing againſt the king's perſon, but to others. Subjects may not reſiſt any magiſtrates, nor ought to do any thing contrary to the king's laws."

Biſhop Bilſon, in his book of the true difference between chriſtian ſubjection and unchriſtian rebellion, written againſt the papiſts in queen Elizabeth's time, there,

p. 260.

p. 260. ſaith, "Deliverance if you would have, obtain it by prayer, and expect it in peace, thoſe be the weapons for Chriſtians. P. 262. The ſubject hath no refuge againſt his ſovereign, but only to God by prayer and patience. Nay, this doctrine was taught by the martyrs in queen Mary's day. For Bradford, in his letter ſaith, "Howbeit, never for any thing reſiſt, or riſe up againſt the magiſtrates."

Doctor Tillotſon ſays, ſermon on St. Luke ix. 55. "When religion once comes to ſupplant moral righteouſneſs, and to teach men the abſurdeſt things in the world, to lye for the truth, and to kill men for God's ſake, then ſurely it loſes its nature, and ceaſes to be religion." Let any man ſay worſe of atheiſm or infidelity if he can. And in another ſermon on 1 Cor. iii. 15. "The Romiſh doctrine of depoſing kings, in caſe of hereſy, and abſolving their ſubjects from their alle-

giance to them, is not a mere ſpeculative doctrine, but hath been put in practice many a time by the biſhops of Rome, as every one knows that is verſed in hiſtory. I hope nobody expects that I ſhould take the pains to ſhew, that this was not the doctrine of our Saviour and his apoſtles, nor of the primitive Chriſtians. The papiſts are, many of them, ſo far from pretending this, that in ſome time and places, when it was ſeaſonable, and for their purpoſe, we have much ado to perſuade them, that ever it was their doctrine; but if tranſubſtantiation be their doctrine, this is, for they came both out of the ſame forge, I mean the council of Lateran, under pope Innocent the 3d. And if (as they tell us) tranſubſtantiation was then eſtabliſhed, ſo was this; and indeed one would think they were twins, and brought forth at the ſame time, they are ſo like one another; that is, both of them ſo monſtrouſly unreaſonable."

Doctor

Doctor Stillingfleet's doctrine and practice of the church of Rome truly ſtated, p. 106. "The principles of our church are directly contrary to them (*i. e.* depoſing principles) and our houſe of convocation would as readily condemn any ſuch doctrines as the univerſity of Oxford; and all the world knows how repugnant ſuch principles are to thoſe of the church of England: and none can be rebels to their prince, but they muſt be falſe to their church."

Biſhop Sanderſon's preface to biſhop Uſher's power of the people. "As for thoſe that would derive the original of all government from the people, by way of pact or contract, it may ſuffice to ſay, that they take that for granted, which never yet was proved, nor I dare ſay, will ever be proved while the world ſtands, either from Scripture, reaſon, or hiſtory. *Jus Gladii*, the right and power of the ſword (which is really the

ſovereign power) belongs, we know, to kings, but it is by the ordinance of God, not the donation of the people; for he beareth the ſword, as St. Paul tells us, as God's miniſter, from whom he received it, and not as the people's miniſter, who have no right to give it, becauſe they never had it themſelves."

Doctor Comber's Compan. to the Temp. I know, ſays he, nothing ſo common with rebels and uſurpers, as to pretend love to thoſe they would ſtir up againſt their lawful prince, but it appears to be ambition and covetouſneſs in the latter end; and ſuch perſons deſign to riſe by the fall of many thouſands. Or if religion ſhould be the ground of the quarrel, beſides our late ſad experience, reaſon will tells us, that war and faction, injuſtice and cruelty, can never lodge in thoſe breaſts where that pure and peaceable quality doth dwell.

dwell. If it be a foreign prince that opposeth our king, he is a robber, and unjust to invade his neighbours rights; if he be a subject, who riseth against his sovereign, he hath renounced Christianity with his allegiance, and is to be esteemed a troubler of our Israel. Therefore whosoever they be that are enemies to the king, or whatsoever the pretence be, we wish they may never prosper, in the black impiety of unjust invasion or unchristian rebellion. And how exactly our fidelity and our devotion in this, agree with the rites and manners of the first and best Christians, may appear to any discerning person.

Doctor Calamy's sermon on Eccles. x. 20. "Supreme governors have the same relation to God, as subordinate magistrates have to their sovereign princes; they are employed and intrusted by him, and accordingly he expects subjection to them as to himself,

that we ſhould honour and ſerve them, according to the high divine character they bear; he takes what is done againſt them, as done againſt himſelf. Whoſoever reſiſteth the power, reſiſteth the ordinance of God, ſo ſaith St. Paul. To oppoſe and ſhake off their government, to plot and conſpire againſt their life, is to rebel againſt God; and when we will not ſuffer our lawful ſovereign, whom the divine Majeſty hath appointed to rule over us, we do by juſt conſequence, and fair interpretation, endeavour what we can to dethrone God himſelf, and prove traitors, not only againſt our natural lord and king, but againſt the heavenly Monarch himſelf, by whoſe commiſſion he reigns."

Biſhop Larn, part before the Lords. "Chriſt and his apoſtles, by their precepts, and the primitive Chriſtians, by their practice, are all clearly for ſubjection to magiſtrates.

First, Our bleſſed Saviour ſtrictly enjoined all men, to give unto Cæſar the things that are Cæſar's; and he put himſelf to the expence of a miracle to pay tribute unto Cæſar. He ſubmitted himſelf to all the powers that were over him at that time; his parents, the ſanhedrim, Herod, Pontius Pilate; and he rebuked St. Peter ſharply, for ſmiting with the ſword; bade him put it up again into his place; if not, he threatened the puniſhment of death, he ſhall periſh by the ſword. Thus far our bleſſed Saviour.

Secondly, For his apoſtles, though their main work was from heaven, yet were they very ſollicitous to ſettle peace upon earth, by preſſing home obedience unto magiſtrates. Submit yourſelves unto every ordinance of man for the Lord's ſake, 1 Pet. ii. 13. Pray for kings and all in authority, 1 Tim. ii. 2. And the ſame apoſtle delivers his mind fully and plainly, Rom. xiii. 1. Let every

ſoul be ſubject to the higher powers. And obſerve with what earneſtneſs he repeats it, as if he had foreſeen the rebellious times, which we have felt: Wherefore thou muſt needs be ſubject, not only for wrath, but for conſcience ſake; not only for fear what the people may, but for what God will inflict; the moſt terrible judgment within the compaſs of human apprehenſion, damnation.

Thirdly, The practice of the primitive Chriſtians, is a faithful commentary upon theſe texts. And certainly their authority, who lived in the primitive light (and who bear witneſs to their own diſadvantage, teaching ſubmiſſion to magiſtrates, the abſolute tyrants, and who never took up arms againſt them, but prayers and tears) ought to beget in us a conformity to thoſe innocent times, when Chriſtianity gained as much

much by patience, as it is now likely to lose by rebellion."

Doctor Sherlock's Sermon on Psalm xviii. 50. "Some make religion a pretence for their rebellion; religion, the greatest and dearest interest of all; but methinks, it is a dangerous way for men to rebel to save their souls, when God has threatened damnation against those who rebel. There is nothing more expresly contrary to the revealed will of God, than treasonable plots and conspiracies against sovereign princes; and though God does many times permit those things to be done, or else no man could ever be guilty of any sin; yet his forbidding of it is a plain argument, that he does not approve it, that he will not countenance it; nay, that he will not permit it, but where he sees great and wise reasons to do so. A strange argument for God's permission of

an unrighteous act, that it is his will it ſhould be ſo."

Doctor Scott's Sermon on Prov. xxiv. 21. "This is the doctrine of our church, expreſſed in the homily of obedience, We may not in any wiſe withſtand violently, or rebel againſt the rulers, or make any inſurrection, ſedition, or tumult, either by force of arms, or otherwiſe, againſt the anointed of the Lord, or any of his officers; but we muſt in ſuch caſe (that is, when we are commanded unlawful things) patiently ſuffer all wrongs and injuries, referring the judgment of our caſe to God; and in this, as well as in other doctrines, her government and diſcipline, our church doth exactly copy after Chriſtianity; if therefore we believe this doctrine, our conſciences will never conſent to our liſting ourſelves againſt the government; but inſtead of believing it, we openly contradict and oppoſe it, as all

thoſe

thoſe do who pretend religion for their faction; we are ſo far diſſenters from the church of England: for conformity to a church conſiſts not merely in frequenting its prayers, ſermons, and ſacraments, and complying with its rites and diſcipline, but alſo in believing its doctrines, or at leaſt, not oppoſing and contradicting them; but whoſoever ſides with faction againſt the government, upon pretence of religion, doth thereby openly renounce the doctrine of our church, and becomes a profeſt non-conformiſt, how conformable he may be in other reſpects."

Having now, I think, fully ſhewn that the chriſtian doctrine doth fully provide for the ſafety and ſecurity of princes, it is a matter of wonder, that any man ſhould have the confidence to make Chriſtianity a foundation for the higheſt reſiſtance againſt princes, to depoſe them from their crowns, and forbid ſubjects to yield obedience; but I

cannot too much admire the wisdom, as well as goodness of God, in forbidding us to resist or defend ourselves by force against a sovereign; and I am not able sufficiently to express my admiration of the resignation, patience, and suffering of the primitive Christians, and their steadiness and boldness, in maintaining the godly doctrine of obedience to superiors, which the glory of the Reformation, the church of England, formerly inculcated, both by precept and example; and lastly, I cannot say enough in praise of our happy, thrice happy constitution, whose fundamental laws are the laws of God, the laws of nature, the laws of reason, and the laws of all learned and civilized nations.

Therefore I am resolved, if at any time these doctrines and laws become unfashionable, and lay the professors and maintainers of them under inconveniencies and persecution; I am, I say, resolved, by God's assist-

ance,

ance, if I must suffer, to suffer according to the gospel of Christ, and church of England, and laws of our constitution: let others despise both, or all three if they will, and preach and practise resistance, but I am resolved to practise passive obedience, after the example of the Jewish prophets and martyrs, Christ and his apostles, and all their true followers; and I can comfort myself, in the most melancholy prospect of things, with the hopes of a reward for dying a martyr, which I can never have by suffering as a rebel. This is my consolation, by the grace of God, I can be content to be barbarously murdered; I know to whom I pay my passive obedience, to my God, and to my king, the laws of God, and the imperial laws of the land require it: for though God approves our religion, and would have all the world to embrace it, and hold it fast, yet he doth not approve of resistance, that is no part

of

of christian loyalty, he would have none embrace it.

Persecution is a condition a Christian may endure with comfort and satisfaction, nay, in which he may delight and rejoice, if he looks unto Jesus the author and finisher of our faith, who, for the joy that was set before him, endured the cross, and despised the shame, for which he is set down at the right hand of God. When the apostles were beaten by order of the sanhedrim, they departed from the presence of the council, rejoicing that they were counted worthy to suffer for his name; their afflictions, distresses, necessities, imprisonments, nay, death itself, was matter of the greatest joy to them: then the Christians suffered after the example of their Saviour, according to the will of God, who called them to suffering, committing their souls unto him as a faithful Creator, and for his sake were killed all

the

the day long, and were counted as sheep for the slaughter.

Now, from what hath been said, I should be glad that every body that reads this, would become of the same way of thinking with the author; but this I can hardly expect, as many are directed in their principles, more by passion, prejudice, and interest, than reason and religion; but I hope I have reason to expect, that those that differ from me will allow, that I have something to say for my opinions, and though they will not give their consent, yet that they will allow me to think, from what hath been said, I may safely resolve upon the following propositions.

Proposition 1st. The people are neither born free, nor have they (in what notion or sense soever you take the word people, whether diffusively, collectively, or representatively) any power, or right of themselves

by

by nature, to chuſe or regulate kings; but what power people do lawfully exerciſe, they muſt receive it from a ſupreme power upon earth, and are bound, and in duty obliged to practiſe it, with ſuch limitations, as that ſuperior power ſhall appoint. For all men are born kings or ſubjects.

Prop. 2d. Government is the expreſs ordinance and inſtitution of God; and if the people had a right to chuſe their governors, it is impoſſible for them to exerciſe it.

Prop. 3d. There muſt be an abſolute, unlimited, uncontroulable power lodged ſomewhere in every government.

This propoſition I have endeavoured to prove from the nature and ends of political ſociety, from the ſtanding doctrine of Chriſtianity, confirmed by the practice of the beſt Chriſtians in all ages of the church, and from the perniciouſneſs of the contrary doctrine, which would make all government

precarious,

precarious, and open a door to all insurrections, rebellions, and treasons in the world, and break the bands of all human society. For it is self-evident, that where there is a government, there some must command, and some must obey or be subjects, otherwise no government could possibly exist. Now those who are to obey, or are subjects, are either to submit to the uncontroulable power of their governors, which is the thing asserted in this proposition, or those supposed subjects have a right to disobey and controul those called governors, and then the governors become in fact true subjects; seeing they are commanded and controuled by others. For it is impossible in the nature of things, that all should command each other mutually; in that case government would entirely cease to be, and every man would be independent of all the world, and there would neither be governors nor governed,

contrary

contrary to the ſuppoſed being of a government. That this is the ſtanding doctrine of Chriſtianity, to pay an active or paſſive obedience to the ſupreme power, is evident from many places of both Old and New Teſtament, from the univerſal opinion, doctrine, and practice of the primitive church, church of England, and all orthodox churches over all the world. St. Paul ſays, Rom. xiii. 1, 2. "Let every ſoul be ſubject unto the higher powers. For there is no power but of God; the powers that be, are ordained of God. Whoſoever therefore reſiſteth the power, reſiſteth the ordinance of God; and they that reſiſt, ſhall receive to themſelves damnation." Which plainly ſhews us, that there are higher powers to be obeyed, and that thoſe powers are ordained of God, and that they that reſiſt them ſhall receive damnation. Now if the apoſtle here meant to teach men their duty to governors,

which

which ſurely admits of no diſpute, then the reſiſting the ſupreme power would be unlawful, which eſtabliſhes the truth of the above propoſition. Otherwiſe this ſolemn doctrine muſt admit of ſuch exceptions and reſerves, as every particular perſon thinks fit to make, which would render this great doctrine and precept of the apoſtle entirely uſeleſs, and no rule and direction at all, but a parcel of impertinent and inſignificant words, leaving men ſtill at their own liberty in all caſes; which would be attended with numberleſs abſurdities and pernicious conſequences, and certainly would be a groſs impoſition upon his diſciples, as is entirely inconſiſtent with his ſolemn introducing this doctrine, with affirming the higher powers to be the ordinance of God, and that therefore the reſiſting them would make them liable to damnation; and yet, at the ſame time, leave every perſon at liberty to

reſiſt

resist those higher powers, when he thinks proper; for if there be no irresistible powers which we are obliged to obey, and an obligation in conscience can only arise from an authority superior to man, then every man is at liberty to refuse subjection when he pleases, and set up any other government; the consequence of which would be, the destruction of all civil societies; and encouragement of all disorders, usurpations, and changes of government, and in fact, its utter dissolution. For if there is a right reserved to every man to judge of his governors, which judgment is superior to the power, which is lodged in the whole government, he may resume that right when he pleases, which every other person has a right to do, which must consequently dissolve every government built on so precarious a foundation. Again, if we believe the second proposition, the truth of which, I humbly

think, I have fully demonſtrated, that government is the expreſs ordinance and inſtitution of God, and had its beginning as early as man had his exiſtence, no perſon can reaſonably deny, that we are obliged to obey that government which God himſelf hath appointed.

Prop. 4th. Monarchy is of divine inſtitution, and is the beſt ſort of government.

This I have largely inſiſted upon, and I hope have fully proved; and ſhall only add, that monarchy has one particular advantage over all other pretended forms of government, which is, that it is free from thoſe terrible convulſions, which often happen, when co-ordinate powers ſtruggle for ſuperiority, or equals in republics to gain the aſcendant over their rivals in power: Such was the pretended ſtruggle in our late civil wars, and ſuch the fatal conteſt between Marius and Sylla, Cæſar and Pompey. All

which ſeem very political reaſons, for the preference to monarchy: To which we may farther add, that monarchy has been long eſtabliſhed and approved amongſt us. And if we look back into all hiſtory, the higher we go, the more plainly it appears, that monarchy was the then government of the whole world, which is a ſtrong proof of its being the firſt, and then alſo thought the beſt ſort of government. And if we will admit the Chriſtian ſcheme into our Engliſh politics, we ſhall there certainly find, that government or monarchy (for there is no other government but monarchy) was of divine inſtitution, and that the firſt man was the firſt monarch, and all his deſcendants were his natural born ſubjects, was divine inſtitution out of the caſe. But if we exclude divine inſtitution, and paternal authority, it will, I believe, be a hard matter, to ſupport the authority of any government,

over

over the lives, liberties, and properties of the people. But, as I have clearly made appear, we have the preference of reaſon, the advantage of experience, and the general practice and opinion of mankind, and the antiquity of its origin, the law of the land, the law of nature, and the law of God, all concurring in preferring the excellency of monarchy.

Prop. 5th. Hereditary monarchy is the beſt ſort of monarchy. There are but two ways of continuing monarchy, either by an hereditary ſucceſſion, or by electing a king at every vacancy. But the advantage is entirely on the ſide of hereditary ſucceſſion; for in elective monarchies, theſe elections, whether well or ill made, are often attended with ſuch national calamities, that even the beſt reigns cannot make amends for them; whereas in hereditary monarchy, whether a good or a bad prince ſucceeds, theſe calami-

ties are avoided. Beſides, in elective monarchies, the general intereſt is commonly ſacrificed to the private good of the king, or to the raiſing his family. or friends, knowing the advantage to ceaſe, when the life drops; whereas thoſe eſtates which are laſting to their families, are better taken care of in all ſtations, from the prince to the plowman; for who is fond of building or beautifying, what he is ſure thoſe whom he has the moſt tender regard for can never enjoy? Or who improves thoſe farms, with either ſpirit or induſtry, which he knows muſt be quickly taken from his neareſt relations for ever.

Prop. 6th. The monarchy of England has been time out of mind, and ſtill continues to be, hereditary.

That we have had a monarchy in England, time out of mind, is out of diſpute; and indeed all ſeem to agree, that the right of

of the imperial crown of this realm, is by inherent right, and the nature of the monarchy, as well as by the unalterable laws of this realm, tranſmitted and devolved by a lineal ſucceſſion, according to the proximity of blood, in the ordinary courſe; ſo that upon the death of the king or queen, who actually reigns, the ſubjects of this realm are bound by law, duty, and allegiance, to obey the next immediate lawful heir, either male or female, upon whom the right and adminiſtration of government is immediately devolved. Some would have it in the power of the ſtates to alter the ſucceſſion when they pleaſe, to exclude him who has the right of ſucceſſion, and elect another in his place, which is the opinion of the Jeſuits, and many of the Whigs, and moſt of the Preſbyterians. That the conſtitution of this kingdom conveys the crown by hereditary right, is evident from the

ſtatute-laws, and laws-books, and the declaration of the moſt eminent lawyers, both antient and modern, of this kingdom. As for example, the act of 1 Jac. 1. called the act of recognition, as I obſerved before, utterly diſclaims any power in the eſtates of the realm, to ſet aſide the next lineal, juſt, and lawful heir to the crown, by their election of any other perſon. This is confirmed by the known maxim and rules of law, that the king never dies, and that there is no *inter-regnum* in our hereditary kingdom; that on the demiſe of the rightful hereditary king, the crown and realm immediately deſcends unto, and are actually veſted in, the power and poſſeſſion of the right heir, before he be either actually proclaimed or crowned; and that it is high treaſon to attempt any thing againſt his perſon or royal authority, before his coronation. And whatever diſputes, doubts, or perplexities

 might

might have arifen before the act of 1 Jac. 1. called the act of recognition, yet this act of the whole legiflature, muft have eftablifhed the hereditary right of the crown of England in the family of Stuart. And lord B. fpeaking about the bill of exclufion, fays, " When the right of that prince, *viz.* the duke of York, afterwards king James 2d, to the crown of England was difputed, his divine right was fufficiently owned by thofe who infifted on a law to bar it. And at the conference about the abdication, it feems agreed both by the lords and commons, that by the conftitution the monarchy is hereditary. Their reafonings at that time, I have largely taken notice of. When this grand point came to be determined, a fmall majority was for the Prince of Orange. Hence we may furely conclude, that if 51 againft 49, could carry and eftablifh fo important a point, the undoubted act of the whole legiflature

passing the act 1 Jac. 1. and 12 Ch. 2. c. 30. must be conclusive, and bind both parties thereto, and all those that came after them, as long as those acts continued in force. And as the English monarchy was, time out of mind, hereditary, by the laws and constitution of that kingdom, if these laws have not been altered, must still be of force, and the hereditary succession of the crown still the same by those laws; but if those laws have been repealed, and new ones made since the Revolution, declaring the English monarchy not hereditary, such a repeal, or such a law, must surely be very well known, and certainly easy to be procured, and as readily to be shewn, as those I have produced to prove the monarchy to be hereditary. And the proof of such a repeal, or such a law, will be expected from those who affirm there are such; for the proof lies on them by all the rules of arguing. There

have

have been two very remarkable periods of time, ſince king James left the crown, very far from being favourable to the family of Stuart, which might have occaſioned ſuch a law, and certainly would have brought ſuch a one to public light, if there had been any ſuch; I mean the convention, when king James was abdicated, and doctor Sacheverel's trial, when there was an attempt to eſtabliſh the lawfulneſs of reſiſtance. At that trial they were ſo far from doing any thing in prejudice of the hereditary right, that all the laws which declare that there is no *inter-regnum* in our hereditary kingdom, and that on the demiſe of the rightful hereditary king, the crown and realm immediately deſcended unto, and are actually veſted in the perſon and poſſeſſion of the rightful heir, before he be either actually proclaimed or crowned, were then inſiſted on. It was likewiſe affirmed, that

it is high treaſon, to attempt any thing againſt his perſon, or regal authority, before his coronation, as was adjudged in Watſon's caſe. Nothing formerly could alter or divert the right of ſucceſſion, and lineal deſcent of the crown to the neareſt and lawful heir, nor ſtop or bind him in the free, full, and actual adminiſtration of the government, according to the laws of this kingdom; and whoever attempted to alter or divert the ſaid ſucceſſion, or ſupport, or approve of, or countenance it, was judged guilty of perjury and rebellion, both damnable ſins, declared ſo by the unerring word of truth. No act of parliament, no outlawry, or even actual rebellion, were judged ſufficient to divert the ſucceſſion from the lineal heir; for the deſcent of the crown could not, *de jure*, be impeached in the right line. Our parliament indeed, at the Revolution, of themſelves declared, that difference in religion

gion may alter the ſucceſſion; and they agreed amongſt themſelves, and I ſuppoſe, for their poſterity too, that no papiſt ſhould ſit upon the Engliſh throne.

Prop. 7th. The government of this kingdom was abſolute monarchy, and the kings of this realm, deriving their power from God alone, to him alone are they accountable for the exerciſe of it. Or, in other words, the realm of England is a perfect ſovereignty or empire, and the king a complete ſovereign, ſubject to none but God, hath all eſſential rights of perfect ſovereignty belonging; he was unaccountable to any human power, has the ſole right and diſpoſal of the ſword, is free from all coercive and vindicative power, is irreſiſtible and unpuniſhable, and his forces are not to be oppoſed by force.

All theſe eſſential rights belonged to him,

him, by the common law of ſovereignty, by the nature of government, by the voice of reaſon, by the laws of God, by the laws and expreſs ſtatutes of the Engliſh conſtitution, by the declaration of the univerſities, by the opinion and doctrine of the moſt eminent divines, and by the eſtabliſhed doctrine of the church of England ſince the Reformation. It would be a contradiction, as I have very fully proved, to call this an imperial crown, to acknowledge the king as ſupreme head over all perſons, to ſay, that he hath no ſuperior but God, that he is ſubject to him alone, and that he is furniſhed with plenary and entire power, unleſs he enjoys all the rights which are included in the very notion of his imperial ſovereignty. For, firſt, to ſay, that he is the ſupreme governor, within his realm and dominions, and ſubject to none but God, muſt needs imply, that he

he is unaccountable for what he doth amiſs, to any tribunal but that of heaven, whoſe vicegerent he is. If there were any power in his kingdom that could call him to account for male-adminiſtration, for that very reaſon, he would not be a complete ſovereign, but the power to which he was accountable would be ſuperior to him. It muſt therefore follow, from his being inſtituted and furniſhed with plenary, whole, and entire power and juriſdiction, that he muſt be unaccountable; for, how can any perſon or ſtate of men, have power or authority to call his majeſty to an account, in whom is veſted ſovereign dignity? Again, if all power and juriſdiction is derived and deduced from the king as ſupreme head; from whom then ſhall any man, or ſtate of men, derive authority for judging and trying him? It can be from none but himſelf; but

but to imagine that he would subject himself to any inferior court or jurisdiction, is an apparent absurdity in hypothesis, and such act would be void by its own nature. And to say that the king is the only supreme governor, instituted and furnished with plenary, whole, and entire power and jurisdiction, must needs imply, that he alone hath the power of the sword; for were the power of the sword in any other person, he could not be furnished with plenary and entire power. Besides, the civil power is insignificant without the military; and therefore, if the civil power were seated in him, and the military in another person or state, the English realm would have two sovereigns, one civil, and the other military, which is most absurd to suppose. Therefore by the common laws of sovereignty, the power of the sword, like all other temporal power,

must

muſt be derived and deduced from him, as ſupreme head and governor of this realm. This ſovereignty would be an empty, inſignificant nothing, were the ſceptre in his hand, and the ſword in another perſon's. Therefore the peers of this realm, nor the commons, nor both together, in parliament, nor out of parliament, nor the people collectively, or repreſentatively, nor any other perſon whatſoever, ever had, have, or ought to have, any right to uſe the ſword, but from the leave and good-will of the king, to whom alone it belongs: neither have they any coercive power over the perſon of the king of this realm; and I think it is evident, where there can be no coercive power, there cannot be any reſiſtance. For the proof of this laſt propoſition, I might produce ſuch a cloud of evidences as would fill volumes.

I ſhall

I shall now conclude, with two or three more quotations to what I have already made.

Bishop Kennet, in his sermon before the house of commons, January 30, 1705, says, "This is the true fountain of that common axiom, *the king can do no wrong*, because there is no right, no remedy against his royal person."

Mr. Brown, after citing 13 Ch. 2. c. 6. 14 Ch. 2. c. 3. argues thus; "These acts utterly divest the estates of the realm of any power of resisting the king from henceforth, supposing that they might have had such a power by the constitution before, though the same act declares this to be, and ever to have been, the fundamental law of this realm." And afterwards adds, "neither can this be evaded by saying, that the parliament had no authority to give away that power

power of the people to reſiſt the king, that ſhould invade their rights and liberties. For firſt, they gave away a power, which is ſuppoſed to be lodged in them, and not in the people. Secondly, The whole nation may be ſaid to have confirmed and ratified their act, in as much as every perſon in the church, militia, and corporations, has for ſo many years ſince ſworn to, or ſubſcribed the declaration, enacted by theſe ſtatutes, That it is not lawful upon any pretence whatſoever, to take up arms againſt the king, which is as full a giving up of the power of reſiſtance by the whole nation, ſuppoſing they had had ſuch a power, as if they had all aſſembled together.

Sir Joſeph Jekyll, one of the learned managers againſt Doctor Sacheverel, has the following words, in relation to the laws: "As to theſe acts before the Re-

ſtoration, I readily admit they condemn reſiſtance generally, they don't mention any exception. The next head of our acts are thoſe after the Reſtoration, and before the Revolution; I do admit thoſe laws go farther than the former, and ſeem to condemn all reſiſtance, and in ſuch terms as to exclude any exception whatever."

Mr. Phipps ſays, "I believe it will not be denied by any lawyer, that taking up arms againſt her majeſty, is high treaſon, by the ſtatute of the 25th of Edward 3d." And Mr. Dodd mentions the ſame ſtatute, as the ſtandard for treaſon for many ages; and ſays, "Now I need not repeat that to reſiſt the executive power and perſon of the king, by that act is compaſſing his death, and levying war againſt him." The very exception made in the

act, to allow of resistance, in case the king turns papist, or marries a papist, being a new exception, as Mr. Dodd mentions, shews that the being a papist was not excepted before, and confirms the rule as to all other articles not excepted, according to the known rule, *Exceptis probat regulam in non exceptis*; Every exception confirms the rule in what is not excepted.

FINIS.