

NORTH-CAROLINA GAZETTE.

With the latest Advices, Foreign and Domestick.

SEMPER PRO LIBERTATE, ET BONO PUBLICO.

The celebrated Dr. BENJAMIN FRANKLIN's Considerations on NATURE and EXTENT of the legislative AUTHORITY of the BRITISH PARLIAMENT.

NO Question can be more important to Great Britain, and the Colonies, than this—Does the legislative Authority of the British Parliament extend over them? On the Resolution of this Question, and on the Measures which a Resolution of it will direct, will depend, whether the Parent Country, like a happy Mother, shall behold her Children flourishing around her, and receive the most grateful Returns for her Protection and Love; or, whether, like a Stepmother, rendered miserable by her own unkind Conduct, she shall see their Affections alienated, and herself deprived of those Advantages, which a milder Treatment would have ensured to her.

The British Nation are generous; they love to enjoy Freedom; they love to behold Slavery in their greatest Abhorrence; is it possible then that they would with them? Yes the Authors of it? No. Oppression is not a Plant of the British Soil; and the late severe Proceedings against the Colonies must have arisen from the detestable Schemes of interested Ministers, who have misinformed and misled the People. A Regard for that Nation, from whom we have sprung, and from whom we boast to have derived the Spirit, which prompts us to oppose their unjust Measures, must lead us to put this Construction on what we have lately seen and experienced. When therefore, we shall know and consider the Justice of our Claim—that we insist on being treated as Freemen, and as the Descendants of those British Ancestors, whose memory we will not dishonour by our Degeneracy—is reasonable to hope, that they will approve our Conduct, and bestow their loudest Applause on our congenial Ardour for Liberty.

But if these reasonable and joyful Hopes should fatally be disappointed, it will at least afford us some Satisfaction to know, that the Principles on which we have founded our Opposition to the late Acts of Parliament, are the Principles of Justice and Freedom, and of the British Constitution. If our righteous Struggle shall be attended with Misfortunes, we will reflect with Exultation on the noble Cause of them; and while suffering unmerited Distress, think ourselves superior to the proudest Slaves. On the contrary, if we shall be reinstated in the Enjoyment of those Rights, to which we are entitled by the supreme and controulable Laws of Nature, and the fundamental Principles of the British Constitution, we shall reap the glorious Fruit of our Labours; and we shall, at the same Time, give to the World, and to Posterity, an instructive Example; that the Cause of Liberty ought not to be despaired of, and that a generous Contention, in that Cause, is not always unattended with Success.

The foregoing Considerations have induced me to publish a few Remarks on the important Question, with which I introduced this Essay.

Those who allege that the Parliament of Great Britain have Power to make Laws binding the American Colonies, reason in the following Manner:

That there is and must be in every State a supreme, irresistible, absolute, uncontroulable Authority, in which the *Jura summi Imperii*, or the Rights of Sovereignty reside:—That this supreme Power is, by the Constitution of Great Britain, vested in the King, Lords and Commons:—That therefore, the Acts of the King, Lords and Commons, or, in other Words, Acts of Parliament, have, by the British Constitution, a binding Force on the American Colonies, they composing a Part of the British Empire.

I admit that the Principle, on which this Argument is founded, is of great Importance; its Importance, however, is derived from its Tendency to promote the ultimate End of all Government. But if the Application of it would, in any Instance, destroy, instead of promoting that End, it ought, in that Instance, to be rejected; for to admit it, would be to sacrifice the End to the Means, which are valuable only so far as they advance it.

All Men are, by Nature, equal and free; no one has a Right to any Authority over another without his Consent; all lawful Government is founded on the Consent of those who are subject to it; such Consent was given with a View to ensure and to increase the Happiness of the Governed as best they could enjoy it in an independant and free State of Nature. The Consequence is, that the Happiness of the Society is the first Law of every Government.

This Rule is founded on the Law of Nature; it must controul every political Maxim; it must regulate the Legislature itself. That People have a Right to insist that this Rule be served; and are entitled to demand a moral Security that the Legislature will observe it. If they have not the first, they are Slaves; if they have not the second, they are, every Moment, exposed to Slavery. For civil Liberty is nothing else but natural Liberty, divested of that Part which constituted the Independance of Individuals by the Authority which it confers on Sovereigns, attended with a Right of insisting upon their making a good Use of their Authority, and with a moral Security that this Right will have its Effect.

Let me now be permitted to ask—Will it ensure and increase the Happiness of the American Colonies, that the Parliament of Great Britain should possess a supreme, irresistible, uncontroulable Authority over them? Is such an Authority consistent with their Liberty? Have they any Security that it will be employed only for their good? Such a Security is absolutely necessary. Parliaments are not infallible; they are not always just. The Members of whom they are composed, are human; and therefore, they may err: They are influenced by Interest; and therefore, they may deviate from their Duty. The Acts of the Body must depend upon the Opinions and Dispositions of the Members: the Act of the Body may, then, be the Result of Error, and of Vice. It is no Breach of Decency to suppose all this; the British Constitution supposes it: It supposes that Parliaments may betray their Trust, and provides, as far as human Wisdom can provide, that they may not be able to do so long, without a sufficient Controul.

Without Provisions for this Purpose, the Temple of British Liberty, like a Structure of Ice, would instantly dissolve before the Fire of Oppression and despotic Sway. It will be very material to consider the several Securities which the Inhabitants of Great Britain have, that their Liberty will not be destroyed by the Legislature, in whose Hands it is entrusted. If it shall appear that these Securities are not enjoyed by the Colonies, a venial Consequence will be, that the Colonists are not under the same Obligations to entrust their Liberties into the Hands of the same Legislature; for the Colonists are entitled to all the Privileges of Britons. We have committed no Crimes to forfeit them; we have too much Spirit to resign them. We will live our Posterity as free as our Ancestors left us.

To give to any Thing that passes in Parliament the Force of a Law, the Consent of the King, of the Lords, and of the Commons, is absolutely necessary. If, then, the Inhabitants of Great Britain possess a sufficient Restraint upon any of these Branches of the Legislature, their Liberty is secure, provided they be not wanting to themselves. Let us take a View of the Restraints, which they have upon the House of Commons.

They elect the Members of that House. "Magistrates, says Montesquieu, are properly theirs, who have the Nomination of them." The Members of the House of Commons, therefore, elected

* The Right of Sovereignty is that of commanding finally, but in Order to procure real Felicity; for if this End is not obtained, Sovereignty ceases to be a legitimate Authority. BURL. 32.

† The Law of Nature is superior in Obligation to any other. BLACKSTONE 41.

‡ BURLAMAQUI.

§ Dissert. on Parties. Let. 11, 12.

¶ As the Law is the Birthright of every Subject, so wherever they go, they carry their Laws with them. 2 WILLIAM'S Reports. 75.

‡ The Commons of England have a great and considerable Right in the Government; and a Share in the Legislature, without whom no Law pass. Lord RAYMOND'S Reports. 950.

4 Institutes. 25.

by the People, are the Magistrates of the People; and are bound by the Ties of Gratitude for the Honour and Confidence conferred upon them, to consult the Interest of their Constituents.

The Power of Elections has ever been regarded as a Point of the last Consequence to all free Governments.—The independent Exercise of that Power is justly deemed the strongest Bulwark of the British Liberties.—As such, it has always been an Object of great Attention to the Legislature, and is expressly stipulated with the Prince in the Bill of Rights. All those are excluded from voting, whose Poverty is such, that they cannot live independant, and must therefore be subject to the undue Influence of their Superiors. Such are supposed to have no Will of their own; and it is judged improper that they should vote in the Representation of a free State. What can exhibit, in a more striking Point of View, the peculiar Care which has been taken, in Order to render the Election of Members of Parliament entirely free? It was deemed an Insult upon the independant Commons of England, that their uninfluenced Suffrages should be adulterated by those, who were not at Liberty to speak as they thought, though their Interests and Inclinations were the same.—British Liberty, it was thought, could not be effectually secured, unless those who made the Laws were freely, and without Influence, elected by those for whom they were made. Upon this Principle is reasonably founded the Maxim in Law, that every one who is capable of exercising his Will, is Party, and presumed to consent to an Act of Parliament.

For the same Reason that Persons, who live dependant upon the Will of others, are not admitted to vote in Elections, those who are under Age, and therefore incapable of judging; those who are convicted of Perjury, or Subornation of Perjury, and therefore unworthy of judging; and those who obtain their Freeholds by fraudulent Conveyances, and would therefore vote to serve infamous Purposes, are all likewise excluded from the enjoyment of this great Privilege. Corruption at Elections is guarded against by the strictest Precautions, and most severe Penalties. Every Elector, before he polls, must, if demanded by a Candidate, or by two Electors, take the Oath against Bribery, as prescribed by 21. c. 24. Officers of the Excise, of the Customs, and of the Post-Offices—Officers concerned in the Duties upon Leather, Soap, Paper, striped Linens imported, Hackney Coaches, Cards and Dice, are restrained from interfering in Elections, under the Penalty of Toool. and of being incapable of ever exercising any Office of Trust under the King.

Thus is the Freedom of Elections secured from the Servility, the Ignorance, and the Corruption of the Electors; and from the Interposition of Officers depending immediately upon the Crown. But this is not all. Provisions, equally salutary, have been made concerning the Qualifications of those who shall be elected. All imaginable Care has been taken, that the Commons of Great Britain may be neither *awed*, nor *allured*, nor *deceived*, into any Nomination inconsistent with their Liberties.

It has been adopted, as a general Maxim, that the Crown will take Advantage of every Opportunity of extending its Prerogative in Opposition to the Privileges of the People; that it is the Interest of those who have *Penions*, or *Offices at Will*, from the Crown, to concur in all its Measures; that Mankind in general will prefer their private Interest to the Good of their Country; and that, consequently, those who enjoy such Penions or Offices, are unfit to represent a Nation, and to have the Care of their Liberties committed to their Hands. All such Officers or Pensioners are de-

* The Athenians, justly jealous of this Privilege, punished, with Death, every Stranger who presumed to interfere in the Assemblies of the People.

† The English Freedom will be at an End whenever the Court invades the free Election of Parliaments. RAPIN.

‡ A Right that a Man has to give his Vote at the Election of a Person to represent him in Parliament, there to concur to the making of Laws, which are to bind his Liberty and Property, is a most transcendent Thing, and of an high Nature.

Lord RAYMOND'S Reports. 951.

§ There are a few Exceptions in the Case of Officers at Will.

48, 49. † Ibid. 50, 51.

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