

ARGUMENTS
CONCERNING THE
CONSTITUTIONAL RIGHT
OF
PARLIAMENT
TO APPOINT
A REGENCY.

Quo Senatûs auctoritas maxuma feret, bonam
Publicum simulantes, pro sua potentia certabant, SALLUST.

THE SECOND EDITION.

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ADVERTISEMENT OF THE EDITOR.

A great part of the following pages have already appeared in the GAZETTEER of December 11.

The channel of a newspaper being the most public, was thought the properest, for extending information on a subject which it behoved every man to consider. Those papers, however, are dispersed; and at the request of many persons who have enquired for them in vain, the whole is now reprinted.

P R E F A C E.

IT is the privilege of an Englishman to enquire freely into, and give his opinion on public affairs; and if, on any important occasion, he can contribute to enlighten or inform his fellow citizens, it then becomes his duty. If he writes with moderation, the moderate will not condemn; if with impartiality, the candid will approve. If neither his labors are venal, nor his design factious, he will receive the indulgence, and perhaps, the thanks of the public.

That the question now agitated is of sufficient importance to excite the interest, and that the difference of opinion upon it is considerable enough to provoke the enquiry of every man who loves his country, will hardly be denied. The question at issue is no less than this, *Will the Parliament, by appointing a Regent, violate, or, will they, by neglecting to do it, betray the Constitution?*

If,

If, on the one side, an attempt to *impair the privilege of Parliament* should be resisted by every friend of liberty, so on the other, let it be remembered, that if their power is increased beyond its proper bounds, the Constitution will be in no less danger; and this should be more particularly guarded against, because it is less liable to suspicion. The effects of a barefaced prerogative, says a celebrated author, are not the most dangerous to liberty, for this reason; because they are open; because the alarm they give is commonly greater than the progress they make. The most dangerous attacks on liberty, are those which are made in disguise; when powers are given under pretence of some urgent necessity, popular perhaps, at first, but such as ought not to be admitted as lawful, or drawn into precedent.

Parliament has an absolute, but it is a delegated trust. For the people they act, and by them are judged. If the following pages should be found to carry conviction to any of those whose voice is to decide in the national council, or to assist the people in forming a just judgment of their representatives, the author will have obtained at once his object and his reward.

ARGUMENT,

ARGUMENT, &c.

IN the various discussions to which the situation of the Sovereign has given occasion, it seems that some essential points have been either entirely neglected, or not stated with sufficient accuracy. Much reference has been had to *precedents* in a great measure irrelevant, and much has been de-claimed on the *expediency* of the Prince's being Regent; but I doubt whether the question of *mere right* has been sufficiently investigated.

I am firmly persuaded that every passage in our history, which could be quoted as analagous to the present time, would tend to corroborate the doctrine which I doubt not to maintain; but I wish to renounce the
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aid of every conclusion drawn from that source. The rights both of the king and the people stand now on a different basis than they did before the revolution, and reference to precedents prior to that event, is neither safe nor conclusive.

That on any known incapacity of the Sovereign, the regal power must be lodged somewhere, is, I believe, denied by none; but where, in such a case, it does reside, or where it ought to be placed, is the question to be determined, and which may be stated perhaps more correctly thus :

“ *Whether* on any established incapacity of the king, does the prerogative descend immediately to the heir apparent, he lying under no disqualification ; *or*, does it accrue to the parliament ? ”

In the *first* case, as soon as the king's incapacity is declared, the prince becomes *de jure* Regent, with the same powers with which the king was invested ; and in the *second*, it lies with the Houses of Parliament to appoint Regent whom they please, and with what powers they think proper.

Now

Now if there be no express law or established custom whereby to answer this question, I presume it will not be denied, that it can only be determined by the *general spirit of the Constitution*, and the *evident welfare and safety of the country*; and if from these sources direct and unquestionable conclusions can be drawn, I shall not hesitate to lay down such a decision, as no less incontrovertible than if the case had been provided for by specific law, and reiterated precedent.

There is not a principle more distinctly established by our constitution, or more essential to the existence of it, than this, "that each of the three estates has its inherent rights, independent of each other, and which can neither be altered nor confounded." This division of power, these privileges so accurately distinguished, and so nicely balanced by the wisdom of our forefathers, form the very essence of our constitution; and if any part of the three which compose our government should at any time invade the rights, or exercise the powers of the other

other, from that moment the Constitution is changed.

I am well aware that this was the case at the Revolution, when the prerogative was assumed by the Convention Parliament. But is it not for this very reason that we call it a *Revolution*? thereby expressing that the old constitution was then done away, and a new one established. The *necessity* of the case, proclaimed by the nation at large, justified the measure. To provide for the security of religious and civil liberty is an act of necessity to a free people; and if not maintained on this ground of necessity, the Revolution was a work of injustice and treason.

Those who contend that Parliament is competent to appoint a Regent on the present occasion, will now be reduced to the necessity of either denying the principle which I have laid down as fundamental in the Constitution; or they will be required to prove that a necessity now exists, which can justify what that Constitution does not allow, viz. *that the two estates should assume the*
rights

rights of the third. The former, I think, they will not be inclined to do ; and if they chuse the latter alternative, I shall ask, on what semblance of foundation such a necessity is alledged ? And let the man who is hardy enough to assert that it does exist, be prepared to say also, that *there exists at the present moment the necessity of a Revolution.* Or let him, when the Houses of Parliament have appointed a Regent, and consequently must have had in themselves first the power which they bestowed, let him shew why the event of the present day is less a Revolution than that of a hundred years since. James, by his abdication, was morally disqualified as king ; his present M—y, by a physical cause, is no less incapacitated from governing : the abdication being voluntary, was final ; the present calamity is dependant on the will of God, and may cease. In the former case, the prerogative was assumed by the convention, and conferred on king William : In the present case, if assumed at all, no matter on whom it is bestowed ; the act of assumption constitutes a revolution.

But it is said, " If Parliament appoint the Prince Regent, with undiminished power, is not this the same as if they merely recognize him such ? " By no means. A right of appointment implies a right of choice ; and the moment the right of appointment is limited to one object, the inherent right of that person is admitted. To deny this, would be to dispute about words ; nor shall I use any ceremony in concluding, that whoever maintains the right of Parliament to appoint, equally contends that they may appoint whom they please. I have nothing to do with what might be the expediency of such a measure ; but as a matter of right they may appoint themselves Regents, and thus compleatly annihilate the third estate.

Other cases may be imagined, in consequence of this doctrine, not only of inconvenience and danger to the state, but of solecism and confusion. I am at liberty to suppose *the Minister for the time being appointed Regent*. He would stand in a situation absolutely hostile to the constitution of a king being

being his own minister. The "King can never die; the prerogative can never be diminished," says the Constitution. It must then be lodged entire somewhere. Where is it lodged? In the hands of a Regent. But one part of the prerogative is, that the King can do no wrong. Then the Regent can do no wrong. But the Regent is minister, and his measures, shielded by this principle of the constitution from enquiry or censure, he may hold the power, and execute all the functions of government, without responsibility.

Let me suppose another case, and who shall say that it is even an improbable one. The Irish Parliament is independent of the English Parliament; but their constitutions are the same: and if the Parliament of England has a right to appoint a Regent, the Irish Parliament has an equal right, and different Regents may exist in the two kingdoms at the same time. I ask, by what tie the nations will *then* be united? The Parliaments are independent, and the Regents

no less so ; each using his prerogative, may involve the subjects of one Sovereign in hostilities with one another, which could hardly be called a civil war. To say that things will not happen, is no answer. It is sufficient to me that they are possible ; for when in philosophy or politics, a system carried to any extent involves you in absurdity and contradiction, its foundation must be in error and insecurity.

Another principle of our constitution, and indeed of every constitution, is this, " That in all cases not especially provided for, that course should be held, and that doctrine maintained, by which it incurs the least chance of being altered or destroyed." This principle, perhaps, never promulgated, because it is inherent in the nature of every human establishment, is decisive on the present occasion. For if the safety of our constitution consists in the nice equipoise of power in each of its three parts, its chiefest danger must be when a greater power is vested in any ; and will the prerogative be most formidable when lodged in the hands
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of the Heir Apparent, who had none before, or when united with the power already existing in the other branches of the legislature?

Many strong arguments to confirm this right of the Heir Apparent, might be derived from the natural descent of an hereditary office, to which the prerogative bears the nearest analogy.—Whenever a temporary or permanent cause disqualifies the holder of such an office, I believe that the laws and customs of every country prescribe, that its functions and power should devolve immediately to the Heir, who would have succeeded in case of his demise. And I am sure that all the principles of right, from which this rule is derived, apply more strongly to the regal power than to any other.

But we want not the aid of these strong grounds; for

Unless the spirit of our constitution admits the rights of its three estates to be confounded without necessity;

Unless

Unless a system which involves contradiction, and creates confusion, is preferable to a system of harmony and order ;

Unless the danger of the Constitution is better than its safety ;

Or, unless the circumstances of the present juncture justify a subversion of the government, and create the necessity of a revolution ;

We are authoris'd to conclude, that *from the moment that the incapacity of the Sovereign to govern is established by constitutional enquiry, from that moment, the Heir Apparent, lying under no disqualification, is de jure Regent of these kingdoms, with all the powers of the prerogative undiminished.*

Till I hear these arguments refuted, or these facts disproved, I think it unnecessary to consider the subject in any other view: I neither enquire whether from the character of those, who propose such a measure, there is any particular temptation to recede from that path which the constitution has prescribed ; nor shall I indulge in reviewing the character of him whose subjects we are, and
ought

ought to be, till the hand of God shall remove from the K—g that calamity which renders him incapable to govern. The best merited panegyric of the Heir Apparent would at this moment be useless; and perhaps at this only moment of his life it might be unseasonable. For as the worst reputation could not diminish his right, so the most amiable qualities cannot increase it. Yet may those who know him be permitted to congratulate their country, that Heaven has provided the only adequate alleviation of the present calamity in the virtues of the Heir Apparent. Hitherto it has only been for a few to feel in what an irresistible manner he never fails to attach those who know him; but the time is come when panegyric will be as unnecessary as it is inadequate; when his character unfolded to the nation will shew, that if he has not been every where idolized, it is because he could not be universally known: when his friends will find their boldest promises outdone, and their warmest wishes more than gratified.

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