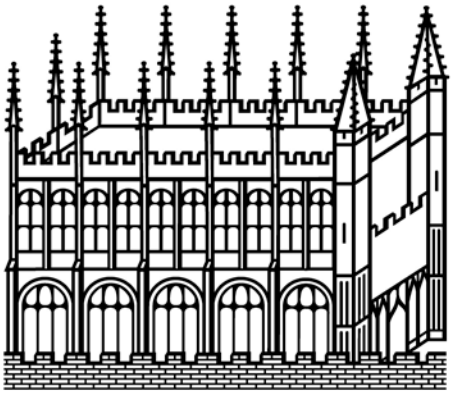

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# ARGUMENT, &c.

IN the various diſcuſſions to which the ſituation of the Sovereign has given occaſion, it ſeems that ſome eſſential points have been either intirely neglected, or not ſtated with ſufficient accuracy. Much reference has been had to *precedents* in a great meaſure irrelevant, and much has been declaimed 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 analogous to the preſent time, would tend to corroborate the doctrine which I doubt not to maintain; but I wiſh to renounce the 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, *(as in the preſent melancholy caſe of* INSANITY) 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, 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 ſhould aſk, on what ſemblance of foundation ſuch a neceſſity is alleged? 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 an 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

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

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

of

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 authoriſed 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 inquire 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

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