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A N S W E R
TO
PAIN'S RIGHTS OF MAN.

BY
JOHN ADAMS, Esq.

ORIGINALLY PRINTED IN AMERICA.

It is not a mechanical horror against the name of a King, or of
Aristocracy, nor a physical antipathy to the sound of an ex-
travagant title, or to the sight of an innocent ribband, that
can authorise a people to lay violent hands upon the Consti-
tution.

LETTER IV.

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L E T T E R I.

MR. RUSSEL,

BOSTON, 1791.

SIR,

THE late Revolution in France has opened an extensive field of speculation to the philosopher and to the politician. An event so astonishing and unexpected in its nature, and so important in its consequences, naturally arrested the peculiar attention of the whole civilized world. The friends of liberty and of man have seen with pleasure the temples of despotism levelled with the ground, and the Genius of Freedom rising suddenly in his collected and irresistible strength, and snapping in an instant all the cords with which, for centuries, he had been bound. Upon the downfall of the arbitrary system of Government in France, there appears to have been but one sentiment, and that a sentiment of exultation; but while the friends of humanity have rejoiced at the emancipation of so many millions of their fellow creatures, they have waited
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with an anxious expectation to see upon what foundations they would attempt to establish their newly-acquired liberty. The proceedings of their Representative Assembly have been contemplated in very different points of view, by men of names equally illustrious, and of characters equally favourable to the cause of liberty. Among the publications which have appeared upon the subject, two pamphlets, founded upon very different principles, appear to have been received with the greatest avidity, and seem calculated to leave the deepest impression. The one written by Mr. Burke, which is one continued invective upon almost all the proceedings of the National Assembly since the Revolution, and which passes a severe and indiscriminating censure upon almost all their transactions: The other, the production of Mr. Pain, containing a defence of the Assembly, and approving every thing they have done, with applause as undistinguishing as is the censure of Mr. Burke.—We are told, that the copy from which an edition of this work was reprinted at Philadelphia, was furnished by the Secretary of State, and was accompanied by a letter, from which the following extract has been published in most of our newspapers. “ I am extremely pleased to find that it is to be reprinted here, and that something is at length to be publicly said, against the *political heresies* which have sprung up among us. I have no doubt our citizens will rally a second time round the standard of *Common Sense*.”

I confess, Sir, I am somewhat at a loss to determine, what this very respectable gentleman means by *political heresies*. Does he consider this pamphlet of Mr. Pain's as the canonical book of political scripture? As containing the true doctrine of popular infallibility, from which it would be heretical to depart in one single point. The expressions, indeed, imply more; they seem, like the Arabian prophet, to call upon all true believers in the *Islam* of democracy, to draw their swords, and,
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that "the inhabitants of the English Colonies in North America were entitled to certain rights by the immutable laws of nature, *the principles of the English Constitution*, and the several charters or compacts," they knew very well what they meant, and were perfectly understood by all mankind. Mr. Pain says, that "a Constitution is to a Government, what the laws, made afterwards by that Government, are to a court of judicature." But when the American States, by their Constitutions, expressly adopted the whole body of the *common law*, so far as it was applicable to their respective situations, did they adopt nothing at all, because that law cannot be produced in a visible form? No, Sir, the Constitution of a Country is not the paper or parchment upon which the compact is written, it is the system of fundamental laws, by which the people have consented to be governed, which is always supposed to be impressed upon the mind of every individual, and of which the written or printed copies are nothing more than the evidence.

In this sense, Sir, the British nation have a Constitution, which was for many years the admiration of the world; the people of America, with very good reason, have renounced some of its defects and infirmities. But in defence of some of its principles, they have fought and conquered. It is composed of a venerable *system* of unwritten or customary laws, handed down from time immemorable, and sanctioned by the accumulated experience of ages; and of a body of statutes enacted by an authority lawfully competent to that purpose. Mr. Pain is certainly mistaken, when he considers the British government as having originated in the conquest of William of Normandy. This principle of being governed by an oral or traditionary law, prevailed in England eleven hundred years before that invasion. It has continued to this day, and has been adopted by all the American States. I hope they will
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never abolish a system so excellent, merely because it cannot be produced in a visible form. The Constitution of Great Britain is a Constitution of *principles*, not of *articles*, and however frequently it may have been violated by tyrants, monarchical, aristocratical, or democratical, the people have always found it expedient to restore the original foundation, while from time to time they have been successful in improving and ornamenting the building.

The people of England are bound therefore by a social compact now existing; and they have no right to demolish their Government, unless it be clearly incompetent for the purposes for which it was instituted. They have delegated their whole collective power to a Legislature, consisting of a King, Lords, and Commons, and they have included even the power of altering the Constitution itself. Should they abuse this power so that the nation itself should be oppressed, and their rights to life, liberty, and property, instead of protection, should meet with tyranny, the people would certainly be entitled to appeal in the last resort to themselves, to resume the trust which has been so unworthily betrayed, and (not to do whatever they should choose, but) to form another Constitution, which should more permanently secure the natural rights of the whole community. The same may be said of the National Assembly of France, who, according to Mr. Pain's idea, are possessed of the whole collective power of the nation, and who seem, like him, to think they have a right to do whatever they choose. Mr. Pain says, that "the authority of the present Assembly is different to what the authority of future Assemblies will be." But if the present Assembly should decree that all future National Assemblies should possess the same power with themselves, it would certainly be binding as an article of the Constitution. Mr. Pain, indeed, will not acknowledge this, and it is the second right which

which he denies his nation, which at the same time has a right to do every thing. Mr. Pain's ideas upon this subject appear to have been formed by a partial adoption of the principle upon which Rousseau founds the social compact. But neither the principle of Rousseau, nor that of Mr. Pain, is true. Rousseau contends that the social compact is formed by a personal association of individuals, which must be unanimously assented to, and which cannot possibly be made by a representative body, I shall not at present spend my time in shewing that this is neither practicable nor even metaphysically true. I shall only observe, that its operation would annihilate in an instant, all the power of the National Assembly, and turn the whole body of the American Constitutions, the pride of man, the glory of the human understanding, into a mass of tyrannical and unfounded usurpations. Mr. Pain does not go quite so far, but we must examine whether his arguments are not equally wide from the truth. "A Government," says he, "on the principles on which constitutional Governments, arising out of society are established, cannot have the right of altering itself. Why not? Because if it had, it would be arbitrary." But this reason is not sufficient. A nation in forming a social compact may delegate the whole of their collective powers to ordinary legislatures, in perpetual succession, and reserve only the right of refusing the abuse of those powers; and every other question relative to the reservation of powers to the nation, must be only a question of expediency. The same power which the present National Assembly possesses in France, is, by the English Constitution, constantly vested in the King and Parliament of Great Britain; and the people in both kingdoms have the same right to resist and punish the abuse of that power.

Surely, Sir, the people of the United States have a Constitution, although they have given the power of making alterations to those by whom it is administered,

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in conjunction with the State Legislatures. Surely, the people of Massachusetts have a Constitution, though it provides for certain alterations by the ordinary Legislatures, and though, since it was formed, such alterations have accordingly been made. The Constitutions of several of the United States are expressly made alterable in every part by their ordinary Legislatures. I think there is not one of them but admits of alterations without recurring to "the nation in its original character." Yet Mr. Pain will surely acknowledge, that the American Constitutions arose out of the people, and not over them. His principles, therefore, "that a Constitutional Government cannot have the right of altering itself," is not true. In forming their Constitution, a nation may reserve to themselves such powers as they may think proper. They may reserve only the unalienable right of resistance against tyranny.—The people of England have reserved only this right. The French National Assembly have been in session more than two years to make laws nominally paramount to their future Legislatures. I shall hazard some observations upon this subject, when I attempt to follow Mr. Pain through his comparison between the French and English Constitutions. But as the English have delegated all their power, I contend they have no right in their original character to change their form of Government, unless it has become incompetent for the purposes for which all Governments are instituted. I am aware of the question which will occur here—Who is to judge of this incompetency? and I am aware of the triumphant manner in which it may be asked. But a triumph is not my object, and in the pursuit of truth I shall venture in my next number to consider this subject.

E T T E R

L E T T E R IV.

SIR,

I HAVE assumed for a principle, that the English nation, having delegated all their collective power, have no right in their original character to change their form of Government, unless it has become absolutely inadequate to the purposes for which it was instituted. The people themselves must, from the necessity of the case, be the judges of this fact; but if, in forming this judgement, and acting in pursuance of it, they proceed from passion, and not from principle; if they dissolve their compact, from an idea that "they have a right to do whatever they choose," and break the bands of society, in the forms of despotism, "because such is their pleasure," they may indeed go through the operation by the plenitude of their irresistible power; but the nation will meet with ample punishment in their own misery, and the leaders who delude them, in the detestation of their own posterity. It is not by adopting the malignity of a political satyrist, by converting the fallies of wit into the maxims of truth or justice, or by magnifying trivial imperfections into capital crimes, that a nation will be justified in resorting to its original strength, to contend against its delegated power. It is not a mechanical horror against the name of a king, or of aristocracy, nor a physical antipathy to the sound of an extravagant title, or to the sight of an innocent riband that can authorise a people to lay violent hands upon the Constitution, which protects their rights, and guards their liberties. They must feel an actual deprivation of their equal rights, and see an actual impossibility for their restoration in any other manner, before they can have a right to lay their hands on their swords, and appeal to Heaven. These are not the principles

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of slavery; they are the tenets of the only genuine liberty, which consists in a mean equally distant from the despotism of an individual, as of a million. They are sanctioned by our own uniform example, and will, I trust, never be departed from by the most enlightened, and most virtuous people on the globe. For sixteen years the people of America endured a continual succession of every indignity, which the pride of dominion, the insolence of power, and the rapacity of avarice, could inflict upon them, before they could resolve to renounce an authority three thousand miles distant from them; and even then, they were so far from thinking they had a right to do whatever they chose, that by the very act which renounced their connection with Great Britain they exposed to the world their own sufferings, and the various acts of tyranny which had compelled them "to acquiesce in the necessity which denounced the separation," and "appealed to the Supreme Judge of the world for the rectitude of their intentions." No, Sir, the venerable character who drew up this declaration never could believe that the rights of a nation have no other limits than its powers. Since the Revolution, the people of the United States have again been compelled to form a national Government, and in its formation proceeded in the same spirit. The confederation was found totally incompetent for the purposes for which it was instituted; not from an abuse of the delegated powers, in those by whom it was administered, but because scarcely any powers at all had been given. The inefficiency of that system had long been fully demonstrated, and had reduced us to extreme distress. The States, united but in name, were upon the verge of general bankruptcy.—Their credit, sunk to the lowest ebb, was upon the point of expiring, and their exhausted treasury gave perpetually the lie to their public faith, so often and so solemnly pledged. The forcible ties of a common

mon interest, directed to one great object during the war, were greatly loosened by the accomplishment of that object, and the seeds of mutual hostility were sown by the partial commercial regulations of the respective States. The revenue laws which had been enacted in several of the States were not able to support their credit, and yet were so unequal in their opinion, that numerous bodies of men, in more than one of the States, appeared in open rebellion against the mildest governments that ever were instituted. Instead of the glorious reward which the people had expected for their virtuous exertions, internal discord, and infamy abroad, presented themselves in dreary perspective before them. At that critical period, when the system to be annihilated was an empty name, and there was only a Government to be formed, the national Constitution was presented to the people of America "in their original character;" and even then its existence was to depend upon the assent of nine States, that is, two thirds of the people. Very fortunately it has at length been freely adopted by all the members of the Union; but the extreme difficulty which impeded the progress of its adoption, and the various amendments, which, in many of the States, were in a manner made the condition of their assent, exhibit the fullest evidence, what a more than Herculean task it is to unite the opinions of a free people, upon any system of government whatever.

Under the sanction of such authority, I venture to assert that the people of England have no right to destroy their government, unless in its operation the rights of the people are really oppressed, and unless they have attempted in vain every constitutional mode of obtaining redress. These principles ought to operate with peculiar force upon the people of England, because, in the uncertain and hazardous event of a revolution, they have more to lose, and less to gain, than any other European nation, and because whatever they

may acquire must, in all probability, be purchased at the expence of a civil war. When provision is made for the alteration of a constitution, otherwise than by the common legislative power, it may be done comparatively without difficulty or danger; but where this power is already delegated, with the other powers of legislation, the people cannot use it themselves, except in their original, individual, unrepresented character, and they cannot acquire the right to act in that capacity, until the power which they have thus conveyed in trust, has been abdicated by the extreme abuses of its administration.

When Mr. Pain invited the people of England to destroy their present Government and form another Constitution, he should have given them sober reasoning and not sippant witticisms. He should have explained to them the nature of the grievances by which they are oppressed, and demonstrated the impossibility of reforming the Government in its present organization. He should have pointed out to them some possible method for them to act in their original character, without a total dissolution of civil society among them; he should have proved what great advantages they would reap as a nation from such a revolution, without disguising the great dangers and formidable difficulties with which it must be attended.

The principal and most dangerous abuses in the English Government arise less from the defects inherent in the Constitution, than from the state of society; the universal venality and corruption which pervades all classes of men in that kingdom, and which a change of government could not reform. I shall consider this subject more largely hereafter; but at present, with respect to the expediency of a revolution in England, I must inquire how the nation can be brought to act in their original character? Mr. Pain, perhaps, from the delicacy of his situation, has said nothing openly upon
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this very important point. Yet, in two different parts of his work, he seems obscurely to hint two methods for the accomplishment of this object. When he compares the situation of the citizens of London to that of the inhabitants of Paris just before the taking of the Bastile, it seems as if it was with an intention to recommend a similar insurrection for the purpose of dispersing the Parliament, and expelling the King, which would leave the nation without any Government at all, and compel them at all events to act in their original character. When he advises "Revolutions by accommodation," he must probably mean, that a convention should be called by act of Parliament to regenerate their Constitution. I cannot imagine any other method of answering his purpose. Mr. Pain seems to think it as easy for a nation to change its government, as for a man to change his coat; but I confess, both the modes of proceeding which he suggests appear to me to be liable to great objections.

LETTER

LETTER V.

SIR,

“THERE are in all European countries,” says Mr. Pain, “a large class of people of that description, which in England are called the *mob*.” It was by the people of this description that the Bastille in Paris was destroyed. In London there is no Bastille to demolish; but there is a government to overturn; and there is a King and Parliament, who must either be put to flight, or compelled to call a convention for the purpose of forming a Constitution. “In the commencement of a Revolution those men are rather the followers of the *camp* than of the *standard* of liberty, and have yet to be instructed how to reverence it.” As these men were made instrumental to the accomplishment of the Revolution in France, Mr. Pain appears to intimate that they may be employed for a similar purpose in England. I am as little disposed as Mr. Pain can be, to reproach either the whole nation to which they belong, or that unhappy class of human beings themselves, for the devastation which they commit. They cannot be considered as free agents, and therefore are neither the subjects of praise or blame; but the friend of humanity will be extremely cautious how he ventures to put in action a tremendous power, which is competent only to the purposes of destruction, and totally incapable either to create or to preserve. This class of men, of whom it is the happiness of Americans scarcely to be able to form an idea, can be brought to act in concert upon no other principles than those of a frantic enthusiasm and ungovernable fury; their profound ignorance and deplorable credulity make them proper tools for any man who can inflame their passions, or alarm their superstition; and as they have nothing to lose by the total dissolution of civil society, there rage may be easily

easily directed against any victim which may be pointed out to them. They are altogether incapable of forming a rational judgment either upon the principles or the motives of their own conduct; and whether the object for which they are made to contend, be good or bad, the brutal arm of power is all the assistance they can afford for its accomplishment. To set in motion this inert mass, the eccentric vivacity of a madman is infinitely better calculated than the sober coolness of phlegmatic reason. They need only to be provoked and irritated, and they never can in any other manner be called into action. In the year 1780, they assembled at London to the number of 60,000, under the direction of Lord GEORGE GORDON, and carrying fire and slaughter before them, were upon the point of giving the whole city of London to one undistinguished devastation and destruction: and this, because the Parliament had mitigated the severity of a sanguinary and tyrannical law of persecution against the Roman Catholics. Should these people be taught that they have a right to do every thing, and that the titles of Kings and Nobles, and the wealth of Bishops, are all usurpations and robberies committed upon them, I believe it would not be difficult to rouse their passions, and to prepare them for every work of ruin and destruction. But, Sir, when they are once put in motion, they soon get beyond all restraint and controul. The rights of man, to life, liberty and property, oppose but a feeble barrier to them; the beautiful face of nature, and the elegant refinements of art, the hoary head of wisdom, and the enchanting smile of beauty, are all equally liable to become obnoxious to them; and as all their power consists in destruction, whatever meets with their displeasure must be devoted to ruin. Could any thing but an imperious, over-ruling necessity justify any man, or body of men, for using a weapon like this to operate a Revolution in Government? Such indeed was the situation of the French National Assembly, when they directed

directed the electric fluid of this popular frenzy against the ancient fabric of their monarchy, They justly thought that no price could purchase too dearly the fall of arbitrary power in an individual, but, perhaps, even *they* were not aware of all the consequences which might follow from committing the existence of the kingdom to the custody of a lawless and desperate rabble.

But do the People of England labour under such intolerable oppression, as would authorise any of their patriots to employ an arm like this for their relief? Suppose sixty thousand men should again assemble round Westminster-hall, and with clubs and firebrands for their sole arguments, should compel the Parliament to call a convention to make a Constitution, what would be the probable consequences? Is it clear that so large a majority of the people of England have lost all their attachment to their Constitution, as to insure an acquiescence in the measure throughout the kingdom? Is it certain that one quarter part of the people would obey an act extorted by such violence as that? Would not all friends of the present Government rally round the standard of the Constitution, and would not their duty compel them to defend it with their lives and fortunes? If it should soon appear that they were decidedly the strongest party, would not the insurrection be extinguished in the blood of its leaders? If the parties should prove to be nearly equal, would not the nation be involved in all the horrors of a long and bloody civil war? In whatever point of view, the effects of this scheme are contemplated, they present nothing but prospects at which every friend of mankind must shudder; nor can I possibly believe that Mr. Pain, who is certainly a benevolent man, who deliberately recommends this method, though, in his ardent zeal for the honour of the French nation, and the propagation of their doctrine, he has incautiously suggested it.

But he recommends Revolutions by accomodation; which, applied to England, must mean that a convention

tion be called by a free and deliberate act of Parliament, to alter the Constitution; but this plan appears to be equally dangerous with the other, and more impracticable; while, by a singular fatality, an act of this kind would be the completest evidence of its own inutility, it would be equally dangerous, because by a formal act of competent authority it would expose the kingdom to all the evils of anarchy and of war, which in the other case would result from a popular convulsion. It would be less practical, because it is contrary to nature, that any body of men should venture to perform the most transcendent act of power of which human beings are capable, for the single purpose of divesting themselves of all power whatever. It would prove its own inutility, because no man will presume that they ought to take such a measure, unless the wishes of a clear and decided majority of the people are favourable to an alteration of the Government. If they are disposed to act in conformity with the desires of the people, the very same power which would authorise them to dissolve the Government, would likewise justify them in making any alterations which would meet with the wishes of the nation, and would render a recurrence to them "in their original character" perfectly unnecessary.

Whatever Mr. Pain's opinion may be with respect to the existence of an English Constitution, it is certain that every member of the British Parliament who gives his vote in the making of a new law, or the alteration of an old one, must suppose that he acts by virtue of a Constitutional right vested in him, but the same right which authorises him to give his suffrage in the most trifling object of legislation, has vested in the Parliament, of which he is a member, the whole power of the British nation, and he cannot possibly deny their right without utterly destroying his own. The right of the individual depends altogether upon the corporation, and his right to vote for the regulation
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of a turnpike, or the toll of a bridge, is the same with theirs to make every necessary and convenient alteration in the Constitution of the kingdom itself. While they are thus convinced of their right to exercise these great powers, would it not be the summit of extravagance and folly in them, nay, would it not be the most flagrant breach of the trust reposed in them, of which they could possibly be guilty, to abdicate an authority lawfully committed to them, to declare themselves altogether incompetent to a wise and prudent use of a Constitutional power, and to commit the peace, the welfare, the very existence of the nation, to the uncertain and hazardous event of a Revolution.

If, however, we can suppose that the Parliament should finally accede to the idea, that they are mere tyrants without the shadow of a right to the authority which they have hitherto exercised, the only act which they could agree to, would be a vote to dissolve themselves, and leave the vessel of the state without either a pilot or a rudder. For the very act of calling a convention would be an usurpation, and, from the importance of its consequences, an usurpation of the most daring nature: it would be assuming the right to dissolve the ties of society, and at the same instant acknowledging that this assumed right was without any sort of foundation. In short, this plan of calling a convention to alter the Constitution by act of Parliament, appears to me, in whatever light it is considered, to involve an absurdity.

But as there is unquestionably somewhere in England, a combination of the right and of the power to alter the Constitution of the country, and as that constitution is indubitably liable to be improved, we may be permitted to inquire, whether a blind imitation of the French National Assembly would probably promote the happiness of the people, the only objects for which all Governments were instituted, or which can authorise their alteration.

LETTER

L E T T E R VI.

S I R,

MR. Pain affirms that the French nation have a Constitution, and that the English have none. I have already offered a few observations upon the latter part of this assertion; but, as a preliminary to some remarks which I propose to make upon his comparison, I must premise, that directly the reverse of his opinion upon this subject is the truth, and that in reality the English nation have a Constitution, and the French as yet have none. The National Assembly have indeed been constantly sitting these two years, to form a Constitution; and at the ceremony of the Federation about eleven months since, they swore themselves and their King to the observance of a Constitution *to be made*. But as they are still possessed of the whole power of the nation, they may repeal any article upon which they have hitherto agreed, by virtue of the same authority, which enabled them to pass the decree, and, therefore, according to Mr. Pain's own ideas, the French cannot be said to have a Constitution, until the National Assembly shall please to dissolve themselves, and to put their whole system into full operation.

I have endeavoured to shew that it is not absolutely essential to the existence of a Constitution, that it should be producible "in a visible form." The period of time when the foundations of the present English Government were laid by the association of the people in "their original character" cannot, indeed, be ascertained. Many of the laws which are in use to this day in Great Britain, and from thence have been adopted by the American Republics, may be traced back to the remotest period of antiquity, and the origin even of the institution of Juries, an institution so congenial

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to the genuine spirit of freedom, is lost in the obscurity of the fabulous ages. Many of the fundamental principles of the English Constitution are known to have existed long before the invention of printing, and even before the inhabitants of Britain were acquainted with the use of letters, and it would therefore be an absurdity to require that the original articles should be produced "in a visible form." But "*ex nihilo, nihil fit*," the very existence of these principles proves the formation of a social compact previous to that existence, and the spirit of liberty, which is their distinguishing characteristic, affords internal evidence, that they did not originate in the merciless despotism of a conqueror, but in the free and unrestrained consent of a manly and generous people. It will not be said that an original compact was never formed, because it is not recorded in the page of history; as well might it be pretended that the pyramids of Egypt arose self-created from the earth, because the time of their erection, and the names of their builders have been consigned to that oblivion in which all human labours are destined to be overwhelmed.

William of Normandy, to whom Mr. Pain always refers the origin of the English Government, was the conqueror only of Harold. He obtained the crown of England by popular election, upon the express condition that he would govern the nation according to her ancient laws and customs; he took the same oath at his coronation which had been taken by his predecessors, and by his last will, after bequeathing the province of Normandy to his eldest son Robert, he expressly acknowledged that he did not possess the kingdom of England as an inheritance, and only recommended his son William as his successor. It would be altogether unnecessary at this time to discuss the question, whether the crown of England was originally hereditary or elective, but the facts which I have here stated, and which

which are warranted by all the most ancient and most authentic English historians, fully demonstrates that the English Government did not originate in the Norman Conquest. "If the succession runs in the line of the conquest, *the nation* runs in the line of being conquered, and it ought to rescue itself from this reproach," says Mr. Pain. "The victory obtained at Hastings not being a victory over *the nation collectively*, but only over the person of Harold, the only right that the conqueror could pretend to acquire thereby, was the right to possess the crown of England, not to alter the nature of the Government," says Judge Blackstone, (1 Comm. 199.) Upon a question of fact relative to the English Constitution, Blackstone is, I believe, as good an authority as Mr. Pain, but I wish not to rest the question upon any authority whatever: I venture to affirm, that any man who will coolly and impartially examine the subject, and appeal to the original sources of information, will acknowledge that those who derive the origin of the English Government from William the Conqueror, can do it upon no other principle than that of supporting a system.

It is not, however, necessary upon the present occasion, to revive a question which has been discussed among the English with all the acrimony of faction. Mr. Pain has chosen the ground which was not found tenable by the slavish supporters of passive obedience and the divine right of kings. They took it originally, because it was necessary to them for the support of their system, and they were driven from it by the friends and supporters of equal liberty. Mr. Pain found it necessary to support a doctrine of a very different nature; and adopting the maxim, that it is lawful to learn, even from our enemies, he has freely borrowed from them the practice of accommodating the facts of history to his political purposes.

Be that, however, as it may, the Parliament of Great Britain, from time to time, have enacted certain laws, which from their superior importance, have been denominated Constitutional; the acquiescence of the people, to whom most of those laws have been extremely satisfactory, gives them at least as good a sanction as the Constitution of France has obtained. The National Assembly were not originally chosen to form a Constitution. They were called together as States General, under the authority of another Constitution, such as it was. They assumed the power to dissolve the old Constitution, and to form another, and the acquiescence of the people has confirmed their assumption. At all events, therefore, their Constitution stands upon no better ground than the acts of the British Parliament.

If, then, the Parliament of Great Britain have a right to declare what shall be the supreme law of the land, they will be able to produce a system of Constitutional law, even according to Mr. Pain's wish, "in a visible form." This system is contained in a number of statutes, enacted, not at one time, or by one body of men, but at divers times, according to the occasional convenience of the people, and by a competent authority. These statutes contain the principles upon which the English Government is founded, and are therefore proper objects of comparison with the Constitution which is to be the supreme law of the land in France. The comparisons which Mr. Pain has drawn are not partially favourable to his native country. We shall inquire whether they are perfectly consistent with truth.

LETTER

L E T T E R VII.

S I R,

BY the English Constitution, the whole collective power of the nation is delegated, and the Constitution itself is alterable by the same authority which is competent to the common purposes of Legislation.

The French are to have a Constitution, every part of which will be nominally beyond the controul of their common Legislatures, and which will be unalterable in all parts, except by the nation in its "original character." At least Mr. Pain has undertaken to answer for them that it will be so: although I have not seen any such article in the Constitution, and though perhaps it has not yet been decreed. I am willing to take Mr. Pain's word for the fact, and to consider the subject as if it were already determined.

I have made some observations upon Mr. Pain's arguments, as they respect the right of a nation to delegate all their power. As a question of expediency, it may perhaps be more difficult to determine, which of these two schemes contains the least evil. Both of them are supported by the example of several among the American States, and can therefore boast the sanction of authorities equally respectable.

The fundamental principle upon which society is formed appears to be, in order that the power of the whole may be rendered subservient to the interests of the whole. The problem to solve is, in what manner the power shall be distributed, so as most effectually to answer that purpose? Considering the extreme difficulty with which a nation can be brought to act in their original character, it should seem, that wisdom must dictate to them the necessity of delegating their whole power in such a manner that it may be rendered

beneficial to the nation, because whatever power is retained by the people, cannot be exercised for their advantage any more than to their injury. The question therefore occurs, why a nation should not delegate all its powers? Mr. Pain has bestowed very little consideration upon this subject; I find, that although he gives his own opinion very freely, he offers only two reasons to support it. One, because, "such a government would be arbitrary;" the other, because "there is a paradox in the idea of vitiated bodies reforming themselves." In the sense in which the word arbitrary is here used, the first argument attacks the foundation of civil society itself; for whenever a number of individuals associate together, and form themselves into a body politic, called a nation, the possession and the use of the whole power (which is not however, arbitrary power) is the very object of their association. This power must exist somewhere, and I cannot see the reason why it should not exist for the benefit of the people.—But whenever a Constitution is made unalterable by the common legislative authority, the nation do in reality abdicate all the powers which they are said to retain, and declare that very important powers shall at all events be useless to them, from an apprehension that they might possibly be abused to their injury.—It is as if a man should bind himself never to wear a sword, lest he should turn it against his own breast.—The only reason why the whole power of a nation should not be delegated, must arise from the danger of its being abused: and a melancholy experience has always shown, that when the whole power has been thus delegated to one man, or to one body of men, it has invariably been grossly abused, and the sword of the people has been turned into a dagger against them. From the pressure of those evils, many nations have been induced expressly to forbid their governments the use of certain powers, without considering that the
 impotence

impotence of their supreme authority would certainly be very prejudicial to them, and perhaps as fatal as the abuse of power. This experiment has repeatedly been made; it has frequently failed: and I believe, that after several more experiments shall fully demonstrate the ill policies of thus annihilating the power of the nation, it will be clearly seen, that all the powers of the people ought to be delegated for their benefit, and that their true interest consists in the distribution of those powers in such a manner as shall in its own operation, guard against the abuses which alone are dangerous to the people.

The Constitution of the United States appears to me to unite all the advantages, both of the French and of the English, while it has avoided the evils of both. By that Constitution, the people have delegated the power of alteration, by vesting it in the Congress, together with the State Legislatures; while at the same time it has provided for alterations by the people themselves in their original character, whenever it shall evidently appear to be the wish of the people to make them. This article appears to be replete with wisdom; I believe it will stand the test of the severest examination, though, according to the ideas emanating from Mr Pain, and coming to us, at the same time, by reflection from the Secretary of State, it contains a very dangerous political heresy.

It is a maxim which will not, I trust, be disputed, that no government, of which the people is not a constituent part, can secure their equal rights: but where this is the case, to cramp the operations of their own Government with unnecessary restrictions, and forbid themselves to enact useful laws, what is it but to defeat the purposes of society, by the very act which gives it a permanent existence; to tie their own hands from an imaginary apprehension, that if left at liberty, they would administer poison to the body which nourishes them.

It is in the distribution of the national powers, it is in the independent spirit of the people, and not in the manuscript limitations of the legislative authority, that a nation is to secure the protection of its liberties.—In this Commonwealth we have a Constitution, most parts of which are unalterable by our ordinary Legislatures; it has existed but ten years: and already its operation has convinced us all, that several alterations in the system would be highly expedient.—Our Legislative body would be fully competent to the purpose, and, if they had the power, would readily make such alterations as might suit the convenience of the people: but they have no authority to act in these cases for the benefit of the people; and as the inconveniences to which this injudicious jealousy has subjected us, are not at this time of such importance, as to render the alterations of immediate or absolute necessity, we must wait our appointed time, and patiently submit to the operation of bad laws, because we have not chosen to invest our Legislature with the power of making good ones. Let us not be frightened, however, from the pursuit of our common interest by the words arbitrary power. Distribute the whole of your power in such a manner, as will necessarily prevent any one man, or body of men, or any possible combination of individual interests, from being arbitrary, but do not incumber your own representatives with shackles, prejudicial to your own interests; nor suffer yourselves, like the Spanish Monarch of ridiculous memory, to be roasted to death, by denying to your servants the power of removing the fire from before you.

But although a Constitution, professedly unalterable by the common legislative authority, is of weight sufficient to prevent the enacting of many good laws, yet it will not always operate as a check upon your legislature. Such is the poverty of all human labours

bours, that even a whole nation cannot express themselves upon paper with so much accuracy and precision, as not to admit of much latitude of explanation and construction. The Legislature must always be allowed to judge of the intentions with which the instrument was formed, and to construe and explain accordingly the expressions which it contains. They sometimes think proper to violate the letter of the Constitution by adhering to its spirit, and at other times they sacrifice the spirit by adhering strictly to the letter. But when your Legislature undertakes to decide that the spirit of the Constitution is directly contrary to its express letter, where is the power in the nation that should controul them? The same power which will always be sufficient to controul a Legislature, of which the people are a constituent part; it is the spirit of the people.— Let your legislative and executive authorities be so constituted, as to prevent every essential, or dangerous abuse of the powers delegated, but depend upon the honest and enlightened spirit of the people for a security which you never will obtain, by merely withholding your powers, unless that spirit should be constantly kept up. Divide your power so that every part of it may at all times be used for your advantage, but in such a manner, that your rights may never depend upon the will of any one man, or body of men; entrust even the power of altering your Constitution itself, because occasions may arise, when the use even of that power may be absolutely necessary for your own welfare, when, at the same time, it may be impossible for you to act in your original character, with the expedition necessary for your salvation: but reserve to yourselves a concurrent power of altering the Constitution in your own persons, because by the decay to which all the works of men are liable, it is possible that your Legislature may become incompetent to make such alterations as may be necessary. But when the people are

constantly

constantly represented in the Legislature, I believe they will never find it necessary to their original character, in order to make any alterations, which they may deem expedient, unless they deny the power of making them to their Legislature.

“But,” says Mr. Pain, “there is a paradox in the idea of vitiated bodies reforming themselves.” This must depend altogether upon the coincidence of the part vitiated with the part which is to apply the remedy; for unless the defect itself necessarily precludes the possibility of applying the power of reformation, the paradox ceases, and no more involves an absurdity, than that a physician should use his own prescriptions to cure himself of a disorder.

The very act by which septennial Parliaments were established in England, afford, sufficient proof that the power of altering the Constitution itself ought to be delegated, and even exercised by the Government upon certain critical occasions. That act was made at a time when the kingdom was threatened with an immediate invasion, when a rebellion had but just been quelled, and when the peace and safety of the nation depended upon the use of this power by the Parliament; such was the opinion of the people at that time, and the act met with general approbation, from the general conviction of its necessity. Such occasions may happen in the history of every free people, and it is therefore proper that the power should be delegated. Upon the principles of equal liberty, upon the principles of public happiness, and, therefore of political expedience, I think it may be fairly concluded, that Mr. Pain's preference of the French to the English Constitution, so far as it relates to this article, is not founded in truth.

F I N I S.