

CHAPTER IV

OF CONSTITUTIONS

THAT men mean distinct and separate things when they speak of constitutions and of governments, is evident; or why are those terms distinctly and separately used? A constitution is not the act of a government, but of a people constituting a government; and government without a constitution is power without a right.

All power exercised over a nation must have some beginning. It must either be delegated or assumed. There are no other sources. All delegated power is trust, and all assumed power is usurpation. Time does not alter the nature and quality of either.

In viewing this subject, the case and circumstances of America present themselves as in the beginning of a world; and our enquiry into the origin of government is shortened by referring to the facts that have arisen in our own day. We have no occasion to roam for information into the obscure field of antiquity, nor hazard ourselves upon conjecture. We are brought at once to the point of seeing government begin, as if we had lived in the beginning of time. The real volume, not of history, but of facts, is directly before us, unmutated by contrivance or the errors of tradition.

I will here concisely state the commencement of the American constitutions: by which the difference between constitutions and governments will sufficiently appear.

It may not be improper to remind the reader that the United States of America consist of thirteen separate states, each of which established a government for itself, after the declaration of independence, done the 4th of July, 1776. Each state acted independently of the rest,

in forming its government; but the same general principle pervades the whole. When the several state governments were formed, they proceeded to form the federal government that acts over the whole in all matters which concern the interest of the whole, or which relate to the intercourse of the several states with each other, or with foreign nations: I will begin with giving an instance from one of the state governments (that of Pennsylvania), and then proceed to the federal government.*

The state of Pennsylvania, though nearly the same extent of territory as England, was then divided into only twelve counties. Each of these counties had elected a committee at the commencement of the dispute with the English Government; and as the city of Philadelphia, which also had its committee, was the most central for intelligence, it became the centre of communication to the several county committees. When it became necessary to proceed to the formation of a government, the committee of Philadelphia proposed a conference of all the committees, to be held in that city, and which met the latter end of July, 1776.

Though these committees had been elected by the people, they were not elected expressly for the purpose, nor invested with the authority, of forming a constitution; and as they could not, consistently with the American ideas of right, assume such a power, they could only confer upon the matter, and put it into a train of operation. The conferees, therefore, did no more than state the case, and recommend to the several counties to elect six representatives for each county, to meet in convention at Philadelphia, with powers to form a constitution, and propose it for public consideration.

This convention, of which Benjamin Franklin was president, having met and deliberated, and agreed upon a constitution, they next ordered it to be published, not as a thing established, but for the consideration of the whole people, their approbation or rejection, and then adjourned to a stated time. When the time of adjournment was expired, the convention

re-assembled, and as the general opinion of the people in approbation of it was then known, the constitution was signed, sealed, and proclaimed, on the *authority of the people*, and the original instrument deposited as a public record. The convention then appointed a day for the general election of the representatives who were to compose the government, and the time it should commence; and having done this they dissolved, and returned to their several homes and occupations.

In this constitution were laid down, first, a declaration of rights; then followed the form which the government should have, and the powers which it should possess—the authority of the courts of judicature and of juries—the manner in which elections should be conducted, and the proportion of representatives to the number of electors—the time which each succeeding assembly should continue, which was one year—the mode of levying, and the accounting for the expenditure, of public money—of appointing public officers, etc., etc.

No article of this constitution could be altered or infringed at the discretion of the government that was to ensue. It was to the government a law. But as it would have been unwise to preclude the benefit of experience, and in order also to prevent the accumulation of errors, if any should be found, and to preserve a unison of government with the circumstances of the state to all times, the constitution provided that at the expiration of every seven years, a convention should be elected for the express purpose of revising the constitution and making alterations, additions, or abolitions therein, if any such should be found necessary.

Here we see a regular process—a government issuing out of a constitution, formed by the people in their original character; and that constitution serving not only as an authority, but as a law of controul to the government. It was the political bible of the state. Scarcely a family was without it. Every member of the government had a copy; and nothing was more common when any debate arose on the principle of a bill, or on the extent of any species of authority, than for the

members to take the printed constitution out of their pocket and read the chapter with which such matter in debate was connected.

Having thus given an instance from one of the states, I will show the proceedings by which the federal constitution of the United States arose and was formed.

Congress, at its first two meetings, in September, 1774, and May, 1775, was nothing more than a deputation from the legislatures of the several provinces, afterwards states; and had no other authority than what arose from common consent, and the necessity of its acting as a public body. In everything which related to the internal affairs of America, congress went no further than to issue recommendations to the several provincial assemblies, who at discretion adopted them or not. Nothing on the part of congress was compulsive; yet in this situation, it was more faithfully and affectionately obeyed than was any government in Europe. This instance, like that of the national assembly of France, sufficiently shews, that the strength of government does not consist of anything *within* itself, but in the attachment of a nation, and the interest which the people feel in supporting it. When this is lost government is but a child in power, and though like the old government of France it may harass individuals for a while, it but facilitates its own fall.*

After the declaration of independence it became consistent with the principle on which representative government is founded, that the authority of congress should be defined and established. Whether that authority should be more or less than congress then discretionarily exercised, was not the question. It was merely the rectitude of the measure.

For this purpose, the act called the act of confederation (which was a sort of imperfect federal constitution) was proposed, and after long deliberation was concluded in the year 1781. It was not the act of congress, because it is repugnant to the principles of representative government that a body should give power to itself. Congress first informed the several states of the powers

which it conceived were necessary to be invested in the union, to enable it to perform the duties and services required from it; and the states severally agreed with each other, and concentrated in congress those powers.

It may not be improper to observe that in both those instances (the one of Pennsylvania, and the other of the United States) there is no such thing as an idea of a compact between the people on one side and the government on the other. The compact was that of the people with each other to produce and constitute a government. To suppose that any government can be a party in a compact with the whole people is to suppose it to have existence before it can have a right to exist. The only instance in which a compact can take place between the people and those who exercise the government is that the people shall pay them while they choose to employ them.

Government is not a trade which any man, or any body of men, has a right to set up and exercise for his own emolument, but is altogether a trust in right of those by whom the trust is delegated, and by whom it is always resumable. It has of itself no rights; they are altogether duties.

Having thus given two instances of the original formation of a constitution, I will shew the manner in which both have been changed since their first establishment.

The powers vested in the governments of the several states, by the state constitutions, were found upon experience to be too great, and those vested in the federal government by the act of confederation, too little. The defect was not in the principle but in the distribution of power.

Numerous publications, in pamphlets and in newspapers, appeared on the propriety and necessity of new modelling the federal government. After some time of public discussion, carried on through the channel of the press, and in conversations, the state of Virginia, experiencing some inconvenience with respect to commerce, proposed holding a continental conference; in

consequence of which, a deputation from five or six of the state assemblies met at Annapolis, in Maryland, 1786. This meeting, not conceiving itself sufficiently authorized to go into the business of a reform, did no more than state their general opinions of the propriety of the measure, and recommend that a convention of all the states should be held the year following.

The convention met at Philadelphia in May, 1787, of which General Washington was elected president. He was not at that time connected with any of the state governments, or with congress. He delivered up his commission when the war ended, and since then had lived a private citizen.

The convention went deeply into all the subjects; and having, after a variety of debate and investigation, agreed among themselves upon the several parts of a federal constitution, the next question was, the manner of giving it authority and practice.

For this purpose they did not, like a cabal of courtiers, send for a Dutch Stadtholder, or a German Elector; but they referred the whole matter to the sense and interests of the country.¹

They first directed that the proposed constitution should be published. Secondly, that each state should elect a convention expressly for the purpose of taking it into consideration, and of ratifying or rejecting it; and that as soon as the approbation and ratification of any nine states should be given, that those states should proceed to the election of their proportion of members to the new federal government; and that the operation of it should then begin, and the federal government cease.

The several states proceeded accordingly to elect their conventions. Some of those conventions ratified the constitution by very large majorities, and two or three unanimously. In others there were much debate and

¹ This and the two preceding paragraphs formed the second part of the information against Paine; but it was only thought necessary to omit the final one from the Symonds edition.—
H. B. B.

division of opinion. In the Massachusetts convention, which met at Boston, the majority was not above nineteen or twenty in about three hundred members; but such is the nature of representative government, that it quietly decides all matters by majority. After the debate in the Massachusetts convention was closed, and the vote taken the objecting members rose and declared : *" That though they had argued and voted against it because certain parts appeared to them in a different light to what they appeared to other members ; yet, as the vote had decided in favour of the constitution as proposed, they should give it the same practical support as if they had voted for it."*

As soon as nine states had concurred (and the rest followed in the order their conventions were elected), the old fabric of the federal government was taken down, and the new erected, of which General Washington is president. In this place I cannot help remarking that the character and services of this gentleman are sufficient to put all those men called kings to shame. While they are receiving from the sweat and labours of mankind a prodigality of pay, to which neither their abilities nor their services can entitle them, he is rendering every service in his power, and refusing every pecuniary reward. He accepted no pay as commander-in-chief; he accepts none as president of the United States.

After the new federal constitution was established, the state of Pennsylvania, conceiving that some parts of its own constitution required to be altered, elected a convention for that purpose. The proposed alterations were published, and the people concurring therein, they were established.

In forming those constitutions, or in altering them, little or no inconvenience took place. The ordinary course of things was not interrupted, and the advantages have been much. It is always the interest of a far greater number of people in a nation to have things right than to let them remain wrong; and when public matters are open to debate, and the public judgment free, it will not decide wrong, unless it decides too hastily.

In the two instances of changing the constitutions, the

governments then in being were not actors either way. Government has no right to make itself a party in any debate respecting the principles or modes of forming, or of changing, constitutions. It is not for the benefit of those who exercise the powers of government that constitutions, and the governments issuing from them, are established. In all those matters the right of judging and acting are in those who pay, and not in those who receive.

A constitution is the property of a nation, and not of those who exercise the government.* All the constitutions of America are declared to be established on the authority of the people. In France, the word nation is used instead of the people; but in both cases a constitution is a thing antecedent to the government, and always distinct therefrom.

In England it is not difficult to perceive that everything has a constitution, except the nation. Every society and association that is established first agreed upon a number of original articles, digested into form, which are its constitution. It then appointed its officers, whose powers and authorities are described in that constitution, and the government of that society then commenced. Those officers, by whatever name they are called, have no authority to add to, alter, or abridge the original articles. It is only to the constituting power that this right belongs.

From the want of understanding the difference between a constitution and a government, Dr. Johnson and all writers of his description have always bewildered themselves. They could not but perceive that there must necessarily be a *controlling* power existing somewhere, and they placed this in the discretion of the persons exercising the government, instead of placing it in a constitution formed by the nation. When it is in a constitution it has the nation for its support, and the natural and the political controlling powers are together. The laws which are enacted by governments controul men only as individuals, but the nation, through its constitution, controuls the whole govern-

ment, and has a natural ability so to do. The final controuling power, therefore, and the original constituting power, are one and the same power.

Dr. Johnson could not have advanced such a position in any country where there was a constitution; and he is himself an evidence that no such thing as a constitution exists in England. But it may be put as a question, not improper to be investigated, That if a constitution does not exist how came the idea of its existence so generally established.*

In order to decide this question, it is necessary to consider a constitution in both its cases:—First, as creating a government and giving it powers. Secondly, as regulating and restraining the powers so given.

If we begin with William of Normandy, we find that the government of England was originally a tyranny, founded on an invasion and conquest of the country. This being admitted, it will then appear that the exertion of the nation at different periods to abate that tyranny and render it less intolerable, has been credited for a constitution.

Magna Charta, as it was called (it is now like an almanack of the same date), was no more than compelling the government to renounce a part of its assumptions. It did not create and give powers to government in the manner a constitution does; but was, as far as it went, of the nature of a re-conquest, and not a constitution; for could the nation have totally expelled the usurpation as France has done its despotism, it would then have had a constitution to form.

The ¹ history of the Edwards and the Henries, and up

¹ This and the three following paragraphs formed the third part of the Attorney-General's information, and are omitted from the Symonds edition with this explanation: "Here follow on page 52 of the original edition four paragraphs, making about eighteen lines of the same close printing as in this edition. They are a continuation of the argument which shews the manner in which restrictions upon power originally assumed, have been mistaken for a constitution. But as those paragraphs are put into the information, and will publicly appear with the pleadings thereon, when the prosecution shall be brought to an issue,

to the commencement of the Stuarts, exhibits as many instances of tyranny as could be acted within the limits to which the nation had restricted it. The Stuarts endeavoured to pass those limits, and their fate is well known. In all those instances we see nothing of a constitution, but only of restrictions on assumed power.

After this, another William, descended from the same stock, and claiming from the same origin, gained possession; and of the two evils, *James* and *William*, the nation preferred what it thought the least; since, from circumstances, it must take one. The act, called the Bill of Rights, comes here into view. What is it but a bargain which the parts of the government made with each other to divide powers, profits, and privileges? You shall have so much, and I will have the rest; and with respect to the nation, it said, for *your share* YOU shall have the right of petitioning. This being the case, the Bill of Rights is more properly the bill of wrongs and of insult. As to what is called the convention parliament, it was a thing that made itself, and then made the authority by which it acted. A few persons got together, and called themselves by that name. Several of them had never been elected, and none of them for the purpose.

From the time of William a species of government arose, issuing out of this coalition Bill of Rights; and more so since the corruption introduced at the Hanover succession, by the agency of Walpole, that can be

they are not verbally recited here, except the first of them which is added in the annexed note, for the purpose of shewing the spirit of the prosecuting party, and the sort of matter which has been selected from the work for prosecution. N.B.—The whole of the several paragraphs taken from the work for this purpose does not amount to two pages of the same printing as in this edition, and where they occur in the original edition they will be noticed in this." After reciting the first paragraph in a note, Paine continues: "Query: Does the prosecuting party mean to deny that instances of tyranny were acted by the Edwards and Henries? Does he mean to deny that the Stuarts endeavoured to pass the limits which the nation had prescribed? Does he mean to prove it libellous in any person to say that they did?"

described by no other name than a despotic legislation. Though the parts may embarrass each other, the whole has no bounds; and the only right it acknowledges out of itself is the right of petitioning. Where then is the constitution either that gives or restrains power?

It is not because a part of the government is elective, that makes it less a despotism, if the persons so elected possess afterwards, as a parliament, unlimited powers. Election in this case becomes separated from representation, and the candidates are candidates for despotism.

I cannot believe that any nation, reasoning on its own right, would have thought of calling these things *a constitution*, if the cry of constitution had not been set up by the government. It has got into circulation like the words *bore* and *quiz*, by being chalked up in the speeches of Parliament, as those words were on window-shutters and door-posts; but whatever the constitution may be in other respects, it has undoubtedly been *the most productive machine of taxation that was ever invented*. The taxes in France, under the new constitution, are not quite thirteen shillings per head,¹ and the taxes in England, under what is called its present constitution, are forty-eight shillings and sixpence per head—men, women, and children—amounting to nearly seventeen millions sterling, besides the expences of collecting, which are upwards of a million more.

In a country like England, where the whole of the civil government is executed by the people of every town and county by means of parish officers, magistrates, quarterly sessions, juries, and assize, without any trouble

¹ The whole amount of the assessed taxes of France, for the present year, is three hundred millions of livres, which is twelve millions and a half sterling; and the incidental taxes are estimated at three millions, making in the whole fifteen millions and a half; which, among twenty-four millions of people, is not quite thirteen shillings per head. France has lessened her taxes since the revolution, nearly nine millions sterling annually. Before the revolution, the city of Paris paid a duty of upwards of thirty per cent. on all articles brought into the city. This tax was collected at the city gates. It was taken off on the first of last May, and the gates taken down. *—Author.**

to what is called the government or any other expence to the revenue than the salary of the judges, it is astonishing how such a mass of taxes can be employed. Not even the internal defence of the country is paid out of the revenue. On all occasions, whether real or contrived, recourse is continually had to new loans and new taxes. No wonder, then, that a machine of government so advantageous to the advocates of a court should be so triumphantly extolled. No wonder, that St. James' or St. Stephen's should echo with the continual cry of constitution! No wonder, that the French revolution should be reprobated, and the *res-publica* treated with reproach! The *red book* of England, like the red book of France, will explain the reason.¹

I will now, by way of relaxation, turn a thought or two to Mr. Burke. I ask his pardon for neglecting him so long.

"America," says he (in his speech on the Canada constitution Bill), "never dreamed of such absurd doctrine as the *Rights of Man*."

Mr. Burke is such a bold presumer, and advances his assertions and his premises with such a deficiency of judgment, that without troubling ourselves about the principles of philosophy or politics, the mere logical conclusions they produce are ridiculous. For instance :

If governments, as Mr. Burke asserts, are not founded on the Rights of MAN, and are founded on *any rights* at all, they consequently must be founded on the right of *something* that is *not man*. What then is that something?

Generally speaking, we know of no other creatures that inhabit the earth than man and beast; and in all cases where only two things offer themselves, and one must be admitted, a negation proved on any one, amounts to an affirmative on the other; and therefore, Mr. Burke, by proving against the Rights of *Man* proves in behalf

¹ What was called the *livre rouge*, or the red book, in France, was not exactly similar to the court calendar in England; but it sufficiently shewed how a great part of the taxes was lavished.—*Author*.*

of the *beast*; and consequently, proves that government is a *beast*; and as difficult things sometimes explain each other, we now see the origin of keeping wild beasts in the Tower; for they certainly can be of no other use than to shew the origin of the government. They are in the place of a constitution. O, John Bull, what honours thou hast lost by not being a wild beast. Thou mightest, on Mr. Burke's system, have been in the Tower for life.

If Mr. Burke's arguments have not weight enough to keep one serious, the fault is less mine than his; and as I am willing to make an apology to the reader for the liberty I have taken, I hope Mr. Burke will also make his for giving the cause.

Having thus paid Mr. Burke the compliment of remembering him, I return to the subject.

From the want of a constitution in England to restrain and regulate the wild impulse of power, many of the laws are irrational and tyrannical, and the administration of them vague and problematical.

The attention of the government of England (for I rather chuse to call it by this name than the English government) appears since its political connection with Germany to have been so completely engrossed and absorbed by foreign affairs, and the means of raising taxes, that it seems to exist for no other purposes. Domestic concerns are neglected; and with respect to regular law there is scarcely such a thing.*¹

Almost every case now must be determined by some precedent, be that precedent good or bad, or whether it properly applies or not; and the practice is become so general as to suggest a suspicion, that it proceeds from a deeper policy than at first sight appears.

Since the revolution of America, and more so since that of France, this preaching up the doctrines of precedents, drawn from times and circumstances antecedent to those events, has been the studied practice of the

¹ This paragraph was the fourth item in the indictment against Paine.—H. B. B.

English government. The generality of those precedents are founded on principles and opinions, the reverse of what they ought; and the greater distance of time they are drawn from the more are to be suspected. But by associating those precedents with a superstitious reverence for ancient things, as monks shew relics and call them holy, the generality of mankind are deceived into the design. Governments now act as if they were afraid to awaken a single reflection in man. They are softly leading him to the sepulchre of precedents to deaden his faculties and call attention from the scene of revolutions. They feel that he is arriving at knowledge faster than they wish, and their policy of precedents is the barometer of their fears. This political popery, like the ecclesiastical popery of old, has had its day, and is hastening to its exit. The ragged relic and the antiquated precedent, the monk and the monarch, will moulder together.

Government by precedent, without any regard to the principle of the precedent, is one of the vilest systems that can be set up. In numerous instances the precedent ought to operate as a warning, and not as an example, and requires to be shunned instead of imitated; but instead of this, precedents are taken in the lump, and put at once for constitution and for law.

Either the doctrine of precedents is policy to keep man in a state of ignorance, or it is a practical confession that wisdom degenerates in governments as governments increase in age, and can only hobble along by the stilts and crutches of precedents. How is it that the same persons who would proudly be thought wiser than their predecessors appear at the same time only as the ghosts of departed wisdom? How strangely is antiquity treated! To some purposes it is spoken of as the times of darkness and ignorance, and to answer others, it is put for the light of the world.

If the doctrine of precedents is to be followed, the expences of government need not continue the same. Why pay men extravagantly, who have but little to do? If everything that can happen is already in precedent,

legislation is at an end, and precedent, like a dictionary, determines every case. Either, therefore, government has arrived at its dotage, and requires to be renovated, or all the occasions for exercising its wisdom have occurred.

We now see all over Europe, and particularly in England, the curious phenomenon of a nation looking one way, and the government the other—the one forward and the other backward. If governments are to go on by precedent, while nations go on by improvement, they must at last come to a final separation; and the sooner, and the more civilly they determine this point, the better.¹

Having thus spoken of constitutions generally, as things distinct from actual governments, let us proceed to consider the parts of which a constitution is composed.

Opinions differ more on this subject than with respect to the whole. That a nation ought to have a constitution, as a rule, for the conduct of its government is a simple question in which all men not directly courtiers, will agree. It is only on the component part that questions and opinions multiply.

But this difficulty, like every other, will diminish when put into a train of being rightly understood.

The first thing is, that a nation has a right to establish a constitution.

Whether it exercises this right in the most judicious

¹ In England the improvements in agriculture, useful arts, manufactures, and commerce, have been made in opposition to the genius of its government, which is that of following precedents. It is from the enterprise and industry of the individuals, and their numerous associations, in which, tritely speaking, government is neither pillow nor bolster, that these improvements have proceeded. No man thought about government, or who was *in*, or who was *out*, when he was planning or executing those things; and all he had to hope, with respect to government, was *that it would let him alone*. Three or four very silly ministerial newspapers are continually offending against the spirit of national improvement, by ascribing it to a minister. They may with as much truth ascribe this book to a minister.—*Author*.

manner at first is quite another case. It exercises it agreeably to the judgment it possesses; and by continuing to do so, all errors will at last be exploded.

When this right is established in a nation, there is no fear that it will be employed to its own injury. A nation can have no interest in being wrong.

Though all the constitutions of America are on one general principle, yet no two of them are exactly alike in their component parts or in the distribution of the powers which they give to the actual governments. Some are more, and others less complex.

In forming a constitution, it is first necessary to consider what are the ends for which government is necessary? Secondly, what are the best means, and the least expence, for accomplishing those ends?

Government is nothing more than a national association; and the object of this association is the good of all, as well individually as collectively. Every man wishes to pursue his occupation, and to enjoy the fruits of his labours and the produce of his property in peace and safety, and with the least possible expence. When these things are accomplished, all the objects for which government ought to be established are answered.

It has been customary to consider government under three distinct general heads. The legislative, the executive, and the judicial.

But if we permit our judgment to act unincumbered by the habit of multiplied terms, we can perceive no more than two divisions of power, of which civil government is composed, namely that of legislating or enacting laws, and that of executing or administering them. Everything, therefore, appertaining to civil government, classes itself under one or other of these two divisions.

So far as regards the execution of the laws, that which is called the judicial power, is strictly and properly the executive power of every country. It is that power to which every individual has to appeal, and which causes the law to be executed; neither have we any other clear idea with respect to the official execution of the laws. In England, and also in America and France, this power

begins with the magistrate, and proceeds up through all the courts of judicature.

I leave to courtiers to explain what is meant by calling monarchy the executive power. It is merely a name in which acts of government are done; and any other, or none at all, would answer the same purpose. Laws have neither more or less authority on this account. It must be from the justness of their principles, and the interest which a nation feels therein, that they derive support; if they require any other than this, it is a sign that something in the system of government is imperfect. Laws difficult to be executed cannot be generally good.

With respect to the organization of the *legislative power*, different modes have been adopted in different countries. In America it is generally composed of two houses. In France it consists but of one, but in both countries it is wholly by representation.*

The case is, that mankind (from the long tyranny of assumed power) have had so few opportunities of making the necessary trials on modes and principles of government, in order to discover the best, *that government is but now beginning to be known*, and experience is yet wanting to determine many particulars.

The objections against two houses are, first, that there is an inconsistency in any part of a whole legislature, coming to a final determination by vote on any matter, whilst *that matter*, with respect to *that whole*, is yet only in a train of deliberation, and consequently open to new illustrations.

Secondly. That by taking the vote on each, as a separate body, it always admits of the possibility, and is often the case in practice, that the minority governs the majority, and that in some instances to a degree of great inconsistency.

Thirdly. That two houses arbitrarily checking or controuling each other is inconsistent; because it cannot be proved on the principles of just representation, that either should be wiser or better than the other. They may check in the wrong as well as in the right—and there-

fore to give the power where we cannot give the wisdom to use it, nor be assured of its being rightly used, renders the hazard at least equal to the precaution.¹

The objection against a single house is, that it is always in a condition of committing itself too soon. But it should at the same time be remembered, that when there is a constitution which defines the power, and establishes the principles within which a legislature shall act, there is already a more effectual check provided, and more powerfully operating, than any other check can be. For example,

Were a bill to be brought into any of the American legislatures similar to that which was passed into an act by the English parliament, at the commencement of George the First, to extend the duration at the assemblies to a longer period than they now sit, the check is in the constitution, which in effect says *Thus far shalt thou go and no further.*

But in order to remove the objection against a single house, that of acting with too quick an impulse, and at the same time to avoid the inconsistencies, in some cases absurdities, arising from two houses, the following method has been proposed as an improvement upon both.

First, to have but one representation.

Secondly, to divide that representation, by lot, into two or three parts.

Thirdly, that every proposed bill shall be first debated in those parts by succession, that they may become the hearers of each other, but without taking any vote. After which the whole representation to assemble for a general debate and determination by vote.

¹ With respect to the two houses, of which the English Parliament is composed, they appear to be effectually influenced into one, and, as a legislature, to have no temper of its own. The minister, whoever he at any time may be, touches it as with an opium wand, and it sleeps obedience.

But if we look at the distinct abilities of the two houses, the difference will appear so great, as to shew the inconsistency of placing power where there can be no certainty of the judgment to use it. Wretched as the state of representation is in England, it is manhood compared with what is called the house of Lords;

To this proposed improvement has been added another, for the purpose of keeping the representation in the state of constant renovation; which is that one-third of the representation of each country shall go out at the expiration of one year, and the number be replaced by new elections. Another third at the expiration of the second year replaced in like manner, and every third year to be a general election.¹

But in whatever manner the separate parts of a constitution may be arranged there is *one* general principle that distinguishes freedom from slavery, which is, *that all hereditary government over a people is to them a species of slavery, and representative government is freedom.*

Considering government in the only light in which it should be considered, that of a NATIONAL ASSOCIATION, it ought to be so constructed as not to be disordered by any accident happening among the parts; and, therefore, no extraordinary power, capable of producing such an effect, should be lodged in the hands of any individual. The

and so little is this nick-named house regarded, that the people scarcely inquire at any time what it is doing. It appears also to be most under influence, and the furthest removed from the general interest of the nation. In the debate on engaging in the Russian and Turkish war, the majority in the house of peers in favour of it was upwards of ninety, when in the other house, which is more than double its numbers, the majority was sixty-three.

The proceedings on Mr. Fox's bill, respecting the rights of juries, merit also to be noticed. The persons called the peers were not the objects of that bill. They are already in possession of more privileges than that bill gave to others. They are their own jury, and if any of that house were prosecuted for a libel, he would not suffer, even upon conviction, for the first offence. Such inequality in laws ought not to exist in any country. The French constitution says, *That the law is the same to every individual, whether to protect or to punish. All are equal in its sight.—Author.**

The first twelve or thirteen lines of this note made the next item in the information against Paine.—H. B. B.

¹ As to the state of representation in England, it is too absurd to be reasoned upon. Almost all the represented parts are decreasing in population, and the unrepresented parts are increasing. A general convention of the nation is necessary to take the whole state of its government into consideration.—*Author.**

death, sickness, absence, or defection, of any one individual in a government, ought to be a matter of no more consequence, with respect to the nation, than if the same circumstance had taken place in a member of the English Parliament, or the French National Assembly.

Scarcely anything presents a more degrading character of national greatness, than its being thrown into confusion, by anything happening to or acted by any individual; and the ridiculousness of the scene is often increased by the natural insignificance of the person by whom it is occasioned. Were a government so constructed, that it could not go on unless a goose or a gander were present in the senate, the difficulties would be just as great and as real, on the flight or sickness of the goose, or the gander, as if it were called a King. We laugh at individuals for the silly difficulties they make to themselves, without perceiving that the greatest of all ridiculous things are acted in governments.¹

All the constitutions of America are on a plan that excludes the childish embarrassments which occur in monarchical countries. No suspension of government can there take place for a moment; from any circumstances whatever. The system of representation provides for everything, and is the only system in which

¹ It is related that in the canton of Berne, in Switzerland, it had been customary, from time immemorial, to keep a bear at the public expence, and the people had been taught to believe, that if they had not a bear they should all be undone. It happened some years ago that the bear, then in being, was taken sick, and died too suddenly to have his place immediately supplied with another. During this interregnum the people discovered that the corn grew, and the vintage flourished, and the sun and moon continued to rise and set, and everything went on the same as before, and taking courage from these circumstances, they resolved not to keep any more bears; for, said they, "a bear is a very voracious, expensive animal, and we were obliged to pull out his claws, lest he should hurt the citizens."

The story of the bear was related in some of the French newspapers, at the time of the flight of Louis XVI. and the application of it to monarchy could not be mistaken in France; but it seems that the aristocracy of Berne applied it to themselves, and have since prohibited the reading of French newspapers.—*Author.**

nations and governments can always appear in their proper character.

As extraordinary power ought not to be lodged in the hands of any individual, so ought there to be no appropriations of public money to any person, beyond what his services in a state may be worth. It signifies not whether a man be called a president, a king, an emperor, a senator, or by any other name which propriety or folly may devise or arrogance assume, it is only a certain service he can perform in the state; and the service of any such individual in the routine of office, whether such office be called monarchical, presidential, senatorial, or by any other name or title, can never exceed the value of ten thousand pounds a year. All the great services that are done in the world are performed by volunteer characters, who accept nothing for them; but the routine of office is always regulated to such a general standard of abilities as to be within the compass of numbers in every country to perform, and therefore cannot merit very extraordinary recompence. *Government, says Swift, is a plain thing, and fitted to the capacity of many heads.*

It is inhuman to talk of a million sterling a year, paid out of the public taxes of any country, for the support of an individual, whilst thousands who are forced to contribute thereto, are pining with want, and struggling with misery. Government does not consist in a contrast between prisons and palaces, between poverty and pomp; it is not instituted to rob the needy of his mite, and increase the wretchedness of the wretched. But of this part of the subject I shall speak hereafter, and confine myself to political observations.

When extraordinary power and extraordinary pay are allotted to any individual in a government, he becomes the centre, round which every kind of corruption generates and forms. Give to any man a million a-year, and add thereto the power of creating and disposing of places, at the expence of a country, and the liberties of that country are no longer secure. What is called the splendour of a throne is no other than the corruption of the state.

It is made up of a band of parasites living in luxurious indolence out of the public taxes.*

When once such a vicious system is established it becomes the guard and protection of all inferior abuses. The man who is in the receipt of a million a year is the last person to promote a spirit of reform, lest, in the event, it should reach to himself. It is always his interest to defend inferior abuses, as so many outworks to protect the citadel; and on this species of political fortification, all the parts have such a common dependence that it is never to be expected they will attack each other.¹

Monarchy would not have continued so many ages in the world had it not been for the abuses it protects. It is the master-fraud, which shelters all others. By admitting a participation of the spoil, it makes itself friends; and when it ceases to do this it will cease to be the idol of courtiers.

As the principle on which constitutions are now formed rejects all hereditary pretensions to government, it also

¹ It is scarcely possible to touch on any subject, that will not suggest an allusion to some corruption in governments. The simile of "fortifications," unfortunately involves with it a circumstance, which is directly in point with the matter above alluded to.

Among the numerous instances of abuse which have been acted or protected by governments, ancient or modern, there is not a greater than that of quartering a man and his heirs upon the public, to be maintained at its expence.

Humanity dictates a provision for the poor; but by what right, moral or political, does any government assume to say, that the person called the Duke of Richmond, shall be maintained by the public? Yet, if common report is true, not a beggar in London can purchase his wretched pittance of coal, without paying towards the civil list of the Duke of Richmond. Were the whole produce of this imposition but a shilling a year, the iniquitous principle would be still the same; but when it amounts, as it is said to do, to no less than twenty thousand pounds per annum, the enormity is too serious to be permitted to remain. This is one of the effects of monarchy and aristocracy.

In stating this case I am led by no personal dislike. Though I think it mean in any man to live upon the public, the vice originates in the government; and so general is it become that, whether the parties are in the ministry or in the opposition it makes no difference: they are sure of the guarantee of each other.—*Author.*

rejects all that catalogue of assumptions known by the name of prerogatives.

If there is any government where prerogatives might with apparent safety be entrusted to any individual, it is in the federal government of America. The president of the United States of America is elected only for four years. He is not only responsible in the general sense of the word, but a particular mode is laid down in the constitution for trying him. He cannot be elected under thirty-five years of age; and he must be a native of the country.

In a comparison of these cases with the Government of England, the difference when applied to the latter amounts to an absurdity. In England the person who exercises prerogative is often a foreigner; always half a foreigner, and always married to a foreigner. He is never in full natural or political connection with the country, is not responsible for anything, and becomes of age at eighteen years; yet such a person is permitted to form foreign alliances, without even the knowledge of the nation, and to make war and peace without its consent.

But this is not all. Though such a person cannot dispose of the government in the manner of a testator, he dictates the marriage connections, which, in effect, accomplish a great part of the same end. He cannot directly bequeath half the government to Prussia, but he can form a marriage partnership that will produce almost the same thing. Under such circumstances, it is happy for England that she is not situated on the Continent, or she might, like Holland, fall under the dictatorship of Prussia. Holland, by marriage, is as effectually governed by Prussia, as if the whole tyranny of bequeathing the government had been the means.

The presidency in America (or, as it is sometimes called, the executive) is the only office from which a foreigner is excluded, and in England it is the only one to which he is admitted. A foreigner cannot be a member of Parliament, but he may be what is called a king. If there is any reason for excluding foreigners,

it ought to be from those offices where mischief can most be acted, and where, by uniting every bias of interest and attachment, the trust is best secured. But as nations proceed in the great business of forming constitutions, they will examine with more precision into the nature and business of that department which is called the executive. What the legislative and judicial departments are every one can see; but with respect to what, in Europe, is called the executive, as distinct from those two, it is either a political superfluity or a chaos of unknown things.

Some kind of official department, to which reports shall be made from the different parts of a nation, or from abroad, to be laid before the national representatives, is all that is necessary; but there is no consistency in calling this the executive; neither can it be considered in any other light than as inferior to the legislative. The sovereign authority in any country is the power of making laws, and everything else is an official department.

Next to the arrangement of the principles and the organization of the several parts of a constitution, is the provision to be made for the support of the persons to whom the nation shall confide the administration of the constitutional powers.

A nation can have no right to the time and services of any person at his own expence, whom it may choose to employ or entrust in any department whatever; neither can any reason be given for making provision for the support of any one part of a government and not for the other.

But admitting that the honour of being entrusted with any part of a government is to be considered a sufficient reward, it ought to be so to every person alike. If the members of the legislature of any country are to serve at their own expence, that which is called the executive, whether monarchical or by any other name, ought to serve in like manner. It is inconsistent to pay the one, and accept the service of the other gratis.

In America, every department in the government is decently provided for; but no one is extravagantly paid.

Every member of congress, and of the assemblies, is allowed a sufficiency for his expences. Whereas in England, a most prodigal provision is made for the support of one part of the government and none for the other, the consequence of which is that the one is furnished with the means of corruption and the other is put into the condition of being corrupted. Less than a fourth part of such expence, applied as it is in America, would remedy a great part of the Corruption.

Another reform in the American constitutions is the exploding all oaths of personality. The oath of allegiance in America is to the nation only. The putting any individual as a figure for a nation is improper. The happiness of a nation is the superior object, and therefore the intention of an oath of allegiance ought not to be obscured by being figuratively taken to, or in the name of, any person. The oath, called the civic oath, in France, viz., the "*nation, the law, and the king,*" is improper. If taken at all, it ought to be as in America, to the nation only. The law may or may not be good; but in this place it can have no other meaning than as being conducive to the happiness of the nation, and therefore is included in it. The remainder of the oath is improper on the ground that all personal oaths ought to be abolished. They are the remains of tyranny on one part and slavery on the other; and the name of the CREATOR ought not to be introduced to witness the degradation of his creation; or if taken, as is already mentioned, as figurative of the nation, it is in this place redundant. But whatever apology may be made for oaths at the first establishment of a government, they ought not to be permitted afterwards. If a government requires the support of oaths, it is a sign that it is not worth supporting, and ought not to be supported. Make government what it ought to be, and it will support itself.

To conclude this part of the subject:—One of the greatest improvements that have been made for the perpetual security and progress of constitutional liberty, is the provision which the new constitutions make for occasionally revising, altering, and amending them.

The principle upon which Mr. Burke formed his political creed, that of "*binding and controuling posterity to the end of time, and of renouncing and abdicating the rights of all posterity for ever,*" is now become too detestable to be made a subject of debate; and therefore I pass it over with no other notice than exposing it.

Government is but now beginning to be known. Hitherto it has been the mere exercise of power which forbade all effectual enquiry into rights, and grounded itself wholly on possession. While the enemy of liberty was its judge, the progress of its principle must have been small indeed.

The constitutions of America, and also that of France, have either affixed a period for their revision, or laid down the mode by which improvement shall be made. It is perhaps impossible to establish anything that combines principles with opinions and practice, which the progress of circumstances, through a length of years, will not in some measure derange, or render inconsistent; and, therefore, to prevent inconveniences accumulating, till they discourage reformation or provoke revolutions, it is best to provide the means of regulating them as they occur. The Rights of Man are the rights of all generations of men, and cannot be monopolized by any. That which is worth following will be followed for the sake of its worth, and it is in this that its security lies, and not in any conditions with which it may be encumbered. When a man leaves property to his heirs, he does not connect it with an obligation that they shall accept it. Why, then, should we do otherwise with respect to constitutions?

The best constitutions that could now be devised, consistently with the condition of the present moment, may be far short of that excellence which a few years may afford. There is a morning of reason rising upon man on the subject of governments that has not appeared before. As the barbarism of the present old governments expires, the moral condition of nations with respect to each other will be changed. Man will not be brought up with the savage idea of considering his species as his enemy, because the accident of birth gave the individuals

existence in countries distinguished by different names; and as constitutions have always some relation to external as well as to domestic circumstances, the means of benefitting by every change, foreign or domestic, should be a part of every constitution.

We already see an alteration in the national disposition of England and France towards each other, which, when we look back to only a few years, is itself a revolution. Who could have foreseen, or who could have believed, that a French National Assembly would ever have been a popular toast in England, or that a friendly alliance of the two nations should become the wish of either? It shews that man, were he not corrupted by governments, is naturally the friend of man, and that human nature is not of itself vicious. That spirit of jealousy and ferocity, which the governments of the two countries inspired, and which they rendered subservient to the purpose of taxation, is now yielding to the dictates of reason, interest, and humanity. The trade of courts is beginning to be understood, and the affectation of mystery, with all the artificial sorcery by which they impose upon mankind, is on the decline. It has received its death wound; and though it may linger, it will expire.

Government ought to be as much open to improvement as anything which appertains to man, instead of which it has been monopolized from age to age, by the most ignorant and vicious of the human race. Need we any other proof of their wretched management, than the excess of debts and taxes with which every nation groans, and the quarrels into which they have precipitated the world?

Just emerging from such a barbarous condition, it is too soon to determine to what extent of improvement government may yet be carried. For what we can foresee, all Europe may form but one great republic, and man be free of the whole.