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“Considerations on the Nature and Extent of the Legislative Authority of the British Parliament”

(Abridged)

By James Wilson

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No question can be more important to Great Britain, and to the colonies, than this—does the legislative authority of the British parliament extend over them?

On the resolution of this question, and on the measures which a resolution of it will direct, it will depend, whether the parent country, like a happy mother, shall behold her children flourishing around her, and receive the most grateful returns for her protection and love; or whether, like a step dame, rendered miserable by her own unkind conduct, she shall see their affections alienated, and herself deprived of those advantages which a milder treatment would have ensured to her.

The British nation are generous: they love to enjoy freedom: they love to behold it: slavery is their greatest abhorrence. Is it possible, then, that they would wish themselves the authors of it? No. Oppression is not a plant of the British soil; and the late severe proceedings against the colonies must have arisen from the detestable schemes of interested ministers, who have misinformed and misled the people. A regard for that nation, from whom we have sprung, and from whom we boast to have

derived the spirit which prompts us to oppose their unfriendly measures, must lead us to put this construction on what we have lately seen and experienced. When, therefore, they shall know and consider the justice of our claim—that we insist only upon being treated as freemen, and as the descendants of those British ancestors, whose memory we will not dishonour by our degeneracy, it is reasonable to hope, that they will approve of our conduct, and bestow their loudest applauses on our congenial ardour for liberty.

But if these reasonable and joyful hopes should fatally be disappointed, it will afford us at least some satisfaction to know, that the principles on which we have founded our opposition to the late acts of parliament, are the principles of justice and freedom, and of the British constitution. If our righteous struggle shall be attended with misfortunes, we will reflect with exultation on the noble cause of them; and while suffering unmerited distress, think ourselves superiour to the proudest slaves. On the contrary, if we shall be reinstated in the enjoyment of those rights, to which we are entitled by the supreme and uncontrollable laws of nature, and the fundamental principles of the British constitution, we shall reap the glorious fruit of our labours; and we shall, at the same time, give to the world and to posterity an instructive example, that the cause of liberty ought not to be despaired of, and that a generous contention in that cause is not always unattended with success.

The foregoing considerations have induced me to publish a few remarks on the important question, with which I introduced this essay.

Those who allege that the parliament of Great Britain have power to make laws binding the American colonies, reason in the following manner. “That there is and must be in every state a supreme, irresistible, absolute, uncontrolled authority, in which the *jura summi imperii*, [“rights of highest command”] or the rights of sovereignty, reside:”^[1] “That this supreme power is, by the constitution of Great Britain, vested in the king, lords, and commons:”^[2] “That, therefore, the acts of the king, lords, and commons, or, in other words, acts of parliament, have, by the British constitution, a binding force on the American colonies, they composing a part of the British empire.”

I admit that the principle, on which this argument is founded, is of great importance: its importance, however, is derived from its tendency to promote the ultimate end of all government. But if the application of it would, in any instance, destroy, instead of promoting, that end, it ought, in that instance, to be rejected: for to admit it, would be to sacrifice the end to the means, which are valuable only so far as they advance it.

All men are, by nature, equal and free: no one has a right to any authority over another without his consent: all lawful government is founded on the consent of those who are subject to it: such consent was given with a view to ensure and to increase the happiness of the governed, above what they could enjoy in an independent and unconnected state of nature. The consequence is, that the happiness of the society is the *first* law of every government.^[3]

This rule is founded on the law of nature: it must control every political maxim: it must regulate the legislature itself.^[4] The people have a right to insist that this rule be observed; and are entitled to demand a moral security that the legislature will observe it. If they have not the first, they are slaves; if they have not the second, they are, every moment, exposed to slavery. For “civil liberty is nothing else but natural liberty, divested of that part which constituted the independence of individuals, by the authority which it confers on sovereigns, attended with a right of insisting upon their making a good use of their authority, and with a moral security that this right will have its effect.”^[5]

Let me now be permitted to ask—Will it ensure and increase the happiness of the American colonies, that the parliament of Great Britain should possess a supreme, irresistible, uncontrolled authority over them? Is such an authority consistent with their liberty? Have they any security that it will be employed only for their good? Such a security is absolutely necessary. Parliaments are not infallible: they are not always just. The members, of whom they are composed, are human; and, therefore, they may err; they are influenced by interest; and, therefore, they may deviate from their duty. The acts of the body must depend upon the opinions and dispositions of the members: the acts of the body may, then, be the result of error and of vice. It is no breach of decency to suppose all this: the British constitution supposes it: “it supposes that parliaments may betray their trust, and provides, as far as human wisdom can provide, that they may not be able to do so long, without a sufficient control.”^[6] Without provisions for this purpose, the temple of British liberty, like a structure of ice, would instantly dissolve before the fire of oppression and despotick sway.

It will be very material to consider the several securities, which the inhabitants of Great Britain have, that their liberty will not be destroyed by the legislature, in whose hands it is intrusted. If it shall appear, that the same securities are not enjoyed by the colonists; the undeniable consequence will be, that the colonists are not under the same obligations to intrust their liberties into the hands of the same legislature: for the colonists are entitled to all^[7] the privileges of Britons. We have committed no crimes to forfeit them: we have too much spirit to resign them. We will leave our posterity as free as our ancestors left us.

To give to any thing that passes in parliament the force of a law, the consent of the king, of the lords, and of the commons^[8] is absolutely necessary.^[9] If, then, the inhabitants of Great Britain possess a sufficient restraint upon any of these branches of the legislature, their liberty is secure, provided they be not wanting to themselves. Let us take a view of the restraints, which they have upon the house of commons.

They elect the members of that house. “Magistrates,” says Montesquieu,^[10] “are properly theirs, who have the nomination of them.” The members of the house of commons, therefore, elected by the people, are the magistrates of the people; and are bound by the ties of gratitude for the honour and confidence conferred upon them, to consult the interest of their constituents.

The power of elections has ever been regarded as a point of the last consequence to

all[11] free governments. The independent exercise of that power is justly deemed the strongest bulwark of the British liberties.[12] As such, it has always been an object of great attention to the legislature; and is expressly stipulated with the prince in the bill of rights. All those are excluded from voting, whose poverty is such, that they cannot live independent, and must therefore be subject to the undue influence of their superiours. Such are supposed to have no will of their own: and it is judged improper that they should vote in the representation of a free state. What can exhibit in a more striking point of view, the peculiar care which has been taken, in order to render the election of members of parliament entirely free? It was deemed an insult upon the independent commons of England, that their uninfluenced suffrages should be adulterated by those who were not at liberty to speak as they thought, though their interests and inclinations were the same. British liberty, it was thought, could not be effectually secured, unless those who made the laws were freely, and without influence, elected by those for whom they were made. Upon this principle is reasonably founded the maxim in law—that every one, who is capable of exercising his will, is party, and presumed to consent, to an act of parliament.

For the same reason that persons, who live dependent upon the will of others, are not admitted to vote in elections, those who are under age, and therefore incapable of judging; those who are convicted of perjury or subornation of perjury, and therefore unworthy of judging; and those who obtain their freeholds by fraudulent conveyances, and would therefore vote to serve infamous purposes, are all likewise excluded from the enjoyment of this great privilege. Corruption at elections is guarded against by the strictest precautions, and most severe penalties. Every elector, before he polls, must, if demanded by a candidate or by two electors, take the oath against bribery, as prescribed by 2. Geo. 2. c. 24. Officers of the excise, of the customs, and of the post offices; officers concerned in the duties upon leather, soap, paper, striped linens imported, hackney coaches, cards and dice, are restrained from interfering in elections, under the penalty of one hundred pounds, and of being incapable of ever exercising any office of trust under the king.

Thus is the freedom of elections secured from the servility, the ignorance, and the corruption of the electors; and from the interposition of officers depending immediately upon the crown. But this is not all. Provisions, equally salutary, have been made concerning the qualifications of those who shall be elected. All imaginable care has been taken, that the commons of Great Britain may be neither awed, nor allured, nor deceived into any nomination inconsistent with their liberties.

It has been adopted as a general maxim, that the crown will take advantage of every opportunity of extending its prerogative, in opposition to the privileges of the people; that it is the interest of those who have pensions or offices at will from the crown, to concur in all its measures; that mankind in general will prefer their private interest to the good of their country; and that, consequently, those who enjoy such pensions or offices are unfit to represent a free nation, and to have the care of their liberties committed to their hands.[13] All such officers or pensioners are declared incapable of being elected members of the house of commons.

But these are not the only checks which the commons of Great Britain have, upon the conduct of those whom they elect to represent them in parliament. The interest of the representatives is the same with that of their constituents. Every measure, that is prejudicial to the nation, must be prejudicial to them and their posterity. They cannot betray their electors, without, at the same time, injuring themselves. They must join in bearing the burthen of every oppressive act; and participate in the happy effects of every wise and good law. Influenced by these considerations, they will seriously and with attention examine every measure proposed to them; they will behold it in every light, and extend their views to its most distant consequences. If, after the most mature deliberation, they find it will be conducive to the welfare of their country, they will support it with ardour: if, on the contrary, it appears to be of a dangerous and destructive nature, they will oppose it with firmness.

Every social and generous affection concurs with their interest, in animating the representatives of the commons of Great Britain to an honest and faithful discharge of their important trust. In each patriotick effort, the heart-felt satisfaction of having acted a worthy part vibrates in delightful unison with the applause of their countrymen, who never fail to express their warmest acknowledgements to the friends and benefactors of their country. How pleasing are those rewards! How much to be preferred to that paltry wealth, which is sometimes procured by meanness and treachery! I say sometimes; for meanness and treachery do not always obtain that pitiful reward. The most useful ministers to the crown, and therefore the most likely to be employed, especially in great emergencies, are those who are best beloved by the people; and those only are beloved by the people, who act steadily and uniformly in support of their liberties. Patriots, therefore, have frequently, and especially upon important occasions, the best chance of being advanced to offices of profit and power. An abject compliance with the will of an imperious prince, and a ready disposition to sacrifice every duty to his pleasure, are sometimes, I confess, the steps, by which only men can expect to rise to wealth and titles. Let us suppose that, in this manner, they are successful in attaining them. Is the despicable prize a sufficient recompense, for submitting to the infamous means by which it was procured, and for the torturing remorse with which the possession of it must be accompanied? Will it compensate for the merited curses of the nation and of posterity?

These must be very strong checks upon the conduct of every man, who is not utterly lost to all sense of praise and blame. Few will expose themselves to the just abhorrence of those among whom they live, and to the excruciating sensations which such abhorrence must produce.

But lest all these motives, powerful as they are, should be insufficient to animate the representatives of the nation to a vigorous and upright discharge of their duty, and to restrain them from yielding to any temptation that would incite them to betray their trust; their constituents have still a farther security for their liberties in the frequent election of parliaments. At the expiration of every parliament, the people can make a distinction between those who have served them well, and those who have neglected or betrayed their interest: they can bestow, unasked, their suffrages upon the former

in the new election; and can mark the latter with disgrace, by a mortifying refusal. The constitution is thus frequently renewed, and drawn back, as it were, to its first principles; which is the most effectual method of perpetuating the liberties of a state. The people have numerous opportunities of displaying their just importance, and of exercising, in person, these natural rights. The representatives are reminded whose creatures they are; and to whom they are accountable for the use of that power, which is delegated unto them. The first maxims of jurisprudence are ever kept in view—that all power is derived from the people—that their happiness is the end of government.

Frequent new parliaments are a part of the British constitution: by them only, the king can know the immediate sense of the nation. Every supply, which they grant, is justly to be considered as a testimony of the loyalty and affection, which the nation bear to their sovereign; and by this means, a mutual confidence is created between the king and his subjects. How pleasing must such an intercourse of benefits be! How must a father of his people rejoice in such dutiful returns for his paternal care! With what ardour must his people embrace every opportunity of giving such convincing proofs, that they are not insensible of his wise and indulgent rule!

Long parliaments have always been prejudicial to the prince, who summoned them, or to the people, who elected them. In that called by King Charles I, [\[14\]](#) in the year 1640, the commons proceeded at first, with vigour and a true patriotick spirit, to rescue the kingdom from the oppression under which it then groaned—to retrieve the liberties of the people, and establish them on the surest foundations—and to remove or prevent the pernicious consequences, which had arisen, or which, they dreaded, might arise from the tyrannical exercise of prerogative. They abolished the courts of the star chamber and high commission: they reduced the forests to their ancient bounds: they repealed the oppressive statutes concerning knighthood: they declared the tax of ship money to be illegal: they presented the petition of rights, and obtained a ratification of it from the crown. But when the king unadvisedly passed an act to continue them till such time as they should please to dissolve themselves, how soon—how fatally did their conduct change! In what misery did they involve their country! Those very men, who, while they had only a constitutional power, seemed to have no other aim but to secure and improve the liberty and felicity of their constituents, and to render their sovereign the glorious ruler of a free and happy people—those very men, after they became independent of the king and of their electors, sacrificed both to that inordinate power which had been given them. A regard for the publick was now no longer the spring of their actions: their only view was to aggrandize themselves, and to establish their grandeur on the ruins of their country. Their views unhappily were accomplished. They overturned the constitution from its very foundation; and converted into rods of oppression those instruments of power, which had been put into their hands for the welfare of the state; but which those, who had formerly given them, could not now reassume. What an instructive example is this! How alarming to those, who have no influence over their legislators—who have no security but that the power, which was originally derived from the people, and was delegated for their preservation, may be abused for their destruction! Kings are not the only tyrants: the conduct of the long parliament will justify me in adding, that kings are not the severest tyrants.

At the restoration, care was taken to reduce the house of commons to a proper dependence on the king; but immediately after their election, they lost all dependence upon their constituents, because they continued during the pleasure of the crown. The effects soon dreadfully appeared in the long parliament under Charles the second.^[15] They seemed disposed ingloriously to surrender those liberties, for which their ancestors had planned, and fought, and bled: and it was owing to the wisdom and integrity of two^[16] virtuous ministers of the crown, that the commons of England were not reduced to a state of slavery and wretchedness by the treachery of their own representatives, whom they had indeed elected, but whom they could not remove. Secure of their seats, while they gratified the crown, the members bartered the liberties of the nation for places and pensions; and threw into the scale of prerogative all that weight, which they derived from the people in order to counterbalance it.

It was not till some years after the revolution, that the people could rely on the faithfulness of their representatives, or punish their perfidy. By the statute 6. W. & M. c. 2. it was enacted, that parliaments should not continue longer than three years. The insecure situation of the first prince of the Hanoverian line,^[17] surrounded with rivals and with enemies, induced the parliament, soon after his accession to the throne, to prolong this term to that of seven years. Attempts have, since that time, been frequently made to reduce the continuance of parliaments to the former term: and such attempts have always been well received by the nation. Undoubtedly they deserve such reception: for long parliaments will naturally forget their dependence on the people: when this dependence is forgotten, they will become corrupt: “Whenever they become corrupt, the constitution of England will lose its liberty—it will perish.”^[18]

Such is the provision made by the laws of Great Britain, that the commons should be faithfully represented: provision is also made, that faithful representatives should not labour for their constituents in vain. The constitution is formed in such a manner, that the house of commons are able as well as willing to protect and defend the liberties intrusted to their care.

...

Can the Americans, who are descended from British ancestors, and inherit all their rights, be blamed—can they be blamed *by their brethren in Britain*—for claiming still to enjoy those rights? But can they enjoy them, if they are bound by the acts of a British parliament? Upon what principle does the British parliament found their power? Is it founded on the prerogative of the king? His prerogative does not extend to make laws to bind any of his subjects. Does it reside in the house of lords? The peers are a collective, and not a representative body. If it resides any where, then, it must reside in the house of commons.

...

If the Americans are bound neither by the assent of the king, nor by the votes of the

lords, to obey acts of the British parliament, the *sole* reason why they are bound is, because the representatives of the commons of Great Britain have given their suffrages in favour of those acts.[\[19\]](#) But are the representatives of the commons of Great Britain the representatives of the Americans? Are they elected by the Americans? Are they such as the Americans, if they had the power of election, would probably elect? Do they know the interest of the Americans? Does their own interest prompt them to pursue the interest of the Americans? If they do not pursue it, have the Americans power to punish them? Can the Americans remove unfaithful members at every new election? Can members, whom the Americans do not elect; with whom the Americans are not connected in interest; whom the Americans cannot remove; over whom the Americans have no influence—can such members be styled, with any propriety, the magistrates of the Americans? Have those, who are bound by the laws of magistrates not their own, any security for the enjoyment of their absolute rights—those rights, “which every man is entitled to enjoy, whether in society or out of it?”[\[20\]](#) Is it probable that those rights will be maintained? Is it “the primary end of government to maintain them?”[\[21\]](#) Shall this primary end be frustrated by a political maxim intended to promote it?

But from what source does this mighty, this uncontrolled authority of the house of commons flow? From the collective body of the commons of Great Britain. This authority must, therefore, originally reside in them: for whatever they convey to their representatives, must ultimately be in themselves.[\[22\]](#) And have those, whom we have hitherto been accustomed to consider as our fellow subjects, an absolute and unlimited power over us? Have they a natural right to make laws, by which we may be deprived of our properties, of our liberties, of our lives? By what title do they claim to be our masters? What act of ours has rendered us subject to those, to whom we were formerly equal? Is British freedom denominated from the *soil*, or from the *people* of Britain? If from the latter, do they lose it by quitting the soil? Do those, who embark, freemen, in Great Britain, disembark, slaves, in America? Are those, who fled from the oppression of regal and ministerial tyranny, now reduced to a state of vassalage to those, who, then, equally felt the same oppression? Whence proceeds this fatal change? Is this the return made us for leaving our friends and our country—for braving the danger of the deep—for planting a wilderness, inhabited only by savage men and savage beasts—for extending the dominions of the British crown—for increasing the trade of the British merchants—for augmenting the rents of the British landlords—for heightening the wages of the British artificers? Britons should blush to make such a claim: Americans would blush to own it.

It is not, however, the ignominy only, but the danger also, with which we are threatened, that affects us. The many and careful provisions which are made by the British constitution, that the electors of members of parliament may be prevented from choosing representatives, who would betray them; and that the representatives may be prevented from betraying their constituents with impunity, sufficiently evince, that such precautions have been deemed absolutely necessary for securing and maintaining the system of British liberty.

How would the commons of Great Britain startle at a proposal, to deprive them of their share in the legislature, by rendering the house of commons independent of them! With what indignation would they hear it! What resentment would they feel and discover against the authors of it! Yet the commons of Great Britain would suffer less inconvenience from the execution of such a proposal, than the Americans will suffer from the extension of the legislative authority of parliament over them.

The members of parliament, their families, their friends, their posterity must be subject, as well as others, to the laws. Their interest, and that of their families, friends, and posterity, cannot be different from the interest of the rest of the nation. A regard to the former will, therefore, direct to such measures as must promote the latter. But is this the case with respect to America? Are the legislators of Great Britain subject to the laws which are made for the colonies? Is their interest the same with that of the colonies? If we consider it in a large and comprehensive view, we shall discern it to be undoubtedly the same; but few will take the trouble to consider it in that view; and of those who do, few will be influenced by the consideration. Mankind are usually more affected with a near though inferiour interest, than with one that is superiour, but placed at a greater distance. As the conduct is regulated by the passions, it is not to be wondered at, if they secure the former, by measures which will forfeit the latter. Nay, the latter will frequently be regarded in the same manner as if it were prejudicial to them. It is with regret that I produce some late regulations of parliament as proofs of what I have advanced. We have experienced what an easy matter it is for a minister, with an ordinary share of art, to persuade the parliament and the people, that taxes laid on the colonies will ease the burthens of the mother country; which, if the matter is considered in a proper light, is, in fact, to persuade them, that the stream of national riches will be increased by closing up the fountain, from which they flow.

As the Americans cannot avail themselves of that check, which interest puts upon the members of parliament, and which would operate in favour of the commons of Great Britain, though they possessed no power over the legislature; so the love of reputation, which is a powerful incitement to the legislators to promote the welfare, and obtain the approbation, of those among whom they live, and whose praises or censures will reach and affect them, may have a contrary operation with regard to the colonies. It may become popular and reputable at home to oppress us. A candidate may recommend himself at his election by recounting the many successful instances, in which he has sacrificed the interests of America to those of Great Britain. A member of the house of commons may plume himself upon his ingenuity in inventing schemes to serve the mother country at the expense of the colonies; and may boast of their impotent resentment against him on that account.

Let us pause here a little.—Does neither the love of gain, the love of praise, nor the love of honour influence the members of the British parliament in favour of the Americans? On what principles, then—on what motives of action, can we depend for the security of our liberties, of our properties, of every thing dear to us in life, of life itself? Shall we depend on their veneration for the dictates of natural justice? A very little share of experience in the world—a very little degree of knowledge in the history

of men, will sufficiently convince us, that a regard to justice is by no means the ruling principle in human nature. He would discover himself to be a very sorry statesman, who would erect a system of jurisprudence upon that slender foundation. "He would make," as my Lord Bacon says, "imaginary laws: for imaginary commonwealths; and his discourses, like the stars, would give little light, because they are so high."[\[23\]](#)

But this is not the worst that can justly be said concerning the situation of the colonies, if they are bound by the acts of the British legislature. So far are those powerful springs of action, which we have mentioned, from interesting the members of that legislature in our favour, that, as has been already observed, we have the greatest reason to dread their operation against us. While the happy commons of Great Britain congratulate themselves upon the liberty which they enjoy, and upon the provisions—infallible, as far as they can be rendered so by human wisdom—which are made for perpetuating it to their latest posterity; the unhappy Americans have reason to bewail the dangerous situation to which they are reduced; and to look forward, with dismal apprehension, to those future scenes of woe, which, in all probability, will open upon their descendants.

What has been already advanced will suffice to show, that it is repugnant to the essential maxims of jurisprudence, to the ultimate end of all governments, to the genius of the British constitution, and to the liberty and happiness of the colonies, that they should be bound by the legislative authority of the parliament of Great Britain. Such a doctrine is not less repugnant to the voice of her laws. . . .

. . .

I am sufficiently aware of an objection, that will be made to what I have said concerning the legislative authority of the British parliament. It will be alleged, that I throw off all dependence on Great Britain. This objection will be held forth, in its most specious colours, by those, who, from servility of soul, or from mercenary considerations, would meanly bow their necks to every exertion of arbitrary power: it may likewise alarm some, who entertain the most favourable opinion of the connexion between Great Britain and her colonies; but who are not sufficiently acquainted with the nature of that connexion, which is so dear to them. Those of the first class, I hope, are few; I am sure they are contemptible, and deserve to have very little regard paid to them: but for the sake of those of the second class, who may be more numerous, and whose laudable principles atone for their mistakes, I shall take some pains to obviate the objection, and to show that a denial of the legislative authority of the British parliament over America is by no means inconsistent with that connexion, which ought to subsist between the mother country and her colonies, and which, at the first settlement of those colonies, it was intended to maintain between them: but that, on the contrary, that connexion would be entirely destroyed by the extension of the power of parliament over the American plantations.

Let us examine what is meant by a *dependence* on Great Britain: for it is always of importance clearly to define the terms that we use. Blackstone, who, speaking of the colonies, tells us, that "they are no part of the mother country, but distinct (though

dependent) dominions,"[24] explains dependence in this manner. "Dependence is very little else, but an obligation to conform to the will or law of that superiour person or state, upon which the inferiour depends. The original and true ground of this superiority, in the case of Ireland, is what we usually call, though somewhat improperly, the right of conquest; a right allowed by the law of nations, if not by that of nature; but which, in reason and civil policy, can mean nothing more, than that, in order to put an end to hostilities, a compact is either expressly or tacitly made between the conqueror and the conquered, that if they will acknowledge the victor for their master, he will treat them for the future as subjects, and not as enemies." [25]

The original and true ground of the superiority of Great Britain over the American colonies is not shown in any book of the law, unless, as I have already observed, it be derived from the right of conquest. But I have proved, and I hope satisfactorily, that this right is altogether inapplicable to the colonists. The original of the superiority of Great Britain over the colonies is, then, unaccounted for; and when we consider the ingenuity and pains which have lately been employed at home on this subject, we may justly conclude, that the only reason why it is not accounted for, is, that it cannot be accounted for. The superiority of Great Britain over the colonies ought, therefore, to be rejected; and the dependence of the colonies upon her, if it is to be construed into "an obligation to conform to the will or law of the superiour state," ought, in *this* sense, to be rejected also.

My sentiments concerning this matter are not singular. They coincide with the declarations and remonstrances of the colonies against the statutes imposing taxes on them. It was their unanimous opinion, that the parliament have no right to exact obedience to those statutes; and, consequently, that the colonies are under no obligation to obey them. The dependence of the colonies on Great Britain was denied, in those instances; but a denial of it in those instances is, in effect, a denial of it in all other instances. For, if dependence is an obligation to conform to the will or law of the superiour state, any exceptions to that obligation must destroy the dependence. If, therefore, by a dependence of the colonies on Great Britain, it is meant, that they are obliged to obey the laws of Great Britain, reason, as well as the unanimous voice of the Americans, teaches us to disown it. Such a dependence was never thought of by those who left Britain, in order to settle in America; nor by their sovereigns, who gave them commissions for that purpose. Such an obligation has no correspondent right: for the commons of Great Britain have no dominion over their equals and fellow subjects in America: they can confer no right to their delegates to bind those equals and fellow subjects by laws.

There is another, and a much more reasonable meaning, which may be intended by the dependence of the colonies on Great Britain. The phrase may be used to denote the obedience and loyalty, which the colonists owe to the *kings* of Great Britain. If it should be alleged, that this cannot be the meaning of the expression, because it is applied to the kingdom, and not to the king, I give the same answer that my Lord Bacon gave to those who said that allegiance related to the kingdom and not to the king; because in the statutes there are these words—"born within the allegiance of

England”—and again—“born without the allegiance of England.” “There is no trope of speech more familiar,” says he, “than to use the place of addition for the person. So we say commonly, the line of York, or the line of Lancaster, for the lines of the duke of York, or the duke of Lancaster. So we say the possessions of Somerset or Warwick, intending the possessions of the dukes of Somerset, or earls of Warwick. And in the very same manner, the statute speaks, allegiance of England, for allegiance of the king of England.”[\[26\]](#)

Dependence on the mother country seems to have been understood in this sense, both by the first planters of the colonies, and also by the most eminent lawyers, at that time, in England.

Those who launched into the unknown deep, in quest of new countries and habitations, still considered themselves as subjects of the English monarchs, and behaved suitably to that character; but it no where appears, that they still considered themselves as represented in an English parliament, or that they thought the authority of the English parliament extended over them. They took possession of the country in the *king's* name: they treated, or made war with the Indians by *his* authority: they held the lands under *his* grants, and paid *him* the rents reserved upon them: they established governments under the sanction of *his* prerogative, or by virtue of *his* charters:—no application for those purposes was made to the parliament: no ratification of the charters or letters patent was solicited from that assembly, as is usual in England with regard to grants and franchises of much less importance.

. . .

This is a dependence, which they have acknowledged hitherto; which they acknowledge now; and which, if it is reasonable to judge of the future by the past and the present, they will continue to acknowledge hereafter. It is not a dependence, like that contended for on parliament, slavish and unaccountable, or accounted for only by principles that are false and inapplicable: it is a dependence founded upon the principles of reason, of liberty, and of law. Let us investigate its sources.

The colonists ought to be dependent on the king, because they have hitherto enjoyed, and still continue to enjoy, his protection. Allegiance is the faith and obedience, which every subject owes to his prince. This obedience is founded on the protection derived from government: for protection and allegiance are the reciprocal bonds, which connect the prince and his subjects.[\[27\]](#) Every subject, so soon as he is born, is under the royal protection, and is entitled to all the advantages arising from it. He therefore owes obedience to that royal power, from which the protection, which he enjoys, is derived. But while he continues in infancy and nonage, he cannot perform the duties which his allegiance requires. The performance of them must be respite till he arrive at the years of discretion and maturity. When he arrives at those years, he owes obedience, not only for the protection which he now enjoys, but also for that which, from his birth, he has enjoyed; and to which his tender age has hitherto prevented him from making a suitable return. Allegiance now becomes a duty founded upon principles of gratitude, as well as on principles of interest: it becomes a debt, which

nothing but the loyalty of a whole life will discharge.^[28] As neither climate, nor soil, nor time entitle a person to the benefits of a subject; so an alteration of climate, of soil, or of time cannot release him from the duties of one. An Englishman, who removes to foreign countries, however distant from England, owes the same allegiance to his king there which he owed him at home; and will owe it twenty years hence as much as he owes it now. Wherever he is, he is still liable to the punishment annexed by law to crimes against his allegiance; and still entitled to the advantages promised by law to the duties of it: it is not cancelled; and it is not forfeited. "Hence all children born in any part of the world, if they be of English parents continuing at that time as liege subjects to the king, and having done no act to forfeit the benefit of their allegiance, are *ipso facto* naturalized: and if they have issue, and their descendants intermarry among themselves, such descendants are naturalized to all generations."^[29]

Thus we see, that the subjects of the king, though they reside in foreign countries, still owe the duties of allegiance, and are still entitled to the advantages of it. They transmit to their posterity the privilege of naturalization, and all the other privileges which are the consequences of it.^[30]

Now we have explained the dependence of the Americans. They are the subjects of the king of Great Britain. They owe him allegiance. They have a right to the benefits which arise from preserving that allegiance inviolate. They are liable to the punishments which await those who break it. This is a dependence, which they have always boasted of. The principles of loyalty are deeply rooted in their hearts; and there they will grow and bring forth fruit, while a drop of vital blood remains to nourish them. Their history is not stained with rebellious and treasonable machinations: an inviolable attachment to their sovereign, and the warmest zeal for his glory, shine in every page.

From this dependence, abstracted from every other source, arises a strict connexion between the inhabitants of Great Britain and those of America. They are fellow subjects; they are under allegiance to the same prince; and this union of allegiance naturally produces a union of hearts. It is also productive of a union of measures through the whole British dominions. To the king is intrusted the direction and management of the great machine of government. He therefore is fittest to adjust the different wheels, and to regulate their motions in such a manner as to cooperate in the same general designs. He makes war: he concludes peace: he forms alliances: he regulates domestick trade by his prerogative, and directs foreign commerce by his treaties with those nations, with whom it is carried on. He names the officers of government; so that he can check every jarring movement in the administration. He has a negative on the different legislatures throughout his dominions, so that he can prevent any repugnancy in their different laws.

The connexion and harmony between Great Britain and us, which it is her interest and ours mutually to cultivate, and on which her prosperity, as well as ours, so materially depends, will be better preserved by the operation of the legal prerogatives of the crown, than by the exertion of an unlimited authority by parliament.^[31]

[1] William Blackstone, *Commentaries on the Laws of England*, 4.48,49.

[2] *Ibid.*, 50,51.

[3] The right of sovereignty is that of commanding finally—but in order to procure real felicity; for if this end is not obtained, sovereignty ceases to be a legitimate authority. Jean Jacques Burlamaqui, *Principles of Natural and Politic Law* (1748), 2.32,33.

[4] Blackstone, *Commentaries*, 1.41.

[5] Burlamaqui, *Principles of Law*, 2.19.

[6] Bol. Diss, on Part. I.11,12. pp. 167,179.

[7] As the law is the birthright of every subject, so wheresoever they go, they carry their laws with them. 2. P. Wms. 75.

[8] 4. Ins. 25.

[9] The commons of England have a great and considerable right in the government; and a share in the legislature without whom no law passes. 2. Ld. Ray. 950.

[10] Charles Louis de Secondat, Baron de Montesquieu, *The Spirit of Laws*, 2.2.

[11] The Athenians, justly jealous of this important privilege, punished, with death, every stranger who presumed to interfere in the assemblies of the people.

[12] The English freedom will be at an end whenever the court invades the free election of parliament. Rapin [Liberty Fund's note: Paul de Rapin (1661–1725) was a French historian. He wrote *L'Histoire d'Angleterre*]. A right that a man has to give his vote at the election of a person to represent him in parliament, there to concur to the making of laws, which are to bind his liberty and property, is a most transcendant thing and of a high nature. 2. Ld. Ray. 953.

[13] There are a few exceptions in the case of officers at will.

[14] [Liberty Fund's note: Charles I (1600–1649) was king of England from 1625 until his execution in 1649.]

[15] [Liberty Fund's note: Charles II (1630–1685) was king of England from 1660 to 1685.]

[16] The Earls of Clarendon and Southampton. [Liberty Fund's note: Edward Hyde, the Earl of Clarendon

(1609–1674), was appointed Lord Chancellor during the Restoration. The Earl of Southampton is Thomas Wriothesley (1607–1667). When hostilities broke out between the king and parliament, he originally sided with parliament. He later switched sides, however, and Charles II made him Lord High Treasurer.]

[17] [Liberty Fund’s note: The Hanoverian line of English kings and queens ruled from 1714 to 1901. The prince in question was George I (1660–1727) who ruled England from 1714–1727.]

[18] Montesquieu, *The Spirit of Laws*, 11.6. If the legislative body were perpetual; or might last for the life of the prince who convened them, as formerly; and were so to be supplied, by occasionally filling the vacancies with new representatives; in these cases, if it were once corrupted, the evil would be past remedy: but when different bodies succeed each other, if the people see cause to disapprove of the present, they may rectify its faults in the next. A legislative assembly also, which is sure to be separated again, will think themselves bound, in interest as well as duty, to make only such laws as are good (Blackstone, *Commentaries*, 1.189.

[19] This is allowed even by the advocates for parliamentary power; who account for its extension over the colonies, upon the very absurd principle of their being *virtually* represented in the house of commons.

[20] Blackstone, *Commentaries*, 1.123.

[21] Blackstone, *Commentaries*, 1.124.

[22] It is self-evident that the power, with relation to the part we bear in the legislation, is absolutely, is solely in the electors. We have no legislative authority but what we derive from them. Debates of the Commons, vol. 6, p. 75.

[23] 2. Ld. Bac. 537.

[24] Blackstone, *Commentaries*, 1.107.

[25] *Ibid.*, 103.

[26] 4. Ld. Bac. 192. 193. Case of the postnati of Scotland. [Liberty Fund: See also Calvin’s Case (1607–1608). Calvin’s Case determined that all persons born within territory held by the king of England enjoyed the benefits of English law.]

[27] Between the sovereign and subject there is “duplex et reciprocum ligamen; quia sicut subditus regi tenetur ad obedientiam; ita ex subdito tenetur ad protectionem: merito igitur ligeantia dicitur a ligando, quia continet in se duplex ligamen” [“a twofold and mutual bond; because just as a subject is held to the king by obedience, so for the subject’s part [the king] is held to protect. Rightly then is allegiance named from “to bind” (*ligare*), because it contains a twofold bond (*ligamen*)”] 7. Rep. 5a. Calvin’s case.

[28] The king is protector of all his subjects: in virtue of his high trust, he is more particularly to take care of those who are not able to take care of themselves, consequently of infants, who, by reason of their nonage, are under incapacities; from hence natural allegiance arises, as a debt of gratitude, which can never be cancelled, though the subject owing it goes out of the kingdom, or swears allegiance to another prince. 2. P. Wms. 123. 124.

[29] 4. Ld. Bac. 192. Case of the postnati of Scotland.

[30] Natural born subjects have a great variety of rights, which they acquire by being born in the king's ligeance, and can never forfeit by any distance of place or time, but only by their own misbehaviour; the explanation of which rights is the principal subject of the law. Blackstone, *Commentaries*, 1.371.

[31] [omitted]

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