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TRACT V.
THE
RESPECTIVE PLEAS
AND
ARGUMENTS
OF THE
MOTHER COUNTRY,
AND OF THE
COLONIES,
DISTINCTLY SET FORTH;
AND THE IMPOSSIBILITY OF A
COMPROMISE OF DIFFERENCES,
OR A
MUTUAL CONCESSION OF RIGHTS,
PLAINLY DEMONSTRATED.
WITH A
PREFATORY EPISTLE,
TO THE
PLENIPOTENTIARIES OF THE LATE CONGRESS
AT PHILADELPHIA.

SECOND EDITION.

BY JOSIAH TUCKER, D. D.
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T H E

Epistle Dedicatory

To the Plenipotentiaries of the several Republics of New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Newcastle, Kent and Suffex on Delaware, Maryland, Virginia, North-Carolina and South-Carolina, deputed to meet and sit in general Congress in the City of Philadelphia.

GENTLEMEN,

THE public Character, with which you are now invested, attracts the Attention of Mankind; as well in *Great-Britain*, as in *America*. Among others, who think themselves concerned in this Dispute, the Author of the following Tract has Reasons peculiar to himself for paying you the earliest public Acknowledgments in his Power, for the Favours you have done him.

Most People here in *Britain* thought that you would not so soon have thrown off the Mask,

A 2

and

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and set up for Independence. And very many there were, who either could not, or would not see, that you intended it at all. Nay, even since the breaking up of your Congress, it has been solemnly declared, and that in Parliament, that you entertained no such Design. Now, to convince such as these of their Mistake, would have been a tedious Affair, and have cost the Author of this Tract a good deal of Trouble, in the Way of Reasoning and Argumentation. But you have done it effectually at once: And for the future it is impossible to misapprehend your Meaning. You have now plainly and flatly told us, without any Colouring or Disguise, that you renounce all Subjection whatever to the Legislature of the Parent-State; and that you will not acknowledge, that she has any other Authority or Jurisdiction over you;—*but what you yourselves shall please to give her.* This is speaking plainly and to the Purpose: And so far you have acted a fair and consistent Part.

BUT, Gentlemen, are you and your Constituents, (for I here include you all) equally consistent and uniform in other Parts of your Conduct? And can it be affirmed, that you are as strenuous Advocates for Liberty in other Cases, as you are in this? You bravely declare, “That by the *immutable Laws* of Nature, you are entitled to Life, Liberty, and Property.”—Certainly you are: And the Reason you give is not

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a bad one, when *soberly* understood, viz. “Be-
“ cause you have never ceded to any Sovereign
“ Power whatever, a Right to dispose of either
“ without your Consent.” Permit me therefore to ask, Why are not the poor Negroes, and the poor *Indians* entitled to the like Rights and Benefits? And how comes it to pass, that these *immutable Laws* of Nature are become so very mutable, and so very insignificant in respect to them? They probably never ceded to any Power,—most certainly they never ceded to you, a Right of disposing of their Lives, Liberties, and Properties, just as you please. And yet what horrid Cruelties do you daily practise on the Bodies of the poor Negroes; over whom you can have no Claim, according to your own Principles? What shameful Robberies and Usurpations are you daily guilty of in respect to the poor *Indians*, the only true and rightful Proprietors of the Country which you inhabit? These Things, Gentlemen, ought not to be: For whilst you, and your Constituents, are chargeable with so much *real* Tyranny, Injustice, and Oppression, you declaim with a very ill Grace against the *imaginary* Tyranny, and the pretended Oppression of the Mother-Country. I am not unacquainted with your Manner of carrying on your *bartering* Trade with the *Indians*, any more than with your Treatment of your unhappy Slaves the Blacks. I could also give some Spe-

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cimens of your *equitable Mode* of measuring, and making Purchases of Lands from the Natives;--- even when you condescend to the Formality and Farce of making a Purchase from them:--- Also how you contrive to thin the Numbers of these unhappy Tribes by Means of your grand Engines of Death, RUM, and the SMALL POX: And then how you drive the miserable Survivors away, and seize their Lands. But I forbear:--- For my Design is not to rouse the Indignation of my Countrymen to go to War with you,--- but to throw you entirely off: Which perhaps may prove the greater Punishment of the two.

In regard to your setting up for Independence, it is no new Thing. Every Colony has done the like, as soon as it was able: So that in *that* Respect you are not singular, you are only on a Par with others. But you are the only People that ever yet existed, who, after having disclaimed all Subjection to the Parent State, still expect to enjoy the same Benefits, the same Protection, the same Posts of Honour, Profit, and Advantage, as if you had always been obedient Subjects. For in Fact, you still expect to be regarded and treated as *Englishmen* in every Case, where any Benefit is to be derived from that Character:--- But as to those Burdens, which *Englishmen* must bear in order to support that Character;--- In respect to these Things you beg to be excused: You will do as you please. This is such a curious Phæno-

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Phænomenon in Politics, Law, and Commerce; that our old World was never able to produce it. *America* alone has that exclusive Honour.

BUT in order to strengthen your Cause, and increase your Numbers, you wish to draw the large and extensive Province of *Canada*, into your general Association. You needed not to have given yourselves all that Trouble. *Canada*, when it has grown rich by our Means, and our Capitals, will assuredly set up for Independence, as you have done. And in a few Years, we shall have the same Scenes of Malevolence and Ingratitude displayed there, which you are pleased to exhibit in your Provinces.--- Perhaps indeed the *Canadians* will not expect (as you do) to be caressed and protected by us at that very Instant, when they are spurning at our Authority, and renouncing our Jurisdiction. For this seems to be a Conduct and Behaviour peculiar to yourselves.

HOWEVER, as *Canada* is for the present faithful to the Power that protects her; therefore you think it an Object worthy of your pious Endeavour to seduce her from her Allegiance.--- In order thereunto, after you had painted the Popish Religion in the blackest Colours in your Address to the Inhabitants of *Great-Britain*, calling it *sanguinary* and *impious*, and declaring it unworthy to enjoy its *own Property* voluntarily given for its own Support by the Proprietors of Lands, who had the only right to give, and who

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were all of the Roman-Catholic Persuasion;---
 after this, I say, you suddenly change your
 Notes, and in your Address to the Inhabitants of
 the Province of *Quebec* you are pleased to com-
 pliment them in the following fulsome Strain.
 “ We are too well acquainted with the *Libera-*
 “ *lity of Sentiment distinguishing your Nation, to*
 “ *imagine, that Difference of Religion, will pre-*
 “ *judice you against an hearty Amity with us.*
 “ You know that the transcendent Nature of
 “ Freedom elevates those who unite in her Cause
 “ above all such low-minded Infirmities. The
 “ *Swiss Cantons* furnish a memorable Proof of
 “ this Truth. Their Union is composed of
 “ Roman-Catholic and Protestant States, *living*
 “ *in the utmost Concord and Peace one with another,*
 “ and thereby enabled, ever since they bravely
 “ vindicated their Freedoms, to defy and defeat
 “ every Tyrant that has invaded them.”

Now here, Gentlemen, you have said, or ra-
 ther insinuated some Things, which, as they are
 true, I will endeavour to illustrate. You have
 insinuated, that Persons of the Roman-Catholic
 Persuasion may be warmed with a glorious Zeal
 for civil Liberty as well as Protestants. This
 is true: And there are incontestible Facts to
 prove it. For Example, the Barons, who dis-
 puted their Liberties with King JOHN, and at last
 wrested the famous Magna Charta from him,
were all Papists. The *Swiss Cantons* themselves,
 when

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when they revolted from the tyrannical House of
Austria, were *all Papists.* The *Cortes of Spain*,
 who rose against CHARLES V. were *all Papists.*
 The first Insurgents in the *Netherlands*, who paved
 the Way for the *Dutch* Common-Wealth, were
chiefly Papists. And the present *Corficans*, and the
Sicilians of Palermo, are *all Papists.* It is therefore
 very injurious, to say no worse, in some of your
 Writers, and some of ours, to charge the Roman
 Catholic Religion with more Absurdities, than
 really belong to it. We Protestants should not
 approve of such a Treatment in our own Case:
 And yet perhaps it might be affirmed with equal
 Truth and Justice, that the tyrannical Power ex-
 ercised by a certain great Northern Potentate,
 with or without any Pretence, wherever he can;
 ---and likewise by you over the poor Negroes
 and *Indians*, --- is owing to the tyrannical Princi-
 ples you have respectively imbibed from the Pro-
 testant Religion:---Than which Accusation no-
 thing can be more false and groundless.

BUT, Gentlemen, tho' I will very readily al-
 low, that the Roman-Catholic Religion has ma-
 ny Absurdities belonging to it,---in which Num-
 ber the Doctrine of Transubstantiation is not the
 least:---Yet I must beg Leave to observe, that
 our Merchants and Manufacturers in *Great-*
Britain would sooner have tolerated the *specula-*
tive Popish Doctrine of Transubstantiation, than
 that *practical* and Protestant one, which you have
 attempted

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attempted to palm upon them in *America*. The Transubstantiation I refer to, is that of turning Bits of Paper, worth nothing at all, into LEGAL TENDERS OF PAYMENT. And this Transmutation, four of your present Republics, viz. *Rhode-Island* and *Providence Plantations*, *Connecticut*, the *Massachusetts-Bay*, and *New-Hampshire*, passed Acts of Assembly to do. And it is very plain, that the other Colonies would have done the same, if they could. But the *British Law* (N. B. *not any Law of Geo. III. but*) of the 24th of *Geo. II. Cap. 53*, Anno 1751, put an End to these *American Fictions* of Transubstantiation. Therefore the Reader will from hence easily perceive the real Cause and Foundation of your great Wrath against the Parliament of *Great-Britain* for interfering with the Legislation of the Colonies.

BUT as you have been pleased to select the *Swiss Cantons* as a Proof of what you advance; also, as you intended (most probably) to propose them for a Model of an Union among your own newly-created Republics, I will crave your Permission to make a few Observations on each of those Points.

THE Cantons in *Switzerland*, whose Governments are elective, and where a Majority of the People, *Poor* as well as *Rich*, have the Privilege of voting, are chiefly, if I remember right, the *small Popish Cantons* in the Mountains; whose Assemblies (in Proportion to their Numbers) are almost, if not altogether, as tumultuous and disorderly,

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orderly, as our parliamenteering Elections in *London* and *Westminster*. *Fists* and *Clubs* (for, I think, it is sagaciously ordered, that no other Weapons shall be admitted into the public Assemblies; and therefore I say, *Fists* and *Clubs*) are often used not only as the most *persuasive*, but as the most *decisive* Arguments: Whereas in the *Protestant Cantons*, especially in the Canton of *Berne*, the greatest and most powerful of all, it is quite the Reverse. For there the Government is entirely *Oligarchical*, consisting of 200 Persons, chosen, or to be chosen, out of certain respectable Families: In the Choice of whom, the People have no Share whatever: Neither have they the Liberty of the Prefs,---nor dare they meddle with State Affairs, without the utmost Risque and Danger. About 40 Years ago a Gentleman of the *Pais du Vaud* (a Province of *Berne*) attempted an Insurrection, exactly on the same Principles, on which you have lately renounced the Authority and Jurisdiction of *Great-Britain*. He entered *Lausanne*, the Capital of the *Pais du Vaud*, at the Head of 3000 Men. But in the Night his Troops were dispersed by the Forces of *Berne*; and the next Morning he lost his Head. I say, he attempted a Revolt *exactly on the same Principles which you now maintain*. For as to any other Grievances, excepting those of not being represented, or of not having any Share in the Legislature of their Country,

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Country, the Subjects of *Berne* have no just Complaint to make. They pay little or no Taxes: They have as much civil [tho' not *political*] Liberty as any People need enjoy. They are likewise extremely populous, for the Extent of Country; and they are withal so very rich, that it is, no uncommon Thing for Peasants or Farmers in that Country, to be worth from four, to six, or eight thousand Pounds Sterling: A Circumstance this, which is not to be found in any other Part of *Europe*, but in *England*.--- Moreover, they manufacture a great deal of good, strong Linens; which, during the late War, were sent down the *Rhine* to *Rotterdam*, and from *Rotterdam* to the *English* Colonies in *America*. How this contraband Trade came to be carried on, so much to our Detriment, during a Time; when we were bleeding at every Vein for your Sakes, you best can explain.

But waving all that:---Why did you mention these People, whose Case in every Respect makes so strongly against you? and what Motives could you have for quoting such Examples, where the Liberty is so much abused in the *Popish* Cantons, and where it is not sufficiently enjoyed in the greatest of the *Protestant* ones?---For my Part, I can account for your Conduct only on one Principle: And Time must shew, whether my Conjectures are rightly founded. You certainly intend to set up yourselves to be the respective
Heads

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Heads of these Republics; or rather you wish to continue in the Posts you now enjoy, and to fortify yourselves in them more and more. Therefore you know that a Time is coming, when you must endeavour to extinguish that fierce Flame, which you are now raising;---when you must use every Artifice, and strain every Nerve of Power to subdue, *per fas aut nefas*, that very Spirit, which you are now exciting even to Madness. A difficult Matter this! and you will find it so. However, I will allow, that one Way to obtain this End, is to be ready with popular Examples, no Matter whether true or false, parallel in Circumstances, or not;---to be ready with them I say, to cite, as Occasion shall offer. You know likewise, that during the Height of the Phrensy, the People never reason, but believe implicitly in their Leaders. Therefore, if you can make the good *Americans* believe, that in the Republics of *Switzerland*, especially the Protestant ones, the People enjoy a most perfect System of Liberty; and consequently that such Republics ought to be proposed as Models for them to copy after; then you think the Work is done. And indeed if these short-sighted Mortals shall trust you with as much Power, as is necessary for establishing such Republics in *America*, you have little more to do than to laugh at their Credulity:---A Circumstance this!
which

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which is not uncommon with *patriotic Professors*, and *popular Orators*, both on your Side of the *Atlantic*, and on ours.

BUT still, you have a farther Use to make of the *Swiss* Cantons. You say, "They live in the utmost Peace and Concord one with another: And are thereby enabled ever since they vindicated their Freedom, to defy and defeat every Tyrant that has invaded them." Now it is not strictly true, that they live in the utmost Concord and Peace one with another. For they are almost all jealous of the growing Power and Riches of the Canton of *Bern*; and these Jealousies have sometimes broke out into a Kind of Civil War: It is very true, Religion was not the Cause of Commotions; but I need not tell you, Gentlemen, that Wars, and even *Scalping-Wars* may arise from Causes, in which it cannot be so much as pretended, that Religion had any Concern. And as to the Circumstance that the *Swiss* have always been able to resist every Invader; it is well known, that their principal Security of late Years, both against foreign Attacks and civil Discords, has been the reciprocal Interest, which all the great Powers of *Europe* have, that these little Governments should remain in *Statu quo*:---That is, that they should neither be united under one Head among themselves, nor be brought into Subjection by any one great

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great foreign Power*. This, I say, has been, is, and will be their Defence. In their present harmless Condition, they are useful to all, but dangerous to none. Whereas the Case would be vastly altered, were they to be united either by Conquests among themselves, or by the Conquest of some foreign Power.

Now, Gentlemen, as this is the true State of the Case, you plainly see, that there is hardly one Circumstance in it parallel with yours. "But this you will say is not material: The very Name of the *Swiss* Republics will serve our Purpose: And we look no farther."— Be it so. And may you soon become as independent of us, as (happily for us) the *Swiss* Cantons are. They are now very faithful and good Allies:---But, had they been our Colonies, I would not have answered, that they would have shewn equal Friendship and Fidelity: Not that I think,

* The *French* are in Possession of the Fortrefs of *Hunningen* on the *Rhine*, and of *Fort Ecluse* on the *Rhone*; and therefore have the Keys of *Switzerland* at both Ends. They have also *Franche Compté*, which borders on several of the Cantons, and the County of *Gex*, which comes up to the Gates of *Geneva*, and joins to the *Pais du Vaud*; between which and *Berne* there is not a single Fortrefs worth mentioning to stop their Progress: And *Berne* itself is not a strong Place. What then is the Security of *Switzerland*, at least of that Part of it, which is worth conquering? Certainly not the mere Strength and Forces of the *Swiss* themselves, independently of the Assistance of other Powers.

that

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that they would ever have proceeded to the same Insults and Outrages, which distinguish your Revolt. At present however there is a very considerable Commerce carried on between us and them; so that there is hardly a Town of Note in *Switzerland*, but abounds with *English* Manufactures, especially those of the *Birmingham* and Toy-kind. Moreover, when our Agents come there for fresh Orders, or to collect in their Debts, they are neither *tarred* nor *feathered*, nor otherwise ill-used in any Respect:---But have *speedy Justice* done them, if they should find it necessary to appeal to the civil Magistrate. And, Gentlemen, perhaps a Time is coming when even you, after you have separated from us, [*for you will never do it before*;]—I say, when even you will behave better, and more justly towards us, than you now do: Nay, when you will be glad of, and thankful for that very Protection and Assistance, which you now exclaim against in Terms of Bitterness and Reproach.

BUT before that Period can arrive, your new Republics must necessarily undergo many Shocks if not Revolutions. Nor is it at all improbable, but that during these Convulsions some of you (the present Demagogues) will not be in the most desirable Situations. Perhaps you will not find those Sweets and Profits, or even those Honours which you now expect. But as the present Scene presents you with more flattering Ideas, I am

content

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content that you should despise and laugh at these Predictions, as the foolish Reveries of an old Man. And indeed if you should, this will not be the first Time, that my Declarations concerning what would happen in *America*, have been, or shall be treated as an idle Dream. I foretold before the War broke out, that you would certainly set up for an Independency, if we should be so unfortunate, as to drive the *French* from your back Settlements. The Event has shewn that my Conjectures were not so absurd, and extravagant as then they were generally thought to be. However, I did not then bow the Knee to the *Ministerial Baals*; but bore my Testimony against their Proceedings, as far as I was able: Nor am I now more disposed to do Obedience to the *Baals* of Popularity. With these Sentiments, I have the Honour to be, Gentlemen,

Your most faithful humble Servant,

GLOCESTER,
Jan. 20, 1775.

J. TUCKER,

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Advertisement.

Advertisement.

*I*T having been signified to the Author, that Gentlemen are desirous of completing their Sets of his American Tracts, now eight in Number, he has reprinted this Fifth Tract for their Accommodation. In respect to the Piece itself, the judicious Reader will readily perceive, that it was first published some Time ago, when the Congress had not gone all those Lengths, to which they afterwards proceeded. But even then, they were so evidently in the Road to the present Rebellion, that none but the wilfully blind, could avoid seeing the Point they had constantly in View.



T R A C T V.

THE
Respective Pleas and Arguments

OF THE
M O T H E R C O U N T R Y,

AND OF THE
C O L O N I E S
DISTINCTLY SET FORTH, &c.

EVERY Event since the Publication of my Scheme for a total Separation from the Northern Colonies, has served to prove, that such a Measure is the only eligible one for the Mother Country to pursue. Consequently, however startled People were at first at the Novelty, and Boldness of the Proposition, yet, upon second Thoughts

and maturer Reflection, they seem now to be generally convinced, that it will be absurd to think of terminating the Dispute in any other Way. Hence therefore, the sooner such a Scheme is adopted, so much the better; inasmuch as fewer Mischiefs will ensue, the smaller will be the Expence of maintaining Fleets and Armies to no Purpose, the less Blood will be spilt:--And I add likewise, as no unworthy Consideration, the less *ill Blood* will be occasioned. Yet nevertheless, as an Attachment to old Opinions and favourite Notions is not soon eradicated, many there are, who still think, "That reconciliatory Measures ought first to be tried:--Because, say they, after all have failed, we can but come to a Separation at last. "In the mean Time, let each Side drop some Part of their Pretensions; let something be sacrificed by each for the Sake of Peace: And then it is to be hoped, when a Progress has been made thus far, some Scheme or other may happily be devised for compromising the remaining Difficulties. Or perhaps these Differences may be found to be so inconside- rable, as not to be worth regarding."

THIS is certainly very good Advice, where it can be followed. But the Misfortune is, that in the present Case, any Scheme for a *Compromise* is absolutely impracticable. And the Reason is, because in all compromising Schemes,

it is believed, and taken for granted by both Parties, that what they give up for the Sake of Peace, doth not invalidate their Right and Title to that, which they chuse to retain. But this is by no Means the present Case: For the Claim of Right on either Side must be universal, or there must be no Claim at all: And neither Party have it in their Power to recede a Tittle from their Pretensions, without subverting the very Foundation of their Claim to all the rest.

I am well aware, that an Assertion of this Nature will shock many Persons: And therefore I would not have ventured to have published it, had I not those Reasons to produce, which appear, to me at least, to be very convincing, if not self-evident. But whether they will have the same Effect on others, is beyond my Province to determine. However, after the Pleas and Pretensions, the Claims and Titles of both Parties are fully set forth, and fairly stated, every Reader will have the better Opportunity of judging for himself.

SECTION I.

The Plea of Right of the Parliament of Great-Britain to govern every Part of the British Empire.

IN all Societies there must be a dernier Resort, and a *Ne plus ultra* of ruling Power. To suppose a Series of ruling Powers one above another, *ad infinitum*, is to suppose as great an Absurdity as can be conceived. Therefore we must stop somewhere. Here in *Great-Britain* it is both the Law, and the Constitution of the Realm, and the Voice of Reason, that we should stop at King, Lords, and Commons, when in Parliament assembled. Mr. LOCKE indeed seems to intimate, that the People, and not the Parliament, are the dernier Resort of ruling Power. And what he expressed rather faintly, his Disciples since, especially Dr. PRIESTLY and the *Americans*, have dared to assert with intemperate Zeal and great Vehemence. But, waving for the present all other Objections to this republican Plan, it cannot be so much as pretended by the most furious Zealot for popular Authority, that this is, or ever was, the ordinary Procedure, the regular and stated Course of Things. And no Man in his Senses will pretend to say, that the Laws and Edicts of Parliament

liament are not binding, 'till they have received the Sanction of some patriotic Club, or popular Assembly convened for that Purpose:—Or that Taxes ought not to be levied, 'till the People shall appear to be willing to pay them*. Therefore, the utmost which can be made of this Appeal to the People, is, that in *desperate* Cases, and on such *extraordinary* Emergencies, as perhaps it is not *prudent* to presuppose, or is not in the Power of Mortals to foresee, Mankind are not bound by any certain, known, or *general* Law, but must find out, and apply the *best Remedy the Case will admit of*. The wisest and fondest of us all may be deprived of his Senses by a Phrenzy in a Moment: And what may happen to one, may happen to many,--- even to the whole House of Commons,—nay, to both Houses of Parliament,—to the Prince on the Throne,—and to all his Family:—What then is to be done in this *supposeable* Situation? And would you be so *mad* yourself, as seriously to propose a Cure for these *imaginary* Madmen, by making a Law, or attempting to provide a Remedy for this, and such like *possible* Contingencies? Surely this is rather too much even

Mr. LOCKE's Theory of Government will be examined at large in reference to these Points, and all others connected with them, in a Tract expressly for that Purpose.

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for our modern Race of Politicians openly to avow. And therefore the just Conclusion is, that in a settled and regular Government, the Parliament, consisting of King, Lords, and Commons, is the dernier Resort of ruling Power. This is certainly the general Rule; tho' like all others it may, and sometimes must, admit of Exceptions in such very extraordinary Cases, as perhaps neither ought, nor could be provided for. A Man, when he has got his Estate accurately surveyed, and well mapped, thinks himself sufficiently secure;—notwithstanding it is still a possible Case, that this Estate may be shaken, torn to Pieces, and scattered asunder by prodigious Earthquakes, or some such preter-natural Convulsions.

HAVING therefore advanced thus far, we are now to consider, whether any Part of the widely diffused *British* Empire can be regularly exempted from the Authority and Jurisdiction of a Parliament, consisting of a King, Lords, and Commons as above described? Or, in other Words, whether that Province can be a Part of the *British* Empire, which is not subject to the *British* Legislation? As to the King himself, there is no Doubt to be made, but that he may rule over other Realms or Provinces by *different Titles*, as well as over us. The Princes of the House of STUART were Kings of *Scotland* by one Title, and Kings of *England* by another: These

two

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two Kingdoms being altogether independent one of the other. King WILLIAM likewise was Stadholder of *Holland*; King GEORGE is Elector of *Hanover*. But what is the Consequence of all these Unions? Plainly this, that neither the *Scotch*, nor the *Hollanders*, nor the *Hanoverians*, notwithstanding their being the Subjects of the same Prince, were ever reputed to be *Englishmen*. For 'till Acts of Parliament were passed in *England*, for naturalizing the *Scotch*, and similar Laws enacted in *Scotland* for naturalizing the *English*, the two Nations were as much Aliens and Foreigners to each other, as if they had been a thousand Leagues asunder. Moreover, as to the *Hollanders* and *Hanoverians*, they neither were, nor are, a Jot the nearer to be invested with the Rights and Privileges of *English* Subjects, than if they had been so many *French*, or *Spaniards*. They are still Aliens, still incapable of enjoying any one Privilege or Immunity, any one Dignity or Honour, any one Office, Place, or Preferment peculiar to the Subjects of the *British* Empire. This Reasoning is certainly conclusive, if any Thing ever was: Nay more, it is Matter of FACT.

To FACTS therefore we are now to appeal, for the remaining Part of this Argument.

OF all the Pleas for Independence (if any Part of the *British* Dominions had a Right to set up such Pretensions) the Claims, which were so artfully

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artfully urged by the famous Mr. MOLINEUX (another Disciple of Mr. LOCK's) for the Independence of *Ireland*, seemed the most plausible. And yet even those amounted to nothing, when examined to the Bottom.

Mr. MOLINEUX's first Pretence was, that after the Conquest of *Ireland* by HENRY II. and after the peaceable Cession of it to him by twenty petty Princes of the Country; the Conqueror engaged on his Part, to grant to his new Subjects the Benefit of being governed by the same Laws with his *English* Subjects, and of enjoying a distinct Parliament of their own:

2dly. THAT a few Years after this original Contract, he made a Transfer or Donation of his newly acquired Kingdom to his youngest Son JOHN, then a Youth about 12 Years of Age: that this Grant was made at *Oxford*, during the sitting of a Parliament, without their being concerned in it as Parties thereto: Nay, that in Consequence of this Donation, the new *Irish* King made divers Grants and Charters to his liege Subjects of *Ireland*:

3dly. THAT during the Reign of the three EDWARDS, certain Lords, Knights, and Burgesses were sent over from *Ireland* to represent that Kingdom in the *English* Parliament.

4thly. THAT there are judicial Pleadings still upon Record, wherein it appears to have been the Opinion of some of the *English* Judges, that

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that the *English* Laws are not obligatory on the Inhabitants of *Ireland*, because they have a Parliament of their own.

THESE Arguments have a specious Appearance at first Sight. But let us examine their Contents:

AND 1st, as to the pretended Stipulation, or original Contract between the Conqueror and the Conquered:—Nothing can be gathered from what the Historians have said about it (for if there ever was any Instrument of this Kind, it is now lost) — I say, nothing can be gathered from it more than this, that the King promised to treat his new Subjects with great Lenity and Indulgence; that he would govern them by the same Laws by which his *English* Subjects were governed; that both Nations should be considered as *one People*;—and that the *Irish* should have a Parliament of their own, for the better Management of their own local, or provincial Concerns:—A Power which is granted in Reality, tho' not by the express Name of a Parliament, to almost every great Corporation within the King's Dominions: That is, a Power to make Laws for the better regulating their own Affairs, and for levying Taxes for particular Uses;—but still subordinate, still subject to the Controul of the supreme Legislature of the whole Empire.

SECONDLY,

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SECONDLY, as to the Fact of the King's creating his youngest Son, when only twelve Years of Age, King of *Ireland*, it is observable, that neither HENRY himself, nor any of his Successors, for some hundreds of Years, appropriated to themselves any higher Title than that of *Lords of Ireland*. It is therefore somewhat singular, that the very first Lord of *Ireland* should assume a Power of creating a Title superior to his own. And the best Way of accounting for so whimsical a Conduct seems to be this:—In those Gothic Times, when the refined Pleasures of Society were ill understood, the Princes, and the great Men were at Loss for suitable Diversions for the Entertainment of their Guests at the three great Festivals of *Christmas*, *Easter*, and *Whitsuntide*. Sometimes they had Recourse to Tilts and Tournaments; at other Times to gaudy Processions, some of them solemn and religious, and others very ludicrous. But what seemed to be the most pleasing of all both in *England* and in *France*, because the most pompous, and in which likewise all the great Families of both Kingdoms bore principal Parts or Characters, were CORONATIONS. These therefore were frequently repeated by every Monarch at their great Festivals, and at the Meetings of their Parliaments. And HENRY himself, who affected such Raree-Shews as little as any one, was crowned according to RAPIN,

three

PLEAS AND ARGUMENTS. 29

three several Times. Nay, he caused his eldest Son, and then Heir apparent, Prince HENRY, to be crowned twice *King of England*, during his own Life-Time; but was far, very far, from imagining, that he had dethroned himself by that Means, or even lessened his own Authority:—Much less can it be supposed, that when he entertained his Court and Parliament at *Oxford* with the merry Coronation of a mere Boy, he resigned the newly-conquered Kingdom of *Ireland* into the Hands of this raw unexperienced Youth;—or indeed that he constituted any other Persons to be Trustees or Guardians for him, 'till he should come of Age. Nay, the contrary is so very apparent, that we know from History,—not only that King RICHARD, Successor to King HENRY, paid no Manner of Regard to this imaginary Donation,---but also that HENRY himself nick-named this very titular King of *Ireland*, JOHN LACKLAND: An Appellation, which could not have been given him with any Propriety, had he created him absolutely and truly the Sovereign of a great Territory, and made him independent of himself. All therefore that can possibly be inferred from such a Ceremony, amounts to no more than this: That JOHN was thereby constituted Vice-Roy, or Lord Lieutenant of *Ireland*; and that, when he went to reside there, he was to act in
that

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that Capacity. Hence therefore the Circumstance of his granting Charters;---which indeed all Lord Lieutenants have a Power to do, and which every great Baron in *England* did formerly; which JOHN himself likewise did to the City of *Bristol*, as Earl of MORETON.---But surely the City of *Bristol* was never yet thought to be exempt from parliamentary Authority and Jurisdiction.

3dly. As to the Circumstance of Lords and Commons being sent over from *Ireland*, to sit and vote in the *English* Parliament:---This might be urged as a very good Argument against the Independence of the *Irish* Parliament; because it is an irrefragable Proof, that an independent Parliament did not then exist in *Ireland*;---and it might also serve to evince the Expediency of an Union with that Kingdom, now at a Time when the Roads are so much better, and the Passages by Sea so much easier, safer, and more regular than in former Times: But it can prove nothing else with any Probability, or Shew of Reason. For the Fact is, that whether there were Deputies sent over from *Ireland* to represent the *Irish* Nation or not, the *English* Parliament made Laws to bind that Kingdom both, before they came,---at the Time of their coming,---and after they ceased to come; that is, for the Space of upwards of 600 Years.

LASTLY,

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LASTLY, in Regard to some Pleadings in our own Courts of Judicature in Favour of the Independence of *Ireland*;-- there never was any formal Decision of this Nature; but only some Doubts started on particular Occasions, and respecting particular Circumstances. Nay, supposing even that there had been such Decisions, an *English* Parliament would hardly have thought, that their supreme Authority and Jurisdiction were to be limited, or circumscribed in any Respect by the Decision of the Courts below.

THEREFORE, to return to the main Point:--- The Fact, the indisputable Fact, is, that ever since the *Irish* have enjoyed the Privilege of being regarded, not as Aliens and Foreigners (such as *Scotchmen* formerly, *Dutchmen* of later Years, and *Hanoverians* at present)---but as natural-born *English* Subjects,---the *English* Laws and Courts of Judicature have necessarily been paramount over the *Irish*. The Decrees of the King's-Bench in *Ireland* are subject to the Revision of the King's-Bench in *England*:---And as to the Upper House of Parliament in *Ireland*, the Lords have no Judicature at all; but all Appeals, and all Causes proper to be tried before a House of Lords, must be tried in *England*. Nay, the very King of *Ireland* is no other, than that Prince, whom the *English* Nation shall first appoint to rule over them. This

was

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was always the Case in every Contest about the *English* Throne: For the Moment a Prince was acknowledged to be King of *England*, he became, *ipso facto*, King of *Ireland*, without any further Ceremony, Election, or Coronation. This therefore was particularly the Case at the Revolution: At which Period the Difference between *Ireland*, and *Scotland*, was very remarkable; inasmuch as the *English* Parliament did not pretend to nominate a King and Queen for *Scotland*, though they did for *Ireland* in the Persons of the Prince and Princess of *Orange*. And the same Case occurred again at the Accession of the present Royal Family; when the *Irish* Parliament never presumed to pass any Act either of Settlement, or of Recognition of the Title of the present reigning House. And yet it would have been, nay, it actually was High-Treason in a Native of *Ireland* to have refused the Acknowledgment of the Title of the House of *Hanover*;—notwithstanding he might have pleaded, according to Mr. Lock's Principles, that the *Irish* Parliament had neither elected, nor recognized the Election of that House.

NEXT to the Appointment of a Sovereign to rule over a Country, is the Power of raising Taxes on the Inhabitants. And this also has been exercised (tho' very sparingly) by the *English* Parliament over *Ireland*.—The Truth is, this itself is an extraordinary Power, which never ought

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to be exercised, but in such extraordinary Cases, as require the Interposition of the supreme Legislature, for the Good and Interest of the whole. In all common Cases, the local or provincial Parliament or Assembly ought to be allowed to judge for itself, and to provide Supplies for its own Wants. Now the particular Case here referred to, in which the general Interest of the Empire was concerned, was that of the Postage of Letters; whereby Provision was made for opening Communications, and carrying on Correspondencies with every Part of the widely-extended *British* Dominions; and therefore an Act was passed in the *British* Parliament (after the Union with *Scotland*) for this most important Purpose. [See the 9th of QUEEN ANN, Cap. 10.] Now, this general Act is the very Law, which establishes and regulates all the Post-Offices erected, or to be erected, as well in *Ireland* and *America*, as in *Great-Britain*;—which ascertains to this very Day, the Rates due and payable for the Postage of Letters; and subjects every Contravenor or Opposer, both in *Ireland* and in *America*, to the same heavy Fines and Penalties, which are to be levied on Offenders in *Great-Britain*.

LASTLY, as Mr. MOLINEUX's Book, in Favour of the Independence of *Ireland*, had unsettled People's Minds, and created much Disturbance,—the Parliament of *Great-Britain*

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thought it necessary to be very explicit on the Point, and to assert their sovereign Rights in the strongest Terms, viz.—“ Be it declared by
 “ the King’s most excellent Majesty, by and with
 “ &c. &c. that the said Kingdom of *Ireland*
 “ hath been, is, and of Right ought to be, sub-
 “ ordinate unto, and dependent upon, the impe-
 “ rial Crown of *Great-Britain*, as being insepara-
 “ bly united and annexed thereunto. And that
 “ the King’s Majesty, by and with the Advice
 “ and Consent of the Lords spiritual and tempo-
 “ ral, and Commons of *Great-Britain* in Parlia-
 “ ment assembled, hath, had, and of Right ought
 “ to have, full Power and Authority to make Laws
 “ and Statutes of sufficient Force and Validity
 “ to bind the People and Kingdom of *Ireland*.

“ AND be it further declared and enacted by
 “ the Authority aforesaid, that the House of
 “ Lords of *Ireland* have not, nor of Right
 “ ought to have, any Jurisdiction to judge of,
 “ affirm, or reverse any Judgment, Sentence,
 “ or Decree, given or made in any Court
 “ within the said Kingdom: And that all Pro-
 “ ceedings before the said House of Lords upon
 “ any Judgment, Sentence, or Decree are, and
 “ are hereby declared to be, utterly null and
 “ void to all Intents and Purposes whatsoever.”

[See 6 of G. 1. Cap. 5.]

THIS Dissertation relative to the Plea for the Independence of *Ireland*, it must be owned,
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has rather been a long one: But surely it cannot be esteemed a Digression; for I defy the warmest, and the ablest Advocate, that ever appeared for *North-America*, to produce any Arguments half so plausible for the Independence of the Colonies, as those which Mr. MOLLINEUX had formerly adduced for the Independence of *Ireland*; which yet, I hope, have received a thorough Confutation. In short, begin where you will, and you will find, that the *North-American legal and historical Plea* is infinitely inferior to the *Irish*. There never was any Stipulation entered into between the Conquerors and the Conquered in *North-America*:—Never any pretended Transfer of the Sovereignty of the Country to other Hands:—Never any Charters given, which even did *pretend* to exempt the Colonies from the Legislature of the *British* Empire:—But, on the contrary, the very Charter of *Pensilvania*, where the Congress was so lately held, declared and maintained the Parliament’s Right of Taxation in express Terms. Moreover, there were never any Lands seized or possessed by the first Settlers or Adventurers on any other Conditions, or in Consequence of any other Deed, Grant, or Title, than those which explicitly acknowledged the Supremacy of the *English* Crown. And lastly, there is not one Instance to be produced of so much as a Doubt in any of our Courts of Judicature

cature, that *America* was not bound by *English* Acts of Parliament;—provided those Acts related to, and particularly mentioned, the Plantations, or Colonies of *America*. On the contrary, as soon as ever it was perceived, that the Seeds of Disobedience were beginning to sprout up in *America*, Laws were made from Time to Time to weed them out, and to maintain the Authority and Jurisdiction of the Parent-State. This may be traced from so early a Period as the Reign of King WILLIAM, when the Colonies were hardly emerged from their Infant-State; yet as some Symptoms of a rebellious Disposition began even then to appear, an express Law was made to destroy every Pretence, and to obviate every future Subterfuge, which could possibly be invented, for asserting the Independence of the Colonies. And as this famous Law was made,---not in these vile degenerate Times, when (according to modern Phrase) our Liberties lie bleeding, and all our Franchises are at their last Gasp,---but in the patriotic Days of our glorious Defender King WILLIAM; and as this Act of Parliament is the most effectual, and *legal* Confutation of the wild Pretensions, and exorbitant Claims of the present Congress, that can be imagined,---inasmuch as it was made above 70 Years before these Republican Meetings were in being;---I shall therefore quote it once more, tho' I have mentioned it

it twice already in the preceding Tracts. “Be it further enacted, and declared by the Authority aforesaid, that all Laws, Bye-Laws, Usages or Customs at this Time, or which HEREAFTER shall be in Practice, or endeavoured, or pretended to be in Force or Practice in any of the said Plantations, which are in any wise repugnant to the before-mentioned Laws, or any of them, so far as they do relate to the said Plantations, or any of them, or which are any wise repugnant to this present Act, or to ANY OTHER LAW HEREAFTER TO BE MADE IN THIS KINGDOM, so far as such Law shall relate to and mention the said Plantations, are ILLEGAL, NULL, AND VOID TO ALL INTENTS AND PURPOSES WHATSOEVER.”—[See 7. and 8. of WILLIAM III, Cap. 7. § 9.]

Now, as this Statute of WILLIAM the Third evidently undertakes to justify the *Constitutional Right* of Parliament to make Laws to bind the Colonies;—it necessarily follows, that, if the late Stamp-Act, and every other Act of GEORGE the Third now complained of, were really and truly no better than *Usurpations*, this original Law, which pretended to authorize them, ought to have borne the greatest Blame:—And then the *American* Grievances will be found to be of much older Date than the *Americans* themselves, for certain Reasons, are willing to acknowledge.

knowledge. For, in Fact, if the heavy Charge of Usurpation, now brought against the Mother Country, is well founded;—King WILLIAM and his Parliament were the prior Usurpers, and the greatest Invaders of the Colony-Rights: So that the worst, which can be said against the present Legislature, with any Colour of Reason, or Shew of Truth, is only this:—That in making the Stamp and other Acts of the present Reign, they too implicitly followed the bad Example which had been set before them. But if the Charge was not brought against King WILLIAM and his Parliament for what they did; it is impossible that it could be brought, *with any Consistence*, against the present Government, who have done nothing more, than tread in their Steps, and following their Decision.

HOWEVER, we will readily allow, that *bad* Laws may be made by *rightful* Governors, as well as by Usurpers. And therefore another Question comes here to be discussed, viz. Were those Colony Laws, lately made by our Parliament,—were they, I say, good or bad in their own Nature?—And particularly it may be asked regarding the * Stamp Act (as being a Kind

* I particularly mentioned the Stamp-Act, as being the *apparent, or pretended* Cause of all the present Disturbances. But no Man living can be so stupid, as to believe, that it was

Kind of Touchstone for all the rest) was it such as deserved to be branded with the Epithets of *cruel, tyrannical, and oppressive*, — had it been made by those Legislators, who had the Right and just Power of making Laws for the Colonies?

Now to answer these Questions, we will here briefly remark, that this Tax had every Quality belonging to it, which could have denominated it *reasonable* and *unexceptionable*, respecting either the Sum or *Quantum* to be raised, — or the *Mode* of raising it, — or the *Uses* to which it was to be applied.

AND first as to the *Quantum*, The Sum intended to be raised, was only a Part, and a small Part too, of the very same Tax, which we had begun to lay on ourselves, and then had greatly augmented for the Benefit and Protection of these very Colonies. — So that in this Instance, at least, there could have been no Pretence for

was the *true* one. The real and true Cause was the driving of the *French* from *Canada*; and the other was only the *Occasion*. Had the *French* Government still subsisted in that Country there would have been no Congresses assembled in our Colonies to dispute the Rights and Authority of *Great Britain*. But when the Colonies became in fact *independent*, through our Means, it was idle to expect, that they would long want an Opportunity of declaring their Independence: And tho' the Stamp Act had never existed, it would have been easy to have found out some other Pretence, to have answered the same end. For when people are *ripe* and *pre-disposed*; any Thing and every Thing will then serve for a Pretext to do that, *which they have a Mind to do.*

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those Clamours, so industriously propagated by the *Americans* abroad, and the Mock-Patriots at home, that the Parliament had laid Taxes on the Colonies, in which the Inhabitants of *Great-Britain* bore no Part: For the latter not only bore a much greater Proportion of the same Tax than the Colonies; but also submitted to several Augmentations of it for the Defence and Protection of *America*.

AND 2dly, as to the *Mode* of raising this Tax: Were all possible Modes to be examined, and compared together, this of a Stamp-Duty appears to be one of the best and most unexceptionable, which the wit of Man can devise; inasmuch as it approaches to a *voluntary* Tax much nearer than any other. In fact, it neither oppresses the Poor, nor impoverishes the Rich; it multiplies Officers or Collectors the least of any: It causes no forceable Entries into People's Houses: Nor is there any Need of using Violence in collecting it: And in short, it doth not endanger Liberty, nor render Property less secure than they would otherwise have been, in any Respect whatever. Nay, so far from it, that in the Course of its Operation, it often detects Forgery and Imposture, and by that Means becomes the Guardian of Simplicity, Honesty, and Fair-dealing.

LASTLY, as to the intended *Application* of this Tax;—the Sums arising from it were solely

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solely to be applied for the Use of *America*, and not of *Great-Britain*:— And in regard even to *America*, the Money was not to be appropriated for the private Use of any particular Province: For had that been the Case, it certainly would have been more prudent in the Parliament to have permitted that particular Province to have raised *its own Taxes for its own Uses*: But this Tax was destined for the Good and Protection of the whole *American* Empire, both in the Islands, and on the Continent. And therefore the very Nature of the Case rendered it exceedingly proper for the supreme Legislature to take upon itself the Cognizance of the Matter, according to the former Example of a Post-Tax in the Reign of QUEEN ANN. [See 9th of Q. ANN, Cap. 10.] It was right so to do, both in order to regulate and direct the whole for the public Good, and also to apportion out, what each Colony ought to contribute thereunto: Which Partition these disjointed Governments, with their discordant Interests, would never have settled among themselves.

IN short, and to sum up all, it is generally allowed on all Sides, by *Americans* as well as others, that had the provincial Governments themselves agreed together to have laid on such a Stamp Duty, as the *British* Legislature did lay on, it would not, it could not, have been deemed excessive and immoderate as to the *Quantum*, or
Sum

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Sum to be raised,---nor unjust, partial, or oppressive as to the *Mode*;---nor yet unwise, unnecessary, or dangerous in respect to the *Application* of it. So that the whole Opposition made to it, from first to last, is resolvable into one single Point, viz. The Powers which laid it on, had no Right so to do; they were USURPERS. But alas! if they were *Usurpers*, it must necessarily follow, that all former *English* Legislatures were *Usurpers* likewise:---For they all made *Laws* to bind the Colonies:---They all imagined, that they were the supreme Legislature of the Empire, which therefore was to govern and controul the whole:---They all acted as if every other Branch of Legislation was wholly and solely derived from them, and therefore could not be but dependent on, and subject to them.

It seems, these grand and fundamental Principles are now flatly denied by the Colonies: Let us therefore see, what they have to say in so extraordinary a Case, and how they attempt to vindicate their novel Claims.

SECTION

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SECTION II.

The Plea alledged by the Colonies in Support of their Pretensions.

IN order to avoid every Appearance of Partiality in this Case, I will state the *American* Plea in the very Words of the *Americans* themselves, convened together in their celebrated Congress at *Philadelphia*; and then it is to be presumed,

————— *Si Pergama dextris
Defendi possint, etiam his defensa fuissent.*

THEIR Words are these:---“ The good People of the several Colonies of *New Hampshire, Massachusetts-Bay, Rhode-Island* and *Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Newcastle, Kent* and *Sussex* on *Delaware, Maryland, Virginia, North-Carolina,* and *South-Carolina*, justly alarmed at the arbitrary Proceedings of Parliament and Administration, have severally elected, constituted, and appointed Deputies to meet and sit in general Congress in the City of *Philadelphia*, in order to obtain such Establishment, as that their Religion, Laws, and Liberties may not be subverted: Whereupon the Deputies so appointed being now assembled, in a full and free Representation of these

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these Colonies, taking into their most serious Consideration the best Means of attaining the Ends aforesaid, do in the first Place, as *Englishmen* their Ancestors, in like Cases, have usually done, for asserting and vindicating their Rights and Liberties, DECLARE,

THAT the Inhabitants of the *English Colonies in North-America*, by the *immutable Laws of Nature*, the Principles of the *English Constitution*, and the several Charters or Compacts, have the following RIGHTS —

“ *Resolved, nem. con.* That they are entitled to Life, Liberty, and Property: And that they have never ceded to any sovereign Power whatever, a Right to dispose of either without their Consent.

“ *Resolved, nem. con. 2.* That our Ancestors, who first settled these Colonies, were at the Time of their Emigration from the Mother Country, entitled to all the Rights, Liberties, and Immunities of free and natural born Subjects within the Realm of *England*.

“ *Resolved, nem. con. 3.* That by such Emigration they by no Means forfeited, surrendered, or lost any of those Rights, but that they were, and their Descendants now are, entitled to the Exercise and Enjoyment of all such of them as their local, and other Circumstances enable them to exercise and enjoy.

“ *Resolved,*

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“ *Resolved, 4.* That the Foundation of *English Liberty*, and of all free Government, is a Right in the People to participate in their Legislative Council: And as the *English Colonists* are not represented, and from their local and other Circumstances cannot properly be represented in the *British Parliament*, they are entitled to a free and exclusive Power of Legislation, in their several provincial Legislatures, where their Right of Representation can alone be preserved, in all Cases of Taxation and internal Polity, subject only to the Negative of their Sovereign, in such Manner as has been heretofore used and accustomed: BUT FROM THE NECESSITY OF THE CASE, AND A REGARD TO THE MUTUAL INTERESTS OF BOTH COUNTRIES, we cheerfully CONSENT to the Operation of such Acts of the *British Parliament*, as are *bona fide* restrained to the Regulation of our external Commerce, for the Purpose of securing the commercial Advantages of the whole Empire to the Mother Country, and the commercial Benefits of its respective Members, excluding every Idea of Taxation internal or external, for raising a Revenue on the Subjects in America WITHOUT THEIR CONSENT.

“ *Resolved, nem. con. 5.* That the respective Colonies are entitled to the common Law of *England*, and more especially to the great and inestimable Privilege of their being tried by the Peers of the Vicinage, according to the Course of that Law.

“ *Resolved,*

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" *Resolved*, 6. That they are entitled to the Benefit of such of the *English* Statutes, as existed at the Time of their Colonization; and which they have, by Experience, respectively found to be applicable to their several local, and other Circumstances.

" *Resolved*, *nem. con.* 7. That these, his Majesty's Colonies, are likewise entitled to all the Immunities and Privileges granted and confirmed to them by royal Charters, or secured by their several Codes of provincial Laws.

" *Resolved*, *nem. con.* 8. That they have a Right peaceably to assemble, consider of their Grievances, and petition the King; and that all Prosecutions, prohibitory Proclamations, and Commitments for the same, are illegal.

" *Resolved*, *nem. con.* 9. That the keeping a standing Army in these Colonies, in Times of Peace, without the Consent of the Legislature of that Colony in which such Army is kept, is against Law.

" *Resolved*, *nem. con.* 10. It is indispensably necessary to good Government, and rendered essential by the *English* Constitution, that the constituent Branches of the Legislature be independent of each other; that, therefore the Exercise of legislative Power in the several Colonies, by a Council appointed, during Pleasure, by the Crown, is unconstitutional, dangerous, and destructive to the Freedom of *American* Legislation.

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" ALL and each of which, the aforesaid Deputies in Behalf of themselves, and their Constituents, do claim, demand, and insist on, as their indubitable Rights and Liberties; which cannot be legally taken from them, altered, or abridged by any Power whatever, *without their own Consent, by their Representatives in their several provincial Legislatures.*"

SECTION

SECTION III.

The respective Pleas of the Parent State, and of the Colonies examined, and compared together: And the Impossibility of their making any mutual Concessions, consistently with their respective Claims, proved and demonstrated.

THE first Thing observable in this Controversy is, that there is no common Principle to rest upon, no common Medium to appeal to. The Colonists reason principally from what they apprehend *ought* originally to be the Case,---to what in future shall, or must be:--- And the Mother Country from what actually was,---to what still ought to be. Or in other Words, the Parent-State grounds her present Claim of Authority and Jurisdiction over the Colonies on Facts and Precedents, and on what was actually the State of Things at the first Settlement of these Colonies, and during the whole Course of their Growth and Progress ever since,---adding withal, that in every State or Commonwealth antient or modern, legal Protection necessarily infers the Duty of legal Obedience, and that there must be in every Government a dernier Resort, and a *Ne plus ultra* of ruling Power. On the other Hand, the Colonists, who are all the Disciples of Mr. Lock,

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have Recourse to what they call *immutable Truths*,---the abstract Reasoning, and eternal Finesses of Things,---and in short to such Rights of human Nature, which they suppose to be *alienable* and *indefeasible*. Former Laws and * Precedents carry little or no Conviction to People, who argue after this Manner: And therefore they are seldom or never mentioned by the *Americans*: For all these, they well know, would † surely make against them. And as to any Claims to be derived from regal Charters, they are not insisted upon AS THE MAIN PILLARS of the *American* Cause, [Indeed, if they were, such Supporters must fall of Course; because

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* Dr. PRIESTLY, the celebrated Champion of the *Americans*, expressly excepts against our having Recourse to any such Topics as these. His Words are curious: "Lawyers, says he, who are governed by *Rules* and *Precedents*, are very apt to fall into Mistakes in determining what is *right* and *lawful* in Cases, which are, in their own Nature, prior to any fixt Law or Precedent." --- [See his *Treatise on Political Liberty*, Page 26.] --- Lawyers therefore are no proper Judges of the Law and Constitution of the Colonies! --- To what a Pass are Times now come!

† In *Crouch's* Book of Rates, Edit. 1757, there are enumerated, under the Article *Plantations* in the Index, from Page 539 to Page 557, no less than *Ninety Clauses*, or Extracts from Acts of Parliament, for governing and controuling the subordinate Legislatures of the Colonies, for regulating their Police, and restraining their Trade; also for dispensing with the Trials by Juries in *contraband* Causes, and for appointing other Modes of Trial; --- and lastly for laying on Duties and Taxes of various Kinds. Moreover it is observable, that every one of the Acts there mentioned, was prior to the present Reign. And had Mr. *Crouch's* Subject led him to it, he might have mentioned twice as many more.

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every Charter granted solely by the King, must, in the very Nature of Things, be subordinate to the supreme Legislature both of King and Parliament.] But these Claims, pretended to be derived from Charters, are quoted only by the bye, as a Kind of supernumerary Proof, and as a Sort of analogical Reasoning, fit only for those, whose weak Minds cannot digest Arguments of a superior Strength and Quality.

HENCE therefore it is plain and evident, that there can be no Grounds for a Compromise of Differences between these two contending Parties; for they hold nothing in common to stand upon: So that either Side must maintain the whole of its Claim, or wholly recede from it. "You are either Subjects, or not Subjects, says the *Englishman* to the *American*; for there is no Medium between Dependence and Independence."—*We are not subject to the English Government in any Respect, against our own free Choice, and voluntary Consent,* says the *American*: *And you are Usurpers in every Attempt you make to deprive us of this innate, inherent, and unalienable Liberty*:—Therefore, says the impartial Bye-Stander, if there be no Medium between Dependence and Independence, between Usurpation and a lawful Authority, it necessarily follows, that your Differences can never be reconciled, or adjusted.—And you will have no other Choice, but either to quarrel perpetually,—or to separate peaceably.

BUT,

BUT, 2dly. We will suppose for Argument's Sake, and because such a Scheme has been publicly recommended,—we will suppose, I say, that some Well-wisher to both Countries, of a better Heart, than Head, should propose a Plan of Reconciliation after the following Manner.

"LET *Great Britain* allow the Colonies the sole Right of taxing themselves: And on the other Hand, let the Colonies allow to *Great-Britain* the exclusive Right of regulating their external Commerce: And then the antient Harmony between them will be restored, and all will be Peace again."

THESE Words, it must be owned, look fair as far as they go: But they are fallacious even at first setting out. For there is a palpable Deception in the very Terms here made use of, *allow the Right*; which Fallacy is easily discovered by substituting other Words in their Stead. For Example, Let *Great-Britain renounce* the Right of taxing the *Americans* without their own Consent: And then the *Americans* will,—what? *Renounce* the Right of regulating their own Commerce? No; by no Means: The *Americans* will never make any such Renunciation. Indeed they say, they cannot: And they say truly, on their Principles. For if such a Right be founded, as they expressly declare it is, in the *immutable Laws of Nature*, if it be *unalienable, unalterable, and indefeasible*, it is impossible to renounce it: And every Attempt of this Sort must be judged

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foolish and preposterous, null and void. Nay, the utmost which can be expected from them, according to this Hypothesis, is what they declare in their 4th Resolve, Page 35, they are ready to do, viz. "*That from the Necessity of the Case, and a Regard to the mutual Interests of both Countries, they will cheerfully CONSENT to the Operation of such Acts of Parliament, as are bona fide restrained to the Regulation of their external Commerce.*" So that here you plainly see, they still maintain their Right, and the Interpretation of that Right;---only consenting to suspend the Exercise of it for the present,---on Condition nevertheless, that such an Use shall be made of this Concession as they shall approve of. In short, it is evident according to their Ideas, that were you to allow them the sole Right of taxing themselves, you would grant them---Nothing: Nothing, but what they had a prior, and even an INDEFEASIBLE Right to enjoy, whether you granted it them or not;---but which you had from the Beginning very injuriously attempted to rob them of. Whereas, were they to allow you the Privilege of making Acts to regulate their Commerce either by Land or Sea, they would thereby grant you a Favour, to which of yourselves you had not the least Claim or Pretention. And consequently as this Permission would always remain a mere Act of Grace and Favour on their Part, there would likewise always exist an unalienable Right

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of limiting, circumscribing, and of interpreting it, in what Manner they thought proper; and at last of totally withdrawing it, when they believed it to be abused, or perverted to their Prejudice.

MOREOVER, 3dly. Granting even that *Great-Britain* was so ill advised, as to enter into a Compact with the Colonies, on these dishonourable and disadvantageous Terms; granting, I say, that we trusted to a Treaty, which the *Americans* themselves declare aforehand to be binding only during Will and Pleasure; and which cannot possibly bind their Posterity,---still it is to be enquired, what Effects would this *seeming* Compromise have upon the Colonies? Would it restore Peace? Would it produce a cordial Reconciliation? No, by no Means. I assert this with the less Hesitation, because I have proved already [see Page 151---157 of Tract IV.] and can prove still more abundantly, that the Act of Navigation of CHARLES II. and every other ancient Law for restraining, and *monopolizing* the Commerce of the Plantations, never did produce those desirable Effects of Harmony and Unanimity, which are now confidently ascribed to them. On the contrary, the real Fact was, *and it is natural it should be so*, that these *coercive* Laws were always regarded, as the never-failing Source of Discord and Dissention between the two Countries. Indeed the Truth, the undeniable Truth is, that the Colonies engaged, from the very first Period of their Existence, in

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all Sorts of contraband Trades, which they could practise with Impunity, or which they could carry on with any Prospect of Profit. And it is astonishing, that any of their Advocates, especially those of a *sacred Character*, should be so far misled themselves (for we dare not suppose, that they would willingly and designedly mislead others) I say, it is really astonishing, that they could be so ignorant of these notorious Facts, as even to insinuate the contrary. But since it has so happened, we must now observe once for all, that it appears from the very Statutes of the Realm, that the Colonists never made it a Scruple of Conscience to import from prohibited Places, and to export to them any Article of Commerce, which they thought they could either buy, or sell to Advantage. Hence therefore mutual Complaints arose from the very Beginning; these encreased and multiplied every Day, in Proportion as the Trade extended. And at last the Colonists not only eluded the Vigilance, but frequently outbraved the legal Power of the Mother-Country. This made it necessary for the *English* Legislature to enact new Laws from Time to Time in order to strengthen and enforce the old ones, and to prevent the Increase of these Evils as much as possible. And it is very observable, that there is one general Principle, which runs throughout all these Laws, and diffuses and expands itself more and more, according to the Exigencies of

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the Case, viz. *That a Jury of American Smugglers was not to be trusted in the Condemnation of a Brother-Smuggler*. Hence therefore every new Law encreased, and extended the Power of making an Option, granted to the Revenue-Officers; of prosecuting the Offenders either in *England*, or in *Ireland*;—or in the Courts of Admiralty in the Plantations,—or indeed by a Jury in any other Plantation, if sufficiently distant from the Spot, where the Fact was committed. So that, in short, the dismal Outcry now raised by the Congress, of having the Rights of *Englishmen* taken from them, viz. the Right of being tried by a Jury of the *Vicinage*,—as if it was the modern Invention of a profligate Ministry, and a corrupt Parliament,—is a Grievance, if it be a Grievance, of UPWARDS OF AN HUNDRED YEARS STANDING; [see particularly 22d and 23d of C. II. Cap. 26. §. 12 and 13.—also, 25th of C. II. Cap. 7.—and 7th and 8th of WM. III. Cap. 7, §. 7.]

Now, if the *Americans* were thus tardy in their Duty towards their Mother Country, during their Infant-State, and before they had learnt even to hiss the high-sounding Words, *immutable Laws of Nature*,—*unalienable Rights*,—and *self-evident Propositions*,—what are we to expect at present, when they have added all the *Principles* of Resistance and Revolt to their former disobedient *Practices*;—and when they are become, even through Motives of Conscience, the deter-

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mined Enemies of the Authority and Jurisdiction of *Great-Britain*?--I ask therefore, Can any Mortal be so stupid, as to believe, that an *American* Jury will, for the future, be more favourable to the *English* Plea of an exclusive Right to, and a Monopoly of their Commerce, than their Juries were in former Times?--And what a Farce would it be, to attempt to bring such a Cause as this before an *American* Judicature, according to the Sentiments and Notions they have now imbibed?--In such a Case, it is much more probable, that they would find a Bill of Indictment against the Officer for seizing these Goods, than against the Culprit for importing or exporting them contrary to an *English* Law; a Law, whose Authority they disclaim, and whose Penalties they both detest, and despise.

BUT why should we labour this Point any longer? Dr. FRANKLIN himself joins his Suffrage to ours as far as this Point is concerned. Many [says he, in his Advertisement to his Considerations on the Nature, and the Extent of the Legislative Authority of the *British* Parliament, printed in * RIVINGTON'S *New-York Gazetteer*, October 30, 1774,] "Many will perhaps be surprized to see the Legislative Authority of the *British* Parliament over the Co-

* I have been lately informed, that the News-Writer of *New-York* was herein mistaken; this Pamphlet being the Production of another patriotic Pen, and not of Dr. FRANKLIN'S.

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"lonies, *denied in every Instance*. Those the "Writer informs, that, when he began this "Piece, he would probably have been surprized "at such an Opinion himself. For it was the "Result, not the Occasion of his Disquisitions. "He entered upon them with a View and Expectation of being able to trace some *constitutional Line* between those Cases in which we " [the *Americans*] ought, and those in which we "ought *not* to acknowledge the Power of Parliament over us. In the Prosecution of his "Inquiries he became fully convinced, that " *such a Line doth not exist*; and that there can "be *no Medium* between *acknowledging*, and " *denying* that Power in ALL CASES."

Now after this, what can be said more? And how can we think of a Medium, of a Temperament, of a Reconciliation in such a Case? Mutual Concessions cannot possibly be made: Compromising Schemes are idle, and visionary Things; because the Nature of the Claim on both Sides is absolutely such, that it must be admitted whole and entire;--or be wholly denied and rejected. Therefore in such a Dilemma, what other Scheme [*peaceable* Scheme I mean] can now remain for the good People of *Great-Britain* yet to pursue,--but either to surrender the disobedient Colonies entirely up, by declaring them to be so many free and independent States;--Or to become their Tributaries and

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Vassals?--I say, their *Tributaries* and *Vassals*: For such we must really be, if we do not separate from them, whatever thin Disguises may be attempted to be put on to cover the Disgrace. Every Advantage, which we enjoy, they are to enjoy in common with us; and yet to contribute nothing but *what, when, and how* they please towards the vast Expence of procuring, and securing these Advantages. We are to defray the Charges of Fleets and Armies, of Forts and Settlements, of Embassies and Alliances, of Treaties of Peace and Commerce, and of all other expensive Privileges which the *English* enjoy among foreign Nations; and then they (the *Americans*) are to reap the Benefits of them equally with ourselves. In short, we are to be the first Adventurers, and the first Drudges in every Case; we are to run the first Risques, and to bear all the primary Expences;--and then, when Matters are brought to bear, and the Trade has succeeded, they are to commence our Rivals and Competitors. Thus, for Example, is there some new and important Discovery to be made in Chymical Processes, in the Arts of Dying, Colouring, Mining, Fluxing, &c. &c.? Or are there any useful Machines to be invented in the Mechanic Arts? The Inventor may have a Patent to reward his Genius, to re-imburse his Expences, and encourage his Industry for fourteen Years, if he pleases; this

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Patent will hold good against his Fellow-Subjects in *Great-Britain*;-- but will not signify a Rush against the Independents of *North-America*:--And what is still more provoking, these Independents will have it in their Power to entice away his Agents and Servants, after he has been at the sole Expence and Trouble of teaching, and training them to the Business:--I say, they will have it in their Power to entice them *publickly* away, by offering them Rewards in our own *public Papers* to remove to *North-America*. Again, are there any Places, either lucrative or honourable, important or influential, to be obtained under the *British* Government? And are all Foreigners and Aliens, and even *Hanoverians*, to be excluded from such Posts of Honour, Profit or extensive Influence? Very right:--But our dear, independent Brethren of *North-America* are neither Foreigners, nor Aliens, not yet *Hanoverians*: They are the better Part of our own selves; and therefore---*they have a Right to every Thing*. Nay, they have a Right to be chosen Members of the *British* Parliament, and to sit and vote for any Sums they shall please, to be applied for the Independence of *America* against the Interest and Claims of *Great-Britain*. Once more; Do we wish to encourage some advantageous Trade with a foreign Country; a Country, which abounds with raw Materials, but is destitute of Manufactures?--We must

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not do it; if such a Trade should be supposed to interfere with the Trade of the Colonies. Are we nevertheless convinced, that we ought to be at Liberty to buy all Sorts of raw Materials at the best Markets, and the cheapest? And that it is the Height of Absurdity, to lay heavy Duties on their Importation into *Great-Britain*? No Matter for that:---For if the Interest of the Colonies should so require, that is every Thing; that alone silences all Objections. And we must give these Colonists great Bounties for raising such Commodities, as might be imported from other Countries much better in *Quality*, much greater in *Quantity*, and without *any Bounties* at all;---nay, tho' these Countries should agree to take our own *English* Manufactures in Return.

THERE is therefore nothing more that can be offered relative to this Subject. For if we shall still persist in caressing our Colonies for putting these Indignities daily upon us;---if we shall still submit to be fleeced, taxed, and insulted by them, instead of throwing them off, and declaring ourselves to be unconnected with, and independent of them, we shall become (and indeed we are now becoming) a Monument of the GREATEST INFATUATION.

F I N I S.