THE

PRINCIPLES

OF THE

BRITISH CONSTITUTION

EXPLAINED;

AND THE

RIGHT, NECESSITY, AND EXPEDIENCY OF

R E F O R M,

ASSERTED.

In a series of Letters to the Author of a late Publication, entitled
"*The British Constitution Invulnerable.*"

BY

A FRIEND TO THE CONSTITUTION.

The present prevailing notions of free Government are founded on better grounds than the examples of former ages, when our constitution was agitated by many irregular and violent movements: they are founded on a rational consideration of the ends of all government, the good of the whole community. *Reeves's Hist. of the Eng. Law. b. 1. p. 10.*

Our civil and political liberties, were not fully and explicitly acknowledged and defined, till the æra of the happy revolution.
Blackstone's Comment. b. 4. p. 443.

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ADVERTISEMENT.

THE Author anticipates an objection which may probably occur, relative to his choice of an occasion for this Pamphlet. He is sensible, that a late publication entitled, " The British " Constitution invulnerable, *or* Animadversions " *on the* Jockey Club," *is one of those pieces which should generally* " *be left to that fate* " *which neglect, time and their own qualities,* " *will effect;*" *nor would he have interrupted its progress, had not a Copy of the second Edition been conveyed to him by a friend, whose judgment is always entitled to deference; who, observing its immediate effects in a particular circle, expressed a wish that occasion might be taken,*

taken, to treat on the important ſubject of Political Reform, and to reſcue it, together with its advocates, from miſrepreſentation. If theſe circumſtances had not occurred, neither this, nor probably any other piece of a ſimilar kind, would have been written; the Author having previouſly determined to avoid Political diſcuſſion in times ſo critical as the preſent.

THE PRINCIPLES OF THE BRITISH CONSTITUTION EXPLAINED, &c.

LETTER I.

SIR,

IF the writer of the Jockey Club, upon whom you have undertaken to animadvert, has, on the one hand, indulged himſelf in an unwarrantable ſpecies of licentiouſneſs, by attacking the characters of individuals; you, on the other, have indulged a ſpecies of licentiouſneſs equally unwarrantable, in attacking, not by name, but in groſs, thoſe,

who animated by the love of their country, desire to see the *practice* of its government, conformed to the *principles* of its constitution.

Your "Animadversions" have been in my hands but a few days. The *arguments* they contain have not excited my attention; but the *speciousness* with which they are written has. Looking on the table of contents, and observing that the words "*moral and political virtue, law, libels, system, and political liberty,*" were inserted as the heads of certain chapters, I expected to find something which might be called discussion; but in this I confess myself disappointed. I mistook your design. It could not be to discuss; but to attain two objects; the one to provoke against the author of the Jockey Club; "execration and punishment;" the other, to expose that which you contemptuously term, *modern* reformation, together with its advocates, to suspicion, reproach, and detestation.

As the demerits of the former will probably

bly be soon ascertained by an English Jury, it is not my intention either to justify or to condemn, him in whole or in part. My design in addressing you on the subject of your "animadversions," is to rescue the latter from that opprobrium with which you have unjustly loaded them; and to shew that reformation is neither so unnecessary as you seem to imagine; nor its advocates so wicked as you represent them.

"The literal meaning of *modern* reform-"ation," you assert is, "to sap the foundation "of all authority by rendering the laws odi-"ous, and the magistrates contemptible; by "sparing no pains to abuse the *indulgencies* "of government: by rendering nugatory all "law; and being independent of all re-"straint."

"The word reform," you add, "has a "kind of necromantic power. Enchanted "with the sound, we quite forget the sense; "and think of nothing but impartial justice, "and perfect happiness. In our own imagi-

 nations

"nations the golden age rifes to view; liberty "and equality are fung by every bard, and "peace and plenty gladden all the land. But "alas! thefe aërial fyftems, when the reality "appears, inftantly vanifh,'[1]

"And, like the bafelefs fabric of a vifion,
"Leave not a wreck behind."

In the former of thefe quotations, you muft have written either ignorantly or malevolently. If you believe what you fay, you have read or converfed but little upon the fubject. Is your circle of acquaintance fo very confined, as not to know *fome* men of worth and character, who profeffing themfelves friends of reformation, nevertheleefs defire to maintain lawful authority, and to render both laws and magiftracy refpectable? Or, do all the books you have met with on this fubject, connect reformation and confufion? If you do not believe what you fay, you muft have been animated by a fpirit of malevolence; and

[1] Animadverfions, p. 91. 92.

and the beft apology for your falfhood is the intemperance of your zeal.

The term "aërial fyftems" in the latter, is rather unluckily applied to "impartial juf-"tice, liberty and equality, and peace and "plenty." What is that *reality* before which thefe "aërial fyftems" inftantly vanifh, and without fo much as a wreck remaining? I fear this paragraph efcaped when you were nodding, and on that account I fpare it; but I believe thefe "aërial fyftems" have generally been confidered by the people of England as real and fubftantial, and I truft they always will.

There are many who, like yourfelf, confound the Britifh conftitution with the practice of the government under it. Confequently, thofe who are juftly diffatisfied with this practice, are frequently branded with the appellation of traitors and enemies to that conftitution. But was it never heard that practice oppofed principle? Is it impoffible to diftinguifh the one from the other? Or do

do you know of any rule for the examination of practice, besides the principle by which it professes to be directed? Principle is the touchstone, practice is the metal; and the application of the one to the other, will discover whether the latter be genuine or base.

In the course of the following letters, it is my intention to bring these together; and, the result will prehaps determine, whether the friend of reformation, may justly be considered as the enemy, or the friend of his country.

A friend to the Constitution.

LETTER

LETTER II.

Sir,

THE English constitution was in a state of fluctuation for ages. Whatever form it maintained in the preceding reigns of the Saxon kings, in the time of William the first it became properly feudal. "At the "conquest a new order of things commenced. "The nature of landed property was entirely "changed; the rules by which personal pro-"perty were directed, were modified; a new "system of judicature was erected; new "modes of redress conceived; new forms of "proceeding were devised; the rank and "condition of individuals became entirely "new; the whole constitution was altered[1];" notwithstanding the common law of this realm was, as you say, properly denominated by William the Conqueror, "*bonæ approba-"tæ antiquæ regni leges.*" The various changes since his time, have been induced by the rising

[1] Reeves's Hist. Eng. Law, 28.

riſing conſequence of an induſtrious, commercial, and high ſpirited people. Goaded by the oppreſſions of many of their kings, they were frequently urged to reſiſtance; and the conteſts between them and the reigning prince, generally terminated in favour of liberty. It is not to the grace of their monarchs, but to the union and patriotiſm of their anceſtors that the people of Great Britain are indebted, for that freedom which the conſtitution ſettled at the Revolution in 1688 guarantees to them. The principles by which that Revolution was directed, "were founded on a rational con-"ſideration of the ends of all government, "the good of the community." This is the foundation upon which our preſent form of government is reared, and to which it continually profeſſes to conform.

We need not therefore go further back, than to the eſtabliſhment of William the Third, for the baſis of the preſent Conſtitution. The principles then recognized by the

Nation, were, 1. That the public good is the end of legitimate government. 2. That as this government is eſtabliſhed *for* the people: ſo the people are its *ſource*. 3. That as the people are the ſource, and their happineſs the end, of eſtabliſhed forms of government: ſo they have an unalienable right at all times, to examine the conduct of their officers. 4. That they have alſo an unalienable right to diſmiſs thoſe officers, whenever the tenor of their adminiſtration is contrary to the laws, ſtatutes, and freedom of the realm.

Upon theſe principles our anceſtors then acted; and thus acting, they have ſhewn an honourable and a laudable example to their poſterity. This example is a legacy incomparably ſuperior, in intrinſic worth and excellence, to all the forms and records handed down from antiquity; however uſeful in their place they may be. Upon theſe principles, the nation has at all times and under all circumſtances, an undoubted right to act, and

to examine its practical government, notwithstanding the tractability and obedience Mr. Burke so strongly enforces, and the author of the Animadversions so highly commends.

The ancient forms then were superinduced, and all the pre-existing laws were confirmed, by the deliberate choice and general consent of the people; and they thus have become universally binding. We shall shew in what manner these principles were recognized in the revolution; and how they form the basis of our present constitution; and then, combining them with the forms of government erected upon them, make some enquiry into the subsequent practice. This will necessarily lead to the discussion of two questions. The one, whether a reformation, in order to assimilate the practice to the principles, is necessary? The other, admitting a reform to be necessary, is it at present expedient?

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The first principle is, 'that the public good is the end of legitimate government.'

No principle it is presumed can be more just than this, though that is not the point we proposed to examine. Its justice is one thing; its recognition by a nation is another. When James the Second was declared to have abdicated the throne, it was on the ground of his having, in the instances enumerated in the bill of rights, acted "utterly and directly contrary to the known laws, statutes "and FREEDOM of this realm"; and in the limitation of the crown to William and Mary for their joint lives; then to the survivor; then to the issue of Mary; and, in case of failure, to Ann and her issue; and in default of her issue, to the issue of William; the reason assigned is, "THE PRESERVATION "OF THE UNITY, PEACE, TRANQUILITY "AND SAFETY OF THE NATION." Had it been possible for James to have forfeited the crown, in consequence of any express pre-existing law; yet that forfeiture would not

 have

have extended to his heirs, unleſs there had been a ſpecial proviſion for that purpoſe; but the next in ſucceſſion would have aſcended the throne *inſtanter* upon his forfeiture. The convention however judged that "the preſervation of the unity, peace, tranquility, "and ſafety of the nation," required the entire diſheriſon of his ſon and his iſſue; and the nation at large, by its general concurrence, ſtamped its broad ſeal on their deciſion.

Further an *election* was made; and the Prince and Princeſs of Orange were choſen to ſucceed to the crown, upon the ground of "an entire confidence, that the Prince would "perfect the deliverance ſo far advanced by "him, and would ſtill preſerve the people "from the violation of their rights." The crown then was limited in the manner and for the reaſons before ſhewn. Theſe tranſactions I conceive fully juſtify my poſition, that the nation recognized as a fundamental principle of their conſtitution, that "the "public

"public good is the end of legitimate go-"vernment."

Our ſecond principle is, 'That as this 'government is eſtabliſhed for the people: 'ſo the people are its ſource.' Here it becomes neceſſary to enquire, by what authority and in whoſe names the convention acted. This queſtion is reſolved by the ſame authentic record. The preamble to the ſtatute runs thus, "Whereas the Lords ſpiritual and "temporal and commons aſſembled at Weſt-"minſter, *lawfully, fully, and freely* REPRE-"SENTING *all the eſtates of the people* of this "realm &c." The abdication was then declared, and the diſheriſon, election, and limitation, ordained, by the authority and in the name of the people. Thus there is a recognitation of our ſecond principle, that the people are the ſource of legitimate government.

The third principle laid down, aſſerts the unalienable right of the people, at all times, to examine the conduct of their officers. That

That this was then recognized, the preceding illuſtration fully proves. A right to examine, I mean authoritatively, muſt be an inſeparable incident to the ſource of a delegated authority. Every office implies a duty to be performed. And who is to determine whether the duty be performed, but the party who appoints? For a nation to appoint the conſtitution, the form and the officers of its government, and in the ſame act to renounce its right of judgment, is to commit *felo de ſe*. And, were it poſſible for the people at any time to be ſo far inſenſible to their intereſts, as to renounce the right of examination, yet ſuch a renunciation could in no wiſe bind their ſucceſſors. Theſe muſt aſſuredly poſſeſs the rights their predeceſſors exerciſed. However no ſuch renunciation can in this caſe be produced.

The fourth principle relates to their 'unalienable right to diſmiſs thoſe officers whenever the tenor of their adminiſtration is contrary to the laws, ſtatutes and freedom of the realm.' In the recognition of this, we have only

only to appeal to matter of incontrovertible fact. The fate of James is a juſtification of the aſſertion; and this right, once deliberately and ſolemnly exerciſed by the nation, cannot by any compact be bartered away or otherwiſe alienated; becauſe it is impoſſible for the nation to receive from any power on earth an equivalent. Beſides the crown was accepted by William and Mary, upon the expreſs condition that the RIGHTS and LIBERTIES then enjoyed and exerciſed, ſhould STAND, REMAIN and BE, THE LAW OF THIS REALM FOR EVER.

A friend to the Conſtitution.

LETTER

LETTER III.

Sir,

THE principles ſtated and illuſtrated in my laſt letter, may be juſtly conſidered as fundamental to the Britiſh government, and as implicated in every branch and form under which it is adminiſtered. Its end is the public good; its ſource is the public authority; it is open to the public examination; and is liable to the public cenſure. In ſhort the Britiſh ſovereignty reſides in the people; and the two great branches of this ſovereignty, the legiſlative and the executive, are delegated by them as a ſacred truſt. The former to the King, the lords and the commons in parliament aſſembled. The latter to the King alone.

It ſhould always be remembered that the government of Great Britain is a delegation; and a delegation upon truſt. To every truſt

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is ſubjoined certain conditions. To ſuppoſe a truſt without conditions, is to ſuppoſe a direct contradiction. The conditions neceſſarily accompanying a truſt are, 1ſt. That the truſtee ſhall faithfully fulfil the deſign of the appointer, in the erection of the truſt, and in his appointment as truſtee. And 2d. That in caſe of miſconduct, whereby the purpoſes of the truſt are defeated, the truſt itſelf ſhall ceaſe, and the whole power revert to the appointor. Theſe conditions, eſſential to the nature of every truſt, are particularly ſo to that of the britiſh government; and thus accord with our principles. Government muſt either be a truſt or a property. To admit the former, is to admit the freedom and liberty of the people. To ſuppoſe the latter, is to ſuppoſe the people in a certain ſtate of political ſlavery. But the people of Great Britain are not ſlaves. There can therefore be no property in them. The britiſh government is a government upon truſt, to be exerciſed for the benefit of thoſe by whom it is delegated; and the only ground upon

which

which the idea of property can be admitted, is that upon which an officer may claim the emoluments of his office, namely, that they were annexed by the party who created the office, to be enjoyed whilſt the duties of the office are fulfilled by the incumbent.

Upon this reaſoning, we may ſafely adopt the language of the title prefixed to your animadverſions, and ſay the "britiſh con-"ſtitution is invulnerable"; but, as I conceive, upon no other. It has thus a ſolid foundation; it is erected for rational purpoſes; it ſubſiſts by the public will; and it muſt conform to its only end, the public good. But we cannot admit the term "*in-*"*dulgences*[1]" which you deſcribe *modern* reformers as "ſparing no pains to abuſe". We know of rights and duties correſponding with each other; but we know nothing of indulgences. The very term implicates a ſubjection diſcordant to the britiſh conſtitution.

[1] Animadverſions p. 91.

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The repreſentatives of the nation in the revolution of 1688; acting upon principles ſo juſt, ſo rational and ſo ſolid; then ſuperinduced the ancient forms of government, and confirmed all their pre-exiſting laws. They might have rejected them; but from a conviction (as we muſt neceſſarily admit) that theſe were more congenial to their diſpoſitions and better calculated to promote their intereſts, they thought proper to adopt them in preference to any others. At the ſame time they enumerated their former grievances, and aſſerted, demanded and enacted their entire abolition. The whole was the act of the nation; an emanation from its ſovereign will, through the medium of its repreſentatives.

In theſe principles conſiſts that competency, which the conſtitution is ſaid to poſſeſs, "to correct its errors and reform its abuſes". Mere forms can neither correct nor reform. Correction and reformation muſt iſſue from an higher ſource. If it be poſſible for them to iſſue from the conſtitution, it is in conſe-

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quence of ſome virtue inherent in the conſtitution; and in what can this virtue conſiſt, but in the principles upon which the conſtitution is founded. Correction and reformation are the effects of comparing practice with principle; otherwiſe every effort dwindles into mere alteration.

The firſt branch of the legiſlative truſt is veſted by the nation in the King, upon the expreſs condition that it be exerciſed for the good of the people. "The ſhare of "legiſlation, which the conſtitution has "placed in the crown conſiſts in the power of "*rejecting* rather than *reſolving*". "The "crown cannot begin of itſelf any altera-"tions in the preſent eſtabliſhed law; but it "may approve or diſapprove of the alterations "ſuggeſted and conſented to by the two "houſes [2]". Now ſuppoſe this power of diſapprobation and rejection to be exerciſed, in direct oppoſition to the purpoſes for which

[2] 1 Black. Com. 154.

it

it is veſted. If, for inſtance, it were poſſible for a king of Great Britain, to reject all bills preſented for his aſſent, and to determine to do ſo, till Parliament had conſented to eſtabliſh a popiſh ſucceſſion to the throne: (It is an impoſſible caſe, and is put hypothetically) how is the nation conſtitutionally empowered to act? As the conſtitution attributes to the King, for certain purpoſes and to a certain extent, the incapacity of doing any wrong: it muſt neceſſarily firſt inquire after, and try to diſcover and puniſh his evil and pernicious counſellors. But admit him to declare that he acts in this reſpect without counſellors, what then? Why the abuſe and violation of the truſt will upon the authority of the revolution determine its continuance. His right of legiſlation ceaſes; and the truſt either reverts to the nation, or veſts in the next heir, in caſe of a previous limitation. This is an inevitable conſequence, admitting *Salus populi ſuprema eſt lex* to be the fundamental maxim of the britiſh conſtitution.

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The ſame mode of reaſoning may be applied to the two houſes in which the other branches of the legiſlative truſt are veſted. The ſame operative, pervading principle controuls and will continue to controul, during the exiſtence of the conſtitution, the conduct of all the legiſlative delegated powers. Nor is it leſs operative, pervading and controuling upon the executive.

If this doctrine be conſtitutional: if the adminiſtration of the moſt elevated forms of our government, may all be brought to this touchſtone: ſurely no doubt can exiſt relative to the right of examination into its interior and inferior circumſtances; eſpecially where the principle upon which I have dilated, is defined in terms immediately applicable to thoſe circumſtances. And, poſſeſſing the right of examination, the people have abundant motives to the duty of its conſtant, temperate and uniform, exerciſe.

A friend to the Conſtitution.

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LETTER IV.

Sir,

THE right and the utility of examination being conſtitutionally aſcertained, I am led to a compariſon of principle and practice; or of conſtitution and adminiſtration. By the latter I do not mean that ſet of men who are more commonly ſo termed; but I intend the general adminiſtration of our government, in all the variety of its ramifications. My deſign however is only to treat of ſome of the principal. To treat of the whole, would require a compaſs far beyond the limits of the preſent publication; and a knowledge of detail far beyond the acquiſition of any individual.

Our monarchy being erected and maintained for expreſs purpoſes is juſtly termed "limited". Its exceſs, under James the ſecond,

cond, was the cauſe of the revolution that ſucceeded his ignominious flight. The limits by which the conſtitution has wiſely bounded it, are intended to be certain and ſubſtantial. Otherwiſe the crown might effect circuituouſly that which it is prohibited from effecting directly. Nothing can be more certain, than that, many of the prerogatives claimed and exerciſed by the crown during the reigns of the Stuarts, were conſidered as grievances by the people; and the reſtraining and annihilating laws they obtained, from the Petition of Right in the 3d. of Charles the firſt, down to the abdication of James the ſecond, fully evince the fact. Amongſt theſe, in addition to the Petition of of Right, ſtand diſtinguiſhed the acts for aboliſhing the ſtar-chamber [1] and high commiſion courts [2]; thoſe relating to ſhip money [3] and knighthoood [4]; the abolition of military

[1] 16 Car. 1 c. 10. [2] 16 Car. 1. c. 11. [3] 16 Car 1. c. 14
[4] 16 Car 1. c. 20

 tenures,

tenures, purveyance and pre-emption [5]; together with the habeas corpus act [6], and that to prevent the diſcontinuance of parliament for more than three years [7]. The bill of rights, in addition to theſe, aboliſhed the power of diſpenſing with the laws which James had claimed; annihilated the court he had erected for eccleſiaſtical cauſes; declared the illegality of levying money and of raiſing or keeping up a ſtanding army without the grant and conſent of parliament; aſſerted the right of the people to petition and to bear arms for their defence; maintained the neceſſity of the freedom of elections, and of ſpeech in parliament; condemned the exaction of exceſſive bail, the impoſition of exceſſive fines, and the infliction of cruel and unuſual puniſhments; regulated trial by jury; annulled all grants and promiſes of fines and forfeitures previous to conviction; and finally declared, that for re-

[5] 12 Car. 2 c. 24. [6] 31 Car. 2 c. 2. [7] 16 Car. 2 c. 1.

 dreſs

dreſs of all grievances and for the amending, ſtrengthening and preſerving the laws, parliaments ought to be held frequently. In all which matters, the ſame bill declares James had endeavoured to ſubvert and extirpate the laws and liberties of the kingdom.

From theſe reſtrictions it is evident that the nation required a real, certain and ſubſtantial limitation of the powers of the crown. Its powers, extended to ſuch a degree as to be inconſiſtent with the general ſafety, were regulated and bounded by the only poſſible rule, the public good. Wherever the prerogative tended to promote this end it was admitted; and wherever it tended to the deſtruction of this end, it was reſtrained or aboliſhed. Now if it were poſſible for the crown ſince the revolution to effect by its *influence*, that which the Stuarts attempted to effect by *force*, the juſt bounds of its prerogative would be evaded; and the conſequences to the people might be equally or perhaps more prejudicial, than

than thoſe were under which our anceſtors ſuffered.

The ſubject of influence has not in our day been wholly diſregarded. It has been diſcovered and aſcertained. The houſe of commons performed this important branch of their duty ſome years ſince. But perhaps notwithſtanding their declaration, that "it ought "to be diminiſhed", there have been no viſible means employed for its diminution. In addition to this unqueſtionable authority, we have that of a celebrated conſtitutional writer, whoſe apprehenſions reſpecting this influence were far from inconſiderable. He has given us a detail, which is well worth the contemplation of every friend to his country; and with this view I tranſcribe it.

"The inſtruments of power", ſays Sir Wil-"liam Blackſtone, are not perhaps ſo *open* "and *avowed* as they formerly were, and "therefore are the leſs liable to jealous and "invidious reflections; but they are not the "weaker on that account. In ſhort our na-

" tional debt and taxes [1] (besides the incon-
" veniences before mentioned) have also in
" their natural consequences thrown such a
" weight of power into the executive scale
" of government, as we cannot think was
" intended by our patriot ancestors; who
" gloriously struggled for the abolition of the
" then formidable parts of the prerogative,
" and by an unaccountable want of foresight
" established this system in their stead. The
" intire collection and management of so
" vast a revenue, being placed in the hands
" of the crown, have given rise to such a
" multitude of new officers created by and
" removable at the royal pleasure, that they
" have extended the influence of government
" to every corner of the nation. Witness
" the commissioners and the multitude of de-
" pendents on the customs in every part of

[1] When Sir William Blackstone published his commentaries the national debt amounted to about one hundred and forty six millions; now it is increased to about TWO HUNDRED AND SIXTY MILLIONS.

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" the kingdom; the commissioners of excise,
" and their numerous subalterns, in every in-
" land district; the post-masters and their
" servants planted in every town, and upon
" every public road; the commissioners of
" the stamps, and their distributors, which
" are full as numerous; the officers of the
" salt duty, which though a species of excise
" and conducted in the same manner, are
" yet made a distinct corps from the ordinary
" managers of that revenue; the surveyors
" of houses and windows; the receivers of
" the land-tax; the managers of lotteries;
" and the commissioners of hackney coach-
" es; all which are either mediately or imme-
" diately appointed by the crown and remove-
" able at pleasure without any reason assigned;
" these it requires but little penetration to
" see, must give that power on which they
" depend for subsistence, an influence most
" amazingly extensive. To this may be add-
" ed the frequent opportunities of conferring
" particular obligations, by preference in

loans,

" loans, ſubſcriptions, tickets, remittances, and
" other money tranſactions, which will great-
" ly increaſe this influence; and that over
" thoſe perſons, whoſe attachment on ac-
" count of their wealth, is frequently the moſt
" deſirable. All this is the natural, though
" perhaps the unforeſeen conſequences of
" erecting our funds of credit, and to ſupport
" them eſtabliſhing our preſent perpetual
" taxes; the whole of which is entirely new
" ſince the reſtoration in 1660, and by far the
" greateſt part ſince the revoiution in 1688.
" And the ſame may be ſaid with regard to
" the officers in our numerous army, and
" the places which the army has created;
" all which put together give the executive
" power ſo perſuaſive an energy with reſpect
" to the perſons themſelves, and ſo prevailing
" an intereſt with their friends and families,
" as will amply make amends for the loſs of
" external prerogative.

" But though this profuſion of officers
" ſhould have no effect on individuals, there
is

" is ſtill another newly acquired branch of
" power; and that is, not the influence only
" but the *force* of a diſciplined army: paid
" indeed ultimately by the people but imme-
" diately by the crown; raiſed by the crown,
" officered by the crown, commanded by the
" crown. They are kept on foot it is true
" only from year to year, and that by the
" power of parliament but during that year
" they muſt by the nature of our conſtitution,
" if raiſed at all, be at the abſolute diſpoſal
" of the crown. And there need but few
" words to demonſtrate how great a truſt is
" thereby repoſed in the prince by his people.
" A truſt that is more than equivalent to
" a thouſand little troubleſome prerogatives.

" Add to all this, that beſides the civil
" liſt, the immenſe revenue of almoſt ſeven
" millions ſterling[1], which is annually paid
" to the creditors of the public, or carried to
" the ſinking fund, is firſt depoſited in the

[1] Now near ELEVEN millions.

royal

" royal exchequer, and thence iſſued out to " the reſpective offices of payment. This " revenue the people can never refuſe to " raiſe, becauſe it is made perpetual by act " of parliament: which alſo, when well " conſidered, will appear to be a truſt of " great delicacy and high importance.

" Upon the whole I think it is clear, that " whatever may have become of the *nominal*, " the *real* power of the crown has not been " too far weakened by any tranſactions in " the laſt century. Much indeed is given " up; but much is alſo acquired. The ſtern " commands of prerogative have yielded to " the milder voice of influence: the ſlaviſh " and exploded doctrine of non-reſiſtance " has given way to a military eſtabliſhment by " law; and to the diſuſe of parliaments, has " ſucceded a parliamentary truſt of an im- " menſe perpetual revenue [1]."

[1] Comment. b. 1. 337. &c.

After

After this faithful but alarming detail of the influence of the crown, the acquiſition and the eſtabliſhment of which, our author attributes to an unaccountable want of foreſight in our patriot anceſtors; can we wonder at the numerous aſſociations which have been formed, not for the purpoſe of giving juſt energy to government, for it wanted none; but for the purpoſe of decrying reformation under the old and ſtale cry of innovation? Can we wonder that thoſe who feel and aſſert the neceſſity of this reformation, are branded with the opprobious epithets of factious and ſeditious? Can we wonder at the exertions we every day obſerve to ſtifle the voice of enquiry, to reduce the people to a ſtate of political blindneſs, and to prevent the diſcuſſion of ſuch " curious queſtions "[2] as relate immediately to their well being, and perhaps to their political exiſtence? Can we wonder

[2] See the Sermon of the Biſhop of St. David's preached before the Lords January 30th, 1793.

that

that conſtitution and adminiſtration are ſo artfully confounded, that thoſe who cannot and dare not go all lengths with the latter, are held up as the enemies of the former? No; the detail we have cited is a key to theſe doctrines and theſe tranſactions; and an honeſt man, with this key in his hand, will be able to open the political cabinet, and there develope the important ſecrets of ſtate myſtery.

A friend to the Conſtitution.

LETTER

LETTER V.

Sir,

THE detail of influence in my laſt letter, which every man of information may increaſe, is contrary to the ſpirit of the conſtitution, if it will not bear to be accurately tried by the principle I have ſhewn to be fundamental, and to have been recognized by the nation at the revolution; namely, that the public good is the end of legitimate government. If this influence, unforeſeen by our patriot anceſtors, was therefore not expreſsly provided againſt by poſitive and definite law: yet, if it be inconſiſtent with the public welfare, it was ſubſtantially provided againſt by the recognition of the principle we have laid down. To examine, is therefore the duty and the intereſt of the people. To correct, in caſe it be juſtly condemned, is their right. The queſtion is highly important, and he who

 endea-

endeavours to ſtifle a ſpirit of enquiry, let him be the friend of whomſoever he may, he is their enemy. He is a traitor to their dearest interests. For to admit an undue and an unreſtrained influence, what is it but to admit an abſolute and arbitrary power? No matter whether the medium by which that power is exercised be ten men, or ten thouſand. If I am in a ſtate of bondage, it is immaterial whether I am the ſlave of one or of a million; only indeed the greater the number of maſters, the worſe generally is the condition of the ſlave, he is not free in the one caſe, equally as in the other.

In addition to the undue influence of the crown, if current opinion may be depended upon, there exiſts the undue influence of an ariſtocracy; which in proportion to its extent may be equally prejudical to the intereſts of people, with that of the crown. And if they ſhould ever extend ſo far as to corrupt the great conſtitutional ſafeguard of the public liberty, I mean the fair and free repreſentation

tation of the people in the houſe of commons: we may profeſs our admiration of the britiſh conſtitution; we may pride ourſelves in the wiſdom of its conſtruction and the harmony of all its component parts; we may look contemptuouſly on other nations who have no ſuch admirable ſyſtem to boaſt of; and ring the changes upon liberty, rights, freedom and conſtitution without intermiſſion; but we ſhall only amuſe ourſelves with words and ſounds, while the ſubſtance they cloathed, and which alone rendered them valuable, is departed.

Sir William Blackſtone, treating of the different ſpecies of government, congratulates his countrymen upon the wiſdom, utility and durability of their conſtitution; and then ſays, "the legiſlature of this kingdom is "entruſted to three diſtinct powers entirely "*independent* of each other. If the ſupreme "power" adds he, "were lodged in any one "of the three branches ſeparately, we muſt "be expoſed to the inconveniencies of either "abſolute

" abſolute monarchy, ariſtocracy, or demo-
" cracy; and ſo want two of the three princi-
" pal ingredients of good policy, either virtue,
" wiſdom, or power. If it were lodged in
" any two of the branches; for inſtance, in
" the king and houſe of lords, our laws
" might be providently made and well exe-
" cuted, but they might not always have the
" good of the people in view." That is, in other words, the virtue which he attributes to the democratic part of our government would be wanting; conſequently our conſtitution would fail to poſſeſs thoſe high and extraordinary qualities on the account of which we profeſs to love it.

Our commentator proceeds thus; " the
" conſtitutional government of this iſland is ſo
" admirably tempered and compounded, that
" nothing can endanger or hurt it, but de-
" ſtroying the equilibrium of power between
" one branch of the legiſlature and the reſt.
" For if ever it ſhould happen, that the inde-
" pendence of any one of the three ſhould
" be

" be loſt, or that it ſhould become ſubſervient
" to the views of either of the other two,
" there would ſoon be an *end* of our conſti-
" tution [3]."

In another place the ſame able commentator, after having ſtated in what our primary rights conſiſt; namely, " in the free enjoy-
" ment of perſonal ſecurity, of perſonal li-
" berty, and of private property;" adds,
" To preſerve theſe from violation, it is ne-
" ceſſary that the conſtitution of parliament
" be ſupported in its full vigour; and limits,
" certainly known, be ſet to the royal prero-
" gative [4]."

Of ſuch importance is the independence of all the different branches of the legiſlative truſt, held by a writer of very high authority upon this ſubject. Other writers of acknowledged authority have been of the ſame opinion. Sir William mentions it as a known apothegm of the great lord treaſurer Bur-

[3] Comment. b. 1.—52. [4] Ib. 145.

leigh,

leigh, even in the days of Elizabeth, " that " England could never be ruined but by a " parliament."

But to resort at once to the highest possible authority, I again turn to the Bill of Rights; and among the enumerated grievances in which James was declared to have subverted the rights and liberties of the people, it is inserted, that he " violated the freedom of " election of members to serve in parlia- " ment;" and then in the solemn declaration subjoined, it is declared, and is thereby become a condition upon which the present limitation of the crown is vested, " That " election of members of parliament ought " to be free." Here the constitution specifically defines the mode by which the great end of the government, the good of the people, is continually to be attained; " the " election of members of parliament ought " to be free."

If therefore the time should ever arrive when the practice is dissonant to the principle:

ple: if the influence of the crown, or of the aristocracy, or of both, should ever pollute this important branch of the legislature, it would lose that independence which is essential to its importance, and probably fall under a uniform management, whereby measures detrimental to the public interest might be procured. And if under such circumstances the treasure of the people should be lavished, and their industry rendered subservient to other interests than their own; where would be our boasted constitution? What good would it produce? What advantages should we derive from it? Would it guard us from the calamities of unnecessary wars? Would it guarantee to us the lovely blessings of peace? Would it perpetually invigorate our commerce? Would it, in fine, answer the valuable purposes for which it was erected, and for which only it is important to be maintained?

A Friend to the Constitution.

LETTER VI.

Sir,

IT ſeems to be almoſt univerſally acknowledged, notwithſtanding the great conſtitutional importance of the independence of the Houſe of Commons, that the election of members to ſerve in parliament is NOT free. Who thoſe are, or what that influence is, by which the freedom of election is now violated, I leave to other determination than mine. But aſſuming it as a fact which, ſo far from being concealed, is frequently attempted to be juſtified, I conclude that a reform here is, of all others, firſt and principally neceſſary.

The right of examining into the practice of government is unqueſtionably in the nation at large; and every individual may lawfully and conſtitutionally, according to his ability, exercise

ercise it; but this right can only be exercised *efficiently* by repreſentation. If therefore it is of importance to the people, that the Houſe of Commons ſhould be conformed to its original and conſtitutional deſign: it muſt be ſo conſtructed as to preſerve its independence; that it may continually be able to form that "*check*" upon the other two legiſlative branches, ſo neceſſary to the "liberty and happi-"neſs of the community[1];" and ſo eſſential to the excellence of the Britiſh conſtitution.

It is the opinion of many, that this freedom of election, from a change of circumſtances induced by a variety of cauſes, cannot now be obtained but by a new diſtribution of the members; and this opinion I conceive to be well founded. Time produces alterations which affect every human contrivance. However well the ſtate of the repreſentation might ſuit the times in which it was formed, it is acknowledged on almoſt all ſides that it does not ſuit the preſent. But becauſe it does not, and

[1] Blackſt. Com. vi. 155.

becauſe

because its restoration to its primary design is urged, does it follow that the constitution must be violated? No, the constitution can only be preserved, by securing to the representative body that independence on the other two branches which, both its genuine spirit and its positive precept, incessantly demand. We have a constitutional rule by which its defects may be rectified; the good of the whole community. With this rule, honestly applied, its independence may be maintained, and the constitution preserved.

As the incongruity of the actual state of the representation cannot be denied: so there are some who apologize for its imperfections, and varnish its blemishes, by assuring us that, in its present form, it answers all the necessary purposes of good government. Departing from principle, they attempt to palliate the errors of practice. Amongst these is a man of considerable eminence, whose opinions and arguments on many subjects deserve the weight they have acquired. As he has professedly

professedly written upon this subject, and is an advocate against reform, it may not be improper to advert to some of the reasons he has advanced.

Mr. Paley, with his usual perspicuity, begins by stating the fact. "The House of "Commons consists," says he, "of five "hundred and forty [fifty] eight members, "of whom two hundred are elected by seven "thousand constituents: so that a majority of "these seven thousand, without any reasonable "title to superior weight and influence in the "state, may, under certain circumstances, de-"cide a question of as many millions. Or "to place the same object in another point of "view, if my estate be situated in one coun-"ty of the kingdom, I possess the ten thou-"sandth part of a single representative; if in "another, the thousandth; if in a particular "district, I may be one in twenty who choose "two representatives; if in a still more fa-"voured spot, I may enjoy the right of ap-"pointing two myself. If I have been born,

or

" or dwell, or have ſerved an apprenticeſhip " in one town, I am repreſented in the na- " tional aſſembly by two deputies, in the " choice of whom I exerciſe an actual and " ſenſible ſhare of power, if accident has " thrown my birth, or habitation, or ſervice, " into another town, I have no repreſentative " at all, nor more power or concern in the " election of thoſe who make the laws by " which I am governed, than if I was a ſub- " ject of the Grand Seignior; and this par- " tiality ſubſiſts without any pretence what- " ever of merit or of propriety, to juſtify the " preference of one place to another. Or, " thirdly, to deſcribe the ſtate of national re- " preſentation as it exiſts in reality, it may be " affirmed, I believe, with truth, that about " one half of the Houſe of Commons ob- " tain their ſeats in that aſſembly by the " election of the people, the other half by " purchaſe, or by the nomination of ſingle " proprietors of great eſtates [2] ."

He

[2] Moral and Polit. Philoſ. ſeventh edition, 217. Since theſe letters

He then proceeds to palliate the facts he has ſtated. " We have," ſays he, " a Houſe " of Commons compoſed of five hundred " and forty [fifty] eight members, in which " numbers are found the moſt conſiderable " landholders and merchants of the kingdom; " the heads of the army, the navy, and the " law; the occupiers of great offices in the " ſtate; together with many private individu- " als, eminent by their knowledge, eloquence, " or activity. Now if the country be not " ſafe in ſuch hands, in whoſe may it confide " its intereſts? If ſuch a number of ſuch " men be liable to the influence of corrupt

letters were written, the ſociety denominated Friends of the People, have publiſhed " The State of the Repreſentation of England and Wales." Their general ſtatement, ſumming up all the particulars, exhibits the following account.

" 71 Peers and the Treaſury return	167	members to ſerve in Parliament.
" 91 Commoners return -	139	
" 17 Boroughs, not containing, on an average 150 voters each	21	
	327	
" To theſe they add -	28	who are returned by compromiſes."
	455	

" motives,

" motives, what aſſembly of men will be " ſecure from the ſame danger? Does any " new ſcheme of repreſentation promiſe to " collect together more wiſdom, or to pro- " duce firmer integrity [3]."

Of the wiſdom, the integrity, and the purity of the members, let the nation continually judge by their conduct; it is not for me to impeach them. Nor yet will I undertake to determine any thing relative to the ſafety of the country in their hands. But I aſſert that the ſtatement Mr. Paley has drawn, by no means correſponds with any juſt idea of repreſentation. Can it be maintained, that ſuch an half of the Houſe of Commons as he deſcribes, who either purchaſe their ſeats, or are nominated by the ſingle proprietors of great eſtates, comes up even to the letter of the bill of rights, that " the *election* of members to " ſerve in parliament ought to be FREE." If we approve of this purchaſe, and this individual nomination, let us renounce our reverence

[3] Moral and Polit. Philoſ. ſeventh edition, 220.

rence for the Britiſh conſtitution. It can have no place in ſuch a ſyſtem. It is matter of mere form, and has no virtue at all, if theſe can ſubſiſt together. So that without examining the *freedom* of the election of the other half, who are ſaid to be choſen by the people, we may either determine for the conſtitution, or for purchaſe and individual nomination; but we cannot determine for both.

" The incurvations of practice are then " the moſt notorious, when compared with " the rectitude of the rule; and to elucidate " the clearneſs of the ſpring, conveys the " ſtrongeſt ſatire on thoſe who have polluted " or diſturbed it [4]." I think with the Duke of Richmond, " If it is not a maxim of " our conſtitution, that a Britiſh ſubject is to " be governed only by laws to which he has " conſented, by himſelf or his repreſentative, " we ſhould inſtantly abandon the error; but " if it is the eſſential of freedom, founded on " the eternal principles of juſtice and wiſ-

[4] 1 Black. Com. 171. note. n.

" dom,

" dom, and our unalienable birth-right, we " ſhould not heſitate in aſſerting it[5]." It is not ſufficient to tell us, that ſuch an half of the repreſentative body, who " purchaſe" their ſeats, or are " nominated by ſingle pro- " prietors of great eſtates," " are conſidera- " ble landholders and merchants, the heads of " the army, the navy, and the law; the oc- " cupiers of the great offices of ſtate; men " eminent for knowledge, eloquence, and ac- " tivity." All this may be very true, we will not diſpute the fact; but, ſay the people, they are not what they profeſs to be; they are not *our* repreſentatives; we never elected them.

Mr. Paley ingeniouſly urges many further arguments againſt reform. Among others, he ſays, " If certain of the nobility hold the ap- " pointment of ſome part of the houſe of " commons, it ſerves to maintain that *alliance* " between the two branches of the legiſla- " ture, which no good citizen would wiſh to " ſee diſſevered."——" If there be a few

5 Letter to Lieut. Col. Sharman.

boroughs

" boroughs ſo circumſtanced as to lie at the " diſpoſal of the crown, whilſt the number of " ſuch is known and ſmall, they may be *tole-* " *rated* with little danger For where would " be the impropriety, or the inconveniency, if " the king at once ſhould nominate a limited " number of his ſervants to ſeats in parlia- " ment; or, what is the ſame thing, if ſeats " in parliament were annexed to the poſſeſſion " of certain of the moſt efficient and reſpon- " ſible offices of ſtate[6]?" But how can this alliance and this toleration conſiſt with an " entire independence" on the other legiſla- tive branches? How will theſe alliances and tolerations aſſort with the idea of a diſtinct body repreſenting the people, and continually forming a " *check*" upon the other two? How are the limits of each to be defined? Who ſhall ſpecifically determine to what extent ſuch alliances and tolerations may ſafe- ly proceed? With ſuch an admiſſion " all is " at ſea, without any compaſs to enable us to

6 Moral and Polit. Phil. ſeventh edition, 222.

 " diſtinguiſh

"distinguish the safe from the dangerous "course[7];" "for surely the true liberty of "the subject consists not so much in the gra-"cious behaviour, as in the limited power of "the sovereign[8]"

A Friend to the Constitution.

[7] Duke of Richmond's Letter to Lieut. Col. Sharman.
[8] Black. Com. b. 4. 443.

LETTER

LETTER VII.

Sir,

THE restoration of the state of the representation, and of its period of sitting, to a conformity with its constitutional design, is a first and necessary step to a general constitutional reformation of the practical errors of our government; because the nation cannot exercise its inherent right of examination and correction, but by the medium of representation; nor can it exercise that right, conformably with the constitution, but by the medium of its Parliament.

But how shall a restoration of parliament to its full vigour be effected? Principally, by affording that just degree of popular influence to the legislature which the constitution requires; by maintaining the independency of the

the common's houſe; by preventing in its deliberations and deciſions, all foreign influence; and by cauſing the real and concenterated voice of the people to be heard within its walls.

The meaſures neceſſary in order to accompliſh this great end, are worthy of moſt ſerious deliberation and extenſive diſcuſſion. It cannot be that a people ought to be repreſented; and yet no adequate means are to be contrived. Many well informed and able men have written upon this ſubject; and if the various plans they have propoſed, were collated, and temperately and honeſtly diſcuſſed, there is little doubt but the beſt would be choſen. It is not my intention at preſent to propoſe any thing ſpecific on this ſubject; but only to obſerve in general, that "the more liberal and great plan of univer-"ſal repreſentation," of which the Duke of Richmond was formerly the ſtrenuous advocate, ſeems leaſt exceptionable of any; as it rejects "all the perplexities to which the

"narrow notions of partiality and excluſion "muſt ever be ſubject[2]."

But if we are to believe the author of the Animadverſions," all the facts, the reaſonings, and the ſuggeſtions now adduced, are unfounded and nugatory. You ſay, "Againſt the "repreſentative body is reiterated the charge "of corruption. If we enquire how it appears, "we find it to conſiſt in their being deaf "to the clamours of the diſcontented and "factious (and ſuch are always to be found) "and in their determined conduct to ſtrength-"en the political fabric, which it is as much "their ſolemn duty, as the national intereſt "to preſerve entire[3]."

It would have been well, if you had condeſcended to have ſtated the manner in which the repreſentative body have expreſſed their determination "to ſtrengthen the political "fabric," agreeably to their duty and the

[2] Letter to Lt. Col. Sharman. p. 57. [3] Animadverſions p. 80.

national intereſt. Do *you* underſtand, or do you wiſh the nation to underſtand, that it is to be ſtrengthened by *force*? Or are *you* apprized of any "determined conduct" of which the people at large are ignorant? Again, what conſtruction are we to give to the term "political fabric;" and what are we to underſtand by its being "preſerved entire"? Do you mean by the former, an imperfect and inadequate ſtate of the repreſentative body; and by the latter, a determination to preſerve it in that ſtate? Further, Do you mean to aſſert, that no charge of corruption, affecting the repreſentation can be ſupported, beſides that which you ſarcaſtically call "being deaf to the clamours of the diſcontented and the factious," and their determination "to ſtrengthen the political fabric"? Upon a ſubject ſo important and ſo much under immediate diſcuſſion you ſhould certainly have been more explicit.

The fact, whatever it be, however remains the ſame, whether it be admitted or denied by

by the author of the "Animadverſions." The conſtitution "admirable and unparalled" as it is, "poſſeſſed" in your eſtimation, "of all "the excellencies to be found in every other "now in exiſtence, or which in times paſt has "been adopted, with few of their defects, "and none of their deformities[3]," requires as eſſential to its very being, an independent houſe of commons. If this "independence "ſhould be loſt," or if it ſhould at any time "become ſubſervient to the views of either of "the other two" branches of the legiſlative truſt: we may, upon the authority of the able commentator on our laws, pronounce the conſtitution to be ſpeedily approaching to its final diſſolution.[4]

A friend to the Conſtitution.

3 Animadverſions, 82. 4 Blackſt. Com. b. 1. 52.

I LETTER

LETTER VIII.

Sir,

IN chaſtiſing the author of the Jockey Club for his general cenſure of the Engliſh Law, it was not neceſſary that your laviſh encomiums, ſhould overleap the bounds of truth, and the opinions of ſome of the greateſt men who have ever adorned the profeſſion. Were it not ſo I ſhould have avoided any diſcuſſion of this ſubject.

Far be it from me, and from every man who is not an enemy to his country, to lead the people into ſuch reflections as tend "to "deprive the magiſtrate of his reſpect," or "the laws of their authority." I hold it to be the indiſpenſible duty of every man to conform to the exiſting laws of the county that affords him protection; but I alſo hold it to be the duty of every man, poſſeſſed of the ability and the means, to point out the defects of

thoſe laws, if any there be, and to ſuggeſt whatever tends to their improvement. We cannot by the laviſhneſs of our praiſe alter the nature and properties of any thing. It is wiſe to diſtribute our praiſe and our blame in juſt proportions to the merits and demerits of the object upon which they are employed. Praiſe in many caſes, by the awkwardneſs or impropriety of its application, becomes cenſure. In others, it merely diſcovers the ignorance or the prejudice of the perſon who beſtows it.

Before I make any direct obſervations upon what you have advanced reſpecting our laws, I think it neceſſary to ſay, that I believe them to be as ably, as wiſely, and as equitably adminiſtered, as they have ever been in any period of our hiſtory. I ſhould be deficient, in juſtice and reſpect, to the very able men who fill the higheſt legal departments, were I, in treating on this ſubject, to withhold my teſtimony to their great ability and uniform integrity.

We are ſometimes too ready to adopt notions which come to us under the authority of great names. The inference made long ago by Lord Bacon, and adopted by Sir William Blackſtone, and by *you*, "that our laws being "mixed as our language; as our language is ſo "much the richer, the laws are the more complete[1]," though plauſible, is not ſtrictly juſt. The mixture of the laws of other nations with thoſe of our own, has produced more evil than good to this nation. Witneſs the "ſlaviſh tenures", with all their "oppreſſive "appendages[2]", imported by William the conqueror and his Norman lawyers. No laws are ſo beneficial as thoſe which flow from certain eſtabliſhed principles, founded in wiſdom and juſtice, and adapted to the particular circumſtances of the community for which they are deſigned. The feodal ſyſtem does not anſwer this deſcription. It is a ſyſtem adapted to military government, and to military

[1] Animadverſions, p. 57. [2] Black. Com. b. 1.

exploits;

exploits; but not to the exigencies of a free commercial people. The innumerable fictions and intricacies with which our laws abound, and by which it is rendered ſo circuitous, are in general occaſioned by this ſyſtem, which ſtill lies at the foundation of our juriſprudence. Let us think juſtly, and not compliment ourſelves, in compliance with prejudice and cuſtom, at the expence of truth and experience. The *policy* of its continuance is one thing; the *wiſdom* of its contrivance is another.

You tell us that "Sir Edward Coke, when "ſpeaking of the theory, calls it the abſolute "perfection of reaſon;" and hence a perſon unlearned in our laws would conclude, that their original formation and ground-work, as well as the whole of the ſuperſtructure, were the effect of the higheſt exerciſe of the rational faculties. But let us hear Sir Edward Coke himſelf; "*Nihil quod eſt contra rationem* "*eſt licitum*, for reaſon is the life of the law, "nay the common law is nothing but reaſon; "which is to be underſtood of an *artificial* "perfection

"perfection of reaſon, gotten by long ſtudy, "obſervation and experience, and not of "every man's natural reaſon[3]." The platform is the work of art, the effect of military policy; and when this is thoroughly underſtood, then, the beſt exerciſe of the rational faculties becomes neceſſary for the adminiſtration of juſtice under this form. But however we may admire the policy and the juſtice of the adminiſtration under it, we cannot admire the wiſdom of the ſyſtem itſelf, upon which the common law, from the conqueſt of William, has been founded.

The people uniformly felt this truth for a ſeries of ages; hence their various and determined efforts to correct the feodal ſyſtem. The ſtruggles of the people were perpetually maintained againſt the oppreſſive conſequences of its introduction. Whoever looks into our legal hiſtory will be convinced of this fact. True it is, that ſome parts of this ſyſtem in a more

3 Co. Lett. 97. b.

corrected

corrected ſtate have, by the ingenuity and the love of equity of many able men, been ſo moulded, and modified, and meliorated, as to be rendered applicable to the enlarged ſtate of our commerce, and the extenſive change of the circumſtances of our property. But this has been effected by the admiſſion of a great variety of ſuppoſititious forms, uſually called fictions of law; in which, though the maxim is, *in fictione juris ſemper eſt æquitas*; yet the circuity and expence they occaſion, may perhaps ſometimes defeat or delay the object they are intended to attain.

Reſpecting our ſtatute law, you ſay "no "greater encomium can be beſtowed upon it, "than what is contained in its definition. "'The ſtatutes are either declaratory of the "'common law, or remedial of ſome defect "'therein.' Every objection therefore that is "urged againſt the ſtatute law, with regard "to its multifarious nature, is a compliment "paid to its excellence[4]."

4 Animadverſions, 36.

As

As far back as Sir Edward Coke's time, when the ſtatutes were not more than a fifth part of their preſent voluminous extent; he, in accounting for the cauſes of a diverſity of opinions among the profeſſors of the law, ſays, " the greateſt queſtions ariſe oftentimes " upon acts of parliament, overladen with " proviſoes and additions, and many times " penned or corrected by men of none or very " little judgment in law." And he adds, " if " acts of parliament were after the old faſhion " penned, and by ſuch only as perfectly knew " what the common law was, before the " making of any act of parliament concerning " that matter, as alſo how far forth former " ſtatutes had provided remedy, for former " miſchiefs and defects, diſcovered by expe- " rience; then ſhould very few queſtions in " law ariſe, and the learned ſhould not ſo " often and ſo much perplex their heads, to " make atonement and peace, by conſtruction " of law, between inſenſible and diſagreeing " words

" words ſentences and proviſoes, as they now " do[5]."

It is well known that our illuſtrious genius Lord Bacon, addreſſed to king James a " propoſal for amending the laws of England." He objects againſt their then form in theſe words, " Certain it is, that our laws, as they " now ſtand, are ſubject to great uncertain- " ties, and variety of opinion, delays, and eva- " ſions." He enumerates the inconveniencies which then flowed from them; and aſſerts that the neceſſity of amendment " is greater in the " *ſtatute* law. For firſt," ſays he, " there are a " number of enſnaring penal laws, which lie " upon the ſubject; and if in bad times they " ſhould be awaked, and put in execution, " they would grind them to powder.

" There is a learned civilian," adds he, " that expoundeth the curſe of the prophet; " *Pluet ſuper eos laqueos*, of multitude of pe- " nal laws; which are worſe than ſhowers of

[5] 2 Rep. pref.

 " hail

"hail or tempeſt upon cattle, for they fall "upon men.

"There are ſome penal laws fit to be re- "tained, but their penalty too great; and it "is ever a rule that any over-great penalty "(beſides the acerbity of it) deads the exe- "cution of the law.

"There is a further inconvenience of "penal laws obſolete and out of uſe; for that "it brings a gangrene, neglect, and habit of "diſcontinuance, upon other wholeſome "laws, that are fit to be continued in prac- "tice and execution; ſo that our laws en- "dure the torment of Mezentius; the living "die in the arms of the dead. Laſtly, There "is ſuch an accumulation of ſtatutes concern- "ing one matter, and they ſo croſs and intri- "cate, and as the certainty of the law is "loſt in the heap.[6]"

A very learned antiquary of our own times has alſo written a propoſal for a ſimilar work.

[6] Lord Bacon's tracts, 8vo. ed. p. 5. 6.

"The

"The *reformation* of the law," ſays he, "hath "generally been an object, and often the "chief glory of good and great reigns."

"The reformation of the code of ſtatutes, "ſo far as to repeal obſolete and ſometimes "dangerous laws, as well as the reducing "the different acts of parliament which relate "to the ſame ſubject, into one conſiſtent "ſtatute, would be a ſalutary, nay is almoſt a "neceſſary work.

"To prove that ſome acts of parliament "(which fortunately for the moſt part, lie "buried in the ſtatute book, till the ſpleen "and reſentment of individuals calls them "forth, to the diſgrace of the law, and the "diſtreſs of the perſon proſecuted) are really "detrimental and dangerous; three or four, "out of an *immenſe* number need only be "mentioned. It is felony by 8 Eliz. c. 3. "to carry live ſheep out of the kingdom, and "there is no exception of the ſtock, which "is neceſſary for the freſh proviſions of a "ſhip's company: upon ſuch an indictment,

 indeed,

"indeed, both judge and jury would probably "unite to prevent a conviction, but the "criminal may be obnoxious to the jury; "and at all events ſuch a proſecution ſhould "not be ſuffered.

"By 25 Hen. 8 c. 13. (during whoſe reign "there are many acts which ſhould be re-"pealed, as they then began to make regu-"lations relative to trade and agriculture, "without underſtanding the true principles "by which they may be promoted) it is made "penal to keep above 2000 ſheep. The "greateſt part of moſt of the Welch coun-"ties and prehaps ſome of the Engliſh, are fit "for nothing elſe, nor can profitably be con-"verted to arable; and yet there was an in-"dictment in Cardiganſhire, within theſe ſix "years, upon this obſolete and injudicious "ſtatute.

"By 2 & 3 Phil & Mar. c. 3. for every ſix "ſcore ſheep, a milch cow and calf is to be "reared every year, under penalties; there is "ſcarcely a farmer or landholder in the "kingdom,

"kingdom, who is not, perhaps, liable to "a proſecution on this ſtatute.

"It is ſubmitted that the laws of queen "Elizabeth, which enforce the going to "Church under penalties (our preſent rati-"onal religion does not want the aid of ſuch "regulations) ſhould be repealed. A ſon "proſecuted his mother upon theſe acts with-"in theſe eight years; and it may almoſt be "ſaid, that no man of buſineſs can go "through life, without ſubjecting himſelf to "many proſecutions, when, at the ſame "time, he was not conſcious of having of-"fended againſt any law whatſoever.

"I have likewiſe been informed, that there "was, not many years ago an indictment, at "the quarter ſeſſions in Somerſetſhire on 6 "Ed. 6. c. 4. which puniſhes ſtriking in a "church yard with the loſs of ears, and "which at the time it was enacted, was in-"tended to prevent the dangerous riots and "diſputes between the papiſts and the prote-"ſtants,

" ſtants, upon the firſt eſtabliſhment of the " reformation.[7]"

The Houſe of Commons ſufficiently felt the neceſſity of a reformation of this kind, to appoint upon the motion of Sir William Young, about the year 1750, a committee to examine and report thereon; though Mr. Barrington ſays, " it is believed, that nothing " material was done, or reſolved upon."

Our laſt authority ſhall be that of the able, learned and elegant commentator, to whoſe writings we have ſo often referred. On the ſubject of our criminal law he ſays, " In Eng- " land where our crown law is with juſtice " ſuppoſed to be more nearly advanced to " perfection; where crimes are more accu- " rately defined, and penalties leſs uncertain " and arbitrary; where all our accuſations are " public, and our trials in the face of the " world; where torture is unknown, and " every delinquent is judged by ſuch of his

7 Barrington's Obſerv. on the Stat. 2d. ed. Appendix.

" equals

" equals, againſt whom he can form no ex- " ception nor even a perſonal diſlike;—even " here we ſhall occaſionally find room to re- " mark ſome particulars, that ſeem to want " *reviſion* and amendment. Theſe have " chiefly ariſen from too ſcrupulous an ad- " herence to ſome rules of the ancient com- " mon law, when the reaſons have ceaſed " upon which thoſe rules were founded; from " not repealing ſuch of the old penal laws as " are either obſolete or abſurd, and from too " little care and attention in framing and " paſſing new ones. The enacting of penal- " ties to which a whole nation ſhall be ſubject, " ought not to be left as a matter of indiffer- " ence to the paſſions or intereſts of a few, " who upon temporary motives may prefer or " ſupport ſuch a bill; but be calmly and ma- " turely conſidered by perſons who know " what proviſions the laws have already made " to remedy the miſchief complained of, who " can from experience foreſee the probable " conſequences of thoſe which are now pro- " poſed,

"posed, and who will judge without passion or "prejudice how adequate they are to the evil. "It is true that outrageous penalties being "seldom or never inflicted, are hardly known "to be law by the public, but that rather "aggravates the mischief, by laying a snare "for the unwary.[8]"

These I conceive are not "compliments", but "objections" to the "multifarious na-"ture" and the oppressive penalties and restrictions, of the statute law; and they prove, that besides the emendations which *you* allow to be necessary, merely from "the wants and "and refinements of men, the lapse of time "and the fluctuation of things,[9]" it requires an able and critical review, a substantial reformation, and an accurate and perspicuous digest.

A friend to the Constitution.

[8] 4 Blackst. Comm. 3. 4. 5. [9] Animadversions p. 56.

LETTER IX.

Sir,

THE last letter sufficiently shews that the *theory* of the laws has not yet arisen to that state of absolute perfection, as to render a proposal for their reform impertinent or superfluous. The limits of my design will not allow me to enter into detail; but it is impossible in contemplating the theory, wholly to forget the *practice*. The flagrant and ruinous abuses here, have long furnished occasion for complaint, to those who otherwise would not have been forward to complain. It may justly be doubted whether two in three of those who have the law on their side, are not under the the cruel necessity of sustaining their injuries, because of the enormity of the expence, and the utter uncertainty of the issue of legal controversy. A mortifying conjecture, in a nation

the theory of whoſe laws are ſtiled the perfection of reaſon.

The expence and the uncertainty incident to a ſuit in our courts, is chiefly occaſioned by the practice of ſpecial pleading. The intent of pleading is to inform the court, of the matters in controverſy between the plaintiff and defendant; ſo to ſtate the facts, that the adverſe party may be apprized of what is intended to be proved. "Its ſubſtantial rules "are founded in ſtrong ſenſe, and in the "ſoundeſt and cloſeſt logic." But as Lord Mansfield once ſaid, "by being miſunderſtood "and miſapplied, they are often made uſe of "as inſtruments of chicane."[1]

This miſapplication has been the ſubject of the cenſure of ſome of the ableſt men that ever ſat upon the bench. Lord Coke, in his firſt Inſtitute,[2]. after having given ſome of the rules of good pleading, remarks, that the

[1] Burrows Rep. 31 J. [2] p. 304 b.

"curious

"curious and nice exceptions," which were allowed "tended to the overthrow or delay "of juſtice." And Sir Matthew Hale has given an hiſtorical account of the pleadings down to his time; from whence it may not be improper to extract a few particulars.

"Under king Edward the third," ſays he, "the law was improved to its greateſt height. "The judges and pleaders were very learned. "The pleadings are ſomewhat more poliſhed "than thoſe in the time of Edward the firſt, "yet they have neither uncertainty, prolixity "nor obſcurity. They were plain and ſkil-"ful, and in the rules of law were very "learned and excellently poliſhed; and ex-"ceeded thoſe in the time of Edward the "firſt. So that at the latter end of this "king's reign, the law ſeemed to be near its "meridian.

"In the time of Richard the ſecond, there "appears a viſible declination of the learn-"ing and depth of the judges and pleaders;

"nor

" nor did thoſe of Henry the fourth and " Henry the fifth, ariſe in many reſpects to " the perfection of the laſt twelve years of " Edward the third.

" The pleadings in the times of Henry " the ſixth, Edward the fourth, Edward the " fifth, and Henry the ſeventh, were far " ſhorter than afterwards, eſpecially after " Henry the eighth; yet they were much " longer than in the time of Edward the " third: and the pleaders, yea, and the judges " too, became ſomewhat too curious therein; " ſo that that art or dexterity of pleading, " which in its uſe, nature, and deſign, was " only to render the fact plain and intelli- " gible, and to bring the matter to judgment " with convenient certainty, began to dege- " nerate from its primitive ſimplicity, and the " true uſe and end thereof, and to become a " piece of nicety and curioſity, which how " theſe latter times have improved, the length " of the pleadings, the many and unneceſ- " ſary

" ſary repetitions, the many miſcarriages of " cauſes, upon ſmall and trivial niceties in " pleading, have too much witneſſed.[3]"

Whoever is inclined to know ſomething of the preſent ſtate of pleading, may acquire ſufficient information from a recent publication[4]; which though it contains many excentricities, abounds with many ſerious and important facts; and ſufficiently evinces that the practice is ſtill expoſed to cenſure, and ſtill requires reformation. Other branches of the practice might alſo be mentioned, but this may ſuffice as a ſpecimen.

Theſe facts and opinions relative to the theory and practice of our laws, are ſufficient to ſhew that a reviſion and reformation, both of the one and the other, may be urged, and their neceſſity maintained, withour reſorting to " the heat of a prevailing faction,

3 Hiſtory of the Com. Law, c. 8.

4 Explanation of the Practice of the Law, by J. F. Schieffer, Eſq.

" the

"the madneſs of momentary enthuſiaſm; "nor yet to cool, artful, ſophiſticated reaſon-"ings, to Eutopian plans, to ſpecious inſi-"nuations, or to practices the moſt illegal[5]."

I have already laid down the conſtitutional rule, whereby every queſtion of theory and practice may fairly be tried, THE PUBLIC "GOOD." Theſe queſtions, I am fully aware, are of great nicety, and importance. The rule though ſtrictly applicable, ſhould nevertheleſs be applied upon an extenſive and profound conſideration of the ſubject, under all its circumſtances. It requires a thorough knowledge of the ſubject, a full conviction of the exiſting inconvenience, a ſound underſtanding, and an unblemiſhed integrity. Or rather it requires a union of men, in whom all theſe eſſential qualities reſide. The nation however is not deſtitute of ſuch men; and if the meaſure be in itſelf important, to the more certain and leſs expenſive adminiſ-

5 Animadverſions. p. 33.

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tration of univerſal juſtice, there is no doubt, but ſuch an union may be found, capable of effecting it.

A friend to the Conſtitution.

LETTER

LETTER X.

Sir,

THE doctrine of libels having recently been the ſubject of parliamentary diſcuſſion and deciſion, may perhaps be generally conſidered as at reſt. You have however devoted a chapter under this head, to inform us how the Romans puniſhed "the injury and ſcandal of their lives and reputation;" in what manner our law writers define an Engliſh libel; and to ſhew us ſome of the moſt glaring of thoſe, upon which you have undertaken to animadvert.

It is not my intention to follow you, nor to ſay much on this head. I foreſee ſome inconveniencies which the late alteration of the law of libels will occaſion; and perhaps a ſhort ſeries of practice will expoſe them to others. The wiſdom of the whole doctrine is at

at leaſt queſtionable; though I will not deny that its policy is applicable to certain ſituations and circumſtances, where free diſcuſſion is dangerous, and the diſcovery of truth is rather to be deprecated than invited.

The public ſenſibility generally precedes every juſt repreſentation of exiſting abuſes, and of grievances requiring correction and redreſs. It is not neceſſary, therefore, for me to deſcend to the invidious taſk of their enumeration. The general voice of the people, in addition to thoſe I have already inſerted, point out the tithes, the ſtate of the poor, the Exciſe laws, penal ſtatutes, public debts, weight of taxes, enormity of the public expences, and miſapplications of public monies, together with ſome other which might be mentioned, as the proper ſubjects of reformation. But here we muſt diſtinguiſh the *real* from the *fictitious* voice. The former is that of the great body of the people; and is heard

 in

in every part of the nation, whenever these topics are mentioned. The latter is that of placemen, pensioners and others, interested, if not in the increase, at least in the continuance and support, of almost every abuse and grievance to which the former are exposed. The constitutional rule, by which the whole ought to be impartially and deliberately examined, has been repeatedly urged; and the application of this rule will always distinguish the useful from the dangerous.

Before I proceed to urge more relative to the necessity, or any thing relative to the expediency, of reformation, I must beg leave to advert to Mr. Burke, the champion of your cause. His "reflections" have been the occasion of a political controversy productive of considerable advantage to the nation. As they contain some conclusions relative to the British Constitution, which I deny, and deny others which I assert, I shall make a short extract from them for the purpose of examination; more especially as *you* introduce him

as an "experienced, politician who though "often abused, never has been fairly an-"swered."[1]

It requires neither much labour nor much ingenuity, to answer Mr. Burke's reflections, so far as they relate to the subject in hand. The rest I profess not to consider. Dr. Price in a sermon preached on the anniversary of the Revolution of 1688, in the year 1789, asserted that "by the principles of the revolution the people of England *acquired* [more "properly *recognized*] three fundamental "rights;" which were

1. To choose our own governors.
2. To cashier them for misconduct.
3. To frame a government for ourselves.

Mr. Burke in his observations on Dr. Price's assertion says, "This new and hitherto "unheard-of Bill of Rights, though made in "the name of the whole people, belongs to "those gentlemen [of the Revolution So-

[1] Animadversions p. 89.

" ciety] and their faction only. The body " of the people in England have no ſhare in " it. They utterly diſclaim it. They will " reſiſt the practical aſſertion of it with their " lives and fortunes. They are bound to do " ſo by the laws of their country, made at " the time of that very revolution, which is " appealed to in favour of the fictitious rights " claimed by the ſociety which abuſes its " name[2]."

" So far is it from being true," continues Mr. Burke, " that we acquired a right by the " revolution to elect our kings, that if we " had poſſeſſed it before, the Engliſh nation " did at that time moſt ſolemnly renounce " and abdicate it, for themſelves and for all " their poſterity for ever[3]."

If Mr. Burke by the term " elect our " kings" meant to repreſent Dr. Price as maintaining, that upon the demiſe of the

[2] Burke's Reflections, p. 11. [3] Ibid p. 12.

king,

king, the nation could conſtitutionally meet and elect a ſucceſſor, he muſt have groſſly miſtaken the Doctor; whoſe propoſitions relate to the revolution in 1688, and to the general facts and tranſactions with which it was accompanied and followed. Dr. Price's propoſitions have perhaps been already illuſtrated in a former letter; but I will ſhortly prove their truth by a reference to matter of fact.

The nation acquired, or as I rather ſay, recognized, in that revolution thoſe three fundamental rights thus;

1. It *elected* to the throne, a perſon in whom the legal right of ſucceſſion neither did nor could otherwiſe have veſted; and both then and at a ſubſequent period it *elected* a new ſtock for the future ſucceſſion.

2. It *caſhiered* James the II. together with his ſon and all his iſſue.

3. It framed its government, by deliberately chooſing to continue its former modification

or

or arrangement, when it had no exiſting obligation or contract with any individual legally capable of claiming the executive, and that part of the legiſlative, government, which had been always *lodged in the crown*. This decides the queſtion of fact. On the queſtion of *right*, we ſhall reſort to higher authority than that of Mr. Burke, to prove that the people of England *did* poſſeſs theſe rights at the revolution. We refer to the whole adminiſtration of the government of Great Britain, both legiſlative and executive, from that period down to the preſent day. If the people of England did *not* poſſeſs theſe rights at the revolution, it unavoidably follows that the whole of our government, for more than an hundred years, has been illegitimate and uſurped. But the ſubſequent adminiſtration has uniformly recognized them; and if the preſent limitation of the crown be conſtitutional, they can no longer be queſtionable.

Thus

Thus the fact that theſe did exiſt at the time of the revolution, is become wholly incontrovertible.

Admitting that theſe rights did exiſt in the nation, it is not difficult to prove that they *now* exiſt; and that there is no future period in which they will not exiſt, unleſs the Bill of Rights, which *confirmed and exemplified the doctrine of reſiſtance, when the executive magiſtrate endeavours to ſubvert the conſtitution*[3], ſhould be diſannuled. I refer to this alone for my proofs.

After the enumeration of thirteen particulars, in which James had endeavoured "to "ſubvert and extirpate the laws and liberties "of this kingdom," the convention declare, vindicate and aſſert, their ancient rights and liberties in as many particulars, expreſſly oppoſed to thoſe violations. Then they add,

[3] Black. Com. b. 4. p. 440.

"Having

" Having therefore an entire confidence, that " his highneſs the Prince of Orange will " perfect the deliverance ſo far advanced by " him, and will ſtill preſerve them from the " violation of their rights, which they have " here aſſerted, and from ALL OTHER attempts " upon their religion, RIGHTS and liberties; " Reſolve that William and Mary be, and be " declared, King and Queen, &c."

The 4th. clauſe proceeds thus, " UPON " WHICH their ſaid majeſties did accept the " crown and royal dignity, &c. according to " the reſolution and deſire of the ſaid Lords " and Commons, contained in the ſaid de- " claration." And the 11th clauſe, referring to this declaration, and all the other preceding matter, ſays " ALL which their " majeſties are contented and pleaſed ſhall be " declared, enacted, and eſtabliſhed, by au- " thority of this preſent parliament, and " ſhall STAND, REMAIN, and BE the law of

" of this realm for ever." Thus I think our caſe is made out, and I leave the public to judge how far Mr. Burke is *now* " fairly an- " ſwered [3].

A friend to the Conſtitution.

[3] The ſame reply may poſſibly have been already given to Mr. Burke's aſſertion, but I do not recollect to have met with it in any of the anſwers I have ſeen.

LETTER XI.

Sir,

EVERY reformation has in its turn been termed "*modern*," and every ſerious propoſal for a reform, has been uniformly abuſed by thoſe whoſe intereſt it was calculated to oppoſe. The ſame men whom we now admire, applaud, and propoſe, as examples for our imitation, were in their day inſulted and ſtigmatized with the opprobious epithet of ſeditious, and were puniſhed as men aiming only to diſturb the public order and tranquility, as enemies and traitors to all good government.

But the friends of reformation ſhould neither be diſcouraged by the application of hard names, nor the imputation of baſe motives.

If the cauſe be good, it will finally maintain its ground, however much in the mean time its advocates may ſuffer. What cauſe has been more oppoſed, than that which the chriſtian world now profeſs moſt ſteadily to embrace? Or what men have been more reviled and perſecuted than thoſe, by whom this cauſe was at firſt propagated? Its oppoſition however facilitated its progreſs; and it has for ages been a current maxim, that the blood of the martyrs was the ſeed of the church. Prejudice and private intereſt have at all times been the active and determined oppoſers of truth, under whatever form it has been preſented the world. In the onſet they frequently ſucceed; but in the iſſue they are generally obliged to retire in diſgrace. The cauſe of truth has been, and will yet be, victorious.

Much of what I have already advanced applies to the queſtion I propoſed to diſcuſs, relative to the *neceſſity* of aſſimilating the practice of the government to the principles of its

conſtitution; ſo that the compaſs of what remains to be ſaid, is reduced.

If an unforeſeen influence has been ſuffered to ariſe and mature in the Britiſh government; an influence foreign to the principles and the end of the conſtitution, and capable of extending the power of the crown beyond thoſe juſt prerogatives, the boundaries of which our patriot anceſtors, bled in the field and ſuffered on the ſcaffold, to fix; an influence which, as it is undefined, may rapidly proceed from one degree of ſtrength to another, till every oppoſing power is effectually ſilenced or deſtroyed; the neceſſity of its correction cannot fail to be evident, until the time ſhall arrive, when the rights and liberties of the people of England no longer deſerve to be aſſerted or maintained.

What is the principal objection to the exiſtence of arbitrary power? Is it not its undefined and unbounded quality? There can be no real liberty in a ſtate without a preciſe definition

definition of the governing power. We acknowledge this in England, when we ſpeak of the neceſſity of the limitation of the king's prerogative, by "bounds ſo certain and notorious, that it is impoſſible he ſhould ever "exceed them, without the conſent of the "people, on the one hand; or without, on "the other, a violation of that original contract, which in all ſtates impliedly, and in "ours moſt *expreſsly*, ſubſiſts between the "prince and the ſubject[1]." But if there exiſts an undefined and undefinable influence, capable of effecting as much or more, than "a thouſand little troubleſome ancient "prerogatives;" I aſk, how is the real and ſubſtantial liberty of the people ſecured? What has been obtained by the effuſion of the blood of our patriot anceſtors? If there be a neceſſity for juſt bounds to the prerogative of the crown, the ſame neceſſity exiſts for placing juſt bounds to its influence.

[1] 1 Black. Com. 237.

Again,

Again, if in ſtead of the Houſe of Commons being filled by members *freely* choſen by the people, it be filled in part by thoſe who purchaſe their ſeats, or are appointed by the ſingle proprietors of great eſtates; if the preſent ſtate of the repreſentation at large be ſuch, as that "neither the liberty of "the nation can be preſerved, nor the per-"manence of a wiſe and virtuous adminiſtra-"tion be ſecured under it[2];" and if the conſtitution and the expreſs law of the land inceſſantly demand its purity; who can deny the neceſſity of its reformation[3]. Who ſhall ſay that "the charge of corruption conſiſts "in its being deaf to the clamours of the "diſcontented and the factious; and in its de-"termined conduct to ſtrengthen the political "fabric[3]?"

[2] See advertiſement of a numerous and reſpectable Meeting of Members of Parliament friendly to a conſtitutional reformation, &c. held at the Thatched-houſe Tavern, 16th May, 1782, preſent Mr. Pitt, Duke of Richmond, &c.

[3] Animadverſions. p. 81.

Further,

Further, if the ableſt lawyers that ever preſided in our courts, or have written on our laws, aſſure us, that, both in theory and in practice, exiſt errors detrimental to the equal and ſpeedy diſtribution of public and univerſal juſtice; if the general complaints of thoſe who have the misfortune to be obliged to ſolicit in our courts, the equity which their individual connections deny them, be loud and inceſſant on the ground of expence and uncertainty; ought we not to endeavour to find a remedy? Can we ſilence the complaints of the half ruined client, by aſſuring him that our laws are "the abſolute perfec-"tion of reaſon?" The end of law, is the impartial diſtribution of juſtice; and if it be poſſible to attain this in a higher degree, the neceſſity of a reformation is apparent and undeniable.

If the collection of the tythes, be injurious to the farmer, and an impediment to the improvement and progreſs of agriculture; if

if the ſtate of the poor be miſerable and wretched, amidſt the millions annually raiſed for their comfortable ſupport; if the trade of the nation be obſtructed, the houſes of individuals be leſs ſacred than the genuine ſpirit of liberty requires, and the right of trial by peers be abridged by an impolitic and odious extenſion of exciſe laws; if the people are expoſed to the ſpleen of individuals, by the revival of obſolete ſtatutes; if the public debts, in a time of peace, are frequently accumulated by expenſive and unneceſſary preparations for war: if the weight of the public taxes be unequally or unneceſſarily oppreſſive; if the reduction of the public expenſes keep no pace with the increaſe of the public neceſſities; if, in fine, the public monies be miſapplied, and the examination of the public accounts, be inceſſantly evaded or denied: if all, or if any of theſe public grievances exiſt (and in theſe matters the people are competent judges), the neceſſity

of reformation cannot be denied, unleſs we give up that fundamental principle of our conſtitution, that "the end of legitimate government is the public good."

It is worth while for every man diligently to enquire and conſider whither all the abuſes and grievances which are reported to exiſt in this country tend? At what determinate point is any of them ſtop? By whom are they to be remedied? Or are they to remain or increaſe, as the inclination or the intereſt of the miniſter for the time being may happen to direct? Every man has an intereſt in the proſperity of his country; and every man of common ſenſe is able to determine, that if abuſes and grievances really exiſt, it is neceſſary, by examination, firſt to diſcover them; and then by timely correction to reform and remove them.

A Friend to the Conſtitution.

LETTER XII.

Sir,

THE neceſſity of reform is become ſo generally apparent, and has ſo frequently and loudly been urged by the higheſt authorities, that the only reſort now left for its real enemies, is that of its *inexpediency*.

You introduce from the Jockey Club, a quotation from Mr. Locke's excellent treatiſe on government, which the author of that publication had inſerted, for the purpoſe of oppoſing Mr. Locke's opinion to Mr. Pitt's practice. And then after an awkward conceſſion upon the ground of neceſſity, you apologize for the contradiction between Mr. Pitt's former opinion, and his preſent conduct upon the ground of inexpediency.

Mr.

Mr. Locke, deeply impreſſed with the importance of real repreſentation in the Britiſh government, ſays, "the legiſlative body "is corrupt. The bare name of a town of "which there remains not ſo much as the "ruins, where ſcarce ſo much houſing as a "ſheep-coat, or more inhabitants than a "ſhepherd, is to be found, ſends as many re-"preſentatives to the grand aſſembly of law-"makers as a whole county, numerous in "people and powerful in riches. At this "ſtrangers ſtand amazed, and every one muſt "confeſs *needs* a remedy."

Notwithſtanding the general tenor of your animadverſions ſtands oppoſed to the neceſſity of reform, and to the principles of thoſe who earneſtly endeavour to promote it, you then add, "And has not Mr. Pitt alſo acknow-"ledged, that this needs a remedy?" Yes, he certainly has; but the public are led to enquire *when* he acknowledged this neceſſity.

You then offer his apology. "We have "lately heard from this ſenator, that the pre- "ſent *time* is not the moſt proper for intro- "ducing *innovations* or reforms[1]." Are innovations and reforms then ſynonymous? If they be, were they always ſo; or are they become ſo within the ſhort compaſs of eleven years? The remainder of your apology for Mr. Pitt I omit, becauſe after having read it more than ten times, it appears wholly unintelligible. The fault may however be rather in the defect of my conception, than in your compoſition.

The queſtion I at firſt propoſed comes then in all its force. Admitting a reform to be neceſſary, is it at preſent expedient? My arguments in favour of its expediency, will be derived from three ſources.

1. The rapid accumulation, and preſent ſtate of the public debts.

2. The general agitation of political ſubjects.

[1] Animadverſions. p. 99.

3. The

3. The commencement of an extenſive war, calamitous in its onſet, deſtructive in its continuance, and uncertain in its iſſue.

Theſe are the grounds, upon which I ſhall urge the expediency of a general reform, in the adminiſtration of our government. Not for the purpoſe of deſtroying its conſtitution; but to aſſimilate the practice to the principle; and thus to reſcue the country from "all the "miſerable conſequences of that diſorder, "riot, and confuſion, which may poſſibly ter- "minate in one general indiſcriminate deſo- "lation[2]."

The rapid accumulation and preſent ſtate of the public debts, have already extended beyond all previous calculation. The debt at the Revolution in 1688, amounted to no more than the ſum of £.664,263. For the infamous circumſtances under which this was entailed on the nation, by the public breach of faith in the time of Charles the ſecond, I

[2] Animadverſions. p. 101.

refer

refer the reader to Sir John Sinclair's very able and perſpicuous hiſtory of the public revenue. In the reign of William, the funding ſyſtem was adopted; and at his death the nation was incumbered with a debt of £.16,394,702[5], upon which an intereſt was annually payable, amounting to £. 1,310,942. The continental wars in the reign of Queen Ann, and the purſuit of the funding ſyſtem, cauſed ſuch an accumulation of debt and intereſt, that the national incumbrances at her death were extended to the ſum of £.54,145,363, at an annual intereſt of £.3,351,358. During George the firſt's time, a reduction was made, which might have been much greater had not "miſmanagement in our domeſtic "affairs" prevented. The principal at his deceaſe, amounted to £.52,092,235, and the intereſt only to £.2,217,551. The reigns of George the ſecond and third, will furniſh

[5] The various ſtatements relative to the public debts, are extracted from Sir John Sinclair's Hiſtory of the public Revenue, omitting the fractions.

us

us with ſeveral different views. The firſt is taken at the commencement of the Spaniſh war, *anno* 1739; when, after a period of twelve years, the principal was reduced to £.46,954,623, and the intereſt to £.1,964,025. The ſecond is, at the peace of Aix la Chapelle, *anno* 1748; when the increaſe had been ſo great, as to advance the principal to the ſum of £.78,293,313, and the intereſt to £.3,061,004. The third view is taken at the breaking out of the French war in 1755; when after a peace of ſeven years, the former was reduced to the amount of £.74,571,841, and the latter to £2,416,717. The fourth is, at the concluſion of the peace in 1762, when the principal debt had been accumulated to the ſum of £.146,682,844, and the intereſt to £.4,840,821. The fifth is, at the commencement of the American war, when there had been a decreaſe during the peaceful interval of thirteen years. The principal then ſtood at £.135,943,951, and the intereſt at £.4,440,821. The ſixth, at its concluſion, when our wretched impolicy

and

and numerous extravagances, had made an addition exceeding two thirds of the former principal, and more than double the former intereſt. So that at its concluſion, the nation ſtood indebted in the enormous amount of the principal ſum of £.246,222,392, for which it was under an intereſt of £.9,143,913. Since this period the amount of its increaſe is underſtood to have exceeded that of ſtock purchaſed, under Mr. Pitt's plan of reduction.

Theſe are broad facts; and hence we may obſerve that the rapidity of the accumulation of our public debts, though at all times ſufficiently great, has in our times been aſtoniſhingly increaſed. The extravagance of expence ſeems to have kept pace with the national diſability to maintain it. Hence ariſes the neceſſity of urging what is termed the flouriſhing ſtate of the public revenue, as a proof of the public proſperity. But this proof is fallacious, and perhaps only invented to ſerve a particular purpoſe.

A rapid

A rapid increaſe of an enormous debt, will ſurely form a ſound argument for the expediency of reform in all the branches of the public expenditure. If our debt is *now* arrived to ſuch an extent, as almoſt to baffle the ingenuity of *modern* politicians to keep pace, even in a time of peace and vaſtly extended commerce, with the annual expence of its intereſt: ſurely it is expedient, by the general correction of all neceſſary expences, and the total annihilation of all extravagances, to furniſh means for its reduction, rather than perpetually to impede the induſtry of the people, by the addition of new burthens.

The enormity of the public debt has placed the nation in a novel and critical ſituation. It is a fact, perhaps not ſufficiently adverted to, that an increaſe of *nominal* property, is upon our preſent funding ſyſtem the inſeparable incident of an increaſe of *real* expence. Thus our individual *apparent* riches are accumulated, by the accumulation of our aggregate debts.

 The

The prospect may be fair, but it is certainly deceitful. It may be flattering for a while, but it is dangerous in the extreme; and the danger requires immediate precaution in order to avert it. It deserves enquiry whether it is not possible for the administration of a government to have an interest distinct in this respect from that of the people. Whether the former may not by an extension of debt, and the consequent increase of its influence, fortify its abuses, while the latter are destined only to suffer them?

A friend to the Constitution.

LETTER

LETTER XIII.

Sir,

THE peculiar circumstances of the times have tended to encourage a spirit of free inquiry and a general agitation of political subjects, which can neither be stifled by art, nor overawed by power. The history of a few years exhibits the mighty effects which this spirit has already produced; nor will its activity and energy cease while there exist subjects upon which it may be employed.

Whatever may be said about *dignity*; and however our pride or our self-interest may urge us to support that which is merely imaginary, there is no true dignity but in wisdom. A wise man accommodates himself and his

plans to times and circumſtances; while a fool wilfully and raſhly oppoſes them. When men begin to enquire, they begin to underſtand. When the principles or foundations of governments are perpetually diſcuſſed, the people will certainly diſcover the deformities of their practice.

The nation all agitating and fermenting as it confeſſedly is, may be conſidered as divided into four claſſes. The firſt conſiſts of the wilful oppoſers of all reformation; of men who deſire the continuance of every defect and abuſe without any dread of the conſequences. They endeavour, as *you* do, to confound reformation with deſtruction; to blacken and villify the characters and the motives of its advocates. They profeſs themſelves friends to the conſtitution, while they are either ſtrangers or enemies to its principles; and they endeavour, with Mr. Burke, to convince the people that they have no duties, beſide thoſe of "tractability and obedience."

The

The ſecond conſiſts of thoſe who, irritated by the provoking language, and the more provoking conduct of the former, are ready to plunge themſelves into the arms of republicaniſm. Who imagine they can trace all the defects and abuſes in the practice of our government up to its form. And judging of the one by the other, are perhaps looking for the deſtruction of the fabric, as the only means for the rectification of thoſe deformities and grievances, the magnitude and variety of which they perpetually contemplate.

The third is compoſed of ſuch as are the real friends of the conſtitution, but the enemies of its practical errors and defects. Theſe know how to venerate the one, while they cenſure the other. Although they are ready to riſk every thing for the preſervation of the former, as eſſential to the happineſs, becauſe the voluntary choice of their country; they abominate the latter, as the only means that can render their efforts for its preſervation ineffectual.

effectual. These are artfully confounded with the second class, though in reality they stand eminently distinguished from them. They have for their leader a man of whom the most elevated of nations might be proud; whose brilliant talents, and incorruptible integrity, render him dear to a zealous and faithful band, not of "visionary speculatists," but of practical and constitutional reformers.

Our fourth class consists of the ignorant and the inconsiderate; these are the proper subjects for imposition, and the effects we have recently witnessed, prove the success of the impositions that have been practiced. Yesterday they cried "Wilkes and liberty; to day, without the acquisition of a ray of better information, they cry "Church and "King," and "King and Constitution." What they may cry to-morrow, is impossible for any man to divine. Amidst all the variety of their attachments, it is lamentable to perceive, that they are rather managed as beasts

beasts of burden, and made the instruments of parties in their turns, than urged to the exercise of their rational faculties as men [1].

The expediency of reform may perhaps be decided, by enquiring how these classes would properly be severally affected by so necessary and salutary a measure.

If we admit the first class to have any interest in the perpetuation of abuse, we admit that *theirs* is not the interest which ought, in the determination of the present question, to prevail. No man, it is imagined, will have the hardihood openly and avowedly to

[1] An indifferent spectator of what has passed in the course of the last few months, would imagine that there exists somewhere, an inclination or an interest to *brutalize* the lower classes of the people; and to render them ungovernable by exciting them to subvert the administration of justice in the exercise of popular vengeance. The innumerable mock executions, encouraged by persons of the higher classes, and effected by their instruments, among the inferior, have a direct tendency to produce this most dangerous consequence. Those who have contemplated Hogarth's several stages of cruelty, will perceive the justice and the propriety of this remark.

contend,

contend, that abuſes or grievances ought to exiſt for the ſake of thoſe whoſe emolument they ſerve to promote. If this argument be abandoned, they have then a common intereſt in a thorough reformation; and as they profeſs an attachment to the Britiſh Conſtitution, more than ordinarily warm, the accompliſhment of ſuch a reform, muſt afford them more than an ordinary degree of pleaſure.

The ſecond claſs is that of republicans. Theſe on all hands are allowed at preſent to be few. The arguments in favour of republicaniſm cannot obtain any degree of weight in this country, but from a glaring diſſimilarity of practice to principle. Admit theſe to be effectually and conſtitutionally reconciled, and you undermine the very ſources from whence theſe men derive their beſt arguments in ſupport of their ſyſtem; thoſe by which alone they can rationally expect to propagate their doctrines. But while they can daily appeal to the underſtandings and the

the feelings of their fellow-citizens, upon the ſubjects of which we treat, it is vain to expect either by fallacy or by force, to convince every one of the futility of their reaſons, or of the "viſionary" nature of their "ſpeculations." The only rational or perhaps poſſible method, whereby the deſtruction of republican principles in Great Britain can be effected, is, as I conceive, ſubſtantially to regulate the whole adminiſtration of its government, by the principles of the conſtitution upon which it is founded.

Our third claſs conſiſts of thoſe whom I have denominated the real friends of the conſtitution; the friends of reform. As the language of theſe men is in general ſpecific, and their propoſals open and avowed; to effect the reform they earneſtly deſire and inceſſantly urge, is to take away all ſubject or ground of complaint. They have as deep an intereſt in the proſperity of their country, as men of any other deſcription. They have

no intereſt to promote by introducing anarchy and confuſion. Look at them in the various orders and ranks of ſociety. They are ſeen every where, and may be known every where, (though recent meaſures have impoſed on many a temporary ſilence). Have they not character, property, manufactories, eſtabliſhments of commerce, extenſive credit, affectionate families, and religion too, at leaſt in common with other men? Are ſuch men diſpoſed to ſacrifice all this ſubſtantial good, at the ſhrine of "viſionary ſpeculations?" No. If theſe are uneaſy and diſcontented, it muſt be with abuſes and grievances which are neither viſionary nor ſpeculative; and a reformation would certainly conciliate their minds in the higheſt poſſible degree.

The ignorant and the inconſiderate, who form the fourth claſs, ought perhaps to be conſidered as of all men the leaſt to be feared in effecting a general reformation. A redreſs of abuſes and grievances could not fail to afford

ford them ſome advantages of which they at preſent are deſtitute. The rational attachment of every deſcription of men, ought, under every form of government to be highly coveted. This alone is to be depended upon. Expreſſions of zeal and devotion, founded on the ignorance and ever fluctuating paſſions of temporary devotees, muſt ceaſe whenever their underſtandings are brought into exerciſe. If any government would procure to itſelf a laſting, ſolid, and univerſal attachment; a general union and conſolidation of the affection and ſtrength of all its parts; it muſt uniformly produce the moſt certain evidence, that it is actuated by no other motive than that of THE PUBLIC GOOD.

A friend the Conſtitution.

LETTER XIV.

Sir,

THE third ſource of my arguments in favour of the expediency of a general reform, is the commencement of an extenſive war, calamitous in its onſet, deſtructive in its continuance, and uncertain in its iſſue. Many perſons inconſiderately apprehend, that the war will be very limited in its extent, and will ſpeedily be brought to a ſucceſsful concluſion. Thoſe who remember the commencement of the American war, and the facility with which the colonies were to be reduced to obedience; may, however, be reaſonably ſuffered to entertain different apprehenſions. A multitude of unforeſeen circumſtances generally ariſe, whereby every war is protracted. Very few wars have terminated in leſs than ſeven years. Many have not terminated in leſs than twice ſeven. From the energy and activity of our enemies, we have reaſon

ſon to contemplate the war as extenſive. Our poſſeſſions are widely expanded; and their plan ſeems to be that of attack. The war may ſoon run from Europe to America, and from thence into Aſia. Its preparations have already made the moſt painful impreſſions on our commerce. Its mere ſound has already blaſted the exquiſitely ſenſible credit of our merchants, our tradeſmen and our manufacturers, whoſe property is every where expoſed, and whoſe operations are every where interrupted. We may fatally flatter ourſelves, if we calculate upon its iſſue as either ſpeedy or ſucceſsful.

As it is unavoidable for a thinking man to form ſome opinion on ſo intereſting a ſubject, the leaſt dangerous mode is to reſort to the hiſtory of former wars; for we have no other rule to direct us. In this caſe, we ſhall hardly imagine, that a calculation of leſs than ſeven years may be depended upon. By referring to our expenditure during the American war, we find it amounted, on the average, to

to about nine millions per annum. Suppoſe the annual expence be equal, (and experience has proved that the expences of war, like every other expence, have been conſtantly on the increaſe) the amount, upon a calculation of ſeven years, will be the ſum of ~~ninety-five~~ ſixty three millions; which, upon the ſuppoſition of its being funded in the three per cents, and reckoning them at the average price of ſixty-five, will form an addition to our national debt of more than ninety-ſix millions. Thus the total amount of the public debt at the probable concluſion of the war, will be ſomewhere about three hundred and fifty millions ſterling; and the increaſe of taxes will be rather ſhort of three millions per annum.

It may be objected that this picture is of too gloomy a caſt; and that it exceeds the bounds of probability. But of what infinite advantage had it been to our country, if, before it was plunged into the American war, we had contemplated its expence and its iſſue, in

in any tolerable proportion to their final amount. Thoſe are not the enemies, but the friends of their country, who adviſe it to count the probable coſt, by a reference to former ſimilar circumſtances. If we reckon too high, the turn is in our favour, and the proſpect brightens; but if on the other hand we reckon too low, deſpondency, if not deſperation, frequently enſues. Experience proves that calculations of expence are in general erroneous, by being formed upon too flattering an eſtimate.

Admitting my calculation to be founded on probability, what an invincible argument for the expediency of reform does it preſent; even allowing, what is at leaſt queſtionable, that the war terminates in the attainment of the wiſhes of its advocates. To what ſource, beſides that of a rigorous œconomy, may the nation look, for the unavoidable payment of accumulated intereſt. The preſent ſources of revenue will be leſs productive, in the degree that our commerce is interrupted by the

operations of war. The flourishing state of our trade, induced by the extraordinary spirit of industry and enterprize in the people, during the interval of peace, rather than by the administration of an *individual*, has been one great cause of the increase of the public revenue. But now all this is sadly reversed. The spirit of industry is checked; and the spirit of enterprize is in some measure destroyed. Fear occupies the place of hope; and danger that of security. The public revenues must necessarily decline; and their deficiences, added to the new probable exigencies, afford the most urgent and undeniable arguments, for an immediate and temperate, but substantial, reformation.

A friend to the Constitution.

LET-

LETTER XV.

Sir,

THE arguments advanced in support of the reformation I have urged, form a sufficient and substantial apology, for the zeal and activity which every friend of his country may occasionally shew, in a cause essential to the well being of our government, if not to the very existence of the constitution. A few words more remain only to be said by way of apology for myself.

Perhaps some persons who take the trouble to read these letters, may think I have introduced the words "constitution, consti-" tutional," and "constitutionally," too frequently; and that, in some parts, I have had an unnecessary reference to the British

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conſtitution: That many of my arguments had been better ſupported by a law paramount to all conſtitutions; and that it would have been wiſer to have aſcended immediately to this law. But I conceive it both prudent and neceſſary, if poſſible, to meet an antagoniſt on his own ground, The queſtion is not, whether the indefeaſible rights of mankind afford a rule, by which all laws and all conſtitutions may be tried; but with thoſe men who are every day ſtunning our ears with their acclamations in favour of the Britiſh conſtitution, the queſtion more properly turns upon this conſtitution itſelf. Upon what principles is it founded? What rights does it recognize and guarantee? Is it a dead letter, or is it a living ſpirit? Does it contain a ſufficient rule by which the practice under it may be examined and corrected? This is my apology for ſo frequent a reference to the Britiſh conſtitution.

It may be alſo objected that I have had too frequent a recurrence to principles. But the neceſ-

neceſſity of general principles in every ſcience is a point univerſally admitted; and I conceive them in no ſcience more neceſſary, than in that of government. It therefore became proper to examine, whether our conſtitution is eſtabliſhed upon any principles; and the more ſo, as the faſhionable and unmeaning praiſe of the preſent day, ſeems merely to relate to the *form*, while principle is forgotten or unknown. If you aſk theſe zealots what is the Britiſh conſtitution, and wherein conſiſts its excellence? Few are qualified to return any other anſwer, both to the one queſtion and the other, than "King, "Lords and Commons." Beſides, I conſidered the neceſſity of examining the practice, and no other mode occurred than an application to principle. This is my apology for ſo frequent a recurrence to principles. One apology more is neceſſary, and that relates Sir, to *you*. Whatever ſeeming aſperity I have uſed in theſe letters, is not to be conſidered as directed *perſonally* to yourſelf. You are

are unknown to me; with your Animadverſions only I am acquainted. Theſe being before me, in common with the reſt of the public, they were open to my obſervations. I conſider the ſubject which they have led me to diſcuſs, in theſe critical times as more than ordinarily important; and the cauſe of truth, and of its aſperſed advocates, as deſerving of particular vindication. I earneſtly wiſh, it may be generally conſidered, with that attention and ſerioufneſs, which its high importance demands; and that our government may determine chiefly to oppoſe the propagation of *French* principles, by a *practical* exhibition of *Britiſh* principles. Our conſtitution furniſhes ſome which are excellent. Thus the moſt *ſenſible* proofs of the worth of this conſtitution, and of the excellence of the form of our government, will be given to an affectionate, loyal, and generous nation.

A friend to the Conſtitution.

March, 1793.