

necessary to be agitated, and that there should be a decision upon it. No one in this House will live long enough to see an end put to the mischief which will be the result of the doctrine which has been inculcated; but the arrow is shot and the wound already given. I shall certainly avoid personal reflections. No one has had more cast upon him than myself; but I never was biased by any consideration of applause from without, in the discharge of my public duty; and in giving my sentiments according to what I thought law I have relied upon my own consciousness. It is with great pleasure I have heard the noble lord who moved the resolution express himself in so manly and sensible a way when he recommended a dispassionate debate, while at the same time he urged the necessity of the House coming to such a resolution, with great dignity and propriety of argument.

I shall endeavor to clear away from the question all that mass of dissertation and learning displayed in arguments which have been fetched from speculative men who have written upon the subject of government, or from ancient records, as being little to the purpose. I shall insist that these records are no proofs of our present constitution. A noble lord has taken up his argument from the settlement of the constitution at the revolution; I shall take up my argument from the constitution as it now is.

The constitution of this country has been always in a moving state, either gaining or losing something; and with respect to the modes of taxation, when we get beyond the reign of Edward the First or of King John we are all in doubt and obscurity. The history of those times is full of uncertainties. In regard to the writs upon record, they were issued some of them according to law, and some not according to law; and such [that is, of the latter kind] were those

concerning ship-money, to call assemblies to tax themselves, or to compel benevolences. Other taxes were raised from escuage, fees for knights' service, and by other means arising out of the feudal system. Benevolences are contrary to law; and it is well known how people resisted the demands of the Crown in the case of ship-money and were persecuted by the court; and if any set of men were to meet now to lend the king money, it would be contrary to law, and a breach of the rights of Parliament.

I shall now answer the noble lord particularly upon the cases he has quoted. With respect to the Marches of Wales, who were the borderers, privileged for assisting the king in his war against the Welsh in the mountains, their enjoying this privilege of taxing themselves was but of a short duration, and during the life of Edward the First, till the Prince of Wales came to be the king; and then they were annexed to the Crown and became subject to taxes like the rest of the dominions of England; and from thence came the custom, though unnecessary, of naming Wales and the town of Monmouth in all proclamations and in acts of Parliament. Henry the Eighth was the first who issued writs for it to return two members to Parliament. The Crown exercised this right *ad libitum*, from whence arises the inequality of representation in our constitution at this day. Henry the Eighth issued a writ to Calais to send one burgess to Parliament.

One of the counties palatine [I think he said Durham] was taxed fifty years to subsidies before it sent members to Parliament. The clergy were at no time unrepresented in Parliament. When they taxed themselves, it was done with the concurrence and consent of Parliament, who permitted them to tax themselves upon their petition, the convocation sitting at the same time with the Parliament. They had,



too, their representatives always sitting in this House, bishops and abbots; and in the other House they were at no time without a right of voting singly for the election of members; so that the argument fetched from the case of the clergy is not an argument of any force, because they were at no time unrepresented here.

The reasoning about the colonies of Great Britain, drawn from the colonies of antiquity, is a mere useless display of learning; for the colonies of the Tyrians in Africa, and of the Greeks in Asia, were totally different from our system. No nation before ourselves formed any regular system of colonization but the Romans; and their system was a military one, and of garrisons placed in the principal towns of the conquered provinces. The states of Holland were not colonies of Spain; they were states dependent upon the house of Austria in a feudal dependence. Nothing could be more different from our colonies than that flock of men, as they have been called, who came from the North and poured into Europe. Those emigrants renounced all laws, all protection, all connection with their mother countries. They chose their leaders, and marched under their banners to seek their fortunes and establish new kingdoms upon the ruins of the Roman empire.

But our colonies, on the contrary, emigrated under the sanction of the Crown and Parliament. They were modelled gradually into their present forms, respectively, by charters, grants, and statutes; but they were never separated from the mother country or so emancipated as to become *sui juris*. There are several sorts of colonies in British America. The charter colonies, the proprietary governments, and the king's colonies. The first colonies were the charter colonies, such as the Virginia Company; and these companies had among their directors members of the privy council and of both

Houses of Parliament; they were under the authority of the privy council, and had agents resident here, responsible for their proceedings.

So much were they considered as belonging to the Crown, and not to the king personally (for there is a great difference, though few people attend to it), that when the two Houses, in the time of Charles the First, were going to pass a bill concerning the colonies, a message was sent to them by the king that they were the king's colonies, and that the bill was unnecessary, for that the privy council would take order about them; and the bill never had the royal assent. The Commonwealth Parliament, as soon as it was settled, were very early jealous of the colonies separating themselves from them; and passed a resolution or act (and it is a question whether it is not in force now) to declare and establish the authority of England over its colonies.

But if there was no express law, or reason founded upon any necessary inference from an express law, yet the usage alone would be sufficient to support that authority; for have not the colonies submitted ever since their first establishment to the jurisdiction of the mother country? In all questions of property the appeals from the colonies have been to the privy council here; and such causes have been determined, not by the law of the colonies, but by the law of England.

A very little while ago there was an appeal on a question of limitation in a devise of land with remainders; and, notwithstanding the intention of the testator appeared very clear, yet the case was determined contrary to it, and that the land should pass according to the law of England. The colonies have been obliged to recur very frequently to the jurisdiction here, to settle the disputes among their own governments. I well remember several references on this head, when the late



Lord Hardwicke was attorney general, and Sir Clement Weare solicitor general. New Hampshire and Connecticut were in blood about their differences; Virginia and Maryland were in arms against each other. This shows the necessity of one superior decisive jurisdiction to which all subordinate jurisdictions may recur. Nothing, my lords, could be more fatal to the peace of the colonies at any time than the Parliament giving up its authority over them; for in such a case there must be an entire dissolution of government. Considering how the colonies are composed, it is easy to foresee there would be no end of feuds and factions among the several separate governments, when once there shall be no one government here or there of sufficient force or authority to decide their mutual differences; and, government being dissolved, nothing remains but that the colonies must either change their constitution, and take some new form of government, or fall under some foreign power.

At present the several forms of their constitution are very various, having been produced, as all governments have been originally, by accident and circumstances. The forms of government in every colony were adopted, from time to time, according to the size of the colony; and so have been extended again, from time to time, as the numbers of their inhabitants and their commercial connections outgrew the first model. In some colonies at first there was only a governor assisted by two or three counsel; then more were added; afterward courts of justice were erected; then assemblies were created.

Some things were done by instructions from the secretaries of state; other things were done by order of the king and council; and other things by commissions under the great seal. It is observable that in consequence of these establishments from time to time, and of the dependency of these govern-

ments upon the suprema legislature at home, the lenity of each government in the colonies has been extreme toward the subject; and a great inducement has been created for people to come and settle in them. But if all those governments which are now independent of each other should become independent of the mother country, I am afraid that the inhabitants of the colonies are very little aware of the consequences. They would feel in that case very soon the hand of power more heavy upon them in their own governments, than they have yet done or have ever imagined.

The constitutions of the different colonies are thus made up of different principles. They must remain dependent, from the necessity of things and their relations to the jurisdiction of the mother country; or they must be totally dismembered from it and form a league of union among themselves against it, which could be effected without great violences. No one ever thought the contrary till the trumpet of sedition was blown.

Acts of Parliament have been made, not only without a doubt of their legality, but with universal applause, the great object of which has been ultimately to fix the trade of the colonies so as to centre in the bosom of that country from whence they took their original. The Navigation Act shut up their intercourse with foreign countries. Their ports have been made subject to customs and regulations which have cramped and diminished their trade. And duties have been laid, affecting the very inmost parts of their commerce, and, among others, that of the post; yet all these have been submitted to peaceably, and no one ever thought till now of this doctrine that the colonies are not to be taxed, regulated, or bound by Parliament.

A few particular merchants were then, as now, displeased at restrictions which did not permit them to make the greatest



possible advantages of their commerce in their own private and peculiar branches. But though these few merchants might think themselves losers in articles which they had no right to gain, as being prejudicial to the general and national system, yet I must observe that the colonies, upon the whole, were benefited by these laws. For these restrictive laws, founded upon principles of the most solid policy, flung a great weight of naval force into the hands of the mother country, which was to protect its colonies.

Without a union with her the colonies must have been entirely weak and defenceless, but they thus became relatively great, subordinately, and in proportion as the mother country advanced in superiority over the rest of the maritime powers in Europe, to which both mutually contributed, and of which both have reaped a benefit equal to the natural and just relation in which they both stand reciprocally, of dependency on one side and protection on the other.

There can be no doubt, my lords, but that the inhabitants of the colonies are as much represented in Parliament as the greatest part of the people of England are represented; among nine millions of whom there are eight which have no votes in electing members of Parliament. Every objection, therefore, to the dependency of the colonies upon Parliament, which arises to it upon the ground of representation, goes to the whole present constitution of Great Britain; and I suppose it is not meant to new-model that too.

People may form speculative ideas of perfection and indulge their own fancies or those of other men. Every man in this country has his particular notion of liberty; but perfection never did and never can exist in any human institution. To what purpose, then, are arguments drawn from a distinction, in which there is no real difference, of a virtual and actual representation?

A member of Parliament chosen for any borough represents not only the constituents and inhabitants of that particular place, but he represents the inhabitants of every other borough in Great Britain. He represents the city of London, and all the other commons of this land, and the inhabitants of all the colonies and dominions of Great Britain; and is, in duty and conscience, bound to take care of their interests.

I have mentioned the customs and the post tax. This leads me to answer another distinction, as false as the above; the distinction of internal and external taxes. The noble lord who quoted so much law, and denied upon those grounds the right of the Parliament of Great Britain to lay internal taxes upon the colonies, allowed at the same time that restrictions upon trade and duties upon the ports were legal. But I cannot see a real difference in this distinction; for I hold it to be true that a tax laid in any place is like a pebble falling into and making a circle in a lake, till one circle produces and gives motion to another, and the whole circumference is agitated from the centre. For nothing can be more clear than that a tax of ten or twenty per cent laid upon tobacco, either in the ports of Virginia or London, is a duty laid upon the inland plantations of Virginia, a hundred miles from the sea, wheresoever the tobacco grows.

I do not deny but that a tax may be laid injudiciously and injuriously, and that people in such a case may have a right to complain. But the nature of the tax is not now the question; whenever it comes to be one, I am for lenity. I would have no blood drawn. There is, I am satisfied, no occasion for any to be drawn. A little time and experience of the inconveniences and miseries of anarchy may bring people to their senses.

With respect to what has been said or written upon this



subject I differ from the noble lord who spoke of Mr. Otis and his book with contempt, though he maintained the same doctrine in some points while in others he carried it farther than Otis himself, who allows everywhere the supremacy of the Crown over the colonies. No man, on such a subject, is contemptible. Otis is a man of consequence among the people there. They have chosen him for one of their deputies at the Congress and general meeting from the respective governments. It was said the man is mad. What then? One madman often makes many. Masaniello was mad. Nobody doubts it; yet for all that he overturned the government of Naples. Madness is catching in all popular assemblies and upon all popular matters. The book is full of wildness. I never read it till a few days ago, for I seldom look into such things. I never was actually acquainted with the contents of the Stamp Act, till I sent for it on purpose to read it before the debate was expected.

With respect to authorities in another House, I know nothing of them. I believe that I have not been in that House more than once since I had the honor to be called up to this; and if I did know anything that passed in the other House I could not and would not mention it as an authority here. I ought not to mention any such authority. I should think it beneath my own and your lordships' dignity to speak of it.

I am far from bearing any ill will to the Americans; they are a very good people, and I have long known them. I began life with them and owe much to them, having been much concerned in the plantation causes before the privy council; and so I became a good deal acquainted with American affairs and people. I dare say their heat will soon be over when they come to feel a little the consequences of their opposition to the legislature. Anarchy always cures itself;

but the ferment will continue so much the longer while hot-headed men there find that there are persons of weight and character to support and justify them here.

Indeed, if the disturbances should continue for a great length of time, force must be the consequence, an application adequate to the mischief, and arising out of the necessity of the case; for force is only the difference between a superior and subordinate jurisdiction. In the former, the whole force of the legislature resides collectively, and when it ceases to reside the whole connection is dissolved. It will, indeed, be to very little purpose that we sit here enacting laws and making resolutions, if the inferior will not obey them, or if we neither can nor dare enforce them; for then, and then, I say, of necessity, the matter comes to the sword. If the offspring are grown too big and too resolute to obey the parent, you must try which is the strongest and exert all the powers of the mother country to decide the contest.

I am satisfied, notwithstanding, that time and a wise and steady conduct may prevent those extremities which would be fatal to both. I remember well when it was the violent humor of the times to decry standing armies and garrisons as dangerous, and incompatible with the liberty of the subject. Nothing would do but a regular militia. The militia are embodied; they march; and no sooner was the militia law thus put into execution but it was then said to be an intolerable burden upon the subject, and that it would fall, sooner or later, into the hands of the Crown. That was the language, and many counties petitioned against it.

This may be the case with the colonies. In many places they begin already to feel the effects of their resistance to government. Interest very soon divides mercantile people; and, although there may be some mad, enthusiastic, or ill-



designing people in the colonies, yet I am convinced that the greatest bulk, who have understanding and property, are still well affected to the mother country. You have, my lords, many friends still in the colonies; and take care that you do not, by abdicating your own authority, desert them and yourselves and lose them forever.

In all popular tumults the worst men bear the sway at first. Moderate and good men are often silent for fear or modesty, who in good time may declare themselves. Those who have any property to lose are sufficiently alarmed already at the progress of these public violences and violations to which every man's dwelling, person, and property are hourly exposed. Numbers of such valuable men and good subjects are ready and willing to declare themselves for the support of government in due time, if government does not fling away its own authority.

My lords, the Parliament of Great Britain has its rights over the colonies; but it may abdicate its rights.

There was a thing which I forgot to mention. I mean, the manuscript quoted by the noble lord. He tells you that it is there said that if the act concerning Ireland had passed, the Parliament might have abdicated its rights as to Ireland. In the first place, I heartily wish, my lords, that Ireland had not been named at a time when that country is of a temper and in a situation so difficult to be governed; and when we have already here so much weight upon our hands, encumbered with the extensiveness, variety, and importance of so many objects in a vast and too busy empire, and the national system shattered and exhausted by a long, bloody, and expensive war, but more so by our divisions at home and a fluctuation of counsels. I wish Ireland, therefore, had never been named.

I pay as much respect as any man to the memory of Lord Chief Justice Hale; but I did not know that he had ever written upon the subject; and I differ very much from thinking with the noble lord that this manuscript ought to be published. So far am I from it that I wish the manuscript had never been named; for Ireland is too tender a subject to be touched. The case of Ireland is as different as possible from that of our colonies. Ireland was a conquered country; it had its *pacta conventa* and its *regalia*. But to what purpose is it to mention the manuscript? It is but the opinion of one man. When it was written, or for what particular object it was written, does not appear. It might possibly be only a work of youth, or an exercise of the understanding, in sounding and trying a question problematically. All people, when they first enter professions, make their collections pretty early in life; and the manuscript may be of that sort. However, be it what it may, the opinion is but problematical; for the act to which the writer refers never passed, and Lord Hale only said that if it had passed the Parliament might have abdicated their right.

But, my lords, I shall make this application of it. You may abdicate your right over the colonies. Take care, my lords, how you do so, for such an act will be irrevocable. Proceed, then, my lords, with spirit and firmness; and, when you shall have established your authority it will then be a time to show your lenity. The Americans, as I said before, are a very good people, and I wish them exceedingly well; but they are heated and inflamed. The noble lord who spoke before ended with a prayer. I cannot end better than by saying to it Amen; and in the words of Maurice, Prince of Orange, concerning the Hollanders: "God bless this industrious, frugal, and well-meaning, but easily deluded people."