

to one's own, or another man's, will, how ardently
foever it be desired by either; nor less impossible doth
it appear to me, for a man, though invested with
twenty different characters of capacities instead of two,
to entertain two different opinions of one and the self
same thing, and at the same time, unless he be
content to take one particular character to himself, and
roundly suffer his lips, from some unaccountable mo-
tive or other, to belie his heart; in which case, if ever
it hath happened among us, or could happen, one might
aptly enough, soliloquise with a sentimental author (G),

“ O perilous mouths,
“ That bear in them one and the self same tongue
“ Either of condemnation or approval:
“ Bidding the law make curfew to their will,
“ Hooking both right and wrong to th' appetite
“ To follow as it draws.”

'Tis true, that just before our election, I was desired by
several to “alter my opinion,” and “declare against
“ the proclamation,” and that in consequence thereof,
I might most assuredly depend on the county's conti-
nuance of the honour of a seat in the house of assembly
to me: but surely my countrymen, who proffered me
these terms, did not well consider the nature and im-
port of them: Could I have prevailed on myself to
forfeare, and sacrifice to popularity, the clear conviction
of my own mind, in relation to the tendency of the
proclamation, my seat might have been secured by
jumping in with the majority, and going with the cur-
rent, at the time I voted against the address on the pro-
clamation: but rather than prostitute the powers of my
sou, and extinguish the clearest light of my under-
standing, by gaining or suppressing its dictate or
information, for all the honours, that the freest suffrages
of the freest people upon earth can confer; let me, in
the phrase of Shakespeare,

“ Die, and go I know not where;
“ Lye in cold obstrucion, and there rot;
“ This sensible warm motion become
“ A kneaded clod; and the dilated spirit
“ —bathe in fiery floods, or —efide
“ In thrilling regions of thick-ribbed ice;
“ —be imprisoned in the viewless winds,
“ And blown with restless violence round about
“ The pendant world; or be worse than worst
“ Of those;” —For,—
“ The weariest and most loathed worldly life,
“ That age, ach, penury, imprisonment
“ Can lay on nature,”

would be with me, far preferable, to the greatest ho-
nours, the people can bestow, under those opprobrious,
discharactered and self condemning terms of accept-
ance. Had they given me their instructions, I most
devoutly would have obeyed them, though thwart, or
counter, to my own notions of the propriety of a parti-
cular measure; for such obedience I hold to be included
in the office and character of a representative of the peo-
ple; but uninstructed by them, and left at large, as
others were, to vote, as our reasons directed, in rela-
tion to a subject, on which the people were then, and
continue still, as much divided in point of sentiment,
as the component branches of our legislature are; I cannot
see, how a vote in either way, should justly subject, or
entitle a man, to censure, or applause, unless it ap-
pear, that such vote was “corruptly” rendered; which
I confess would be great and good grounds for reproof,
and indeed, for “something more;” but whereof I stand
clearly acquitted in my own conscience, as I trust, I
shall, in the good opinion of every man, (if any suspi-
cion is or can be entertained) on perusal of the follow-
ing letter I was honoured with by the governor, on
the day of our election, on my application to him to
do me that justice I was hopeful to receive at his hands,
and a true copy of which is here printed from the origi-
nal, in the printers hands, and presented to the pub-
lick for their satisfaction:

Annapolis, Monday 24th May, 1773.

S I R,

YOU are pleased to address me with the following
question, viz.

“ Be pleased, Sir, to recollect whatever you have
“ observed of my conduct, since your arrival in this
“ government; say, from a review of the whole tenor
“ of my behaviour, whether you have ever had any
“ particular reason to believe that I had it in my view
“ to obtain an appointment to a place of honour or
“ profit?”

In answer to which I briefly say, that I never had
the least reason to suppose you had any such views—
nothing of the kind was ever intimated to me in the
most distant (or any) manner, by yourself or any
friend of yours—And I recollect my being desirous
that you should qualify, under a commission, as a pro-
vincial magistrate, which office I deemed you very well
qualified to fill, and that you declined the same, de-
claring that your private affairs, and the difficulty in
settling with your brothers, &c took up so much of
your time, that you should not be able to execute that
trust or office, with the punctuality you thought due
to it.

ROBERT EDEN.

Having observed thus much, in relation to the right
which every man hath to his own free opinion, without
the censure, or rebuke of others; even, though acting
in the capacity of a representative, where no instructions
have been received from the constituent; as also, with
respect to my own conduct, in the exercise of that right.

“ we “ would force upon them;” when it is more pro-
“ bable, that we are no less obdurate in not embracing
“ some of theirs. For where is the man, that has incon-
“ testable evidence of the truth of all that he holds, or of
“ the falsehood of all he condemns; or can say, that he has
“ examined to the bottom, all his own, or other mens opi-
“ nions? The necessity of believing without knowledge, nay
“ upon very slight grounds, in this fleeting state of action
“ and blindness we are in, should make us more busy and
“ careful to inform ourselves, than constrain others.”
Locke's essay on the understanding, b. 4. ch. 16. sect. 4.

(G) Shakespeare.

in voting against the address on the proclamation; and
proved, I hope, satisfactorily to the publick, that such
vote was not “corruptly” given; or from the motives
of self-interest or honour, thereby to obtain an office, a
place of profit, or preferment in government; I shall
now take the opportunity, agreeably with my promise
on the day of our election, of communicating, as
briefly as I am able, to the publick (what was then un-
generously and ungenially denied me, though repeat-
edly requested) some of those grounds and reasons, that
induced me to be of the opinion, I have entertained in
relation to the proclamation; wherein, if I am wrong,
it is so much the more my misfortune, having taken
some pains to be right if possible: but “wherein if I
“ am wrong,” I have my hopes, I shall be let “right,”
by men more informed of the subject; and which, if it
be done with genuinity (and not with scurrility, ef-
fiontery, and abuse; treatment, that few men in
health and heart can peaceably bear, and patiently
put up with) I shall esteem kind, and look on such in-
formant as a partner in my investigations (H).

To come then to the point, without any further
preamble or apology:

The constitution of our mother-country, upon whose
model most of the British provincial governments
here have been formed, is that of a mixed or li-
mited monarchy, wherein the legislative power is lodg-
ed in the king, lords, and commons; and the executive
power in the king alone. This is a matter, so thro-
ughly known, and so generally acknowledged by e-
very British American, that an attempt to prove the
position, would rather weaken, than validate it; how-
ever, if any person can entertain a doubt on the head,
he may recur to the underwritten authors (I), and
the books of law referred to by them, for his satisfac-
tion.

To the king, as supreme executive power in the state,
belong many prerogatives, i. e. special powers or pre-
eminences, which he hath over and above all other
persons, and out of the ordinary course of the com-
mon law (K); although they are coeval with it, being
acknowledged and supported by the laws of the land
(L): and in the exertion of these prerogatives or pow-
ers, consists the executive part of government; which is
wisely placed in the royal hand, by the British consti-
tution, “for the sake of unanimity, strength, and
“ dispatch.”—“Were it placed in many hands, it
“ would be subject to many wills; many wills, if dis-
“ united and drawing different ways, create weakness
“ in a government; and to unite those several wills,
“ and reduce them to one, is a work of more time
“ and delay, than the exigencies of state will afford: the
“ king is therefore not only the chief, but properly,
“ the sole magistrate of the nation (M).”

We have discovered the reason, let us enquire next,
the ends, for which these prerogatives were centered
in the crown: and these were, (as our understand-
ings must inform us, and as the underwritten autho-
rities of law (N) will incontestibly prove) “for the
“ good of the subject, and the advantage of the community.”

That the reader, however, may acquire a clearer
and more comprehensive notion of prerogative, I shall
beg leave to transcribe, for his diligent and attentive
perusal, the following paragraphs from Mr. Locke's
incomparable (and, as yet, unanswered) treatise of ci-
vil government.

“ Where the legislative and executive power (writes
“ this great man) (O) are in distinct hands, as they
“ are, in all moderated monarchies, and well framed
“ governments, there the good of society requires,
“ that several things should be left to the discretion of him,
“ that has the executive power. For, the legislators,
“ not being able to foresee, and provide by laws, for
“ all that may be useful to the community, the execu-
“ tor of the laws, having the power in his hands, has
“ by the common law of nature, a right to make use
“ of it for the publick good of the society, in many
“ cases, where the municipal law has given no direc-
“ tion, till the legislative can conveniently be assem-
“ bled to provide for it. Many things there are,
“ which the law can by no means provide for, and
“ those must necessarily be left to the discretion of
“ him, that has the executive power in his hands, to

(H) “When truth, candour, and moderation (says the
“ author of a piece, signed Brutus) distinguish the pen of a
“ writer in defence of the injured rights of a people; we
“ peruse his works, not only with attention, but even with
“ some degree of pleasure; and though conviction may not
“ always flow from the weight and pertinency of his argu-
“ ments, yet credit may be reasonably given him for the sin-
“ cerity and goodness of his intentions. On the contrary,
“ when from a spirit of envy, rancour and malevolence,
“ writers, in order to carry into execution their own
“ wicked designs, put on the mask of publick virtue, ar-
“ raign the measures of government, and endeavour by
“ falsehoods and misrepresentation, to produce convulsions
“ in the state; when by the most strained torture of construc-
“ tion, they attempt to extract criminality from the most in-
“ nocent designs, supposing their readers to be all either fools
“ or knaves, incapable of understanding their own lan-
“ guage, or wicked enough to become the abettors of sedi-
“ tion, words are too feeble to express the contempt and de-
“ testation they ought to be held in.” See Gazette, No.
1444.

(I) Blackstone's commentaries, vol. I. p. 147. 154.
155. and Bacon in his abridgment, vol. IV. p. 149.

(K) Blackstone, vol. I. p. 239.

(L) 2 Inst. 496. “For although the stat. de preroga-
“ tiva regis seems to be introductory of something new, yet
“ for the most part, it is but a sum or collection of certain
“ prerogatives that were known long before.” In-
“ stances whereof may be read in Bacon's abridg. tit. preroga-
“ tive, fol. 149. See also 3 Inst. 84.

(M) Blackstone's commentaries, vol. I. p. 250.

(N) See Shower's cases in parliament, p. 75. Plov.
487. Sir Francis More's reports, 673. considerations on the
law of forfeiture, passim; and Locke on civil government.

(O) See his treatise of civil government, fol. edit. p.
213, 214.

“ be ordered by him, as the publick good and advantage
“ shall require; nay, it is fit that the laws themselves
“ should in some cases give way to the executive power,
“ or rather, to this fundamental law of nature and
“ government, viz. That as much as may be, all the
“ members of the society are to be preserved: for since
“ many accidents may happen, wherein a strict and rigid
“ observance of the laws may do harm (as not to pull
“ down an innocent man's house to stop the fire, when
“ the next to it is burning); and a man may come
“ sometimes within the reach of the law, which makes
“ no distinction of persons, by an action that may de-
“ serve reward or pardon; it is fit the ruler should
“ have a power, in many cases, to mitigate the seve-
“ rity of the law, and pardon some offenders: for the
“ end of government being the preservation of all, as
“ much as may be, even the guilty are to be spared,
“ where it can prove no prejudice to the innocent.”

“ This power, to act according to discretion, for the
“ publick good, without the prescription of the law, and
“ sometimes even against it, is that which is called prero-
“ gative. For since, in some governments the law-making
“ power, is not always in being, and is usually too nu-
“ merous, and so too slow for the dispatch requisite to exe-
“ cution: and because it is also impossible to foresee, and
“ so by laws to provide for all accidents, and necessities,
“ that may concern the publick; or to make such laws,
“ as will do no harm, if they are executed with an in-
“ flexible rigor, on all occasions, and upon all per-
“ sons, that may come in their way; therefore there is
“ a latitude left to the executive power, to do many things
“ of choice, which the laws do not prescribe.

“ This power, whilst employed for the benefit of the
“ community, and suitably to the trust and ends of the go-
“ vernment, is undoubted prerogative, and never is
“ questioned. For the people are very seldom, or never,
“ scrupulous or nice in the point; they are far from
“ examining prerogative, whilst it is in any tolerable
“ degree employed for the use it was meant, that is,
“ for the good of the people, and not manifestly against it.
“ But if there comes to be a question, between the executive
“ power and the people, about a thing claimed as a prero-
“ gative, the tendency of the exercise of such prerogative to
“ the good or hurt of the people, will easily decide that
“ question.” Thus far, Mr. Locke, who hath in
terms plain and explicit, chalked out to us, the na-
ture, reason, end, and extent, of undoubted prerogative;
suggesting also, in the close of the latter paragraph,
(what I wish had long since been known to the peo-
ple) the test or criterion of a due, or undue exertion of
prerogative: it might have assisted them in forming
right notions of the governor's proclamation, respecting
the fees of officers; so loudly complained of, and so
little understood; (P) prevented wrong impressions
from being made on the minds of many; and others,
from imagining their rights were invaded and brought
into jeopardy, by that measure, before they were
touched. For it is to be observed here, that pro-
clamation is a branch of prerogative, and doth grow
from it, as a shoot from the parent trunk: in the rights
of exerting the power, consists (as I apprehend) prero-
gative; in the act of declaring, or notifying the exe-
cution of such power, consists proclamation: proclamations
then being evidently of the essence of prerogative, and
participating of its nature and qualities; are useable for
the like good and salutary ends and purposes in the
community: hence, Lord Hobart, very rightly remarks,

(Q) “that they are so far just, as they are made pro-
“ bono publico, i. e. for the publick utility;” and
the books seem all to agree, that the governing power
of the state, “may in certain cases and on special oc-
“ casions make and issue them, for prevention of
“ offences, to ratify and confirm ancient laws, and direct
“ the observance of them, on pain of displeasure:” (R)
nay, my Lord Coke, notes, (S) “that proclamations
“ are of great force, which are grounded on the laws
“ of the realm:” “for although (writes he) (T)
“ the king by his proclamation, or otherwise, cannot
“ change any part of the common law, or statute law, or
“ the customs of the realm, nor create any offence, by his
“ prohibition or proclamation, which was not an offence
“ before; (that being to alter the law of the land;) yet
“ he may PROHIBIT by his PROCLAMATION a
“ thing which is PUNISHABLE BY THE LAW, BY FINE
“ AND IMPRISONMENT; and that as a CIRCUM-
“ STANCE WILL AGGRAVATE THE OFFENCE:” for,

(as judge Blackstone well observes,) (U) “the
“ crown hath not any power of DOING wrong, but
“ merely of PREVENTING wrong from being done.”
thus (in illustration of the principles above laid down
in the books,) the established law is, (writes
the same author) (V) that the king may prohibit
any of his subjects from leaving the realm: a pro-
clamation therefore, forbidding this in general for
three weeks, by laying an embargo upon all shipping
in time of war, will be equally binding as an act of
parliament, because founded upon a prior law. A
proclamation disarming papists is also binding, being
only in execution of what the legislature has first or-
dained: but a proclamation for allowing arms to
papists, or for disarming any protestant subjects,
will not bind, because the first would be to assume a
dispensing power, the latter, a legislative one, to the
vetting of either of which in any single person, the
laws of England are absolutely strangers.” In one
word, “In all cases (saith the Lord Coke) (W) the
“ king out of his providence, and to prevent dangers,
“ which it will be too late to prevent afterwards, he
“ may prohibit them before; which will aggravate the
“ offence, if it be afterwards committed:” agreeably,

(P) “If this may be said, without incurring again the
charge of presumption.”
(Q) Rep. p. 251.
(R) See Bacon's abr. tit. prerog. fol. 188. and the autho-
rities there referred to by him.
(S) 3 Inst. 162.
(T) Case of proclamations, 12. rept. 75. 76.
(U) Comts. vol. 1st. p. 154.
(V) Comts. vol. 1st. p. 270. 271.
(W) Case of proclamations, 12. rept. 75. 76.

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