

Neither has that subtle *Sophist*, *Philanthropos*, been less unfortunate in being too late with his Objections. He brings one in the following Manner. Now, in answer to this, he should have first shewn, to make the Order of Court extraordinary, that no such Thing has been done before by any Court in this Province, for if there has, then this Order is not extraordinary.

I call this Writer a subtle *Sophist*, and I think the above Citation will vindicate me in it. He puts it upon his Adversary to prove a Negative; and I will venture to say, such a Negative as is impossible to be proved. For how is it possible to prove that no such Order was ever made before by any Court in this Province? I know of no other Way, than by exhibiting to the public View, a Copy of every Order of Court that ever was made in the Province; and this is absolutely impossible: For granting we had whole *Magazines of Paper*, and an *Army of Printers at Command*, yet many Orders of Court, that have been made in this Province, must be lost by Accidents of Fire, &c; and if all that are to be found now, were to be produc'd, tho' there should appear no such Order amongst them, still the Proof would be incomplete, because it would not appear from thence, that never any such Order was made before, seeing many Orders have been made which are now destroy'd. But this Objection, so far as it was possible to answer it, was answer'd before it was made. It is asserted, in the last *Freeholder*, that the Law is now sixty Years old, and this is the first Time ever any such Power was pretended to. It was his Opponent's Business to have shewn the contrary.

To avoid being tedious I shall mention only one Objection more, which was likewise answer'd before it was made. It would have been worthy of him to have shewed, that the *Justices of our Mother Country, or the Overseers of the Poor, are otherwise limited than by general Restraint*. The *Freeholder* had perform'd the very Thing desir'd, and proved, by quoting the Act of Parliament which makes Provision for the Poor, that the *Justices* are tied down both to a limited Sum, and the Appropriation of it. Yet this Writer takes it for granted the Case is otherwise, and reasons upon it; from whence one may see how well he had inform'd himself in the Subject he undertook to write upon. I purposely avoid the unmeaning Nicknames of *Party Scribler*, and such like Trash; these being equally applicable to all of us who have wrote upon this subject. There is nothing more common, than for one Lady of Pleasure to call another Wh—re, yet it does not become the *Kettle* to call the *Pot* Black A—se.

It remains now to examine the Cavils rais'd against what the *Freeholder* has said concerning the *British Constitution*: And in doing this, I do not propose to follow the *Sophist* thro' all his Labyrinths of Quibble and Confusion: I shall content myself with stating the main Points in Dispute, and defending what the *Freeholder* has said; as I think he writes like a *Freeman*, and breathes the true Spirit of *British Liberty*. I shall support what I have to say by that great Authority, which the *Native* says, has never yet been disputed, tho' by the *Bye* that is not true. The *Freeholder* has defin'd the Constitution to be an original Contract betwixt the People and their Rulers, and he has defin'd it justly; Mr. *Lock* will bear him out in it, for he asserts and proves, that "it was this alone which did, or could give Beginning to any lawful Government in the World." The same great Writer in another Place shews "that the Reason why Men enter into Society, is the Preservation of their Property; and the End why they chuse and authorize a Legislative is, that there may be Laws made, and Rules set, as Guards and Fences to the Properties of all the Members of the Society; to limit the Power, and moderate the Dominion, of every Part and Member of the Society." I shall add, by way of Comment upon this, the Words of the most masterly Performance, that ever was wrote upon the *British* Constitution. "We are not to wonder, however, if Men do not look up to this Original of Government, nor trace these Consequences from it. In most Countries, in the Institution of Governments, two great Powers have been usually given, and too great Confidence repos'd, either at first, or in Process of Time. These Powers have subsisted, have been confirm'd by more Time; and increas'd by the very Nature of Power, which is the properest Instrument of its own Propagation. But the original Composition, for want of being express'd, or sufficiently imply'd, or frequently recur'd to, in the Forms of the Government, hath been forgot, or hath grown so obsolete, that they, whose Interest required that no such Thing should be believ'd, have thought them-

“ selves at Liberty boldly to deny it. But the Subjects of Great Britain have been more happy; our original Contract hath been recar'd to often.” Thus far my Author. Yes, Sir, the Subjects of Great Britain have constantly kept their original Contract in view; and agreeable to the true Intention of it, have justly claim'd every Thing as their Rights and Privileges, which was necessary for the Preservation of their Properties. These Rights and Privileges they both claim'd and enjoy'd, before any written Laws gave them a Title to them, as the *Freeholder* has made clearly out in his third Letter. It is from this Root that the *Tree of Liberty* has flourished in Britain, beyond that of any other Nation. The Branches of this Tree, indeed, have frequently been lopp'd, nay, the very Root has been struck at, by the Madness and Ambition, sometimes of foreign, but oftener that of domestic, Enemies; yet the *English Oak* has always prov'd too hard for them; it has quickly branch'd out again, and flourish'd afresh; tho' our Ancestors have been sometimes oblig'd (if I may be allow'd to use the Expression) to water it with their Blood. I am not without Apprehensions that the phlegmatical *Philanthropos* will be very much disgusted at so bold an Allegory; as he found fault with so plain and easy a Metaphor as the *Bulwark of the British Constitution*, for being too pompous.

Had the Writers on the opposite Side of the Question kept this original Agreement and the Design of it in View, it might have prevent'd them from blundering about like Men blindfolded or in Drink, when they talk'd of the Constitution; for as my last cited Author observes, “they must have been blind-ed by Ignorance, or Passion, or Prejudice, who did not always see that there is such a Thing necessarily, and in the very Nature of our Constitution; and that they might as well doubt, whether the Foundations of an antient, solid Building, were suited and proportion'd to the Elevation and Form of it, as whether our Constitution was established by Composition and Contract.” Is not this making the Constitution, seel'd by original Contract, the Basis of the whole? These Gentlemen, who raise a foolish Laugh at such Ways of Speaking, ought to consider, that if bold and emphatical figurative Expressions, be too strong for weak and squeamish Brains, that is no reason why they ought not to be us'd. It is very probable the *Snail*, whose Delight is in crawling along the Ground, would object, in the very same Manner, to the Use of Wings.

From what has been said it will appear, that Parliaments are not the Constitution, (as the *Sophist* asserts) but that they take their Form, Powers and Existence from it: That they cannot alter that Form, or alienate these Powers, either from one Branch of the Legislature to another, or to any other distinct Body of Men whatever, without breaking thro' that Agreement of the Society, (to be govern'd after such a particular Manner) which constituted them; very aptly termed by the *Freeholder* the Basis of the whole. I expect to be told, that this is taking upon me to dispute to the Assembly what they cannot do: But, Sir, I am warranted by that great Authority, which has never yet been disputed, to say, that “it is a Mistake to think, that the supreme legislative Power of any Common-wealth can do what they will; their Power, in the utmost Bounds of it, being limited to the public Good of the Society.” I shall suppose for Instance, that the Representatives of the People agreed to a perpetual Law, placing an unlimited Power in the supreme Magistrate, or in any Set of Men appointed by him, to tax the People for whatever they might think necessary for defraying the Charges of Government in general. I desire to know, whether such an Act would be agreeable to the *British Constitution*? The Gentlemen I am reasoning with, must say it would, consistent with their Principles. But I desire it may be considered, that the Representatives of the People, having only a delegated Power for a certain Time, are bound to deliver over all that Power they were intrusted with, at the Expiration of that Time, back again to the People; who may intrust the same Men again, or others, if they think proper: Now it being a fundamental Part of that Agreement which constituted the Society under the present Form of Government, that the People should not be taxed without their own Consent, or their Representatives; should their Representatives agree to put that Power of Taxing on any other Footing, how could they deliver back that Power to their Constituents, at the Expiration of the stated Time, which was the very Condition of their being intrusted with it? From the Time that such a Law was in Force, the People might be taxed at any Time, and to any Extent, without their own Consent, or their Representatives, which was the great Security they had for the Preservation of their Property, by the original Agreement, the only Reason.