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Notes to the ninth volume.

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N O T E S
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NOTE [A], p. 34.

HERE is a passage of Sir John Davis's question concerning impositions, p. 131. " This power of laying on
" arbitrarily new impositions being a prerogative in point
" of government, as well as in point of profit, it cannot
" be restrained or bound by act of parliament; it cannot
" be limited by any certain or fixt rule of law, no more
" than the course of a pilot upon the sea, who must
" turn the helm or bear higher or lower sail, according
" to the wind or weather; and therefore it may be properly
" said, that the king's prerogative in this point, is
" as strong as *Samson*; it cannot be bound: For though
" an act of parliament be made to restrain it, and the
" king doth give his consent unto it, as *Samson* was
" bound with his own consent, yet if the *Philistines*
" come; that is, if any just or important occasion do
" arise, it cannot hold or restrain the prerogative; it
" will be as thread, and broken as easy as the bonds of
" *Samson*—The king's prerogatives are the sun-beams of
" the crown, and as inseparable from it as the sun-beams
" from the sun: the king's crown must be taken from him;
" *Samson's* hair must be cut out, before his courage can
" be any jot abated. Hence it is that neither the king's
" act nor any act of parliament can give away his prerogative. "

NOTE [B], p. 103.

WE shall here make use of the liberty, allowed in a
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note, to expatiate a little on the present subject. It must be confessed, that the king in this declaration touched upon that circumstance in the English constitution, which it is most difficult, or rather altogether impossible, to regulate by laws, and which must be governed by certain delicate ideas of propriety and decency, rather than by any exact rule or prescription. To deny the parliament all right of remonstrating against what they esteem grievances, were to reduce that assembly to a total insignificancy, and to deprive the people of every advantage, which they could reap from popular councils. To complain of the parliament's employing the power of taxation, as the means of extorting concessions from their sovereign, were to expect, that they would entirely disarm themselves, and renounce the sole expedient, provided by the constitution, for ensuring to the kingdom a just and legal administration. In different periods of English story, there occur instances of their remonstrating with their princes in the freest manner, and sometimes of their refusing supply when disgusted with any circumstance of public conduct. 'Tis, however, certain, that this power, though essential to parliaments, may easily be abused, as well by the frequency and minuteness of their remonstrances, as by their intrusion into every part of the king's counsels and determinations. Under color of advice they may give disguised orders; and in complaining of grievances, they may draw to themselves every power of government. Whatever measure is embraced, without consulting them, may be pronounced an oppression of the people; and till corrected, they may refuse the most necessary supplies to their indigent sovereign. From the very nature of this parliamentary liberty, it is evident, that it must be left unbounded by law: For who can foretel, how frequently grievances may occur, or what part of administration may be affected by them? From the nature too of the human frame, it may be expected, that this liberty would be exerted in its full extent, and no branch of authority be allowed to remain unmolested in the hands of the prince:

For will the weak limitations of respect and decorum be sufficient to restrain human ambition, which so frequently breaks through all the prescriptions of law and justice?

BUT here it is observable, that the wisdom of the English constitution, or rather the concurrence of accidents, has provided, in different periods, certain irregular checks to this privilege of parliament, and thereby maintained, in some tolerable measure, the dignity and authority of the crown.

IN the ancient constitution, before the beginning of the seventeenth century, the meetings of parliament were precarious and were not frequent. The sessions were short; and the members had no leisure, either to get acquainted with each other, or with public business. The ignorance of the age made men more submissive to that authority which governed them. And above all, the large demesnes of the crown, with the small expence of government during that period, rendered the prince almost independent, and taught the parliament to preserve great submission and duty towards him.

IN our present constitution, many accidents, which have rendered governments, every where, as well as in Great Britain, much more burthensome than formerly, have thrown into the hands of the crown the disposal of a large revenue, and have enabled the king, by the private interest and ambition of the members, to restrain the public interest and ambition of the body. While the opposition (for we must still have an opposition, open or disguised) endeavours to draw every branch of administration under the cognizance of parliament, the courtiers reserve a part to the disposal of the crown; and the royal prerogative, though deprived of its ancient powers, still maintains a due weight in the balance of the constitution.

IT was the fate of the house of Stuart to govern England at a period, when the former source of authority was already much diminished, and before the latter began to flow in any tolerable abundance. Without a regular and fixed foundation, the throne perpetually

tottered; and the prince sat upon it anxiously and precariously. Every expedient, used by James and Charles, in order to support their dignity, we have seen attended with sensible inconveniences. The majesty of the crown, derived from ancient powers and prerogatives, procured respect; and checked the approaches of insolent intruders: But it begat in the king so high an idea of his own rank and station, as made him incapable of stooping to popular courses, or submitting, in any degree, to the controul of parliament. The alliance with the hierarchy strengthened law by the sanction of religion: But it enraged the puritanical party, and exposed the prince to the attacks of enemies, numerous, violent, and implacable. The memory too of these two kings, from like causes, has been attended, in some degree, with the same infelicity, which pursued them during the whole course of their lives. Though it must be confessed, that their skill in government was not proportioned to the extreme delicacy of their situation; a sufficient indulgence has not been given them, and all the blame, by several historians, has been unjustly thrown on *their* side. Their violations of law, particularly those of Charles, are, in some few instances, transgressions of a plain limit, which was marked out to royal authority. But the encroachments of the commons, though, in the beginning, less positive and determinate, are no less discernible by good judges, and were equally capable of destroying the just balance of the constitution. While they exercised the powers, transmitted to them, in a manner more independent, and less compliant, than had ever before been practised; the kings were, perhaps imprudently, but, as they imagined, from necessity, tempted to assume powers, which had scarcely ever been exercised, or had been exercised in a different manner, by the crown. And from the shock of these opposite pretensions, together with religious controversy, arose all the factions, convulsions, and disorders, which attended that period.

This Note was, in the first editions, a part of the text.

NOTE [C], p. 180.

MR. Carte, in his life of the duke of Ormond, has given us some evidence to prove, that this letter was entirely a forgery of the popular leaders, in order to induce the king to sacrifice Strafford. He tells us, that Strafford said so to his son, the night before his execution. But there are some reasons, why I adhere to the common way of telling this story. 1. The account of the forgery comes through several hands, and from men of characters not fully known to the public. A circumstance which weakens every evidence. It is a hearsay of a hearsay. 2. It seems impossible, but young Lord Strafford must inform the king, who would not have failed to trace the forgery, and expose his enemies to their merited infamy. 3. It is not to be conceived but Clarendon and Whitlocke, not to mention others, must have heard of the matter. 4. Sir George Ratcliffe, in his life of Strafford, tells the story the same way that Clarendon and Whitlocke do. Would he also, who was Strafford's intimate friend, never have heard of the forgery? It is remarkable, that his life is dedicated or addressed to young Strafford. Would not he have put Sir George right in so material and interesting a fact.

NOTE [D], p. 182.

WHAT made this bill appear of less consequence was, that the parliament voted tonnage and poundage for no longer a period than two months: And as that branch was more than half of the revenue, and the government could not possibly subsist without it; it seemed indirectly in the power of the parliament to continue themselves as long as they pleased. This indeed was true in the ordinary administration of government: But on the approaches towards a civil war, which was not then foreseen, it had been of great consequence to the king to have reserved the right of dissolution, and to have endur-

ed any extremity rather than allow the continuance of the parliament.

NOTE [E], p. 221.

IT is now so universally allowed, notwithstanding some muttering to the contrary, that the king had no hand in the Irish rebellion, that it will be superfluous to insist on a point which seems so clear. I shall only suggest a very few arguments, among an infinite number which occur. (1) Ought the affirmation of perfidious, infamous rebels ever to have passed for any authority? (2) Nobody can tell us what the words of the pretended commission were. That commission which we find in Rushworth, vol. v. p. 400, and in Milton's Works, Toland's edition, is plainly an imposture; because it pretends to be dated in October 1641, yet mentions facts which happened not till some months after. It appears that the Irish rebels, observing some inconsistency in their first forgery, were obliged to forge this commission a-new, yet could not render it coherent or probable. (3) Nothing could be more obviously pernicious to the king's cause than the Irish rebellion; because it increased his necessities, and rendered him still more dependent on the parliament, who had before sufficiently shown on what terms they would assist him. (4) The instant the king heard of the rebellion, which was a very few days after its commencement, he wrote to the parliament, and gave over to them the management of the war. Had he built any projects on that rebellion, would he not have waited some little time, to see how they would succeed? Would he presently have adopted a measure which was evidently so hurtful to his authority? What can be imagined to be the king's projects? To raise the Irish to arms, I suppose, and bring them over to England for his assistance. But is it not plain, that the king never intended to raise war in England? Had that been his intention, would he have rendered the parliament perpetual? Does it not appear,

by the whole train of events, that the parliament forced him into the war? (6) The king conveyed to the justices intelligence which ought to have prevented the rebellion. (7) The Irish catholics, in all their future transactions with the king, where they endeavour to excuse their insurrection, never had the assurance to plead his commission. Even amongst themselves they dropped that pretext. It appears that Sir Phelim O'Neale, chiefly, and he only at first, promoted that imposture. See Carte's Ormond, vol. iii. No. 100. 111. 112. 114, 115. 121. 132. 137. (8) O'Neale himself confessed the imposture on his trial and at his execution. See Nelson, vol. ii. p. 528. Maguire, at his execution, made a like confession. (9) It is ridiculous to mention the justification which Charles II. gave to the marquis of Antrim, as if he had acted by his father's commission. Antrim had no hand in the first rebellion and the massacre. He joined not the rebels till two years after: It was with the king's consent; and he did important service, in sending over a body of men to Montrose.

NOTE [F], p. 273.

THE great courage and conduct, displayed by many of the popular leaders, have commonly inclined men to do them, in one respect, more honor than they deserve, and to suppose, that, like able politicians, they employed pretences which they secretly despised, in order to serve their selfish purposes. It is, however, probable, if not certain, that they were, generally speaking, the dupes of their own zeal. Hypocrisy, quite pure and free from fanaticism, is perhaps, except among men fixed in a determined philosophical scepticism, then unknown, as rare as fanaticism entirely purged from all mixture of hypocrisy. So congenial to the human mind are religious sentiments, that it is impossible to counterfeit long these holy fervors, without feeling some share of the assumed warmth: And, on the other hand, so precarious and

temporary, from the frailty of human nature, is the operation of these spiritual views, that the religious ecstasies, if constantly employed, must often be counterfeit, and must be warped by those more familiar motives of interest and ambition, which insensibly gain upon the mind. This indeed seems the key to most of the celebrated characters of that age. Equally full of fraud and of ardor, these pious patriots talked perpetually of seeking the Lord, yet still pursued their own purposes; and have left a memorable lesson to posterity, how delusive, how destructive, that principle is by which they were animated,

WITH regard to the people, we can entertain no doubt, that the controversy was, on their part, entirely theological. The generality of the nation could never have flown out into such fury, in order to obtain new privileges and acquire greater liberty than they and their ancestors had ever been acquainted with. Their fathers had been entirely satisfied with the government of Elizabeth: Why should they have been thrown into such extreme rage against Charles, who, from the beginning of his reign, wished only to maintain such a government? And why not, at least, compound matters with him, when, by all his laws, it appeared, that he had agreed to depart from it? Especially, as he had put it entirely out of his power to retract that resolution. It is in vain, therefore, to dignify this civil war and the parliamentary authors of it, by supposing it to have any other considerable foundation than theological zeal, that great and noted source and animosity among men. The royalists also were very commonly zealots; but as they were, at the same time, maintaining the established constitution, in state as well as church, they had an object, which was natural, and which might produce the greatest passion, even without any considerable mixture of theological fervor. *The former part of this note was, in the first editions, a part of the text.*

NOTE [G], p. 274.

IN some of these declarations, supposed to be penned by Lord Falkland, is found the first regular definition of the constitution, according to our present ideas of it, that occurs in any English composition; at least any published by authority. The three species of government, monarchical, aristocratical, and democratical, are there plainly distinguished, and the English government is expressly said to be none of them pure, but all of them mixed and tempered together. This style, though the sense of it was implied in many institutions, no former king of England would have used, and no subject would have been permitted to use. Banks and the crown-lawyers against Hambden, in the case of ship-money, insist plainly and openly on the king's absolute and sovereign power: And the opposite lawyers do not deny it: They only assert, that the subjects have also a fundamental property in their goods, and that no part of them can be taken but by their own consent in parliament. But that the parliament was instituted to check and controul the king, and share the supreme power, would, in all former times, have been esteemed very blunt and indiscreet, if not illegal, language. We need not be surprised that governments should long continue, though the boundaries of authority, in their several branches, be implicit, confused, and undetermined. This is the case all over the world. Who can draw an exact line between the spiritual and temporal powers in catholic states? What code ascertained the precise authority of the Roman senate, in every occurrence? Perhaps the English is the first mixed government, where the authority of every part has been very accurately defined: And yet there still remain many very important questions between the two houses, that, by common consent, are buried in a discreet silence. The king's power is, indeed, more exactly limited; but this period, of which we now treat, is the time at which that accuracy commenced. And it appears

from Warwick and Hobbes, that many royalists blamed this philosophical precision in the king's penman, and thought that the veil was very imprudently drawn off the mysteries of government. It is certain, that liberty reaped mighty advantages from these controversies and inquiries; and the royal authority itself became more secure, within those provinces which were assigned to it. *Since the first publication of this history, the sequel of Lord Clarendon has been published, where that nobleman asserts, that he himself was the author of most of these remonstrances and memorials of the king.*

NOTE [H], p. 304.

WHITLOCKE, who was one of the commissioners, says, 65. "In this treaty, the king manifested his great parts and abilities, strength of reason and quickness of apprehension, with much patience in hearing what was objected against him; where-in he allowed all freedom, and would himself sum up the arguments, and give a most clear judgment upon them. His unhappiness was, that he had a better opinion of others' judgments than of his own, though they were weaker than his own; and of this the parliament commissioners had experience to their great trouble. They were often waiting on the king, and debating some points of the treaty with him, until midnight, before they could come to a conclusion. Upon one of the most material points, they pressed his majesty with their reasons and best arguments they could use to grant what they desired. The king said, he was fully satisfied, and promised to give them his answer in writing according to their desire; but because it was then past midnight, and too late to put it into writing, he would have it drawn up next morning (when he commanded them to wait on him again) and then he would give them his answer in writing, as it was now agreed upon. But next morning the king told

“ them, that he had altered his mind: And some of
“ his friends, of whom the commissioners inquired, told
“ them, that after they were gone, and even his coun-
“ cil retired, some of his bed-chamber never left pressing
“ and persuading him till they prevailed on him to
“ change his former resolutions.” It is difficult, how-
ever, to conceive that any negociation could have suc-
ceeded between the king and parliament, while the latter
insisted, as they did all along, on a total submission to
all their demands; and challenged the whole power,
which they professedly intended to employ, to the punish-
ment of all the king’s friends.

NOTE [I], p. 317.

THE author is sensible, that some blame may be
thrown upon him, on account of this last clause in Mr.
Hambden’s character; as if he were willing to entertain
a suspicion of bad intentions, where the actions were
praise-worthy. But the author’s meaning is directly con-
trary: He esteems the last actions of Mr. Hambden’s life
to have been very blameable; though, as they were deriv-
ed from good motives only pushed to an extreme, there
is room left to believe, that the intentions of that patriot,
as well as of many of his party, were laudable. Had
the preceding administration of the king, which we are
apt to call arbitrary, proceeded from ambition, and an
unjust desire of encroaching on the ancient liberties of the
people, there would have been less reason for giving him
any trust, or leaving in his hands a considerable share
of that power which he had so much abused. But if his
conduct was derived in a great measure from necessity,
and from a natural desire of defending that prerogative
which was transmitted to him from his ancestors, and
which his parliaments were visibly encroaching on; there
is no reason why he may not be esteemed a very virtuous
prince, and entirely worthy of trust from his people.
The attempt, therefore, of totally annihilating monarchi-

cal power, was a very blameable extreme; especially as it was attended with the danger, to say the least, of a civil war, which, besides the numberless ills inseparable from it, exposed liberty to much greater perils than it could have incurred under the now limited authority of the king. But as these points could not be supposed so clear during the time as they are, or may be, at present; there are great reasons of alleviation for men who were heated by the controversy, or engaged in the action. And it is remarkable, that even at present, (such is the force of party-prejudices,) there are few people who have coolness enough to see these matters in a proper light, or are convinced that the parliament could prudently have stopped in their pretensions. They still plead the violations of liberty attempted by the king, after granting the petition of right; without considering the extreme harsh treatment, which he met with, after making that great concession, and the impossibility of supporting government by the revenue then settled on the crown. The worst of it is, that there was a great tangle of enthusiasm in the conduct of the parliamentary leaders, which, though it might render their conduct sincere, will not much enhance their character with posterity. And though Hamden was, perhaps, less infected with this spirit than many of his associates, he appears not to have been altogether free from it. His intended migration to America, where he could only propose the advantage of enjoying puritanical prayers and sermons, will be allowed a proof of the prevalence of this spirit in him.

NOTE [K], p. 339.

IN a letter of the king to the queen, preserved in the British Museum, and published by Mrs. Macaulay, vol. iv. p. 420, he says, that unless religion was preserved, the militia (being not as in France a formed powerful strength) would be of little use to the crown; and that if the pulpits had not obedience, which would never be,
if

if presbyterian government was absolutely established, the king would have but small comfort of the militia. This reasoning shows the king's good sense, and proves, that his attachment to episcopacy, though partly founded on religious principles, was also, in his situation, derived from the soundest views of civil policy. In reality, it was easy for the king to perceive, by the necessary connexion between trifles and important matters, and by the connexion maintained at that time between religion and politics, that, when he was contending for the surplice, he was, in effect, fighting for his crown and even for his head. Few of the popular party could perceive this connexion: Most of them were carried headlong by fanaticism; as might be expected in the ignorant multitude. Few even of the leaders seem to have had more enlarged views.

NOTE [L], p. 403.

THAT Laud's severity was not extreme, appears from this fact, that he caused the acts or records of the high commission court to be searched, and found that there had been fewer suspensions, deprivations, and other punishments, by three, during the seven years of his time, than in any seven years of his predecessor Abbot; who was notwithstanding in great esteem with the house of commons. *Troubles and trials of Laud*, p. 164. But Abbot was little attached to the court, and was also a puritan in doctrine, and bore a mortal hatred to the papists. Not to mention, that the mutinous spirit was rising higher in the time of Laud, and would less bear controul. The maxims, however, of his administration were the same that had ever prevailed in England, and that had place in every other European nation, except Holland, which studied chiefly the interests of commerce, and France, which was fettered by edicts and treaties. To have changed them for the modern maxims of toleration, how reasonable soever, would have been deemed

a very bold and dangerous enterprize. It is a principle advanced by president Montefquieu, that, where the magistrate is satisfied with the established religion, he ought to repress the first attempts towards innovation, and only grant a toleration to sects that are diffused and established. See *l'Esprit des Loix*, liv. 25. chap. 10. According to this principle, Laud's indulgence to the catholics, and severity to the puritans, would admit of apology. I own, however, that it is very questionable, whether persecution can in any case be justified: But, at the same time, it would be hard to give that appellation to Laud's conduct, who only enforced the act of uniformity, and expelled the clergymen that accepted of benefices, and yet refused to observe the ceremonies, which they previously knew to be enjoined by law. He never refused them separate places of worship; because they themselves would have esteemed it impious to demand them, and no less impious to allow them.

END OF THE NINTH VOLUME.



