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A

SHORT ARGUMENT

ON THE

ADMINISTRATION

OF

OATHS,

ENDEAVOURING TO SHEW THAT IT IS

AN ESSENTIAL AND UNALIENABLE

PREROGATIVE

OF

THE SOVEREIGNTY.

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PREFATORY NOTE.

THE following outline of Argument was drawn up before the introduction of the Bill now in Parliament, for preventing the Administration of unlawful Oaths. The introduction of that Bill, while it has withdrawn the motive for enlarging the outline by any discursive or declamatory matter, has furnished at the same time a reason for presenting it in this its summary form; as being the suffrage of at least one independent individual, on the absolute necessity of the measure proposed for the approbation of the Legislature.

M. H. G. 97

A SHORT ARGUMENT

ON

THE ADMINISTRATION OF OATHS,

&c. &c. &c.

THE Design of the following argument is to defend these two propositions :

First. That the ADMINISTRATION OF OATHS is an essential, unalienable PREROGATIVE of the SOVEREIGNTY, and

Secondly. That the USURPATION of that PREROGATIVE demands the most RIGOROUS INTERPOSITION of the LEGISLATURE.

It should seem, at the first statement of these propositions, (whether we consider the principles upon which they rest, or the facts to which they refer,) that they could require

no aid of argument or illustration to augment their evidence; but yet that evidence does not only appear to have escaped the observation of the public at large, but also to have hitherto eluded even the vigilance of the Legislature.

To support the former of these propositions, it is necessary to shew;

- I. What is the nature of *an oath*.
- II. In what the *administration of an oath consists*.
- III. What is the nature of *sovereignty*.

To support the latter proposition, we must shew:

- I. That the prerogative *has been usurped*.
- II. That the *interposition of the legislature* is therefore *necessary*.
- III. That such interposition must be accompanied with *rigour*.



I. *Of the NATURE of AN OATH.*

AN OATH is to be considered, both in respect of its inward *essence*, and of its outward *operation*.

An oath, in respect of its *essence*, is “ the calling upon God *to witness* (that is to say, to take notice of) what we say ; and *invoking* HIS *vengeance*, or *renouncing* HIS *favour*, if what *we say* be *false*, or what *we promise* be *not performed*.”*

Hence it is evident, that an oath, in respect of its *operation*, is “ the *strongest bond* under which the *moral agency of man* can be *held*.”

And it is only with the design of producing this *strong obligation*, that oaths are used.

The compulsive power of an oath on the mind of the individual who has taken it, flows from the terror of the judgment invoked in case of non-observance: and it is resorted to as a power surpassing the strongest force of human obligation.

This nature and operation of an oath, has been known in all times to the practice of mankind ; though the terrors, which form its sanction, have been more or less distinct, according to the state of moral and religious knowledge.

* Paley.

Its force is well-observed, by a very antient writer, to consist in this, viz. the fear of *punishment from God*, and of infamy from men; though with this material difference, that the breach of it may be concealed from men, but *cannot from God*.*

Its practical obligation on the mind consists in this, viz. a *persuasion* that its breach must be attended with the *greatest* of possible calamities; while the evils that may accompany its observance are *inferior*, and comparatively *small*:----everlasting misery constituting the former; but nothing worse than death, (the pain producing which is momentary, and may be followed by everlasting happiness) constituting the latter.

Now he, who deliberately takes an oath, puts himself under *such persuasion* of the necessity of fulfilling an engagement; and of exerting the powers, and pursuing the conduct, necessary for accomplishing that end.

This engagement is determined by the rule of the oath.

The engagement of an oath is a compact between two parties, viz. he who *takes* the

* Aristotle.

oath, and he who *administers* it.----Which brings us to,



II. *The ADMINISTRATION of an OATH.*

As an oath, in general, is the *strongest obligation* that can be laid upon the *agency of man*: and as every *particular oath* directs that agency to a *particular end*; so the *end*, to which that agency is in each particular instance directed, is *prescribed by him* who ADMINISTERS the oath.

Whence it is an universal principle, that all oaths are sworn, *in animum imponentis*; or according to the mind of the persons administering them.

He, therefore, who administers an oath, lays upon another the strongest obligation by which man, as an agent, can be bound: and as he prescribes the rule by which that agency shall act, (“the *animus imponentis* being the rule of the juror’s duty,”) it follows, that the administrator of an oath binds, in the strictest *tie*, *ligamen*, or *allegiance*, the person who takes the oath; and becomes the supreme disposer of the conduct and actions of that

person, in the respect in which he is so bound : that is to say, that he acquires and exercises, *in that particular*, a perfect, proper, and essential power of *sovereignty*.

This will appear with evidence incontrovertible, if we examine



III. *What is the NATURE of SOVEREIGNTY.*

Civil Society consists in an assemblage of individual beings, wrought into a corporate mass by the operation of government.

The natural powers of the individuals so united, generate a compound power under the sole direction of government, and to be exerted against every cause injurious to the union, whether it be external or internal.

Government, in its genuine and most comprehensive sense, signifies, the outward exercise or practical display of *sovereignty*.

“ SOVEREIGNTY and LEGISLATURE are convertible terms,”* and denote “ that supreme, irresistible, absolute, uncontrolled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside †, and which must exist in every state.

* Blackstone, Vol. I. p. 46. 8vo.

† *Ib.* p. 49.

Hence

Hence, all sound opinions of government have maintained, that the natural powers brought by men into society, are there (as it were) deposited in *a common treasury*, and that they thence resume from the public stock, such, or such portions of them, as the common interest can dispense with. All the residue are there reserved as the unalienable property of the corporate body, and to the sole exercise of the sovereignty in furtherance of the general welfare.

The sovereign will, or the will of the legislature, can alone determine on the powers which it may be safe to grant, or salutary to withhold. And every power privately possessed, is to be considered as an express or implied concession of the public power in favour of the individual.

But of the primary powers contributed, or of the secondary powers resulting from these, there are some so important and essential to the *constituting principle* of civil society, that is, the very *existence of government*, that it is impossible for the sovereignty to surrender or alienate them without corrupting its nature, and either producing its immediate, or preparing its remote, dissolution.

And these are, *the powers and prerogatives of sovereignty*, the *jura summi imperii*, of which we have already spoken.

What they are, is to be collected from the *reason* of sovereignty, and not from a rule so imperfect and defective as the fluctuating practice of any particular government.

We may comprise them under the heads of powers, essential to the establishment of government, or capable by abuse of working its destruction.

All powers, therefore, capable of producing a complete act of sovereignty; and, *à fortiori*, all powers sufficiently strong to resist a legitimate act of sovereignty, are necessarily comprehended in the *jura summi imperii*.

Upon this principle it is, that the sovereign, or legislative, authority of all states is extremely jealous of the powers it grants, not only to the members of the society individually, but even to the Executive Office, constituted for the especial purpose of watching over the public peace, and of giving effect to the laws enacted.

In this our own country in particular, we cannot fail to observe upon the slightest inspection of the government, that the constitution

tion rests upon the above principle, viz. that all powers emanate from the sovereignty of the legislature, which is extremely scrupulous to determine with precision, the quality and degree of the powers with which it invests its executive magistracy.

If we take for an example that which respects the greatest mechanical force possessed by the State, which is called the *military force*, and consists in the aggregate strength produced by the union of the natural powers of individuals, we shall discover this principle to be rigorously observed.

The portion of this strength brought into action at any given time, constitutes the military establishment. This can only be produced by an act of the sovereignty, and when produced, can only be employed by the executive authority in the proportions and to the extent determined and prescribed by the legislative provision.

Accordingly, for any person or persons to attempt to produce such a force without the authority of the sovereignty, is considered as an act of hostility and rebellion against it, and is declared by the law to be high treason. And, in perfect consistence with the principle

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on which that law was established, the recent events of our experience have rendered it most expedient to extend it to all acts tending to seduce the individuals composing the aggregate military force, from their duty and allegiance to their legitimate commander.

But we must suppose the Constitution to be founded on the weakest of materials, or rather to be erected on no foundation at all, if, with all its jealousy to preserve every other power of government, it can be disposed to forego, or abandon at large, a power paramount to all the rest, and which by a short and easy operation may annihilate them all.

Now, the whole strength of the military force depends ultimately upon the fidelity and obedience of the individuals composing it; that is to say, that it depends upon their using fidelity and obedience to their commander, as the rule of their conduct. For since, notwithstanding the mechanism of military discipline, the success of its action must finally depend upon the compliance of the individuals with the public rule prescribed; if an adverse rule could be substituted, possessing a more impressive force upon the minds of those individuals, the military strength of the government

vernment would become thereby paralyzed, or extinguished. And in that event, it would be ridiculous to say, that the military power is the strength of the sovereignty, when the means of maintaining the command over it is taken away; or that it is its exclusive prerogative, when the superior prerogative that gives it action, is either formally alienated, or asserted with so little vigour as to amount in practice to an alienation.

It is manifest therefore, that if the constitution considers the exercise of the military power to be the proper and unalienable prerogative of the sovereignty, it must, *à fortiori*, consider as such also, the power of imposing upon the minds of its subjects the *superior obligation of an oath*.

But it is moreover an express principle of English law, and consonant with every principle of sound reason, “that there is an implied, original, and virtual allegiance, owing from every subject to his sovereign, antecedently to any express promise; although the subject never swore any faith or allegiance in form.” Hence it follows, that every power capable of establishing a supreme control over the subject, exhibits an essential character

ter, and must constitute an integral part of, *the sovereignty*; since it would be a gross and risible absurdity, to say that the sovereignty is the supreme authority over the subject, and yet concede at large, to the community of subjects, an authority still superior: which would, nevertheless, be the case, if those, who did not dare (from the severity of the punishment) to begin rebellion by *assuming arms*, were to take advantage of the remissness of the law in another respect, and, by substituting the rule of a private oath to the rule of public duty among the soldiery, become eventually possessors of their strength. For we are not to consider here the *moral quality* or illegality of an oath taken against duty, but the *mechanical operation* and *certain effect* of an oath, *when taken*, upon the *minds* of men; and which we are to estimate as an ultimate mechanical power, determining the agency of man.

But that the Constitution, as far as the Legislature has hitherto declared its principles, really considers the sovereignty as possessing the exclusive power of administering oaths, is evident from this, that, whenever it is found necessary for the public service
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that oaths should be administered, it does not order the magistrate to administer them, but it empowers—*i. e.* it invests particular persons, for specific purposes, and in a limited degree, with the power of imposing such oaths; not thinking it safe to trust so serious a power even to the regular executive authority, except under very particular and explicit restrictions. And, in truth, what should we not say, were we to see such a power assumed by the Crown as we have lately seen exercised by the subject?—and yet the Constitution confides to the Crown many of the chief powers of government. In respect of the executive authority, nothing can indeed be more jealous, than the conduct of the Legislature on the subject of oaths: whereas the dangerous and most solemn employment of oaths, or *testis* having the quality of oaths, is left comparatively free, or without any adequate constraint, to the use of the multitude; although we have seen, by so many examples, how feeble the most mighty crown is in the face of a multitude.

If the constitution, therefore, is not a tissue of inconsistencies, it must maintain the same principle in respect of every component
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portion of the community: and if we have not hitherto found it so expressed, we are to ascribe this silence to the current of events by which alone legislatures are induced to enact specific laws; and which, until now, have only required of the British Legislature to direct its main attention and care to the powers possessed or exercised by the executive authority.

But, the strange and unexampled æra in which we live, and in which (as the sun, after coming to his solstitial point, turns and follows a quite opposite direction, so) society has turned into a quite different course from that by which our ancestors were uniformly guided:-----this æra, shews us the necessity that exists for the sovereignty to direct its vigilance, and to exercise its control, no less over *the many*, than it has hitherto done over *the few*.

The power of administering oaths, therefore, (that is to say, the power of laying upon the minds of the human agents composing society, the supreme compulsive force of an oath, and of administering the rule by which that force shall determine their conduct,) constitutes, by every principle of analogy,
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consistency, and evident reason, an *inherent prerogative, unalienable* from SOVEREIGNTY.

In support of the second proposition, we are to shew,

I. *That the PREROGATIVE of ADMINISTERING OATHS has been USURPED.*

In proof of which fact, I shall content myself with referring the reader to his own recent and most calamitous experience, when the navy of Great Britain, and the established government of Ireland, were convulsed to their foundations by no other agency in chief than that of oaths administered to individuals, binding them to acts of rebellion; and which oaths, when taken, (offering to their imaginations only the choice between a possibility of death and a certainty of damnation) held them bound, by the strongest mechanical tie possible, to the rule of rebellion to which they had sworn: the whole of which the reader may revive in his recollection, by perusing the report from the Committee of Secrecy of the Irish House of Commons, reported May 10; and

and from the trials of the several mutineers in the fleet.

Such an act we have shewn to be the usurpation of a prerogative of SOVEREIGNTY ;



II. *That the INTERPOSITION of the LEGISLATURE is therefore NECESSARY,*

Depends on this :

That the Executive Authority is not, at present, invested with any VINDICATORY POWERS *adequate to the offence.*

So that the latitude of the law, on this head, enables individuals to subvert the whole fabric of government ; and, although they are deterred from an open act of assault against the superstructure, they are encouraged secretly and deliberately to sap the foundation.

In the present view of the question, we have nothing to do with the *moral quality* of oaths. It is little to the present purpose, that an oath can really create no new moral obligation : that an oath, taken to do an evil action, is not binding, &c. The present argument only concerns the *mechanical effect* of an oath taken, upon the mind of the person who takes it ; in which we are to estimate its force

as a principle of action ; and, in this point of view, it is the same, whether it be legal or illegal : it is sufficient that the individual be under the *actual persuasion*, which is the practical and efficient cause of the obligation.

And as the force of an oath, examined by this rule, is so great as to break asunder the only tie by which the subject is bound to the rule prescribed by the sovereignty, *i. e.* the only bond by which civil society is held together ; it follows,



III. *That the interposition of the Legislature must be accompanied WITH RIGOUR, and with all the weight of its exalted authority.*

It is necessary that the Legislature should pointedly and explicitly assert its right, and declare the administration of *all oaths* to be an inherent, unalienable prerogative of the sovereignty ; and that none may be administered, but by a power emanating from, and delegated by, the sovereign power of the state. And it is necessary that it should annex punishment to *every exercise* of this solemn and dangerous power, other than by persons duly

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authorised ; rendering the smallest usurpation of it a misdemeanor ; and all such, as have for their object to direct the subject in the great line of his civil conduct, or to influence his relations with the sovereignty, a FELONY ; both in the person administering the oath, (that is, usurping, in that instance, the sovereign power,) and in the person taking it, (that is, renouncing, in the same instance, his lawful allegiance.)

It is perfectly unavailing to the good of individuals, to confide to the subject the power of administering *any oath whatever* ; and, to connive at the exercise of such a power, after our dearly-bought experience, would be the height of imbecillity. Bonds, contracts, &c. are all that private persons can require, in their individual capacities or relations. If the sacred obligation of an oath should be found necessary in any particular case between private parties, magistrates might be empowered by law to administer them ; if it be demanded for any purposes entirely unconnected with political affairs, an express provision might be made. But it is manifest, that the system of administering oaths ought, at the present alarming moment,

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to be *in toto* claimed, called in, and re-modelled, by the Legislature; that every power of administering them should be issued *de novo*; and that *every exercise* of that power, (otherwise than by the authorities created, or within the restrictions limited) should be rendered punishable, in different degrees, by an EXPRESS ACT OF PARLIAMENT.

And the Act itself, so passed, with a preamble (adapted to the intelligence of the most illiterate class of the community, and setting forth the occasion and design of the statute) should be read, on successive stated days, in all parish churches and chapels, in market places, in courts of assize, &c. and every other method of giving notoriety used; in order to impress generally and forcibly, on the minds of the multitude, the danger and criminality of being concerned in any manner, in private oaths, or in any oath whatever, administered otherwise than by the authorities constituted by law.

THE END.

By the same Author,

REMARKS

PREPARATORY TO

THE ISSUE

OF THE

RENEWED NEGOTIATION

FOR

PEACE

PRICE SIXPENCE.

*B. Origin of Duty & Right probably by the
Same Author*

