

John Locke

The Second Treatise of Civil Government

### **CHAPTER XIII.**

#### **OF THE SUBORDINATION OF THE POWERS OF THE COMMON-WEALTH.**

§149. THOUGH in a constituted common-wealth, standing upon its own basis, and acting according to its own nature, that is, acting for the preservation of the community, there can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate, yet the legislative being only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them: for all power given with trust for the attaining an end, being limited by that end, whenever that end is manifestly neglected, or opposed, the trust must necessarily be forfeited, and the power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security. And thus the community perpetually retains a supreme power of saving themselves from the attempts and designs of any body, even of their legislators, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the liberties and properties of the subject: for no man or society of men, having a power to deliver up their preservation, or consequently the means of it, to the absolute will and arbitrary dominion of another; when ever any one shall go about to bring them into such a slavish condition, they will always have a right to preserve, what they have not a power to part with; and to rid themselves of those, who invade this fundamental, sacred, and unalterable law of self-preservation, for which they entered into society. And thus the community may be said in this respect to be always the supreme power, but not as considered under any form of government, because this power of the people can never take place till the government be dissolved.

§150. In all cases, whilst the government subsists, the legislative is the supreme power: for what can give laws to another, must needs be superior to him; and since the legislative is no otherwise legislative of the society, but by the right it has to make laws for all the parts, and for every member of the society, prescribing rules to their actions, and giving power of execution, where they are transgressed, the legislative must needs be the supreme, and all other powers, in any members or parts of the society, derived from and subordinate to it.

§151. In some commonwealths, where the legislative is not always in being, and the executive is vested in a single person, who has also a share in the legislative; there that single person in a very tolerable sense may also be called supreme: not that he has in himself all the supreme power, which is that of law-making; but because he has in him the supreme execution, from whom all inferior magistrates derive all their several subordinate powers, or at least the greatest part of them: having also no legislative superior to him, there being no law to be made without his consent, which cannot be expected should ever subject him to the other part of the legislative, he is properly enough in this sense supreme. But yet it is to be observed, that tho' oaths of allegiance and fealty are taken to him, it is not to him as supreme legislator, but as supreme executor of the law, made by a joint power of him with others; allegiance being nothing but an obedience according to law, which when he violates, he has no right to obedience, nor can claim it otherwise than as the public person vested with the power of the law, and so is to be considered as the image, phantom, or representative of the common-wealth, acted by the will of the society, declared in its laws; and thus he has no will, no power, but that of the law. But when he quits this representation, this public will, and acts by his own private will, he degrades himself, and is but a single private person without power, and without will, that has any right to obedience; the members owing no obedience but to the public will of the society.

§152. The executive power, placed any where but in a person that has also a share in the legislative, is visibly subordinate and accountable to it, and may be at pleasure changed and displaced; so that it is not the supreme executive power, that is exempt from subordination, but the supreme executive power vested in one, who having a share in the legislative, has no distinct superior legislative to be subordinate and accountable to, farther than he himself shall join and consent; so that he is no more subordinate than he himself shall think fit, which one may certainly conclude will be but very little. Of other ministerial and subordinate powers in a commonwealth, we need not speak, they being so multiplied with infinite variety, in the different customs and constitutions of distinct commonwealths, that it is impossible to give a particular account of them all. Only thus much, which is necessary to our present purpose, we may take notice of concerning them, that they have no manner of authority, any of them, beyond what is by positive grant and commission delegated to them, and are all of them accountable to some other power in the common-wealth.

§153. It is not necessary, no, nor so much as convenient, that the legislative should be always in being; but absolutely necessary that the executive power should, because there is not always need of new laws to be made, but always need of execution of the laws that are made. When the legislative hath put the execution of the laws, they make, into other hands,

they have a power still to resume it out of those hands, when they find cause, and to punish for any maladministration against the laws. The same holds also in regard of the federative power, that and the executive being both ministerial and subordinate to the legislative, which, as has been shewed, in a constituted common-wealth is the supreme. The legislative also in this case being supposed to consist of several persons, (for if it be a single person, it cannot but be always in being, and so will, as supreme, naturally have the supreme executive power, together with the legislative) may assemble, and exercise their legislature, at the times that either their original constitution, or their own adjournment, appoints, or when they please; if neither of these hath appointed any time, or there be no other way prescribed to convoke them: for the supreme power being placed in them by the people, it is always in them, and they may exercise it when they please, unless by their original constitution they are limited to certain seasons, or by an act of their supreme power they have adjourned to a certain time; and when that time comes, they have a right to assemble and act again.

§154. If the legislative, or any part of it, be made up of representatives chosen for that time by the people, which afterwards return into the ordinary state of subjects, and have no share in the legislature but upon a new choice, this power of chusing must also be exercised by the people, either at certain appointed seasons, or else when they are summoned to it; and in this latter case the power of convoking the legislative is ordinarily placed in the executive, and has one of these two limitations in respect of time: that either the original constitution requires their assembling and acting at certain intervals, and then the executive power does nothing but ministerially issue directions for their electing and assembling, according to due forms; or else it is left to his prudence to call them by new elections, when the occasions or exigencies of the public require the amendment of old, or making of new laws, or the redress or prevention of any inconveniencies, that lie on, or threaten the people.

§155. It may be demanded here, What if the executive power, being possessed of the force of the common-wealth, shall make use of that force to hinder the meeting and acting of the legislative, when the original constitution, or the public exigencies require it? I say, using force upon the people without authority, and contrary to the trust put in him that does so, is a state of war with the people, who have a right to reinstate their legislative in the exercise of their power: for having erected a legislative, with an intent they should exercise the power of making laws, either at certain set times, or when there is need of it, when they are hindered by any force from what is so necessary to the society, and wherein the safety and preservation of the people consists, the people have a right to remove it by force. In all states and conditions, the true remedy of force without authority, is to oppose force to it. The use of force without authority,

always puts him that uses it into a state of war, as the aggressor, and renders him liable to be treated accordingly.

§156. The power of assembling and dismissing the legislative, placed in the executive, gives not the executive a superiority over it, but is a fiduciary trust placed in him, for the safety of the people, in a case where the uncertainty and variableness of human affairs could not bear a steady fixed rule: for it not being possible, that the first framers of the government should, by any foresight, be so much masters of future events, as to be able to prefix so just periods of return and duration to the assemblies of the legislative, in all times to come, that might exactly answer all the exigencies of the commonwealth; the best remedy could be found for this defect, was to trust this to the prudence of one who was always to be present, and whose business it was to watch over the public good. Constant frequent meetings of the legislative, and long continuations of their assemblies, without necessary occasion, could not but be burdensome to the people, and must necessarily in time produce more dangerous inconveniencies, and yet the quick turn of affairs might be sometimes such as to need their present help: any delay of their convening might endanger the public; and sometimes too their business might be so great, that the limited time of their sitting might be too short for their work, and rob the public of that benefit which could be had only from their mature deliberation. What then could be done in this case to prevent the community from being exposed some time or other to eminent hazard, on one side or the other, by fixed intervals and periods, set to the meeting and acting of the legislative, but to intrust it to the prudence of some, who being present, and acquainted with the state of public affairs, might make use of this prerogative for the public good? and where else could this be so well placed as in his hands, who was intrusted with the execution of the laws for the same end? Thus supposing the regulation of times for the assembling and sitting of the legislative, not settled by the original constitution, it naturally fell into the hands of the executive, not as an arbitrary power depending on his good pleasure, but with this trust always to have it exercised only for the public weal, as the occurrences of times and change of affairs might require. Whether settled periods of their convening, or a liberty left to the prince for convoking the legislative, or perhaps a mixture of both, hath the least inconvenience attending it, it is not my business here to inquire, but only to shew, that though the executive power may have the prerogative of convoking and dissolving such conventions of the legislative, yet it is not thereby superior to it.

§157. Things of this world are in so constant a flux, that nothing remains long in the same state. Thus people, riches, trade, power, change their stations, flourishing mighty cities come to ruin, and prove in times neglected desolate corners, whilst other unfrequented places grow into populous countries, filled with wealth and inhabitants. But things not

always changing equally, and private interest often keeping up customs and privileges, when the reasons of them are ceased, it often comes to pass, that in governments, where part of the legislative consists of representatives chosen by the people, that in tract of time this representation becomes very unequal and disproportionate to the reasons it was at first established upon. To what gross absurdities the following of custom, when reason has left it, may lead, we may be satisfied, when we see the bare name of a town, of which there remains not so much as the ruins, where scarce so much housing as a sheepcote, or more inhabitants than a shepherd is to be found, sends as many representatives to the grand assembly of law-makers, as a whole county numerous in people, and powerful in riches. This strangers stand amazed at, and every one must confess needs a remedy; tho' most think it hard to find one, because the constitution of the legislative being the original and supreme act of the society, antecedent to all positive laws in it, and depending wholly on the people, no inferior power can alter it. And therefore the people, when the legislative is once constituted, having, in such a government as we have been speaking of, no power to act as long as the government stands; this inconvenience is thought incapable of a remedy.

§158. *Salus populi suprema lex*, is certainly so just and fundamental a rule, that he, who sincerely follows it, cannot dangerously err. If therefore the executive, who has the power of convoking the legislative, observing rather the true proportion, than fashion of representation, regulates, not by old custom, but true reason, the number of members, in all places that have a right to be distinctly represented, which no part of the people however incorporated can pretend to, but in proportion to the assistance which it affords to the public, it cannot be judged to have set up a new legislative, but to have restored the old and true one, and to have rectified the disorders which succession of time had insensibly, as well as inevitably introduced: For it being the interest as well as intention of the people, to have a fair and equal representative; whoever brings it nearest to that, is an undoubted friend to, and establisher of the government, and cannot miss the consent and approbation of the community; prerogative being nothing but a power, in the hands of the prince, to provide for the public good, in such cases, which depending upon unforeseen and uncertain occurrences, certain and unalterable laws could not safely direct; whatsoever shall be done manifestly for the good of the people, and the establishing the government upon its true foundations, is, and always will be, just prerogative, The power of erecting new corporations, and therewith new representatives, carries with it a supposition, that in time the measures of representation might vary, and those places have a just right to be represented which before had none; and by the same reason, those cease to have a right, and be too inconsiderable for such a privilege, which before had it. 'Tis not a change from the present state, which

perhaps corruption or decay has introduced, that makes an inroad upon the government, but the tendency of it to injure or oppress the people, and to set up one part or party, with a distinction from, and an unequal subjection of the rest. Whatsoever cannot but be acknowledged to be of advantage to the society, and people in general, upon just and lasting measures, will always, when done, justify itself; and whenever the people shall chuse their representatives upon just and undeniably equal measures, suitable to the original frame of the government, it cannot be doubted to be the will and act of the society, whoever permitted or caused them so to do.

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