

## To the Nation

It hath pleased Almighty God to visit these Realms, with a Calamity so dreadful, that our excellent Laws and Constitution, — unwilling to presume the Possibility of such a Case, have thro' respectful Delicacy to the sacred Person of the Sovereign, avoided making any Provision against its happening. But we are now unfortunately brought to the reluctant Necessity of filling up this Chasm left in the Laws and Constitution. It is an important and awful Moment, in which the Nation is to recur to their primal Rights, in determining their Choice, to whom they shall delegate the Supreme Executive Power of governing them during this severe Visitation of the Almighty upon the sacred Person of their Sovereign. — There cannot be a Doubt but that the present Parliament, legally constituted and even — legally convened, may legally and effectually determine this Choice for those they represent.

It becomes then a Duty in every Individual to suggest any

Plan, that may tend to produce a right Determination of a point so essential to the Purity and Vigor of our Constitution. I have already seen and admired, the ingenious and zealous and eloquent Efforts of several Persons, who have favoured the Public with their Thoughts upon this most important of all political Subjects. And they all tend effectually to open inform and prepare the Mind to a right Judgment. But as few Persons can so readily form a satisfactory Judgment upon a Plan, which they have to frame model and digest in their own Minds, as when it is already planned and drawn out for them: so I have thought this a sufficient Reason for submitting to the Eyes of the Public, a Draft of such a Bill as in my Humble Opinion will meet every Doubt and Difficulty which occur in the present Flow of national Distress. At all Events the actual Delineation of the Plan, will shew its Defects and how they may be previously amended, more than Volumes of Instruction and Eloquence upon the Motives Reasons and Theory of a Regency in the present Circumstances —

Dr<sup>t</sup> of the Bill &c

## Comment.

Per spicua non sunt probanda. Therefore I will cite no Authority to prove that the Nation being deprived by the Hand of God, for a Time of their supreme Ruler, have in them the sole inherent Right to substitute another for the Time being: and that every national Act is properly legally and constitutionally done by the Majority of their Representatives in Parliament.

When a Case directly in Point is not to be met with; it is to the Spirit Reasons and Analogy of former Precedents, that our Law looks up in making its Determinations.

Mr. Justice Blackstone after other Writers, (1 Vol. p. 191) says —  
 "the Crown is, by Common Law and constitutional Custom, hereditary: and this in a Manner peculiar to itself: but that the Right of Inheritance may from time to time be changed, or limited by Act of Parliament under which Limitations the Crown still continues hereditary". Its heritable Quality then assimilates the Crown to other Inheritances descendible by Common Law. And the Person of the Sovereign, with every proper Degree of Deference and respect to his exalted

Station, is still, as to all mortal Incidents, not out of <sup>the</sup> Line of Parity with his Subjects.

In case then of the mental Incapacity of a Subject actually — seized of an Estate of Inheritance; (2 *Wms* ex parte Ludlow 638) — The Person who would be heir at Law, or next intitled to the real Estate after the Lunatic's Death, is not intitled to the Custody of the Person: „ for the personal Estate in all probability will „ increase by the Continuance of the Lunatic's Life, consequently „ it must be for the Advantage of the Committee to preserve such „ Life and be more careful and tender of it: — And Lord Chancellor King further adds: „ I have found by Experience, that granting „ the Commitment to two has been attended with Inconveniencies, „ by occasioning Suits, & putting the Estate to great Expence. „ and he therefore in this Instance, granted the Custody of the Lunatic's Person to one, in preference of another in equal Degree, who applied to the Court for it. — Therefore the Custody of his Majesty's sacred Person, should be committed to the Queen.

The 17 Edw. 2 Prer. Reg. enacts, „ that the King shall provide „ that the Lands of Lunatics be safely kept without Waste, and they „ and their Families, if they have any, shall be maintained with „ the Profits thereof: and that the residue be kept for their Use and „ be delivered unto them, when they come to right Mind, so that

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„ the Lands shall not be aliened neither shall the King have any  
 „ Profits thereout to his own Use: but if they die in such Estate;  
 „ the Residue shall be distributed for their Souls by the Advice of  
 „ the Ordinary, „ And now by the subsequent Amendments of  
 the Law of Administrations, such Residue shall go to their  
 Executors or Admors.

It hath been determined (Mod. 4. Hill: 28 Hen: 8 Re: 420  
 Frances v Holmes) that, the King cannot grant the Lands  
 „ of a Lunatick to another to take the Profits to his own Use:  
 „ because himself is not intitled to them otherwise, than to  
 „ sustain the Person of the Lunatick his Issue Wife and  
 „ Family, and to give the Surplusage to the Lunatick when he  
 „ recovers his Memory: but otherwise it is of an Ideot: for the  
 „ King shall have the Profits to his own Use, making Allowance  
 „ to the Ideot for his Keeping. „ (2 Chan: Ca: 240: Michas 29  
 Car: 2. Lady Mary Cope's Case), „ The Allowance according to  
 „ the Quality and Estate of the Lunatic must be liberal and  
 „ honorable. And in (2 P. Wms 252 W. Justice Dorners case  
 Mich: 1724) Lord Macclesfield says: „ that a Lunatic in  
 „ the Eye of the Law is never looked upon to be desperate, but  
 „ always at least in a Possibility of recovering: it is his Benefit  
 „ and Comfort I am to take Care of, where no Creditor complains,

„ and not to heap up Wealth for the Benefit of his Administrators or  
 „ next of kin: therefore I will not lessen the Allowance &c. — It is to  
 be observed that upon the Lunacy of Sir W<sup>m</sup> Dormer, King William  
 and Queen Mary, granted the Custody of his Estate to his Uncle —  
 „ Mr. J. Dormer who was the next Remainder Man in Tail of the  
 „ principal Part of the Family Estates but the Person of the Lunatic  
 „ was granted to another. (2 P<sup>W</sup><sup>m</sup> 262.) And such is the general  
 Usage; for it is clearly his Interest by good Management to keep  
 „ it in Condition, accountable however to the Court of Chancery  
 „ or to the Non compos himself if he recovers: or otherwise to his  
 „ Executors or Adminors; (Black. 1 V. 305)

The Relation which the King bears to private Inheritances:  
 is such as the Nation bears to the Crown. It is a presumption  
 of Law, that every Fee is holden of the Crown: it is the first  
 Principle of the Constitution, that the Crown is holden of the  
 People. We have seen how the King acts (by his Chancellor) in  
 one Case: we are to see, how the analogous Power is to act in  
 the other. —

The supreme executive Power of these Kingdoms is vested  
 by our Laws in a single Person, the King or Queen: by the 1<sup>st</sup> Mar.  
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 „ and Preeminencies, thereunto annexed united and belonging,

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are particularly recited to descend to and come to the Heir thereof according unto the Laws of this Realm. — It is for the Perfection of the Constitution that this sole Person is invested with such Powers and Prerogatives: the Suspension or temporary Extinction of any of them, must take off some Degree of that Perfection; and be therefore unconstitutional. In a private Inheritance such Powers and Prerogatives would be looked upon as Appurtenances or Appendages to the Freehold: the Exercise and Execution of which must be necessary, to keep on footing the Estate, to which they are thus inseparately annexed. It is sufficiently understood, that no other Branch of the Legislative Body, does or ought to participate of any Degree of the executive Power of Government: and therefore whilst that is committed to the Heir apparent, his legislative Capacity as a Peer of Parliament must certainly cease: as must also the Relation of Subject for the Time, during which the Royal Power is vested in him. — The Laws of this Country know of no Power of Controul, which can vest or exist in a Subject, over the executive Power of Government: when therefore the Hand of Providence calls upon the Nation for a temporary Substitute to such executive Power; if the Nation mean not to alter or vary the

Constitution: it is incumbent upon them to keep the three — different Branches of the Constitution in the same Degree of Dependance and Independance, Union and Separation, in which they now are. — In a private Inheritance no Variation of Tenure in the Estate would be warrantable by Law during a Limacy. — To permit any Members of either House of Parliament to exercise any Degree of Controul over the Supreme Executive Power, would be so blending the Ingredients of our most excellent Constitution, that in such a Case, its original Features would be no longer cognizable.

The only legal and constitutional Check or Controul over the Prerogative of the Crown are in Parliament: when the Prerogative and Influence of the Crown have at any Time been found redundant and luxuriant; Parliament has immediately interfered by pruning and retrenching them: thus at different Periods, we see that Parliament hath taken out of the Hands of the Crown, the free Alienation of the Royal Revenues, the absolute Disposal of the Crown Lands and the optional Removal of the Judges from their Seats. Such Power alone is vested by the Constitution in Parliament as a sufficient Barrier against any possible Encroachments of the executive Power, over the two other Branches of the Legislature. — And we have



the Satisfaction to see, that every proper Occasion, has called this Power into Action: Example then as well as Reason will —  
 quarrantee us in future. — Our Lawyers have in fact been so —  
 convinced of this Truth, that they have laid it down as an —  
 Aphorism: „ The King's Prerogative. is limited by bounds so —  
 „ certain and notorious, that it is impossible that he should exceed —  
 „ them without the Consent of the People... (Black<sup>n</sup> 1 Vol. p 141. & alibi)

(Chan: Cases. 19. Hill: 14 & 15. Car: 2<sup>d</sup>) „ Where Committees of —  
 „ a Lunatick sue for any Thing in the Right of the Lunatick, in such —  
 „ Case the Committee as well as the Lunatick is made a Party, „.

And in (May 27. Cox vs Dawson) it is expressly laid down that —  
 „ Actions ought to be in the Lunatick's Name, „. Suffice these —  
 Authorities to shew by Analogy and Principle, that all Acts —  
 of Royalty during the Regency should be in the King's Name

It is impossible to bring the Similitude of the Crown with —  
 common Inheritances into such a strait Parity; that they shall —  
 precisely tally in every Particular. — And there are in fact —  
 some such essential Differences between them, that do not even —  
 come within the same Principle. — For instance: the Produce of —  
 a private Inheritance, is intended for the Benefit of an —  
 Individual: and it is indifferant to the State, to whom such —  
 Produce is actually applied. Therefore it shall during the —  
 Lunacy of the Possessor, be saved for his next of kin. — But the

Revenues of the Crown are granted for the Exigencies of the State, — and whilst the Wheels and Machinery of Government is in Motion, they cannot be withheld. — The civil List Revenue and other — Emoluments of the Crown, are such only, as have thro' the Succession of Ages and Courts, been fixed and settled by the Nation, as necessary and requisite for the civil Purposes of a limited Monarchy. To keep <sup>up</sup> however the Parity, as nearly as may be, a limited Sum is directed quarterly to be paid, to her Majesty out of the civil List Revenue, the Savings of which may be accumulated for the Purposes supposed by the Law in private Cases. — It will be for the Consideration of both Houses of Parliament to increase such Allowance in their Discretion. — The repeated Liquidations of the Debts and Arrears upon the civil List Revenues during the present Reign, prove that the Fund is by no Means too ample for the necessary Purposes of our Government.

One other essential Difference is, that the actual legal Estate of Freehold is not in the Cases of private Inheritances, vested in the Committee of the Estate of the Lunatick, but he shall act only as — Steward (Vern: 262. *Michas Foster v Merchant*), Committee of a  
 „ Lunatick cannot make Leases, nor any ways incumber the Lunatick's  
 „ Estate without special Order of this Court, where the Profits are not  
 „ sufficient to maintain the Lunatick: nor shall any Allowance for  
 „ Improvements or Buildings on the Lunatick's Estates be made him;

But in the Case of the Crown, the actual Exercise of the Royal Prerogative, which is appendant to and inherent in the Inheritance of the Crown, must be actually vested in and be at the free and uncontrouled Power of the Person in whom the supreme executive Power of Government is seated, for the necessary Emergencies of the State. For no Person can deny, that the Suspension or Extinction of this Prerogative and Power will alter and change the present constitutional Form of Government. Mr. Justice Blackstone (1 Vol. p. 242) has unquestionably said: „ that if such a Power were „ vested in any domestic Tribunal there would soon be an End of „ the Constitution, by destroying the free Agency of one of the „ constituent Parts of the sovereign Legislative Power. „

In private Inheritances the Law goes to a general Principle, for the Advantage of the Inheritance, & even deviates from the general Rule. — So (Ley 27. Trin: 9 Jac: Blewitt's Case), „ Lord of a Manor „ being Lunatick, may by his Steward, whom before his Lunacy he „ had constituted for Life grant Copyhold Estates according to the „ Custom, whether for one Life in Possession and another in Reversion, „ So if we are to compare magna Parois: it must allowed, that the „ Heir apparent to the Crown freely elected by the Majority of the „ Members of both Houses of Parliament, to exercise the executive „ Power of Government, during the temporary Illness of the Sovereign „ certainly must have more Power and Authority over the great

Offices and Employments of the State, than a Steward over the Copyholders of a Manor: and the filling in the Manner directed and required by the Constitution the great Offices and Employments of the State, is certainly of more import and consequence to the Nation than the Renewal of a Copyholder's Tenure is to a private Inheritance.

We have before seen, that the Produce of a Lunatick's Inheritance, was intended by the Law to form a Provision during his Lunacy for himself and Family. — Upon similar Principles, is the Jointure of her Majesty made to commence from the unhappy Day of his Majesty's Indisposition: and as the younger Branches of the Royal Family are to be provided for by Parliament: so whenever a Parliament with a Head shall be convened: they shall immediately make Provisions for them according to their several and respective Situations and Ages.

The anticipated commencement of a Wife's Jointure upon the Incapacity of the Husband is an Idea consonant with the Principles and Decisions of our Law (Pl. in Parlm<sup>t</sup>. Edw: 1 & Co: Lit: 133). — Margariete Mose, the Wife of Thomas de Weyland, who was abjured the Realm for Felony, was admitted into her Life Estate (or Jointure) during her Husband's Life from the Time of his legal Incapacity. This Determination was perhaps the most solemn that ever was made, being an Application to Parliament, who before they would

determine the Point had all the Judges and Serjeants and Counsellors—  
summoned before the King in Council to certify to His Majesty, what  
had before been determined in the like Cases.

It will be useless to attempt to prove, that no Case precisely  
similar to the present, has ever occurred in the Annals of our  
History.— But if it had, and any joint or limited Regency had  
been appointed under it, it will not be too much to assert, that  
such an Appointment, would have been brought about by the  
Lower Arts and Contivance of some Party or Faction, who had  
other Views, than the Welfare and Perfection of the Constitution  
at Heart. And as Parliament by their frequent Amendments  
and Repeals of the Laws, shew that they are bound by no—  
Precedent, so neither can the present Convention of the Houses  
of Peers and Commons be tied down to Precedent, (if any did  
exist). But the Nation expects and demands of them, that  
they now determine, what the Spirit and Intention of our  
Laws and Constitution shall direct: and that has been my  
Humble Attempt to point out.

