

## The Earl of Clarendon to William Pym

*Introduction: In 1765, a London newspaper printed four letters on the Stamp Act crisis by an author writing under the pseudonym of William Pym. (The writer had actually mistaken John Pym's first name for William.) Pym's second letter was subsequently reprinted in a Boston newspaper. Adams, writing as the Earl of Clarendon, responded to Pym in three installments between January 13 and 27, 1766.*

*The historical John Pym and the Earl of Clarendon (Edward Hyde) were two of the most respected statesmen of seventeenth-century England. Pym the parliamentarian and Clarendon the royal advisor were rival advocates of mixed government and of drawing the English monarchy into a constitutional balance with Parliament. Among the many arguments advanced by the new Pym in defense of the Stamp Act, the most provocative was his claim that the British Parliament had the authority and power to abrogate the colonial charters whenever it chose to do so.*

*Adams's response ranks among the most elegant and moving pieces that he ever wrote. He clearly enjoyed the fiction of writing an other-worldly debate between these two great statesmen of the English Civil War. His prose crackles with sarcasm as he mocks Pym for his apostacy from the principles of revolutionary republicanism. The theme of Clarendon's first letter is the unconstitutionality of juryless courts and taxation without consent. The second letter is a stirring defense of the spiritedness of American liberty and virtue against the doctrine of passive obedience. The third letter, one of the most literary pieces that Adams ever wrote, is a systematic explication of the "essentials and fundamentals" of the British constitution.*

*13 January, 1766*

**No. i**

**Sir,—**

The revolution which one century has produced in your opinions and principles is not quite so surprising to me as it seems to be to many others. You know very well, I had always a jealousy that your humanity was counterfeited, your ardor for liberty cankered with simulation, and your integrity problematical at least.

I must confess, however, that such a sudden transition from licentiousness to despotism, so entire a transformation from a fiery, furious declaimer against power, to an abject hireling of corruption, though it furnishes a clue to the labyrinth of your politics in 1641, gives me many painful reflections on the frailty, inconstancy, and depravity of the human race. These reflections, nevertheless, are greatly mollified, by the satisfaction I feel in finding your old friend and coadjutor, Mr. Hampden, unaltered and unalterable in the glorious cause of liberty and law. His inflexibility has confirmed the great esteem my Lord Falkland and I always had of his wisdom, magnanimity, and virtue; and we are both of us at present as well convinced of his excellency, as a subject and citizen, as we were

formerly of his amiable accomplishments in private life. But your apostasy has confirmed our belief of what was formerly suspected, namely,—your subornation of witnesses, your perjuries, briberies, and cruelties; and that though your cunning was exquisite enough to conceal your crimes from the public scrutiny, your heart was desperately wicked and depraved.

Can any thing less abominable have prompted you to commence an enemy to liberty,—an enemy to human nature? Can you recollect the complaints and clamors, which were sounded with such industry, and supported by such a profusion of learning in law and history, and such invincible reasoning, by yourself and your friends, against the Star-Chamber and High Commission, and yet remain an advocate for the newly-formed courts of admiralty in America? Can you recall to your memory the everlasting changes which were rung, by yourself and your party, against ship-money, and the other projects of that disgraceful reign, and on the consent of the subject as indispensably necessary to all taxations, aids, reliefs, talliages, subsidies, duties, &c., and yet contend for a taxation of more than five million subjects, not only without their consent, expressed or implied, but directly against their most explicit and determined declarations and remonstrances?

You, of all mankind, should have been the last to be hired by a minister to defend or excuse such taxes and such courts,—taxes more injurious and ruinous than Danegeld of old, which our countryman Speed says, “emptied the land of all the coin, the kingdom of her glory, the commons of their content, and the sovereign of his wonted respects and observance;”—courts which seem to have been framed in imitation of an ancient jurisdiction, at the bare mention of which I have often seen your eyes lighten, I mean the court of the masters of the king’s forfeitures. I cannot omit so fair an opportunity of repeating the history and unfolding the powers of that court, as it seems to have been the very antitype of the new courts of admiralty in America, and to have been created and erected with the same powers and for the same purposes. It was in the reign of King Henry VII. that a British Parliament was found to be so timid, or ignorant, or corrupt, as to pass an act, that justices of assize, as well as justices of peace, without any finding or presentment of twelve men, upon a bare information for the king, should have full power and authority to hear and determine, by their discretions, all offences against the form, ordinance, and effect of certain penal statutes. This unconstitutional act was passed in the eleventh year of that reign; and thus the commons were found to sacrifice that sacred pillar, that fundamental law, that everlasting monument of liberty, the Great Charter, in complaisance to the ravenous avarice of that monarch. In pursuance of this act, Sir Richard Empson and Edmund Dudley were made justices throughout England, and “masters of the king’s forfeitures.” The old sage, Coke, says, that act was against and in the face of that fundamental law, Magna Charta, and that it is incredible what oppressions and exactions were committed by Empson and Dudley upon this unjust and injurious act, shaking that fundamental law. “And that, in the first year of the reign of King Henry VIII. the Parliament recited that unconstitutional act, and declared it void.” And those two vile oppressors fell a sacrifice to the righteous indignation of an injured and exasperated nation. And he closes with an admonition, that the fearful end of these two oppressors should deter others from committing the like, and admonish parliaments that, instead of

this ordinary and precious trial, *per pares et per legem terrae*, they bring not in absolute and partial trials by discretion.

Give me leave, now, to ask you, Mr. Pym, what are the powers of the new courts of admiralty in America? Are the trials in these courts *per pares* or *per legem terrae*? Is there any grand jury there to find presentments or indictments? Is there any petit jury to try the fact, guilty or not? Is the trial *per legem terrae*, or by the institutes, digests, and codes and novels of the Roman law? Is there not a judge appointed, or to be appointed, over all America? Is not this a much more extensive jurisdiction than that of Empson and Dudley, as justices over all England? Will you say, that no Empsons and Dudleys will be sent to America? Perhaps not; but are not the jurisdiction and power given to the judges greater than that to those oppressors? Besides, how can you prove that no Empsons will be sent there? Pray, let me know, are not the forfeitures to be shared by the governors and the informers? Are we not to prophesy the future by the experience of the past? And have not many governors been seen in America whose avarice was at least as ravenous as that of Henry VII.? Have not many of their tools been as hungry, restless, insolent, and unrelenting as Empson and Dudley, in proportion to their power? Besides, are not the Americans at such a distance from their king, and the august council of the mother country, and, at the same time, so poor, as to render all redress of such insolence and rapacity impracticable?

If you consider the nature of these new American taxations, the temper and manners of the people in that country, their religious and civil principles; and if you recollect the real constitution of Great Britain, and the nature of the new courts of admiralty, you will not wonder at the spirit that has appeared in that country. Their resistance is founded in much better principles, and aims at much better ends, than I fear yours did in Charles's reign; though I own you were much nearer the truth and right of the cause then than now. And you know, if you had lived in America, and had not been much changed, you would have been the first to have taken arms against such a law, if no other kind of opposition would do. You would have torn up the foundations, and demolished the whole fabric of the government, rather than have submitted; and would have suffered democracy, aristocracy, monarchy, anarchy, any thing or nothing, to have arisen in its place.

You may, perhaps, wonder to hear such language as the foregoing from me, as I was always in an opposite faction to yours while we lived on earth. I will confess to you, that I am in many respects altered since my departure from the body; my principles in government were always the same, founded in law, liberty, justice, goodness, and truth; but in the application of those principles, I must confess, my veneration for certain churchmen, and my aspiring, ambitious temper, sometimes deceived me and led me astray. This was a source of remorse, at times, through my life; and, since my separation, and the sublimation of my faculties, and the purification of my temper, the detestation of some parts of my conduct has been greatly increased. But as these are subjects of very great importance, I shall make them the materials of a correspondence with you for some time to come.

Clarendon

20 January, 1766

No. ii

Sir,—

You and I have changed sides. As I told you in my last, I can account for your tergiversation, only on the supposition of the insincerity, baseness, and depravity of your heart. For my own part, as the change in me is not so great, neither is it so unaccountable. My education was in the law, the grounds of which were so riveted in me that no temptation could induce me, knowingly, to swerve from them. The sentiments, however, which I had imbibed in the course of my education from the sages of the law, were greatly confirmed in me by an accident that happened to me in my youth. This is an anecdote relative to my father and me which I presume you must have heard. A scene which will remain with indelible impressions on my soul throughout my duration. I was upon that circuit which led me down to my native county, and on a visit to my aged father, who gave me an invitation to take a walk with him in the field. I see the good old gentleman, even at this distance of time, and in his venerable countenance that parental affection to me, that zeal for the law, that fervent love of his country, that exalted piety to God and good-will to all mankind, which constituted his real character. “My son,” said he, “I am very old, and this will probably be the last time I shall ever see your face; your welfare is near my heart; the reputation you have in your profession for learning, probity, skill, and eloquence, will, in all probability, call you to manage the great concerns of this nation in parliament, and to counsel your king in some of the greatest offices of state; let me warn you against that ambition which I have often observed in men of your profession, which will sacrifice all to their own advancement; and I charge you, on a father’s blessing, never to forget this nation, nor to suffer the hope of honors or profits, nor the fear of menaces or punishments from the crown, to seduce you from the law, the constitution, and the real welfare and freedom of this people.” And these words were scarcely pronounced, before his zeal and concern were too great for his strength, and he fell upon the ground before me, never to rise more! His words sunk deep into my heart, and no temptation, no bias or prejudice, could ever obliterate them. And you, Mr. Pym, are one witness for me, that, although I was always of the royal party, and for avoiding violence and confusion, I never defended what could be proved to be real infringements on the constitution. While I sat in parliament with you, I was as heartily for rectifying those abuses, and for procuring still further security of freedom, as any of you; and after the restoration, when the nations were rushing into a delirium with loyalty, I was obliged, in order to preserve even the appearance of the constitution, to make a stand; and, afterwards, in the reign of my infamous and detestable, though royal son-in-law, James II., I chose to go into banishment, rather than renounce the religion and liberties of my country.

I have made these observations to excuse my conduct in those reigns, in some degree, though I must confess there were many parts of it which admit of no excuse at all. I suffered myself to be blindly attached to the king and some of his spiritual and temporal minions, particularly Laud and Strafford, in some instances, and to connive at their

villanous projects, against my principles in religion and government, and against the dying precepts of my father. Besides, my intimacy with that sort of company had gradually wrought into me too great a reverence for kingly and priestly power, and too much contempt of the body of the people, as well as too much virulence against many worthy patriots of your side of the question, with whom, if I had coöperated instead of assisting the court, perhaps all the confusions and bloodshed which followed might have been prevented, and all the nation's grievances redressed.

These reflections were a source of remorse at times, through my life; and since my departure from the earth I have revolved these things so often, and seen my errors so clearly, that were I to write a history of your opposition now, I should not entitle it a rebellion; nay, I should scarcely call the protectorate of Cromwell a usurpation.

With such principles as these, and divested as I am of all views and motives of ambition, as well as attachment to any party, you may depend upon it, the conduct of Barbadoes has given me great uneasiness. That island was settled in the Oliverian times by certain fugitives of the royal party, who were zealous advocates for passive obedience; and I suppose a remnant of the servile spirit of their ancestors and of that ruinous doctrine has prevailed on them to submit. I own it is a severe mortification to me to reflect that I ever acted in concert with a people with such sentiments, a people who were capable of so mean and meaching a desertion of the cause both of liberty and humanity.\* But the gallant struggle in St. Christopher's and on the continent of North America, is founded in principles so indisputable in the moral law, in the revealed law of God, in the true constitution of Britain, and in the most apparent welfare of the British nation, as well as of the whole body of the people in America, that it rejoices my very soul. When I see that worthy people, even in the reign of a wise and good king fettered, chained, and sacrificed by a few abandoned villains, whose lust of gain and power would, at any time, fasten them in the interest of France or Rome or hell, my resentment and indignation are unutterable.

If ever an infant country deserved to be cherished it is America. If ever any people merited honor and happiness they are her inhabitants. They are a people whom no character can flatter or transmit in any expressions equal to their merit and virtue; with the high sentiments of Romans, in the most prosperous and virtuous times of that commonwealth, they have the tender feelings of humanity and the noble benevolence of Christians; they have the most habitual, radical sense of liberty, and the highest reverence for virtue; they are descended from a race of heroes, who, placing their confidence in Providence alone, set the seas and skies, monsters and savages, tyrants and devils, at defiance for the sake of religion and liberty.

And the present generation have shown themselves worthy of their ancestors. Those cruel engines, fabricated by a British minister, for battering down all their rights and privileges, instead of breaking their courage and causing despondency, as might have been expected in their situation, have raised and spread through the whole continent a spirit that will be recorded to their honor with all future ages. In every colony, from Georgia to New Hampshire inclusively, the executioners of their condemnation have been compelled by

the unconquerable and irresistible vengeance of the people to renounce their offices. Such and so universal has been the resentment, that every man who has dared to speak in favor of them, or to soften the detestation in which they are held, how great soever his character had been before, or whatever had been his fortune, connections, and influence, has been seen to sink into universal contempt and ignominy. The people, even to the lowest ranks, have become more attentive to their liberties, more inquisitive about them, and more determined to defend them, than they were ever before known or had occasion to be; innumerable have been the monuments of wit, humor, sense, learning, spirit, patriotism, and heroism, erected in the several provinces in the course of this year. Their counties, towns, and even private clubs and sodalities have voted and determined; their merchants have agreed to sacrifice even their bread to the cause of liberty; their legislatures have resolved; the united colonies have remonstrated; the presses have everywhere groaned; and the pulpits have thundered; and such of the crown officers as have wished to see them enslaved, have everywhere trembled, and all their little tools and creatures been afraid to speak and ashamed to be seen. Yet this is the people, Mr. Pym, on whom you are contributing, for paltry hire, to rivet and confirm everlasting oppression.

Clarendon

*27 January, 1766*

**No. iii**

**Sir,—**

You are pleased to charge the colonists with ignorance of the British constitution; but let me tell you there is not ever a son of liberty among them who has not manifested a deeper knowledge of it, and a warmer attachment to it, than appears in any of your late writings; they know the true constitution and all the resources of liberty in it, as well as in the law of nature, which is one principal foundation of it, and in the temper and character of the people much better than you, if we judge by your late impudent pieces, or than your patron and master, if we judge by his late conduct.

The people in America have discovered the most accurate judgment about the real constitution, I say, by their whole behavior, excepting the excesses of a few, who took advantage of the general enthusiasm to perpetrate their ill designs; though there has been great inquiry and some apparent puzzle among them about a formal, logical, technical definition of it. Some have defined it to be the practice of parliament; others, the judgments and precedents of the king's courts; but either of these definitions would make it a constitution of wind and weather, because the parliaments have sometimes voted the king absolute, and the judges have sometimes adjudged him to be so. Some have called it custom, but this is as fluctuating and variable as the other. Some have called it the most perfect combination of human powers in society which finite wisdom has yet contrived and reduced to practice for the preservation of liberty and the production of happiness. This is rather a character of the constitution and a just observation concerning it, than a regular definition of it, and leaves us still to dispute what it is. Some have said that the

whole body of the laws, others that king, lords, and commons, make the constitution. There has also been much inquiry and dispute about the essentials and fundamentals of the constitution, and many definitions and descriptions have been attempted; but there seems to be nothing satisfactory to a rational mind in any of these definitions; yet I cannot say that I am at a loss about any man's meaning when he speaks of the British constitution or the essentials and fundamentals of it.

What do we mean when we talk of the constitution of the human body? what by a strong and robust, or a weak and feeble constitution? Do we not mean certain contextures of the nerves, fibres, and muscles, or certain qualities of the blood and juices, as sily or watery, phlegmatic or fiery, acid or alkaline? We can never judge of any constitution without considering the end of it; and no judgment can be formed of the human constitution without considering it as productive of life or health or strength. The physician shall tell one man that certain kinds of exercise or diet or medicine are not adapted to his constitution, that is, not compatible with his health, which he would readily agree are the most productive of health in another. The patient's habit abounds with acid and acrimonious juices. Will the doctor order vinegar, lemon juice, barberries, and cranberries, to work a cure? These would be unconstitutional remedies, calculated to increase the evil which arose from the want of a balance between the acid and alkaline ingredients in his composition. If the patient's nerves are overbraced, will the doctor advise to jesuits'-bark? There is a certain quantity of exercise, diet, and medicine, best adapted to every man's constitution, which will keep him in the best health and spirits, and contribute the most to the prolongation of his life. These determinate quantities are not perhaps known to him or any other person; but here lies the proper province of the physician, to study his constitution and give him the best advice what and how much he may eat and drink; when and how long he shall sleep; how far he may walk or ride in a day; what air and weather he may improve for this purpose; when he shall take physic, and of what sort it shall be, in order to preserve and perfect his health and prolong his life.

But there are certain other parts of the body which the physician can, in no case, have any authority to destroy or deprave; which may properly be called *stamina vitae*, or essentials and fundamentals of the constitution; parts, without which, life itself cannot be preserved a moment. Annihilate the heart, lungs, brain, animal spirits, blood, any one of these, and life will depart at once. These may be strictly called fundamentals of the human constitution. Though the limbs may be all amputated, the eyes put out, and many other mutilations practised to impair the strength, activity, and other attributes of the man, and yet the essentials of life may remain unimpaired many years.

Similar observations may be made, with equal propriety, concerning every kind of machinery. A clock has also a constitution, that is a certain combination of weights, wheels, and levers, calculated for a certain use and end, the mensuration of time. Now, the constitution of a clock does not imply such a perfect constructure of movement as shall never go too fast or too slow, as shall never gain nor lose a second of time in a year or century. This is the proper business of Quare, Tomlinson, and Graham, to execute the workmanship like artists, and come as near to perfection, that is, as near to a perfect

mensuration of time, as the human eye and finger will allow. But yet there are certain parts of a clock, without which it will not go at all, and you can have from it no better account of the time of day than from the ore of gold, silver, brass, and iron, out of which it was wrought. These parts, therefore, are the essentials and fundamentals of a clock. Let us now inquire whether the same reasoning is not applicable in all its parts to government. For government is a frame, a scheme, a system, a combination of powers for a certain end, namely,—the good of the whole community. The public good, the *salus populi*, is the professed end of all government, the most despotic as well as the most free. I shall enter into no examination which kind of government, whether either of the forms of the schools, or any mixture of them, is best calculated for this end. This is the proper inquiry of the founders of empires. I shall take for granted, what I am sure no Briton will controvert, namely,—that liberty is essential to the public good, the *salus populi*. And here lies the difference between the British constitution and other forms of government, namely, that liberty is its end, its use, its designation, drift, and scope, as much as grinding corn is the use of a mill, the transportation of burdens the end of a ship, the mensuration of time the scope of a watch, or life and health the designation of the human body.

Were I to define the British constitution, therefore, I should say, it is a limited monarchy, or a mixture of the three forms of government commonly known in the schools, reserving as much of the monarchical splendor, the aristocratical independency, and the democratical freedom, as are necessary that each of these powers may have a control, both in legislation and execution, over the other two, for the preservation of the subject's liberty.

According to this definition, the first grand division of constitutional powers is into those of legislation and those of execution. In the power of legislation, the king, lords, commons, and people are to be considered as essential and fundamental parts of the constitution. I distinguish between the house of commons and the people who depute them; because there is in nature and fact a real difference, and these last have as important a department in the constitution as the former—I mean the power of election. The constitution is not grounded on “the enormous faith of millions made for one.” It stands not on the supposition, that kings are the favorites of heaven, that their power is more divine than the power of the people, and unlimited but by their own will and discretion. It is not built on the doctrine, that a few nobles or rich commons have a right to inherit the earth, and all the blessings and pleasures of it; and that the multitude, the million, the populace, the vulgar, the mob, the herd, and the rabble, as the great always delight to call them, have no rights at all, and were made only for their use, to be robbed and butchered at their pleasure. No, it stands upon this principle, that the meanest and lowest of the people are by the unalterable, indefeasible laws of God and nature, as well entitled to the benefit of the air to breathe, light to see, food to eat, and clothes to wear, as the nobles or the king. All men are born equal; and the drift of the British constitution is to preserve as much of this equality as is compatible with the people's security against foreign invasions and domestic usurpation. It is upon these fundamental principles that popular power was placed, as essential, in the constitution of the legislature; and the constitution would be as complete without a kingly as without a popular power. This



popular power, however, when the numbers grew large, became impracticable to be exercised by the universal and immediate suffrage of the people; and this impracticability has introduced from the feudal system an expedient which we call representation. This expedient is only an equivalent for the suffrage of the whole people in the common management of public concerns. It is in reality nothing more than this, the people choose attorneys to vote for them in the great council of the nation, reserving always the fundamentals of the government, reserving also a right to give their attorneys instructions how to vote, and a right at certain, stated intervals, of choosing a-new; discarding an old attorney, and choosing a wiser and better. And it is this reservation of fundamentals, of the right of giving instructions, and of new elections, which creates a popular check upon the whole government which alone secures the constitution from becoming an aristocracy, or a mixture of monarchy and aristocracy only.

The other grand division of power is that of execution. And here the king is, by the constitution, supreme executor of the laws, and is always present, in person or by his judges, in his courts, distributing justice among the people. But the executive branch of the constitution, as far as respects the administration of justice, has in it a mixture of popular power too. The judges answer to questions of fact as well as law; being few, they might be easily corrupted; being commonly rich and great, they might learn to despise the common people, and forget the feelings of humanity, and then the subject's liberty and security would be lost. But by the British constitution, *ad quaestionem facti respondent juratores*,—the jurors answer to the question of fact. In this manner, the subject is guarded in the execution of the laws. The people choose a grand jury, to make inquiry and presentment of crimes. Twelve of these must agree in finding the bill. And the petit jury must try the same fact over again, and find the person guilty, before he can be punished. Innocence, therefore, is so well protected in this wise constitution, that no man can be punished till twenty-four of his neighbors have said upon oath that he is guilty. So it is also in the trial of causes between party and party. No man's property or liberty can be taken from him till twelve men in his neighborhood have said upon oath, that by laws of his own making it ought to be taken away, that is, that the facts are such as to fall within such laws.

Thus, it seems to appear, that two branches of popular power, voting for members of the house of commons, and trials by juries, the one in the legislative and the other in the executive part of the constitution, are as essential and fundamental to the great end of it, the preservation of the subject's liberty, to preserve the balance and mixture of the government, and to prevent its running into an oligarchy or aristocracy, as the lords and commons are to prevent its becoming an absolute monarchy. These two popular powers, therefore, are the heart and lungs, the mainspring and the centre wheel, and without them the body must die, the watch must run down, the government must become arbitrary, and this our law books have settled to be the death of the laws and constitution. In these two powers consist wholly the liberty and security of the people. They have no other fortification against wanton, cruel power; no other indemnification against being ridden like horses, fleeced like sheep, worked like cattle, and fed and clothed like swine and hounds; no other defence against fines, imprisonments, whipping-posts, gibbets, bastinadoes, and racks. This is that constitution which has prevailed in Britain from an

immense antiquity. It prevailed, and the house of commons and trials by jury made a part of it, in Saxon times, as may be abundantly proved by many monuments still remaining in the Saxon language. That constitution which has been for so long a time the envy and admiration of surrounding nations; which has been no less than five and fifty times since the Norman conquest, attacked in parliament, and attempted to be altered, but without success; which has been so often defended by the people of England, at the expense of oceans of their blood; and which, coöperating with the invincible spirit of liberty inspired by it into the people, has never failed to work the ruin of the authors of all settled attempts to destroy it.

What a fine reflection and consolation is it for a man, that he can be subjected to no laws which he does not make himself, or constitute some of his friends to make for him,—his father, brother, neighbor, friend, a man of his own rank, nearly of his own education, fortune, habits, passions, prejudices, one whose life and fortune and liberty are to be affected, like those of his constituents, by the laws he shall consent to for himself and them! What a satisfaction is it to reflect, that he can lie under the imputation of no guilt, be subjected to no punishment, lose none of his property, or the necessaries, conveniences, or ornaments of life, which indulgent Providence has showered around him, but by the judgment of his peers, his equals, his neighbors, men who know him and to whom he is known, who have no end to serve by punishing him, who wish to find him innocent, if charged with a crime, and are indifferent on which side the truth lies, if he disputes with his neighbor!

Your writings, Mr. Pym, have lately furnished abundant proofs that the infernal regions have taken from you all your shame, sense, conscience, and humanity; otherwise I would appeal to them, who has discovered the most ignorance of the British constitution,—you who are for exploding the whole system of popular power with regard to the Americans, or they who are determined to stand by it, in both its branches, with their lives and fortunes.

Clarendon