LETTERS

ADDRESSED

TO THE PEOPLE OF THE CANADAS

AND

BRITISH NORTH AMERICA,

ON

ELECTIVE INSTITUTIONS.

BY AN EAST ANGLIAN.

COBOURG:

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1835.

ELECTIVE INSTITUTIONS.

LETTER I.

To the People of the Canadas and British North America.

"I particularly recommend to you to explain that this province is singularly blessed, not with a mutilated constitution, but with a constitution which has stood the test of experience, and is THE VERY IMAGE AND TRANSCRIPT OF THAT OF GREAT BRITAIN."—Governor Simcoe's Speech upon closing the first session of provincial parliament assembled under the Constitutional Act.

FRIENDS AND FELLOWCOUNTRYMEN,

That we are British subjects is our proud boast. British Institutions have been the admiration of every age and are of every country, as being favorable to the political, civil, and religious liberty of the people. They secure freedom of sentiment to every man and permits the right publicly to discuss all political subjects, whether they have relation to institutions of government or its administration. When they are held in veneration by a people, it is often as dangerous to attack such institutions as it is difficult to dispel any prejudices in their favor. All history shows, that, whatever institutions may have been by conquest or otherwise engrafted on those which were earliest constituted in a country, these early institutions will ever

after more or less prevail. The more ancient, the more sacred they are held. In young countries like these in British North America, it is the duty of every able and good man freely, fearlessly, and publicly to express his sentiments on such institutions, more especially when they and any portion of them are declared defective, if not noxious, by a large majority of the people. They must bear in mind, these institutions are not merely for the day or for the age; once planted on our virgin soil, beneath their wide spreading branches our children for many a generation must sit with freedom, peace, and happiness or with slavery, anarchy, and misery for their portion as they will inherit from their fathers. Whatever ameliorations have been or may be going on in them, British institutions are held to be next to perfect; so that the nearer we can assimulate our own to them to the greater perfection we shall attain. Though we are a portion of the British people, who have immigrated hither, yet the state of our society is not the same as in the British isles; and though their institutions are fit for the welfare and good government of their people, yet they may not be applicable and suitable to these provinces. Our society is yet infantile and young. Those principles on which were based institutions in the earlier ages of English society and on which now stands that stately fabric the English constitution, it is not unreasonable to suppose are more applicable to our state of society and would produce like effects to our posterity, than those which are now applied to govern a wealthy, refined, and intelligent nation and a vast commercial empire. It may be urged, that which suits the genius of one age may be incompatible with that of another; consequently precedent alone may be fallacious. But when a large majority of a people consider certain measures as absolutely necessary for their welfare and good government or for national reformation, and these measures are supported by the experience and authority of antiquity, they are strongly substantiated and powerfully enforced.

I am about to express my sentiments on the institutions now established for the colonial government of these provinces; and whatever may be my failings I entreat you to believe my intentions are good. I therefore take the liberty and shall avail myself of an opportunity to me kindly permitted to address to you a series of letters on a subject vitally affecting ourselves and our posterity, To some it may or may not be new while others may be prepossessed for or against it. Though my language should be deemed strong or even severe, I will not fearfully shrink nor willfully offend. I claim a fair hearing.

I shall first endeavor to establish that, if the Canadian Constitution be an exact model or "the very image and transcript" of the English Constitution in theory, in practise the Canadian Constitution is not nor cannot be the same; and if it be not an exact model or "the very image and transcript" the theory of the Canadian Constitution is not now in practise. The former part of this proposition I prove more from a regard to popular prejudices than a belief that any man conversant with the subject can question its truth. It is the interest of some to impress on us the delusion that we are still as if we lived in the British isles, within the pale of the English constitution, enjoying all rights and privileges which it confers. Yet all must well know that the passage of the Reform Bill, admitted by all to be a constitutional measure, had no effect whatever on us. In the lower province, the laws relative to property are wholly unknown to the English constitution; and in this province laws are still in force which have been long since repealed in England. When it suits the purpose of some persons, these or those principles are unconstitutional and their advocates are republicans, rebels, and revolutionists. But what constitution is meant no one knows. It is their intention to use the word in a vague and unmeaning sense to excite terror. The form of the legislature we usually mean by the constitution of a country. The main principle on which the English constitution is based is that the

legislative power belongs to parliament, which can amend or alter the constitution itself. The constitution of the Canadas is an act of the imperial parliament which can alone amend or alter it. This act establishes a Legislature in these provinces and permits the exercise of suspended powers inherent in the people as British subjects. That this Legislature cannot be like that of England must be evident to all, since we have not the elements in our society wherewith such a legislature can be formed. We have no aristocracy. We have no "timber" to build an aristocracy. We cannot have a House of Peers. Nor can we have a constitution in practise like the English constitution though they were like in theory.

I will not ironically say there is division in the legislative powers in both Canadas as well as in the colonies of British North America generally; but I must say that the legislative power by the constitutional act is divided. With the Executive power I have nothing at present to do. We all know the House of Assembly is elected by the people. This is according to the theory and practise of the Canadian constitution. The second branch of the legislature is called the Legislative Council. What is its theory and practise or how is it constituted and elected? The framers of the constitutional act never intended that, the division of the legislative power should be accompanied by an actual division of the people They could never have intended to cut up society into hostile political parties; and that only one party be in the Legislative Council and only another in the Assembly. Yet, that there is such an actual division of the people wherever a Legislative Council exists, whither; shall I flee to avoid the proof? Not to Lower Canada, for it is there as well as here; nor to Prince Edwards, New Brunswick, Novascotia, Newfoundland, for it is there as well as at the Cape of Good Hope and Australasia. Such Legislative Councils have not "the magic of dignity" to give weight to their resolutions; they have no claim to the respect or reverence of the people. Hereditary titles and personal

honors may give weight and power to a legislative body; but what weight and power can be in a few tinkers, tailors, soldiers, sailors, &c. &c.? To whom better can we confide the exercise of a discretionary power in the making of our laws? Reflect what strength is needed to mend a kettle and what virtue to darn a hole in a pair of inexpressibles; and then reflect what wisdom is needed to march a regiment and what honesty to steer a rich merchantman and you must perceive we have all the materials for an aristocracy, which are all artfully blended together in our legislative Councils. Such a body must be well calculated to produce an equilibrium in the branches of the legislature. If it be the fulcrum of the lever it must be like that on which Archimedes would have moved the earth but if placed in either scale it will be found wanting in something more than weight. It was the intention of those who framed our Constitutional Act, that this Legislative Council should bear the same relation to each of the other branches of the Legislature as the House of Peers in England. But in practise this Council must be a mere creature of the Crown during whose pleasure its members hold their office. Deriving their power, influence, and honor if there be any from such a source, and holding them by such a precarious tenure, all their acts and deliberations must be conformable with the wishes and views of him whose breath gave them being; for if they are not, they render themselves liable to incur his displeasure and to forfeit their office. Not so the House of Lords; who, without apprehension of being divested of their office, fearlessly repel the aggressions of the crown and preserve their prerogatives while they watch over the rights and liberties of the people. While the House of Peers is a seperate, distinct, and independant branch of the legislature, united with the other branches it may be called omnipotent, and disunited it is powerless; the Legislative Council is dependant on the Crown and independant of the Commons; it is inseparable from the Crown and

separate and distinct from the commons; its interests are to subserve themselves and the Crown and are hostile to those of the people. I have used the word Crown; but I would not wish you to believe that the best of sovereigns would ever have such a body as our Legislative Councils subservient to his Crown. It were well that the King can do no wrong, could he be charged with the mal-practises of such a body, which feed on the life blood, oppose the welfare, and obstruct the good government of his loyal subjects. Could the truth, from the distance of a thousand leagues, reach his royal ear, it would not be long ere such noxious creatures were swept from existence. Could British subjects be made traitors, could their loyalty to the best of sovereigns be shaken, it would be by the acts of such a worthless, tyrannical and irresponsible body as our Legislative Councils. It was never the intention of those who framed the Canadian constitution that one of its branches should be directly or indirectly self elective. I will not dwell upon the declaration of members in both houses of imperial parliament that the Legislative Councils of the Canadas are in practise self elective. I will not urge that A plays into the hand of B, B. into the hand of C, C. into the hand of D, and D. into the hand of A again an endless and profitable game. It is a well established principle that were even the number of the House of Peers to be limited it would confer on that house the power to elect its own members. What then must it be in these colonies where there are but few members and still fewer attend who recommend to the Crown, *alias* the red-tapists of Downing street, their brothers, sisters, cousins, and connexions whom they think fit to have so high an honor as to become their pliant tools. Had they not ever been strenuously opposed, by a majority of the people, ere this probably an ignorant, haughty, tyrannical, and purse-proud aristocracy might have been created by these Legislative Councils. Could public plunder have made them, they

must have been wise, virtuous, wealthy, and honorable. Like such a body in New South Wales, were it their interest, they would plunder thieves. But it may be their apology that only to ape an aristocracy, without personal honors or hereditary titles, it is essentially necessary that they have landed estates. Hence it is, I presume, according to Mr. Ellice, late Minister at War, "it was the fashion in Upper Canada for every counsellor to get a grant of from 5,000 to 20,000 acres, to the great detriment of the country and the great nuisance of the inhabitants around." Nor are such grants in fashion only in this province; they have been extended to the same bodies more or less in all British North America. But when it is considered how valueless land is thought to be in this part of the world, where it is covered with forests and inhabited with wild beasts and not with baronial castles and hereditary bondsmen, it can be no wonder that something more must be requisite to ape an aristocracy than merely wild lands. It can be nothing less than free access to the casual and territorial revenue. Without the consent of the local legislatures or imperial parliament enormous sums are annually given to the members of these Legislative Councils. For proof, to the gentlemen whom I shall select, I do not wish you to entertain as individuals the least disrespect. They who have pocketted the pounds, no doubt their consciences are easy. In 1833 the receipts of the Casual and Territorial Revenue in the funds denominated letter D or Canada Company's instalments, and K or King's Rights, were £56,230. The expenditure from these funds was £34,682, leaving a balance of £21,548. I am not about to tell you this expenditure has been appropriated to making and improving roads with the consent of parliament; but without the consent of any parliament has been chiefly given to pensioners, placemen, and Legislative Councillors, of course justly for services. A Catholic bishop, in these hard times for Catholics, may deserve £500 and his Clergy £1000,—

more especially when out of the same fund £3,500 is paid in aid of the support of the ministers of the Church of England in this province and £1611 for the support of Methodist missionaries. The sum of £180 was paid the same year for house rent for the Lord bishop of Quebec! But it is not probable that a Catholic Bishop or an Archdeacon can sit in the Legislative Council. Not for being president of the Executive Council, for which he receives £111, but for being president of the general board of Education the Archdeacon has out of these uncontrolled funds £135. From the same funds a pension of £1,200 was paid to Sir W. Campbell; £1000 to Hon. W. D. Powell; £450 to Hon. J. M'Gill; £500 to Hon. J. Wells as Treasurer of the U. C. College; £200 to Hon. D. W. Smith, late Surveyor General; and £580 to Hon. W. Allen, as Commissioner of Canada Company. In 1834, the receipts in these funds were £51,486 and the expenditure £28,916, leaving a balance of £22,570; which is about £1000 more than the former year and thus the whole receipts were nearly expended. Of this sum, Hon. P. Robinson's salary for two years as Surveyor General of Woods was £1000 and as Commissioner of Crown Lands £1000. Hon. J. B. Robinson, to make up his salary as Speaker of the Legislative Council, £450. The other Honorables received the same this year as the year before. From 1824 to 1833 the Hon. Dr. J. Strachan received out of the Clergy Reserves fund £3,553. It must be borne in mind that all these sums have been paid without the consent of either the imperial or the local parliament; and also, that besides these sums, large salaries are annually granted to the same gentlemen or their families by the local legislature. With these salaries I have nothing to do; but whether the other sums be legally or illegally granted what are those who receive them but public paupers or public plunderers? I would not have you believe that the framers of our constitutional act ever intended such men to be members—the chief and only active mem-

bers—of the Upper House of our legislature. I would not have you believe that this act authorise the payment to these men such enormous sums for secret or special services or rather to enable them to ape an aristocracy. These monies must either belong to the people of Britain, or the people of Canada; if to the former they can be only granted by imperial parliament, and if to the latter, to whom I am of opinion they were conceded by imperial acts, they can be only granted by the local legislature. But one branch of this legislature get these sums for its own members without the consent of the other branch, which represents the people. Whether this be the theory of our constitution you can judge; but I will not do you the injustice to believe that you will admit that British statesmen ever framed a constitution for British subjects with such a theory whatever may be its corrupt and illegal practise. Nor will you easily believe that these statesmen ever intended to blend together in one body, to have a discretionary power in the making of laws for British subjects, the executive, legislative, judicial, and ecclesiastical power. What is this but the climax of despotism? The Legislative Council is composed of the members of the Executive Council, chief justice and judges, archdeacon and bishop, and tinkers, tailors, soldiers, sailors, &c. &c., all endowed intuitively with a deep and thorough knowledge of the science of government. The three nominal branches of the Legislature is thus virtually reduced to two; the combined and preponderating influence of the Councils and Head of Executive renders that of the House of Assembly as a legislative body nugatory and null. If this were intended to be an exact model, or "the very image and transcript," as we are told, of the constitution of Great Britain, it has proved, after nearly half a century's practise, a most miserable and clumsy piece of machinery. It is then no wonder that there is no harmony among the several branches of our legislature; more especially between the Legislative Council and the House of Assembly. How much was lately

feared in the mother country from the collision of the peers and commons, while the continual clashing of the branches of the colonial legislatures excites no fear whatever. Not only is our society cut up into hostile political parties, only one of which shall be in the Legislative Council and only another in the Assembly; but, consequently, measures which are essential to our well being and good government are repeatedly rejected, and in some instances out of pure party spite. This is not merely the case in this colony but every colony in which a Legislative Council exists. The following table demonstrates the harmony which subsists in these Legislative bodies in both Canadas under the present working of our constitution :—

	Bills burked in L. Canada L. Council.	*Bills burked in U. Canada L. Council.*
1824	12	11
1825	12	8
1826	19	10
1827	No session.	15
1828 }	16	12
1829 }		22
1830	16	28
1831	11	7
1832	14	14
1833	16	9
1834	25	19
1835	(All, but one.)	40
In 9 Sessions	141	In 12 Sessions 195
Yearly	15...6	16...3

Submitting this respectfully to your serious consideration,

I remain,

Your humble servant,

AN EAST ANGLIAN.

LETTER II.

To the People of the Canadas and British North America.

"You ought to consider that you have but a third share in the Legislative power of the government; and ought not to take all upon you, nor be so peremptory. You ought to let the COUNCIL have a share. THEY ARE IN THE NATURE OF THE HOUSE OF LORDS OR UPPER HOUSE; but you seem to take the whole power in your hands, and set up for every thing. You have sat a long time to little purpose and have been a great charge to the country. Ten shillings a day is a large allowance and you punctually exact it. You have been always forward enough to pull down the fees of other ministers in the government, why did you not think it expedient to correct your own to a more moderate allowance?"—Tyrant and Governor Fletcher's Speech to House of Assembly, New York, September, 1693.

FRIENDS AND FELLOWCOUNTRYMEN,

In my former communication I have endeavored to show and flatter myself I have shown to your entire satisfaction and conviction, that if the Canadian constitution be an exact model or "the very image and transcript," of the English constitution in theory, the Canadian constitution is not nor cannot be the same in practise; and if it be not an exact model or "the very image and transcript," the theory of the Canadian constitution is not now in practise. I farther maintain that the present practise of the Canadian constitution cannot promote the welfare, peace, and happiness, and good government of the people; forasmuch one branch of the legislature is tyrannical, unconstitutional, corrupt,

anti-British, unpopular, odious, factious, and obstructive of colonization and useful legislation. It had been well had the British government profitted by experience and not have again attempted to impose on British colonists a form of government which was noxious and resisted two centuries and a half ago. Then as now there might be found in North American colonies a Council, who "are in the nature of the House of Lords or upper house;" who are in continual collision with the representatives of the people; and who are a "paltry screen" between them and a tyrannical governor and a corrupt administration. Though there have been many Fletchers since 1693, yet comparatively few Councils have been tolerated; it was reserved for the genius of a Pitt to revive and enforce them on British colonists. They have been again patiently tried in these provinces, and, first, they have been found to be tyrannical.

The concentrating of the executive, the legislative, the judicial, and the ecclesiastical powers of government in the hands of a few, a mere family compact, constitutes despotism and tyranny. That these powers are concentrated in our Legislative Councils it is not difficult to prove. A newly-arrived Governor, presumed to be ignorant of the country, and the wants and wishes of its people, usually knowing but little of the business of government, and having been appointed merely because he wants to fill a lucrative situation, must resort to a Council to advise him and to enlighten his ignorance. This body is called the Executive Council and is intended to mimic the privy council in England, but with it bears not in reality any analogy; for this is responsible and changes with the current of public opinion, but the Executive Council is a permanent, secret, and irresponsible body, and, though scarcely recognised by our constitution, is the actual administrative government of the provinces. If the Governor for the time being follow their council, he soon becomes their tool; but should he have sufficient

strength of mind to resist their cunning arts, he is quickly relieved from the burdens of his duties by the red-tape rulers of Downing-street. There is evidence that Governors have been advised by the Executive Council to act contrary to the clear meaning of despatches from the colonial office, which probably receives much of its information from them; and thus, in fact, they alone rob and rule the country. With the Legislative Council, one branch of the legislature, the Executive Council is not merely identical in feeling and interest but it is identical in persons. It administers the government and interferes with the whole business of Legislation; it executes the laws and helps to enact them; and the laws which it passes, it advises the Governor to accept or reject. Is this constitutional? The English constitution draws an impassible barrier between the executive and legislative powers; for if the Crown were allowed to take an active part in making laws, it would soon render useless the other two branches of the legislature, as to an extent they are in these provinces. These Councils, all the individuals in one having seats in the other, and may form a majority of its quorum, blend together the Executive and Legislative powers, which is the climax of despotism. Then again, judges and ecclesiastics are allowed seats in these Councils. In this Province, and it is well near the same in the lower, the Chief Justice is speaker of one and an Archdeacon is president of the other. When it is borne in mind the Executive Council, which in the lower province is the Court of Appeals, the highest Court of judicature in the country, has the power to advise the appointment of judges, commissioners of peace, sheriffs, peace clerks, coroners, and others, not only the judges take an active part in enacting laws which they will have to expound and execute, but the whole judicial power and patronage are in the hands of men who may make a majority of a quorum in one branch of the legislature. Is this constitutional? There is a maxim laid down by DeLolme who

well understood the English constitution "that the judicial authority ought never to reside in an independent body; still less in him who is the trustee of the executive power." Are the executive council the trustee of the Executive power? Are they an independent body? To whom are they responsible and in whom do the judicial authority reside if not directly or indirectly in them? Men, thus possessing the judicial power and patronage, are allowed to carry both with them into one branch of the legislature. What more is wanted to cap the climax of tyranny and despotism? Give this executive power to ecclesiastics! Though in the early ages of the Christian church the bishops were elected by the people and the clergy had no secular cares to engage their thoughts and attentions, it is now necessary, in this enlightened age, that an archdeacon should administer our government, should blend temporal with spiritual concerns, should be both executive and legislative councillor, and from the servant of the church and the people become the lord and ruler thereof, for the glory of God and the salvation of men. Then again, what are the other men who compose these councils but placemen and office-holders and servants of the people? Are they the most fit and proper persons to make laws? For whom will they legislate but for themselves, for their own interests, for their own aggrandizement, at the expense of the people, who have no check or control over them? Whence is their authority for their enormous salaries? Whence the source of their public plunder, in lands and money? The people or their representatives? Did they consent these men should divide among themselves the enormous sums I exposed in my last letter? Did they consent that these men should appropriate to themselves and family from one thousand to five and twenty thousand acres of wild lands? But these men are not the servants of the people, they are the tyrants, the lords, the gods of the people! Bow then down and place their heel on our necks or worship them! They

are not corrupt, though their bags are bursting with public plunder; they are not unpopular, though they are pronounced by the press and the people a nuisance; they are not odious, for Britons love tyrants and will be slaves; nor are they factious though they are arrayed continually against the people, their rights, liberties, and privileges. Against some popular measures it has been thought enough to pronounce them un-English or anti-British, but who will dare to say that the constitution and working of the executive and legislative councils is English or is British? Who will dare to say that bifarious body bears any analogy with any constituted body in Britain? The Scotch and Irish peers are *elective*; the English peers are hereditary; but this bifarious body are life legislators appointed by themselves in the name of the Crown. Excepting the bishops, formerly elected by the people, such creatures are altogether unknown in the mother country and they have always died miserably in her colonies. That system is too debasing which estimates a man by the qualities of his ancestors; hence we deem it more politic to dignify the poor and the obscure; and to prevent virtuous emulation, to hedge them round with barriers impassible by the rest of the community. Entrust the public wealth in the hands of such men and will they not make good use of it?

Nothing is more conducive to the prosperity, the intelligence, the security, the peace, and the happiness of a colony than the disposal of waste land for the removal of people, for the greatest progress of colonization. The executive council have the management, or rather mismanagement, of a very large portion of all the wild lands of the country, to the great detriment of its settlement and the great nuisance of the people. The elements of colonization are wild land and the removal of people. If there were no wild land, no people would remove; if no people would remove, wild land will be valueless. When wild land becomes private property it ceases to be an element of coloniza-

tion; and the motive for settling wild land, the prospect of obtaining a property in the land on the easiest possible terms, is removed. It is, therefore, a rule in the art of colonization, that those having power over wild land and seek to promote the removal of people, should never diminish that power by the disposal of wild land, except for the removal of people for the greatest progress of colonization. No doubt the executive councils and their adherents, ever boasting their anxiety to promote immigration to these provinces, have strictly observed this or like rule. It will however be found that these men have destroyed as much as they possibly could of the primary element of colonization, by getting to themselves the largest possible quantity of wild land for nothing or as bribes, which, being located throughout the country, that it may rise in value by the adjoining lands becoming settled, and thus taxing the labor of the settler, enhancing the price of wild land at the expense of the immigrant, and destroying the motive for removing to waste land, disperses the colonists over a vast wild and uncultivated tract, and thus prevents a combination of labor and an accumulation of capital, renders them inaccessible to a market, deprives them of mutual aid and support and many of the necessaries of life, and obstructs their moral, religious, and intellectual improvement. Not to notice the one-seventh of the wild lands, the whole of which a political church is ready to swallow up; nor of another seventh reserved to the Crown, the alledged proprietor of all, both of which reserves are in the midst of lands become private and improving property; and both of which, for a long time, like the dog in the manger, they would neither use themselves nor permit any one else to use; unconditional grants of vast tracts have been made to any one who could find favor with the executive council, or Governor, or minister of the day; and grants of smaller tracts, with or without conditions, to disbanded soldiers, navy and army pensioners, pauper immigrants, and to others able

or unable, willing or unwilling, to use the property; and without law, without system, and without check or control of the people, their property has been lavished with the greatest profusion, rendered insecure by unknown claimants, and the primary element of colonization, so essential to their present and future prosperity and happiness, has been wantonly wasted and destroyed. It may be now said that this maladministration of the wild lands has partly ceased; but are not its effects still felt? And more than that, the profusion of the executive formerly and its caution now must have an opposite tendency; and if its caution tends to increase immigration, and, as increasing, to decrease the proportion between the people and the land open to cultivation; and consequently lessen the proportion which land should bear to people so as to produce the highest profits and wages, which should be the immediate object of a colonizing government in exerting its power over wild lands. Thus the executive council, and adherents, by swallowing up the wild lands, have not only destroyed a large quantity of the primary element of colonization, but, by lowering high profits and wages, have weakened the strongest stimulus to immigration. What would be the use of their wild lands without cheap labor to cultivate them? They are the friends of immigration; but why? That the immigrant may buy or work their lands which they obtained for nothing; to make the immigrant their servant, serf, or slave. He goes, in consequence to the States; where profits and wages are high, and where land is cheap, plenty, and disposed of systematically by law.

At the conclusion of my last letter I showed that in Lower Canada no less than 141 bills, in nine years, passed by the House of Assembly had been rejected by the Legislative Council, which likewise so amended about 70 others, in the same period, as to cause their rejection by the Assembly. During twelve years, in this province, 195 bills have been rejected by the Legislative Council, which have amended between twenty

and thirty more so as to be rejected by the Assembly. Of ninetytwo bills originating in the legislature of Upper Canada the last session, thirty-four passed by the Assembly were rejected by the Legislative Council, whose amendments of two others caused them to be rejected by the Assembly; eight passed by the Council were rejected by the Assembly; and five passed by both houses were reserved for the signification of his Majesty's pleasure, that is, were obstructed by the executive council a portion of the legislative council. Thus out of 92 measures, forty-nine were obstructed in their passage, of which many were essentially necessary for the good government of the people. Taking an average of ten years, and both provinces, full twenty measures of a public nature, passed by the representatives of the people, in countries in which seldom more than fifty or sixty measures are brought forward, have been destroyed by the obstructive character of our Legislative Councils. They afford an admirable system of checks to legislation, never before practised by any government. A useful measure is passed by some three score of the representatives of the people; it is forced by the pressure without through a Council of a score individuals; a half dozen of whom in another council is compelled to pass it; and lastly, a single wisdom box three thousand miles off rejects it in the name of the Crown. This is legislation by a colonial *independent* parliament. In conclusion, it is vain to force upon us the blighting principles of aristocracy; in every colony in which they have been introduced, immediately their effects were felt and the people were sufficiently numerous and strong enough they have ever been successfully resisted and ultimately shaken off.

I remain,

Your humble servant,

AN EAST ANGLIAN.

LETTER III.

To the People of the Canadas and British North America.

"The synods and councils formed by the clergy afforded the first pat ern of elective and representative assemblies, which were adopted by the independent genius of the Germanic rac , and WHICH BEING PRESERVED FOR MANY AGES BY ENGLAND, PROMISE IN THE NINETEENTH CENTURY TO SPREAD OVER A LARGE PORTION OF MANKIND."—Sir J. Macintosh's Hist. England.

FRIENDS AND FELLOWCOUNTRYMEN,

In my first communication I have endeavored to show and flatter myself I have shown to your entire satisfaction and conviction that if the Canadian Constitution be an exact model or "the very image and transcript" of the English Constitution in theory the Canadian Constitution is not nor cannot be the same in practise ; and if it be not an exact model or "the very image and transcript," the theory of the Canadian Constitution is not now in practise. My second letter, I trust, established beyond a doubt, that the Legislative Council, one branch of our Legislature, is tyrannical, unconstitutional, corrupt, anti-British, unpopular, odious, factious, and obstructive of colonization and useful legislation. If these propositions are proved you must clearly perceive the consequence, which is loudly demanded by a very large majority of the people of the Canadas and by numerous bodies in other British colonies. There are it is true some difference of opinion as to the precise nature of the change, but all are agreed that some change must take place in the constitution of our Legislative Coun-

cil; which, I am of opinion with very many others, should be made ELECTIVE. I will therefore now prove that the elective principle has been at different periods applied to constitute all the several branches of the English legislature; and I.—That the kings of England before and after the conquest were elected. II.—That a portion of the House of Peers has been from time immemorial to this day elected. III.—That the House of Commons is and has ever been elected. This elective principle is the birthright of Englishmen and all within the pale of the English constitution. It is recognised by their most ancient laws; it was again confirmed at the passage of the Reform bill, and again at the passage of the Municipal Reform bill.

I shall not put any stress on the first proposition that the kings of England before and after the conquest were elected; but will give the proof and will add Paley's opinion on an elective monarchy. We perceive by the quotation at the head of this letter from that eminent historian, Sir J. Mackintosh, that the elective principle was very early adopted by the German nations. Their princes had no other title to their power but their free election by the people. Their conquests in Gaul, introduced the same principle into France, where, during the two first races of its kings, the monarch was elective. Shortly after the arrival of the Saxons in England, about A.D. 449, the kingdom was divided into seven parts or principalities, in each of which were a king and *commune concilium* or parliament; and a general assembly which deliberated on the common affairs of the whole heptarchy. There is evidence that the parliament of each principality had not only the power to elect their king but some instances are recorded in which they deposed him. Henry of Huntingdon, an early historian, records the fact that "King Sigebert, growing incorrigible, the great men and *the people* assembled together in the beginning of the second year of his reign, and *deposed him with unanimous consent.*" History testifies that the great Alfred

was elected king as well as several of his successors. Notwithstanding the Norman conqueror was an hereditary sovereign, at the head of a victorious army, and a conquered but a brave and warlike nation was at his feet and their government subverted, yet we have the authority of our best historians, that when William I. was crowned in Westminster Abbey A. D. 1066, he had sufficient respect of their rights and long established customs as to require "some of that appearance of assent from the people, *if not* ELECTION *by them, which are still vainly affected in such solemnities.*" Whoever has witnessed a British sovereign proclaimed must well know that this right of election by the people is still admitted in the shape of ceremony and a raree-show. In the charter of Stephen, he represents himself as "being by the grace of GOD and the consent of the clergy and people, *elected* king of England, &c." The coronation of John, who signed *magna charta*, was remarkable and I think must be admitted as conclusive proof. He was crowned at Westminster on the 23rd May, 1199, "after a speech from Archbishop Hubert, in which he announced to the audience that John was *elected* king, and laid it down as a known principle, that no one could be entitled by any previous circumstance to succeed to the crown, unless he was chosen to be king by the body of the nation (*ab universitate regni* ELECTUS) according to the examples of Saul and David. John, says Matthew Paris, assented, and the persons present cried out "Long live the king!" This speech of the Bishop in which he lays down as well known the principle for which I contend, must be admitted as decisive proof of my first proposition. Now we will hear what Paley has to say respecting an elective monarchy;—"An hereditary monarchy is universally to be preferred to an elective monarchy. The confession of every writer on the subject of civil government, the experience of ages, the example of Poland and of the papal dominions, seem to place this amongst the few indubitable maxims which the science of politics admits

of. A crown is too splendid a prize to be conferred upon merit: the passions or interests of the electors exclude all consideration of the qualities of the competitors. * * * Nor should it be forgotten, amongst the advantages of an hereditary monarchy, that, as plans of national improvement and reform are seldom brought to maturity by the exertions of a single reign, a nation cannot attain to the degree of prosperity and happiness to which it is capable of being carried, unless an uniformity of counsels, a consistency of public measures and designs, be continued through a succession of ages."

II.—That a portion of the House of Peers has been from time immemorial to this day elected. According to Sir J. Macintosh, as above quoted, "The synods and councils of the clergy afforded the first pattern that has been preserved for many ages by England, of elective and representative assemblies." De Lolme tells us "the assembly of the clergy is formed in England on the model of the parliament; the bishops form the Upper House; the deputies from the dioceses and from the several chapters form the Lower House, the assent of the king is likewise necessary to the validity of the acts or canons; and the king can prorogue, or dissolve the convocation." Thus we perceive the assemblies of the clergy afforded the pattern of the English legislature. I shall now show that the bishops who not only formed the Upper House of their convocation, but according to our modern peers, a portion of the Upper House of the English legislature, *were elected by the people* and the consent of the clergy is recited in the ancient laws as necessary to their validity. I wave all discussion on ancient church government and the distinction between bishops and presbyters which have been the subjects of much controversy. The ancient fathers of the church tell us it belonged to the people to choose worthy pastors and to refuse the unworthy. Bishops were at first appointed by the whole congregation,

consisting of clergy and laity, as they were afterwards called. The people in the west preserved this right of chusing their bishops till after the reign of Charlemaigne and his sons; and even to this day bishops are elected though the choice is directed by the king. Were any proof required that these lords spiritual were elected, the very first articles of *magna charta* would amply afford it. This lasting foundation of British liberty declares at its very beginning that the freedom of election was secured to the clergy; and the former charter of the king was confirmed, by which the necessity of a royal *conge-d'elire* and confirmation was superseded. That these spiritual politicians and fighting barons have had a hand in framing English laws from time immemorial I presume will not be disputed. I shall, however, cite a passage or two from ancient laws. In one of the most ancient extant, Ethelwolf's charter of tithes, was granted of course "by the advice of my bishops and other chief men of my kingdom." The following is from Dr. Wilkins' translation of Saxon laws:—"Wihtred, the king of Canterbury, in the fifth year of his reign and the sixth day of August, in a place called Berghamstyde, gathered the principal people to council; there were there *all the clergy* and the *herdsfolk*, where the chiefs and the congregation established these laws." Other like extracts could be given but I shall content myself by referring to Stephen's charter above cited in which he describes himself as "being by the grace of God, and the consent of the clergy and people elected king of England," &c. as well as other ancient laws and charters. Be assured this doctrine will be disputed by no bishop, notwithstanding the absurdity in politics as well as in religion of admitting bishops to legislate on temporal affairs in the House of Lords. Receiving their preferment from a court and having further expectations from it, bishops will be generally in the interest of the court and opposed to the interests of the people. However it is clear they were anciently

elected by the people; and whether the ancient peerage was or was not like the modern, or whether the House of Peers was or was not distinct from the House of Commons; a portion of the members of the former was constituted by the "elective principle."

But one of the strongest proofs that can be required of the extensive application of this principle to British institutions is that at the union of England with Scotland, the Scotch lords were empowered by the act of union every new parliament to *elect* sixteen of their own body to represent the whole in the English House of Lords. As if determined that this elective principle should not be wanted in our glorious constitution, at the union of Great Britain with Ireland the Irish Peers were empowered to *elect* twenty four, who set during their lives, to represent the whole Peerage in the English House of Lords. Even the hereditary portion of the House of Lords is now assailed by public opinion. Members of the House of Commons have come forward and, in their places, given notice of motions which will be made next session affecting the constitution of that Honorable House. The popular member for all Ireland, O'Connel, gave notice that he should, next session of parliament, move for the appointment of a select committee "to inquire and report whether it be necessary for the maintenance of the rights and liberties of the people of Great Britain and Ireland, that the principle of representation shall be introduced into the other House of Parliament." Here is one of the best lawyers and most enlightened statesmen of the age proposing to extend the principle of election and representation through the whole of the second branch of the imperial legislature, which has all the magic of dignity and the advantage of personal honors, hereditary titles, landed estates, and all that is essential to constitute an aristocracy. If it be necessary for the maintenance of the rights and liberties of the people of England and Ireland, to

introduce the elective and representative principle into this noble, ancient, and illustrious house of parliament, how much more,—I say, how much more—must it be necessary for the maintenance of the rights and privileges of the people of British North America, to introduce the elective and representative principle in the second branch of our legislature, the Legislative Council; which, instead of possessing all the magic of dignity, the advantage of personal honors and hereditary titles, landed estates, and all that is essential to constitute an aristocracy, I have proved, is tyrannical, unconstitutional, corrupt, anti-British, unpopular, odious, factious, and obstructive of colonization, and useful legislation. I presume it will now be admitted that the "elective principle" constitutes a large portion of even the second branch of the English legislature. But in which branch shall we find the principle by which our Legislative Councils are constituted? A more unconstitutional—a more anti-British principle cannot be found. No loyal Englishman would ever send us to seek it in revolutionary France! No free-born Briton ever intended that principle, bad as it is, should have been worked with such scandalous, corrupt, and despotic materials of which our Legislative Councils are composed. Did Pitt intend to put beneath the noses of free-British subjects a nuisance that disgusted and disgusts so many British colonies? Did Fox, while he contended these Councils should be made elective, consent that free British subjects should be governed by a nest of ignoble, bigotted, ignorant, pauper tyrants?

III.—I presume it requires no proof that the house of Commons is and has been elected. The passage of the Reform bill was but another triumph of the "elective principle;" and this same sound constitutional principle has been applied to Municipal Corporations, by which they were anciently constituted. When these boroughs were enfranchised, in the election of municipal officers, the gift was not for the exclusive enjoyment of a few,

bat the inhabitants collectively exercised the franchise. This is evident from many charters. In the charter of Great Yarmouth, granted by John, it is stated that "he gave the franchise to the inhabitants collectively in fee absolute." Yet, notwithstanding it has a population of 20,000 inhabitants, it has not within its walls more than 500 burgesses. In Magna Charta it is thus understood, when the king after declaring that "the city of London shall have all the old liberties and customs that it used to have," adds, "moreover we will and grant that all other cities, boroughs, towns, and the barons of the cinque ports shall have all their liberties and free customs." Thus it did not grant any new privileges but was only declaratory of ancient rights as the petition of Charles I. The Crown was at the time of Ed. III. possessed of revenues which made application to the people for money unless upon extraordinary emergencies unnecessary; it therefore plainly appears that *redress of grievances*, making salutary laws for the good of the community, and preserving the liberties of the people by supporting a due balance between the power of the Crown and the rights of the subject was the main ends of calling of parliaments. In this province, the passage of the Township Officer's bill was a triumph of the "elective principle," and is a wedge in the block of corruption. A due and right exercise of this principle in the election of township officers will pave the way for its more extensive application. I mean an *elective Legislative Council* and have no intention to conceal what I mean. I believe it to be the only constitutional reform—the only true British principle that can be applied to our Legislative Council to ensure the welfare and good government of these fine provinces.

I remain,

Your humble servant,

AN EAST ANGLIAN.

LETTER IV.

To the People of the Canadas and British North America.

"The colonists and their children shall enjoy the same liberties and privileges in the American settlements as if they had been born in England."—First charter of Virginia.

FRIENDS AND FELLOWCOUNTRYMEN,

This is the language of the first charter granted to an English colony by a king of England and this provision occurs in almost all the colonial charters. Before I enquire what were these liberties and privileges enjoyed by Englishmen, in their first colonies, it may be well to state what were the liberties and privileges required by some of the most enlightened British statesmen in a colonial charter, but a short period since. The charter of the projected South Australian Land Company sought from the Crown the freedom of trade; local self-government by elective and representative institutions; and the appropriation of the revenues derived from the sale of their wild lands to the purposes of colonization. Let us now see what were the liberties and privileges granted to English colonies by their ancient charters. I mean especially to show that the elective principle has been applied to constitute all the several branches of some of the old colonial legislatures.

At the first settlement of Virginia, its supreme government was vested in a board resident in England and

its subordinate jurisdiction devolved on a colonial council indebted to the appointment and subject to the instructions of the king. This arbitrary system continued but a few years; for Sir G. Yeardley declared his intention to re-instate the colonists in full possession of the privileges of Englishmen; and, in 1619, the first legislative body of Europeans that America ever produced, consisting of the Governor, the Council, and Burgesses, elected by the seven existing boroughs, assembled in one apartment at James Town. Thus early was planted in America that elective and representative system that forms the soundest political frame in which liberty was ever embodied, and the safest and most efficient organ by which its energies are exercised and developed. The government of both the colonies of New York and Virginia has been called feudal aristocracies. They were the most despotic form of government of all the American colonies and to which ours bear the nearest resemblance. Jefferson, late President of the United States, in his remarks on the constitution of his native state of Virginia, says "All the powers of government, legislative, executive, and judiciary results to the legislative body. The concentrating these in the same hands *is precisely the definition of a despotic government.*" Have I not shewn that all these powers are concentrated in the hands of our Legislative Councils? Jefferson farther says, "A government should not only be founded on free principles, but the powers of government should be so divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others." Are not the powers of government thus divided and balanced by the English constitution? Are they by the Canadian constitution? By this, in practise at least, these powers are *divided;* but the Legislative Council has not weight, nor talent, nor wealth, nor strength sufficient to ensure respect to its resolutions; and, instead of its balancing with the other powers, it

is a clumsy make weight to one and something more than "an effectual check and restraint" to the other. The Canadian legislature is divided but not balanced; it is cut up into parties among whom there can be no harmony; produces actual and violent oppositions among the people, and weakens the natural forces of the country.

Massachusetts Bay had an approximation to the complex government of the mother country. The supreme legislative body at first was composed of all the freemen who were members of the church; but after 1639 a House of Representatives was established. The Executive power was committed to a Governor; who, with a Council, were annually elected by the members of the legislative Assembly. The appointment of Governor, not merely in Massachusetts Bay, but in Connecticut, Rhode Island, Virginia, Pennsylvania, and Maryland, was vested in the colonists by their charters. This is one step beyond what is wished for or wanted by the colonists of British North America. They ask a Council to be elected by a constituency in the country, and we perceive that Massachusetts, not only elected such a council, but the Governor also. If this was the privilege of Englishmen during the reigns of their most despotic kings in the seventeenth century, what has deprived them of this privilege and why may they not exercise it in this liberal and enlightened age?

Shall I now turn to the colonies of Connecticut and Rhode Island, or were their governments too democratic for the nice stomachs of aristocratic Englishmen? These colonies not only annually elected their governor but their council. Every power, as well deliberate as active was invested in the freemen of the corporation or their representatives; while the executive of the empire was excluded from every constitutional means of interposition or control. Were such a democratic government sought by Canadians, their ignoble and pauper aristocracy might with more show of reason urge that elective institutions would dissolve the bond

of connection between these colonies and the mother country. With various forms of local government, it could not be their institutions that violently separated the colonies, now a portion of the United States, from the mother country; it was the disgraceful attempt of her corrupt and tyrannic oligarchy to subvert their free, elective, and representative institutions and to infringe on the constitutional liberties and privileges of British subjects.

Maryland, like the other proprietary governments, may be said to have been an hereditary monarchy in miniature. Lord Baltimore, son of Sir George Calvert, Secretary of State to James I, obtained a charter from Charles I, which, saving the allegiance and sovereignty due to the Crown, created him the absolute proprietor of Maryland, and vested the absolute government of it in his family. The first assembly of this colony consisted of the whole body of freemen; but when the population had increased, a representative body elected by the freemen was constituted. A Council of twelve persons, somewhat similar to our executive council, was appointed by the proprietor. Lord Baltimore, a Roman Catholic, gave freedom and protection to every sect of Christians, but special privileges to none; and the catholic planters of Maryland procured their adopted country the distinguished praise of being the first of the American colonies in which religious toleration was established by law. Efforts were made to thrust down the throats of these Catholics a Church of England; and when this Church of England was declared to be the established ecclesiastical constitution of the State, the political equality of religious sects was subverted and the universal toleration of every form of Christian worship was abolished! For what purposes have religious bodies been bought up with bribes from the casual and territorial revenues in these provinces? Read the history of Maryland.

The Carolinas were conferred by Charles II, on some of his insatiable courtiers, among whom were Lord Clarendon, the Earl of Shaftesbury, and others. By

their charter they were allowed to create an order of nobility, by conferring titles of honor, but differing in style, from those used in England. At first a council of twelve, to advise the Governor, was constituted; the half of which was appointed by the Governor and the other six were chosen by the assembly, annually elected by the freeholders. So smitten were these noble courtiers with their own order, dignity, and the distinctions and decorations of aristocracy, that the celebrated Lord Shaftsbury was unanimously selected by his colleagues to frame a constitution which gave birth to that memorable instrument that bears the name of "the fundamental constitutions of Carolina." This instrument is now recognised as the composition of the illustrious philosopher, John Locke, in whose genius and talents, his friend Shaftesbury entertained implicit confidence. By the complicated machinery of this instrument, the land of the province was erected into seigniories, baronies, counties, &c., and was divided into five parts, one of which was assigned to the proprietors, another to the nobility, and the remaining three parts to the people. Two classes of hereditary nobility was created, under the titles of landgraves and caciques, with unalienable and indivisible possessions according to their dignity. Besides which there were to be officers of state, such as chamberlain, chancellor, high steward, &c. &c.

In a young colony a state of things must exist totally incompatible with the avocations of official dignitaries and the splendid idleness of an order of nobility. The colonists of Carolina were consequently constrained to declare it was impossible to execute the grand model; but willing to give it a fair trial, five persons were appointed by the proprietors, and five others were elected by the freeholders to form a Council, which, with twenty delegates chosen by the same electors, were invested with the legislative power. These fundamental constitutions, declared sacred and unalterable, after twenty-three years experience, were regarded by

all classes of the colonists with uncurable aversion, and were found to be utterly worthless and impracticable. Thus perished the legislative labors of John Locke, who, when he was expelled Oxford and a fugitive from England, was a nobleman of the title of landgrave in Carolina. Thus will ever perish every effort, even though made by a Locke's elevated and comprehensive mind and a Shaftesbury's sagacious and experienced understanding, to establish the blighting principles of aristocracy in America; to whose virgin soil, equal rights, equal privileges, and equal justice to all men are alone congenial.

We have already seen that New York, of which the bigotted Duke of York, afterwards James II., was the proprietor, was cursed, like the Canadas with a Council having "the nature of the House of Lords or Upper House." The governors were appointed by the King, and history says "They were, many of them, *land jobbers*, bent on making their fortunes; and being invested with the power to do this, they either engrossed for themselves, or patented away to their particular favorites, a very great proportion of the whole province." The baneful effects of this destruction of the primary element of colonization are felt to this day in the State of New York, but has not a like system of land jobbing been carried on in these provinces and will not its effects be felt by our posterity? The Councillors were also appointed by the crown and acted as a privy council to the Governor, besides performing the legislative and judicial functions of the House of Lords. With this Council, the Assembly, elected by the freeholders, was in continual collision. The constitution of New York approached nearer to ours than that of any other of the old colonies; and like ours neither insured obedience to the government nor afforded happiness to the people.

New Jersey was purchased from the Duke of York, afterwards James II., by Lord Berkeley and Sir George Carteret. The proprietors, anxious to exhibit a political fabric that should appear desirable and advantageous

to mankind, entered into that remarkable competition in which sovereigns and legislators found it their interest to vie with each other to produce the best models of liberty and to tender to the acceptance of their subjects the most effectual securities against arbitrary government. This policy, cherishing in the minds of the people an attachment to liberty and a conviction of their right to it, proved highly beneficial to the provinces of North America. The instrument published by the proprietors of New Jersey gave assurance that the province should be ruled only by laws enacted by an Assembly in which the people were represented, and to which many important privileges were confided. They had not only the power of making peace and war, but it was stipulated by the proprietors, "that they are not to impose, *nor suffer to be imposed*, any tax, custom, subsidy, tallage, assessment, or any other duty whatever, upon any color or pretence, upon the said province and inhabitants thereof, other than what shall be imposed by the authority and consent of the general assembly." This instrument also assured religious toleration to all persons. The administration of the executive power, together with the right of a negative on the enactments of the provincial assembly, were reserved to the proprietors. Such was the first constitution of New Jersey.

We come now to the celebrated Constitution of the illustrious William Penn, proprietor of Pennsylvania and Delaware, whose government and laws are so renowned for their wisdom, their moderation, and the excellence of their provisions in favor of liberty. It is not less strange than true, this illustrious man exhibited, two hundred and fifty years ago, a political fabric having a great analogy to that which is now demanded by a large majority of the people of the present British North American colonies. The government was to be administered by the proprietor or his deputy as governor; and by the freemen formed into two separate bodies of a provincial Council and a General Assembly. The Council was *to be elected by the freemen* and to consist

of seventy-two members, afterwards reduced to eighteen and then to twelve, of whom one-third were annually to retire and be replaced with new ones. The governor presided in this Council with no other control than a treble vote. Two-thirds of this council made a quorum and the consent of two-thirds of a quorum was indispensable to the passage of a measure. It not only exercised the whole executive power, but at first had the initiatory in legislation or the privilege to prepare all the bills that were to be presented to the Assembly. At first the General Assembly consisted of two hundred representatives elected by the freemen, but was afterwards limited to thirty-six and then to twenty-four. This body was originally restricted to a simple assent or negation in passing or rejecting bills sent to them by the Governor and Council; but afterwards it shared with them the privilege of preparing and proposing laws and was allowed to regulate its own adjournments. All elections, whether for the Council or Assembly were to be conducted *by ballot*. Having thus given a Constitution to his subjects, the liberal minded legislator declared "That which makes a good constitution, must keep it; namely, men of wisdom and virtue; qualities that, because they descend not with worldly inheritances, must be carefully propagated by *a virtuous education of youth*." In conclusion he declared "We have, with reverence to God and good conscience to men, to the best of our skill contrived and composed the frame of this government to the great end of all government, to support power in reverence with the people, and to secure the people from the abuse of power, that they may be free by their just obedience, and the magistrates honorable for their just administration; for liberty without obedience is confusion, and obedience without liberty is slavery."

We have seen that out of all the Constitutions of the old English colonies, which now form a portion of the United States, not one of them is exactly like that of the Canadas. We have an Executive Council and a Legislative Council, the members of which are ap-

pointed in the name of the Crown which choses its representatives; and a House of Assembly elected by the people. The Council in the province of New York was the only one appointed by the Crown and which arrogated to itself the executive, legislative, and judiciary power of our Councils. In Maryland and Virginia the Councils of each were appointed by its proprietors; and in the Carolinas, it was partly appointed by the proprietors and partly elective; and in Massachusetts Bay, Connecticut, Rhode Island, Pennsylvania, and Delaware, the Councils were all elective. New Jersey had only a general Assembly and the other colonies had a House of Assembly elected by the people. Most of the constitutions of these colonies subsisted long after the glorious revolution and the adoption of our inimitable Constitution of 1688, and that of Rhode Island, I believe, exists unchanged to this day. If therefore it was the privilege of British colonists to elect their Council as well as their Assembly, before and after the British revolution, they ask no boon that their Legislative Council, declared by a large majority of the people as now constituted a curse and a nuisance, be rendered *elective*; but only pray to be permitted to exercise suspended powers inherent in them as British subjects and colonists and which many of their progenitors exercised.

I remain,

Your humble servant,

AN EAST ANGLIAN.

LETTER V.

To the People of the Canadas and British North America.

"Instead of the King's naming the Council at that distance—i: which case they had no security that persons of property a d persons fit t be named would be chosen—wishing, as he did, to put the freedom a d stability of the C nstitution of Canada on the strongest basis, HE PROPOSED THAT THE COUNCIL SHOULD BE ELECTIVE."—Fox's Speech during the debate on the Canadian Constitution in Imperial Parliament.

FRIENDS AND FELLOWCOUNTRYMEN,

That the Canadian Constitution is the workmanship of the old corrupt oligarchy of the mother country speaks nothing in its favor; while the proposition of the immortal Fox, backed by the voice of the people after nearly half a century's experience of the vicious working of the Legislative Council, that it should be made elective, must strongly enforce its favorable claims on all unprejudiced and reflecting minds. I have shown that, if the Canadian Constitution be an exact model or "the very image and transcript" of the English Constitution in theory, in practise the Canadian Constitution is not nor cannot be the same; and if it be not an exact model or "the very image and transcript," the theory of the Canadian Constitution is not now in practise. That the present practise of the Canadian Constitution cannot promote the welfare, and peace, and happiness, and good government of the people; forasmuch, the Legislative Council, one branch

of the legislature, is tyrannical, unconstitutional, corrupt, anti-British, unpopular, odious, factious, and obstructive of colonization and useful legislation. I have proved that the elective principle has been at different periods applied to constitute all the several branches of the English legislature. And that, in English colonial government, approximating as near as possible to the English constitution, the elective principle has been applied to constitute all the several branches of colonial legislatures. What then are the objections that the elective principle be applied to constitute the Legislative Council, the second branch of our legislature, which cannot, as it exists at present, promote the welfare, peace, happiness, and good government of the people, for which it was constituted? It is asserted that were the Legislative Council made elective the counterpoise of the constitution would be destroyed; for both branches would be composed of the same materials, and, although sitting in different chambers, they would in reality form but one body, and be alike operated upon by every sudden impulse of popular fury and excitement. I maintain that both branches are now composed of the same materials, for there are no other in this continent; and, as they do not in reality form but one body, the conclusion is illegitimate and erroneous. Though both branches are now composed of the same materials, they are not organised and framed on the same plan; and, since they do not thus form in reality but one body, they would not any more were the Legislative Council made elective, in which case they would be differently organised and framed both from the present Legislative Council and from the House of Assembly. Should it be said that both branches, composed of the same materials, which are organised and framed by the same principle, would in reality form but one body; I answer, that the same materials can be differently organised and framed by the same principle. I say with the illustrious Fox, the Legislative Council would not be elective as

"the members of the Assembly were intended to be, but upon another footing. He proposed that the members of the Council should not be eligible, unless they possessed qualifications much higher than those who were eligible to be chosen members of the House of Assembly: and, in like manner, the electors of the members of Council should possess also qualifications proportionably higher." If wealth can make any distinction, the two branches would not then be composed of the same materials; but, as this great statesmen said "By this means we would have a real aristocracy, chosen by persons of property, from amongst persons of the highest property, and who would thence possess that weight, influence, and independence, from which alone could be derived a power of guarding against innovations that might be made by the people on one part, or the Crown on the other." I am not favorably inclined to the constitution of two distinct constituencies with unequal privileges in the same country. I would have the same constituency elect both branches. But that there may be as distinct an organization of the component materials as possible and as great a dissimilarity of the genius of the two bodies as is consistent with harmony in all proper measures, I would have the House of Assembly all elected for a definite period, say four years; and the Council, which might still be required to have much higher qualifications than those who were eligible to be chosen members of the Assembly, or rather one third part of the Council, should be elected for a different period, say every two years, so that its composition would be wholly renewed every six years; and both be elected from one constituency only. The powers of government would then be, as much as in that of Great Britain, placed in different bodies, which are differently organised. I answer, further, that the Legislative Council, being chosen solely by the Crown, subservient thereto and dependent thereon, "destroys the counterpoise of the constitution; for both branches of the legislature,

no matter of what materials composed or where they sit, form in reality but one body;" which gives the Crown in its legislative capacity an active and unconstitutional power in the business of enacting laws, makes it absolute, and renders useless and nullifies the constitutional privileges of the House of Assembly. Consequently the unfounded objection to an elective Legislative Council may be cogently and forcibly urged against this same Council as at present constituted.

It has been stated further against an elective Legislative Council that it would harmonize with the popular branch, or rather both branches would act alike; so that, both being led by the same common influence of ambition, intrigue, prejudice and passion, such a Council would not be a sufficient check to destroy the evil effects that would result from sudden and strong excitement and rash and precipitate legislation. But this objection is nearly the same as the foregoing, expressed in different words; and turns on the erroneous assumption that both branches constituted by the elective principle must be in reality but one body. That, when both branches are constituted by the elective principle, the legislature is divided into two separate and independent bodies, working harmoniously and at the same time operating as a real check upon undue and rash legislation, is clearly shown by the unequivocal language of experience. I have proved that a majority of the English old colonies had elective Councils which were the second branch of their legislatures; and they were organised and framed out of one constituency. Had not the working of these councils been found an efficient check and restraint on the popular branch and had not their constitution distributed the powers of government into two distinct departments, a principle so well known to all the ablest of American statesmen, would the elective principle have been applied to constitute the second branch of the legislatures of a very large majority of

the States of the Union? The incontrovertible fact that these independent States adopted from the old colonies the elective principle to constitute the second branch of their legislature must be received as decisive proof that it will divide and balance the powers of government and be an efficient check to arrest the evil effects resulting from sudden and strong excitement and rash and precipitate legislation.

Another objection, of the raw head and bloody bones species, that has been urged against an elective Legislative Council, is that it would make us a republic. What is meant by a republic? Was ever the government of England from before the days of the Great Alfred to the reign of our beloved monarch, William IV. a republic? Name not Cromwell. When her barons and people elected their king, was England a republic? Was she not an elective monarchy? When the election of her monarchs became mere rareeshow and her House of Commons and a portion of her House of Lords were constituted by the elective principle was and is she a republic? If so, what objections can be urged that we assimilate our institutions to those of the mother country? If not, would not our constitution approximate much nearer hers with an elective Council, as the elective principle is applied to constitute a portion of the second branch of her legislature, than with our present Legislative Councils, constituted by a principle unknown to her constitution? When the English old colonies elected their House of Assembly, their Council, and their Governor and all, were they republics, or were they not still fertile, flourishing, and freedom-breathing colonies of a constitutional monarchy? But those who urge this objection are casting their mind's eye over the institutions of the United States. Now it is admitted by the most violent opponents of an elective Council and it is the boast of Britons, that the statesmen of America, who framed the constitution of their country, preserved the theory of the government under which they had lived,

and placed its powers, like that of Great Britain, in different bodies, which are differently organised. The federal Government of the United States, were we ever so much inclined, it would be impossible for any colony to imitate ; for its Senate, or second branch of the legislature, is composed of two senators from each state, chosen by its legislature for six years, and represents its sovereign authority. For materials to compose such a body we are more destitute than to create an hereditary aristocracy. Perhaps these objectors have in their mind's eye some one or other of the States, which they would have us believe is a republic. Then its Governor is elective either by the people or the other branches of the legislature ; while we should have all the advantages of an hereditary monarchy. Were our council elective, instead of a few pauper placeholders, we should create a monied aristocratic body representing the real wealth of the country ; and thus, as far as the elements of our society would admit, our constitution, like that of Great Britain, would be founded on monarchial, aristocratic, and democratical principles. Many able politicians are of opinion that the constitutional monarchy of France, approaches nearer to a republic than the United States to a monarchy. A late able writer, says "La France et les Etats-Unis ont ainsi, malgré la diversitié de leur constitution, ce point de commun, que l'opinion publique y est, en resultat, le pouvour dominant. Le principe générateur des lois est donc, à vrai dire, le meme chez les deux peuples, quoique ses developpemens y soient plus ou moins libres, et que les consequences qu'on en tire soient souvent differentes. Ce principe, de sa nature, est essentiellement republicain. Ainsi pensais je que la France, avec son roi, resemble plus une republique, que l'Union, avec son président, a une monarchie."— Literally translated : France and the United States have thus, notwithstanding the diversity of their constitution, this point in common, that public opinion is in them, in the result, the dominant power. The genera-

ting principle of the laws, is then, to say truly, the same among both people, although its developement be more or less free, and the consequences we draw from them be often different. This principle, in its nature, is essentially republican. Thus I think that France, with its king, resembles a republic more than the Union, with a president, a monarchy. It is admitted as before stated that the government of the United States, as near as the elements of which it is constituted would permit, resembles the glorious constitutional monarchy of England; and this able French writer states, and there are good grounds for his opinion, especially as the elements of French Society are well known to be republican, that France, with a king resembles a republic more than the Union, with a president, a monarchy; which, it is admitted, approaches as near as possible to the monarchy of our mother country, to which we are anxious to assimilate our government, while France recedes from a monarchy towards a republic. "What the French nation wants at this moment is a popular monarchy, surrounded by republican—purely republican institutions:" said Lafayette to the Duke of Orleans when about to become the king of the French. "What is France but a republic, fettered by a director?" asks Chateaubriand. By the 23d article of the Constitutional Charter of France—the nomination of the Peers of France belongs to the King; who has the power to vary the dignities, confer them for life, or to render them hereditary. By the 61th article of the charter it was ordained that the foregoing article be examined in the session of 1831, when the law was passed, enacting:— That the nomination of the Chamber of Peers belongs to the King; by the CanadianConstitution the nomination of the Legislative Council is belongs to the King. By the French law, the dignity of a Peer is to be conferred for life; by the CanadianConstitution the *dignity* of a Legislative Councillor is conferred for life. By the French law, the dignity is not transmissible by hereditary descent; by the Canadian Constitution it is

the same. By the French Law their number is unlimited; by the Canadian Constitution it is the same.—The Chamber of Peers is an irresponsible body of life-legislators, so are the Legislative Councils. The Chamber of Peers is a constituant branch of the legislature and highest Court of Judicature in the country, so are Legislative Councils; and, contrary to the principles of the British Constitution, passing a law and setting in Judgement on their own act, and, identified with the Executive Councils, advising the govenor to assent to it. The Chamber of Peers, in its working, has been found o be a most tyrannical, absolute, odious and vicious body; attacking the freedom of the Press and violating the rights, liberties and privileges or the people. The legislative Councils, I have shown, are tyrannical, unconstitutional, corrupt, odious and obstructive of colonization and useful legislation; and the liberty of the Press has been assailed by them directly or indirectly, as in the cases of Mackenzie, Collins, Duvernay, and Tracy. I put it to you as Irishmen, Scotchmen, and Englishmen—I put it to you as Canadians and British subjects—under what Constitution would you live, that of England or that of France?—under British monarchial institutions or under French republican institutions? under an elective Legislative Council, which assimilates as near as the elements of our society will permit, to the British legislature or under an irresponsible, tyrannical, and corrupt body of life legislators, which resembles only the republican French Chamber of Peers, that has brought the country to the verge of anarchy and revolution? I put it to you as men who have left their native land, I put it to you as fathers who would transmit unimpaired and unsullied the rights, liberties, and privileges of British subjects from generation to generation, will you plant on this virgin soil and rear none other than British institutions; or will you continue to live under and transmit to your posterity an institution, a branch of the legislature which is constituted by a principle un-

known to the constitution of our mother country and resembling only the Chamber of Peers in republican France; and which has been found, after forty years' experience, inefficient to promote the welfare, peace, happiness, and good government of the land of our birth or the land of our adoption.

Ere I take my leave of you, I shall notice that a portion of the Press, preferring abuse to argument, frequently applies the terms French democrats, and French republicans, to the inestimable people of the sister province; were they one or the other, would it not be surprising they should demand an elective Legislative Council, when that which they have, assimilates to the republican French Chamber of Peers, and has like powers, privileges, &c? Desiring that you will shake off your apathy and indifference to your own affairs: that you will think and reflect for yourselves on questions vitally affecting the government of the country and the life, liberty, and property of the subject; that you will uphold and support a free, liberal, and enlightened Press; that you will extend the blessings of education to your children; and that you will enjoy all the elements of happiness and the inestimable advantages of a good government, I submit these letters, with no other hope of reward than that which ever accompanies the conscientious desire of well doing, to your serious attention; and

I remain,

Your humble servant,

AN EAST ANGLIAN.

HAMILTON, U. CANADA,
Dec. 1st, 1835.