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The Works of George Lord Lyttleton

Lyttelton, George <Lord>

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Notes on the preceding Observations.

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NOTES on the preceding OBSERVATIONS.

P. 34. *And the usual method was, for the senate to decree, upon any great exigency, that a dictator should be made, and to direct on what person of consular dignity the nomination should fall.*

In relating the transactions of the year 318 from the building of Rome, Livy uses these words, "Major itaque ex civibus amissis dolor quam lætitia fuis hostibus fuit; et senatus (ut in trepidis rebus) dictatorem dici Mamercum Æmiliium jussit." See also other proofs of their exercising this power, which the same historian gives, l. iv. c. 46. Ann. Urb. Condit. 317. l. ix. c. 38. Ann. Urb. Condit. 444.

Yet we find that some consuls did not think themselves bound to obey such an order: for (as Livy also informs us) in the year of Rome 324, the senate, alarmed at the extraordinary preparations of the Æqui and Volsci against the Roman state, and still more apprehensive of bad consequences from the discord between the two consuls, who differed in all counsels the one from the other, recurred to the expedient of creating a dictator: but those magistrates, so discordant in all other points, agreed in pertinaciously refusing to name one: whereupon, as the danger, by new intelligences brought, seemed to be more and more dreadful, Quintus Servilius Priscus, who, with a great reputation, had held the highest dignities of the commonwealth, applying himself to some of the tribunes of the people, who were present in the senate-house, told them, *the senate called upon them in that extremity to compell the consuls, by their power, to name a dictator.*

There had never been a precedent, either of such a refusal on the part of the consuls, or of such an application on the part of the senate. The tribunes, glad of the opportunity to

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augment their power, after consulting apart with all their colleagues, declared, *It was their pleasure, that the consuls should obey the decree of the senate; and, if these should persist in a longer resistance against it, they would send them to prison.* The consuls, chusing (says Livy) to be overcome by the tribunes rather than by the senate, yielded to this command; but not without a protest against the injury done to the consular power, which the senate thus betrayed. Nor yet could they agree which should name the dictator, but ended the dispute by casting lots.

Liv. l. iv. 58. In the year of Rome 347, when the consular office was exercised by three military tribunes, instead of two consuls, these making a resistance to a decree of the senate for creating a dictator, the tribunes of the people were again applied to by that body, for the aid of their power to force a compliance: but they, discontented at seeing the plebeians perpetually excluded, by the influence and intrigues of the patricians, from the military tribuneship, to which, by law, they might attain, though not to the consulship, sullenly refused their assistance. Yet they said, that, when all the dignities of the state should be, without distinction, communicated to the people, *they would then take good care that the decrees of the senate should not be made ineffectual by any arrogance of the magistrates.* This resource having failed, the contention was kept up between the senate and two of the military tribunes; who, thinking themselves equal to the conduct of the war, complained "that the dignity they had obtained from the people, should be thus taken from them: but the third said, that hitherto he had remained silent, because he rather desired that his colleagues should yield to the authority of the senate, without any force upon them, than suffer the power of the tribunes of the people to be implored against them. That even now he would willingly give them more time to alter their opinion, if the exigency of the state could bear that delay; but, as the necessity

of war would not wait for longer consultations, he would prefer the service of the publick to their good-will, and contenting himself with the sole authority of the senate (whatever opposition might be made against it) would name a dictator that night." He did so; and this shews, that any one of the consuls, or military tribunes, with consular power, might name a dictator without the consent of his colleague or colleagues: the reason of which, doubtless, was, that the natural unwillingness in the mind of such a magistrate, to make over to another the supreme command, would probably hinder its being unnecessarily or wantonly done; but on many occasions a contrary disposition might be well apprehended; and the absence of one consul, or military tribune, on the publick service abroad, might happen to disappoint the desire of the senate, if the concurrence of both consuls, or of all the military tribunes, had been necessary to this act.

In the year of Rome 542, the senate decreed, that the consul, before he went out of the city, *should ask the people whom they would be pleased to have him name dictator, and should name the person they ordered*; adding, that, if the consul refused to refer this matter to the people, the prætor should do it; and, if the prætor would not, it should be done by the tribunes. The consul did refuse, declaring that he would not consult the people on a matter *which was in his own power*, and forbade the prætor to do it; whereupon it was done by the tribunes of the people, *and the people enacted, that Quintus Fulvius, who was then at Capua, should be named dictator.* Quum consul se populum rogaturum negasset, quod sue potestatis esset, prætoremque vetuisset rogare; tribuni plebis rogarunt, plebesque scivit, ut Q. Fulvius, qui tum ad Capuam erat, dictator diceretur.

I find no other instance in the Roman history of the senate's submitting to the will of the people the nomination of the person who should be raised to this office.

The purpose of creating a dictator at this time was only that the comitia, or assembly of the people for electing the magistrates of the ensuing year, might be held by that officer, instead of one of the consuls; it being necessary that both should be absent from Rome upon military service; in their several provinces, when the assembly was held. The cause of referring the affair to the people, in this extraordinary manner, was a difference which arose between the senate and the consul, M. Valerius Laevinus; the latter chusing to name M. Valerius Messalla, who commanded the Roman fleet in Sicily, to which province he was going; and the fathers denying that a dictator could legally be named out of Italy. The dispute was ended, in consequence of the decree of the people, by the other consul, Marcellus, being sent for to Rome, and naming Quintus Fulvius, agreeably to their order.

P. 34. "He tells us, that the senate reproaching the consuls with a neglect of their duty, for not having exerted the authority of their charge, to punish a conspiracy of the Roman knight, Spurius Maelius, with some tribunes of the people, against the commonwealth, one of them said, *The blame laid on them was unjust: for they, being subject to the controul of the laws, which had given an appeal from them to the people, wanted strength in their magistracy, more than they did in their minds, to inflict the vengeance due to a crime of this nature. That there was need of a man, not only courageous, but moreover free, and not fettered with the restraints of the laws. He therefore would name Lucius Quintus dictator.* The words of Livy are these: *Tum Titus Quintus, consules immerito increpari, ait, qui constrieti legibus de provocatione, ad dissolvendum imperium latis, nequaquam tantum virium in magistratu, ad eam rem pro atrocitate vindicandum, quantum animi haberent. Opus esse non forti solum viro, sed etiam libero exsolutoque legum vinculis. Itaque se dictatorem Lucium Quintium dicturum.*"

Ann. Urb.
Condit.
316.

These words seem entirely to overturn the opinion of some learned writers on the Roman history, that the law, proposed by the consuls, Horatius and Valerius, in the year of Rome 306, established a right of appealing to the people against the acts or decrees of a dictator. For, had this been true, it would have been the grossest absurdity for Livy to make T. Quintius, no more than ten years afterwards, (ann. U. C. 316) give it as a reason for naming a dictator, that the consuls, *being subject to the laws of appeal*, had not strength in their magistracy sufficient for the exigency of the state at that time. A magistrate *equally subject to the laws of appeal*, could not have supplied the defect of power in them. But the historian says expressly, that the dictator was free from that restraint, *liber exsolutusque legum vinculis*. Indeed it appears that the law of Horatius and Valerius had no reference to the dictatorial office, the object of it being to prevent the introduction of any new-invented magistracy, such as the decemvirate had been, without the controul of an appeal to the people. Livy writes of L. iii. c. 55. it thus: "*Aliam deinde consularem legem de provocatione, unicum praesidium libertatis, decemvirali potestate eversam, non restitunt modo, sed etiam in posterum muniunt sanciendo novam legem, ne quis ullum magistratum sine provocatione crearet, qui creasset eum jus fasque esset occidi, neve ea caedes capitalis noxae haberetur.*" The dictatorship certainly was not a magistracy created after this law, having been established long before, in the year of Rome 253 or 257. And what power the law *de dictatore creando* had originally given to it, the same historian informs us in the following words: "*Creato dictatore primum Romæ, postquam praeferi secures viderunt, magnus plebem metus incescit, ut intentiores essent ad dicto parendum. Neque enim, ut in consulibus, qui pari potestate erant, alterius auxilium, neque provocatio erat, nec ullum, nisi in curâ parendi, auxilium.*" It was therefore a power without appeal, either to any other magistrate or to the people; a power against the
terror

P. 118.

terror of which the people had no help, but unresisting obedience. And this refutes the opinion of Algernon Sidney, who, in his celebrated Essay on Government, contends that when dictators are said to have been *sine provocatione*, it is only to be understood in relation to other magistrates, and not to the people; which, he says, "is clearly proved in the case of Quintus Fabius, whom Papirius, the dictator, would have put to death (Liv. l. iii. c. 33.) *Tribunos plebis appello* (says Fabius's father) *et provoco ad populum, eumque tibi fugienti exercitus tui, fugienti senatus judicium, judicem fero, qui certè unus plusquam tua dictatura potest polletque: videro cessurusne sis provocationi, cui Tullus Hostilius cessit?*"

Liv. viii. l.
34, 35.

But, if we look to what followed (as the same historian relates it) we shall find that Papirius continued firm in asserting the majesty of his office; and, though he spared the life of Fabius, at the intercession of the people, yet he took care to express, that the offender was not saved by any reversal or over-ruling of the sentence which he had past against him, nor by any right in the tribunes, or in the people, to help him, but was given to their prayers. "Stupentes tribunos, et suam jam vicem magis anxios, quam ejus, cui auxilium ab se petebatur, liberavit onere consensus populi Romani *ad preces et obtestationem versus, ut sibi pœnam magistri equitum dictator remitteret, tribuni quoque inclinatam rem in preces subsecuti orare dictatorem insistunt ut veniam errori humano, veniam adolescentiæ Q. Fabii daret, satis eum pœnarum dedisse. Jam ipse adolescens, jam pater M. Fabius contentionis obliti procumbere ad genua, et iram deprecari dictatoris. Tum dictator, silentio facto, bene habet, inquit, Quirites, vicit disciplina militaris; vicit imperii majestas, quæ in crimine fuerunt, an ulla post hunc diem essent. Non noxæ eximitur Q. Fabius, qui contra edictum imperatoris pugnavit; sed noxæ damnatus donatur populo Romano,*"
"donatur

“donatur tribunitiæ potestati, precarium non justum auxilium
“ferenti.”

From all this it appears, that no lawful authority in the tribunes or people of Rome delivered Q. Fabius from the sentence pronounced by the dictatorial power. He was only saved because they *supplicated* for him; and their *supplications* themselves were a very sufficient proof *that no appeal lay to them*. They might indeed (as the right of making laws was in them, especially with the consent of the senate) have passed a law (*plebiscitum*) to restrain the dictatorial power from acting against Fabius, as they afterwards did pass one, in favour of Minucius, to render the power of the master of the horse equal to that of the dictator: for laws may be made repugnant to the principles of any constitution by an abuse of the legislative authority in those to whom it is trusted: and this, it seems, was what Papirius apprehended; but he firmly maintained the constitutional power belonging to his office, of judging in this case without the controul of any appeal to them; and this independency, asserted by him, they in effect acknowledged, when they had recourse to entreaties against the execution of his decree, instead of reversing it, or stopping it's effect, by any act of theirs.

Liv. l.
xxii. 25.

THE RECEIVING OPERATIONS
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