Patriarcha non Monarcha.

THE Patriarch Unmonarch'd:

BEING

OBSERVATIONS

ON

A late Treatise and divers other Miscellanies,

Published under the Name of

Sir *Robert Filmer* Baronet.

IN WHICH

The falseness of those Opinions that would make Monarchy *Jure Divino* are laid open:

AND

The true Principles of Government and Property (especially in our Kingdom) asserted.

By a Lover of Truth and of his Country.

LONDON:

Printed for *Richard Janeway*, in Queens-head-Alley in *Pater-Noster-Row.* 1681.

THE PREFACE To the READER.

IT may not be unknown to those that have been conversant in Books and Pamphlets published during the late unhappy times, that all the Treatises (except the Patriarcha) *which are the subject of the ensuing* Observations, *were published at first in single Tracts without Name, though they have since come out under that of Sir* Robert Filmer *Baronet, deceased: All which, though I hope they might be written with an honest designe, and in defence of Kingly Government, and of his then Majesties lawful and just Rights, then trampled upon by a domineering Faction, and may contain some things useful enough to confute divers levelling Notions then too much in fashion; yet whilst this Gentleman (as violent men commonly do) ran into the other extream, and must needs assert an Absolute Monarchy* Jure Divino, *so that no other Government can be lawfully exercised, nor the least Limitations set to it, without Sacriledge, and diminution of that Soveraignty which is derived from no less an Original than God himself; and by denying that Princes can ever be obliged by any Fundamental, or after-Contracts, or Concessions, or by any Coronation-Oaths, to abstain from the Lives, Liberties, or Properties of their Subjects, farther than as they themselves shall think it convenient; so that there can be no such thing in nature as a Tyrant: I leave it to the judgment of the impartial Reader, whether what this Author might designe*

as Physick, hath not served rather to inflame the Distemper; and whether he hath not by such rash and ill-grounded Assertions, given too much advantage to the Enemies of Kingship to retort, That since all Government was ordained by God for the good of Mankind, that could never be of divine institution which would render all things to be so much the Princes Right, that the Subjects can claim a Property in nothing which he shall please to take from them; and that however they use them, yet they still exercise but their own Royal Rights and Prerogatives. So that by thus taking away all distinctions between Kings and Tyrants, and between Slaves and Subjects, I fear that (like Rehoboam's harsh Answer to his Peoples Complaints) he hath not given many of his Readers a prejudice against that Government, which temper'd by known Laws, I take to be the best in the World.

For as Superstition can never serve to advance the true Worship of God; but by creating false Notions of the divine nature in mens minds, or render it not as it ought to be, the Object of their Love and Reverence, but servile Fear; so I suppose this asserting of such an unlimited Power in all Monarchs, and such an entire Subjection as this Author exacts from Subjects, can produce nothing but a Slavish Dread, without that Reverence, Esteem, and Affection for their Princes Person and Government which is so necessary for the quiet of Princes, and which they will have, whilst they believe he thinks himself obliged in Conscience and Honour to protect their Lives and Fortunes from Slavery and Oppression, according to just and known Laws: And that contrary Notions of this Supreme Power, are so far from setling mens minds in a sober and rational Obedience to Government, that they rather make them desperate and careless who is their Master, since let what change will come, they are sure to be no better than Slaves, as may be seen in all the Absolute Monarchies from France to China.

You may also consider whether most of the Arguments this

this Author makes use of for absolute Obedience to Usurpers, as representing the lawful Prince and Father of the People, might not serve for the establishing of Oliver *and the* Rump-Parliament, *as well as a lawful Soveraign; since I am sure* Milton *makes use of the same places of Scripture for this purpose, which this Author and* Salmasius *do for another.*

So that most moderate men, nay, the Author's own Friends, may wish that either these Treatises had never been published, or at least have been left in private Studies and Book-sellers shops, amongst those heaps of Pamphlets condemned to dust and oblivion; since no man can imagine to what end this Patriarcha *and other Tracts should come out at such a* Time *as they did, unless the Publishers thought that these Pieces, which printed apart could only serve to ensnare the Understandings of some unthinking Country-Gentleman or Windblown-Theologue, could do no less, being twisted into one Volume, than bind the Consciences, and enslave the Reasons of all his unwary Readers.*

Since therefore short Treatises of this kind, written in a gentile stile, and a formal appearance of Law and Reason, do more mischief among young men, and those that have not leisure to look much into the grounds of this Controversie, than tedious Volumes: And that this Notion of the Divine and Patriarchal Right of absolute Monarchy hath obtain'd so much among some modern Church-men, who cry it up as their Diana, *and consequently hath so much infected our Universities, that are the Seminaries where the Youth of this Nation do commonly receive Principles both in Religion and Politicks, which if they have not a mind large enough to overcome the prejudices of Education, will mis-lead them as long as they live, and so make them desire at least to alter that Government, and give up those Priviledges which their Ancestors were so careful to preserve and deliver down to Posterity: I thought my self obliged (having perhaps more leisure, though less parts and learning*

ning than a great many others) to do God, my King, and Country this ſervice, as to lay open the weakneſs of the Reaſons, and the dangerous conſequences of this Author's Principles. And though men of greater abilities may either diſpiſe ſuch weak Arguments as this Author makes uſe of, or elſe think it below them to ſpend ſo much time from their more uſeful and beneficial Employments, and that indeed his Reaſons are not ſo knotty or intricate, that they require any more than honeſt ſence and plain Engliſh to lay them open to the unprejudiced Reader; yet ſince the Poyſon hath ſpread ſo far among the men of Letters, and in the Country among divers of the Gentry and Clergie, I thought it not amiſs to do my weak endeavour to undeceive them: And in ſo doing, I deſire to be thought no other than what I really am, a zealous aſſertor and defender of the Government eſtabliſht by Law; being ſo far from a Commonwealths-man, that for my own part I reverence Monarchy above all other forms of Government, and ſhould be as willing to have it unmixt (it being that by which God Almighty governs the Univerſe) could humane nature be long truſted with it, and could we be as certain that his Vicegerents on Earth would as eaſily imitate thoſe divine Attributes of wiſdom and goodneſs, as they are prone to lay claim to his abſolute Power. For as where thoſe Perfections direct the Scepter, a Prince is to be loved and reverenced as the beſt Repreſentative of the divine nature; ſo the exerciſe of an abſolute unlimited Power, without theſe, can create no other Idea in mens minds, than what the barbarous Indians *have of thoſe terrible Gods they worſhip, to whom though they often make Oblations of what is deareſt to them, yet it is upon no higher motive of Devotion, than that they thereby hope to cajole them not to do them any miſchief, and would ſoon caſt them off if they knew how to get rid of them. Therefore the fault is not in the Government as abſolute, but in humane Nature, which is not often found ſufficient, at leaſt for above one or two Succeſſions, to ſupport and manage ſo unli-*

unlimited a Power in one single person as it ought to be. And for this I desire the Reader to look over the Catalogue of all the Persian, Roman, *and* Turkish *Monarchs that have ever succeeded in so many hundreds of years, and see how many good ones they will finde among them, and who truly considered the good and prosperity of that Empire which God had trusted them withal; the effects of which absolute Power being very well known to the Satyrist who lived under it, when he thus shrewdly observes:*

——— Nihil est quod credere de se *Juven.*
Non possit, cum laudatur Diis æqua potestas. *Sat.* 4.

And how much Christian Religion hath altered the case, I desire all observing Readers to consult the late Histories of France *and* Muscovy, *and other despotick Governments in* Europe.

But since the Government of this Nation, as now established, I conceive the best in its kind, as most equal and beneficial both to the Prince and People; so that it is onely their faults who would go off from it, if they are not both Prince and People the happiest in the World: I hope I may, without sin, wish those accursed from God, who would remove our ancient Land-marks, and pull up all Limits between Prerogative and Law; and who (as it may justly be feared) would mis-lead Princes, enslave Mankind, and (if occasion were) sacrifice both to their own private Interests and Ambition. The like I may say of those who would destroy this ancient Government, and set up a Democracy amongst us; since I know not which is worst, to be knawn to death by Rats, or devoured by a Lion.

Nor is it that I am conscious to my self of having writ any thing in these ensuing sheets contrary to Law, destructive to Government, or that Obedience which all good Subjects owe their Prince and his Laws, which hath made me forbear prefixing my Name to this Treatise; since perhaps some of those Motives which might perswade this Author to forbear it in the Treatises he published, might likewise

have

have the same effect upon me; especially since I doubt not but what I have here written will provoke those Craftsmen who esteem this Notion of our Authors (by which they expect to get both Riches and Honour) as the Diana *that fell down from* Jupiter: *And therefore it is no wonder if they are angry with any man that should go about to pull off the specious Vails with which they have covered it, and shew it (as it really is) a wooden Idol of their own making; and if they knew the man, would, according to the usual course of those who abound more in Malice than Reason, quit the matter, and fall upon the person of their Antagonist, and endeavour to stir up both the great Vulgar and the small Vulgar (as Mr.* Cowley *ingeniously terms men of Title without Sense.)*

Besides all which, joyn'd with the small opinion I have of my own performances, or that I think these Papers capable to transmit my Name to Posterity; yet if I were sure I could do it, however writing against an ingenious Gentleman long since deceased (and whose good Name upon all accounts I designe not to diminish) yet I should not think it generous to raise my self a Fame to the prejudice of another mans: And therefore my Request to you is, That you would believe I write these Observations *for no other end than for the Truth, and in defence of the Government as it is established, and the just Rights and Liberties of all true English-men. All which, I pray God preserve as long as the Sun and Moon endure.*

I am your Friend,

Philalethes.

Obser-

Obſervations

UPON A

TREATISE

CALLED

PATRIARCHA,

And ſeveral other Miſcellanies,

Lately Publiſhed

Under the Name of Sir *Robert Filmer* Baronet.

CHAP. I.

THE reaſon why I chuſe to begin theſe Obſervations with this Treatiſe of the natural Right of Kings, rather than with any of the reſt, though publiſhed long before it, is, becauſe being (as I ſuppoſe) writ after the reſt, and on purpoſe to aſſert Monarchy to be *Jure Divino*, is likely to contain the Authors moſt mature thoughts; and being written with better connection than his other

Tracts, contains the ſubſtance of them all; which were deſigned not ſo much to eſtabliſh an Hypotheſis, as to obſerve the weakneſs of other mens: and being publiſhed at ſeveral times, and on divers occaſions, give us but the ſame Notions repeated, according as the Tenets in the Authors he writ againſt needed (as he thought) a Confutation; Which how far they do deſerve it, I leave to the Reader to judge; and therefore ſhall not take upon me to defend any mans Opinions, though never ſo great or learned, farther than I conceive them agreeable to right Reaſon. Nor ſhall I trouble my ſelf to criticize on every ſmall Errour or Miſtake in this Author's Writings, but onely ſet my ſelf to conſider ſuch main Arguments as appear to be founded on falſe or meer precarious Principles; not concerning my ſelf with his other Treatiſes, but as they contain ſome other Reaſons or newer Matter than I finde here.

Page 2. The deſigne of this Treatiſe, is againſt an Opinion maintained by ſome Divines, and ſeveral learned men, That Mankind is naturally endowed and born with Freedom from Subjection, and at liberty to chuſe what form of Government it pleaſe; and that the Power which any one man hath over others, was at firſt beſtowed according to the diſcretion of the Multitude. *Page* 3. This Opinion, he ſays, is not to be found in the Fathers of the Primitive Church: that it contradicts the Doctrine and Hiſtory of the Holy Scriptures, the conſtant practice of all ancient Monarchies, and the very Principles of the Law of Nature. And upon this Doctrine the Jeſuits, and favourers of the *Geneva* Diſcipline, have built this perilous Concluſion: That the People or Multitude have power to puniſh or deprive the Prince, if he tranſgreſs the Laws of the Kingdom. And for this quotes the Writings of divers Jeſuits. How

How far this Tenet deſerves the Author's Cenſure, and is liable to the Concluſions he ſays ſome have drawn from thence, ſince the truth or falſhood of Propoſitions does not depend upon the men that have made uſe of them, I ſhall conſider hereafter; now confining my ſelf onely to examine the Reaſons he brings either in this or any other of his Treatiſes to overthrow this Opinion. And if they prove weak, and inſufficient for the end the Author deſigned them, ſome Friend of his, or his Tenets, had beſt finde out others; which if they prove and appear evidently true, I ſhall then reſt ſatisfied, and acknowledge my ſelf abſolutely convinced. In the mean time I ſhall now give you the Author's Hypotheſis all at once, in his words, that you may judge whether I deal fairly with him or no.

P. 5. To paſs over therefore his Cautions (which are honeſt and ſober) I ſhall come to what he obſerves upon ſeveral paſſages of *Bellarmine*. And though he does not quote the places from whence he took them, yet I hope he hath dealt fairly with him: Though I ſhall not take upon me to defend the contradictions or falſe conſequences either of this or any other Author, ſince I onely obſerve the onely Anſwer which (*p.* 11.) Sir *R. F.* gives *Bellarmine*'s Argument for the natural Liberty of the People, is out of *Bellarmine* himſelf; whoſe words are theſe: *If many men had been created together out of the Earth, they ought all to have been Princes over their Poſterity. In which words* (the Author ſays) *we have an evident confeſſion, that Creation made Man Prince of his Poſterity. And indeed not onely* Adam, *but the ſucceeding Patriarchs had by right of Fatherhood, Royal Authority over their Children. Nor dares* Bellarmine *deny this. That the Patriarchs* (ſaith he) *were endowed with Kingly power, their deeds do teſtifie; for as* Adam *was Lord of his Children, ſo his Children, under him, had a Command and Power over their own Children:*

but ſtill with a ſubordination to the firſt Parent, who was Lord Paramount over his Childrens Children to all Generations, as being the Grandfather of his People. Which conception of *Bellarmine*, though it may deſtroy his Argument for natural Freedom, yet I conceive that it does not deſtroy the neceſſity of ſuppoſing all the Kingdoms and Commonwealths now in being in the world, to have had their beginning from Conqueſt, or elſe from the Conſent or Inſtitution of the People who began it; as I ſhall endeavour to prove more at large.

But from this conceſſion of *Bellarmine's*, the Author taking this as a yielded point, proceeds thus: P. 12. *I do not ſee how the Children of* Adam, *or any man elſe, can be free from Subjection to their Parents: And this Subjection of Children being the Fountain of all Regal Authority, by the Ordination of God himſelf, it follows, That Civil Power not onely in general is by Divine Inſtitution, but even the Aſſignment of it ſpecifically to the eldeſt Parents: Which quite takes away that new and common diſtinction which refers onely Power Univerſal and Abſolute to God; but Power Reſpective, in regard of the ſpecial Form of Government, to the Choice of the People.*

P. 13. *This Lordſhip which* Adam *by command had over the whole World, and by right deſcending from him, the Patriarchs did enjoy, was as large and ample as the abſoluteſt Dominion of any Monarch which hath been ſince the Creation. For Power of Life and Death, we finde that* Judah *the Father pronounced ſentence of death againſt* Thamar *his Daughter-in-law for playing the Harlot;* Bring her forth *(ſaith he)* that ſhe may be burnt. *Touching War, we ſee that* Abram *commanded an Army of* 318 *Souldiers of his own Family; and* Eſau *met his brother* Jacob *with* 400 *men at Arms. For matter of Peace;* Abraham *made a League with* Abimelech, *and ratified the Articles with an Oath. Theſe Acts of judging in capital Crimes, of making War, and concluding Peace,*

Peace, are the chiefeſt Marks of Soveraignty that are found in any Monarchy.

And not onely until the Flood, but after it, this Patriarchal power did continue, as the very name Patriarch *doth in part prove. The three Sons of* Noah *had the whole World divided amongſt them by their Father; for of them was the whole World overſpread, according to the Benediction given to him and his Sons:* Be fruitful, and multiply, and repleniſh the earth.

Then he proceeds upon a vulgar Opinion, *p.* 14, 15. *That at the Confuſion of Tongues, there were* 72 *diſtinct Nations erected, not as confuſed Multitudes, without Heads or Governours, but they were diſtinct Families which had Fathers for Rulers over them: whereby it appears, that even in the Confuſion, God was careful to preſerve Paternal Authority, by diſtributing the diverſity of Languages according to the diverſity of Families.* And for this he quotes the Text, *Gen.* 10. v. 5. Speaking of the diviſion of the Iſles of the Gentiles among the Sons of *Japhet*, it follows, *v.* 5. *Theſe are the Families of the Sons of* Noah, *after their Generations in their Nations; and by theſe were theſe Nations divided in the Earth after the Flood. So that though the manner of this Diviſion be uncertain, yet it is moſt certain the Diviſion it ſelf was by Families from* Noah *and his Children.*

P. 16. As for *Nimrod*'s being King over his own Family by Right, and over other Families by Uſurpation and Conqueſt, and not by Election of the People or Multitude, he gives us Sir *Walter Rawleigh*'s opinion that it was ſo; (which I think is no better a proof than if he had given us his own:) but if it were true, it proves no more, than that this Patriarchal Right could not long continue, ſince it was uſurped in the Grandchild of *Ham*, the fourth diſcent from *Noah*. But he proceeds thus:

As this Patriarchal Power continued in Abraham, Iſaac,

ſaac, *and* Jacob, *even unto the Egyptian Bondage; ſo we finde it amongſt the Sons of* Iſmael *and* Eſau: *it is ſaid,* Theſe are the Sons of *Iſmael*, and theſe are their names by their Caſtles and Towns, Twelve Princes of their Tribes and Families, *&c.*

P. 18. He owns this Paternal Government was intermitted during their Bondage in *Egypt*, becauſe they were in ſubjection to a ſtronger Prince: *But after the return of the* Iſraelites *out of bondage, God, out of a ſpecial care of them, choſe* Moſes *and* Joſuah *ſucceſſively to govern as Princes, inſtead of the ſupream Fathers: And after them, God raiſed up Judges to defend his People. But when God gave them Kings, he re-eſtabliſhed the ancient and prime Right of Lineal-ſucceſſion to Paternal Government: And whenſoever he made choice of any ſpecial perſon to be King, he intended that the Iſſue alſo ſhould have the benefit thereof, as being comprehended ſufficiently in the perſon of the Father, although the Father onely was named in the Grant.*

P. 19. The Author proceeds to obviate an Objection that he ſees may be made to his Hypotheſis, That it may ſeem abſurd that Kings now are Fathers of their People, ſince Experience ſhews the contrary. *It is true* (ſays he) *all Kings are not the natural Parents of their Subjects, yet they all either are, or are to be reputed the next Heirs to thoſe firſt Progenitors who were at firſt the natural Parents of the whole People; and ſo in their right ſucceed to the exerciſe of Supream Juriſdiction: and ſuch Heirs are not onely Lords of their own Children, but of their Brethren, and all others* that were Subjects to *their Fathers. And therefore we finde that God told* Cain *of his brother* Abel, His deſires ſhall be toward thee, and thou ſhalt rule over him. *Accordingly when* Jacob *bought his brothers Birthright*, Iſaac *bleſſed him thus:* Be Lord over thy brethren, and let the ſons of thy mother bow before thee.

P. 20.

P. 20. *As long as the first Fathers of Families lived, the name of Patriarch did aptly belong unto them; but after a few Descents, when the true Fatherhood it self was extinct, and onely the right of the Father descended upon the true Heir, then the Title of Prince or King was more significant to express the power of him who succeeds onely to the right of Fatherhood which his Ancestors did naturally enjoy. By this means it comes to pass that many a Child, by succeeding a King, hath a right of a Father over many a gray-headed Multitude, and hath the Title of* Pater Patriæ.

It may be demanded, What becomes of the Right of Fatherhood, in case the Crown does escheat for want of an Heir; whether doth it not then devolve to the People? The Answer is, It is but the negligence or ignorance of the People to lose the knowledge of the true Heir: for an Heir there is always. If Adam *himself were still living, and now ready to die, it is certain that there is one man, and but one in the world, who is next Heir, although the knowledge who should be that one man, be quite lost.*

P. 21. *This ignorance of the People being admitted, it doth not by any means follow, that for want of Heirs the Supream Power is devolved to the Multitude, or that they have power to rule, and chuse what Rulers they please. No, the Kingly power in such cases escheats to the Princes and independent Heads of Families: for every Kingdom is resolved into those parts whereof at first it was made. By the uniting of great Families or petty Kingdoms, we finde the greater Monarchies were at first erected; and into such again, as into their first matter, many times they return again. And because the dependancy of ancient Families is oft an obscure and worn-out knowledge, there the wisdom of many Princes have thought fit to adopt those for Heads of Families, and Princes of Provinces, whose Merits, Abilities, or Fortunes, have enabled them, or made them fit and capable of such Royal Favours. All such prime Heads*

and Fathers have power to consent in the uniting or conferring of their Fatherly Right of Soveraign Authority on whom they please: And he that is so elected, claims not his power as a Donative from the People, but as being substituted by God, from whom he receives his Royal Charter of an Universal Father, though testified by the Ministry of the Heads of the People.

P. 22. *In all Kingdoms or Commonwealths in the world, whether the Prince be the Supreame Father of the People, or but the true Heir of such a Father,* p. 23. *or whether he come to the Crown by usurpation of the Nobles, or of the People, or by any other way whatsoever; or whether some few or a multitude govern the Commonwealth; yet still the Authority that is in any one, or in many, or in all these, is the onely Right and natural Authority of a Supream Father. There is, and always shall be continued to the end of the world, a natural Right of a Supream Father over a multitude, although by the secret Will of God, many do at first most unjustly obtain the Exercise of it.*

To confirm this natural Right of Regal Power, we finde in the Decalogue, that the Law which enjoyns Obedience to Kings, is delivered in the Terms of, Honour thy Father and thy Mother: *as if all Power were originally in the Father. If Obedience to Parents be due immediately by a natural Law and Subjection to Princes, but by the mediation of an humane Ordinance, what reason is there that the Laws of Nature should give place to the Laws of Men? as we see the power of the Father over his Child, gives place, and is subordinate to the power of the Magistrate.*

P. 24. *If we compare Rights of a Father with those of a King, we finde them all one, without any difference at all, but onely in the latitude or extent of them: As the Father over one Family, so the King as Father over many Families, extends his care to preserve, feed, clothe, instruct,*

and

and defend the whole Commonwealth. His War, his Peace, his Courts of Justice, and all his Acts of Soveraignty, tend onely to preserve and distribute to every subordinate and inferiour Father, and to their Children their Rights and Priviledges; so that all the Duties of a King are summed up in an Universal Fatherly Care of his People.

I have been so just to the Author as to transcribe as much of his first Chapter as tends to prove the original power of Kings, as well that you might see the Hypothesis which he builds his Divine Right of Absolute Monarchy in his own words, and so be the better able to judge whether I understand and answer him or not; as becaufe it contains the substance and strength of all that the Author had to say in defence of it.

So that I shall now fall to examine whether his Foundations will bear so weighty a Structure as he hath raised upon it. His first Argument against the natural Freedom of Mankinde is drawn from Scripture, and from *Bellarmine*'s own Concession, *That* Adam *was (and consequently every other Father ought to be) a Prince over his Posterity. And as* Adam *was Lord over his Children, so his Children, under him, had a power over their own Children, subordinately to the first Parent, who was Lord Paramount over his Childrens Children to all Generations, as being the Grandfather of his People.*

So that neither the Children of Adam *or any else, can be free from subjection to their Parents; and this subjection to Parents being the foundation of all Legal Authority, by the Ordination of God himself: therefore no man can be born in a state of Freedom or Equality.*

In answer to which, I shall not concern my self what *Bellarmine* or any other have granted; but would be glad to know where and how God hath given this Absolute power to Fathers over their Children, and by

by what Law Children are tyed to an Absolute Subjection or Servitude to their Parents, since the Author in another place affirms, that at first a Childe, a Slave, and a Servant, were all one without any difference. I see no divine Charter in Scripture of any such absolute despotick power granted to *Adam* or any other Father.

Vid. *Preface to his Observations on* Aristotle's *Politicks.*

The Author, in his Observations on *Grotius de Jure belli*, &c. founds this dominion of *Adam* over the Earth and all Creatures therein, on *Gen.* 1. 28. and quotes Mr. *Selden* in his *Mare Clausum*; where he says, *That* Adam, *by donation from God, was made the general Lord of all things, not without such a private dominion to himself as did exclude his Children*, &c. From which words I do not conceive that *Adam*'s absolute power over his own Off-spring can be made out; for the words are spoken as well to the Female as Male of Mankind: *Be fruitful and multiply, and replenish the Earth, and have dominion over the fish of the Sea*, &c. *and over every living thing that moveth* (in the Original, *creepeth*) *upon the face of the Earth.* By which words *Adam* hath no power conferred upon him over his own Children (when he should have them:) These words implying no more than a conferring of a power by God on Mankind, under these words of *Male and Female* (and was not at all personal to *Adam* or *Eve* alone) whereby they might subdue or tame the Brute Creatures for their use, not comprehending those of the same kind with themselves; since the general words extend no farther than to every living thing that *creepeth* upon the Earth: nor does Gods grant of the Creatures to *Noah* comprehend more than this: Onely God there gives man a priviledge to kill the Creatures for Food, which *Adam* had not. Which shews that *Adam* was so far from having any such power of Life

Life and Death over his own Children, that he had it not so much as over Brute Creatures: Since if he had this power as a Monarch, it is highly probable, that being the Father of all Men in the world, and having by the murder of *Abel* not onely lost a Son but a Subject, it had been his Right alone to have punished *Cain* the Murderer: Whereas we finde *Cain*, *Gen.*4. *v.*14. upon his conviction of the Murder, telling God, that *every one* that findeth him, should slay him; and therefore, *v.* 15. God set a mark upon *Cain*, lest *any* finding him should slay him. From whence we may infer, 1. That it was a Law of Nature then, that Murder was to be punished. 2. That this Right of punishing did not belong to *Adam*, as a Father, alone, so as to have power of Life and Death over his Children, since the Text does not mention that he was afraid his Father should put him to death, but every one that met him: Neither does God set a mark upon him to secure him from *Adam*, but from any body else that should light on him. From whence it follows, that if *Adam* had no more right by Gods concession to take away his Sons life for the murder of his Brother, (which is one of the greatest offences he could commit) than any other of his Brethren or Kinsmen; there is no reason why he should have it in any other case. And as for what the Author says, *That this Lordship which* Adam *had over the whole World, the Patriarchs by a Right descending from him, did enjoy; which was as large and ample as the absolutest Dominion of any Monarch which hath been since the Creation*; I cannot understand how this Right derives it self from *Adam*: For he tells us but a little before, *p.* 12. *That Civil Power not onely in general is by divine Institution, but even the Assignment of it specifically to the eldest Parents.* Therefore granting that all the Patriarchs from *Abraham* to *Jacob*'s twelve Sons, inclusively, assumed a power of Life and Death over

over their own Families; 1. I desire to know how this Right can be derived from *Adam*: for the Right of supream Monarch of the world descending upon the eldest Son of *Adam*, whom we will suppose to have been *Seth* (since *Cain* might forfeit his Birthright,) this power of Life and Death could onely be truly vested in the eldest Grandchild, or descendant from *Seth*; which I suppose the Author means by *eldest Parents*, or else he talks nonsence: And that *Abraham* was this eldest Grand-son of *Seth*, will be hard to prove, since it is not apparent from Scripture, whether *Shem* or *Japhet* were the eldest Son of *Noah*, or *Abram* or *Nahor* the eldest Son of *Terah*. And the Fathers and ancient Commentators on this place, are divided in their opinions concerning this point. And it is plain from divers places in Scripture, that the eldest Son is not always first named. But supposing that *Shem* was the eldest Son of *Noah*, it does not appear that *Arphaxad* from whom *Abram* descended, was his eldest Son, since the Scripture does not undertake to give us the names of all the Sons of *Shem*, but onely of *Arphaxad*, as his name was necessary for the deriving of the Genealogy of *Abraham* the Ancestor of the Jewish Nation. But if any man will answer (as the Author does, *p.* 21.) that this right Heir of *Adam* coming by length of time to be lost, this supream Kingly power became devolved to all independent Heads of Families; then this Right of *Adam*, as Lord and King of the whole World, as the first man, must certainly be extinct, since none but the true Heir could have a Right to that (according to the Author's principles:) So that this power of Life and Death which the Author will have the Patriarchs to have exercised over those of their Family, must belong to them either as Fathers, or else as Masters, or Heads of their particular Families; and not as Heirs to *Adam*. But since the Author seems

to

to found this Power of *Adam* upon Mr. *Hunton*'s conceſſion, (See *Anarchy of a limited Monarchy*, p. 264.) That it is God's Ordinance that there ſhould be Civil Government, becauſe *Gen.* 3. 16. God ordained *Adam* to rule over his Wife, and her deſire was to be ſubject to his; and that as hers, ſo all theirs that ſhould come out of her: Firſt, all Expoſitors look upon theſe words as reſpecting only a Conjugal, and not Filial Subjection. Neither were they ſpoke in the ſtate of Nature or Innocence, but after the Fall. Neither for all that, did *Adam*, or any other Husband, by theſe words acquire an abſolute Authority over the Life of his Wife, in the ſtate of Nature, ſo that ſhe hath no right left her to defend herſelf from the unjuſt violence or rage of her Husband. Therefore ſince this Power of *Adam* over *Eve* and her Children, cannot be pretended to belong to him as a Father, but as a Maſter of a Slave, and thoſe that ſhall be deſcended from her; it were worth while to enquire, what Power a Father or Maſter of a Family can claim ſeparate from any Commonwealth, (as we will ſuppoſe theſe Patriarchs were.) For this will ſerve toward the ſolving thoſe Examples he puts of *Abram*'s power of Peace and War, and of *Judah*'s power of Life and Death over his Daughter-in-law *Thamar*. We will firſt then conſider the power of a Father by the Law of Nature over his Children, and then that of a Maſter of a Family over his Wife, Servants, or Slaves. To begin with that of a Father, as the moſt worthy; I ſhall endeavour to ſearch into the Original of the Father's Power over the perſons of his Children, and how far it extends.

It is evident, that this Power of Fathers over their Children, can only take place in the ſtate of Wedlock; for as to Children got out of Marriage, it is uncertain who is their Father: who can only be known by the decla-

declaration of the Mother; and ſhe ſometimes cannot certainly tell her ſelf. So that no man is obliged to take care of or breed up a Baſtard, becauſe the Mother, if ſhe had her liberty of keeping what company ſhe pleaſed, can never morally aſſure him that the Child is his: therefore unleſs he take upon him the care and education of this Child, it belongs to the Mother, and not to him to provide for it. So that the Right of the Father over his Child, commences by vertue of the Marriage, which is a mutual Compact between a Man and a Woman for their Cohabitation, the generation of Children, and their joint care and proviſion for them. So that though by the Law of Nature (which is confirm'd by the Law of God) the Woman, as the weaker veſſel, is to be ſubject to the Man, as the ſtronger, ſtouter, and commonly the wiſer creature, to whoſe care and courage ſhe muſt owe the greateſt part of her proviſion and protection; yet ſhe is not without an Intereſt in the Children, ſince ſhe is under an obligation to perform her part (and that the moſt laborious and troubleſome) in their Education; though her Power and Right in them be ſtill ſubordinate to that of the Man, to whom by force of the Marriage ſhe hath already ſubjected herſelf. Some Writers therefore think they have done ſufficiently when they tell us, that the Father hath an abſolute Dominion over his Child, becauſe he got it, and is the cauſe of its being. By this Argument the Mother hath greater Right over the perſon of the Child, ſince all Naturaliſts hold the Child partakes more of her than of the Father; and ſhe is beſides at greater pain and trouble both in the bearing, bringing it forth, nurſing and breeding it up. But if it be anſwered, that the Man being Maſter of his Wife, is by the Contract ſo likewiſe of her Iſſue: Then it follows, that this power of the Father does not commence barely from Generation,

tion, but is acquired from the Contract of Marriage; which (till I meet with ſome reaſon to the contrary) I ſee not why it might not be ſo agreed by the Contracts, that the Father ſhould not diſpoſe of the Children without the Mothers conſent: Since we ſee it often ſo agreed in the Marriages of Soveraign Princes, who are always ſuppoſed to be in the ſtate of Nature, in reſpect to each other. Yet though I will not deny, but ſome Gratitude and Acknwledgment is due from Children to Parents, even for this, that they did enter into the ſtate of Marriage for their generation, and were the occaſion of their Being: Yet I do not ſee, how by this alone a Father acquires an abſolute power and dominion over the perſon of the Child, to diſpoſe of it as he thinks fit: Since Parents acting here only as Natural, and not Moral Agents, they are not the voluntary Cauſes of its generation: Therefore I cannot found ſo great a Right as that of an abſolute perpetual Dominion over the Children, upon ſo ſlight a foundation.

Vid. *Articles of Marriage between King* Philip *and Queen* Mary, *in* Godwin's *Annals*, An. 1554. Thuanus, Lib. IX. *So likewiſe where a Subject marries his Queen, as the Lord* Darnley's *Marriage with* Mary *Qu. of* Scotland, *the Soveraignty, and conſequently the Power over the Children to be born remained entirely in Her.*

We muſt therefore trace this Right of Fathers over his Children to a more true original than any of theſe. Since then all the Laws of Nature, or Reaſon, are intended for one end or effect, *viz.* the common good and preſervation of Mankinde; and that Marriage is no otherwiſe a Duty, than as by the propagation of our Species it conduces to, without the help and aſſiſtance of others; and that the Parents entred into this ſtate of Marriage for the procreation of Children: both the Inſtinct of Nature and Law of Reaſon dictate, that they are obliged to take care of and

and provide for that Child, which they as ſubordinate Cauſes have *produced*; as being thoſe on whom God hath impoſed this Duty, which is much greater than that of Generation: for now the world is ſufficiently peopled, it may be doubted, whether any perſon is obliged to Marry, further than it may conſiſt with their conveniency, or courſe of Life. But Parents, when they are Married, are tyed by the Laws of Nature to take care of the Children. Therefore I ſuppoſe the higheſt Right of Parents in their Children, doth ariſe merely from their diſcharge of this great Duty of Education, as may appear from this Inſtance. Suppoſe the Parents not being willing to undertake the trouble of breeding up the Child, do either expoſe it, or paſs over their Right in it to another, aſſoon as it is born; I deſire to know if the perſon that finds this Child, or he to whom it is aſſigned, breed it up until it come to have the uſe of Reaſon, what Duty this Child can owe his Parents, if they are made known to him? Certainly, all the obligation he can have to them, muſt be upon the ſcore of their begetting him; which how ſmall that is, you may obſerve from what hath been ſaid before: nor can the Parents claim any further Right in this Child, ſince by their expoſing and granting it away, they renounced all the Intereſt they could have in it; ſo that the Duty and Gratitude he ſhould have owed them, had they taken upon them the care and trouble of breeding him up, is now due to his Foſter-Father or Mother, who took care of him until he was able to ſhift for himſelf. From whence it is evident, that the higheſt Right which Parents can have in their Children, is not meerly natural, from generation; but acquir'd by their performance of that nobler part of their Duty. And ſo the higheſt Obedience which Children owe their Patents, proceeds from that Gratitude and Senſe they ought

ought to have of the great obligation they owe their Parents, for the trouble and care they put them to in their Education.

Having now, I hope, found out the Original of Parents Right and Intereſt in their Children, and the chief ground of their Gratitude and Duty to their Parents; we will now proceed to the Second Point propoſed, and conſider what kinde of Right this is, and how far it extends. Since therefore the Father's greateſt intereſt in his Child proceeds from his having bred it up, and taken care of it, and that this Duty is founded on that great Law of Nature, that every Man ought to endeavour the common good of Mankinde, which he performs, as far as lies in his power, in breeding up, and taking care of his Child; it follows, that this right in the Child, or power over it, extends no farther than as it conduces to this end, that is, the good and preſervation thereof: and when this Rule is tranſgreſſed, the Right ceaſes. For God hath not delivered one man into the power of another, merely to be tyrannized over at his pleaſure; but that the perſon who hath this Authority, may uſe it for the good of thoſe he governs. And herein lies the difference between the Intereſt which a Father hath in his Children, and that property which he hath in his Horſes or Slaves; ſince his right to the former extends only to thoſe things that conduce to their Good and Benefit; but in the other he hath no other conſideration, but the profit he may reap from their labour and ſervice, being under no other obligation but that of Humanity, and of uſing them as becomes a good-natur'd and merciful man; yet ſtill conſidering and intending his own advantage, as the principal end of his keeping of them. Whereas in his Children he is chiefly to deſign their good and advantage, as far as lies in his power, without ruining himſelf: and though

he juſtly may make uſe of their labour and ſervice while they continue as part of his Family; yet it is not for the ſame end alone that he uſes his Horſes or Slaves, but that his Children being bred up in a conſtant courſe of Induſtry, may be the better able either to get their own living, or elſe to ſpend their time as they ought to do, without falling into the Vices of Idleneſs or Debauchery. So that it is evident, the Father has no more right over the Life of his Child than another man; being as much anſwerable to God if he abuſe this Right of a Father, in killing his innocent Son, as if another had done it. Neither hath he from the ſame Principles any right to maim or caſtrate his Child, (as this Author allows him to do, in his Directions for Obedience;) much leſs ſell him for a Slave: Therefore it is no part of the Law of Nature, (unleſs he cannot otherwiſe provide for it) but of the *Roman*, or Civil-Law, that a Father ſhould have power to ſell his Son three times. For the Father is appointed by God to meliorate the condition of his Child, but not to make it worſe; ſince it is not himſelf, but God that properly gave him his being. So that I hope I have ſufficiently proved there is a great difference between a Child and a Slave, or a Servant for Life, though this Authour will have them in the ſtate of Nature to be all one.

But, for the better clearing of this point, how far the power of Parents over their Children extends, I think we may very well divide (as *Grotius* does) the life of the Child into three periods or ages. The firſt is the time of imperfect judgment, or before the Child comes to be able to exerciſe his Reaſon. The ſecond is the period of perfect Judgment, yet whilſt the Child ſtill continues part of his Fathers Family. The third is after he hath left his Father's,

De J. B. l. 2. c. 5. § 2.

and

and either enters into another Family, or sets up a Family himself. In the first Period, all the actions of Children are under the absolute dominion of their Parents: for since they have not the use of Reason, nor are able to judge what is good or bad for themselves, they could not grow up nor be preserved, unless their Parents judged for them what means conduced to this end; yet this power is still to be directed for the principal end, the good and preservation of the Child. In the second Period, when they are of mature Judgment, yet continue part of their Fathers Family, they are still under their Fathers command, and ought to be obedient to it in all actions which tend to the good of their Fathers Family and concerns; and in both these Ages the Father hath a power to set his Children to work, as well to enable them to get their own Living, as to recompence himself for the pains and care he hath taken, and the charge he may have bin at in their Education. For though he were obliged by the Law of Nature to breed up his Children, yet there is no reason but he may make use of their labour, as a natural recompence for his trouble. And in this Period the Father hath power to correct his Son, if he prove negligent, or disobedient; since this Correction is for his advantage, to make him more careful and diligent another time, and to subdue the stubbornness of his Will: But in other actions the Children have a power of acting freely, yet still with respect of gratifying and pleasing their Parents, to whom they are obliged for their Being and Education, since without their care they could not have attained to that age. But since this Duty is not by force of any absolute Subjection, but only of Piety, Gratitude and Observance, it does not make void any act, though done contrary to those Duties, as Marriage, and the like; for the gift of a thing is not therefore void, though made contrary

to the Rule of Prudence and Frugality. In the third Period, they are in all actions free, and at their own disposé; yet still under those obligations of Gratitude, Piety and Observance toward their Parents as their greatest Benefactors, since if that they have well discharged their Duty toward their Children, they can never in their whole lives sufficiently recompence so great benefits as they have received from them.

But it seems the Authour is not satisfied with these distinctions, but saies, *He cannot conceive, how in any case Children can ever naturally have any power or moral Faculty of doing what they please, without their Parents leave; since they are always bound to study to please them. And though by the Laws of some Nations, Children when they attain to years of discretion, have Power and Liberty in many actions, yet this Liberty is granted them by positive humane Laws only, which are made by the Supreme Fatherly Power of Princes, who regulate, limit, or assume the Authority of Inferiour Fathers, for the publick benefit of the Commonwealth: So that naturally the Power of Parents over their Children never ceaseth by any separation, but only by the permission of the transcendent Fatherly Power of the Supreme Prince, Children may be dispensed with, or priviledged in some cases from obedience to subordinate Parents.*

Observations on *Grotius* de J. B. *p.* 62.

For my part, I see no reason why these distinctions of *Grotius* may not be well enough defended against all the Reasons which the Authour gives us to the contrary: For he only tells us, *He cannot conceive how in any case Children can ever naturally have any power or moral faculty of doing what they please, without their Fathers leave; and that naturally the Power of Parents never ceaseth by any separation*, &c. but gives us no other reason, than that they are always bound to study to please them. As if this obligation of Gratitude and Com-

Complacency, did likewise comprehend a full and perfect propriety of all Fathers in the persons of their Children, and an absolute power over them in all cases whatsoever, so that Children shall have no Right left to consult their own good or preservation, in any case whatsoever, farther than the Father pleases. As for *Bodin*, and divers others that have writ on this subject, they do no more than follow others, who have asserted this Absolute Power, upon no other grounds than the *Jewish* or *Roman* Municipal Laws; but have never troubled themselves to look into the true Original of Paternal Authority, or Filial Subjection, according to the Laws of Nature or Reason. And most Treatises of this subject being commonly written by Fathers, they have been very full in setting forth their own Power and Authority over their Children; but have said little or nothing of the Rights of Children, in the state of Nature, towards their Parents.

Vid. *Bodin* de Rep. l. 1. c. 4.

Therefore *Bodin* thinks he hath done enough in supposing that if a Father is wise, and not mad, he will never kill his Son without cause, since he will never correct him without he deserve it; and that therefore the Civil Law supposes, that the Will of the Parents in managing the concerns of their Children, is void of all Fraud; and that they will rather violate all Divine and Humane Laws, than not endeavour to make their Children both rich and honourable: And from those instances out of the *Roman* Law, supposes that Parents cannot so much as will any thing to their Childrens prejudice, or so much as abuse this Fatherly Power of Life and Death: And therefore thinks he hath sufficiently answered the Objection he makes, that there have been some Parents, who have abused this power so far, as to put their Children to Death without cause. He says,

Loc. sup. laudat.

They give us no Examples to the contrary: And supposing this to have sometimes fallen out, must therefore Legislators alter a wholsome Law, because some persons may abuse it?

But if we consider what *Bodin* hath here said, we shall finde every one of his Suppositions false: For, 1. he supposes it to be the Right of all Fathers, by the Law of Nature, to have an absolute power over the lives and persons of their Children. 2. That the Jewish and Roman Law are most agreeable to the Laws of Nature in this point. 3. That Fathers do seldom or never abuse this power. 4. That if they do abuse it, yet it is better to leave it in their hands, than to abrogate it or retrench it. The falseness of all which Assertions, I either have already, or else shall hereafter make manifest: Only I shall remark thus much at present, That upon *Bodin*'s principle, women that murder their Bastards would have a good time on't, because having no Husbands, they have full power over the Life of their Children; and there is no reason that it should be retrencht by any positive Laws, because some offend against it. But however, this Argument of *Bodin*'s would do our Author's cause no good: for if Parents are to be trusted with this absolute power over their Children, because of the natural affection they are always supposed to bear them; then Princes ought not to be trusted with it, since none but Parents themselves can have this natural affection towards their Children; Princes (as the Author grants) having this power onely as representing these Parents. Whereas Parentage is a natural Relation, and neither can be created nor assigned farther than the Civil Laws of the Country have appointed; and therefore there can be no adopted Son by the Law of Nature, since Adoption arises chiefly from the promise and consent of the person adopted, and partly from the Authority of the

Civil

Civil Law, or Municipal Law of the Commonwealth. So that in relation to Princes, upon this Reason of *Bodin*'s, *ceſſante cauſa, ceſſat effectus.* But indeed *Bodin* never dreamt of this fine Notion of our Author's, that all Monarchs were not onely Heads, but Fathers of their people, or elſe certainly we ſhould have had this as the chief Argument to prove his French Monarchy to be *Jure Divino.* But I ſhall trouble my ſelf no farther with him at preſent, but ſhall proceed to conſider this point of abſolute Obedience a little farther.

I ſuppoſe the Author (as any ſober man elſe) would grant, that Children are not obliged ſo much as to attempt to perform the commands of their Parents, in caſe they evidently appear impoſſible or extravagant, ſuch as a Father may give when he is in a fit of drunkenneſs, madneſs, or ſudden rage, which is all one with madneſs; and of this who can judge, but the Children who are to perform theſe Commands? And in this caſe no man will deny but it is lawful for the Children to hold, nay binde their mad or drunken Parents, in caſe they cannot otherwiſe hinder them from doing miſchief, or killing either themſelves, their Mothers, or Brethren. So that though they may do this from that natural love & charity which all men in the ſtate of nature ought to ſhew toward each other, yet they may likewiſe juſtifie the doing of it as Children, who ought to have a greater concern for the good and preſervation of their Parents, than meer ſtrangers, and have therefore an higher obligation to prevent their doing any miſchief either to themſelves or neer Relations; this being for the Fathers good and preſervation, and that for which he hath cauſe to thank them when he comes to himſelf. And if it be ſaid, that the Son may then refuſe his Fathers Commands, or reſiſt them, pretending he is mad, drunk, or in a rage, when he really is not, and thereby take occaſion to obey his Father

no farther than he pleases: to this I answer, That the Son is either really perswaded that his Father is in some of those evil circumstances before mentioned, or else onely pretends that he thinks so, when really he does not. If in the first case he erre in his judgment, and the ignorance did not proceed from his own fault (either of passion, prejudice, or too slight an esteem of his Fathers understanding) he is not culpable, though he make such a false judgment of his Fathers actions: for God considering onely the sincerity of the heart, does not require of any man more than he is able to perform. But if on the other side the Son play the Hypocrite, and refuse his Parents Commands, pretending they are mad or drunk, when really they are not, he is without doubt doubly guilty both, of Hypocrisie and Disobedience. But this does not hinder Children in the state of Nature from judging of the reasonableness or lawfulness of their Parents Commands, and of the condition they are in when they gave them: for otherwise a Child ought to be of his Fathers Religion, though it were Idolatry, if he commanded it; or were obliged to break any of the Laws of Nature, if this Obedience were absolute. And it is a lesser evil that the Commands of Parents should be disobeyed, nay, sometimes their persons resisted, than that they should make a Right to command or do unreasonable and unlawful things in a fit of madness, drunkenness, or passion, destroy either themselves or others.

But it may be replied, that though Fathers in the state of Nature have no Right to act unjustly or cruelly toward their Children, or to command such unlawful or unreasonable things; yet however they are onely answerable to God for so doing; and there is out of a Commonwealth no superiour power that can question the Fathers actions: for since his Children are committed by God to his care, he onely is answerable for them,

them, and for his actions towards them, since no other man hath any interest or concern in them but himself. So that if he kill, maim, abuse, or sell his Son, there is no man that hath Right to revenge, punish, or call him to an account for so doing; and if no others that are his equals, much less his Wife and Children, who are so much his Inferiours, and who ought in all things to be obedient to his Will. Therefore this Power, though it be not absolute in respect of God, yet is so in respect of his Wife and Children: and so in all cases where the Children cannot yield an active Obedience to their Fathers commands, they are notwithstanding obliged (by the Law of God; See *Ephes.* 6. 1, *Colos.* 3. 20.) to a passive one; and patiently to submit to whatever evils or punishments he pleases to inflict, though it were to the loss of Life itself.

To which I answer, That though it is true, a Father in the state of Nature, and considered as the head of a separate Family, hath no Superiour but God, and consequently no other person whatsoever hath any Authority or Right to call him to an account, and punish him for this abuse of his paternal Power; yet it doth not follow, that such absolute submission is therefore due from the Children, as does oblige them either to an active or a passive Obedience in all cases to the Fathers Will, so that they neither may, nor ought to defend themselves in any circumstance whatsoever. There is a great deal of difference (in the state of Nature) between calling a man to an account as a Superiour, and defending a mans self as an equal. For a man in this state hath a right to this latter against all men that assault him, by the principle of Self-preservation: But no man hath a right to the former, but onely in respect of those over whom he hath an Authority, either granted him by God, or conferr'd upon him by the consent of other men. So

that

that the evils which an Aggreſſor, or Wrong-doer, ſuffers from him he injured, though in reſpect of God the Supreme Lawgiver they may be natural Puniſhments ordained by him, to deter men from violating the Laws of Nature, yet they are not ſo in regard of the Perſon who inflicts them. For God may ſometimes appoint thoſe for the Inſtruments of his Juſtice, who otherwiſe do injury to the perſon puniſhed; as in the caſe of *Abſalom*'s Rebellion againſt his Father *David*. So that in this caſe the evils the wrong-doer ſuffers are not properly Puniſhments, but neceſſary Conſequences of his Violence and Injuſtice; and in reſpect of the Inflicter, are but neceſſary means of his preſervation. So that if a Son have any Right to defend himſelf in what belongs to him from the unjuſt violence of his Father, he doth not act as his Superiour; but in this caſe as his Equal, as he is indeed in all the Rights of Nature, conſidered only as a Man; Such as are a Right to live, and to preſerve himſelf, and to uſe all lawful means for that end. Therefore ſince, as I have already ſhown, that a Father hath no higher Right or Authority from God over the perſon of his Child, but as it tends to his good and preſervation, or as it conduces to the great end of Nature, the common Good and preſervation of Mankinde: So when the Father tranſgreſſes this Authority, his Right ceaſes; and when that ceaſes, the Sons Right to preſerve himſelf (and in that, to purſue that great end) begins to take place. Therefore out of a Civil ſtate, if a Father will endeavour evidently, without any juſt cauſe, to take away his Sons Life, I think the Son may in this caſe, if he cannot otherwiſe eſcape nor avoid it, and that his Father will not be pacified neither with his ſubmiſſion nor entreaty, defend himſelf againſt his Father, not with a deſign to kill him, but purely to preſerve his own Life; and if in this caſe the

Father

Father happen to be kill'd, I think his Blood is upon his own head. But if any object to me the Example of *Isaac*'s submission to his Father, when he intended to sacrifice him: To this I answer, that as this act of *Abraham*'s is not to be taken as an Example for other Fathers, so neither does the Example of *Isaac* oblige other Sons. For as *Abraham* had no right to offer up his Son, but by God's express Will; so it is rational to suppose, that *Isaac* being then (as Chronologers make him) about nineteen or twenty years of Age, and able to carry wood enough upon his back to consume the Sacrifice, and of years to ask where the Lamb was for the Offering; was also instructed by his Father of the cause of his dealing so with him: and then the submission was not paid to his Father's, but to God's Will, whom he was perswaded would have it so. But if any man yet doubts, whether resistance in such a case were lawful, I leave it to his own Conscience, whether if his Father and he were out of any civil estate, whose assistance he might implore, he would lie still, and suffer his Father to cut his throat, only because he had a minde to it, or pretended revelation for it.

So likewise if a Father in this state should go about to violate his Sons Wife in his presence, or to kill her, or his Grandchildren, I suppose he may as lawfully use the same means for their preservation, (if he cannot otherwise obtain it) as he might for his own; since they are delivered to his charge, and that he only is answerable for them. For since the Father doth not acquire any property in the Sons person, either by begetting or educating him, much less ought he to have it over those the Son hath begotten.

But though Children may have this Right of defending their own Lives, or those of their Wives and Children, from their Fathers unjust violence, when they

they can by no means elſe be preſerved; Yet I would not be here underſtood to give Children this right of reſiſting upon any leſs occaſion; as if the Father ſhould only go about to correct his Son, though without juſt cauſe, it were therefore lawful for him to reſiſt or beat his Father. For we are obliged by the Law of Chriſt to bear ſmaller Injuries from others, much more from a Father; neither yet would I give them any right to continue this ſtate of War, and to revenge upon their Parents the Injuries they have formerly received at their hands. For all Revenge, taken in this ſence, as a ſatisfaction of the minde in returning of an evil or injury already received, without any reſpect to a mans own preſervation, or the good of the perſon that did the wrong, is unlawful even in the ſtate of Nature. Therefore this returning Evil for Evil, which ſome improperly call Revenge, is only juſtifiable for one or both of theſe ends; either to make the party that hath done the Injury ſenſible of his Errour, and ſeeing the Follies and Inconveniences of it, to alter his minde, and reſolve to do ſo no more; or as it may conduce to a mans own preſervation for the future, and be a warning to others not to injure him in like manner, ſince they ſee he will not take injuries tamely. But all this is ſtill left to a mans own prudence, how far he will paſs them by: And he is certainly obliged to leave off returning them, aſſoon as he can be ſafe without it; ſince otherwiſe quarrels would be perpetual. Neither ought one, who hath been highly obliged to a man perhaps for his life, to return him evil for evil, ſince ſcarce any Injury being great enough to cancel ſo great an Obligation. Therefore ſince a Father, who hath truely performed his Duty, is the greateſt Benefactor we can imagine in this life; ſo no man ought to revenge an Injury, though never ſo great, upon him; ſince it is not only undutiful, but ungrate-

ungrateful, and cannot serve either of those two ends for which alone this returning evil for evil is allowable. For first, it cannot make the Father see his fault; since this correction being from a Son whom he looks upon as one highly obliged to him, and so much his inferior, will rather serve to exasperate than amend him. Secondly, Neither can this bearing of the Injury encourage others to attempt doing the like; since all that know the case, will likewise consider the person that did the wrong. So that Patience alone is the only lawful means to make the Father see his Errour, and be reconciled to his Child, who ought to embrace it afloon as the Father offers it.

But as for the places of Scripture brought for absolute Obedience to Parents; *viz.* the fourth Commandment, *Honour thy Father and thy Mother. Children, obey your Parents in the Lord*, Ephes. 6. 1, 2. and *Children, obey your Parents in all things*, Col. 3. 20. God did not intend here to give us any new Law or Precept concerning this Duty, but to confirm and explain the fifth Commandment; as that was but a confirmation of the Law of Nature, by which men were obliged to reverence and obey their Parents, long before that Law was given. Therefore since the Laws of Nature (which are but Rules of right Reason for the good of Mankinde) are the foundation of this Commandment, and of all those commands in the New Testament, they are still to be interpreted according to that Rule. Neither are other places of Scripture understood in any other sence; such as are those of turning the right Cheek, of giving away a mans Coat to him that would go to Law, and the like: all which we are not to Interpret Literally, but according to Reason. And so are likewise these words of St. *Paul* to be understood, *Children, obey your Parents in all*

See Grotius *and Dr.* Hammond's *Annot. upon these places.*

all things; that is, in all things reasonable and lawful. And this sence must be allowed of, or else Children were bound to obey all commands of their Parents, whether unlawful or lawful; being comprehended under this general word *All*. Nor will the distinction of an active or passive Obedience help in this case; for passive Obedience cannot be the end of the Fathers command, and consequently his will is not performed in suffering; since no Father can be so unreasonably cruel, as to command a thing meerly because he would have occasion to punish his Son whom he thinks must not resist him. Neither do these places appoint a Son when an infant, a man of full age, and perhaps an old man of threescore, to be all governed the same way, or that the same Obedience is required of them all.

And this brings me to a fuller Answer to the Author's Argument, and to shew that though Children are indeed always bound in Gratitude to please their Parents (as far as they are able without ruining themselves) and to pay a great reverence to them; yet that this submission is not an absolute subjection, but is to be limited according to the Rules of right Reason or Prudence. And to prove this, I will produce instances from the case of *Adam*'s Children, since the Author allows no Father to have had a larger authority than himself: We will therefore consider in the first place, *Adam*'s power as a Father, in respect of his Sons marriage. Suppose then that he had commanded one of his Sons never to marry at all, certainly this command would have been void, since then it had been in *Adam*'s power to have frustrated Gods Command to mankind of increase and multiply, and replenish the Earth; which was not spoken to *Adam* and *Eve* alone, since they could not do it in their persons, but to all mankind represented in them. And likewise *Adam* had been the occasion of his Sons in-

con-

continency, if he had lain with any of his Sisters before marriage. *Secondly*, Suppose *Adam* had commanded *Abel* to marry one of his Sisters (that being the onely means then appointed to propagate mankind) which he could not love, can any man think that he had been obliged to do it? Certainly no: for it would have been a greater sin to marry a wife he knew before-hand he could not live with, than to disobey his Father; for else how could this be true, *Therefore shall a man leave Father and Mother, and cleave to his Wife*? Since then *Adam* could not force his Sons affections, but onely recommend such of his Sisters as he thought would best suit with his humour, therefore if the Son could not live without marriage, and that *Adam* could not force a Wife upon him, it was most reasonable that he should chuse a Wife for himself. And to come to that other great point, that the Son can never separate himself from his Fathers Family nor subjection, as his Lord and Master, without his consent: Suppose then that *Adam* had been so cruel and unnatural (as some Fathers are) and being sensible of the profit he received from his Sons labours, would never have given them leave to have left his Family, and have set up for themselves, nor to have had any thing of their own, but (onely allowing them and their Wives a bare subsistance) have kept them like slaves as long as they lived; the Author I suppose would reply, That he might have done so if he had pleased; and that the Sons had no lawful means to help themselves, since he onely was Judge when or whether ever it was fit to set them free or no.

But I desire to know whether *Adam* had this power by a natural Right, or an acquired; not by the latter: for I have already proved, that neither Generation nor Possession can confer an absolute Right over the person

ſon of another: Nor yet could he have it by the Sons conſent; for they would never give their conſent to ſuch an abſolute ſlaviſh ſubjection. Nor yet could he have any ſuch Right by the revealed Will of God, ſince I have alſo proved that ſuch an abſolute ſubjection is nowhere requir'd by him in Scripture.

But now to return to the acquired Right of Education, neither can that confer ſo abſolute a power over any mans perſon, as that therefore he ſhould be a ſlave to his Foſterer as long as he liv'd; ſince admitting that the Father, or other perſon that takes upon him that care, may perhaps juſtly claim a Right in the ſervice or labour of the Childe, to ſatisfie them for their trouble and charge in bringing him up: Yet it does not therefore follow, that this ſervice is due as long as the Childe lives, but rather until ſuch time as they can make his labour ſatisfie them for their charge and trouble in keeping him; which may very well be by that time the Child attains to twenty five years of age at fartheſt. And there are thoſe that have offered to breed up and maintain all the Foundlings and Baſtard-children in *England*, if they may be bound to ſerve them until about that age. So that I ſee no reaſon why a few years Education ſhould give any man a Right over another perſon as long as he lived. But if it be urged that the Childe owed his life to his Father or Foſterer, ſince without his aſſiſtance he muſt have periſht, and therefore the ſervice of the Childs whoſe life is but little enough to recompence it; to this I anſwer, That the Parents are under an abſolute obligation, by the Laws of God and Nature, to breed up their Childe; and they ſin if they do not perform it as they ought: the end of a Father not being chiefly for the breeding up and preſervation of the Child, and therefore there is no reaſon he ſhould acquire ſuch a property in him, meerly becauſe he did his duty; and the

the intent of a Father being to better the condition of his Son, and not to make it worse, I doubt whether an absolute or perpetual Servitude, or Death it self, were the better bargain; and if this Right will not hold for the Father himself, much less will it for a Fosterer, since he is likewise obliged by the Laws of Nature and Humanity, if he be able, to breed up the Child he finds, and not to let it perish. So that the advantage he may make of the Child ought not to be the principal end of his undertaking, but the doing of good to mankind; and the advantage is to be considered onely as an encouragement, not as the onely motive to his duty, since he is obliged to do the same thing, though he were sure the Childe would either die or be taken away from him, before it could be with him half long enough to satisfie him. Neither does this reason hold true, according to the Scripture-rules of Gratitude; that a man hath Right to exact of one to whom he hath done a Courtesie, or bestowed a Benefit, a Return as great as the Benefit bestowed; since this were not beneficence, but meer bartering or exchange: And a man who had his life saved by anothers assistance (suppose by pulling him out of the water) was obliged by this principle to leave his life at his disposal ever after.

Therefore I see no reason, from all that hath yet been said, why a Son when he comes to be a man able to shift for himself, may not in the state of nature marry, and separate himself from his fathers Family, even without his Fathers consent, if he cannot otherwise obtain his liberty by his entreaty and all fair means: Not but that the Father may, if he please, disinherit his Son for so doing, or for marrying without his consent, since every man is free to dispose of his own upon what conditions he thinks fit. And the Son was to have considered before-hand which he valued most, his

own Liberty, or his Fathers kindneſs, and the hopes of his ſhare of his Eſtate after his death.

But I now come to the Author's main Argument from Scripture-Examples: *That the Patriarchs, by a Right derived from* Adam, *did exerciſe as Heads of their reſpective Families, a dominion as abſolute as that of any Monarch: And ſo inſtances in* Thamar *brought out to be burnt by her Father-in-law* Judah: *Touching War,* Abram's *commanding an Army of* 318 *Souldiers of his own Family;* Eſau's *meeting his Brother with* 400 *men at Arms: For matter of Peace,* Abram's *making a League with* Abimelech: *And that theſe acts of judging in capital Crimes, of making War and Peace, are the chiefeſt marks of Soveraignty that are found in a Monarchy.* All which I ſhall endeavour to anſwer. *Firſt,* The inſtance of *Judah* rather makes againſt him; for he confines this power before to the chief Father of the Family, and will never have Children to be free from ſubjection to their Fathers: whereas in this caſe *Judah,* as Head of his own Family, exerciſed an abſolute power of Life and Death, and ſo was free from ſubjection to his Father *Jacob,* who was then living. And ſuppoſe (as the Text, *Gen.* 38. expreſſes) *Judah* went down from his Brethren to a certain *Adullamite*, and there married, and ſet up a diſtinct Family; yet this will not help the Author, ſince (*p.*33.) he will not allow the Fatherly Authority to be confined to one Family, if the Families were at ſuch a diſtance as they might receive their fathers commands; which lies upon him to prove: And therefore this ſubjection was not perpetual. *Secondly,* I ſhall ſhew by another Example, that the Head of a Family hath not abſolute power of the lives of his Children and Grandchildren; and that is from *Reuben*'s pathetical Speech, *Gen.* 42. to his Father *Jacob,* when he refuſed to ſend *Benjamin* with him into *Egypt*; *Slay my two ſons* (ſays he) *if I bring him not unto thee.*

Now

Now if *Jacob* had this absolute power as a Father, it had been impertinent in *Reuben* to have spoke thus, since he knew his Father had power to slay his Sons, if he thought fit, whether he gave him such an authority or not. But if it be replied, that *Jacob* when his Sons married might set them at liberty, and so give them power of Life and Death; that is, make them absolute in their respective Families: This is *gratis dictum*, and no proof brought of it out of Scripture, and therefore may as well be otherwise: Nor is it likely that *Jacob* should thus manumit his Sons, since it is apparent they did not then set up distinct Families; for we finde *Jacob* still commanding them, as Head of the Family, to go down and buy Corn in *Egypt*, saying, *Go down and buy us* (that is, the whole Family, whereof they were Members) *a little food*. And yet these Sons did not think their Fathers command so absolute, but that they tell him plainly, they will not go down unless he send *Benjamin* with them.

As for the other Examples of *Abram*'s exercising the full power of a Prince in making War and Peace, I will not deny that the Heads of separate Families, being out of Commonwealths, have many things analogous to them, though they are not Commonwealths themselves: And the reason why I do not allow them to be so, is, because the ends of a Family and a Commonwealth are divers: and so many parts of a Monarchical Empire are not to be found in Families, yet the Heads of such Families may notwithstanding exercise a power of Life and Death in great Offences, and also of making War and Peace: And this being for the good of the Family they govern, and by their implyed consents, no body will contradict him in the exercise of this power. But this being matter of fact, does not prove an absolute and unquestionable Right in the Father of such a Family, of doing whatsoever he

pleaſe, and that no Member of the Family hath power in any caſe to contradict his will; for it is rational to conceive that this Father of a Family having had an authority over his Children and Servants (born perhaps in his houſe) from their very Infancy, and if he be a wiſe and a good man, and hath carried himſelf as a good Father or Maſter ought to do toward them, ſhould even by their conſents (as knowing none more worthy than himſelf) retain the exerciſe of that Authority after they are gown up to be men; in which he cannot be contradicted, without diſorder and miſchief to the whole Family: So that indeed this ſubmiſſion of the Children and Servants, is by a tacite conſent to obey the Father or Maſter in all things tending to the common good of the Family. But this proves not this abſolute deſpotick power the Author contends for, but onely the moſt reaſonable way of acting for the Families good, and whilſt the Father exerciſes this Authority onely for that end, which when he tranſgreſſes, his Right to govern ceaſes: for if this Author would have but conſidered the ſtate of ſome parts of *Africa*, he ſhould have found, that where the Father will exerciſe this abſolute power, and ſell his Children for ſlaves, the Children make as little ſcruple (where they are ſtrong enough) to put the ſame trick upon their Fathers: Nor can they be juſtly blamed for ſo doing, until any man can ſhew me that the Father hath ſome better Right than meer Cuſtom or Power.

I ſhall now proceed to the conſideration of thoſe other places he produces out of Scripture, for the natural Right of Fathers to be Kings over their Deſcendants. *Firſt*, As for the example of *Nimrod*, that makes againſt him; for here the Grandſon of *Ham*, who ought to have been a Servant to the Children of *Shem* and

Patriarcha, p. 16.

and *Japhet*, interrupting this Paternal Empire, domineers and tyrannizes not onely over his own Family, but the Descendants of the elder Brethren. But Sir *Walter Rawleigh* (of which opinion the Author himself is) will have him to be Lord over his own Family, by Right of Succession; but to enlarge his Empire against Right, by seizing violently on the Rights of other Lords of Families.

But however, after the confusion of Tongues, the Author will have it revive again; and *the distinct Nations thereupon erected, were not confused Multitudes without Heads or Governours, and at liberty to chuse what Governours they pleased; but they were distinct Families which had Fathers for Rulers over them: whereby it plainly appears, that even in this confusion God was careful to preserve the Fatherly Authority, by distributing the diversity of Languages according to the diversity of Families.* For so it appears by the Text, *Gen.* 10. 5. 20. 22.

But these places will not prove what the Author quotes them for, *viz.* the Monarchical or Kingly power of Fathers: for neither does the Scripture or *Josephus* mention, that this division of the World by *Noah*'s Posterity was performed by the Fathers of these Families as absolute Monarchs; but it rather seems that their Children and Descendants followed them as Volunteers, as retaining a Reverence and Affection to their persons for their great age, experience, and care of their Families: Which * an ingenious modern Author conceives to be the natural original of all Governments, springing from a tacite deference to the Authority of one single person. And of this opinion is excellent *Pufendorf*.

* Sir *Will. Temple*'s Essay of Government, *p.* 67.

And of this kind were those first Kings which *Aristotle* calls Heroical, *whom the People did obey of their own accord, because they deserved well of them, and either*

by teaching them Arts, or by warring for them, or by gathering them together when they were dispersed, or by dividing Lands among them. Secondly, If it were true that these Fathers of Families were so many absolute Kings, yet it quite destroys the Author's *Hypothesis*, who will have but one true Heir to *Adam*, who if he could be known, had a natural Right to be Monarch of the whole world. *And though Kings now* (Patriarch. p. 19.) *are not the natural Parents of their Subjects, yet they all either are, or are to be reputed Heirs to those first Progenitors, who were at first natural Parents of the People, and in their right succeed to the exercise of Supreme Jurisdiction; and such Heirs are not only Lords of their own Children, but also of their Brethren, and all others that were subject to their Fathers.* Whereas we see here no such right of Eldership observed, neither among the Sons of *Noah* nor their descendants; but every one, as appears from the words of the Text, was an independant Head & Leader of his own Family: by these were the Isles of the Gentiles divided, *&c.* and by these, *viz.* the descendants of *Shem*, were the Nations divided, *&c.* So likewise the other places he brings concerning the Sons of *Ishmael* and *Esau*, do destroy the Authours notion of an Heir to the Authority of the Father, or that any Son is more Lord of his Brethren than another. For all the Sons of *Esau* and *Ishmael* are reckon'd as so many independant Princes, or Dukes, and Lords of distinct Territories, without any Superiority in the eldest Son, who ought by the Authours Principle to have been absolute Lord over the rest: And if these could divide themselves into as many distinct Governments as there were Sons, Why might not they do so *in infinitum?* And then there could never be any common Prince or Monarch set over them all, but by Force or Conquest, or else by Election; either of which destroys the notion of the Natural Right of Eldership. And

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as for the places he brings to prove it; 1. Gods words to *Cain* concerning *Abel*, will not do it, *His desires shall be subject unto thee, and thou shalt rule over him.* For first, this might be spoken only personally to *Cain*, and not to give a Right to all Eldest Sons. Secondly, the words do not signifie an absolute Despotick Power, but a ruling or governing by perswasion or fair means; as when a man is ruled, that is, advised by another in his concerns. Then as for the blessing upon *Jacob* by his Father *Isaac*, *Be Lord over thy Brethren, and let the Sons of thy Mother bow before thee*, 'twas never litterally fulfilled. For *Jacob* was never Lord over *Esau*, who was a Prince of Mount *Seir* in *Jacob*'s life-time, whilst *Jacob* was at best but Lord of his own family. And as for bowing and other Rights of Superiority, we read [*Gen.* 33. 3.] that *Jacob*, at his Interview with his Brother *Esau*, called him Lord, and bowed seven times to the ground before he came to him. So that this Text is no more than a Prophecy, to shew why the Jews, or descendents of *Jacob*, should have Right in After-times to rule over the *Edomites*, or Posterity of *Esau*. Lastly, this Example makes against the Authour: for it seems it is not the Eldest Son, but whom the Father pleases to appoint, is Heir after his death: Since here *Esau* looses his Birth-right by his own act, but chiefly by his Fathers Will.

Yet if after all, some will urge from the Principles I have laid down, that it seems more to conduce to the happiness and peace of Families, and in that to the great end I have before laid down, the common good of Mankinde, rather to allow this absolute Power of Life and Death to Parents over their Children, and an absolute Subjection to them as long as they live; since Parents do usually take that care to breed up their Children, and to have that tender Affection towards

them, that they will ſeldom take away their Lives, or ſell them for Slaves, or keep them ſo themſelves, unleſs there be very great cauſe; of which the Father only ought to be Judge, ſince it being the nature of moſt Children to be apt to contradict and diſobey their Fathers commands, or perhaps reſiſt them, pretending they would kill them, when they only go about to give them due correction; And ſince moſt young people hate reſtraint, and love to be gadding abroad, they having a Right by theſe Principles to judge when they are able to ſhift for themſelves, would take any ſlight pretence to run away from their Father aſſoon as they were grown pretty big, and ſo perhaps leave their Parents in their old Age, when they had no body to take care of them: whereby nothing but confuſion and quarrels would happen in Families, great miſchief to the Parents, and often ruine to the Children; who being often opiniatred, and ſelf-will'd, would think better of their own abilities than they really deſerved. And therefore divers Nations ſeeing theſe great Inconveniencies, did by their Laws leave Parents the Power of Life and Death over their Children. *Such were* (thoſe the Author inſtances in) *the* Perſians, Gauls, *and many Nations in the* Weſt-Indies: *And the* Romans *even in their Popular State had this Law in force: Which Power of Parents was ratified and amplified by the Laws of the* XII Tables, *enabling of Parents to ſell their Children three times. And the Law of* Moſes *gives full power to the Father to ſtone his diſobedient Son, ſo it be done in preſence of a Magiſtrate. And yet it did not belong to the Magiſtrate to inquire and examine the juſtneſs of the cauſe; but it was ſo ordained, leſt the Father ſhould in his Anger ſuddenly or ſecretly kill his Son.*

See Patriarcha, p. 38. chap. 2.

To all which I anſwer, that ſince this Argument quits

quits the natural Power of a Father by Generation, and only ſticks to the acquired one of education, and appeals to the common good of Mankinde; I do acknowledge it is a better than any of the reſt. Yet I think it is not true, that Parents in the ſtate of Nature would more ſeldome abuſe their power, than Children would this Natural Liberty I here allow them, of defending and providing for themſelves in caſes of extreme Danger and Neceſſity. For this Temptation to do ill is greater on the Fathers ſide, than that of the Children: For they looking on themſelves as having an abſolute and unqueſtionable power over them, and that they may deal with them as they pleaſe, are apt to think themſelves ſlighted and diſobeyed by their Children, perhaps on very light occaſions; and their Paſſion often riſes to that height (as not conſidering the Follies and Inconſiderateneſs of Youth) that they may, if Cholerick or Ill-natur'd, ſtrike them with that which may either kill them, or elſe cripple or maim them; and perhaps out of an immoderate Anger, or being weary of them, murder them on purpoſe. And Fathers being more apt, as having oftner occaſion to be angry with their Children, than their Children with them, it is evident to me, that in the ſtate of Nature (where there is no Magiſtrate to keep the Father in awe) Fathers will be as apt to kill or maim their Children, as Children their Parents. And if the Fathers (as I ſaid before) are intended for the good and preſervation of their Child; and that where their Right ceaſes, the Childrens Right to preſerve themſelves takes place: It ſeems to conduce more to the general good of Mankinde, that the Children ſhould make uſe of this laſt refuge of defending themſelves, when they cannot otherwiſe preſerve their Lives and Members, than that Fathers ſhould have ſuch an abſolute Right to deal with

with them as they pleaſed, without any power in the Children to reſiſt or defend themſelves. So likewiſe Fathers being ſo much older, underſtand their own advantage better than their Children; and being ſomtimes more ill-natur'd, and often (by reaſon of their Age) more covetous than they, may be tempted to ſell their Children for Slaves, whereby they may fall into a condition worſe than Death itſelf; and may not the Son then endeavour to run away, or uſe all lawful means poſſible to eſcape ſo great a miſery? Or if the Father will keep his Son as a Slave all the days of his life, without any hopes of ever being free? For when the Father dies, the Son (according to this Authour) is to be Servant to his Eldeſt Brother, or to whomever elſe his Father pleaſed to bequeath him. Is not the caſe the ſame? And as for the quiet of the Family, which is ſuppoſed to be preſerved by the Sons abſolute ſubmiſſion, rather than his reſiſtance in any circumſtance, I think it would rather increaſe Diſſentions, by encouraging of Fathers to uſe their Power over their Children, not as Reaſon, but Drunkenneſs or Paſſion may impel them: Whereas this Right of Children in defending their Lives, and not being obliged to give them up at their Fathers pleaſure, will rather make Parents act moderately and diſcreetly towards their Children, when they know they are not obliged to ſtay or bear with them upon other conditions, than that they may enjoy their Lives in ſafety, and the ordinary means thereof with ſome comfort. Not that I give Children any Right, as I ſaid before, to diſobey their Parents, or reſiſt them upon every ſlight occaſion; but rather to bear with their Infirmities, as far as it is poſſible; And to ſuffer divers Hardſhips and Inconveniencies from them, rather than to reſiſt or leave them; conſidering the great obligation they owe them. So that I do not allow this

Remedy,

Remedy, but in case of extreme Necessity, yet of which the Sufferer only in the state of Nature can be Judge; since in that state where there is no Umpire, (without both their consents) but God only, every man is Judge when his Life is in danger.

And if the Peace of Mankinde were to be procured merely by a mans Sufferance and Submission, without any respect to this Right, then it would be his duty to give himself up to be robb'd or kill'd by any one who had the wickedness to attempt it; because himself being innocent, may go to Heaven; and the other being guilty of an intent to rob or murder, may be damned if he be killed. And besides, it would more conduce to the preservation of Mankinde, that but one man should be lost, whereas by resistance they may both perish. Yet I suppose no man is so sottish, as to hold he ought quit his own preservation in these cases; or if he do hold it for discourse sake, I am sure he would not be so mad as to observe it. For this were such an Argument, as to hold, Because some men may abuse that Law of Self-preservation to another mans destruction; Therefore it were unlawful to defend a mans self at all.

As for the Examples of those Nations and Commonwealths who have permitted Fathers to exercise a Despotick Power over their Children, The Law of Nature or right Reason, is not to be gathered from the Municipal Laws or Customs of any particular Nation or Commonwealth, which are often different and contrary to each other. Therefore as to the Jewish Law, though I will not say it was contrary to the Law of Nature, yet it was extremely rigorous and severe in all its dispensations, and does not now oblige Christian Commonwealths in this particular, as in divers others, much less in the state of Nature. And as for the *Romans*, they saw the inconveniencies of this Absolute Power, and

and retrenched it by degrees, until it came to be no more than now with us, and in most Countreys of *Europe*. So likewise the Arguments which *Bodin* brings for the absolute power of Parents over their Children, depending upon the *Roman* and *Jewish* Law, may be easily answered from these grounds.

Having, as I hope, clear'd this main point of Paternal Authority, and of Natural Obedience, without giving an extravagant power to Parents on the one hand to abuse their power, or a priviledge to Children on the other side to be stubborn or disobedient to their Parents; If then this Paternal Authority extend farther than I have seated it, I shall own my self beholding to any Friend of the Authour's, or his Opinions, to shew me my errour. But if they cannot, I desire they would consider, whether this natural Right of Kings which the Authour asserts precedent to any compact or civil constitution, can extend farther than the natural Authority of Fathers, from whom they are supposed to derive it, and on which it is founded. And if it appear, that Princes have such Power as our Fathers, then all that the Authour hath writ on this subject signifies just nothing.

Therefore I shall now proceed to examine the rest of his Principles; and shall I hope prove, that (supposing this Fatherly Power as absolute as the Authour fancies) yet that his Divine Absolute Monarchy cannot however be derived from thence.

The Authour seems to think it a Question very easie to be answered. If any one asks what comes of this Right of Fatherhood, in case the Crown, Fatherly power, escheat for want of an Heir, whether it fall to the People, or what else becomes of it? To which his Answer is, *That it is but the Negligence or Ignorance of the People to loose the knowledg of the true Heir; for an Heir*

Patriarch. P. 20.

Heir there is always. If Adam *were ſtill living, and now were ready to die, it is certain that there is but one Man, and but one in the world, who is next Heir; although the knowledge who ſhould be that one Man be quite loſt.*

So that this fine Notion ſignifies nothing now, for *Adam* being dead, and his right Heir not to be known, it is all one as if he had none; ſince, for ought I know to the contrary, the Authors Footman may be the Man. But to help this, the Author hath found out a couple of Expedients, (ſuch as they be;) The firſt is, *That an Uſurper of this Power, where the knowledge of the right Heir is loſt, being in by poſſeſſion, is to be taken and reputed for the true Heir, and is to be obeyed by them as their Father.* And if this will not do, he gives us another, and tells us, *The Government in this caſe is not devolved upon the multitude; but the Kingly power eſcheats in ſuch caſes to the Fathers and independent Heads of Families: For every Kingdom is reſolved into thoſe parts of which it was firſt made.*

Directions for Obedience, *p.* 69.

Patriarch. *p.* 21.

Each of which we will examine in their turn. To begin with the former, let us ſee if it be ſo eaſie a thing as the Authour makes it, to know who was *Adam*'s, or any Monarch's right Heir (ſetting the Municipal Laws of the Country aſide;) ſo that the People cannot be excuſed of wilful Ignorance or Negligence, if they looſe this knowledg. Where by the way I obſerve, that as eaſie a thing as it was to know who was *Adam*'s right Heir, and upon whom by the Laws of God and Nature the Crown is to deſcend, upon the Death of the Monarch; yet he no where poſitively anſwers this important Queſtion: For ſometimes he is to claim by deſcent, as in this inſtance of the Heir of *Adam*; ſometimes by his Father's laſt Will,

Will, as in the case of *Noah*'s Sons, according as the Examples out of Scripture do best serve his turn. So that I believe he did not either negligently or ignorantly avoid settling this point, because he might still have a hole left to creep out at, or else because he could do it no better than the Instances he brings would permit.

He says, [Direct. for Obedience, *pag.* 68.] *A Son is always to live under the subjection of his Father, unless by Gods immediate appointment, or by the Grant or Death of his Father, he become himself possess'd of that Power to which he was subject.*

By which words he seems to imply, that this Power is to descend to the Eldest Son, when his Father dies. So likewise in this Treatise we are now upon, [*P.* 12.] he says, *Civil Power not only in general is by Divine Institution, but even the assignment of it specifically to the eldest Parents.* By which words I suppose he means, (if any thing) eldest Sons; though I know not why he should limit it to Parents: for methinks it were very hard the eldest Son should forfeit his Right, in case he were not a Parent when his Father died. So likewise he tells us, [P. 19.] *That these Heirs of this Fatherly Power, are not only Lords of their own Children, but also of their Brethren, and all others that were subject to their Father.* Yet tells us not plainly which of the Sons is Heir; only says a little before, *That when God made choice of any special Person to be King, he always intended that the Issue also should have the benefit thereof.* Though this general Rule was false in the case of *Saul*, whose Children were disinherited by God to establish the Crown upon *David* and his Line. So uncertain things are Instances drawn from Scripture without any due consideration of the Reason of them.

But to return to the subject: I grant that it is not impossible but from the command of a Father of a Family, who hath divers other Families under him, there

there may spring a Civil Government, though the Fatherly Authority doth properly regard the Education of the Children, and the Masterly Power to encrease Riches: And though it is not changed barely by the great number of Children or Servants; yet the difference between them is not so wide, that there can be no transition from one to the other, unless a new Right of Soveraign Majesty be produced by God. For if a Father of a Family being provided of a great stock of Children and Slaves, will by way of Manumission permit them to enjoy their own Goods and Families apart, on that condition that they submit to his Government for their common Security; I do not see what is wanting to the making him a Prince, if he have strength sufficient to perform the ends of a Commonwealth. But he dying, and nominating a Successour, if his Sons will consent to him, and confirm his Will, they may if they please; if not, all of them, as in an Interregnum, may appoint what sort of Government they will have for the future. Nor will the Law of Nature be violated, if the youngest Son, having most Votes, should be elected in his Fathers stead.

I should be glad any man could demonstrate to me from the Laws of God and Nature, that *Adam*'s eldest Son was by the Right of Eldership to be Lord over his Brethren, without their Election or Consent, when their Father died. Indeed the Jewish Law allow'd a preheminence to the Elder Brother, and that he should have a double portion, and be reverenced by all his Brethren, expresst by this Phrase of, *Let thy Mothers Sons bow before thee*: But this proves not that as Eldest Son he had therefore a Right of exercising all that Authority, upon the Death of their Father, over his Brethren, which his Father had before: Neither had *Jacob* any such Right over *Esau*, though he sold

his

his Birthright, or the eldeſt or any other Son of *Jacob* any ſuch Right over his Brethren; for certainly God would not have abrogated it if they had. So that *Jacob*'s Authority as a Father, ended with his Life: and for any Deſpotick Propriety or Dominion over them, I have already proved that the Father has none in the ſtate of Nature. Yet admitting he had, the Children notwithſtanding would have been free at his Death. For Servitude being a mere perſonal Duty, due only to the perſon of him that acquired this Slave; when the perſon dies to whom he owed this ſubjection, the Slave is free in the ſtate of Nature, unleſs the Lord of this Slave transferr'd his Right in him to another in his life-time; a mans Perſon not being like a brute beaſt, to be ſeiz'd by whoever can lay hold of him; he hath no longer any obligation to ſerve his Children, (unleſs he will make himſelf their Slave of his own accord.) But if it be anſwered, that the Father may bequeath this Right of Dominion over his Children at his Death, by his Will, to which of his Sons he pleaſed; and that he that is ſo conſtituted by their Father, is Lord over all the reſt of his Brethren; and endeavour to prove this from *Geneſis* the 9. *verſ.* 25, 26, 27. where *Noah* curſing *Canaan*, becauſe *Ham* his Father had derided his nakedneſs, ſays, *He ſhall be a Servant unto his Brethren:* I deſire you would take notice, that this Anſwer quite gives up the Natural Right of the Heir, or Eldeſt Son. 2. I ſuppoſe this rather was a Prediction or Curſe to be fulfilled in *Canaan*'s Poſterity, than upon himſelf. For firſt, this Right was not given, as it ought to have been, over the Perſon of *Ham* the Offender, whom this Authour allows to have had an equal ſhare with his Brethren in the diviſion of the World, and ſo to have been in all Prerogatives equal with them.

Obſervat. on Grotius, *p.* 49, 50.

Neither

Neither doth he give this Right to one of them, but to both alike; saying both of *Shem* and *Japhet*, that *Canaan* should be their Servant: which could not be meant of his person, since that could not be divided by them both, who were like to live at so great a distance; therefore it can onely signifie, that his Descendants should be slaves to the others. And several Commentators upon this place, do suppose that *Moses* related this Curse of *Noah* upon *Ham*, onely to shew the Jews the Right they had to make slaves of the *Canaanites*, because they were descended from *Canaan*. And as for the Right of bequeathing slaves by Testament, it is much disputed whether by the Law of Nature Testaments have any force in this case; those that have written of it, being much divided about it in the state of Nature, since all Propriety in that state being but Occupancy or Possession, which ceases with the life of the Occupant. Therefore since a Testament commences onely from the Testators death, who as soon as he died, lost his Right in the Goods bequeathed, since the dead can have no interest in any thing; neither can the Legatee sustain the person of the Testator, since this Right ceased before that of the Legatees could begin. So that it seems to me at present, that the power of bequeathing either the persons of men or goods, was but a consequence of an absolute Propriety in things which arises from Compact in a Commonwealth, as I shall hereafter prove.

Therefore out of this State, a Will cannot bind the persons of the Children or Servants so bequeathed: And for this cause we find *Abraham*, *Gen.* 24. *v.* 2, 3. binding his Servant that ruled over his House, with an Oath not to take a Wife for his Son of the Daughters of the Land. And *Gen.* 49. *v.* 29. *Jacob* taking an Oath of *Joseph* not to bury him in *Egypt*; because they doubted whether they could oblige them to do it by

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their Teſtament. But as for the Right of bequeathing Crowns or Kingdoms by Teſtament, as I will not deny but that ſome Kingdoms may have been ſo bequeathable by their Conſtitution, and others become ſo by Cuſtom; yet I cannot grant that this Right belonged to the Prince or Monarch by the Law of God or Nature, but proceeds purely from a continued Cuſtom of the Kingdom, or Civil Law thereof; elſe why had not *Henry* VIII, or *Edward* VI, power to limit or bequeath the Crown to whom they pleaſed, as well as *William* the Conqueroour? And to look into other Countries, what now renders Women uncapable of ſucceeding to the Crown of *France*, yet capable of inheriting that of *England*, *Spain*, and divers other Kingdoms of *Europe*, but the Cuſtoms or particular Conſtitutions of the Eſtates of theſe Kingdoms? which no Will or Teſtament can alter. What elſe hinders the Grand Seignior, that he cannot diſinherit his eldeſt Son if he ſurvive him, but the Cuſtom of the *Ottoman* Empire? And what is this Cuſtom, but (as the Author himſelf acknowledges in the caſe of *England*) the Common Law of the Country, which is ſaid to be Common Cuſtom? *Thus to protect the Cuſtoms which the Vulgar ſhall chuſe, is to protect the Common Laws of* England. So that it was the Will of the People, and not the Prince alone, that made this a Law: for if this Law of the Succeſſion of the Crown depended upon his Will, then if he be an abſolute Monarch, that (when ſufficiently declared) being the onely Law, might alter it when he would; and ſo he might bequeath the Crown to whom he pleaſed. But every one that underſtands the preſent Laws of Deſcent of the Crown of *France*, or the manner of Succeſſion in the *Ottoman* Empire, knows that if the

Vid. *Mezeray Abregé* Chron. *An.* 1317. *Phil. le Long.*

Freeholders Inqueſt. p. 62.

the King of *France* or Grand Seignior (as absolute as they are) should bequeath their Kingdoms to any other than the right Heir, this Will would signifie nothing, and no body would obey this Successor of their appointing. And if any man think to evade this, by saying, That the Succession of the Crown is a Fundamental Law of the Government, and that a Prince may be Absolute, and yet not have a power to alter that as he may every thing else; I would ask him who made this a Fundamental Law at first, whether the King then in being, or the King with the Consent of the People, upon the first institution of the Government? If the King made it alone, since he is supposed to have made it at first for the good of the People, of which he is the Judge (and is supposed in Law never to die) why then is not he as competent a Judge of what is good for the People now, as a King that lived a thousand years agone was what was fit for the People then? and consequently hath as much Right of altering the Succession for the Peoples benefit, as he that established it at first, since every Law may be altered by the same Power that made it? But if he say it is a Fundamental Law, because long custom hath made it so, then it is apparent such a Law hath its force from the Consent of the People at first or since, Custom being nothing else. Or lastly, if he will acknowledge that the Consent of the People was necessary to make this a Fundamental Constitution, then it can neither be altered without their Consent; and so consequently no Princes Testament is good as to that, farther than the People or their Representatives give their assent thereunto: And the same Law holds in the Father of a Family, since this Author will have no difference between him and a King, but only *secundum Magis & Minus.*

If then there be no Right in the state of Nature for

a Father to bequeath his Dominion over his Children by his Teſtament, let us return again to that of Deſcent, and ſee if that will prove a better foundation to build this natural Right of Princes upon. For my part, I think that it is not onely impoſſible to know who was *Adam*'s right Heir of his Fatherly Power now, after five or ſix thouſand years, but might likewiſe be as uncertain, as ſoon as ever the breath was out of his body: For ſuppoſing *Eve* ſurvived him, why ſhould not her natural Right of governing the Children which ſhe her ſelf brought forth (and which out of Wedlock would have belonged to her) revive and take place before any Right of her eldeſt Son; to whom upon this ground ſhe muſt have become ſubject, if ſhe would continue part of the Family or natural Commonwealth, (which ſhe could not avoid, there being none but her Children or Grandchildren in the world) and it being againſt the nature of Government to allow two Abſolute Heads in the ſame Family or Commonwealth? So that for ought I ſee, the Mother of the Family hath the beſt Right to the Government in the ſtate of Nature, after the Husbands death, upon the Authors own grounds: For if the Commandment of *Honour thy Father and thy Mother*, ſignifie more than bare Reverence and Reſpect, as appears by the Apoſtles Expoſition of this Commandment, *Epheſ. 6. v. 1. Children, obey your Parents in the Lord*, which he makes the ſame with *Honour thy Father and thy Mother*; then this Obedience which was due to the Father, belongs likewiſe to her when his power ceaſes.

But paſſing over this difficulty, and allowing this Fatherly Authority to deſcend to *Adam*'s next Heir, it might have been a great Queſtion, who this next Heir was, ſuppoſing *Cain* to have been diſinherited for the murder of *Abel*, and to have gone away and built a City, and ſet up a Government by himſelf? Yet let

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us ſuppoſe *Abel* left a Son behind him, who ſurvived *Adam* his Grandfather; which he might very well do, and yet the Scripture be ſilent in it, ſince the intent of *Moſes* in his Genealogies being onely to give us the Pedigree of the Jews, and therefore ſays little of his other Children but by the by. I would ask the Author or any man elſe, who was *Adam*'s Heir after his death, whether this Son of *Abel* or *Seth*; (whom we will ſuppoſe likewiſe to have ſurvived his Father?) If he ſay that *Adam* might leave it to *Seth* by Will, this is *gratis dictum*; and it lies upon him to prove that *Adam* made a Will; or if he did, how it could bind his true Heir. If he ſay that *Seth* ought to ſucceed and govern his Brethren, as being nearer in bloud to *Adam*, what reaſon was there that the eldeſt Son's ſon ſhould be puniſhed and loſe his Birthright for that which was not his fault, but misfortune, *viz.* that his Father was murdered before his Grandfather died? Nor could *Seth* claim, being elder and conſequently wiſer than his Nephew: for his Nephew muſt be older, ſince *Seth* was not born until after *Abel* was killed. But if it be affirmed, that the eldeſt Son of *Abel* ought to ſucceed and repreſent his Father; I ask, by what Law? If it be replied, that it is to be ſuppoſed that *Adam*, if he had made a Will, would rather have had his Grandſon ſucceed him than his younger Son; this is *gratis dictum*, and were to affirm that the Right of governing is bequeathable; which I have already confuted. But if it be ſaid, that this Son of *Abels* ſhould ſucceed becauſe he repreſents his Father; I would ask them, by what Law this Right of Repreſentation ſhould take place before propinquity of Bloud? or how could the Fathers expectation onely confer a Right to his Son, in that which the Father was never poſſeſſed of? So that there being equal Reaſons on both ſides, and neither Law nor Precedent in the caſe, there remained no

way to decide this Controverſie, but either Combate, or the Judgment or Arbitration of the reſt of *Adam's* Deſcendants. I ſuppoſe the Author will not allow the former ſufficient to confer a good Title, ſince the beſt Title might have the worſt ſucceſs in that Appeal to the Sword. If he allows the latter, then this hereditary Monarchy of *Adam* became Elective, and depended upon the Will of all the Heads of the Families which deſcended from *Adam:* (For it is not likely in ſo doubtful and material a point as who ſhould govern, any of them would loſe the priviledge of giving his Vote.) And if ſo, this Right of Succeſſion depended upon their Wills, which might give it to which of the two Competitors they liked beſt; and this being once done, might for quietneſs paſs into a Cuſtom or Law for the future. And that this Right of Repreſentation, where the Son dies before his Father, cannot be decided by the Law of Nature or Reaſon alone, is evident, in that divers Nations or diſtinct Tribes of People have had different Cuſtoms about it, and have eſtabliſhed this Right of Succeſſion divers ways: For though the Roman or Civil Law allow of this Right of Repreſentation, yet the *Germans* and all Nations deſcended from them, did not admit it until very lately; which ſhews there is nothing but Cuſtom in the caſe. And upon this pretence the League in *France* admitted the Cardinal of *Bourbon* King, by the name of *Charles* the X, before his Nephew the King of *Navar*, his elder Brothers Son, who died before him. And that this difficulty who ſhall ſucceed, the Uncle or the Nephew, hath ſtill perplext mankind in all Countries where the Succeſſion hath not been ſettled by poſitive Laws or long Cuſtom, (which is but the continued Will of the People) may appear by thoſe different Judgments that have been

See *Grotius de J. B. Li.* cap. 7.

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in all Ages made on this matter: for when there arose a Controversie between *Areus*, Son of *Acrotatus*, eldest Son to *Cleomenes* King of *Lacedæmon*, and *Cleomenes* the second Son of the said *Cleomenes*, the Senate adjudged the Royalty for *Areus* against *Cleomenes*. But in *Spain*, after the death of *Alphonso* the V, King of *Castile*, *Mariani*, l. 13. c. 3. the States of *Spain* acknowledged his younger Son *Sancho* to be King, and put by *Ferdinand de la Cerda* the Grandson to the late King by his eldest Son, though he had the Crown left him by his Grandfathers Will. And when *Charles* the II, King of *Sicily* died, and left a Grandson behind him by his eldest Son, surnamed *Martel*, and a younger Son called *Robert*; the matter being referred to Pope *Clement* V, he gave judgment for *Robert* the younger Son of *Charles*; who was thereupon proclaimed King of *Sicily*. And it seems *Glanvil*, who was Lord Chief Justice under *Henry* II, makes it a great Question who should be preferred to the Crown, the Uncle or the Nephew. So that it was no strange thing for King *John* to make himself King before his Nephew *Arthur*, since it was a moot point among the Lawyers of that Age, who ought to succeed. And where no Power could intervene, it was decided by War, and sometimes single Combats, which Historians mention to have been waged between Uncles and Nephews contending for the Principality; and not onely in this case, but in all others where the Succession of the Empire is not settled by such Laws or Customs, it lies continually liable to be disputed between the Sons or Grandsons of the last Prince, nor can ever be decided but by the Sword: Of which there is an Example in one of the greatest and most absolute Monarchies in the world, *viz.* the Empire of the *Mogul*, where for *Vicerius in Vita* Henry 7.

See *Bernier's* Travels, 1 part. and *Tavernier* Lib. Sir *Tho. Row's* Embaſſie, *Purchas* part. *Terry's* Relation of *Indoſtan*,

want of ſettling the Succeſſion at firſt by a poſitive Law, and making the *Raias*, *Omrahs*, or great Lords give their conſent to it, and ſwear to obſerve it, and ſo have made and aſcertained it as an inviolable Cuſtom (as it is in the *Ottoman* Empire;) now upon the death of an Emperour, though he declare by his Will who ſhall be his Succeſſor, yet the Grandees (who are ſo many petty Princes, and lead the People under their Command after them as they pleaſe) do not think themſelves at all obliged to obſerve it, much leſs to ſet the Crown upon the eldeſt Sons head; but every man is for that Son of the laſt *Mogul* whom they like beſt, that is, him they conceive will ſuit beſt with their intereſts and deſignes: Nor do the Brothers think themſelves at all obliged to yield to their eldeſt Brother, whom they are aſſured will put them to death, or make them perpetual Priſoners. So that every one provides for himſelf, and makes his Party as ſtrong as he can by Gifts and Promiſes among the Grandees, againſt his Fathers death. Nay, lately this prize hath been played among the Sons even in their Fathers lifetime, as in the caſe of the late *Sha-Jehan*, who lived to ſee all his Sons killed, and his perſon made a priſoner by his youngeſt Son *Aureng Zebe*, who is for ought I know, *Mogul* at this day. And if any man thinks this onely an Evil peculiar to this Empire, and not to others, let him but read the Hiſtories of the ſeveral Revolutions and Changes in all Mooriſh and Eaſtern Monarchies, and he ſhall find them managed much after the ſame rate. Nor hath theſe differences onely divided theſe Monarchies where the Succeſſion was never well ſettled at firſt, but even thoſe that have been better conſtituted, and where one would believe the Diſcent of the Crown had been ſufficiently ſettled by

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a long Diſcent of Kings for many hundreds of years. And of this, *Scotland* hath been a famous Example; where after the death of King *Alexander* III, and his Grandaughter *Margaret* of *Norway*, two or three ſeveral Competitors claimed a Right to ſucceed: But omitting others, it was agreed that it lay between *John Baylliol*, and *Robert Bruce* Earl of *Carick*; both of them drawing their Diſcent from *David* Earl of *Huntingdon*, Great Uncle to the laſt King (in whom they all agreed the Right to the Crown would have been, had he ſurvived.) *Baylliol* claimed, as eldeſt Son to *Dornagilla*, Grandaughter to *Margaret* the eldeſt Daughter of the ſaid Earl *David*. *Robert Bruce* claimed, as eldeſt Son of *Iſabel* the ſecond Daughter of the ſaid *David*. So that if *Baylliol* alledged his Diſcent from the eldeſt Daughter, *Bruce* was not behind-hand; but pleaded, though it was true he was deſcended but from the ſecond Daughter, yet he being a Grandſon, and a degree neerer, ought to ſucceed; (whereas *Baylliol* was but great Grandſon to Earl *David*:) And though *Dornagilla*, *Baylliol*'s Mother, was in the ſame degree with himſelf, yet he being a man, ought to be preferred before a woman in the ſame Line; and that if the Laws of *Scotland* would have given it to *Dornagilla*, if it had been an ordinary Inheritance, yet Diſcent of the Crown was not to be ruled by the Common Laws of other Inheritances. In ſhort, this Diſpute did ſo divide the Nobility into Factions, and puzzle the Eſtates of the Kingdom, that not being able to decide it, they and all the Competitors agreed to refer the Controverſie to *Edward* I. King of *England*, one of the wiſeſt and moſt powerful Princes of his time; who upon long advice and debate with twelve of the learnedeſt men of both Kingdoms, at laſt adjudged the Crown to *Baylliol*; or, as the Scotch Hiſtorians relate, becauſe he would do him Homage for it: which, *Bruce* being of

a higher ſpirit, refuſed. Yet this did not put an end to this great Controverſie; for though *Bayllioll* was thereupon admitted King, yet falling out not long after with King *Edward*, to whom he owed all his greatneſs, and having the worſt of it, the Nobility and States of *Scotland* revived *Bruce*'s Title, and declared him King; who after a long War with *England*, enjoy'd the Crown quietly at laſt, and left it to his Iſſue, whoſe Poſterity (in our preſent King) enjoy it to this day.

To this I ſhall adde one Example more from *Portugal* within theſe hundred years. King *Henry* called the Cardinal dying without Iſſue, there was a great Controverſie who ſhould ſucceed; (for he died ſuddenly juſt as the States of the Kingdom were aſſembled to ſettle the Succeſſion, for he declared himſelf unable to decide it:) So that he onely left by his Will twelve Governours of the Kingdom, who ſhould govern during the *interregnum*, but that the Crown ſhould deſcend to him that ſhould appear to them to have the beſt Title. Four eminent Competitors put in their claims: 1. *Antonio* called the Baſtard, who nevertheleſs pretended that he was lawful Son to Don *Lewis*, ſecond Brother to *Henry* the laſt King: So that he had no more to do but to prove himſelf Legitimate. 2. *Alexander* Duke of *Parma*, who claimed as Grandſon to *Mary*, eldeſt Daughter to Don *Duarte*, youngeſt Brother to the laſt King *Henry*, and Son to King *Emanuel*. 3. The Duke of *Braganza*, who claimed as Son to *Katherine*, ſecond Daughter of the ſaid Don *Duarte*, yet alledged his Title to be beſt, becauſe he was the next of the Bloud-Royal who was a Native of *Portugal* (as the Heir of the Crown, as he pretended, ought to be, by a Fundamental Law of that Kingdom:) yet it ſeems that Law was not then ſo well known, or otherwiſe there was no reaſon why theſe Governors ſhould not

not have admitted him King as ſoon as ever they met. 4. *Philip* the ſecond, King of *Spain*, who claimed as Son to *Iſabella* Daughter of *Emanuel* King of *Portugal*, and ſo a degree nearer than the reſt to *Henry* the laſt King. The States and Governours differing, the States were diſſolved; and during their receſs, the Governours not agreeing among themſelves, the King of *Spain* raiſed an Army, and entering *Portugal*, ſeiz'd the City of *Lisbon*, and conſequently all the reſt of the Kingdom ſubmitted to him, and ſo made himſelf King by force. And yet we have ſeen in his Grandſon's time, the Eſtates of *Portugal* declare this Title void, and the Crown ſetled in the Poſterity of the Duke of *Braganza*, who ſtill enjoy it by vertue of this Fundamental Law. And that this Fundamental Law could not be altered but by the conſent of the Cortes or States, appears by the late Alteration of this Conſtitution upon the Treaty of Marriage of the preſent Prince Regents Daughter with the Duke of *Savoy*. And how much even Kings themſelves have attributed to the Authority of their Eſtates, appears by the League made between *Philip* the Long King of *France*, and *David* King of *Scots*; wherein this Condition was expreſt, That if there ſhould happen any difference about the Succeſſion in either of theſe Realms, he of the two Kings which remained alive, ſhould not ſuffer any to place himſelf on the Throne, but him who ſhould have the Judgment of the Eſtates of his ſide; and then he ſhould with all his power oppoſe him who would after this conteſt for the Crown. So that our Author, without cauſe, lays the fault upon the wilful ignorance of the People in not remembring or acknowledging the right Heir of the Crown; when the ableſt and wiſeſt men of the Age they lived in could not by the meer Laws of Nature and Reaſon, determine which was he: And our Author ſhould have done well to have ſet down

down some certain Rules, how the People might be assured, without a positive Law before made, that they acknowledge the right Heir, and not an Usurper to his prejudice.

CHAP. II.

Observations on the Directions for Obedience in doubtful times, and other places of his Patriarcha, *and other Treatises.*

BUT since this Author, rather than the disposal of a Crown shall fall to the decision of the People, or States of the Kingdom, will give an Usurper a good Right to it against all persons but him that hath the Right; we will now examine how much of that is true which he lays down in his Directions for Obedience to Governours in doubtful times, and how far men are bound in Conscience to obey an Usurper, whilst he that hath Right is kept out by him. First, he takes it for granted, that all those that so eagerly strive for an original Power to be in the People, do with one accord acknowledge that originally the Supream Power was in the Fatherhood, and that the first Kings were Fathers of Families; which if granted, yet will not prove that this proceeded from that natural perpetual subjection which Children owe their Parents; or that because they are Parents, they are therefore Lords and Kings over them: So that this being the Groundwork of whatever he says in this Discourse, *p.* 67. if this be faulty (as I hope I have proved it to be) all that he builds

Vid. *Mezeray Abregé Chron. An.* 1318.

builds upon this foundation, ſignifies nothing. Secondly, he aſſumes that this Paternal power cannot be loſt; it may be transferr'd or uſurped, but never loſt, or ceaſeth — *But as the power of the Father may be lawfully transferred or aliened, ſo it may be unjuſtly uſurped; and in Uſurpation the Title of the Uſurper is before and better than the Title of any other than him that had a former Right: for he hath a poſſeſſion by the permiſſive Will of God, which permiſſion how long it will laſt, no man ordinarily knows; every man is to preſerve his own life for the ſervice of God, and of his King or Father: and is ſo far to obey an Uſurper, as may tend not onely to the preſervation of his King and Father, but ſometimes even of the Uſurper himſelf, when probably he may be thereby preſerved to the correction or mercy of his true Superiour. And though by humane Law a long Preſcription may take away a Right, yet divine Right never dies, nor can be loſt or taken away.* The ſame he ſays *p.* 70. *That in Grants and Gifts that have their original from God or Nature (as the power of the Father hath) no inferiour power of man can limit nor make any Preſcription againſt them. Upon this ground is built that Maxime, That* Nullum tempus occurrit Regi, *no time bars a King.* Which ſecond aſſumption is likewiſe falſe: for I have already proved that all Fatherly power ceaſes with the life of the Father, as Motherly power with the life of the Mother; or elſe in the ſtate of Nature a man muſt be left like other Cattle, to be pickt up and markt by whoever can firſt ſeize him. And ſecondly, that it is falſe that this power and authority of a Father can be transferred to, or uſurped by another; or that the Son owes the perſon to whom his Father transfers or ſells him, any other duty than as his Aſſignee performs the Office of a Father towards him. Much leſs that an Uſurper acquires any Right over the perſon of the Son in the ſtate of Nature: for otherwiſe if a Thief ſhould pro-

procure ſtrength enough to drive a Maſter of a ſeparate Family out of doors, and ſo this Rogue could ſubdue the whole Houſe, and ſet up for Lord and Maſter of it, that then the Wife, and Children, and Servants, were immediately bound to obey him, becauſe he hath a poſſeſſion, and is in by the permiſſive Will of God, and ſo hath a better Right than any body elſe, but the Maſter himſelf. It is true indeed, in this caſe every Member of this Family is bound to preſerve his own life, and may yield a paſſive Obedience to this Rogue, for fear of his power, and as far as he thinks it will conduce to his preſervation; but I do not ſee any obligation he hath from Conſcience or Reaſon, to obey this Robber farther than as he cannot help it, but may take the firſt opportunity to drive him out of the Houſe, and call in his true Father or Maſter; unleſs he hath made him any promiſe to be quiet and not aſſault him, for then he is in the ſame ſtate with a Priſoner upon parol: for all Writers on this ſubject, hold that nothing but a lawful War can give any man a Right over the perſon of another, unleſs he become his Servant by ſome voluntary act of his own; or otherwiſe the Slaves taken by the *Argier*-Pyrates were in a ſad caſe, for they were bound in Conſcience never to eſcape, without the conſent of their Maſters. Nor upon the Authors principles, is there any difference between a Father of a Family, in the ſtate of Nature, and a Prince, ſince he tells us more than once, that a Kingdom is but a large Family: And conſequently no difference between an Uſurper of the Fatherly power, and that of a Monarch; onely the Rogue that uſurped the one, could call himſelf but Maſter of the Family; but the other would ſtile himſelf King, Emperour, or Protector. Nor will the place of St. *Paul*, *Rom.* 13. *v.* 1. oblige any man in this caſe: for though it is ſaid, that St. *Paul* wrote this Epiſtle, *Nero* an Uſurper being

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Emperour of *Rome*; I deny that *Nero* was an Usurper: for though it is true that *Claudius* left a Son, yet since by the Roman Law a man might make whom he pleased his Son by Adoption, which Son so adopted was in all respects looked upon as the true Heir of the adopting Father, and *Nero* was so adopted by *Claudius*; and so being elder than his own Son *Germanicus*, would succeed before him. And besides, the Adoption being confirmed and passed into a Law by the Senate, *Nero* was as truly *Claudius*'s Son by the Roman Law, as *Britannicus* himself. So that an Usurper hath at first no better Right than another: For Gods permitting a wicked act to be done, as a Banditi or Pyrate to take a man Prisoner, does not therefore confer on this Thief or Pyrate any Right over a mans person. So that the instance the Author gives, *p.* 73. will not hold, *That Usurpers have such a qualified Right to govern, as is in Thieves who have stolen Goods, and during the time they are possessed of them, have a Title in Law against all others but the true Owners; and so such Usurpers, to divers intents and purposes, may be obeyed.* For first, this is no Law of Nature or Reason, but only a positive Law of *England*; where, for the avoiding of perpetual violence and strife, and for the better securing of Property, they have made possession even in Thieves to confer a Temporary Right against all but the true Proprietor: Whereas in the state of Nature, a Thief by invading another mans Goods unjustly, and taking them away by violence, becomes an Enemy to all Mankind; and so may lawfully be killed, or have what he hath so possessed taken from him by any other. Secondly, Neither does the parallel between the possession of Goods, and that of a Kingdom, hold: for Goods may be possessed by the first Occupant; but Government, which is an Authority over the person

Tacit Annal. 12. c. 25, 26.

of

of a man can never be seized, since a man without his own act or consent can never lawfully fall into the power or possession of another (as I have already proved:) So that I know not to what purpose this Treatise of the Authors could serve, but to make all men obliged in Conscience to yield not onely a passive but an active Obedience to all the Commands of *Cromwel* and the *Rump*, not onely in things lawful and necessary, but indifferent ones too, *p.* 74. in which consists all Obedience, since all the Authority, even of lawful Powers, extends onely to indifferent things; all other actions being sufficiently setled by the Law of God or Nature.

But the Author perceiving this difficulty, endeavours to extricate himself, by saying, *p.* 75. *That though granting in things indifferent, an Usurper may be obeyed as well as a lawful Prince, yet that it does not therefore follow that there is as much Obedience due to an usurped Power as a lawful; but that herein lieth a main difference between them, that some things are indifferent for a lawful Superiour, which are not indifferent but unlawful for an Usurper to enjoyn. Usurpation is the resisting and taking away the Power from him who had such a former Right to govern the Usurper, as cannot lawfully be taken away. So that it cannot be just for an Usurper to take advantage of his own unlawful act, or create himself a Title by continuation of his own Injustice. And if it can never be an act indifferent for the Usurper to disobey his lawful Soveraign, much less can it be indifferent for him to command another to do that to which he hath no Right himself. It is onely then a matter indifferent for an Usurper to command another when the actions enjoyned are such as the lawful Superiour is commanded by the Law of God to provide for the benefit of his Subjects, by the same or the like restrictions of such indifferent things; and it is to be presumed, if he had not been hindered, would have commanded the same or the like Laws.*

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Let us now see how far this distinction will serve his turn. I should in the first place be glad to know what he means by these words, *lawful Soveraign or Superiour*: If he means such a Superiour who was particularly appointed by God, God never since *David* and *Solomon* expresly appointed a King in any Nation. Secondly, If one who was elected by the People, or whose possession is confirmed by their acknowledgement publickly declared, and so passed into a Law; this were to set up what he so much abhors, an elective King, who must claim by Law. If by *lawful*, he means such a one who upon a bare possession, hath by his own power alone made a Law declaring himself to be the lawful Superiour; *this Law is unlawful for him to make, or for the Subjects to obey*: And if it be such a one to whom possession gave a Right (as he will have it) being in possession by the permissive Will of God, though at first an Usurper; Why hath not this second Usurper as good a Title to take the Government from the former, as he or his Ancestors had to take it from him that had it before? But indeed Occupancy onely confers a Right in the state of Nature to such things as are meerly necessary for a mans subsistence; but Government is an Office of Trust and Power, and which the Usurper might very well have lived without: And why should a bare possession of this, though of three or four hundred years, confer a better Right than that of a year or two? for this last possession seems, accoding to the Authors principles, to be the better Title. For he says, a little before, *p.69.* That the first Usurper hath the best Title, being now in by the permissive Will of God: And if so, may not the last Usurper use the like Argument, since he tells us, p. 67. *That this last Usurper hath a better Title than any other, except him who had a former Right; for he hath a possession by the permissive Will of God: which permis-*

ſion how long it may endure, no man ordinarily knows? Now which is beſt, a Right which once a man onely had by the permiſſive Will of God, but is now ended (God having otherwiſe declared himſelf,) or a preſent poſſeſſion which he hath by the ſame permiſſive Will; which when it will have an end, no body knows? But if he anſwers, as he does, *p. 69. That this Uſurper is onely then to be obeyed and reputed by the Subjects for the true Heir, where he hath continued ſo long that the knowledge of the right Heir is loſt by all the Subjects; for no man hath an infallible certainty, but only a moral knowledge, which is no other than a probable Perſwaſion grounded on a peaceable Poſſeſſion; which is a Warrant for Subjection to Parents and Governours:* I know not what the Author means here by *true Heir*, and as little when he will have this knowledge to be loſt. If he means by *right Heir*, the Son or deſcendant of the firſt Uſurper, I ſhould be glad to know how he that had no Right himſelf, could confer a Title upon another; or by what Law his Son had a Right to ſucceed him? If by the conſent of the People, this were to grant that which he before denies as at all neceſſary to any Princes Title. If becauſe he or his Deſcendants have an uninterrupted long poſſeſſion, the difficulty ſtill remains, how this long poſſeſſion can confer a Right, for the Reaſons already given. But if it be ſaid that the Heir of this Uſurper hath a better Right than any body elſe, as having poſſeſſion, and that it were deſtructive to the Peace of the Commonwealth to put him out, after ſo long an enjoyment of the Crown: it's true, this were a good Argument not to make any alteration in the Government, as it is ſetled; but they muſt likewiſe conſider, that the ſame may be as well made uſe of by the laſt Uſurper and his Party, ſince he having now the poſſeſſion in as full a manner as he that had it before, cannot perhaps be put out of it, without involving the Nation

Nation in a tedious bloudy War. It is likewiſe as uncertain, when the knowledge of this right Heir of the firſt Uſurper ſhall be ſaid to be loſt by all the Subjects. If he means perſonal knowledge, when all the people that could remember the Prince that was turned out are dead, and none left alive that certainly know who is his next Heir, the Right of this true Heir will quickly be loſt in one Generation: but if he means a traditional moral knowledge (as he ſeems to do) then this can never be loſt as long as there is any Authentick or Hiſtorical Tradition of the Deſcent of this Heir; which Tradition may be continued for a thouſand years together: during all which time, the Princes that ſucceed being Heirs of ſuch Uſurpers, can never require a perfect Right to their Crowns, the Author holding it an undoubted truth, *p.* 60. *That though Preſcription may take away a common Right, yet divine Right (or that to a Crown) never dies, or can be taken away thereby. And upon this ground the common Maxime is built,* Nullum tempus occurrit Regi. *So that as long as this kind of moral knowledge of this right Heir can be had from any Authentick Hiſtory or Record, the Prince in being hath onely a Right from Poſſeſſion, and can never create himſelf a Title by the continuation of his own Injuſtice, or command any of his Subjects to fight againſt this true Heir, ſince they are to obey this Uſurper,* (p. 72.) *or his Heirs, onely in ſuch things as tend to their own preſervation, and not to the deſtruction of the true Governour.* By which Principle, the Author at once renders the Titles of all the Crowns in *Europe* diſputable, and all Allegiance uncertain and queſtionable by their Subjects; as I ſhall ſhew in ſeveral inſtances, as I ſhall prove from Hiſtories of unqueſtionable credit. I ſhall begin with our own Country, *England.* If therefore, as the Author will have it, *p.* 69. the Uſurper is onely then to be taken for the true Heir, when the knowledge of the right Heir is loſt

by all the Subjects; it will follow, that all the Kings and Queens that reigned in *England* until the coming in of K. *James*, were Usurpers: for the Right of Succession to the Crown of *England*, could not be obtained by Conquest alone. (And I suppose this Authour does not allow it to be bequeathable by Will) as long as the right Heir was in being, and could be known from authentick Histories and Traditions. Now the Right of the Crown by Descent belonging, after the death of *Edward* the Confessor, to *Edgar Atheling* his Cousen; he dying without Issue, the Right fell to *Mawd* his Sister, who married *Malcolm* III, King of *Scotland*; and though her Daughter *Mawd* was married to *Henry* the first, King of *England*, from whom all our Kings are descended, yet the Right was not in her, but in *Edgar* King of *Scotland*, her Brother, from whom all the Kings of *Scotland* to King *James* were descended. It is true, the Kings of *Scotland* were too wise ever to set up this Title, because they knew the *Norman* Race were quietly possessed of the Throne, and had been admitted and confirmed for lawful Kings by many great Councils or Assemblies of the Clergy, Nobility, and People: yet did not this absolve the People, who might very well retain the traditional knowledge of this right Heir; *For divine Right never dies, nor can be lost or taken away, or barr'd by Prescription.* So that all Laws which were made to confirm the Crown either to *Henry* I. or any of his Descendants, were absolutely void and unlawful, by our Authors principles; and so likewise all Wars made against the King of *Scotland* in person, were absolutely sinful and unlawful, since (according to this Authors principle) the command of an Usurper is not to be obeyed in any thing tending to the destruction of the person of the true Governour. So by the

Buchanan de Rebus Scoticis, lib. 7.

the ſame Principle, all Laws made in *France* about the Succeſſion of the Crown, are abſolutely void: and it would be a mortal ſin in the French Nation to reſiſt any King of *England* of this Line, if he ſhould make War in perſon upon the French King then in being, ſince according to the ancient Laws of Deſcent in that Kingdom, he is true Heir of the Crown of *France*. Nor can the *French* here plead ignorance, ſince there is ſcarce a Peaſant there but knows our King ſtiles himſelf King of *France*, and quarters the Arms of that Kingdom; and ſo ought to underſtand the juſtneſs of his Title. So likewiſe in *Spain*, all the Kings of *Caſtile* are likewiſe by this Rule Uſurpers, ſince the time of *Sancho* III, who ſucceeded to the Crown after the death of *Alphonſo* V his Father, who had bequeathed it to *Alphonſo* and *Ferdinand de la Cerda*, his Grandſons by *Ferdinand* his eldeſt Son, who died before him: Yet notwithſtanding this Teſtament, and their Right, as repreſenting their Father the elder Brother, *Sancho* their Uncle was admitted as King by the Eſtates of *Caſtile*; and his Deſcendants hold that Kingdom by no better Right to this day. Nor is this a thing ſtale or forgotten; for the Dukes of *Medina Cœli*, on whom (by Marriage of the Heireſs of the Houſe *de la Cerda*) the right deſcends, do conſtantly put in their Claim upon the death of every King of *Spain*; and the anſwer is, The place is full. Nor can thoſe of this Author's opinion plead poſſeſſion, or the ſeveral Laws that have been made to confirm the Crown to the firſt Uſurpers and their Deſcendants: for it will be replied out of this Author, *p.* 70. *That the right Heir having the Fatherly Power in him, and ſo having his Authority from God, no inferiour Power can make any Law of Preſcription againſt him, and* Nullum tempus ocurrit Regi: And this were to make the Crown elective and diſpoſable according to

Mariana de Rebus, Hiſp. lib. 13. cap. 7.

the Will of the Estates or People. I shall now return to the Author's distinction, and shew that his distinguishing the Laws or Commands of Usurpers into indifferent or not indifferent, signifies nothing: for suppose that an Usurper, as several have been in *England* and other Kingdoms, either dares not, or thinks it not for his interest to alter the form of the Government, but is contented for his own safety to govern upon the same Terms his Predecessors did, and so will not raise any Money, or make new Laws without the consent of the Estates, whom he summons for that purpose; Now they must either obey his Writs of Summons, or they must not: if they do not obey them, he will perhaps be encouraged to take their Goods by force (perhaps by a standing Army which he may have ready in pay) and then say it is long of their own stubbornness, who would not give it him freely when they might have done it; and they shall likewise be without these good Laws the Author supposes he may make: but if they meet, he will not let them sit, unless they first by some Oath or Recognition acknowledge his Title to be good, and own him as their lawful Prince. Now what shall they do in this case? they must either lose their Liberties, and alter the form of the Government, or acknowledge him to the prejudice of their lawful Prince. But if the Laws are once made, and they appear evidently for the good of the Commonwealth, they then are no longer indifferent, since all private Interests are to give place to the publick Good of the Commonwealth; since in the instance before given of the Father of a Family's being driven out of doors by a Robber, no doubt but every Member of the Family ought to obey this Rogue in case the house should be on fire or ready to fall, and he would take upon him to give orders for the quenching or securing it from falling; for they did this not to own his Authority,

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but from the obligation they owe to their Father or Master, who would have done the same, had he been at home. So to obey Laws made by an Usurper that tend to the apparent benefit of the Commonwealth, is not to acknowledge these usurped Powers as lawful. I do less understand the force of another distinction he makes use of, *p.* 155. *That an Usurper is so far to be obeyed, as may tend to the preservation of a mans King and Father, nay sometimes even to the preservation of the Usurper himself; when probably he may thereby be reserved to the correction or mercy of his true Superiour.* For how Obedience to an Usurper can tend to the preservation of the lawful Prince, I understand not. And as for the other instance of preserving the person of the Usurper for the mercy or correction of the true Superiour, it had been a very good pretence for Obedience to *Cromwel* and the *Rump*; nay, to fight for them, since this was but to preserve them for his Majesties mercy or correction another time, though their Power might have continued until now; *since they had a Possession by the permissive Will of God, which how long it would endure, no body could tell.* Such untoward things are Arguments drawn from false Principles, that they flie in the faces of those that make use of them, and will either reduce them to absurdities, or else prove weapons against themselves.

But I shall now come to his last Refuge, when he can no longer evade, but that by the Peoples ignorance of *Adam*'s right Heir, or of the Heirs to the last Prince, the supreme Power is devolved upon the People, who may chuse what kind of Government they please, (*Patriarch.* p. 21.) This he denies, saying, [*That in such cases the Kingly Power escheats to the Fathers or independent Heads of Families.* The same Answer he gives to this Objection in his *Anarchy of a limited Monarchy*, p. 272. where he replies (very pleasantly)

That no King can die without an Heir, as long as there is one man living in the world; it may be the Heir may be unknown to the People, but that is no fault in Nature, but the negligence of the People whom it concerns.] So that it ſeems the next Heir being often not to be known, any man, when the Prince dies, may ſtep into the Throne; and if he have Power enough, is next Heir: for a King can never die without an Heir, as long as any one man is left alive in the world; and who can diſprove him that he is not the man? So that the power he hath given to his Maſters of Families to chuſe an Heir, or one to eaſe them of their Fatherly Power, ſignifies nothing: For this Uſurper that can firſt ſeize it, may be right Heir to *Adam* for ought any body knows. And certainly having Poſſeſſion, which is the permiſſive Will of God, he hath a better Right than any other, as we have often heard before: And are told farther in the *Anarchy of a limited Monarchy*, p. 273. *That if the true Heir of the Crown come to be diſpoſſeſſed, in ſuch caſes the Subjects Obedience to the Fatherly Power muſt go along and wait upon Gods Providence; who onely hath Right to give and take away Kingdoms, and thereby adopt Subjects into the Obedience of another Fatherly Power.* So that Man is not onely a Creature who is his Goods that can firſt catch him, but, according to this Author, is in a worſe condition than Brutes: for whereas if a Dog be taken up by a Stranger, and a Collar clapt about his neck, and ſo led away, it is left to *Fowler*'s diſcretion how far he will obey his new Maſter; and as he may either ſtay with him, if he likes his Quarters, & finds himſelf well uſed, ſo ſurely he may without any ſin, knaw his halter (nay bite the fingers of this Uſurper of his Liberty) and run away. But poor Man does not onely fall to the firſt Occupant, whom he may not either obey or diſobey, as he finds it moſt conduce to his intereſt and preſerva-

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tion, but is peg'd down to an absolute Obedience, and obliged in Conscience to obey this Usurper (let him use him well or ill) with the same respect and duty as if he were his Father: Which I think God was a better friend to Mankind than ever to intend. But to return to the subject from whence we digressed, our Author, for fear he should seem by admission of a Power in Fathers of Families to chuse a Head or Prince over them, and to have granted it to them as the whole People, he distinguishes, saying, *It does not escheat to the whole People, but onely to the supream Heads and Fathers of Families; not as they are the People, but* quatenus *Fathers of the People, over whom they have a supream Power devolved unto them after the death of their Soveraign. Chief Fathers in Scripture are accounted all the People, as all the Children of* Israel, *as all the Congregation, as the Text plainly expounds it self,* 2 Chron. 1. 2. *where* Solomon *speaks to all* Israel, *that is, to the Captains, the Judges, and to every Governour, the chief of the Fathers; and so the Elders of* Israel *are expounded to be the Chief of the Fathers of the Children of* Israel, 1 King. 8. 1. *and* 2 Chron. 5. 2.

Anarchy of limited Monarchy, p. 272.

By all which it appears, that the Author allows in this case the Government escheats to part, but not to all the People, or whole multitude of Men, Women, and Children taken together, to chuse what Government they please. And indeed in this sence there was never any Democracy or Government of the People in nature: for though a Democracy may be defined to be that kind of Government where the supream Power is in a Council or Assembly consisting of all the Citizens: And although it does not less concern the Women and Children in that kind of Government to be happier than in others, yet who ever thought it a new sort of Commonwealth, and not a perfect Democracy,

mocracy, though Women, Children, and Slaves were excluded the publick Councils and Assemblies? And therefore if it be esteemed a perfect Democracy (and was so at *Athens*, which all must grant to have been so) where onely Free men, or at their own dispose, and such who were supposed at first to have by their meeting together instituted this Government, which is likewise continued by those who have succeeded into their Places and Rights: I see no reason why these should not be looked upon as representing the whole promiscuous body of the People, to whom the Power devolves upon the want of a Successour. For it is likely that Commonwealths were first instituted by Fathers of Families, having Wives, Children, and Slaves under their Domestick Government; whom nevertheless they would neither equal with themselves, by admitting them to a Vote in the Government, neither yet would abdicate their power over them. But then the Author urges, *If Infants and Children be concluded by the Votes of their Parents, this destroys the whole Cause: for if it be allowed that the Acts of Parents bind their Children, then farewel the Doctrine of the natural freedom of Mankind. Where subjection of Children to Parents is natural, there can be no natural freedom: and if any reply, that all Children shall not be bound by their Parents consents, but onely those that are under age; it must be considered, that in Nature there is no Nonage. If a man be not born free, she doth not assigne him any other time when he shall attain his freedom: or if she did, then Children attaining that age, should be discharged of their Parents contract. So that in conclusion, if it be imagined that the People were but once free from subjection by Nature, it will prove a meer impossibility ever lawfully to introduce any kind of Government whatsoever, without apparent wrong to a multitude of People. It is farther ob-*

Anarchy of a limited Monarchy, p. 270, 271.

observable, that ordinarily Children and Servants are a far greater number than Parents and Masters; and for the major part of these to be able to vote and appoint what Government or Governours their Fathers and Masters shall be subject to, is most unnatural, and in effect to give the Children the government over their Parents.

To which Objection I reply, 1. That the Author is here mistaken, and that there is really an Age of Nonage in nature (as hath been already proved) in which though the Child be indeed free, yet (by reason of his own want of strength and discretion to judge what is necessary for his own good and preservation) is obliged to submit himself to his Parents judgment in all things conducing to that end. 2. That Children, neither Infants or others, are obliged to the Acts or Agreements of their Ancestors in the state of Nature, farther than it conduces to their benefit or preservation. So that if a married man out of a Commonwealth, should sell or yield himself to a Master of a Family for a Slave, upon condition that his Master should provide him all the necessaries of life (without which such a grant or sale of a mans self cannot be supposed good) certainly if he had then no Children, this could not bind his Issue that was to be born, so that they should be perpetual Slaves to all Generations; since natural Equity, and the favour of Liberty, will interpret, that the Aliment which the Master affords the Children of this Slave, are understood to be contained under that provision which the Master is obliged to make for him and his, by vertue of their Contract. Or admit that there was no express provision made in the Conditions for the maintenance of the Children, yet in this case, I see no Right the Master can claim in the persons of these Children, longer than 'till he hath satisfied himself out of their labour for the charges he hath been at in feeding and providing for them; which

which may very well be by twenty five years of age (as I have already proved.) So that about that time I see no reason why such Children may not lawfully shift for themselves, if they do not like their Master. And if any Friend of theirs undertake to satisfie their Master before that time, I think they are free, though he should refuse to accept it, since it was lawfully tendered. Indeed for Slaves taken in a just War, there may be some appearance of reason, why their Children should also be Slaves, since the Parents accepted of their lives upon that condition that they should live in perpetual servitude, and their Master undertook to maintain them upon no other consideration: So that these Children do implicitely owe their lives to their Master, since he might by the Laws of War have slain their Parents, and so they could never have been born. But I will not assert, that even this slavery is perpetual in relation to the Children: But as for Subjects, though they are not directly or expresly bound by the Acts or Consents of their Ancestors, who first instituted the Government, yet indirectly or consequentially they are obliged to stand to what their Ancestors have done: For since, as I said before, no man will deny to accept of the Promise or Conditions of his Ancestor, if it be for his advantage, and since the Institution of Government was for the common good of mankind in general; so this or that particular Government being for the preservation and security of every Subject that enjoys the priviledges thereof, no man can believe that the Posterity of those that first instituted this Government, will go about to undo what their Ancestors have done so much for their benefit, and reduce all things to the state of Nature again. So that as long as they submit to, and enjoy the benefits of the Government which was first establisht by the consent of their Forefathers, they are supposed to yield a tacite Assent to those

thoſe Compacts which they long ſince made, and implicitely become Subjects to that Government under which they were born. So that thoſe that firſt inſtituted Government in any Country, have no neceſſity expreſly to promiſe or engage for the Subjection and Obedience of their Children, or thoſe who ſhould ſucceed them. And if any private perſons will not own this Government, and ſo take upon to reſiſt it, pretending they are not obliged by the Compacts of their Forefathers to obey it as eſtabliſhed by them; ſuch perſons, if they enter into a ſtate of War, or make Confederacies to that end, may juſtly be looked upon as Enemies to the Government, and puniſhed accordingly, ſince they will go about to diſturb the common Peace and Tranquility of the Nation for their own private Diſcontents or Advantage: for the People being once entred into Society, can never be ſuppoſed to alter their Judgments all at once without very good cauſe, much leſs to die, though the particular perſons that conſtituted it do: for as a River is ſtill eſteemed the ſame as long as the water runs in the ſame Channel, though the ſame individual water never ſtays in the ſame place, but one part ſtill puſhes out another; ſo thoſe are not leſs to be eſteemed in the politick capacity (of a Civil State) the ſame people, than thoſe by whom the Commonwealth was at firſt founded. And though it is true that Governments may have been at firſt begun by Fathers of Families and other Freemen, who firſt ſubmitted their Wills to that of one perſon or more, and ſo the Women, Children, and Servants, who had had no Votes in its Inſtitution, might be ſuppoſed as repreſented by their Husbands, Fathers, and Maſters: And ſince they enjoy all the common benefits of the Commonwealth, and are likewiſe capable of enjoying all thoſe priviledges and advantages which are proper and peculiar to Free Subjects,

jects, whenever they come to be at their own disposal, and that they owe their breeding up and preservation to its protection; they may well be lookt upon as under an higher Obligation in Conscience and Gratitude to this Government, than Strangers of another Country, who onely staying there for a time to pursue their own Occasions, and having no Right to the same priviledges and advantages of the Commonwealth, do onely owe a passive obedience to its Laws.

But to let you see more plainly, that upon such a devolution of the Government as the Author grants, not onely the Masters of Families, as Fathers, ought to have Votes, but all others that are at their own dispose; I will ask any of his opinion, what he thinks of a single man living in a house alone, or with a Wife, without either Children or Servants, or perhaps boarding in another mans house for their money, why they should not have Votes as well as those that are his independant Fathers and Masters? I can see no reason, nor I believe they neither. So though the Author by the words *Supream and Independant Heads of Families*, seems to exclude all Sons from having Votes whilst their Fathers are alive, although they are married, and have separated into distinct Families; yet since I have proved that neither Paternal Authority nor Filial Subjection is absolute or perpetual in the state of Nature (into which the Commonwealth is by the death of the Prince now supposed to be resolved) and if it were otherwise, yet unless they will void all those Laws and Constitutions that have been before settled both for descent of Inheritances, and the distinguishing of Property. So that if these Laws stand in force during this *interregnum* (unless they will fall to absolute confusion) these Sons so making divers Families, and having Estates distinct from their Fathers, ought likewise to have Votes in the Government, upon the Authours

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own principles, since the Laws of the Country have set them free from all Paternal subjection, more than what the Rules of Piety and Gratitude oblige them to. And as for such Sons as (though of mature age, yet) remain as Servants in their Fathers Families, and so are under a greater subjection than those that are separated from it; I see no reason why they may not appoint their Father, as him they could best trust, to vote for them, and represent them in the choice of a Governour; and then they are as much obliged as any man can be by the act of a person whom he hath impowered to act for him, or as these Fathers of Families would be by Representatives of their own chusing: it being morally impossible, if this devolution of the Government should happen in a populous Country, for all the Authors independent Heads or Fathers of Families, ever to meet in Person to chuse a King; these being vastly numerous, and divided from each other at great distances. So that all the Author's Objections against a mixt Popular Election will prove as strong against this of Fathers alone: For how, except by some secret miraculous instinct, should they all meet at one time and place? What one Head of a Family or Company, less than the whole Body of these Fathers of the People, can have power to appoint either time or place of Election, where they are all free and independant by Nature? and without a lawful Summons, it is most unjust to binde those that are absent. So neither can the whole Body of the Fathers of Families summon it self: One man is sick, another is lame, a third is aged, and a fourth (though a Father of a Family, may be under years of discretion, or not in his right senses) and many more may have business of their own which they cannot leave, to run two or three hundred miles up to the chief City to chuse a King. So that either the People

Anarchy of a mixt Monarch. p. 269

People may elect, or else his Fathers of Families cannot, for the same reasons. And if the major part of these Fathers should agree to chuse Representatives, how can this Agreement of the major part bind the minor that did not consent, since according to the Authors principles, in Assemblies that take their original from the Law of Nature, no one man or multitude can give away the Right of another? So that though the Author seems to have been so good-natured as to have given these independent Fathers of Families a Power in this case of Escheat to chuse a Governour, yet all this signifies nothing, since they can never all meet or agree to chuse Representatives: They are still like to be his Slaves who can make a Party strong enough to seize the Government, and usurp an Authority over them: *Whom yet they must obey, since he either is or represents the right Heir of* Adam; *and so no body hath a better Right than himself, who is in by the permissive Will of God; which how long it will last, no body can tell. And God does but adopt Subjects into the obedience of another Fatherly Power, or else they must fall into a down-right Anarchy, and every Father of a Family may set up for an absolute Prince.* But to return whither we have digressed; for I have said this, onely to shew that this Authors principles (as well as those of others) contradict themselves in this subject; and either these Fathers of Families are the People, and consequently cannot, according to this Authour, ever meet or agree to chuse a Prince; or else the whole People may as well. But since it may be objected, that it does not serve to find out truth, or settle the Question in hand, barely to recriminate and shew the same flaws in his Principles as he finds in those of others; let us see if his Objections

Patriarcha, pag. 44. *Where the Arguments against Elections by a major part, are proposed at large.*

Patriarcha, p. 42.

jections against *Bellarmine* and *Suarez*, and all those who place Supream Power in the People, be such terrible things, that the poor Jesuits are absolutely run down in this Dispute. He therefore first asks, *If their meaning be, that there is but one and the same Power in all the People of the World, so that no Power can be granted, except all the men upon the Earth meet and agree to chuse a Governour?* To which *Suarez* answers, *That it is scarce possible, nor yet expedient, that all the men in the world should be gathered together into one Community. It is likelier that either never, or for a very short time, this Power was in this manner in the whole Multitude of men collected together; but a little after the Creation men began to be divided into several Commonwealths, and this distinct Power was in each of them.* To which our Author replies, *That this Answer of scarce possible, nor yet expedient, &c. begets a new doubt how this distinct Power comes to each particular Community, when God gave it to the whole Multitude onely, and not to any particular Assembly. Can they shew or prove, that ever the whole Multitude met, and divided this Power which God gave them in gross, by breaking it into parcels, and by appointing a distinct Power to each Commonwealth? Without such a Compact, I cannot see (according to their own Principles) how there can be an Election of a Magistrate in any Commonwealth, but a meer Usurpation upon the Priviledge of the World. If any think that particular Multitudes at their own discretion had power to divide themselves into several Commonwealths, those that think so, have neither Reason nor Proof for so thinking: and thereby a Gap is opened for every petty factious Multitude to make more Commonwealths than there be Families in the world.*

In which Dispute I conceive the Jesuit hath gone too far, in asserting an undivided Soveraignty in the whole Multitude collected together before any Civil Government instituted; That being onely the Com-

pact or Agreement of those that entred into it, and binding none else at first. So likewise this is a meer *Chimera* of the Author's, that *Adam* or *Noah* were absolute Monarchs and Heirs of the World, so that no man could withdraw themselves from the Obedience of their right Heirs, without being guilty of Rebellion. Whereas I have already proved, that all the Sons of *Noah*, and their Descendants, were independant Governours of their Families, without any subordination to the eldest Son or Heir. And if every Brother had a Right to set up an Independant Family or Principality distinct from that of the eldest, I would fain know what became of this absolute Right of *Adam* or *Noah*, and by what authority this undivided Soveraignty which God had conferred on *Noah*, was thus crumbled into parcels. If by Gods appointment, then it seems God did not countenance this notion of the right Heir of the world: If they did it of their own heads, then all the ancient Patriarchs, or first Peoplers of the world, were guilty of Rebellion and Usurpation against their elder Brother and his Descendants. But if the Author's Friends think he hath the advantage, because I grant that the World was peopled after the Flood under the conduct or government of distinct Heads or Fathers of Families; this does not grant any natural Right in those Heads of Families to have an absolute power over their Descendants, since perhaps God divided the Language of the World by so many Tribes or Families, for the better conservation of the mutual Love and Concord of neer Relations, since men would more readily obey their Ancestor or common Father, than a meer stranger; or for other reasons best known to his infinite Wisdom. So that there was a necessity that those of the same Stock should upon the dispersion march off together, since none else understood one another. Yet the Scripture does not

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tell us, whether in this division and plantation of the World, the Headship of these Families was according to eldership of birth, or whether they elected the fittest man of their Tribe or Family to be their Leader: And if the eldest were the man, it was not from any Right over them, but either of reverence to his Wisdom, or to avoid the Dissentions that might arise by other kind of choice on Eldership; though indeed it confers no Right of it self, yet is often preferred as a kind of natural Lot. So that every one of these Heads of Families being independant from each other, they could never agree upon a Ruler over them, but by Compact among themselves: And if so, he was their Leader that all the rest liked and agreed upon. So that there needed no Compact of all the People of the world, since every Father of a Family being independant upon any man else, had a power to confer his Authority of governing himself and his Family upon whom he pleased: which Power, whether, and how far it was from God, and what kind of Authority it was, we shall examine hereafter. So that though I grant all Government might be at first instituted by Fathers of Families, yet this does not prove any despotick Power that such Fathers had over their Children or Descendants; and so consequently could confer no such Authority over them. So that all the rest of the Authors Queries about the distinct power of the Multitude vanish, since, though there never was any Government where all the promiscuous Rabble of Women and Children had Votes, as being not capable of it, yet it does not for all that prove all legal Civil Government does not owe his Original to the consent of the People, since the Fathers of Families, or Freemen at their own disposal, were really and indeed all the People that needed to have Votes; since Women, as being concluded by their Husbands, and being commonly unfit for civil

busineſs, and Children in their Fathers Families being under the notion of Servants, and without any Property in Goods or Land, had no reaſon to have Votes in the Inſtitution of the Government.

So likewiſe all the Authors Objections and Cavils, *p.* 44. how the greater part of a Multitude could overrule the reſt in the ſtate of Nature, ſignifie nothing; ſince if many men meet to chuſe a Governour, the firſt Queſtion muſt be, whether the Votes of the major part ſhall not conclude the reſt; and then all that agree that they ſhall, are bound by their own conſent; and thoſe that will not agree to it, are ſtill in the ſtate of Nature toward all the reſt, and are free to go and ſet up a Government by themſelves, that they all can agree to *Nemine Contradicente*. And if they diſturb thoſe that have agreed, that they will be concluded by the majority, they may be lawfully uſed as Enemies. And for Proxies or Repreſentatives, though the beginnings of moſt Kingdoms and Commonwealths, like the head of *Nilus*, are hard to be traced up to their Heads or Fountains, and no man can poſitively tell the manner of their beginning; yet if they began from ſome ſmall quantity of men collected into one Army or City, there needed no Proxies at all, ſince every man might give his Vote himſelf. But ſince the Author puts me to name any Commonwealth out of Hiſtory, where the Multitude, or ſo much as the greateſt part of it ever conſented, either by Voice or Proxies, to the election of a Prince; I will name him two Commonwealths: The firſt was *Rome*, where all the People or Freemen conſented to the election of *Romulus*, being formerly propoſed. See *Dionyſius Halicarnaſſeus*, lib. 3. And the ſecond ſhall be that of *Venice*, where though it is true the whole promiſcuous Rabble did not chuſe a Prince, yet all the Maſters of Families, or Freemen at their own diſpoſe, had a Vote in the choice of the firſt

Duke

Duke and Senate; which plainly proves some Governments to have had their beginning by the consent of the People. And though some Governments have begun by Conquest, yet since those Conquerours could never perform this without men over which they were not always born Monarchs, it must necessarily follow, that those Souldiers or Volunteers had no obligation to serve them, but from their own agreements with their General, and for those advantages he proposed to them in the share of those Conquests they should make. Thus were the *Goths*, *Vandals*, and our *Saxon* Kingdoms erected by such Generals of Armies, who not being Kings at home, nor able to subsist there, were forced to seek their fortunes abroad; which when they had obtained, they could have no farther Right over the men they brought with them, than what sprung from their mutual Compacts and Consents. And as for Proxies, as there was no need of them in the instituting of those Commonwealths we read of, since taking their Original from all the People of one City or Army, they might easily give their Votes themselves; but where the People or Masters of Families are more numerous and dispersed than can well meet all together, it is impossible, upon the Authors Concession of an Escheat of the Crown, that ever a new Monarch can be chosen without their making Representatives. As for what he says about the silent Acceptation or tacite Consent (or non-contradiction) of the People, no man will say that it alone confers a Right, where there was none before; as in the case of Conquerours or Usurpers, whom perhaps People dare not speak against: So like-

Read likewise our Historians of the manner of Will. the Conquerors coming over, and you will finde those that helped him in that expedition were Volunteers, to whom he promised a share of his Conquests; which he after made good to them.

likewise a tacite Consent to a Government, whether Paternal or Civil, justly instituted, does confer a Right, as I have already granted, and shall now farther shew in answer to the Authors Objections. The Author urges farther, *That if Children under years of discretion, and Servants, are not absolutely and in Conscience obliged to submit to the Votes of their Fathers and Masters in the choice of the Government, farther than they receive benefit and advantage by it; then every man is at liberty that does not like the Government, to be of what Kingdom he pleases: and so every petty Company hath a Right to make a Kingdom by it self; and not onely every City, but every Village, and every Family, nay, and every particular man would have a liberty to chuse himself to be his own King if he pleased; and he were a madman, that being by Nature free, would chuse any man but himself to be his Governour; and so no man would be tyed to obey the Government farther than he found it for his interest and advantage, and consequently would think he might lawfully resist it whenever he found it impose upon him what he did not like, or was contrary to his interest.*

Anarchy of a mixt Monarchy, p. 268.

In answer to which, I grant, first, That every Possessor of a propriety in Land or Goods in any Government, is not onely bound to obey, but likewise to maintain it; since those that first instituted the Government, did likewise tye themselves and all those that should at any time possess those Lands or Goods, to the maintenance of the Government which they had established: And it is just and reasonable, that those that claim under such first possessors, should, if they like to enjoy the Lands or Goods, perform the Conditions annexed to them; since men may by their own private Deeds, much more by a common consent, change their Estates with what Conditions they please; which those that afterwards come to enjoy the same under

under their Title, are certainly bound in Law and Conſcience to make good. Secondly, As for all others who poſſeſſing no ſhare in the Lands or Goods of a Kingdom, yet enjoy the common benefits of the Government, I conceive they are likewiſe bound to obey and maintain it as firſt inſtituted, for the reaſons before given. So on the other ſide, if they do not like the Government they live under, the world is wide enough, and they may remove themſelves elſewhere: for I cannot think that the poſitive Laws of any Government do oblige any man in Conſcience (who is not a ſlave by his own act or fault) never to go out of the Country where he was born, or can oblige him to return again if he once go out of it, or can hinder him from becoming a Subject to another Prince or Commonwealth, unleſs he have taken an Oath of Allegiance to the Prince where he was born, and then he is tyed by his Oath not to act any thing contrary thereunto: And if one man may do this, why not more, and ſo on to an indefinite number? But if any Lawyer tells me there is a native Allegiance due by the Laws of divers Countries precedent to any Oath, and that in ſome Countries (as anciently in *England*, and in *Ruſſia* at this day) there are Laws that no man ſhall travel out of the Kingdom without leave; I ſuppoſe theſe are but poſitive Laws, and as ſuch bind onely to a ſubmiſſion to the puniſhment as to forfeiture of Eſtate, or the like, but do not bind the Conſcience to obſerve them farther than as it is convinced the thing commanded is more than indifferent in its own nature, and conduces to the good of Mankind in general, or of the whole Commonwealth in particular. Nor indeed was this notion of a native Allegiance known to our *Saxon* Anceſtors, ſince they counted no man an abſolute Subject until he was ſworn in the Tourn or Court of Frankpledge, and was entred into a decenary

or Tything. And if it be objected, that upon these Terms the major part of a people may go away and leave the Government without defence; that is not likely, nor so much as to be supposed, as long as the Country continues habitable, and the Government tolerable for the Subjects to live under: which if it prove otherwise, I see no reason that God should have ordained any Country for a common Bridewel, where men should be obliged in Conscience to drudge, be oppressed, and ill-used all days of their lives without remedy. And as for the other part of the bad consequences the Author insists will follow, if this natural freedom of Mankind be allow'd, for which you may consult his *Anarchy of a mixt Monarchy*, where you will see them at large, *p.* 268, 269. *Every petty Company hath a Right to make a Kingdom by it self*, &c. I shall answer him as briefly as I can. The Author discourses after that rate, that one would think, if it were not for his Principle of Patriarchal Power, men could not subsist, his being the foundation of all Civil Government and Property. As for the first absurdity that will follow upon the supposal of the Peoples power, *That any man might be his own King*; I would ask the Author, What if any man, being weary of the world, will withdraw into some Desert? I think he hath then no other Governour than *Adam* had: Nor is this unlawful; or else all the ancient Hermits, who in times of persecution retired into Deserts, sinn'd in so doing. But for the absurdities that follow the supposal of a natural state of Freedom, *As that every particular City or Family may chuse what Government they please, if they do not like what is already established*; I have already granted, that where a Commonwealth is established, and men are come out of the state of Nature, and constitute one Politick Body, all the Members of it are obliged in Conscience to maintain this Govern-

Government according to its first Institution. But if it be to be constituted anew, as upon *his Escheat of the Crown among the Fathers of Families*, Who are to chuse one? who must take upon him this FatherlyPower over them? The inconvenience will be the same upon his own Principles: For all Cities, Towns, and Families consting of so many independant Heads of Families, if the major part of an Assembly cannot conclude the minor (as this Author supposes) then though all the Fathers of Families in a Nation should agree in the choice of a King, and but those of one Town or Family dissent, these Dissenters, if they do not like the Prince the rest have elected, may certainly (if they are able) divide from them, and set up a distinct Government of their own; since all these Fathers of Families being alike free and independant, can in the state of Nature claim no Superiority over each other. So that the Author, from his own Principles, falls into the same inconveniencies which he finds fault with in those of others; whereas indeed there is no absurdity in this Supposition.

I shall now consider in the last place that part of his Hypothesis (*Patriarch.* p. 21.) where he supposes, *That all such prime Heads and Fathers of Families have power to consent in the uniting or conferring their Fatherly Right of Soveraign Authority on whom they please; and he that is so elected, claims not his Power as a Donative from the People, but as being substituted properly by God, from whom he receives his Royal Charter of an universal Father, though testified by the ministry of the Heads of the People.* I have already pull'd up the foundations of this Notion in the beginning of these Observations, by shewing that God hath not ordain'd or conferred any such Power on any particular Father or other Relation, and therefore neither on all the Fathers of Nations or Countries taken together, they not having any Owner-

Ownership or Property in their Childrens persons, but a Right to govern and direct them for their benefit and preservation; which Fatherly Right cannot be transferred to another, much less survive his person, as I have already proved. Yet to render this as clear as may be, granting him what he contends for, that this Fatherly Power may be transferred to another; I should be glad to know, though the Monarch so nominated by them may have a supreme Power over all their Children and Servants, yet whence does he derive this Right of commanding absolutely over the Persons and Estates of these Fathers of Families themselves: Not from succession from *Adam*; for his right Heir cannot now be known: nor from their transferring the power of governing their own persons upon him; for then this Right commences from their own Act or Election, and not from the Fatherly power supposed to be at first conferred on *Adam*. And if they transfer onely their Fatherly or Masterly Authority upon this new Monarch, then he hath onely a Right to govern their Children and Servants, the Persons and Estates of these Fathers not being included in this Grant. And again, if this Election in the state of Nature could confer a Right, then this Monarch must owe his Power to these Fathers of Families; and so these being (as I have already proved) the representative Body of the People, he must receive his Authority as a Donative from them; which he will by no means admit of. But since he will have him properly and immediately substituted by God, from whom he receives his Power of an universal Father, then these Fathers of Families do not create or constitute the Monarch, but onely are Instruments or Ministers to put him in possession; and if so, it is the possession of the Crown, and not their Election, that gives him this Right. But (as the Author words it) *He receives from God this Charter*

Charter of an universal Father. Upon which Principle, I see not to what purpose this Nomination or Election serves; for if any body during this *interregnum*, can by force or fraud slip into the Throne, he is more properly Gods Substitute, and to be obeyed accordingly, than if he had come in by their Nomination or Election, since he is in possession by the immediate Will of God, and declared by the success. So that these Fathers are in a fine case, after all their Priviledge to elect, since whoever can usurp this Authority over them, must immediately be their Father and Master, whether they ever give their consents or not: For this Author says, *Paternal Power cannot be lost; it may be either transferred or usurped, but never lost.* But I have sufficiently exposed the absurdity of this Notion before, in what I have said about Obedience to Usurpers, and shall lay it more open when I come to shew in what sence Princes owe their Authority to God.

Obedience to Government, p. 66, 67.

Therefore, since these Fathers of Families had in the state of Nature an absolute Power of governing themselves, I shall now enquire in the next place, Whether they may not pass over this Power upon some certain Conditions, and reserving some Rights and Priviledges to themselves and Children, upon the making of the Compact with their new Prince. Secondly, How the person so elected owes his Authority to them, and in what sense to God. As to the first, I see no reason but that these Fathers of Families may, if their number be not too great, agree to govern all alike together; and that whoever is a Master of a distinct Family, or a single man at his own dispose, and not a Servant, shall have a Vote in the Government, and that the major part of the Votes shall conclude all the rest, and then it will be as perfect a Democracy as ever was; since, as I have granted

granted already, there was never such a Government where all Women and Children promiscuously had Votes with their Husbands, Fathers, or Brothers. So that if ever there was any such thing as a Democracy in the world, this would be one. Or lastly, if they may all govern themselves, they may as well agree to chuse a certain number of their own Body to represent them, and to meet in a common Council or Assembly, and to govern them either for life or yearly, as they shall make the Conditions with them; and then this Government will become an Aristocracy, where a few of those that are reputed the best do govern, though by a Power derived from these Fathers of Families. And if they may bestow this Power upon more than one under certain Conditions, I see no reason why they may not do the same, if they confer it upon one man after the same manner, either by making a Compact with him upon his accepting the Government, how much of this Power he shall exercise, and how much they will reserve to themselves. If they agree that he shall have no more but a Presidency in their Council in time of Peace, and shall not have any power more than that, unless in time of War; he then is the Mouth of the Senate in time of Peace, and their General in War. And of this kind was the *Lacedemonian* King: And in modern times the ancient Dukes of *Venice*, when they went out to War: And so are those Caciques that the *Indians* in the *Caribbee* Islands and *Brasile* chuse to be their Leaders in War, but in Peace have little or no power. So likewise these Masters of Families or Freemen agreeing with him that they would chuse for their Prince, what Power he should exercise or they would confer upon him; as suppose that he should not condemn any of them to death, unless many of the same condition with himself find him guilty; or that he should not make any Laws or levie Taxes for the pub-

publick Charges of the Commonwealth, but what they propose to him; and that he swear for himself and his Posterity to observe these Conditions: There will then be produced a Limited Kingdom, consisting of a Prince as the Head of all Civil Power, and of an Aristocratical or Democratical Council, according as that Assembly consists either of the whole, or but of the People. And that such a Government is no Solœcism in Politicks, I shall prove farther when I come to make some Observations upon this Authors Treatise of the *Anarchy of a mixt Monarchy*. Nor can any man imagine from the Privileges of the Nobility and People that are found to have been almost the same in all these Northern Kingdoms of *Europe*, as ancient as the Government, could ever have owed their Original to any other Cause than the Original Constitution of the Government. And if these Fathers of Families may limit the power they confer upon their new Prince, upon this Escheat of the Soveraign Power, and retain some of it to themselves; they might do the same upon the first institution of the Government, either as when so many Masters of Families who had before lived apart and without any dependance upon each other, did agree in the state of Nature to erect a Civil Government among them; or else when a Colony or Army of men was led out by some particular Captains or Leaders for the conquest of a foreign Country, which when conquered and settled, every free Souldier in the Army would certainly have as good a Vote in the creating of their General to be their King, as their Captain or Colonel; since they all were at first but Volunteers, and followed these Captains not from any Civil Authority they had over them, but by their own consent. But since the Author will by all means have it, that these Fathers of Families must needs transfer their power upon one man absolutely, who must be endued with

with all this power, without any reservation; I shall now give you his best Arguments for this absolute Monarchy, and try whether they are unanswerable or not.

Patriarch. p. 49. His first reason for it, is built upon *Bellarmine's* Concession, *That God when he made all mankind of one man, did seem openly to signifie, that he rather approved the government of one man than of many.* This had been somewhat of an Argument, if *Adam's* power had been purely Monarchical over *Eve* and all his Children and Descendants, as it was not; but if it had, Gods bare Approbation lays no Obligation for all mankind to practise it now, any more than it is a good Argument to say, that it is now not onely lawful, but necessary for men to marry their Sisters, because God approved of that way of propagation of mankind at first. Secondly, *God declared his Will, when he endued not onely Men, but all Creatures with a natural Propensity to Monarchy; neither can it be doubted but a natural Propensity is to be referred to God, who is the Author of Nature.* What he means by a Propensity in all Creatures to Monarchy, I understand not; neither know I any Monarchy among Brutes, besides that of the stronger over the weaker; and in that Authors sence, the master-Buck in a Herd of Deer, the master-Bull in that of Cows, and the Bell-weather of the Flock, are all of them so many Monarchs, endued with Fatherly Authority over the Herd; or else, which is as good, are Usurpers of that Authority, and so the Herd are all bound in Conscience to submit to them. As for the Monarchical Government of Bees, whether under a King or Queen, I doubt it would pose even those *Virtuosi* who have glass-Hives, to prove their Government an absolute Monarchy both in War and Peace; and that none of the Princes of the Bloud or other Bee-grandees have any share in it; or that never a Bee in the Hive dare place any Honey in the Combs, or eat a drop of what she

she hath gathered her self, without the Queens orders. But if the Government of Bees be Monarchical, and that were a good Argument for Monarchy, then that of Emmets might be so for a Democracy, since most Naturalists not being able to distinguish any Kings or Princes in the Ant-hill, do suppose them to be a Commonwealth. But Raillery apart, I would be glad to be fully satisfied whether Mankind naturally incline to be governed by an absolute Monarchy. It is true, the greatest part of the Eastern Governments in the world are absolute Monarchs; but the Author cannot bring this as an Argument of any Propensity, according to his Principles: *For if all of them were founded upon the Right of Fatherhood, or else the Usurpation of that Right*; this proves rather a natural Obligation to this kind of Government, than a Propensity: for an Obligation cannot be drawn from a bare Propensity. Since then a man would have an Obligation to drink Wine, because as soon as he tasts it he hath a Propensity to it, and perhaps may take so much of it until he be drunk, and then sick, and so this Propensity may turn to a Surfeit. So some Nations (as *Rome* for example) having taken a Cup too much of Monarchy, this Surfeit produced an absolute aversion, hatred, and a propensity to the contrary extream. But as the Eastern Nations have inclined to an Absolute, so have the Western either to Commonwealths or limited Kingdoms. Witness the *Grecians* of old, and the modern Kingdoms of the *Gothick* Model; as also those petty Governments of several Nations in *America*. His third Reason is, *That God confirmed Monarchy to be the best Government, in that Commonweal which he instituted among the Hebrews; which was not Aristocratical (as Calvin saith) but plainly Monarchical.* If the Author here means before they desired a King, it is true that God himself was their King, and govern'd them upon extraordinary

nary occasions, by men divinely assisted or inspired; and such were the Judges whom God raised up to deliver them from the slavery and oppression of their Neighbours; and being looked upon as having a great portion of the Spirit of God, did likewise judge the People, that is, decide difficult Cases by way of Appeal in time of peace. But that the Government was purely Aristocratical, this Author himself confesses even when he denies it: He tells us, *p.* 50. at the time when Scripture saith, *There was no King in* Israel, *but that every man did that which was right in his own eyes, even then the* Israelites *were under the Kingly Government of the Fathers of particular Families: for in the consultation for providing Wives for the* Benjamites, *we find the Elders of the Congregation bare the onely sway, Judg.* 21. 16. Now what is an Aristocracy, if this be not? *viz.* an Assembly of the Elders or chief of the Fathers (that is, the best men) meeting, consulting, and resolving of publick business. What power these Fathers of Families had at home, is not declared, whether it was independant, or else did submit to the government of its own Tribe: But that it was Aristocratical, is apparent, if *Josephus* understood any thing of the History or Antiquities of his own Country, which he undertook expressly to write of: For *Antiq. lib.* 4. *cap.* he brings in *Samuel* speaking to this effect to the People (desiring a King) *An Aristocracy is the best Government, neither should you require any other sort of Government.* But as for the Kings which God gave them afterwards, there is nothing to be drawn from thence for this Authors advantage; for he himself tells us, there is no use to be made of it: For speaking against *Milton*'s sence of the words in *Deut.* 17. 14. he says, *Can the foretelling or the forewarning the* Israelites *of a wanton wicked desire of their*

Vid. *His Observations upon* Milton, *p.* 20.

theirs (i.e. *of a King*) *which God himself condemned, be an Argument that God gave or granted them a Right to do such a wicked thing? Or can the narration and reproving of a future Fact, be a donation and approving of a present Right? or the permission of a sin be made a commission for the doing of it?* So that it seems sometimes when it makes against the Author's sence, God is so far from approving Kingly Government, that it is a sin for the People so much as to desire it. But it is likewise as great a Question, whether after Kingly Government was established, it was likewise absolute, so that the King might put any body to death, right or wrong: For we find, 1 *Sam.* 14. 45. the People rescued *Jonathan* out of the hands of his Father *Saul*, and would not permit him to be put to death for his breach of the rash Vow which *Saul* had made; nor is it imputed to the People, that is, the Army, for a sin. Neither could *Ahab* take away *Naboth*'s Vineyard and his Life together, but by colour of Law, and a legal Tryal. Neither could King *Zedekiah* save *Jeremy* the Prophet from the power of the Princes who cast him into the Dungeon: for *Jer.* 38. *v.* 5. *Zedekiah* said, *Behold, he is in your hand; for the King is not he that can do any thing against you.* His fourth reason is, that God in Scripture mentions not, nor takes notice of any other Government than Monarchical. This is but a Negative Argument at best, the Scriptures not being written to teach us Politicks, but to declare God's Will, and to shew us his merciful and gracious dealing with the *Jews*, notwithstanding all their backslidings, and rebellions against his Commandments. His fifth reason is, that *Aristotle* saith in his *Ethicks*, *chap.* 11. That Monarchy is the best form of Government, and a Popular Estate the worst: The words are, τυπων ὁ βελτιστη βασιλεια, χειριστη ὁ τιμοκρατια. Which, though true, does not enforce any Obligation to the one more than the o-

ther: for though a man be obliged to his own preſervation, yet he himſelf is the onely Judge of the means; and if he erre, and uſe the worſt means for the beſt, they are not in fault if they acted as well as they could, and to the beſt of their knowledge, for that end. Neither does it follow, that there are no more ſorts of Government than theſe two to be choſen. Nor is it any better Argument, that the world for a long time knew no other ſort of Government but onely Monarchy; and that the Platforms of Commonwealths were hatched amongſt a few Cities in *Greece*, and that they were firſt governed by Kings, until the wantonneſs, ambition, or faction of the People made them attempt news kinds of Regiment. But let any one read the Greek Hiſtories, and he will find the cruelty and tyranny of Kings did more frequently give occaſion to the People to run into Commonwealths, than either the ambition or faction of the People. And as for the antiquity of Monarchy, the alteration of it rather makes againſt him, ſince the whole Body of a People ſeldom alter a Government, unleſs they find themſelves hurt by it, and that it proved inconvenient for them. I ſhall not diſpute which is the better Government, Monarchy or Commonwealth, ſince in my own judgment I incline to the former, where the Monarch is good. And though I will not affirm, as the Author does, *That even the Power which God himſelf exerciſeth over mankinde, is by the Right of Fatherhood, as he is both King and Father of us all:* Since beſides his abſolute power, and his being the ſole cauſe of our production, he is alſo endued with that infinite Wiſdom and Goodneſs, that he ſtill orders all things for the good of his Subjects, and ſo hath beſides his Power, the higheſt Right to govern, as the beſt and moſt perfect being: So likewiſe Monarchs, as far as they

Directions for Obedience, p. 71.

they imitate the divine Wisdom and Beneficence, have the like Right to be called Gods Lieutenants. Nor shall I trouble my self, as the Author does, (*p.67. and so on to 73.*) to compare the Mischiefs and Inconveniencies that have been found in absolute Monarchical and Popular Government, there being various Examples both of Cruelty and Injustice in both; and I think they are both the apteſt of any sorts of Governments to run into Extreams: and I know not whether there have not been found out a Regal Government mixt with somewhat of an Aristocracy or Democracy, which if truely observed, were freest from the inconveniencies of either. But this Author is so full of the mischiefs of Commonwealths, that he sometimes mistakes in History, and makes those Disorders to arise from the faults and licentiousness of the People, which proceeded indeed from the Usurpation of their Power. Thus he makes it the height of the Roman Liberty, that its Subjects might be killed by those that would; and sets forth the Tyranny of *Sylla* as an effect of the Roman Freedom, when indeed it was rather an effect of the absolute Monarchy usurped by *Sylla* during his Dictatorship. So that *Dionysius Halicarnasseus* gives us his judgment of those actions of *Sylla*, in these words: *I would onely shew, that for these wickednesses the name of Dictator became hateful: for all things seem good and profitable onely whilst they are well used, which if they come to be depraved by those that are in power, the same things are counted wicked and unprofitable.* So likewise (*p.73.*) he makes the Multitude or People of *Rome* to have elected *Nero*, *Heliogabalus*, *Otho*, and *Vitellius* for Emperours, and to have murdered *Pertinax*, *Alexander Severus*, *Gordian*, and the rest there named; whereas whoever reads the Historians of those times, will find it was not the People Lib. V. *circa finem.*

or Senate, but the Army that either elected or murdered Emperours: And as for *Nero*, the Senate had never dared to have declared him a publick Enemy, had he not become so odious and intolerable, that nobody would take Arms for him; and that the Army under *Galba*, which had revolted and chosen him Emperour, was then marching to *Rome*. So that indeed these Emperours were torn in pieces by the Dogs they themselves fed, and kept constantly in pay to prevent the People, who had not yet quite forgot their former Liberty, from recovering it again. And the People of *Rome* had just as great a hand in the setting up and putting down Emperours, as those of *Stambola* have had in the deposing or setting up those Grand Seigniors which the Janizaries (their Guards) have strangled of late years, setting up their Uncles or Brothers in their rooms; or as the People of *England* had in setting up either *Oliver* or his Son *Richard* for Protectors. But leaving these lesser Mistakes, which I look upon onely as the Transports of the Author's Resentments against Popular Government, in which I shall not contradict him in the main; onely I would fain lay the Saddle upon the right Horse, and not blame them for the faults committed by a standing Army which in those times domineer'd over both Emperour and the People of *Rome*, and imposed upon them what Emperour they pleas'd, though never so base and unworthy. I shall therefore in the last place come to the second point I before proposed, whether the person on whom the Fathers of Families upon this Escheat of the Crown confers their Authority, owe the same to them, or else immediately to God. The Author (in the passage before cited) will by no means grant, *That the person so elected claims his Power from the People, but as being substituted properly by God, from whom he receives his Royal Charter of an universal Father, though testified by the*

the Miniſtry of the Heads of the People. Which Aſſertion is built upon grounds altogether falſe and precarious, as I have already proved: For firſt, he here ſuppoſes, *That God hath given by divine grant, all Fathers in the ſtate of Nature, an abſolute deſpotick power over the perſons of their Sons, ſo that they may ſell or otherwiſe transfer this Fatherly power to whom they pleaſe. And* ſecondly, *That the Children are as much obliged to obey thoſe to whom the Fathers transfer this Right, as they were their Fathers themſelves.* Thirdly, *That this Power ſo transferred, does not properly derive it ſelf from the Fathers who ſo paſs over their Fatherly power, but to God, who conferred it on them at firſt.* In which Hypotheſis every one of the Propoſitions are falſe: For, *firſt*, I have proved that no Father hath by *any divine Grant or Charter*, an abſolute deſpotick power over the perſon of his Son: Or, *ſecondly*, that God hath given Fathers a power to bequeath or transfer their Authority to another, ſo that the Grantee ſhould by this Aſſignement ſucceed to all the Rights of a Father: and therefore the two former being falſe, the laſt of Princes receiving their power immediately from God, which is built upon them, muſt be ſo too. And beſides, it is evident, that theſe Fathers do not onely here paſs over a Fatherly power of governing of their Wives and Children, but likewiſe that of governing themſelves, not as Fathers, but as men; ſince they muſt transfer this power, whether they had Wives or Children or not, elſe they might onely paſs over to this new Monarch their power over their Wives and Children, and reſerve the power of governing themſelves ſtill: So that it is plain, there is a power different from that of a Father, to be transferred. But if it may be replyed, They may chuſe themſelves a Father if they pleaſe; indeed I have heard of a mans adopting of a Son, which ſtill muſt be by this Son's own conſent; yet I never

heard of a Son's adopting himſelf a Father, or that a Father, which is a natural Relation, can be created at mans pleaſure: it is true, a Lord or Maſter may, but he cannot thereby challenge that natural Reverence and Gratitude due onely to a Father. So that if Fathers have a power of governing themſelves and their actions in the ſtate of Nature, and that they can confer this Right on any other, it is evident they do not confer this as a Paternal power on their Monarch, which the Author ſuppoſes to be granted by God to all Fathers.

We ſhall now come to the ſecond Head at firſt propoſed, and examine what power a Maſter of a ſeparate Family hath over his Slaves or Servants in the ſtate of Nature. *Firſt*, As for hired Servants, though it is true they may ſubmit themſelves to the will and diſpoſal of another what Diet they ſhall eat, and what Clothes they ſhall wear, what work they ſhall do, and what hours of reſt or ſleep they ſhall have to themſelves; and that the Maſter may beat or correct him if he do amiſs, and through wilfulneſs or negligence diſobey his Maſters commands; and that theſe are the Conditions that moſt hired Servants, being part of their Maſters Family, do ſerve upon: yet is this not ſo properly an abſolute Obedience, as a duty of Truth and Honeſty in the Servant; ſince as he is bound to perform his part of the Contract, ſo likewiſe is the Maſter to perform what he hath promiſed them, ſince this ſervice is neither abſolute nor perpetual: ſo that when his time is out, he is free of courſe. And if in the mean time the Maſter does not allow him ſufficient Food, Clothes, or hours of reſt, ſo that he may be able to perform his work, this Servant in the ſtate of Nature (if he cannot perſwade his Maſter to uſe him better) may without doubt quit his ſervice as ſoon as he can; ſince he was to yield his Maſter his Labour upon certain Conditions,

ditions, which not performed on the Masters part, the Servant is not obliged any longer to perform his part of the Bargain, in living with him or serving him. And as for those that have sold or yielded themselves up as absolute perpetual Servants or Slaves to the government of another, I see no reason why they may not in this state of Nature make certain Conditions with their Master, before they will give themselves up to him, since if a man may covenant with another upon what condition he will serve him for seven years, why may he not do the same for his whole life? So that upon the non-performance of these Conditions, this kind of Servant hath the same remedy against his Lord as an hired Servant may have. And of this sort were our ancient English Villains, who though they could claim no property against their Lords, either in Goods or Lands; yet if the Lord killed his Villain, the Wife had an Appeal of Murder of the death of her Husband. Since no man can be supposed so void of common sense (unless an absolute Fool, and then he is not capable of making any Bargain) to yield himself so absolutely up to anothers disposal, as to renounce all hopes of safety or satisfaction in this life, or of future happiness in that to come. So that I conceive that even a Slave (much more a Servant hired upon certain Conditions) in the state of Nature, where he hath no civil power to whom to appeal for Justice, hath as much Right as a Son or Child of the Family, to defend his life, or what belongs to him, against the unjust violence or rage of his Master. Nor do I think any places of Scripture, if well considered, command the contrary: For as for the places in St. *Paul*'s Epistles, *Ephes.* 6. 5. *Servants, be obedient to them that are your Masters according to the flesh, with fear and trembling.* And *Coloss.* 3. 22. *Servants, obey in all things your Masters*, &c. does not extend to all things that are, but only

to things lawful for them to do, that is, that were not againſt the Principles of Chriſtian Religion. And in this it is that St. *Peter*, 1 *Pet.* 2. 18, 19. commands *Servants or Slaves* (which there were all one) *to be ſubject to their Maſters, not onely to the good and gentle, but alſo to the froward. For this is thank-worthy,* or grateful, *if a man for conſcience towards God,* εἰ διὰ συνείδησιν Θεοῦ, *endure grief,* or trouble, *ſuffering wrongfully.* Which words ſeem to import, that Servants ought to bear with a great deal of bad uſage from their Maſters; but does not command them in the ſtate of Nature to give up their Lives or Goods to their Maſters, without any reſiſtance. But if any ſhall urge the Example of Chriſt alleadged in the third verſe, who ſuffered (even to death) for us; I conceive that does not extend to a ſuffering or ſubmiſſion unto all things, but to ſuch things for which Chriſt himſelf ſuffered, *viz.* for Conſcience toward God, that is, for matters of Religion; which is likewiſe moſt agreeable to the ſence of the words that follow: *For what glory is it, if when you are beaten for your faults, you take it patiently? but if when you do well, and take it patiently,* &c. Now who ever can imagine a Servant to be beaten for doing his duty? Therefore doing well, here, ſignifies the profeſſion of Chriſtianity; which they were not to deny, though they had unbelieving Maſters. Therefore ſince no interpretation of Scripture ought to be againſt Reaſon, that can never tell a man that he ought to yield up himſelf ſo wholly to anothers diſpoſal, as to give his Maſter an abſolute right and power over him to kill or maim him without cauſe, or to be ſo baſely and penuriouſly uſed as perpetually to ſuffer hunger, cold, and nakedneſs, or the like; ſo that his life ſhould rather become a burden and a puniſhment, than a ſatisfaction. For ſince we have no notions of happineſs but in life, nor in that farther than it is accompanied

with

with ſome contentment of mind, no rational man can be ſuppoſed to conſent to renounce all the pleaſures and ends thereof, (and which onely make life deſireable) much leſs the Right of living and preſerving himſelf. So that even ſuch a Slave may without doubt in the ſtate of Nature, run away from his Maſter, and ſet himſelf at liberty if he can, ſince his Maſter hath not performed his part of that tacite condition of his Service; which was, that this Maſter ſhould for his Labour provide him all the neceſſaries of life, and ſuffer him to enjoy the ordinary ſatisfactions of it. Nor is the worſt of Slaves, that is, one taken in War, ſo abſolutely at his Maſters diſpoſe, as that becauſe he hath him in his power, he hath therefore a Right to uſe him as he will: For firſt, as long as the Conquerour keeps his Slave as a Priſoner, and makes him work in Fetters, though he hath given him his life for the preſent, yet there does not thence ariſe any Obligation in the Slave to Obedience; ſo that the Slave may yet run away if he can, nay, kill his Conquerour, unleſs he will come to other Terms with him, and make him promiſe him his Service and Obedience upon the granting him his Liberty and enjoyment of the ordinary Comforts of Life: And if he cannot enjoy theſe, I believe there is no ſober Planter in *Barbadoes* (who are moſt of them the Aſſignees of Slaves taken in War) but will grant ſuch a Slave may lawfully run away if he can. Therefore it is not true what Mr. *Hobbes* ſays, That no injury can be done to a Slave: for his reaſon is not valid, that becauſe a Servant hath abſolutely ſubjected his will to that of his Lords, therefore whatever he does, he does it by his Maſter's will, in which his own is included, ſo that *volenti non fit injuria*: this proves no more than that the Slave hath no juſt reaſon of complaint though his Maſter give him Victuals that does not ſuit with his palate, or preſcribe him Work which may

may not pleaſe his humour. So on the other ſide, what rational man will affirm, that this Slave hath given up the natural Rights of living, and being preſerved as a man, but that injury may be done to this Slave as any other Servant, if the Task impoſed upon him be beyond his ſtrength to perform, or if he be beaten or like to be put to death without cauſe, or that he hath not Food ſufficient to enable him to do his work? for he may ſtill require at his Maſters hands the uſage of a man, and of a rational Creature. So likewiſe though this property in the perſon of a Slave taken in War, may be aſſigned over to another, yet the Right of commanding a Slave by his own conſent, cannot be ſo, farther than it was agreed upon in the Bargain between him and his Lord: for if he covenanted to be a Slave onely to his Lord and no man elſe, the Lord cannot in juſtice aſſigne nor ſell him to another, without his conſent, nor leave him to his Heirs; ſince there might be certain peculiar reaſons wherefore a man might ſubject himſelf to this man, and not to another. So likewiſe in abſolute Empires which began purely from Conqueſt, though it is taken for granted that they may be aliened at the Will of the Conquerour, yet it is otherwiſe in Subjects who have ſubmitted themſelves upon certain Conditions, and who have ſome Liberties remaining to them; and much more in thoſe Kingdoms which are limited by their Inſtitution: for there, not properly the Perſons of the men, but the Right of governing them, is ſaid to be tranſferred as far as it is accompanied with the Honours and Profits annexed to it. For although a Prince may ſay of his Subject, He is my Man, yet this Property in him is much different from that whereby a Prince calls his Horſe his own: for in the firſt ſence he means no more than that the Right of governing this man belongs to me, and not to another, yet cannot be extended as far as he

he pleaſes; but that Property which is attributed to a Beaſt or other Goods, includes a Right of uſing or conſuming that thing as he will himſelf, without any other reaſon than that it is his own. But although the Laws of Humanity do not permit, that however a man hath carried himſelf towards us, all Remains of that Primitive Equality between men ſhould be quite extinguiſhed towards him; and after a man hath entered into a ſtate of Peace with us, that he ſhould be dealt with as a Brute or inanimate thing: though it is true that the Cruelty and Avarice of divers Nations hath proceeded ſo far, that Slaves are reckoned amongſt Houſhold-goods, and are ordered not ſo much by Command, as by the force of an abſolute Dominion and Property; yet this is not from the Law of Nature, but the Civil Law of that particular Commonwealth. So that though I grant by the Roman Civil Law, a man might have ſaid of a Slave in the ſame ſence as of a Beaſt, This is mine; yet this was not from the Laws of Nature, but Cuſtom of that Empire, who taking many Captives in the Wars, almoſt all their Servants conſiſted at firſt of ſuch: Yet this is not allowed of in our Law, nor yet in *France* and other Countries. And this will ſerve to demonſtrate what this Author lays down in his Preface to his Obſervations on *Ariſtotle*'s Politicks to be falſe, That *Adam* was a Father, King, and Lord over his Family, and that a Son, Subject, and Slave, or Servant, were all one at firſt; ſince it may hereby appear that there is a real difference in Nature between every one of them. And though the expreſs names of Subject, Tyrant, and Slave, be not found in Scripture, yet the things are, and that as plainly deſcribed as if they had been called ſo; though the Hebrew being a barren Language, hath not diſtinct words for them, without Epithites or Circumlocutions: For (1.) As to Servants, it is apparent

apparent out of the Law of *Moſes*, *Exod.* 21. *v.* 2. *Levit.*25.39.44. *Deut.*15.12. there is a vaſt difference between Hebrew Servants and thoſe that were of other Nations; theſe latter onely being called Bondſervants, whoſe ſervice was perpetual, and who were as a Poſſeſſion and Inheritance to their Lords; whereas the former were not to be made to ſerve with that Rigour, but onely as hired Servants to be ſet free in the ſeventh or *Sabbatical* year. And it is frequent in the Law as well as Prophets, to make mention of the Wages of an Hireling. So that nothing is plainer, than that even among the Jews, there was a difference between hired Servants, Hebrew Servants for years, and forreign Slaves for ever. And before that, when *Jacob* ſerved *Laban* for his two Daughters, it is evident that there was then a diſtinction between an hired Servant and a Slave, ſince there was a Contract for what Wages *Jacob* ſhould ſerve him: And though *Laban*, for ought appears, according to the cuſtom of thoſe times, was an Independant Father of a Family, as well as *Jacob* was afterwards, and conſequently a Prince, as this Author needs will have it; yet we do not finde it charged upon *Jacob* as a Crime, no not by *Laban* himſelf, but onely as a matter of unkindneſs, that he had ſtolen away from him with his Daughters and the Goods he had yearned in his ſervice. So likewiſe, though the word Tyrant is not found expreſly in Scripture, yet the thing it ſelf is, if a Tyrant be one who abuſes his Kingly Power to the Oppreſſion of his Subjects; or elſe *Pharaoh* in *Egypt*, and thoſe Kings who after the *Iſraelites* coming out of *Egypt* ſo cruelly oppreſſed them, were all good and lawful Monarchs, and had as much Authority as their own Princes which God ſet over them: and it had been a wicked thing in them to have reſiſted them and driven them out as they did, whenever they were able; ſince they

they were in poſſeſſion, according to this Author, by the permiſſive Will of God. Having now ſhewn the difference of the Power of a Maſter of a Family, from that of a Father, and that the Right which a Father hath in his Children, is divers from that which he hath in his Servants or Slaves; I will now conſider in the laſt place the Power which *Adam* had, or any other Husband now hath over his Wife in the ſtate of Nature.

I have already proved that the Authority of the Husband over the Wife, commences from that Contract we call Marriage; and though by the Word of God the Woman is made ſubject to the Man, yet the reaſon of that ſubjection naturally depends upon the Mans being commonly ſtronger both in body and mind than the Woman; and where that ceaſes, the ſubjection will likewiſe of courſe ceaſe, even amongſt us: For we ſee that if a Husband be a fooliſh or a careleſs man, and either cannot or will not govern his Family and Eſtate, the Wife may and does, and oftentimes him into the Bargain: Nor does any one finde fault with her for ſo doing, ſince ſomebody muſt govern the Concerns of the Family; and if the man either cannot or will not, who hath more Right or Intereſt to do it, than her, who hath an equal ſhare in the happineſs and well-being of her Family and Children? Neither can there be at once two abſolute Heads in the ſame houſe commanding contradictory things, without confuſion, ſince the Children and Servants could never tell whom to obey. So that even this ſubjection of the womans will to the mans, commanded by Scripture, is ſtill with a ſuppoſition that the man is capable or willing to govern: for if he be not, he loſes this Prerogative of courſe. But ſuppoſe he is able to govern her and the Family, the Queſtion is, What kind of Power he hath over her, as a Husband, in the

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ſtate of Nature? I grant, that if ſhe made it part of her Bargain to be ſo abſolutely ſubject to him as that he might command her in all things as a Slave, and make her do what work he pleaſed to appoint, and that he may either turn her away, or put her to death, if he find her imbezilling his Goods or committing Adultery; the woman in this caſe is bound by her Contract, as another Servant, who makes her ſelf ſo by her own act or conſent. But this is not the Queſtion, but what power the man hath naturally over his Wife, as a Husband, ſuppoſing no ſuch Conditions or Bargain were made at the Marriage. It is true indeed that the Wife ought to be ſubject to the Husband in all things tending to the good and preſervation of her Children and Family, or elſe the Family would have two Heads (as I ſaid before.) But it does not therefore follow, that he hath ſuch a deſpotick power over her, that ſhe may in no caſe judge when he abuſes his Fatherly or Husbandly power: For ſuppoſe the Father of a Family, in the ſtate of Nature, ſhould in a mad or drunken fit go about to kill or maim herſelf or one of his innocent Children, can any body think this were Rebellion againſt the Monarch of the Family, for the Wife to reſcue her innocent Child or ſelf out of his hands by force, if ſhe could not otherwiſe make him be at quiet? Or ſuppoſe the Husband in ſuch a fit ſhould command his Wife to deliver him a ſum of money which ſhe had in her keeping, when ſhe was morally ſure that he would preſently play it or otherwiſe ſquander it away; will any rational man affirm that a Wife may not deny to deliver her Husband his own money in ſuch circumſtances? So that it is evident, ſhe never ſo abſolutely ſubmitted her will to his, as not to reſerve to her ſelf the faculty of a rational woman, as not to judge when her Husband would evidently deſtroy her ſelf or Children, or abſolutely

lutely ruine the Family, when he was not in a capacity to govern himself. So likewise if the Husband command her to do any thing against her Conscience, or the Laws of Nature, she is not obliged to obey him: For though the Wife in all matters peculiar to the Marriage-bed, and in all other things that relate to the well-ordering the Family, is obliged to submit her will to that of her Husband; yet it does not therefore follow that she is an absolute Slave, to be commanded or compelled in all actions not tending to this end. And if it be objected, that as Commonwealths cannot be governed without some coactive Empire, so Marriage cannot well subsist by a bare Compact, or the power of Friendship alone, to oblige the Wife to her duty, in case she prove disobedient. As I do not deny but perhaps it may be lawful for the Husband, as Head of the Family, in some cases, if the Wife prove palpably obstinate and disobedient to his reasonable commands, and will not hearken to Reason, to compel her by correction; and the rather, since Christ hath taken away the liberty of Divorce, whereby a man might be rid of a cross Wife (as of an ill Servant) if she did not mend her manners; and therefore he hath no way else to mend her, if she will not do her duty by perswasion and fair means: Yet this Power is very rarely to be used, since it is onely some women that either need or will endure to be so handled; and all discreet and rational Wives, as well as Servants, will do their duty without it. Yet this Example of the absolute Obedience of Subjects in a Commonwealth, does not agree with that of a Wife to her Husband, as Head of the Family; since Families (especially those who consist of a good number of Children and Servants) may have a twofold end: the one peculiar to it self, the other common with that of Civil Governments. The common end is considered in that defence and securi-

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ty resulting from the conjunction of many into one Body; in which, although an absolute Empire be necessary, yet since the Wife being but one weak woman, can contribute but very little to this end, it may very well suffice to the peace and unity of the Family, if she be tyed to her Husband onely by a simple Compact by way of Friendship, without any despotick power over her. But the peculiar ends of Matrimony, which are the procreation and breeding up of Children, and providing things necessary for the Family, may well enough be obtained, although the Husband be not invested with this despotick power (which supposes that of life and death, or other grievous punishments) and though the Wife be tyed by her Compact only and the Bonds of Amity; of which Compact the Husband being the Principal, does imitate that of an unequal League between Civil States, in which the Husband being the Head, the Wife owes him all due respect and observance; and he on the other side owes her maintenance and protection. Therefore I am not of the opinion of some, who will have the Husband, in the state of Nature, to be endued with an absolute power of life and death over his Wife; and that in this consists the very quintessence of Marital power, because, forsooth, that all Empire, when it is in its proper subject, and neither is exercised precariously by any man, nor circumscribed by any superiour Power, does always import *jus vitæ & necis* over the Subject. But this is not so: for a man, in the state of Nature, may become part of anothers Family, and yet make it in his Bargain that the Master of this Family shall not put him to death or misuse, unless it be for Crimes that deserve death by the Law of God or Nature, or become a publick Enemy. And the Supposition is false, which first supposes such an absolute Empire to be in the Husband, as in the proper Subject; neither is there

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any absolute power of life and death necessary to the ends of Marriage: for if the woman commit small faults, and will not be amended, the Husband may correct her; if greater (as suppose Adultery) he may put her away, and likewise chuse whether he will provide for the Children which he hath reason to believe he did not get himself. If she murder her Children, or commit any other abominable sin against Nature, she may justly be cut off from the Family, and punisht as a common Enemy to Mankind; and so she might be if she had not been his Wife, but Servant, or other Member of the Family. Yet I do not affirm, that this despotick Empire, or power of life and death, is against the Laws of Nature, or inconsistent with the state of Matrimony, any more than the absolute power of a good Prince should destroy the love of his Subjects towards him, or the reverential fear we ought to have of God, destroy our love of him. Therefore as I have allowed that the woman may confer such a power on her Husband over her self, in the state of Nature; so I grant this absolute power may likewise be conferred on Husbands by the Civil Laws of particular Commonwealths. Thus it is murder for a man in *England* to kill his Wife taken in the very act of Adultery; but it is not so in *Spain*, *Italy*, and most other Countries, if he kill his Wife if he find her alone in another mans company, though it cannot be proved they have done any thing else to deserve it.

Having now gone over the whole power of the Head of a separate Family, as a Father, Husband, and Master, and proved that no man is a Slave by Nature, or without his own Consent (as a Slave by Compact) or without his fault, as a Slave taken in a just War; and that no Master of a Family hath such Right in the person of one of these, but that he may do him injury if he take away his life, or punish him without

cause; and that such even such, a Slave may lawfully set himself free, if the Master do not perform his part of the Bargain. And having in the last place shewn what power a Husband hath over his Wife in the state of Nature, and from whence it takes its Original; it is now time to answer those Arguments and Objections made by this Author and others, *That the Prince or Governour so elected by the Fathers of Families, or Freemen at their own dispose (which I hold to be equivalent to the whole People) hath not onely his Nomination from them, but that it is from God alone that he derives his Soveraign Power and Authority, with which he is endued upon his first acceptance of the Supreme Power; and if he should accept it with any limitation, it were to restrain that Power which God hath conferred upon him by his being made the Supreme Magistrate, and would hinder him from performing that great Duty as he ought.* In answer to which I have already proved, that no such unlimited Power was conferred by God to any private man in the state of Nature, as a Father, Husband, or Master; and therefore could not be given to any Civil Soveraign, who is supposed to have no more power than the Father of the Family had before. A second Objection is, *That no particular man hath in the state of Nature any power over his own life, and therefore cannot have any over the life of another man; and if one man hath not this power, neither have the People (which is but a universal consisting of singulars) any such power, and consequently cannot confer it on any other man: therefore every Prince must have this Soveraign Power of life and death, not from the People, but from God.* In answer to which, I shall first of all deny the consequence, that because God hath not given a man a power over his own life, therefore he can have none over the person of another. For God gave man a Right to preserve, but not to destroy himself, and so cannot dispose of his own life when-

whenever he is weary of it. Therefore since the first Law of Nature is Self-preservation, it is lawful for a man to use all means conducing to this end, that do not prejudice another mans Right in his particular life or happiness; so that if any man assault me in the state of Nature, I may defend my self, and consequently kill the Assailant, if I cannot otherwise escape. But perhaps it will be replyed, that the intention here is not principally to kill the man, if it may be otherwise avoided; and that this Right is given men onely to preserve their lives from being taken away at another mans pleasure, but that no private man hath power to revenge an injury done to another or ones self, in the state of Nature, with death, but God, or him to whom God hath committed this power, according to St. *Paul*, *Rom.* 12. 19. *Dearly beloved, avenge not your selves*, &c. I shall prove that this place does not destroy that which I maintain: for I grant that all Revenge taken, as the satisfaction some men take in the very doing evil or prejudice to another, is unlawful, even by the light of Nature. *Secondly*, Likewise where Magistracy is instituted, who is to bear the Sword for the punishment of evil doers? I grant all return of like for like to be unlawful, since he is appointed as a publick Judge to right those that are injured, and maintain the common Peace. But no Text forbids men to punish injuries done either to themselves or those they have a concern for, in the state of Nature; for this is not Revenge, but a natural Punishment to deter men from committing violent and unjust actions that disturb the peace of humane Society, since the wrong doer declares himself thereby a publick Enemy to all Mankind. And on this account *Cain* feared that (not his Father onely, but) every one that met him, would slay him, that is, punish him for the death of their Brother or Kinsman. And if this were unlawful, then all War must

be ſo in the ſtate of Nature; and Princes being always in that ſtate in reſpect of each other, could never make any War for the gaining of Rights uſurped, or to puniſh for Injuries received. So that this power which a man in ſome caſes hath over the life of another, is onely given him by God for the common good and preſervation of Mankind, of which every particular perſon is a part: and ſo this power conferred upon the ſupreme Magiſtrate is no more, nor extends higher than that, though there are more things requiſite to the publick peace and ſafety of a Civil Government, than are to humane Society in the ſtate of Nature: And from hence do ſupreme Powers derive their Right of making poſitive Laws, and ordaining higher Puniſhments for Offences than the Laws of God or Nature do expreſly appoint, as for Theft, Coining, and the like. Nor is the Antecedent true, that no man in the ſtate of Nature hath a power to diſpoſe of his own life: For though it may be true that no man hath a Right to make away himſelf whenever he diſlikes his being here; yet it does not therefore follow, but that for a greater good to the publick, any man, nay a Prince himſelf may lay down his life for his Peoples good: And therefore I doubt not but the Example of *Codrus* the *Athenian* King was not onely lawful, but highly commendable, in ſacrificing his life for the good and ſafety of his People, ſuppoſing that all their Eſtates and Liberties depended upon that one Battel; much more for a private man to lay down his life to ſave ſome publick perſon highly uſeful to humane Society. And this much does the Apoſtle *Paul* himſelf ſeem to admit, *Rom.* 5. 7. when he ſays, *For ſcarcely for a righteous man will one die: yet peradventure for a good man ſome would even dare to die.* Where by a righteous man, Expoſitors underſtand one who had ſufficiently done his duty in an ordinary private capacity,

capacity, yet contributed little to the publick good; whereas by a good man, is understood some person highly useful and beneficial to others; and for such a one a man may not onely dare to die, but actually lay down his life if occasion be. A second Objection is, *That if the supreme Magistrates Authority be derived from the People, then this Authority must be either inferiour or superiour to it: If inferiour, how can the People be commanded or governed by that which is inferiour to its self? If superiour, how can the Effect be more noble than the Cause, since neither any particular Person nor the whole Multitude had Soveraign Authority, and therefore could not confer it upon others.* To this I answer, That this Soveraignty being but the submission of the Wills of the Persons that institute it to the Will of him on whom they confer it, that he should thereby make use of all their Powers for the common good of them all; and being therefore not any physical but moral Quality, may be produced in another by their Compact, who had it not formally in themselves before: As from the Voices of divers men singing together, there may arise a Harmony which was not in their particular Voices alone, though each of these Voices must be musical to produce it. So every particular person having before, in the state of Nature, a Right to preserve himself and to govern his own actions, when many men joyn together to confer this care upon one or more, there arises a Political Power indeed more noble, yet of the same kind with the other: for if the singulars had it not before in some measure, the universal could not have it all. So that it is absurd to alleadge, that Soveraignty is not derived from men, because it cannot be found among a mans natural powers or faculties in the same manner, as it is in the supreme Magistrate, as if there were no other than Physical Qualities in nature; yet even in Physicks, admitting *Epicurus* Hypotheses of Atomes to be true,

there will arise from their conjunction that quality in bodies which we call divisibility, and yet each particular Atome considered apart, being indivisible, had it not alone. But to answer a distinction they use in this matter between the immediate *efficient* and the immediate *constituent modus* of Soveraignty; they confess indeed, *That by this Election and Transferring of the Power of the Fathers of Families, the Civil Soveraign is declared, but that it is from God alone that he receives his Soveraign Authority.* If they mean by this transferring of Fatherly Power, any absolute Power which God hath by any Law divine or natural, conferred upon the Fathers over their Children and Families; I have already proved, that this Fatherly power is neither absolute, nor assigneable to another. If they mean any other Soveraignty distinct from this, then they must needs conceive this as an abstracted *Ens*, or Physical quality, which is immediately produced by God, and conferred upon the person of the Soveraign at his Election or Declaration: but I see no reason of constituting here more Causes than needs (as one efficient, and the other secundary) or why God should do that by an extraordinary unintelligible way of acting, which he may perform by a plain and easie one, since it is contrary to his other methods of acting in the course of Nature: For *frustra fit per plura, quod potest fieri per pauciora*; and supposing as I have already proved (and as divers who are sufficiently for Kingly Power do admit) that the People or Heads of Families have a freedom of setting up what kind of Government they please, either Monarchical or other; and if there were none other but Aristocracies or Democracies in the world, I would fain know what then would become of this notional Majesty or Soveraignty? Now if any man should ask them where this abstracted Soveraignty exists before it finds a King to settle upon, and whether it be a Substance or

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an Accident: if the latter, how it can subsist without its Subject? or if the former, when it was created whether it was at the beginning of the world, or like the Souls of men, *creando infunditur, & infundendo creatur?* or whether there be one single Soul of Soveraignty diffused all over the world, which being distributed, does, as it were, animate so many Kings? Also whether this Majesty dies with the Monarch, or else survives him as the Soul does the Body, and by a new Metempsychosis immediately transfuses it self into his Successour. If the Gentlemen of this Author's Principles please but to consider these difficulties, I'll undertake they will finde them as hard to be resolved as any the Author hath proposed about all the Peoples agreeing or being the cause of this Soveraignty: But I will not deny that God is properly the original and efficient Cause of Soveraignty as of all good things, and particularly of that power whereby every individual Freeman in the state of Nature, hath a power to dispose of his actions for his own preservation and the common good of mankind. And the particular powers of many men being put together, constitute that which we call a Politick or Civil Power. And therefore his last Objection is easily answered, That if the People be any Cause of Soveraignty or Civil Power, they must have received this power from God, by which they can confer it on any other: But it can no way be proved that they received it from God; for God having, as I said, imprinted upon mans Soul such a tender care of his own good and preservation, and hath likewise enjoyned him to preserve Peace and Order amongst men, in order to the common good and preservation of mankind, and hath likewise given him reason to find out all means necessary for this end, amongst which the constitution of Civil Government must be reckon'd as the principal; who can doubt but the faculty of constituting

ſtituting of Civil Government likewiſe proceeds from God the Author of Truth and giver of all good things? Thus the invention of Cloaths, Fire, and Houſes, proceed from God, though they were found out by man as his Inſtrument, for a help to his neceſſities and natural weakneſs. And as in ſome Countries there is little or no need of Cloaths or Houſes, where the weather is always warm and ſerene; ſo likewiſe God hath not impoſed upon any People an abſolute Obligation of conſtituting any Civil Government at all, if they can live without it, or at leaſt of its exerciſing farther than they have need of. Thus among the *Weſt-Indians*, in ſeveral parts of *America*, where they have no diſtinct propriety in Land, more than in their little Gardens, and Cabins, (which in Countries ſo ſtenderly inhabited as thoſe, where Land is worth nothing) every man enjoys, by a tacite conſent, a living upon Veniſon, Fiſh, or other Animals, and Fruits which the Woods produce; they need no Chattels, nor Diſhes, but a few Earthen-pots or Cups of Calebaſſes, beſides their Bows and Arrows, and Fiſhing-tackle, which every man knows how to make for himſelf. So likewiſe having no need of Clothes, and living but from hand to mouth, and taking care onely to provide meer neceſſaries of life, as they never have any ſuperfluities, ſo they have no Diſputes about them: and moſt of their things being eaſie to be provided, they are ſeldom known to ſteal them one from each other; and if a man catch another ſtealing any thing from him, he will be ſure to beat the Thief ſoundly, or may be mark him with the ſharp Tooth of a Beaſt they call an *Agoutye* (which is the diſgracefulleſt puniſhment any man can ſuffer:) ſo that one of the main ends of a ſupreme

See Garcilaſſo de Vega's *Hiſtory of* Peru.

See Lerius *Hiſt.* Braſile, *cap.* 18. *Hiſtory of the* Caribbe *Iſlands*, lib. 11. c. 19.

ſupreme power among us, *viz.* to decide Controverſies about Property, and puniſh Thieves, are there of no uſe. And as for other Injuries, ſuch as Maims, Adultery, and the like, they have no certain Judges for any of theſe things; every man that is injured in any of theſe caſes, being his own Judge and Executioner, obſerving that Law of an Eye for an Eye, and a Tooth for a Tooth; onely in Adultery the man hath power to kill both his Wife and the Adulterer, if taken in the act; and in Murder, and great Hurts or Maims, where the party injured is not able to revenge himſelf, his neer Relations will not fail to do it; and if they ſhould omit, they would be looked upon as Cowards or infamous: ſo that being naturally loving to each other, and having no words of diſgrace to quarrel about, and other Quarrels happening but ſeldom, and no man maintaining or taking the part of the wrong-doer, or revenging the death of a Murderer or Adulterer, they have lived many Ages without any common Power to keep them at peace among themſelves; and yet they have much fewer Crimes committed amongſt them than us. It is true, they have Captains or Cacicks among them, but they have no power but in time of War; and when the Expedition is ended, though they pay them reverence and reſpect, and make them preſide in all their Councils and Aſſemblies, yet they have no Authority in time of Peace to puniſh or queſtion any man. So that if they lived in Iſlands which were either far diſtant from others, or elſe were inacceſſible, and would make no forein Expeditions, they would not need ſo much as this Cacick, and ſo could live together without any other Government than that of the Fathers of Families over their Wives and Children. But perhaps it will be ſaid, theſe are Man-eaters and barbarous People, and ſo are not to be quoted as Examples for the reſt of mankind. It is true, the *Braſilians* eat

eat their Enemies taken in War, but the *Caribbes* do not. But as for the Obſervation of the other Laws of Nature, I will leave it to any man to judge which part of mankind obſerve them beſt; thoſe that can live peaceably together without either Judge or Gallows, or we that can ſcarce be at quiet, though we have them. But I have done this, onely to ſhew an intelligent Reader what are the true reaſons of the neceſſity of a Civil Power amongſt us that have a full propriety in all Lands and Goods by the particular Laws of our Countries.

Having now I hope diſpatcht the firſt part of my intended Task, which was to prove that the Author's Hypotheſis concerning the Monarchical Deſpotick Power of *Adam* over his Wife, Children, or Deſcendants, is altogether vain, and without juſt grounds either from Scripture or Reaſon; and conſequently that neither any Fathers of Families, nor the Princes as repreſenting them, can from divine Grant deduce any ſuch abſolute Power or Right over their Children or Subjects: I ſhall not trouble my ſelf with the anſwering of the reſt of this Treatiſe, having gone a good way in the ſecond Chapter, and anſwered his moſt material Objections about the Peoples conferring Soveraignty; ſo that the reſt is of ſmall conſequence. I ſhall not need to examine whether the Jews choſe the King, or God, ſince that Government being purely Theocratical, it concerns other Nations not at all; much leſs ſhall I vindicate the Form of the Roman Commonwealth, or diſpute whether they were more happy under Kings or Emperours, or whether Democracies or Tyrannies are beſt; or affirm that the People can correct their King, or that there e're have been any Tyrants in *England* ſince the Conqueſt, ſince they are all either foreign to this purpoſe, or elſe ſignifie nothing when his foundations are pulled up. As for what he ſays concerning

a limited or mixt Monarchy, I ſhall reſerve all that is needful to be obſerved upon that ſubject, until I come to conſider the Author's Treatiſe called, *The Anarchy of a limited Monarchy*; where all or the greateſt part of what he hath here written, is there repeated. As for his third Chapter, ſince Divinity is not my Profeſſion, and that the Texts of S. S. he there quotes, have been debated by ſo many Expoſitors both in Engliſh and Latine, I count needleſs to repeat out of others what ſenſe they may bear, though I do not approve of the Author's interpretation, who would have them applied alike to all Princes, whether good or bad, lawful or unlawful; ſince upon thoſe Principles there can be no difference between a juſt Prince and a Tyrant, or between a lawful Monarch and an Uſurper. Nor ſhall I meddle with what he ſays concerning the Kings Power and Prerogative, though I think there are divers things which he there ſays, that are falſe and of very ill conſequence; yet ſince I confine my ſelf purely to the Laws of Nature and Reaſon, I ſhall leave it to other more able Pens, and better skill'd in the Laws and Cuſtoms of this Kingdom, to give him ſuch an anſwer as they deſerve. Neither would I be thought to encourage Princes to ſtretch their Power to the utmoſt limits, nor yet to ſtir up Subjects to take Arms as ſoon as ever they think themſelves injured, ſince the Populace is but too apt, where they are left to be their own Judges, to pronounce Sentence in ther own favour. Therefore, quitting all theſe as unneceſſary Diſputes, I ſhall now proceed to take a ſhort view of the reſt of thoſe Errors and Miſtakes which remain yet to be obſerved in his other Miſcellany-Treatiſes firſt publiſhed.

CHAP.

CHAP. III.

I Desire the Reader in the first place to take notice that I wholly pass by the first Treatise called, *The Freeholders Grand Inquest*, since I confess my self no Lawyer verst enough in the learning of Records, to answer him in his own way; I shall therefore leave him to those that have made it their business: And as for great part of it concerning the Antiquity and Power of the Commons in Parliament distinct from that of the Peers or Inheritable Nobility, I shall refer the Reader to Mr. *Petyts* learned Treatise of the Rights of the Commons of *England*, where all Objections against it are in my opinion fully answered. Therefore I shall begin with his Observations upon *Aristotle*'s Politicks; which I shall not dwell long upon, since I look upon that as one of the confusedest Pieces he hath written: Nor is it my business, as that great Author said once in the case of *Plato*, to defend *Aristotle*, but Truth. I shall likewise pass by the Preface, since it contains nothing considerable but his Hypothesis of *Adam*'s Monarchy; of which there needs no more to be said. And as for the places out of St. *Paul* and *Peter*, it not being my designe to write Divinity-Lectures, I shall refer the Reader to the learned *Commentators*; onely I shall take notice that his Assertion, *That these Apostles wrote their Epistles when the name of the Authority and People of* Rome *was still in being, though the Emperours had usurped a Military Power: and yet though the Government was for a long time, in most things, in the Senate and People of* Rome; *yet for all this, neither of the two Apo-*

See likewise a late Treatise, intituled Jani Anglorum facies nova, *written by a young Gentleman of great Learning and Ingenuity.*

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ſtles take notice of any ſuch Popular Government; and our Saviour himſelf divides all between God and Cæſar, and allows nothing to the People. All which, though but a Negative Argument againſt Popular Government, and ſo not concluſive, yet the foundation of it is not true: For though in *Rome* there remained a ſhadow of the Power in the Senate, yet it was onely in ſuch caſes as the then Emperours committed to their judgment (as the Kings of *France* do now make uſe of the Parliament of *Paris*) onely to eaſe themſelves of divers troubleſome Cauſes, or to take off the *odium* from themſelves, as in the condemnation of *Sejanus* and divers other Conſpirators againſt them; and yet they reſerved the laſt Appeal to themſelves in Caſes both Civil and Capital, as may be obſerved in St. *Paul*'s appeal to *Cæſar*: and it is certain that the Roman Emperours in thoſe times put men to death as often as they had a mind to it, by their own power made what Edicts they pleaſed, and appointed Proconſuls and Governours of Provinces as often as they ſaw it convenient, and had all Money coined with their Image or Superſcription, and received and diſpoſed of all Tributes & publick Taxes. And yet this Author doubts whether *Tiberius*, *Claudius*, or *Nero* were abſolute Monarchs, when they had all the Prerogatives that a Monarch could have.

I come now to the Author's Obſervations on *Ariſtotle*'s Politicks. It will be eaſie to prove that he makes uſe of him in all places that make for his Hypotheſis, but takes no notice of thoſe that make againſt it (a uſual courſe among Writers, eſpecially in Politicks or Divinity:) Nor does he onely do this, but likewiſe oftentimes perverts *Ariſtotle*'s ſence to make it ſubſervient to his own; of which I ſhall produce theſe inſtances. In his firſt Quotation, *p.* 3. he renders theſe words, πασα δ' οἰκεία βασιλεύεται ὑπο τῦ πρεσβυτάτυ. for the eldeſt in every houſe is King: Whereas βασιλεύεται does not here

here signifie to be an absolute Monarch, but to govern as a Master of a Family or chief Ruler; a power far short of that of an absolute Monarch: And so *Lambinus* hath rendered it in his Version. So likewise he hath misplaced these words, ἢ γὰρ ἂν νόμον λεγόμεν βασιλεὺς εἶναι ἐν ἅπασιν οἷσ ἐστὶν εἶδος πόλεως ἑνὸς μόναρχίας, and makes them to come in as a reason of what he says before concerning a perfect Monarchy; whereas this sentence precedes the former, and there are three or four sentences between them: and therefore it cannot serve for a Consequent, where it is really an Antecedent. Nor is this sentence truely rendered by the Author, *For a King according to Law, makes no kind of Government*; whereas he should have said, No distinct species of Government: for so are these last words to be rendered, ἐν ἅπασιν οἷσ ἐστὶν εἶδος πόλεως ἑνὸς μόναρχίας. or else he would make *Aristotle* contradict himself, if after he had spoke so much in other * places of a King according to Law, he should make it no kind of Government at all. So likewise p. 4. he misrenders these words: τούτων δὲ βελτίστη μὲν ἡ βασιλεία, χείρίστη δὲ τιμοκρατία, *That of all Governments Monarchy is the best, and a Popular State the worst*: Whereas any one but meanly skill'd in Greek, knows that βασιλεία does not signifie Monarchy, but Kingship; and τιμοκρατία is not a Popular Estate, but an Aristocratical Commonwealth, and in the same Chapter put in opposition to δημοκρατία. I shall not trouble my self to inquire whether *Aristotle* distinguishes well between an Aristocracy and an Oligarchy, or between an Oligarchy and a Democracy; or whether he do well to exclude Artificers from any Vote in the Government: These I shall leave to be defended by those that are greater admirers of him than my self; onely I will see that (if I can) he have fair play, and not that sence put upon him that

* Vid. 3 Pol. c. 14. *Speaking of the ancient Heroical Kingdoms.*

that he never meant. And therefore I shall turn over to *p.* 12, where he quotes another place out of *Aristotle*'s fourth Book, *cap.* 13. *That the first Commonwealth among the* Grecians, *after Kingdoms, was made of those that waged War:* From whence he would infer, That the *Grecians*, after they left off to be governed by Kings, fell to be governed by an Army: So that any Nation or Kingdom that is not charged with the keeping of a King, must perpetually be at the charge of paying and keeping of an Army. Which, though it happened true during the corrupt Oligarchy of the *Rump*, which was but an armed Faction contrary to the sense of this Nation; yet is not a necessary Consequent of all Commonwealths: Neither is it the Author's sence in this place, as may appear by what he says before, and what follows these words, That he meant no such thing, a standing Army in constant Pay being a thing unknown among the Greek Commonwealths, where every Freeman served in person as a Horseman or on foot, according to his ability, as any that reads those Histories may easily observe; and a Guard of Strangers, or a constant standing Army; was ever held the Body of Tyranny (as it still continues in all absolute Monarchies from *France* to *China.*) But to return to *Aristotle* in the place before cited by the Author, where speaking just before of the Government of the *Maleans* and other Greek Commonwealths, he says, *That their Government consisted not onely of those Footmen that bore Arms, but of those that had served in the Army:* And then follows these words, quoted by the Author, Καὶ ἡ πρώτη πολιτεία. So the words τῶν πολεμούντων, are not well rendered by those that waged War, since they should rather be rendered by those that went to the Wars; this Force not being to defend them from their own Citizens, but Neighbours with whom they were still at Wars: for it appears that not onely those had

had a ſhare in the Government who were actually in Arms, but thoſe alſo that had ſerved in the Army; for *Ariſtotle* ſays immediately after, *That their Strength conſiſted chiefly at firſt of Horſemen, and that as the Commonwealths increaſed in the ſtrength and number of them that were of ability or ſubſtance to bear Arms, the Adminiſtration of the Commonwealth was communicated to more.* From whence it appears, that (as alſo at firſt among the *Romans*) they onely had a Voice in their Councils or Aſſemblies, who were able to maintain themſelves in the Wars at their own charge: As amongſt us none have a Vote to chuſe Parliament-men, but Freeholders; or as in old times, none but thoſe who ſerved in the Wars in perſon, had Votes in the *Withena Gemote*, or Great Council: And yet this was no ſtanding Army no more than thoſe in *Greece*. So likewiſe neither are theſe words fairly rendered in the ſame page, αὕτη γὰρ ἡ πλῆθος, (and that in a Popular State) *The Soveraign Power is in the Sword, and thoſe that are poſſeſſed of the Arms*; but are thus to be rendered, *In this kind of Government (i. e.* Popular) *thoſe govern and have greateſt Power, who bear Arms and fight for the reſt* (which is but reaſonable.) I ſhall not trouble my ſelf with the reſt of thoſe Contradictions and Faults he finds with *Ariſtotle*, ſince I look upon this Treatiſe of *Politicks* as the moſt confuſed he hath writ; onely it ſeems this Author did but skim over *Ariſtotle*, when he ſo confidently aſſerts, *That the natural Right of the People to found or elect their own kind of Government, is not once diſputed by him.* which whether he aſſerts or no, let theſe words judge, *lib.* 5. *Pol. cap.* 10. Ἐν δὲ ταῖς κατὰ μέρος βασιλείαις πάντα δὴ τὰς φύσεις αἰτίας ἔχει ταῖς εἰσημμέναις καὶ τὸ γένεσθαι πολλοῖς δίκαιον ἀφορίστοις, καὶ τὸ δύνασθαι μὴ κακοπαθοῦσι τυραννικῶς ἀλλὰ βασιλικῶς τιμᾶν, ὁμοίως ἔσται γὰρ δίκαια γὰρ ἐγίνετο τὰ κατάλληλα, μὴ βλαπτόμενον γὰρ οὐδὲν ὑπὸ βασιλέως, ἀλλ' ὁ τυραννὸς καὶ μὴ βλαπτόμενος. Which may be thus Engliſhed: *But of Kingdoms by deſcent, this may be*

be supposed the cause of their dissolution, besides those already mentioned, viz. *when it happens to many of them, who not being endued with the power of a Tyrant, but onely with a Kingly Authority, become contemned whilst they will unjustly abuse their Subjects; for then there is an easie dissolution of the Government; for he is not a true King over those that like not his Government, but a Tyrant.* P. 20, & 21. He finds fault with *Aristotle* for making the main distinction between right Forms of Government, and those that are imperfect or corrupt, to consist solely in this, *That where the profit of the governed is respected, there is a right Government; but where the profit of the Governours is onely regarded, there is a corruption or transgression of Government.* By this it is supposed by *Aristotle* that there may be a Government (which he calls a Tyranny) onely for the benefit of the Governour. That this Supposition is false, may be proved from *Aristotle* himself, to instance in the point of Tyranny. And therefore the Author endeavours to make him contradict himself thus: *Tyranny* (saith *Aristotle*, lib. 3. cap. 7,) *is a Despotical or Masterly Monarchy.* Now he confesseth, *l. 3. c. 6, That in truth the Masterly Government is profitable both to the Servant by nature, and the Master by nature:* And he yields a solid reason for it, *viz. It is not possible, if the Servant be destroyed, the Mastership can be saved.* Whence it may be inferred, *That if the Masterly Government of Tyrants cannot be safe without the preservation of them whom they govern,* it will follow, *That a Tyrant cannot govern for his own profit onely.* And thus his main definition of Tyranny fails, as being grounded on an impossible Supposition. By his own confession, no Example can be shewn of any such Government that ever was in the world, as *Aristotle* describes Tyranny to be: for under the worst of Kings, though many particular men have unjustly suffered, yet the Multitude, or People in general, have

found benefit and profit by the Government.

If *Aristotle* were alive, I doubt he would say this Author plaid the Sophister with him, and did not onely misquote his words, but pervert his meaning. For first, *Aristotle* does not say in that place he quotes, (or in any other that I know of) *That Tyranny is a Despotical or Masterly Monarchy*: And therefore all he builds upon this Concession is false. It is true indeed, *Aristotle* says, *That the Government of the Master is profitable both to the Servant by nature, and the Master by nature*, (that is, upon his supposition that they are either so by nature.) But the Author omits what immediately follows, because it would vindicate *Aristotle*'s true meaning: for his next words are, *Nevertheless it* (i. e. the Masterly power) *regards chiefly the profit of the Master, and of the Servant but by accident; but Oeconomical Government, or that of a Master over the Wife, Children, and Servants, is for their sakes whom he governs, and for the common good of them all.* Hence it appears plainly, that *Aristotle*, when he says that a Tyranny is for the benefit of the Governour alone, he does not mean that the Subjects can have no benefit at all by it, since it is the Tyrants interest they should live and get Children, or else he would quickly want Subjects. Thus the Children of *Israel*, under the Tyranny of *Pharaoh*, had Meat, Drink, and Cloaths, and were not so low kept but they got Children apace; and yet we find God thought them oppress, and heard their cry. But *Aristotle* clears the point, when he distinguishes an absolute Masterly power over a Slave, from that of a Father of a Family; the Master in the former considering onely his own profit, and the preservation of the Slave but by accident; and so an ill-natured brutish Master takes care of the life of his Slave that works in the Mines or Sugar-works in the *Indies*, not out of any love to the person of the Slave, but because he can-

cannot ſubſiſt without him. So a Graſier or Butcher takes care of his Cattel that they thrive and do well (as they call it) yet every body knows that they take this care onely for their Carcaſſes, which yield them ſo much ready money at the Market. So that indeed a Tyrant onely conſiders his own good in the welfare of his Subjects, and looks upon them as no better than brute Beaſts, in which he hath an abſolute property to ſhear or kill, as he thinks it moſt conduces to his own profit; without conſidering to what end he is ſet over them: As the *Grand Seignior* makes uſe of the bodies of his poor Chriſtian-ſlaves (for Subjects I cannot call them) to fill up Ditches, and to blunt the edge of his Enemies Swords. But that all Kings are bound to preſerve the Lands, Goods, and Lives of their Subjects, the Author himſelf confeſſes, (*Patriarcha*, p. 94.) *Though not by any municipal Law, ſo much as the natural Law of a Father, which binds them to ratifie the Acts of their Forefathers and Predeceſſors in things neceſſary for the publick good of their Subjects.* So then I hope there is ſome difference between the Government of a Father over his Children, and that of an abſolute Lord over his Slaves, notwithſtanding our Author's Quotation out of *Ariſtotle*, whereby he would make them all one, *viz.* *That a Kingdom will be a Fatherly Government:* Which is true, if you take it in the beſt ſence, for that affection that Kings like Fathers ſhould have for their Subjects: And ſo it is plain *Ariſtotle* intended it, by the words immediately foregoing, thus; *For the Society of a Father with his Sons, has an appearance of a Kingdom*; not that it is ſo indeed. But to make an end with *Ariſtotle*, I will give you one place more which the Author does not quote fairly; where *Ariſtotle* reckoning up the ſeveral ſorts of Monarchies, *The laſt* (ſays he) *is*

Anarchy of a limited Monarchy, p. 294.

* The Greek word is ἑκούσιοι, of their own accord.

† κατὰ νομὸν. Which confutes the Author's fancy, that a King according to Law makes no kind of Government.

the Heroick, which flouriſhed in Heroical times; to whom the People did * *willingly obey, and they were paternal and* † *legal.* And then reckoning up the occaſions & reaſons of their Obedience, he concludes thus: ἐκ τούτων βασιλεῖς ἱδρύοντο, *And theſe were choſen Kings by the conſent of thoſe that were willing* (Lambinus renders it, *à voluntariis*) *and left the Kingdom ſo obtained to their Children.* Which whole ſentence is omitted by the Author, becauſe it makes againſt his Hypotheſis, and proves that the moſt ancient Kingdoms began by Election of the People. So true is that excellent Simile of the elder Dr. *Don*'s, That Sentences of good Authors, whilſt they remain in their proper place, like the hairs of an Horſes tail, contenter in one root of ſtrength and ornament; but pulled out one by one, ſerve only to make Snares. And indeed he hath made uſe of *Ariſtotle* as Lawyers do of their Adverſaries Evidence; where it makes for them they allow it, and make uſe of it; but where it is againſt them, it is falſe, or ſignifies nothing.

I ſhall now curſorily look over the reſt of this Diſcourſe; where (*p.* 23.) though it be true what *Ariſtotle* ſays, *That the People muſt act as a Monarch, and become as one Perſon, before it can govern:* So after they are ſo united into one Senate or Council, it is no good Argument to ſay, *That the whole Multitude does not govern where the major part onely rules, becauſe many of the Multitude that are ſo aſſembled, are ſo far from having any part in the Government, that they themſelves are governed againſt, and often contrary to their wills; thoſe people (to contract it) being the major part in one Vote, that are perhaps of another opinion in another: and ſo every change of buſineſs begets a new major part.* For though it is true, every individual perſon does not actually agree to every Vote, yet

yet implicitly he does, since at the first institution of the Government, the first Compact was, That the agreement of the major part should conclude the whole Assembly; and whoever either then would not, or now refuses to be so concluded, is still in the state of Nature, in respect of all the rest, and is not to be lookt upon as a Member of that Commonwealth, but as an Enemy, and a Covenant-breaker.

I shall not quarrel with the Author, if he hold that Monarchy does most conduce to the main ends of Government, Religion towards God, and Peace towards men; since I agree with him, that absolute Monarchy (if a man could be sure the Monarch would still continue prudent and just) were the best sort of Government for mankind. Onely I cannot but smile to finde the Author (*p.* 27.) so much admire the high respect the great Turk pays the *Mufti* or chief Bishop, as he calls him, (where by the by, I never heard the Turkish Church-Government was Episcopal before) yet every printed Relation can tell us, that this wonderful Reverence is but a meer piece of Pageantry, the Idol being of his own making, and whom he again unmakes at his pleasure; a sort of Ordination I suppose the Author would not allow to those of an indelible Character. It is true indeed what the Author affirms, (*p.*29.) That *Rome*, being in any desperate condition, was still forced to flie to Monarchy, chusing a Dictator with absolute Power: Yet this was onely as a General in time of War, or some great civil Commotion being very near it; where it must be confest that the absolute power of one is best at such times, which needed a speedy Remedy; And argues no more the *Romans* good opinion of Monarchy, than it does any mans approbation of Martial Law; which though perhaps the best that can be used in War, it will not therefore follow that it were to be chosen in times of Peace, no more

more than becauſe Brandy may do a man good when he is ſick in his ſtomach, therefore he ought to drink it conſtantly. So that as one benefit of the Dictatorſhip was the help it gave them upon an Extremity, ſo the next happineſs they wiſht for after that was over was, that the Dictator would lay down his Office again. And the People of *Rome* were never more tyrannized over and oppreſt, than when theſe Dictators held their Power by force, contrary to their Inſtitution, and longer than there was need of them; as may be ſeen in the Examples of *Sylla* and *Ceſar*. But the Conſuls, though they had in many things (eſpecially in calling the Senate, and in commanding the Army) a Kingly power, yet it was not abſolute, but was liable to be queſtioned by the Senate and People; as any man that reads the Roman Hiſtory may obſerve. [*See the Oration of* Valerius *in* Dionyſius Halicarnaſſæus, *lib.* 7. *upon the difference between the Senate and People.*] I ſhall not now ſtay to diſpute whether the People of *Rome* did well or ill in expelling *Tarquin*; but beſides his perſonal faults, he was never their lawful King, having aſcended the Throne by the murder of his Father-in-Law *Servius Tullius*, and kept it by the power of a ſtanding Army, without the due Election of the Senate and People; which was contrary to the Inſtitution of that Kingdom, which was Elective.

The Author (*p.* 32.) makes a great difficulty to grant the Roman Commonwealth to be Popular: It is true, it was not ſo abſolutely, but was mixt with an Ariſtocracy in the Government of the Senate, and with Regal power in the Authority of the Conſuls; yet it is plain, the ſupreme Power remained in the Body of the People: And though by the unequal diviſion of the Centuries, it is true, the greater part of the common People were ſeldom admitted to vote, being concluded by the major part of the firſt 97 Centuries, who conſiſted

sted of the better and richer men; yet this inequality begot the *Tributa Comitia*, which (with the Author's good leave) was more absolute than the former *Comitia Centuriata*: For *Dion. Halicarnas. lib. 9.* relating the original of these *Tributa Comitia*, and how they differed from the other, says, That the latter were transacted in one day without any *Auspicia*, and could make a Law at once without any precedent *Senatus Consultum*; which the *Curiata Comitia* could not. And though it is true that the power of making War and Peace, and creating of Magistrates, remained in the *Comitia Curiata*, yet the judging of great and capital Crimes, and of altering and making Laws, remained in the *Tributa Comitia*; as may be observed in the banishment of *Coriolanus*, and other punishments by them inflicted; and all Appeals were to this Assembly. Yet granting that the force of the Government lay in the *Curiata Comitia*, or better sort of Citizens, yet it was still vertually in the common People, who resumed it when they would. And it was to this whole Body of the People that *Valerius Publicola* used, when Consul, to make the Lictors abase his Fasces, and in that sufficiently acknowledged where the Soveraign Power resided.

I shall not trouble my self farther to defend the Model of the Roman Commonwealth, which I look upon as one of the most unequal and irregular that ever were; and if it had not been for the excellent Temper, admirable Discipline, and exact Education of that People, it was impossible it could ever have lasted so long: In which when they began to grow remiss through Riches and Luxury, their Commonwealth soon fell to pieces, being indeed never well compacted at first. Much less shall I take upon me to defend a Popular Government, where the mixt Multitude, without any Representatives, consult of Affairs, or make Laws.

Laws. Any man that will but read *Thucydides* and *Livy*, will ſee enough of it.

As for the Author's Arguments againſt the Peoples being able to agree to inſtitute any Government at all, they are moſt of them but meer Wrangling, and have been anſwered in the foregoing Obſervations, and ſo need not be repeated. I ſhall likewiſe paſs by the Author's Directions for Obedience to Government in doubtful times, ſince I have already taken notice of all that is conſiderable in it.

CHAP.

CHAP. IV.

I Shall therefore in the next place look over his miſcellany obſervations. (1) Upon divers modern Authors. As for Mr. *Hob*'s *Leviathan*. I ſhall leave them to decide the controverſie as they pleaſe, and refer it to the readers judgment who hath the better on't: For in many things I think neither of them are in the right: only it is a hundred pitties Mr. *Hobs* did not conſult the Author, and take in his Patriarcal Hypotheſis, and then all his rights of exerciſing Soveraign Tyranny would have gone down well enough. But for my part I neither like the *foundation* nor the building which Mr. *Hobs* hath ſet up, and therefore ſhall here leave the Author to build and pull down as he pleaſes without my intermedling.

And leſs ſhall I take upon me to vindicate *Milton*, ſince that were at once to defend downright Murder and Rebellion. So that I ſhall turn over to his obſervations upon *Grotius*, an Author of greater learning, and better reputation, than either of them.

P. 37. Where I ſhall not trouble my ſelf to defend the manifold diſtinctions, and contradictions of the old Civil Lawyers about the Law of Nature, and the Law of Nations; or whether the natural, and Moral law be all one, it is ſufficient if *Grotius*'s didifinition of the law of Nature be true: Nor does it ſignifie any thing whether the word Law of nature be found in Scripture; Yet I think *Thomas Aquinas* may well enough be defended, that there is ſuch a thing too proved from 11. *Romans v.* 14, 15. For though he doth not ſay expreſly that nature is a Law unto them, but *they are a law unto themſelves*, yet certainly Saint *Pauls* meaning is to the ſame: For if the

Gentiles by nature *did the things contained in the law*, and so were a law unto themselves, I know not what else he can mean by their doing by nature *the things contained in the law*, but their living according to the Laws of nature or right reason, which (all rational men are sensible of as soon as they come of an age able to exert this faculty and so) becomes by nature a Law unto themselves; neither can this be custom, since Saint *Paul* says they do so by nature *&c.* the things contained in the Law.

Neither do I see any Reason why *Grotius* is to be blamed for not taking his Hypothesis concerning the Original of Mankind, of Dominion, and Property out of *Genesis*, since writing of the rights of Peace and War according to the laws of nature, and the general consent of civilised Nations, and not according to any revealed Will, or Law of God he was not bound (nay it was contrary to his purpose) to make use of Scripture farther than to confirm what could be made out from natural reason alone, for to have done otherwise had been to have written a treatise of cases of Conscience in Divinity, and not of right and wrong by the laws of nature. So that though he sometimes make use of Texts of Scripture, yet it is either to strengthen those, or else to answer some objections that may be drawn from thence against his conclusions. And therefore he was not obliged to take notice, whether God gave a begining to Mankind from one man, or more at once, since it might if he had pleased have been either way. Nor yet did he dream of *Adams* Monarchy over the whole Creation before he had any Subjects to command, nor of his being sole Lord Proprietor and first occupant of all the earth, and of all the Creatures in it, when neither he, nor his Children ever knew, nor made any use of the 1000. *parts*; of them, these were Notions

tions too fine ſpun for a man of his ſolid judgment ever to light on, ſo therefore we muſt be beholding to our Author and ſome Engliſh Divines for this admirable diſcovery. Yet as I doubt not but if that great man were alive, he could well enough defend himſelf by that great reaſon, and learning he was Maſter of, againſt what ever this Author or ſome other leſſer Scriblers could reaſonably object againſt a work of that nature; yet I doubt not but moſt of thoſe things the Author obſerves as errors, may be well enough defended by one of far meaner parts, and leſs learning than *Grotius* himſelf; ſo that I am not convinced that he either forgets or contradicts himſelf (as our Author will needs have him) when he refers *alieni abſtinentia* or abſtaining from that which belongs to another, to conſiſt with a ſociable community of all things, becauſe ſays the Author, where there is Community, there can be neither *meum nor tuum*, nor yet *alienum*; and if there be no *alienum*, there can be no *alieni abſtinentia*, and ſo likewiſe by the Law of nature, men ought to ſtand to bargains, but if all things were common by nature how could there be any bargains. P. 59.

In anſwer to which, it will appear that a Propriety of occupancy or the perſonal poſſeſſion of things and applying it to the uſe of one or more men while they have need of it, may very well conſiſt with community, and is abſolutely neceſſary to the preſervation of Mankind: As for Example, a Theater is in Common to all that have a right of coming thither, but no man can ſay that one place in it is more his than anothers, untill he is ſeated in it, and then that place is ſo much his, that whileſt the Play laſts no man can without injury put him out of it; ſo likewiſe ſuppoſing the Earth and fruits thereof to have been at firſt beſtowed in Common on all its inhabitants; yet ſince Gods firſt Command to man was, encreaſe and

multiply, if he hath a right to perform the end, he hath certainly a right to the means of his preſervation, and the propagation of his ſpecies, ſo that though the fruits of the earth, or beaſts, for food were all in common, yet when once any man had by his own labour acquired ſuch a proportion of either as would ſerve the neceſſities of himſelf, and Family, they became ſo much his own, as that no man could without manifeſt injuſtice rob him of theſe neceſſities of life; and this ſort of Community was moſt Primitive, and Natural, being ſtill retained among the *Americans* to this day, the reſt of the Country lying ſtill in common; neither can any *Indian* preſcribe to this or that Tree, that grows out of his own Garden, or to any of the wild Beaſts, that this is his more than anothers, until he hath either gathered thoſe or killed the other, and then all look upon it as robbery to take from each other, what they are once poſſeſſed of; ſo likewiſe in this ſtate of Community, if an *Indian* make a bargain with another to give him ſome of his venizon for ſuch a proportion of maiz or roots, there is never an honeſt *Indian* but will judge the taker bound to make good his bargain without any diſpute; ſo likewiſe if any two or more of them make a bargain to go a hunting, or fiſhing together, upon condition that the Venizon, or Fiſh that they ſhall take be equally divided amongſt them all, I think every one of them will think himſelf wronged if one of them cheat or ſteal from the reſt before the quarry come to be divided. So that you may ſee how true it is which this Author affirms, *that if all things were common by nature there could be no contracts, agreeable to which is the Hypotheſis layd down by* Grotius; 'that 'God imediately after the Creation did beſtow upon 'Mankind in general a right over all things of an in-'ferior nature, from whence it came to paſs, that 'preſently every man might take what he would for his

'his own occasions, and that such an universal right 'was instead of property, for what every man so took, 'another could not take from him but by injury.

But it seems our Author will have this repugnant to Scripture, because Mr. *Selden* in his *Mare clausum* (from I know not what Tradition of the *Rabbins*,) '*supposes that* Adam *by donation from* 'God, *Gen.* 1. 28. was made general Lord of all 'things, not without such a private dominion to himself as (without his grant) did exclude his Children; and that by donation, assignation, or some 'kind of cession (before he was dead or left any heir to succeed him) his Children had their distinct territories by private dominion; *Abel* had his flocks, and 'pastures for them; *Cane* had his fields for Corn, and 'the land of *Nod* where he built himself a City. P. 46.

For the confutation of which opinion, I have already proved that *Adams* absolute dominion over the lives and persons of his Children is not to be deduced from that place of *Genesis*, before cited by Mr. *Selden*. Let us now consider whether *Adam* had by these words an absolute dominion over the world and all things therein, distinct from that of his wife and Children, *the words are Male and Female created he them, and God blessed them, and God said unto them, be fruitful and multiply and replenish the Earth, and subdue it, and have dominion over the Fish of the Sea, and over the Fowel of the Air; and over every living thing that moveth upon the face of the Waters.*) From whence it may be observed, 1. That though these words are placed before the making of *Eve* by a Prolepsis (very usual in Scripture) yet it is apparent that they must have been spoken after it, by these words male and female created he them, since *Moses* could not speak of a Female untill the woman was made. 2. That this Dominion over the creatures is given unto them both joyntly, the grant of the Dominion as well as the blessing be-

ing given alike to them. And God blessed them, and said unto them &c. 3. That it does not appear that this Dominion was personal to *Adam* and *Eve* alone, exclusivly to their Children, and descendents, so that none of them could eat, or dispose of any fruits of the Earth for the supplying of the necessities of nature without their leave, for the words are general, Male and Female created he them; and so seem, though spoke to the persons of *Adam* and *Eve* as the Protoplasts of Mankind to relate to all the Males, and Females that ever should be born. 4. That this Dominion was not absolute to dispose of the Creatures as they pleased, since the previledge of using them for food was not given until after the flood. So if these words in *Genesis* do not prove an absolute Dominion in *Adam*, over all things, I do not see any other place that can; for though it is true that God after the fall made the woman subject to her husband; yet I do not see why she should therefore loose her right of preserving her self by the fruits of the earth, or her using any of the Creatures, suppose the milk of a Cow without her husbands consent. For if *Adam* had been at any time in an ill humour (all the things in the world being his) should he have but forbid her to eat any of them without his leave, our great Grandmother might have starved without all remedy.

So likewise had he been at any time angry with any of his Sons, and had forbid them to touch so much as an Apple, they must either have perished, or if they had filled their bellys, been at once guilty of Theft, and disobedience; so that it had been in his power without any violence to have taken away their lives when he pleased. But I cannot think it rational, neither is it consonant to Scripture, that God gave *Adam* such a despotick power over all things; for since all the Children of *Adam* had as much right to their lives as *Adam* had himself, it

 must

must likewise follow, that they had as good a right to the fruits of the earth, which were then the only means to maintain it, and consequently might have filled their bellies when they pleased with any of the natural products of the earth, without their Fathers leave; for the Psalmist saith, God gave the Earth to the Children of men, that is, not to any one man, nor yet absolutely in common, but to be either divided, or used in common, as they should find it stand best with their convenience and way of living; so that I shall not much dispute with the Author whether *Cain*, and *Abel* had their separate Pastures for their Flocks by the Allignment of their Father; though I believe it will be a pretty hard task to prove that *Cain*, when he ran away for his brothers murder, enjoyed the land of *Nod*, where he built a City by his fathers settlement. But though Mr. *Selden*, and the Author agree very well about the distinct Dominion of *Adam*, yet they do not so concerning that of *Noah*, and his Sons, whom Mr. *Selden*, (and I think with very good reason) from *Gen. IX.* 2. Will have to be joynt Commonors with their Father in the dominion of the world and all its creatures; but the Author says, that the Text doth not warrant it. 'For 'though the Sons are mentioned in the blessing, yet 'it may be best understood with a subordination, or 'benediction in succession, the blessing might be ful-'filled, if the Sons either under or after their Father 'enjoyed a private dominion: It is apparent that the words rather warrant the contrary. For the Text does not mention any blessing in subordination but is alike in present to *Noah* and his Sons, for God spake to *Noah* and to his Sons, and so is their power over the creatures: as appears *v.* 3. Every moving thing that liveth, shall be meat for you; even as the green herb, that is (the fruits granted to *Adam* before

fore) have I given you (in the plural number) all things. As for this Authors other argument from the private dominion of *Adam*, it might be good against Mr. *Selden*, who had admitted it before, but is none against those that do not believe any such grant. As for *Noah*'s being sole heir of the world, he takes that for granted (which is no law of nature) that in the state of nature one man is more an heir to his Father (or any other relation) than another; but having confuted that opinion already, I need say no more of it here.

Mr. *Seldens* account of the original of Propriety, 'After *Noah* is, that in distributing Territories, the 'consent of Mankind passing their promise or com- 'pact(which did also bind their Posterity) did inter- 'vene so, that men departed from their common 'right of Communion of those things, which were 'so distributed to particular Lords and Masters. But 'the Author replys, that this distribution by the con- 'sent of Mankind we must take upon trust, for there 'is not the least proof of it out of Antiquity: If by Antiquity he means prophane Authors, all of them, both Historians and Poets that have writ of this subject are for a primitive Community of all things, necessary for the life of Man: As any man that considers what the Poets say concerning the golden Age, whose cheif happiness they place in mens enjoyment of the fruits of the earth in Common, nor does *Lactantius Li. V. Inst. Cap.* 5. one of the learnedst of the Fathers interpret those passages otherwise. If by antiquity he means proof out of Scripture; that neither makes for or against this opinion, the Scriptures not being written to shew us the originals either of Government, or Propriety, any more than to teach men Chymistry or Astronomy, though there be some so sottish to think they thus find some grounds for their

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Fancies in those studies; yet it appears that the land of *Canaan* was all, or most of it in Common in *Abrahams* time, or else he could never have lived, and kept his flocks upon it as a separate Master of a Family, without becoming subject to any other Prince. But however I look upon this Tradition delivered by the Greek and Latin Authors every whit as good as that Jewish one which Mr. *Selden* quotes out of *Eusebius, and Cednenus*: though he does not lay any stress upon it. But our Author admits it as an undeniable Record. That *Noah* himself as Lord of all was Author of the distribution of the world, and of all private dominion, and that by an appointment of an oracle from God he did confirm this Distribution by 'his last Will and Testament, which at his death he 'left in the hands of *Shem*, his eldest Son, and also 'warned all his Sons that none of them should invade 'any of their brothers dominions, or injure one an-'other, because from thence discord, and civil war, 'would ensue. Its not likely that the Antient *Jews* should know any thing of this Will of *Noahs*, for if they had, so diligent an Author, and so well versed in the Jewish Antiquities as *Josephus*, would not have omitted so famous a piece of history. 2. The *Rabbins* themselves, and consequently our Fathers of the Church are not agreed whether *Shem* or *Japhet* were the eldest. For though it is true that St. *Austin* and those Fathers that follow the vulgar translation, made *Shem* the eldest; yet St. *Chrysostom*, and all the Fathers of the Greek Church, who therein follow the *LXX. Versior*, as of greater Antiquity and Authority, are for *Japhets* being the eldest brother: So that this Testament being left in *Shems* hands is a meer Rabinical invention, it being much to be doubted whether Letters, much more Wills in writing were in fashion, in *Noah*'s days, and if *Noah* left no Will, which no Jury can

can now decide) then the world was left to *Noahs* Sons, Grand-children in Common to be divided according to their several occasions, since they all three had equal right to it : But it seems a weak Hypothesis if it serve the Authors present purpose, shall be received, though it contradict his other Principles; For in his *Patriarcha* and other of his treatises he makes *Adam* sole Monarch of the World, and that this right descended wholy and entirely to *Adam*'s right heir; But here we find *Noah* turns the Propriety and Dominion of the world into an absolute gavel-kind, and distributing the Earth among his three Sons, makes them all Heirs and Monarchs alike, so that *Shem* the elder is here disinhereted not only of his entire Dominion in the world, but also of his natural right of Lording it over the rest of his bretheren, so that whereas the whole world should have been his, if his Father had not made this unlucky Will, he is fain to be content with a third part. I shall pass by other impossibilities in this fancy of *Noah*'s Will, as how *Noah* should by revelation make a distribution of the Earth among his *Sons*, when he never had discovered a hundreth part of it. *Josephus*, and the Fathers not supposing him ever to have descended from the Mountains of *Ararat* into the Plains all his life time. But to pass over such Romantick fancies, let us come to the Authors more solid Arguments: Why Dominion, and Property could not be introduced by the voluntary consent of Men, and therefore must needs (P. 70.) have begun from *Noahs* appointment. Toward the end of these observations he puts this Quere. 'If it were a thing so voluntary, and at the pleasure of men, when they 'were free, to put themselves under subjection, why 'may not they as voluntarily leave this subjection 'when they please, and be free again? If they had

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'liberty to change their natural freedom, into a vo-
'luntary ſubjection, there is a ſtronger reaſon that
'they may change their voluntary ſubjection into na-
'tural freedom, ſince it is as lawful for men to alter
'their wills as their judgments. To which it may be
anſwered, that the ſame reaſon that made men in-
ſtitute civil Government, and Property at firſt, the
ſame likewiſe obliges them to maintain it, being once
inſtituted in the ſtate in which they find it: For ſince
the Common good of Mankind, is the higheſt end a
man can propoſe to himſelf, and the common good
of the City, or Commonwealth where he lives, the
greateſt ſubordinate end next to that, and that both
Government, and Property were at firſt introduced
by common conſent for the good of thoſe humane
ſocieties that firſt agreed to it, every ſucceeding
member of that Commonwealth, or civil ſociety,
though born never ſo many ages after, is as much ob-
liged to the obſervation thereof, as they that firſt in-
ſtituted it; and though ſome men either by their own
fault, and the careleſneſs, or prodigality of their
Anceſtors, may perhaps be now under ſuch Circum-
ſtances by reaſon of their poverty, as that civil Go-
vernment may appear inconvenient for them, and the
Property now eſtabliſht contrary to their intereſts,
as having perhaps little ſhare either in lands, or goods,
he is not therefore at liberty to reſiſt the Government,
and to change the courſe of this Property already
eſtabliſht; and this is by the laws of nature, without
any Divine revelation: ſince no man can diſturb the
general Peace of humane ſociety for his own private
advantage, or ſecurity, without tranſgreſſing the natu-
al laws of God, by bringing all things into as far as
in him lies out of the ſetled courſe they now are in, in-
to a ſtate of Anarchy and confuſion, which having once
entred into War, this violent uſurper of another mans
rights

rights can be no more sure to keep what he hath unjustly gotten, than he was, from whom he took it; and consequently can never be in security until he have again entred into the same compacts for establishing both Government and Propriety, which his Ancestors did at first: So that there can rationally no peace nor setled security be expected as long as he detains that which he at first took from another by force.

P. 70. As for the other difficulty he makes, *How all the men in the world should agree in one mind, and at one instant of time to change the natural Community of all things into a private Dominion, for without such an unanimous consent, it was not possible for Community to be altered; for if but one man in the world had dissented, the alteration had been unjust, because that man by the law of nature had a right to the common use of all things in the world; so that to have given a Propriety of any one thing to any other had been to have robbed him of his right to the common use of all things:* which objection likewise is thus farther urged by another Author, *That the nature of things in common is such, that there is not the least Atome in them, but every member of the Community hath a share in it, so that no man could appropriate, or enclose any thing to himself without a wrong to the whole, or if all the rest had agreed to it, that one man who refused this enclosure, might have broken open all theirs.*

Which had been no difficulty at all, if the Author had but considered what kind of right God had bestowed upon Mankind at first, which was not an absolute positive, or unalterable communion of every man *pro indiviso*, every blade of grass in the world: (for such as a Fiction of our Laws suppose, among Tenants in common) for then the Products of the earth could have contributed nothing to the ends for which they were designed by God *viz.* the preservation and Propa-

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gation of the ſpecies of Mankind, ſince no man could have eat any thing which another might not have pulled out of his mouth, pretending he could not eat without his leave, becauſe he had a ſhare in it, and ſo upon this principle, no man now being able to derive a title from *Adam*, could at this day poſſeſs any thing (ſuppoſe in *America*) by a right of poſſeſſion or occupancy which another might not without any wrong or injuſtice take from him; nor was it a poſitive or unalterable community of things; for then if it had been ſo ordained it had been part of the law of nature, and no Property could ever have been introduced, though all Mankind had conſented to it. Therefore it follows that God beſtowed no more upon any particular man than what would ſerve for the preſervation of himſelf, and propagation of his ſpecies, and only in that manner as might prove ſubſervient to that deſign, which being ſuppoſed it is evident that before compacts there might be a negative, though not a poſitive communion of things; that all things being expoſed to all men (as meat is at an ordinary) they did not belong to this perſon more than to another; for ſeeing things are not of any uſe or benefice unleſs applyed to mens particular neceſſities, and that this grant of thoſe things neceſſary for life would prove altogether in vain, were it lawful for others to take from us, thoſe things which we have already ſeiſed on, therefore man being a rational creature, and being able to foreſee future inconveniences, or to draw a conſequence from that which he hath found by experience, the firſt natural law muſt be the erecting of this Principle of Reaſon, Not to do to another that which I would not have done to my ſelf in the ſame Circumſtances; Therefore, if it be rational for me to deſire my own preſervation, and to enjoy the means to it, it is likewiſe rational to permit

mit another man to do the like, since he hath as much right to his being as I have to my own; so that if a man have already seised any of those common things for his own use, though he does not actually then use them, those things cannot be taken from him without injury; and if any man will call this first principle of natural Justice, a true agreement of Mankind, I shall not gainsay it, since such an agreement is but a rational assent of every particular mans understanding that the abstaining from the doing such a thing is every private mans interest, and likewise for the good of humane society. Thus among the *Indians*, few or none steal from each other (though they have no stone walls nor Locks to secure their things in) because they know Theft would bring in perpetual War, and confusion among them; and therefore it is all their interests to joyn against Theft, not only as a breaker of the laws of nature, but an infringer of this tacite agreement: But that this Principle belongs to man considered purely as a rational creature that is able to draw true conclusions from true Premises, appears from the condition of Children, Fools, and Mad-folks, which though they have in many things an imperfect reason, and a sense of their present appetites, or desires, yet not being able to make any judgment of the reasons or consequences of actions, are not to be reckoned in the rank of rational creatures, so that it is evident that God intended occupancy or possession should concern a right among men to things that were before in common; yet so, that this occupancy does not give a man a right to more than is really necessary, and which he can apply to the necessities of himself and Family: Therefore this natural Propriety in things much less, that which is introduced by Law, or common consent, cannot exclude that natural right every man

man hath to his own preſervation, and the means thereof; ſo that no man can be obliged in Conſcience, or commits a ſin, if in a caſe of extream neceſſity, (even ready to periſh) he makes uſe of ſome of the ſuperfluous neceſſaries of life which another man may have laid by for the future uſes of himſelf, and Family, and that were without his conſent, if it can by no other means be obtained, and that the things the neceſſitous perſon takes are not immediately neceſſary for the preſervation of the lives of the Poſſeſſors, and his Family; (for in this caſe this neceſſity is to be preferred before all others) therefore this right of ſelf preſervation is ſtill ſuppoſed in all humane compacts, or laws about the diviſion, and diſtribution of things; ſo that when our own and all other laws are ſo favourable that they do not eſteem thoſe guilty of theft that take only victuals in caſe of extream neceſſity, though without the owner's conſent, and though the perſon that takes them be ſo poor that he cannot make ſatisfaction for what he hath ſo taken, it being ſufficient that he is ſuppoſed willing to do it if ever he comes to be able: So likewiſe ſince the Earth was firſt Peopled by diſtinct Families, or companies of men, all of whom had a right to the neceſſities of life, (which are indeed no other than the products of the Earth) theſe coming to inhabit ſuch and ſuch tracts of ground, it was in their power, either to live in common upon ſuch things as the earth produced of it ſelf, or elſe to divide to every man his ſhare which another ſhould have no right in: Thus the *Indians* in *America* (as I ſaid before) have all the Country in common among them (except the ſites of their houſes and Gardens) but our Planters rather chuſe to allot every man his ſhare, it being that which ſuits beſt with that way of life they have been uſed to in their own Country; and as they think will

will moſt conduce to their common Peace, and advantage; not but that they might if they had pleaſed have occupied ſuch a tract of land, which thoſe *Indians* made no uſe of, in common with them, there being no more Obligation upon them to come to a more diſtinct diviſion than there does upon the *Indians* themſelves; ſo on the other ſide after theſe Planters have divided this unoccupied land into as many ſhares as will ſerve the neceſſities of each mans Family, It is an injury not only in any of thoſe that agreed to this diviſion, but in any *Indian* who is at peace with them (that is, hath never declared any war) to break up this encloſure, or take away any thing that is there planted without the conſent of the owner. For ſince the owner hath poſſeſſed himſelf of this land, and beſtowed his Labour and Induſtry upon it, and that the other hath no right to any more of the products of the earth, than that may ſerve for the ſubſiſtance of himſelf and his Family, and that there is more ground loſt where he may procure himſelf the like neceſſaries if he pleaſe, he hath no right to take away this land from the owner without his conſent, ſince he hath the ſame right to this Field, as the other hath to his Cottage or Garden. And if ſuch an occupancy will not create a Propriety, certainly all the Nations in the world are in an ill condition; For ſince none of them can now convey their Titles to the Country they poſſeſs from any one of *Noahs* Sons, if occupancy or poſſeſſion be no good Title, then the reſt of Mankind may upon the Authors own Principles, come in for a ſhare wherever they pleaſe; for certainly all the land that then remained undiſcovered (which could not be leſs than two parts of three) and conſequently undivided amongſt *Noah*'s Sons, muſt afterwards fall either to the firſt occupiers, or all the reſt of Mankind muſt

ſtill

ſtill have a right in it. So there is no need either of ſuppoſing the original of Property to have proceeded from *Noah* and his Sons, or elſe from the common conſent of all mankind at once, ſince no man hath a natural right to any more things than he could make uſe of, nor any right at all to thoſe he had no need of, nor had actualy ſeiſed, for his own uſe: This being I hope thus far cleared, I will not take upon me to maintain what *Grotius* aſſerts, that after Property was once introduced, it was againſt the law of nature to uſe community, ſince neither community, nor Property are by the abſolute law of nature, [God having beſtowed the fruits of the Earth on the Sons of Men for their uſes] but as for manner of uſing them, whether in Propriety or in common, he left it to the diſcretions of thoſe ſeveral parcels of Mankind who agreed to live together in civil ſociety or common-wealth, as it might either way conduce to their particular way of living, or common ſafety and intereſt: For as where a Country is thinly peopled, and produces all the neceſſaries for life only by the labour of the Inhabitants in hunting, fiſhing, and the like imployments of that life which we call barbarous, becauſe it does not exerciſe it ſelf in day Labour, and that the People do neither need nor deſire thoſe ſuperfluous things that others doe, there is no need of encloſing or appropriating any more Land than they really make uſe of, more being but a burthen to them, ſo likewiſe where the People are more than the Country can well maintain from its own Products, there will preſently ariſe a neceſſity of diviſion of lands in the firſt place, and of Trade abroad in the next; or elſe the People muſt either diſcharge themſelves into their neighbours territories, or live by robbing, or playing the Pyrates upon their neighbours, as appears by *Tartars, Arabs and Algerines*; and conſequently when a Country is once divided, and a great ma-

ny are without any ſhare of land, there muſt be laws made to maintain this Propriety, and puniſhments ordained for them that diſturb it; and this is the true reaſon why there is an abſolute neceſſity for a diviſion of lands in *Holland*, but not ſo in *Surinam*. The nature and original of Propriety being thus layd open, the other ſmall Objections againſt this Primitive Community which ſome men draw out of Scripture will eaſily be anſwered; as firſt how *Adam*'s Children could have any right to any of the things of the world, ſince that the world and all things in it were given by God to *Adam* and *Eve*, before their Children were born; and ſo being born after this grant, they could have no farther intereſt in any thing than their Parents pleaſed to allow them, to whom all things were granted before? As for this particular grant or Dominion of *Adam*, I have all ready ſhewn its weakneſs, and that the Grant was not Perſonal to *Adam*, and *Eve* alone, but to all Mankind, though made to them as the Protoplaſts or repreſentatives thereof; and as for the right of occupancy, I have already layd down, that no man in the ſtate of nature, hath a right to more land or territory than he can well manure for the neceſſities of himſelf and Family; that is, can reduce into actual poſſeſſion, otherwiſe a man that firſt ſets his foot on an uninhabited Iſland, would have an abſolute right to the whole, though it were a Thouſand miles long, or to all the Territory he could diſcover with his Eyes, ſo that no man could make uſe of one foot of land, in that Iſland but by his permiſſion.

But another Objection is, *That even in the ſtate of Innocency there neither ought, nor could have been ſuch a Community, becauſe ſince all order is agreeable to right reaſon, and the beſt order of poſſeſſing the things, which were granted by God to Mankind, was only proper to that*

state, in which the abstaining from that which was anothers might best be practiced: Since that Law must be writ upon mens minds even before the fall, at least before the Law given, thou shalt not steal, by which there is established a certain and distinct Propriety to every man in the things he possesses. In answer to which it may be replyed, that no man can tell what kind of life men would have led, had they continued in the state of Innocency; or whether Propriety or Community would have suited best with their way of life, though I rather encline to the latter, since there had been no need of enclosure, the Earth producing all things needfull for the life of man without his labours, and going naked, could need no more things than what were meerly necessary; but after the fall (untill which they needed no laws as being uncapable of sinning) these Commandments thou shalt not steal, nor covet thy neighbours goods, did take place even during this Communion of things: For the same law of Nature or Reason, that now forbids men to covet, or take from each other any of those things which he enjoys by the laws of the Commonwealth where he lives, does before the institution of the laws about an absolute Property, likewise forbid the taking away from any man those things, which were necessary for the subsistance of himself, or Family, and was either actually possessed of, as being in his hands, or lying in his presence, or to such things as he had perhaps laid by for future occasions; nor is there any more obligation upon Mankind from these Commandments, thou shalt not steal, thou shalt not covet, to institute an absolute distinct Property in all things, than there is that we should still have slaves among us, because the *Jews* seldom using any other servants, God commands them that they should not covet such a slave, any more than his Ox, or his Ass: For

the Law was only intended to take place, as far as the Subject was capable. Having now answered all the considerable Arguments that can be made against the possibility of a primitive Communion. I hope this great difficulty which hath puzled some Divines, which is *prior in nature*, Propriety or civil Government is now cleared, since it is apparent, Propriety, understood either as the application of natural things to the uses of particular Men, or else as the general agreement of many men in the division of a Teritory, or Kingdom, must be before Government, one main end of which is to maintain the Dominion or Property before agreed on.

Having run over all that is most considerable in these observations, both concerning the natural Dominion of *Adam*, and consequently shewn the original of Dominion and Property, I shall concern my self very little, in the difference between the Author, and *Grotius*, concerning the Power of the people to resist and punish Kings, in which I shall say no more, than that a Prince who is subject to be so punished, is not really a King, in the sense that the word King ought to be understood, since a King is properly one that hath no Superior, and consequently is not capable of Punishment; all punishments as I said before, being properly the effects of a Superior, over an Inferior; so that the Kings of *Sparta* were no more than Generals of the Army, and if the Duke of *Venice* should have the title of King given him to morrow, he would still be but the Head of the Senate, since the one was liable to be put to death by the Ephori, as the other is still by the Counsel of Ten. But if there are any such desperate inconveniences (as the Author mentions) that attend this Doctrine of natural freedom, and Community of all things, it is more than I can find, or I believe any

any man else, that will consider the nature of mankind; and when that is done, if things are contrary to his notions of them; it is not his declaiming will alter mens Judgements, much less the nature of the things themselves.

Obs. P. 63. As for *Grotius*'s three ways whereby Supreme Power may be had, as 1. By full right of Propriety. 2. By an usufructuary, and 3. By a temporary right, I think in most things *Grotius* may very well be defended, though not in all. For whereas he acknowledges two ways, whereby a King may obtain a full right of Propriety, in a Kingdom: That is either by a just war, or by donation from the People. I do not see the Author finds fault with him upon any just grounds, because he hath not shewn how a War can be just without a precedent Title in the Conqueror, as if no war could be just, nor no Conquest made without such a precedent Title: For all men know that a war may commence upon other scores, than old Titles, and in such wars the Prince, or State that hath the right of their side, may prosecute this war, either untill they gain this first demand, or else absolutely subdue their Adversary. So that he mistakes in saying, that *Grotius* will have a Title only to make the War just, so that all he says upon this false supposition signifies just nothing, but as for what he says about a Conqueror's having no new Title, but being remitted to his old one, is true: Nor do I see any inconvenience from it. For if he were an absolue Monarch before he were put out, he cannot Attain more than he had before; so if he, or his Ancestors, had no absolute, but a limited Power; he could be restored to no more than the Constitution of the Government will allow him. Nor did *Edward IV.* or *Henry VII.* though they first obtain'd

the Crown by War, pretend to more Power than their Predeceſſors. I ſhall not trouble my ſelf about the reaſons the Author gives for it: But I think he is out in making it ſeem impoſſible from what *Grotius* hath ſaid, for a Prince to gain a full right of Propriety by a juſt War, for *Grotius* ſays the contrary; and allows that in ſome caſes a Prince may gain an abſolute dominion by Conqueſt. But the Author makes this Dilemma to bring *Grotius* to an abſurdity: *That if a King come in by Conqueſt, he muſt either conquer thoſe people that have a Governour, or thoſe that have none: If they have no Governour, they are a free People, and ſo the war will be unjuſt to Conquer thoſe that are free. But if the people Conquered have a Governour, that Governour hath a Title or not: If he have a Title it is an unjuſt War that takes the Kingdom from him: If he have no title but only the poſſeſſion of a Kingdom; yet it is unjuſt for any other man, that wants a Title ſo to Conquer him that is in poſſeſſion; for it is a juſt rule, that where caſes are alike, he that is in poſſeſſion is in the better condition:* and for this he quotes *Grotius* himſelf, which he need not have done, for he himſelf allows it for truth, only he will have all uſurpers whatever to have a right, whether by Conqueſt or otherwiſe, which *Grotius* will not.

P. 64.

As for the reſt of this argument, it is drawn from Principles never laid down nor maintained by *Grotius*: For firſt if a People, that have no abſolute Governour (as the *Braſilians, and Caraibees* have none as I have already ſayd) live peaceable and offend no body, I think it unlawful to make war upon ſuch a People (as the *Spaniards* did) without any cauſe but to make them ſlaves. But if ſuch a People will joyn together as they often do, under a Carak or Captain, created by themſelves, and make an offenſive War upon

See Directions for Obedience. P. 68. 69.

upon their neighbours, without just cause: I think they may justly be Conquered, and become either slaves or subjects to the Conquerer, as well as one single man in the same case, since both *Grotius* and all writers allow the taking of slaves in a just war, but none ever made it alike reasonable, to make slaves of those that have done them no injury. As for the other part of the Dilemma, where the People Conquered have an absolute King, or Government, either by Title or Possession *Grotius* likewise allows an absolute Conquest of such a People, provided the war were just: For though the Governour, or Governours made the war, yet since the People have transferred all their Power to them, and have agreed to authorize all their actions, the subduing of the Forces, raised by this Governor is a Conquest of the whole People, as *Grotius* allows the Conquerer either to reduce them to the condition of Slaves or Subjects, which he pleases; and certainly where the Conquerer had a right to subdue, the Conquered have likewise an obligation to obey. As for Possession it is true, that it is unjust for another Man to Conquer him, that hath but a Possession of a Kingdom, if that be the only ground of the quarrel; But neither *Grotius*, nor any reasonable man else, will allow the Conquerour of such a Possessor that wants a Title, to have gained an absolute right over the People, since the Usurper himself commanded them only by force, and that they never confirmed his Title by any after consent. 'Tis true *Grotius* defines publick Subjection, to be that whereby a People yeilds it self up to the Government of any one, or more men, or also to another People: But he limits this Subjection to that which proceeds

See Grotius *de* I. B. *Li.III.Cap.* 7.

Ib. Cap. 8.

Ib. Cap. 8.

from consent, as he divides Subjection from consent into publick, and private, but does not exclude but allows Subjection without consent, as often as he that deserved to loose his liberty, is reduced by force into the Power of him who hath a right to exact that Punishment; and who have this right, *viz.* the Conquerors in a just War, he after shews us, *Lib. III. Cap.* 7. 8. So that it is evident that the Author never read *Grotius* carefully, or else misrepresents his sence on purpose, though I am so charitable as rather to believe the former, than the latter. He likewise finds fault with *Grotius* for supposing, *That some People for avoiding a greater evil, do so yeild themselves into anothers power as to except nothing; for it would, says he, be considered how without war, any People can be brought into such danger of life, as that because they can find no other way of defending themselves, or because they are so prest with Poverty, as they cannot otherwise have means to sustain themselves, they are forced to renounce all right of governing themselves, and deliver it to a King.* But since the Author could not understand how this can be without an actual War, I will shew those of his opinion several instances wherein it may and hath happend, that the People may renounce all rights of Property, or of Government without any war, made upon them. The first instance shall be that of the *Egyptians*, who when they had parted with their Cattel, and Flocks to *Joseph* for Bread, were after forced to yeild up their lands and bodies to *Pharaoh*, and to become instead of Subjects, absolute Servants or Slaves, as appears by *verse* 19. Buy us, and our land for Bread, and we and our land will be servants unto *Pharaoh*; who disposed of their persons as he thought fit, for *verse* 21. It is sayd, as for the People, he removed them

Lib. II. Cap. 5. §. 26.

Obs. P. 66.

Gen. 47.

to

to Cities, from one end of the borders of *Egypt*, even to the other end thereof; that is, he made Colonies of them, and changed the places of their abode; or perhaps made them servants to work in publick works, or manufactures, so that they that dwelt in the North of *Egypt* he removed into the South, that they might be out of their own Country, and have less interest or temptation to challenge their own lands again, when the Famin should be over. From whence it is clear that a People that were free Subjects, may without a War give up themselves, and all that they have to the Dominion of another; But since this instance may seem of too long standing, I will produce one that may happen nearer home; suppose the *States* of *Holland* being threatned by the *French* King, to make War upon them, if they do not give up themselves to be his absolute Subjects, or suppose being Master at Sea, (*as God knows after the rate his power now encreases, but that he may be so*) he threaten to cut their Banks and let in the Sea to drown them, and their Country, if they will not yeild it up to him; may they not if they find they cannot resist him, submit themselves to him, and make the best terms they can for themselves, and are they not then obliged by the Authors own Principles to continue his Subjects? and yet here is no actual War, or inundation, but threats only, to force them to this submission. So that the Authors Supposition is false, that no case can happen but an actual War only, which can reduce a People to such terms of extremity, as to compell them to an absolute *abnunciation* of all Soveraignity, and so likewise is this consequence also which he assumes from thence; *then war which causeth that necessity is the prime means of extorting such Soveraignity, and not the free gift of the People, who cannot otherwise chuse but give away that Power, which they cannot keep; for they might either leave their Country or bury*

bury themselves in it. But it seems the Author had forgot his Logick; or else he would have remembred, to distinguish between *Causa sine qua non*, and *Causa efficiens*, a cause which does not properly give being to a thing, and yet without which it could not have been produced: Thus a Slave at *Argiers* though it is the occasion of his servitude his being taken Prisoner, yet the true Cause of his becoming a lawful Servant to his taker, does not proceed from his conquering him, but from his coming to Terms with him, that he shall be dismist of his Fetters, or Imprisonment, upon Condition he will serve faithfully and not run away, and all Moralists consider those actions they call mixt; as when a Merchant flings his goods over into the Sea to avoid being cast away among the number of the Voluntary ones, though they commenced from some kind of force, since in this case the Merchant might if he pleased keep his goods if he would venture his life. So in many cases may a Conquered People, if they have never neither by themselves, or their representatives owned the Conquerer. But as much as the Author quarrells at the word usufructuary Right in *Grotius*, as too base to express the Right of Kings, and as derogatory to the dignity of Supreme Majesty; yet the the *French* are not so scrupulous; but in the absolutest Monarchy of *Europe*, plainly declare that their King hath but an usufructuary right to his Kingdom, and the Territories belonging thereunto, or that he can any way charge them with his debts, or alienate, or dispose of them; without the consent of the States of France, and was so solemnly, declared by that great Assemby *des notables* called by *K. Francis* the First, to give their Judgment of the Articles of Peace lately made with the Emperour *Charles V.* at *Madrid*, their sense was

See Mezeray in the reign of this King. 1527.

was, that *Burgundy* which by thoſe Articles was to be delivered up, was an inſeparable Member of the Crown, of which he was but the uſufructuary, and ſo could not diſpoſe of the one any more than of the other; nor was this any new opinion, but as old as St. *Lewis*, who being deſired by the Emperour *Frederic III.* to reſtore the King of *England* his juſt Rights; To which the ſaid King replyed, (whoſe words I will faithfully tranſlate (as they are in *Matthew Paris p.* 765. *Anno Dom.* 1249.) By the holy Croſs with which I am ſigned I would willingly do it, if my Counſel (*i. e.* the Eſtates) would permit it, becauſe I love the King of *England* as my Coſen; but it were hard at this very inſtant of my Pilgrimage (*viz.* for the holy land) to diſturb the whole body of my Kingdom, by contradicting the Counſels of my Mother, and all my Nobles, although the Interceſſors are very dear to me; neither is this to make a Kingdom all one with a Ferm (as the Author words it) ſince in the civil Law it ſignifies not only one that barely receives the rents, or profits, but likewiſe enjoys all other Prerogatives and advantages that may accrew to him as the true owner, though he have not power to ſell or give it away; Nor I ſuppoſe will any French or Engliſh Subject (unleſs ſuch bigotted ones as the Author) acknowledge any Foraign Prince, or other Perſon can obtain an abſolute Dominion over them by Conqueſt. I am ſure they were not of that opinion between two hundred, and three hundred years agoe, when the King of *England* brought a plauſible Title into *France*, and had it backt by almoſt an entire Conqueſt of the whole Kingdom, and a formal ſetlement and acknowledgment from *Charles VI.* then King and the greateſt part of the Nobility and Clergy of *France* at *Paris*:

and

and yet after all this, the French had so little Conscience as to proclame *Charles* the Dauphin King of *France*, and to drive the English out of the Country, and renounce their allegiance which they had sworn to our Kings, *Henry V.* and *VI.* and yet the Author will have it to be but a naked presumption in *Grotius* to suppose *The Primary will of the People to have been ever necessary, to bestow Supreme power in succession.* But if the Author will not be content that Kings shall have any less than absolute Propriety in the Crown, let us see the consequences of this Doctrine; For the Crown must be of *England* in the nature of an absolute Fee Simple, and is consequently chargeable by any act, or alienable by the Testament of the King in being: So that then King *John* had Power to make this Kingdom feudatary, and tributory to the Pope: and so the Pope hath still a good Title to it. And since Religion with these Gentlemen diminishes nothing from the right, and absoluteness of Monarchy; the same King might have made over his Kingdom to the Emperor of *Moroco* (as the Historians of those times relate he would) and so the Sarracen Prince might have entred upon the non-performance of the Conditions, and have turned out his Vassal, and been King here himself; which opinion how contrary it was to the notions which Kings themselves had of the right to dispose of their Kingdoms, let any man consult *Matthew Paris*, and he will see there what *Phillip Agustus* amongst other things tells Wallo *the Popes Legate, that no King could give away his Kingdom without the consent of his Barons, who are obliged to defend it, and all the Nobility there present began to cry out at once, that they would assert this Priviledge till death: That no King, or Prince could by his sole Will, give away his Kingdom, or make it*

P. 69.

Anno 1216. P. 280.

it tributary, by which the Nobles of the Kingdom might become Slaves. Nor did the Engliſh Nobility think otherwiſe, ſince this was one of the cauſes of their taking Arms againſt King *John:* and afterwards in his Sons reign, we find the Procurators of the Nobility and People of *England* declare in the Council of Lyons, *quod univerſitas Regni nunquam* (i. e. *Patres nobilium vel ipſi*) never conſented or would ever conſent to the tribute unjuſtly extorted by the Court of *Rome:* At which proteſtation his Holyneſs was ſo confounded, that our Author tells us he never lift up his Eyes, or had a word to reply.

Matt. Paris. 1245. *p.* 659. 666.

And every Monarch hath as abſolute a Propriety in his Kingdom, as *Noah* had in the World, as our Author ſuppoſes, I know no reaſon why the King may not bequeath his Crown to which of his Sons he pleaſes, no matter whether lawfully begot or not, ſince Princes are above all Terms, or poſitive Laws, or he may divide it among them, as *Noah* did the World to his three Sons: So that upon theſe grounds the Teſtament of *Henry VIII.* whereby he diſinherited the Line of *Scotland*; and that of *Edward VI.* whereby he excluded his Siſters from the Crown ſhould have been valid, but the Loyal Subjects of *England* beleived that neither of thoſe Kings could diſinherit the right Heir of the Crown by their Teſtaments alone, but acknowledged them in the perſons of Queen *Mary*, and King *James* notwithſtanding thoſe pretended Wills. I have been the larger upon this Subject that men that do not much conſider, nor are verſed in theſe matters, may ſee the abſurd, wicked conſequences of this notion, of an abſolute Propriety and Dominion, to be inſeperable from Monarchy: So that I doubt not but even thoſe very men who love a ſmatch of arbitrary Government,

vernment, because it best suits with their tempers or interests, cannot away with it unmixt, when it comes to exert all its Prerogatives: Thus some men think Musk, and Ambergreece mixt whith other Ingredients makes an agreeable Perfume, which if held to their noses in the Cod, or whole Lump, they are so far from thinking a good smell, that they loath it.

I shall not affirm with *Grotius That the Empire which is exercised by Kings, doth not cease to be the Empire of the People:* For I suppose the People have passed over all their present interest in it, to the Prince and his heirs, and as long as that line lasts they have nothing to do with it, and consequently cannot set up another Family over them; and so on the other side the King hath no such absolute Property, as that he can alter the succession otherwise than the fundamental laws of the Monarchy did first appoint; which were made by consent of all the Estates, and without which they cannot be altered; nor is there any fear of a contradiction, as the Author supposes, [*That the Succession must either hinder the right of Alienation which is in the People, or the alienation must destroy the right of succession, which must attend upon elected Kings.* For we own no right of alienation in the People, as long as there is a lawful Heir remaining and succeeding in his right, to whom the Crown was first legally setled; nor yet does therefore the succession diminish the right which the People had at first, but that it may arise and take place again if the King should die without known heirs.

Chap. VI. Having done with his observations upon *Grotius*, I am now come to his Anarchy of a limited or mixt Monarchy; in which (though I shall not undertake to maintain all which our Author if whom he writes against hath laid down in this

this treatise, since many things in that it treats were written according to *Irene*'s notions during the late Warrs) yet I hope I may be able to shew that this Doctrine of a limited Monarchy is not but of Yesterday, as our Author will have it: But that all the learned men in the laws and constitutions of these Northern Kingdoms, have held it to be no such damnable Doctrine, but that the contrary would introduce all Tyranny, and Arbitrary Goverment among them, which is at this day practiced in the Eastern parts of the world.

260. But it seems the Author allows, that there may be a mixt Government; but not a mixt Monarchy, because the word Monarchy is compounded of two Greek words μόνος one alone, and Ἄρχειν to Govern, or Rule: and therefore Monarchy being the Government of one man alone cannot admit of any limitation or mixture.

But what if one should say that all this is nothing but wrangling about words: since why may not he be called a Monarch who hath the Supreme, though not the only Power in a Commonweakth, if the custom of that Country allow it him, though his Power be limited or mixt, as well as for the *Romanes*, to call their Monarch but Imperator, or General: or for the *Florentines*, or *Russians* to call their Monarch great Duke: Since it is not the names, but the exercises of the power that creates the difference: Nor is it any more a Bull, or contradiction than to call that which I now write but of, an Inkhorn, though perhaps it is made either of Glass, or Mettal; So the first Monarch being absolute, the Title of Monarch may now be by custom well enough applyed to those that are not absolutely so; but to pass by such Grammar niceties, I shall endeavour to vindicate the writer of this Treatise of Monarchy, whom the

the Author calls Mr. *Hunton*, from giveing an Idea of a Government, which is nothing but meer Anarchy and Fiction: and that there hath been, and yet is such a kind of Government as a limited Kingship; which if the Author is so dogged, as he will not allow it the name of a Monarchy, we cannot help it, let his Friends give it a more proper name if they please: As for what he will prove out of that Authors words that every Monarch (even his limited Monarch) must have the Supreme Power of the state in himself, so that his Power must no way be limited by any power above his: *For then he were no Monarch, but a subordinate Magistrate, is true; yet I do not see that the Author contradicts himself as the observatour will have him, when he tells us in the same Page, That in a moderate, or limited Monarchy, the supreme power must be restrained by some law according to which this power was given, and by direction of which this power must act: So that he will have his Supreme Power not limited, and yet restrained: Is not a restraint, a limitation? and if restrained, how is it Supreme? and if restrained by some law, is not the Power of that law, and of them that made it above his Supreme Power? and if by the direction of such law only he must Govern, where is the Legislative Power, which is the cheif of Supreme Powers? when the law must rule and govern the Monarch, and not the Monarch the law; he hath then at best but a gubernative or executive Power: and so proceeds to quote this Authors own words at large, if his Authority transcends his bounds, and if it command beyond the Law, and the Subject is not bound Legally to subjection in such cases, and if the utmost extent of the Law of the land be the measure of the limited Monarch's Power, and Subjects duty where shall we find the Supreme, that* Culmen, *or* apex potestatis *that prime* ἀρχὴ *which the Author saies must be in every Monarch, the word* ἀρχὴ *which signifies, princi-*

Principality and Power, doth also signifie beginning, which doth teach us that by the word Prince, *or* Principality, *or* Principium *or beginning of Government is meant; this if it be given to the law, it robs the Monarch, and makes the law the* Primum Mobile; *and so that which is but the instrument or servant to the Monarch becomes the Master.* In vindication therefore of Mr. *Hunton*, on whom he makes these remarks, I shall in the first place grant that he hath perhaps spoke not so properly, in saying that the supreme Power must be restrained by some law, whereas indeed he should rather have sayd limited by some law, since the word restrained is of a harsh signification, and denotes something of a certain force, the exercise of which this Author is altogether against in his whole treatise of Monarchy; so that putting it thus, that the supreme Power (in a limited Monarchy) must be limited by some Law, does not therefore place any coercive power above his, who can call him to an account for his actions: But a Power that may remonstrate to him where he hath acted contrary to that Law, and may by that law punish, not the Monarch, but his Ministers that have dared to transgress those such known laws. For as for the Monarch himself, it is still supposed that he in his own person can do no injury: So that he may still be Supreme, and yet be limited, not by any power Superior to his own, but by his laws (or declared Will) which he himself hath made in the Assembly of his Estates, and which he can not alter, but by the same form by which they were constituted; and this sort of limitation may very well consist with a perfect Monarchy. Thus the King of the *Medapersians* was an absolute Monarch, and alone made laws, and yet we find in *Dan. XII.* that *Darius* was forced against his will to cast *Daniel* into the Lyons Den,

for transgressing his own Decree, because the Laws of the *Medo-Persians* did not alter, that it could not be dispensed with by the King, when they were once made: Thus it is no derogation to God himself to be bound by his own Oath, which from the immutability and perfection of his nature he cannot afterwards alter. See *Heb. VI.* from *v.* 16. to 17, 18. That by two immutable things, in which it was impossible for God to lie &c. the two immutable things are first his own nature, and then the Oath, he sware by himself, so that we see this restriction of Gods power by his Oath (which is a law to him) is no derogation from his absolute Monarchy or Ommipotency; but is consistent with it; therefore it does not follow that in all laws where the law governs the Monarch, he hath therefore but a Gubernative power: Or that if the Soveraign Authority is limited by Law, it ceases to be Supreme, as I shall by and by shew more at large; in the mean time I shall not defend Mr. *H.*'s opinion, when he saith that in a mixed Monarchy, the Soveraign Power must be originally in all the three Estates, or that the three Estates are all sharers of the Supream Power, only the primity of share in the Supream power is in one: For the Observator observes very well that this contradicts what he before confessed, *That the Power of Magistracy cannot well be divided; for it is one simple thing, or indivisible beam of Divine perfection; yet he will for all this allow his mixed Monarch but one share of the Supream power, and gives other shares to the Estates; and so destroys the very being of Monarchy, by puting the Supream power, or a part of it in the whole body or a part thereof*; Therefore I am so far of their opinion that held, the Supream Power cannot well be divided into several shares, since there is so great a conjunction between all

all the parts of Soveraign power, that one part cannot be ſeparated from the other, but it will ſpoil the regular form of the Government, and ſet up an irregular Commonwealth, which will ſcarce be able to hold well together. And that this will be ſo in all Governments, ſee what Mr. *Pufendorf* hath ſaid in that excellent work *de Jure naturæ et Gentium* diſcourſed upon this Subject; neither am I not here of *Grotius*'s mind, Lib. I. Cap. 3. §. 9. 17. *Who ſuppoſes the Supream power to be divided: if a People yet free ſhould command its future King* per modum manentis præcepti, *after the manner of a laſting, or ſtanding Precept or Command*; where it does not appear, how there can be a laſting Command at that time when no Perſon hath any longer a power of Commanding: For every Command ſuppoſes a coactive force, to be exerciſed, when ever that Precept is violated; therefore the People conſtituting a King, muſt either retain this power againſt the King, or may not retain it; if the former, there will remain only the empty name of a King; but the real Soveraignty will ſtill remain in the People; but if the latter be true, and they do not retain it; this Precept or Command ſignifies nothing. So likewiſe in that ſame place, *If in the conferring of the royal power any thing be added, by which it may be underſtood that the King may be compelled, or puniſhed; For here it is true the Soveraignty is not divided, but the people hath it indeed altogether*; For if the People have a right of puniſhing the King upon any pretence whatever, there is nothing conferred upon him, but the office of the firſt Magiſtrate in the Commonwealth under the name of King, but the Royal Power will ſtill remain in the People; becauſe (as I have already laid down) all puniſhment, *qnatenus* as ſuch, muſt proceed from a Superior: But all compul-

ſion is performed two ways, either morally, or Phyſically, that is by way of Soveraign Authority, or by force of Arms, or War; for there is no Authority can be morally ſuppoſed againſt an Equal, conſidered as ſuch; therefore when *Grotius* inferrs, that the People may be at leaſt equal to the King, becauſe in ſome caſes it may compel him, he is likewiſe neceſſitated to grant that neither of them hath any Authority over the other, becauſe it contradicts the nature of a Commonwealth: Though compulſion by force of Armes as between Equals, or thoſe who have no Authority over each other, muſt be granted in the ſtate of nature, in which we will make uſe of *Grotius*'s own Example; that a Creditor hath naturally a right of compelling the Debtor to pay his debts, although the Creditor hath no right to exact this of him by way of any authority thereby veſted in himſelf: otherways it were neceſſary that every one who owed another any thing, muſt preſently come under his power: therefore the Debtor muſt be compelled by the Creditor to pay his debt, either by the aſſiſtance of ſome Judge (which cannot be ſuppoſed between the King and People) or if they live in a natural liberty, by force. But if we ſhould allow this way of compulſion to the People, it will follow that both the King and the People do ſtill live in a natural liberty, or meer ſtate of nature; that is that the Commonwealth, is diſſolved: Yet we will grant *Grotius* this, that in all civil conſtitutions there is nothing abſolutely free from ſome inconveniencies, therefore becauſe of the inconveniencies that ariſe from this divided Soveraignty, it does not preſently follow that there can be no ſuch Government or that it muſt preſently fall to an abſolute Anarchy; for right is not to be meaſured from what pleaſes either this, or that Author, but from his or their will, from whom this right at firſt began. So likewiſe on the other

other ſide, it muſt be granted that if ſuch diviſion of the Supreme Authority hath been inſtituted by any People that people have not conſtituted a Regular government but a politick body ſubject to perpetual diſtempers.

Therefore ſuppoſing the moſt that can be required, that the King in a limited Monarchy is he who alone gives the Eſſence and Authority to the Laws, though he can make no other than what are offered him in the Aſſembly of his Eſtates; yet if all Magiſtrates that put theſe Laws in execution are ſubordinate to him, and depend upon him, this takes away that inconvenience this Author objects againſt limited Monarchs: For he is truely Supreme, ſince he makes the laws, and is the Fountain of all power in his Dominions; neither does this derogate from the Supremacy of his Power that he is obliged either by original contract, or by after promiſe, or condeſcent not to make any laws, or to levy any mony, or taxes from his Subjects, but what they ſhall offer him in the Aſſembly of his Eſtates. For ſince all laws that are made in a Monarchy, are but the declaration of the Monarchs will: and that he being but one man cannot declare his will Phyſically to the ſences of all his Subjects, but requires ſome politick form, or manner of ſignifying this will to all that are to obey it, which is various according to the ſeveral Cuſtoms and conſtitutions of divers Kingdoms; therefore as in Monarchies where there are no uſe of Letters, Laws can be no otherwiſe made, or promulgated, but by ſignifying the Monarchs will to the ſubordinate Magiſtrates by word of mouth, by ſuch Officers as muſt be ſuppoſed to bring ſome ſufficient token, that they come immediately from them, and are ſufficiently inſtructed in the matter he will have obſerved as a law, which form can depend upon nothing but Cuſtom, or the common conſent of the People to admit that for Law which ſhall be ſo

promulgated, since they have no infallible certainty, but that the Messenger may be sent by some body else that hath a mind to make alterations in the State without the Princes knowledge; or else that the Messenger may mistake the Princes meaning, and report the law wrong. So likewise in Kingdoms where laws are put into writing, there must be some form, or rule agreed upon, both of making, and promulgating Laws: So likewise in those we call limited Monarchies, the Custom or form is not to admit any thing for a Law, or the authentick will of the Prince, but what his Subjects have offered to him drawn up into form, and which he hath passed into a Law, by some token of consent before instituted in the presence of the general Assembly of the Estates of his Kingdom: which course is absolutely the best both for the Prince and People; For since the end of all laws (as of Government it self) are the good of the people; so it is not likely that the Subjects having the drawing up of the Laws, will offer any to the Prince that they are not absolutely perswaded are for the benefit of the Commonwealth, nor can that be any prejudice to the Prince's power, since no law can be made unless he give it the stamp of his Royal Authority. Therefore though Forms are not essential to the declareing of the will of a private man in the state of nature, yet they must be in respect of that of such a Prince, since the power of the former is natural and can influence only those that hear him, but that of a Prince is artificial, or political as proceeding from compact, and is to command even those that never saw him, or are like to come into his presence; it is requisite that the ways of declaring his will be made so certain, that the Subjects may have no reason to doubt of it: therefore there can no way

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be found out which can more certainly assure all the Subjects both of the benefit, and Authority of the Laws; than when a Prince voluntarily in a general Assembly of all the Estates of his Kingdom, either by pronouncing of words, or by touching the Bills offered him with his royal Scepter, (or any such like Ceremony) declares he will have those Bills, or Writings promulgated and observed as his Laws, or declared Will, which being once done in such a solemn and publick manner, takes away all suspition that the Prince was not well advised when he made them, or wrought upon by the flateries or insinuations of Women or Favourites; Circumstances which being wanting in absolute Monarchies, where the Prince's Edicts are perhaps either given out in hast, or at second hand to those who never see him, by *Eunuchs*, or Officers; who taking the Monarch at some advantage, and makes him pass Commands which perhaps he does not remember or repents of the next day; whereas in such a limited Monarchy, a Prince does not only appear with greater Splendor and Authority, when in the face of his Subjects he exercises the highest Act of Soveraignty in making laws, but likewise assures them that he acts with an absolute freedom, when having a liberty to deny, he yet grants the desires of his Subjects; yet so establishes them for Laws, that they cannot be altered without their consents, and by the same means by which they were first made: which being supposed may serve to answer an Objection that some may make, that if this way of passing of Laws, or the Princes declaring his will after this manner be but a matter of form, or Circumstance, why may not this Monarch alter it at his pleasure, and declare for the future (for example) that all laws shall be by him passed in his privy

Council, and then being openly proclamed, and Copies recorded in all Courts of Justice, shall be of the same Authority as if they had been passed in the Assembly of Estates: To which the answer is obvious, that though it is true the Monarchs passing of Laws, whether in the great Council, or in his privy Council be but a matter of form, if the Legislative power remain wholly in himself; yet since even the forms, and Circumstances in doing things are such essential things without which business cannot be done; If therefore the people made it part of their original Contract with their Prince at first, that he should make no laws, but what should be of their proposing, and drawing up; and that he might refuse if he pleased the whole, but should not alter any part of it: This though in its self a matter of form, yet being at first so agreed is indeed an original and fundamental constitution of the Government. Therefore the Author is as much mistaken in his Divinity as his Law, when *Patriarcha P. 97.* Resolves the question in the affirmative, *Whether it be a sin for a Subject to disobey the King if he command any thing contrary to his Laws, That the Subject ought to break the laws* if his King command him: Where as as the Author hath put it, nothing is more contrary to Law and Reason, for so it would be no sin for Souldiers or others, to give and take away mens Goods by force, or turn them out of their houses, if they could produce the Kings Commission for it; and consequently it was no sin in those *Irish* Rebells that acted by a counterfeit Commission under Sr. *Philim. O Neal*; for though it was forged (yet the forgery being known but to very few) it was in respect of those who acted by vertue thereof all one, as if it had been true and according to this Authors Divinity, *Part 1. Page 98.* They were obliged to rise and cut the throats

throats of all the English Protestants, since the King *by his Commission commanding a man to serve him in the Wars, he may not examine whether the War be just, or unjust, but must obey, since he hath no authority to judge of the causes of War*; which if spoken of such Wars as a King hath a right to make, is true; but of all wars in general, nothing is more false, as appears by the instance before given; nor are the examples the Author there brings at all satisfactory, as that not only in humane Laws, *but also in Divine a thing may be commanded contrary to law, and yet obedience to such commands is necessary: the sanctifying the Sabbath is a Divine law; yet if a Master command his Servant not to go to Church upon a Sabbath day, the best Divines teach us, that the Servant must obey this Command though it may be sinful, and unlawful in the Master, because the Servant hath no authority or liberty to examine or judge whether his Master sin or no in so commanding.* Where if the Author suppose, as I do not, that the Sunday (which he improperly calls the Sabbath) cannot be sanctified without going to Church, or that going to Church on that day is an indispensible duty, the Master commanding the contrary ought no more to be obeyed, than if he should command his Servant to rob, or steal for him; but if going to Church be a thing indifferent, or dispensible at some times then the Author puts a Fallacy upon his Readers, arguing from the non-performance of a thing which is doubtful, or only necessary *secundum quid*, in which case the Subject or Servant is bound to obey Authority to a thing of another kind which is absolutely unlawful; Since it is sinful, for any Subjects to obey the King's private or personal Commands in things unlawful, and contrary to known positive laws: The laws only setting the bounds of Property in all Commonwealths;

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so that though it be no sin in *Turky* or *Muscovy* for an Officer to go and fetch any mans head by vertue of the Grand Seigniors Commission, without any trial or accusation; I suppose any man that valued his life, would say it were murder for any person to do the same by the Kings bare Commission in *England*; and yet there is nothing but the Laws and Customs of each Government that creates the difference: Not that I do affirm it were a sin in all Cases for a Subject to obey the King though contrary to Law, since there are some Laws which the King hath power to dispence with, and others which he hath not, and others which he may dispence with, but yet only for the publick good, in cases of extreme necessity: But to affirm as the Author does without any qualification or restriction, that it is a sin to disobey the Kings personal Commands in all cases however issued out; savours of Mr. *Hobs* Divinity as well as Law; nor does the Author himself when he hath thought better on't, *assert the Kings Prerogative to be above all laws but for the good of his Subjects that* are under the laws, and to defend the peoples rights (as was acknowledged by his late Majesty in his speech upon his answer to the Petition of right: *So it is true the King hath a power to* pardon all Felonies, and Manslaughters, (and perhaps Murders too) yet supposing this power should be exerted but for one year towards all Malefactors whatsoever, any man may easily imagin what such a Prerogative would produce; So that the publick good of the Kingdom ought to be the rule of all such Commands, and where that fails the right of commanding ceases. As for the instance of the Court of Chancery it is (*not a breach of the Kings Prerogative*) but part of the Common Law of this King-

Patriark. P. 99.

Ib. 99.

Kingdom, so no man that understands any thing of Law or Reason, will affirm that it is a Court of that exorbitant power, that it is limited by no rules or bounds, either of Common, or Statute Law, or of the Laws of *æquum*, and *bonum*; or that every thing that a Chancellour, who is keeper of the Kings Conscience, decrees, must be well, and truly decreed, since this were to set up an absolute Tyrany. But I shall now proceed to examine the rest of the reasons the Author gives, either in this Treatise, or his Patriarcha against the possibility of a limited Monarchy.

He finds fault with Mr. *H.* 'For asserting 'that a Monarch can have any limitation *ab* 'Externo: and that the sole means of Soveraignty 'is consent and fundamental contract, which 'consent puts them in their power which can be no 'more nor other than is conveyed to them by such 'contract of subjection; upon which our Author 'inquires thus; *if the* sole means of a limited Mo- 'narchy, be the consent and fundamental contract of 'a Nation, how is it that he saith a Monarch may 'be limited by after condescent! is an after conde- 'scent all one with a fundamentnl contract, or with 'an original, and radical constitution! why yet he 'tells us it is a secundary *original constitution*: A se- 'cundary original, that is a second first: and if that 'condescent be an act of Grace, doth not this con- 'desent to a limitation come from the free determi- 'nation of the Monarchs will! if he either formally, 'or virtually (as the Author supposeth) desert his 'absolute or Arbitrary power which he hath by con- 'quest or other right. *P.* 281.

Which last words of Mr. *H.* though I confess they are ill expresst, yet I see no down right contradiction in the sence Mr. *H.* meant them. (if any man please to consult him he there says) *That a Monarch*

Monarch may either be limited by original constitution, or an after condescent; therefore these words the sole means of Soveraignty is the consent, and fundamental contract, is not meant of a limited Monarchy any more than of another, but of any Soveraignty whatever. So likewise though these words, a secundary original constitution may seem to be ἀβυσσία and to destroy each other, yet as the Author explains himself, you will find they do not in sense; for he only supposes that a Prince who hath an absolute Arbitrary power, either by succession, or election, finding it not so safe and easie as he conceives it would be for him, if he came to new terms with his people, would desert some of that despotick power and govern by set rules, or Laws, which he obliges himself and his Successors by Oath, or some other conditions, never to make, or alter without the consent of his Subjects. I see not why this may not in one sense be called a second original constitution; for he was at first an absolute King by which was the original constitution, and his coming to new Terms with them may be termed in respect of this a secundary original constitution, or agreement, of the government though founded upon the former old right which the Monarch had to govern: as for a King by Conquest, it cannot indeed in respect of him be properly called a secundary constitution, since the Conquerour had no right to clame an absolute subjection from the Subjects until they submitted to him, so as that they might not drive him out again, if they were able, until he came to some Terms with them. Thus I think no sober man but will maintain, that the people of *England* might lawfully have driven out *William I.* (called the Conquerour) supposing he had claimed by no other title but Conquest alone, which when he had sworn to observe and maintain all the Laws, and liberties of

of the people of *England*, and had been thereupon Crown'd, and received as King, and had quitted his pretensions by Conquest, or force, and had taken the Oaths and homage of the Clergy, Nobility and People; they could not then without Rebellion endeavour to do. And certainly had he not thought his title by Conquest not so good as the other of King *Edward*'s Testament; he would never have quitted the former and sworn to observe the Laws of his Predecessor; so likewise *Henry I.* (from whom all the Kings and Queens of *England* have since claim'd) upon his Election and Coronation (for other title he had none) granted a Charter whereby he renounced divers illegal practices (which Flatterers may call Prerogatives) which his Father, and brother had exercised contrary to King *Edward*'s Laws, and their own Coronation Oaths, so that here is an Example of one of the Authors absolute Monarchs, who by a right of Conquest might pretend to the exercise of an arbitrary power, yet renounced it, and only retained so much as might serve for the well governing of his Subjects, and his own security. It is not therefore true which this Author affirms, that this accepted of so much power as the people pleased to give him, since they neither desired, nor did he grant them any more but those just rights they had long before enjoyed under their former Kings before his Father's coming into *England*. However I conceive this wise Prince was of the opinion of *Theopompus* King of *Lacedemon*, who when his wife upbraided him that he would leave the royal dignity to his Sons less than he found it, no, rather, replyed he, greater, as more durable: and therefore *Plutarch* in the same place ascribes the long continuance of the *Lacedemonian* Kingdom to the limited power of their Kings, in these words. (' and indeed *Plut. in Lycurgo.*

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'when Envy is removed from Kings) together with 'excess of power, it followed that they had no cause 'to fear that which happened to the Kings of the *Mas-* '*senians*, and *Argives* from their Subjects: But because this Author tells Mr. *H.* that if we should ask what proofs or examples he hath to justify his Doctrine of a limited Monarchy in the Constitution, he would be as mute as a fish; we will shew two or three examples of the antiquity of such limited Monarchies: though they were not of the same model with those that are at this day found among the *Germanes*, and other northern Nations descended from thence. In *Macedon* the Kings descended of *Caranus* (as *Callisthenes* says in *Arrian*) did obtain an Empire over the *Macedonians*, not by force but αλλανόμω by Law. So *Curtius Lib. IV.* The *Macedonians were used to Kingly Government, but in a greater appearance of liberty than other Nations:* For it is certain the lives of their Subjects were not at their disposal: as appears from the same Author *Lib. VI. The Army by an antient custom of the* Macedonians *did judg of Capital causes* (i.e. *in time of War*) *but in peace it belonged to the People:* the power of their Kings signified litle, unless his Authority was before of some force. And this was by original constitution, for we do not find that ever the Kings of *Macedon* altered any thing in their original constitution; yet they had the Soveraignty in most things; and their persons were sacred. So likewise among the antient *Romans*, where *Romulus* from a Captain of Volunteers, became a King. *Dyonisius Halicar: Lib. II. Tells us that after* Romulus *had made a speech to his Souldiers, and followers to this effect, that he left it to them to consider what Government they would chuse; for whatsoever they pitcht upon he should submit to it, and though he did think himself unworthy the Principality; yet he should not refuse to obey their*

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Commands; concluding that he thought it an Honour for him to have been declared the Leader of so great a Colony, and to have a City called by his name. Whereupon the people after some deliberation among themselves chose him their King, or limited Monarch, since both the Senate and people had from the very beginning their particular shares in the Government, the Senates making this great Counsel (which yet were for the greater part of them chosen out of the *Patricians* by the Tribes, and *Curiæ*) *with these he consulted, and referred all businesses of lesser moment which he did not care to dispatch himself; for he reserved to himself the last Appeal in causes, and to be* Pontifex Maximus, *or Cheif Priest, and Preserver of the Laws and Customs of their Country, as also to be cheif General in War; but to the people were reserved these three Priviledges, to create Magistrates, to ordain Laws, and to decree Peace and War, the King referring it to them; So that the Authority of the Senate did joyn in these things, though this custom was changed, for now the Senate does not confirm the decrees of the people, but the people those of the Senate: But he added both dignity, and power to the Senate, that they should judg those things which the King referred to them, by Major part of the votes.* And this he borrowed from the Lacedemonian Commonwealth, for the Lacedemonian Kings were not at their own liberty to do whatever they pleased, but the Senate had power in matter appertaining to the Commonwealth. But because these examples may seem too stale, or remote, Let us now consider all the Kingdoms that have been erected upon the ruins of the Roman Empire by those Northern Nations that over-ran it; and see if there were so much as one Kingdom among them that was not limited: As for the Kingdoms of the *Goths*, and *Vandals* erected in *Italy Africk*, and *Spain*, the Author confesses they were limited

Dyon. Hal. Lib. 11.

limited, or rather mixt, since their Kings were deposed by the people whenever they displeased them: So likewise for the Successors of those Gothick Princes in *Castile*, *Portugal*, *Arragon*, and *Navarre*, and the other Kingdoms of *Spain*: He that will read the histories of those Kingdoms, will find them to have been all limited, or rather mixt, and to have had Assemblies of the Estates, without whose consent those Kings could antiently neither make Laws, nor raise mony upon their Subjects: and as for *Arragon* in particular they had a Popular Magistrate called the cheif Justiciary, who did in all cases oppose and cancel the Orders and Judgments of the King himself where they exceeded the just bounds of his power, and were contrary to the Laws, though indeed now since the times of *Ferdinand* and *Isabella*, the Kings relying upon their own power by reason of the Gold and Silver they received from the Judges, and the great addition of Territories have presumed to infringe many of their Just rights, and Priviledges. And as for the Kingdoms erected by Francks in *Germany* and *Gaule*, which we now call German Empire and Kingdom of *France*. As for the former any one that will read the ancient French, and German Historians, will find that the Kings of *Germany* could not do any thing of Moment, not so much as declare a Successor without the consent of their Great Counsell of Nobility, and Clergy, and as to the latter as absolute as it seems at present, it was a few ages past, almost as much limited, if not more than its Neighbours: For the Kings of *France* could not anciently make Laws, raise any publick War, wherein the Nobility, and people were bound to assist him, or Levy Taxes upon their Subjects without the consent of the Estates; but those Assemblies being at first discontinued by reason of the continual wars which *Henry V.* and *Henry* the *VI.*

Mariana. Lib. XVIII.

Kings

Phil. Com. Livre. VI. Cap. 7. Kings of *England* made upon them; to which *Mezeray* in his History tells us, *France owes the loss of its Liberties, and the change of its laws*: In whose time they gave their King *Charles VII.* a power to raise mony without them; which trick when once found out appeared so sweet to his Successors, that they would never fully part with it again: and *Lewis* the *XI.* by weakening his Nobility and People by constant Taxations, and maintaining Factions among them, bragged that he had *mettre les Roys du France*, brought the Kings of *France. hors du Page.* or out of worship Whereas the Author last mentioned remarks that he might have said with more truth, (*les mettre du sense, hors et de la raison*); and yet we find in the beginning of the Reign of *Charles VIII.* the Assembly of the Estates gave that King the sum of two Millions, and an half of Francks; and promised him after two years they would supply him again: It seems *Comines* in the same place, did not look upon this as a thing quite gone, and out of Fashion, since he then esteemed this as the only just and Legal way of raising mony in that Kingdom: as appears by these words immediately after. *Is it toward such Objects as these (meaning the Nobility and People) that the King is to insist upon his Prerogative, and take at his pleasure what they are ready to give! would it not be more just both towards God and the World, to raise mony this way than by Violence, and Force! nor is there any Prince who can raise mony any other way, unless by Violence, and Force, and contrary to the Laws. So likewise in the same Chapter speaking of those who were against the Assembly of the Estates at that time; that there were some (but those neither considerable for quality or vertue) who said that it was a diminution to the Kings Authority to talk of assembling the Estates, and no less than Treason against him. But it is they themselves who commit that crime against God,*

the King, and their Country, and those who use these expressions are such as are in Authority without desert, unfit for any thing but flattery, whispering trifles and stories into the ears of their Masters, which makes them apprehensive of these Assemblies, lest they should take cognizance of them, and their manners. But I suppose it was for such honest expressions as these, that *Katherine de Midices* Queen of *France* said, that *Comines* had made as many Hereticks in Politicks, as *Calvin* had done in Religion; that is because he open'd Mens Eyes, and made them understand a little of that they call King-craft. But however in some Provinces of *France*, as in *Languedoc* and *Provence*, though the King is never denyed whatever he please to demand; yet they still retain so much of the shadow of their antient Liberties as not to be taxed without the consent of the Assembly of Estates consisting of the Nobility, Clergy, and Burgesses of great Towns, and Cities, which however is some ease to them, not to have their mony taken by Edict. So *Hungary*, which was erected by the *Huns*, a stirp of the European *Scythians*, by which you may judge the antient form of Government was much the same as that of the *Germanes*. All Histories grant that Kingdom to have been limited, and to be of the same form with that of the other Northern Nations, nay which is more, to have had a Palatine, who could hinder the King from ordaining any thing contrary to the Laws: and as for *Poland*, the Author cannot deny but it is limited in many things; but as he only takes notice of those things in which the King hath power, so he omits most of those in which he hath none, as in raising of mony, or making laws without the consent of the Diet. So likewise in *Denmark*, the Author himself cannot deny but that Kingdom is limited, for he could not before the late war with *Sweden* either make War or Peace, raise mony or make laws without the consent of his Senate, who were a constant

ſtant repreſentative of all the Nobility. But for the Election of a new King, or for the making of new Laws the whole body of the Nobility, and Clergy were to be preſent and conſent. As for *Scotland* the Government of it hath alwayes ſo much reſembled *England*, that it being now the ſame Prince, I ſhall not ſay more of it, but that it hath alwayes been a limited, if not a mixt Government. In *Sweden* the Kings power is much the ſame, only the Commons have repreſentatives in the aſſembly of Eſtates, which they had not in *Poland* and *Denmark*: But in *Denmark* and *Sweden* the Kings (until of Late that they became Hereditary) were never received or owned as Lawful, until they were Crown'd and had Sworn to obſerve and maintaine the Laws of the Kingdom and priviledges of the Nobility and People. But the Authour thinks he hath gotten a great advantage, *becauſe he finds that in* Poland *and* Denmark, *the Commons have no repreſentatives in the Aſſembly of Eſtates, and that therefore in ſome limited Monarchies the whole Community in its underived Majeſty do not ever convene to Juſtice.* Which ſignifie little, for theſe that are now the Nobility may be Heirs to thoſe that once had the whole propriety of the Country in their hands, when theſe Kingdoms were erected; and ſo tho the body of the People encreaſed, yet the ancient Nobility never admitted them into a ſhare of the Government. As in *Venice* without doubt all the Ancient Planters of thoſe Iſlands had Votes in the Government, and it was then popular, though it is now reſtrained to the ancient Families, or thoſe new ones they now admit, and is much ſuch an other cavil as that in *England*: Before the reduceing the *Nobiles Minores* to two Knights of the Shire, the Commons had no Votes in the great Council, or Parliament, which opinion ſee confuted in Mr. *Petyt's* Treatiſe of the ancient Rights of the Commons of *England*, and in the learned Treatiſe, call'd *Jani Anglorum*

facies nova. And this appears more plainly in *Denmark*, where every Lord of a Mannor, or Territory is a Nobleman, and hath a Vote in the Diet or Assembly of the Estates, or else it might have begun as in *Poland*, which is but an Association of so many petty Princes for mutual defence, under an Elective Head, who when they entred into this Confederacy, reserved to themselves the power they had before over their Subjects and Vassals: which how absolute that was, any man may find, that understands the *Sclavonians* Genius, in so much that from the absolute Subjection of that People to their Lords we have the Word SLAVE to this day: But the Author himself confesses the Kingdom of *Poland* to be limited, but it is only by the Nobility; who are for all this forced to please the King, and to second his will to avoid discord, which is very true, and is requisite in all limited Governments, that the King, Nobility, and People should agree, and as it is their duty to comply with his desires, as much as may be, without giving up their liberties, lives, and fortunes, absolutely to his disposal: So it is his, to answer his Peoples desires in all things which are for their benefit: Not that I praise the Form of Government in *Poland*, since of all those that own the name of King, I am so far of the Authors mind as to think it most liable to Civil Dissentions. But before I dismiss this Subject, I must take notice of a mistake in the last Page of this Authors present Treatise, which is that the People or Community in all these three Realms are as absolute Vassals as any in the world, which is not true, unless it be affirmed of the Vilains or Vassals of the Nobility, which is granted are more absolute Vilains, than ours were in *England*, but as for the free born, or ordinary Free-holders in *Denmark*, and *Sweden*, and for the Merchants and Artificers dwelling in Townes and Cities, they have all their di-

See Pontanus Hist. Dan. & Severus de Stat. Sueciæ.

distinct

ſtinct priviledges: and are free, both their Perſons, and Fortunes, and cannot be oppreſſed by the Nobility, nor taxed but by the Dyet or Aſſembly of Eſtates: but perhaps the Authors Friends may now cavil, and ſay that theſe are no Monarchies at all, becauſe a Monarchy is the Government of one alone, in which neither Nobility nor People have any ſhare; to which I ſhall ſay no more then that theſe People call their Goverments Monarchies, as participating more of that then any other forme; and they are owned to be true Kings all the world over; and if the Gentlemen of the Authours opinion will quarrel about words, my buſineſs is not to diſpute from Grammar but reaſon; ſo that theſe Kingdoms may be called Monarchies as they are in *Europe*; but if theſe Gentlemen think it not fit to call them ſo, let them conſider how much all this Authors diſcourſe will concerne our Government in *England*; or elſewhere in *Europe*. Having now taken a ſhort view of the Ancient Governments of moſt of the Moderne Kingdoms that have been erected ſince the ruin of the *Roman* Empire; we will conclude with the Government of our own Countrey, and inquire whether ever it were an abſolute deſpotick Monarchy or no. As for the Original of the *Saxon* Government, it is evident out of *Tacitus* and other Authours, that the Ancient *Germans*, from whom our *Saxon* Anceſtors deſcended, and of which Nation they were a part, never knew what belonged to an abſolute deſpotick power in their Princes. And after the *Saxons* coming in, and the *Heptarchy* having been erected in this Iſland, the Ancient form of Government was not altered, as I ſhall prove by and by; therefore though the Monkiſh Writers of thoſe times, have been ſhort and obſcure, in that which is moſt material in a Hiſtory, *viz.* the form of their Government, and manner of ſucceſſion to the Crown amongſt them; ſtuffing up their books with unneceſſary ſtories

of miracles, and foundations of Churches, and Abbeys: Yet so much is to be pickt out of them, that the Government of the *West-Saxons* which was that on which our Monarchy is grafted, was not despotical, but limited by Laws, that the King could not seise mens lands or goods without Process; that he could not make Laws without the consent of his *Wittena Gemote*, or Great Counsel: Nor take away mens lives, without a Legal trial by their Peers, and that this Government hath never been altered, but confirmed by their Successors both of the *Danish* and *Norman* Race; as appears by their Charters and confirmations, and many confirmations of *Magna Charta*, and other Statutes; as there is no man that is but moderately vers'd in the history, and Laws of his Country, but very well knows: and that this opinion of *Englands* being a limited Monarchy is no new one, but owned to be so by our Kings themselves: We may appeal to the last words of *Magna Charta* it self, *Concessimus etiam eisdem, pro nobis et hæredibus nostris, quod nec nos nec hæredes nostri aliquid perquirenmus, per quod libertates in hac Charta contentæ infringantur vel infirmentur. Et si ab aliquo contra hoc aliquid perquisitum fuerit, nihil valeat, et pro nullo habeatur.* And this his late Majesty of blessed memory, who best knew the extent of his own power, says in his Declaration from *New-market Martij, 9. 1641. That the Law to be the measure of his power; and if the Laws are the measure of it, then his power is limited; for what is a Measure, but the bounds or limits of the thing measured?* So likewise in his Answer to both Houses concerning the Militia, speaking of the men named by him, *If more power shall be thought fit to be granted to them, than by Law is in the Crown it self; His Majesty holds it reasonable that the same be by Law first vested in him, with power to transfer it to those persons.* In which passage his Majesty plainly grants, that the power of the Crown is limited

See. Mr. Petyt's *Preface to his forementioned Treatise.*

limited by Law, and that the King hath no other Prerogatives then are vested in him thereby: Nor was this any new Doctrine, or indicted by persons disaffected to Monarchy, and which had but newly come off from the Parliament side, by the apparent Justice of his late Majesties Cause, as Mr. *Hobs* in his little Dialogue of the civil wars of *England* doth insinuate, but was the opinion of the ancient Lawyers many hundred years ago: *Bracton* who lived in the time of *H.* 2. writes thus *Li. I. Cap.* 8. *Ipse autem Rex non debet esse sub homine sed sub Deo et Lege, quia Lex facit Regem. Attribuit igitur Rex Legi, quod Lex attribuit Ei.* viz. *dominationem, et potentiam. Non est enim Rex ubi dominatur voluntas, et non Lex.* And *Li. III Cap. 9. Rex est ubi bene Regit, Tyrannus dum populum sibi creditum* violenta opprimit dominatione, *quod hoc sanxit lex humana, quod leges ligent suum Laterem*; if this be law we have a Tyrant as well described, as by any difinition in *Aristotle.* Also that the King alone cannot make a Law. *Lib I. Cap.* 1. So likewise the Lord Chancellour *Fortescue* in his excellent treatise *de laudibus Legum Angliæ* dedicated to Prince *Edward* only Son to *Henry* the *VI.* and certainly writing to him whom it most concerned to know those Prerogatives he might one day enjoy, he would not make them less than really they were. *Cap.* 9. He instructs the Prince thus: *non potest Rex* Angliæ *ad libitum suum mutare Leges Regni sui* Principatu *namque nedum regali, sed et politico ipse sito* Populo *dominatur*: Populus *enim iis Legibus gubernatur quas ipse fert, cum Legis vigorem habeat quicquid de consilio, et de consensu Magnatum et Reipublicæ communi sponsione authoritate Regis sive* Principis *præcedente iuste fuerit difinitum, et approbatum.* And the Parliament *Rol.* 18. E. 1. *num.* 41. (quoted in Lord *Cook*'s Inst. 4. *pt.*) acknowledges the same: *Homines de* Cheshire *qui onerati sunt de servientibus Pacis sustentandis, petunt exonerari de oneribus Statuti: Winton' &c.* The Kings Answer

swer was, *Rex non habet consilium mutandi consuetudines, nec statuta revocandi.* So likewise *Cap.* 18. speaking of the Laws of England; *non enim emanant illa à Principis solùm voluntate, ut Leges in Regnis quæ tantum regaliter gubernantur, ubi quandoque statuta ita constituentis procurant commoditatem singularem, quod in ejus subditorum ipsum redundant dispendium et jacturam, sed concito reformari possunt dum non sine* Communitatis *et Procerum regni illius assensu* primitus *emanarunt*: so *Cap.* 13. *Et ut non potest caput corporis Physici nervos suos commutare neque membris suis proprias vires, et propria sanguinis alimenta denegare, nec Rex qui caput est corporis Politici, mutare potest Leges corporis illius, nec ejusdem Populi substantias proprias subtrahere reclamantibus iis, an invitis.* And concludes thus, *habes jam Princeps, institutionis politici Regni formam, quam Rex ejus in Leges ipsius aut subditos valeat exercere, ad tutelam namque legis, subditorum, ac eorum corporum et bonorum, Rex hujusmodi erectus est: et ad hanc potestatem a* Populo effluxam *ipse habet, quo ei non liceat potestate alia suo Populo dominari.* I had not been so large on a Subject which is so known and evident, and which no sober man will deny, were it not for two reasons; the first is to satisfy Divines, and men of other professions, who have not leasure to read old Law Books, and perhaps may lye under some doubts what the true form of Government of this Kingdom hath ever been: and in the next place, to confute the Author's Cavil, and other mens of his way to the contrary: Authority being the best Judge in this Case, as *Diogenes* confuted *Zenos*'s Arguments against motion (not by disputeing) but walking: So now whether the Treatise this Author writes against, be *but a Platonick Monarchy, or a better piece of Poetry* than *Policy* I will not dispute; but this much I think I may safely affirm, that the Government he describes is not a Creature to be found (God be thanked) on English ground, and for those that so much

much admire it, let them go find it by the banks of *Nilus*, or *Ganges* where the Sun (that late Emblem of universal Monarchy) is so indulgent to the Creatures he produces, that those which he cannot make grow here beyond an *Eut*, or *Adder*, are there made Crocodiles, and Serpents that devour a man at a bit. So that if you should stile them the representatives of the Monarchs of those Climates, Travellers will say you do not wrong them. I shall now proceed to answer the most material Objection of this Authors, and not imitate him who in this Treatise passes by all the Arguments which Mr. *H.* brings to prove that this is no absolute despotick, but at least a limited Monarchy, as silently as Commentators do hard places that puzle them. Let us therefore look back to his Patriarcha, where he gives us a distincton of the School-men, 'whereby they subject Kings to the directive, but not 'to the coactive power of Laws, and is a confession 'that Kings are not bound by the positive Laws of any 'Nation: Since the compulsory power of Laws is that 'which properly makes Laws to be Laws, by binding 'men by rewards and punishments to obedience; 'whereas the direction of the Law, is but like the ad-'vice, and direction which the Kings Councel gives 'the King, which no man says is a Law to the King. I grant this distinction, provided the Author will likewise admit another, that though the King is not obliged by Laws, or to any Judges of them as to Superiors; or as to the compulsory Power of them: Yet in respect of God, and his own Conscience, he is still obliged to observe them, and not to dispence with them in those cases which the Law does not give him a power so to do; and since it is true that it is the rewards and punishments annext that give laws their Sanction, therefore there are certain rewards which will naturally bless Princes that keep their Laws, such as peace of Conscience, Security, the affections of their

People

People &c. and if I call the contrary effects to these natural punishments, that are commonly the consequences of the breach of them, I think I should not speak absurdly; since the Author himself tells us P. 93. *Albeit Kings who make the Laws, are (as King* James *there teacheth us) above Laws, yet will they rule their Subjects by the Law, and a King governing in a setled Kingdom leaves to be a King & degenerates into a Tyrant so soon as he seems to rule* (it is there printed in the Copy *according*, which is nonsence) *contrary to his Laws*: and certainly a Tyrant can never promise himself security, either from his own Conscience, or from Men; but whereas he says the direction of the Law is only like the advice which the Kings Councel gives him, which no man says is a Law to him, is false; for the Kings Councel should never advise him to do that which he cannot whith a safe Conscience perform; but the Kings Conscience can never advise him to break those Laws that are the boundaries between his Prerogatives, and the Peoples just Rights; and therefore though it is true in some cases where the King sees the Law rigorous, or doubtful, he may mitigate or interpret the Execution thereof by his Judges, to whom he hath made over that power in the intervalls of Parliament, and though perhaps some particular Statutes may by his Authority be suspended, for causes best known to himself and Council; Yet this does not extend to Laws of publick concernment: and for that I will appeal to the Conscience of any true Son of the Church of *England*, whether he thinks (for Example) that the Proclamation for indulgence contrary to the Statute made against Conventicles were binding or no: Neither is this that follows consistent with what the Author hath said before: *That although a King do frame all his Actions to be according to the Laws, yet he is not bound thereto but at his good will, and for good Example, or so far forth as the general Law of the safety of the Commonwealth doth naturally bind him; For in such sort only positive Laws may*

may be said to bind the King, not by being positive, but as they are naturally the best, and only means for the preservation of the Common-wealth! So that if a King thinks any, the firmest and most indispensible Laws that have been made, (suppose, *Magna Charta*, or the Statute *de Tallagio non concedendo* for example) not to be for the safety of the Commonweal, it is but his declaring that he will have them no longer observed, and the work is done, nor will this that follows help it, though true, *that all Kings even Tyrants and Conquerors are bound to preserve the Lands, Goods, Liberties and lives of all their Subjects, not by any Municipal Law so much as the natural Law of a Father, which binds them to ratifie the Acts of their Fore-Fathers, and Predecessors in things necessary for the publick Good of the Subjects.*

All which is very well, but if this Monarch thus succeeding in the place of the natural Father, is the sole Judge of what things are necessary for the common good, what if he have a mind to keep these Children (for Children, and subjects, slaves are all one with this Authour) as some unnatural Fathers do, as cheap as they can, or to make the most of them, will let them enjoy no more but the scanty necessaries of life; and will think fair water, brown bread and wooden shooes sufficient for a Farmer, and 300 *l.* or 400 *l. per annum* enough in Conscience for a Country Gentleman, or desiring to be absolute, (and therefore to have a constant standing Army to raise mony with) as some Monarchs do, and being resolved that for the future all the just rights and priviledges of his Clergy Nobility and People shall signifie nothing, will take all the over-plus of his Childrens Estates, leaving them no more then a poor and miserable subsistence, he may lawfully do what he will with his own, and it is all his upon the first intimation of his pleasure by Edict, or Proclamation: But perhaps some honest Divine may start up, and tell him he will be damned for thus abusing his power, or breaking his Coronation Oath: what

What if this Father of his people shall laugh at him for a fool, and think himself too cunning to believe any such thing, or what if his Son, or Successor be resolved not to run his head any more into the snare of a Coronation Oath, but finding himself invested in all the absolute power of his Predecessour without any unjust act of his own (since we know Princes seldome loose any thing they have once got) will exercise it as he pleases for his own humour or glory, and thinks himself not obliged in Conscience to restore any of those rights his Predecessor hath usuped upon his People. I know not what benefit this may be to the Prince, but this I am sure of; it would very little mend the Subjects condition to be told their former Monarch was damned, or that this may follow him, when they are now slaves; nor is this a mere *Chimera* since a Neighbouring people over against us, lost their liberties by much such a kind of proceeding. *And therefore this Authour hath found out a very fit interpretation of the Kings Coronation Oath, for whereas he used to Swear that he will cause equal and upright justice to be administred in all his judgments, and to use discretion with mercy, and truth according to his power, and that the just Laws and customes* (quas vulgus elegerit) I will not translate it *shall chuse to be observed*, to the honour of God. Yet our Author will have the King obliged to keep no laws but what he in his discretion Judges to be upright, which is to make the Oath signifie just nothing, as I have proved already, wherein he abominably perverts the sense of this Oath, for that which he puts first is really last. And the words by which he Swears to observe the Laws, and customes, granted by King *Edward*, and other his Predecessors, are absolute, and without any reservation, or restriction; and as for the last clause where the King Swears to observe and protect *justas Leges, & consuetudines*, (which he translates upright Laws, and customes) this word *just* is

Vide Iuramenta Regis quando coronatur old Stat. ed 1555.

juſtas in this place is not put reſtrictively (as any man may ſee that conſiders the ſenſe of the words) but only by way of Epithite ſuppoſing that the People would not chuſe any laws to be obſerved, but thoſe that are juſt, and upright, but the Author omits here *quas populus Elegerit*, as a ſentence that does not at all pleaſe him; though it be in all the Copies of the old Coronation Oaths of our Kings: and he may as well deny that they tooke any other clauſe, as this: yet ſince the Author himſelf gives us an interpretation of theſe words in his Freeholders inqueſt, *pag.* 62. which will by his own ſhowing make theſe clauſes *juſtas Leges, & conſuetudines*, not to extend to all laws and cuſtomes in generall, but thoſe *quas vulgus elegerit*, that is as he there interprets it the Cuſtomes which the vulgar *ſhall chuſe, and it is the vulgus or common people only who chuſe cuſtomes, common uſage time out of mind creates a cuſtome, nq where can ſo common a uſage be found as among the vulgar*, &c. *If a cuſtome be common through the whole Kingdom, it is all one with the common law in* England, which is ſaid to be common cuſtome; that in plain terms to maintain the cuſtomes which the vulgar ſhall chuſe, is the common Laws of *England*, ſo that in the Authours own ſenſe it ſhall not ſignifie ſuch Laws which the King himſelf hath already choſen, and eſtabliſht, but only thoſe which the people have choſen, and in this ſenſe perhaps it was part of the Oath of *Richard* II. to aboliſh all evil, unjuſt Laws; that is, evil vulgar cuſtomes, and to aboliſh them whenever they ſhould be offred him by bill. But I do not read that any King or Queen ſince *Richard* II. took that clauſe he mentions, and perhaps King *Richard* took it in the Authours ſenſe, and found ſuch interpreters to his mind, and that made him prove ſuch a King as he was, to endeavour to deſtroy all the Laws and liberties of this Nation, burning and cancelling the Records of Parliament, and indeed there was no need of any, if it be true which he did not ſtick to affirme, *that the Laws of*

of England *were only to be found in his head, or his breaſt; but the Authour though he grants (for it were undutiful to contradict ſo wiſe a King as King* James,) *that a King Governing in a ſetled Kingdom, leaves to be a King, and degenerates into a Tyrant ſo ſoon as he ſeems to rule contrary to his Laws*, yet will by no means have this King counted a Tyrant. But I will not trouble my ſelf about trifles, much leſs maintaine that the Lords or Commons had any Authority to uſe King *Richard* as they did; ſince it is a contradiction that any power ſhould Judge that, on which it depends and who dieing, that is immediatly diſſolved, ſince our Kings have ever been truſted with the Prerogative of calling and diſſolving Parliaments, and certainly they can never be ſuppoſed to let them ſit to depoſe themſelves. And of this opinion was *Bracton lib. 1. cap. 8. Si autem ab eo petatur eum (breve non currat contra ipſum) Locus erit ſupplicationi, quod factum ſuum corrigat & emendat, quod ſi non fecerit, ſatis ſufficit ei ad pœnam, quod Dominum expectet ultorem.*

But to return where we left off, if it be granted that Kings do Swear to obſerve all the laws of their Kingdomes, yet this Author is ſo good a caſuiſt, that he can as eaſily abſolve their Conſciences as the Pope himſelf; *For ſays he, no man can think it reaſon that Kings ſhould be more bound by their voluntary Oaths then Common perſons are by theirs, now if a private man make a contract, either with or without an Oath, he is no farther bound then the equity and juſtice of the contract ties him; for a man may have relief againſt an unreaſonable, and unjuſt promiſe, if either deceit or Errour or force or fear induced him thereunto: Or if it be hurtful or grievous in the performance; and ſince the Laws in many caſes give the King a Prerogative above common Perſons, I ſee* no reaſon why he ſhould be denyed that Privileg which the meaneſt of his Subjects doth enjoy. *Patriarch p. 97.*

I know not to what end the Authour writ this Paragrph, unleſs it were to make the world beleive, that when

when Kings take their Coronation Oaths they do it not freely; but only are drawn in, by the *Bishops*, or overawed by the great *Lords*; that they do not understand what they do, and so are meerly chousled, or frighted into it by Fraud, or Force. A very fine excuse for a Prince for so solemn an action, and which he hath had time enough to consider of, and advise with his own Conscience, whether he may take it or no: That he can be said to be induced by Fear or Force, who was a lawful King before, and only uses this ceremony to let his Subjects see the reallity of his intentions towards them. And that nothing shall prevail with him to break his Oath which he hath made before God. That he will preserve those Laws and rights of his Subjects, which he does not grant but find them in possession of: But as for this relief against an unreasonable, or unjust promise as the Author terms it. If by those words he means a promise, or grant that may tend to some damage, or inconvenience of the Promiser or Grantor, to some right or Jurisdiction that the Grantor might have enjoyed, had it not been granted away, either by his Ancestors, or himself; If the *Promise* were full, and perfect, or the grant not obtained either by fear, force, or Fraud; all Civilians, and Divines hold that the Promiser, or Grantor is obliged to the Promise, and cannot take away the thing granted, though it were in his power so to do.

For *David* makes it part of the Character *Psal. XV.* 4. of the upright man, and who shall dwell in Gods Tabernacle, that sweareth to his own hurt, and changeth not. But our Author hath found a way to set all men loose from their Oaths, or contracts if they be any thing grievous, or hurtful in the performance, that is if the Promiser, or Grantor think it so: and Kings must have at least as much, and in most cases a greater Prerogative than common Persons. 'It was a thousand pities this Author was not Confessor to King *H. III.* He 'might then have saved him the sending to *Rome* for a 'dispensation of his Oath for the observance of *Magna charta*, which he had made before in Parliament at *Oxford. Anno Regni.* 21. and taught him and all Princes else 'a nearer way to be freed from their Coronation Oaths, 'if ever they find them uneasie to them.

But *Edward* 1. that great Prince was of another mind, who in his Letter to the Pope concerning the Tribute

granted by King *John*. *Et super hoc nequivimus ejusdem deliberationem habere cum Prelatis et proceribus ante dictis, sine* quorum Communicato Concilio Sanctitati *vestræ non possumus respondere, et jure jurando Coronatione nostra præstito sumus astricti, quod Jura* Regni *servabimus illibita, nec aliquid quod Diadema tangat regni ejusdem absque ipsorum re quisito comsilio facimus.* So likewise that Victorious Prince *Edward III.* in the preamble to the new Statute of Provisors *Anno* Regni. 25. Which Statute *viz.* repealing a former Law *viz.* 35. *Edward. I.* which said this Statute holdeth always his force, and was never defeated or annulled in any point, and by so much as he is *viz.* the King bound by his Oath to do the same, to be kept as the Law of the Realm.

Mat. Paris. P. 435.

But I come now to the last main Objection which the Author makes against limited Monarchy; and by which he hopes to prove it an absolute Monarchy: I will set down the difference between our Author, and Mr. *H.* upon whom he animadverts in their own words. 'First 'Mr. *H.* holds that the King himself in a limited Monar-'chy is not to be resisted or punished any more then in 'absolute Monarchy, and so can doe no wrong in his own 'person.

'Yet if he this limited Monarch transcends his bounds, 'if he commands against Law, the subject is not Legally 'bound to obedience in such cases, whereupon our Au-'thor asks who shall be Judge, whether the Monarch 'transcend his bounds? Mr. *H.* conceives that in a limited 'legal Monarchy, there can be no stated external Judge 'of the Monarch's actions, if there grow a fundamental 'variance betwixt him, and the Community. And in an-'other place confesses that there can be no Judge Legal, 'and constituted within that form of Government whereupon 'the Author thinks he hath got a great advantage over our Gentle-'man, and therefore is resolved to put the question home, and 'demands of him if there be a variance betwixt the Monarch, and 'any of the meanest persons of the community who shall be judg? 'for instance, the King commands or gives Judgment against 'me: I reply his commands are illegal, and his Judgments not ac-'cording to Law: who must judge? if the Monarch himself judge, 'then you destroy the frame of the Government, and make it 'absolute: For saith Mr *H.* to confine a Monarch to a Law, 'and then to make him Judge of his own deviations from

'from that Law, is to obsolve him from all Law, and 'on the other side, if any or all the People may Judg, 'then you put the Soveraignty in the whole Body, 'or part of it, and destroy the Being of Monarchy, and 'thus this Author (says Sir *R. A.*) hath caught 'himself in a plain Dilemma: if the King be Judg, 'then he is no limited Monarch, if the people Judg, 'then he is no Monarch at all: so farewell limited 'Monarchy, nay farewell all Government if there be 'no Judg.

But as sure as this Author thinks he hath his Adversary at an Advantage, *yet I do not see that he hath given him so much as a Foyl, much less a fair Fall*, for all this terrible Dilemma. For first, it is for this, that if the people be Judg when the Princes commands are unlawful, it will therefore destroy the being of Monarchy; suppose a King should command all his Subjects to go to Mass, which they being Protestants judg Idolatrous. If they obey him, they must commit Idolatry, if they disobey him he is then no Monarch. But perhaps it will be replied, that it is true, the Subjects may judg when the Command is unlawful, but if they cannot yield active obedience, yet they must yield a passive one, and submit patiently to the Penalties he pleases to lay upon them for not going. This Answer will not serve turn, for the Authors Objection is general, if the people judg, (he does not say resist) he is no Monarch at all: and refusing to go to Mass is a judging the Princes Command unlawful. But Mr. *Hobs*, from whom this Argument is borrowed, drives it more home, (if the Authors friends will admit the Consequence) & affirms truely upon his own principles, that if the Subject do judg in any case whatever, of what is lawful or unlawful, good or evil, it quite destroys the Monarchy. For the Mo-

narch is sole Judg of all Actions, whether they be Lawful or not. Now when the Monarch hath declared his Will, that all his Subjects should go to Mass, surely not to go, is to disobey the Monarchs Command. Since his will was, they should absolutely go to Mass, nor leave it to their discretion either to go to Mass, or undergo the Penalty ordained for not going. Lastly, neither does the Judgment of the people concerning their own safty, in many cases, take away the absolute power of a Monarch. For a General of an Army hath an absolute Power over the Lives of his Soldiers but does it derogate from his absolute power, that he knowes he shall not be obeyed if he command his Men to leap down a Precipice, or to kill each other?

'But Mr. *H.* proposes two or three expedients to 'help this inconvenience of the want of a publick 'Judg. First. He says a Subject is bound to yield 'to a Magistrate, where he cannot *de jure* challeng 'obedience, if it be in a thing in which he can pos-'sibly do it without subversion to the Goverment, 'and in which his Act may not be made a leading 'Case, and so bring on a prescription against public 'liberty. And again, he saith, If the Act in which 'the Exorbitance, or Transgression of the Monarch 'is supposed to be, be of lesser moment, and not 'striking at the very Being of the Govenrment, it 'ought to be borne by publick patience, rather then to endanger the Being of the State. But these Salvoes however moderate and sober, will not please our Author at all. 'For he will have 'them to be but Fig-leaves to cover 'the nakedness of Mr. H's limited Mo-'narch formed upon weak supposals in cases of les-'ser moment. For if the Monarch be to govern 'only according to Law, no transgression of his 'can

Anarchy 285.

'can be of no small moment, if he break the bounds 'of Law; for it is a subversion of the Government 'it self, and may be a leading case, and so bring on 'a prescription against publick Liberty; and strikes 'at the very being of the Government it self; and 'let the case be never so small, yet if there be ille-'gality in the Act, it strikes at the very being of li-'mited Monarchy, which is to be legal, unless the 'Author will say, as in effect he doth, that his limi-'ted Monarch must govern according to Law, in 'great & publick matters only, but that in smaller, 'and which concern private Men, he may rule ac-'cording to his own will.

All which, although it look fine, yet examined to the bottom signifies little, for it is not true, that every the least transgression of the bounds of Law, is a subversion of the Government it self, since if done perhaps only to one or a few persons, it does not follow that therefore it must be a leading case, and so bring on a prescription against publick Liberty in all cases. Neither does the Subjects bearing with it not contribute otherwise then accidentally to this breach of Liberty. Since he is obliged to bear it, not because it is just, but because he either may hope to have redress by the ordinary course of Law, or else by petitioning the Assembly of Estates, when they meet, who are partly ordained on purpose to remonstrate the Grievances of Subjects to their Prince, and thereupon, to have them redressed. Nor is this limited Monarch (as the Author would infer) less obliged to govern according to Law, in smaller or private matters, then in great and publick ones. Only in many smaller matters, Princes or their Officers may through ignorance or inadvertency sometimes transgress the true bounds of Law, which they would not do per-

haps if they were better informed. And so likewise if the Subject bear it, it is not from the Legality of the Act, but from this great Maxime in Law and Reason, that a mischief to some private men, is better than an inconvenience in giving every private person power, that thinks himself injured by the Prince or his Officers, to be his own Judg and right himself by force; since that were contrary to the great duty of every good Subject of endeavouring to preserve the common peace and happiness of his Country, which ought to be preferred before any private mans Interest. So on the other side if the oppression or breach of Laws be general, and extend to all the People alike: if the reason of the case alter, why may not the practice do so too. 'But 'Mr. *H.* gives us another remedy in this case, that 'if the Monarchs Act of Exorbitancy or Transgression be mortal, and such as suffered, dissolves the 'Frame of the Government and publick Liberty, 'then the illegality is to be laid open, and redress-'ment sought by Petition. Which is true, for an 'Appeal to the Law from the violence of subordi-'nate Ministers, is really a Petition for Justice to the 'King himself, who is by the Law supposed present 'in the persons of his Judges that represent him: 'and this the Author himself in a better humour 'does confess in his *Patriarcha* P. 93. The people 'have the Law as a familiar interpreter of the Kings 'pleasure, which being published throughout the 'Kingdom doth represent the presence and Majesty 'of the King; also the Judges and Magistrates are 'restrained by the common Rules of Law from 'using their own Liberty to the injury of others, 'since they are to judg according to the Laws, and 'not to follow their own Opinions. And because 'it might so happen that the King may be some-'times

'times surprised or importuned to write Orders, 'or Letters to the Judges to direct them to act contrary to the Law. The King himself in Parliament hath declared, what Oath these Justices shall take when they are admitted into their Office where among other things they swear thus. *And that* ye deny no man common right, *by the Kings* Letters nor *none* other mans, *nor for none other cause, and in case such Letters do come to you contrary to the Law, that ye do nothing by such Letters but certifie the King thereof, and proceed to execute the Law, notwithstanding the same Letters, and concludes thus. And in case ye be from henceforth found in default in any of the points aforesaid,* ye shall be at the Kings will of Body, Lands, or Goods, thereof to be done as shall please him. as God help you, *&c.* And the Lord Chief-Justice *Anderson* and his Fellow-Justices in the Common-Pleas, who upon so great a point as *Cavendishes* Case was, 35 *El.* having consulted with all the Judges of *England*, delivered their Opinions solemnly in writing, that *the Queen was obliged by her Coronation-Oath, to keep the Laws*, and if they should not likewise observe them, they were forsworne. *Anderson*, p. 154, 155. Which Will of the Kings is supposed to be as well declared by the House of Peers *his Supreme Court of Justice*, as by any other way. See the Judgment upon *Tresillian* and the rest of his Brethren 21 *Rich.* 2. and the Impeachment of the House of Commons against the Judges that gave their Opinions contrary to Law, in the case of Ship-money, *Vide* the subsequent Act of Parliament, 17 *Car.* 1. Chap. 14. declaring that upon the Tax called Shipmoney and the Judgment *Entr.* 1. *H.* 7. 4. *b.* the judicial opinions of the said Justices and Barons were, and are contrary

See the Oath of the Justices, 18 E. 3.

to the Laws and Statutes of this Realm; and the Liberty of the Subjects, *&c.* which if it be truely observed, there can never be any fear of a Civil War or popular Commotion, since our Law supposes the King can do no wrong, that is in his own person. And therefore Sir *John Markham*, when Chief Justice told King *Edward* the 4th. *That the King cannot arrest any Man himself for suspition of Treason or Felony as other of his Lieges may: for if it be a wrong to the party grieved, he has no remedy. Therefore if any Act or thing be done to the Subject contrary to the Law, the Judges and Ministers of Justice are to be questioned and punished if the Laws are violated, and no reflection made upon the King, who is still supposed to do his Subjects Right. Si factam fuerit injustum* (says Bracton *per inde non fuerit factum Regis.* And thus much will serve for a further Answer to the Authors Query before mentioned. Whether it be a sin for a Subject to disobey the King if he command any thing contrary to his Laws, since all the Subjects both great and small are supposed to know what the Rights and Priviledges of the Subject are, as well as what are the Prerogatives of the Crown, nor are these reserved Cases so many or so difficult as the Author would make us believe; but that they may be easily understood without Appealing to any other Judg then the Conscience of every honest man. And though the King may for our common defence in time of War make Bulwarks upon another mans Land, or command a House to be pull'd down if the next be on Fire: or the Suburbs of a City to be demolished in time of War to make it serviceable; though men may justify their obedience in such Cases, yet it were folly and madness from thence to argue, that the King were as much to be obeyed if he commanded us to pull down a whole

whole Town for his Diverſion, or to take away all mens Lands or Goods at his Pleaſure. Since if he ſhould be ſo weak as to command it, it were his unhappineſs that he had no more underſtanding. But it would be our Crime, and we alone were puniſhable, if we ſhould obey ſuch a Command, and it is only upon this ſuppoſition, whether the ſufficiency of the Protection of our Laws and the integrity of the Judges, declared in the 14th of his now Majeſties Reign, by the Act concerning the Militia, be full? that it is a Traiterous Poſition that Arms may be taken by his Majeſties Authority againſt his Perſon, or againſt thoſe Commiſſioned by him, in perſuance of Military Commiſſions; Becauſe they ſuppoſe the King will not make uſe of the Militia for the deſtruction but the preſervation of the Subjects juſt Rights, and becauſe all Officers of the Army or Militia, are at their Peril, to take notice whether their Orders are according to Law or not. For they put it thus, though to take free Quarter or to hang a man by Martial-Law in time of War be lawful, yet to do ſo in time of Peace, though in the Kings Name, is Robbery and Murder. And of this Opinion is that antient Book called the *Mirror* of Juſtices, *Chap.* 1. *Sect.* 10. *De Larcine.*

En ceſt Peche (viz. Robbery) *chiont tonts ceux que pernont le' autrun per l' Authorite del Roy en le' autre Grand Seigneur ſans le gree de ceux aux queux les biens ſont.* 'Into this Crime (*viz.*) Robbery, all thoſe do fall who take the Goods of another by the Authority of the King, or any other great Lord without their Conſent. 'Nor I dare ſay, 'will any honeſt well-meaning Subject be diſcon-'tented, if in caſe of extream neceſſity, or ſome 'ſudden danger the King ſhould ſomewhat exceed

'his Prerogative for the defence of the Kingdom 'further then the Law will allow. Since in mat-'ters of private concern, a Man will not be angry 'with his Agent or Factor whom he hath impower-'ed to look after his Buſineſs in another Countrey, 'if the Agent, perceiving the perſon for whom he is 'intruſted, does not uuderſtand how his concerns 'in that place ſtand, and that the Affair will not 'permit him to ſend again for farther Orders, if he 'act contrary to his firſt Inſtructions: ſince if he 'did not, his Friends or Maſters buſineſs would be 'loſt. Much more in the caſe of a King, who be-'ſides the peoples concerns, with which he is in-'truſted, hath likewiſe his own Crown and Dignity 'at Stake. So likewiſe a King will eaſily pardon a 'Subject who upon a ſudden Inſurrection or Inva-'ſion, raiſes Forces and marches againſt the Enemy, 'without ſtaying for a Commiſſion; and when a 'Prince hath ſo well ſatisfied his Subjects that he 'never intends to make uſe of this Prerogative but 'for the good and preſervation of his people, he 'may do almoſt what he pleaſes, and no body 'will be concerned. *And* this made *Queen Elizabeth* 'meet with that great Affection and Confidence 'that ſhe did throughout her whole Reign; for 'though ſhe ſometimes exerciſed as high Acts of 'Prerogative as ſome of her Predeceſſors, yet ſhe had 'the good luck to have ſcarce any of them queſtion-'ed in Parliament: becauſe the whole Nation was ſa-'tisfied, ſhe acted for the beſt, and ſought no o-'ther end but the publick good and ſafety of the 'Kingdom. Which, had ſhe permitted *Spain* to have 'ſwallowed up *France* and the Low-Countries, it 'would have been a hard task to perſwade them.

But Mr. *H.* proceeds in the ſame Paragraph, and ſuppoſes that redreſsment by Petition failing (that is,

is, that the Judges either do not, or will not act according to their Oathes) then (if the Exorbitancy ‘ or transgression be mortal to the Government) ‘ prevention by resistance ought to be: and if it be ‘ apparent, and appeal be made to the Consciences ‘ of Mankind, then the Fundamental Laws of that ‘ Monarchy must judg and pronounce sentence in every mans Conscience, and every man (so far as concerns him) must follow the Evidence of Truth in his own Sense, to oppose or not oppose according as he can in Conscience acquit or Condemn the Act of the Governour or Monarch.

This our Author finds fault with: ‘ First, concerning the laying open of illegal Commands, he ‘ will have Mr. *H*'s meaning to be, that each private Man in his peculiar case, should make a publick Remonstrance to the World, of the illegal ‘ Acts of the Monarch, and then if upon his Petition he cannot be relieved according to his Desire, ‘ he ought to make Resistance. Whereupon the Author would know who can be Judg, whether the ‘ illegality be made sufficiently apparent? It is a ‘ main point, since every man is prone to flatter ‘ himself in his own cause, and to think it good, ‘ and that the wrong or injustice he suffers is apparent, when moderate and indifferent men can discover no such thing: and in this case the Judgment of the common people cannot be gathered or ‘ known by any possible means; or if it could, it ‘ were like to be various and erronious.

In which Animadversion of our Author, he first lays that to Mr. *H*'s Charge, which he does no where affirm; that every particular Subject, when injured, should make a publick remonstrance to the people; but only lay it open to the Monarch, or his Judges that represent him, by Petition. And sure there is a great

great deal of difference between a Petition, and a Remonſtrance. He does not ſay that every ſingle Subject failing of Redreſs by Petition, ought to make reſiſtance in his own caſe, for he before ſuppoſes the Exorbitant Act or Tranſgreſſion not to be Mortal, & ſuch as ſuffered, diſſolves the Frame of the Government and publick Liberty. And that in ſuch lighter caſes for the publick Peace, we ought to ſubmit and make no reſiſtance at all, but *de jure cedere*; which can never fall out, as long as this Tranſgreſſion or Exorbitance extends it ſelf only to ſome particular men.

2. Our Author will have no particular man to be Judg in his own Cauſe. I grant it, if by *Judg* he means *Execution* too, by publick reſiſtance. Otherwiſe a mans paſſing his judgment or declaring it, that he thinks himſelf injured, ſuppoſe by a Decree in *Chancery* or Act of Parliament, does not diſturb the Goverment or publick Peace. But he may if he pleaſe bring his Appeal, or a new Bill in Parliament and have the unjuſt Decree or Act reverſed, which he can never do, if he did believe he ought not to make the injuſtice or illegality of this Act or Decree apparent to thoſe that are to give him redreſs, but if this Exorbitant Act or Tranſgreſſion be general and preſſes upon all alike, I deny that the Judgment of the common people cannot be gathered or known by any poſſible means: or if it could it were like to be various and erroneous. For ſuppoſe the illegal Act were ſo publickly declared that for the future all Taxes ſhould be raiſed without conſent of Parliament: or that all menſhould be tried for their Lives without Juries. I would fain know whether the Judgment not only of the Commonalty, but of all the people, may not be eaſily known, though not gathered by Vote? or whether it would be various and erroneous in theſe caſes. Fr the people

though

though they do not argue so subtilly as our Author does, yet in their Sence of Feeling, when wrong'd or hurt, are seldome mistaken.

Then our Author is angry that Mr. *H. will have an Appeal made to the Consciences of all Mankind, that being made, that the Fundamental Laws must judg and pronounce Sentence in every mans own Conscience, here he would fain learn of Mr. H. or any other for him, what a Fundamental Law is, or else have but one Law named to him, that any Man shall say is a Fundamental Law of the Monarchy.*

Well, to do the Authors Friends a pleasure, (since he is dead himself) I will name one that he himself would deny to be one in this Monarchy; and that, is, that the Crown upon the death of the King should descend to the next Heir, and so we have one Fundamental Law, and I hope there may be more. But he says Mr. *H.* tells us, 'that the 'Common Laws are the Foundation, and the Statute 'Laws superstructive. Yet our Author thinks that 'Mr. *H.* dares say, that there is any one branch or 'part of the Common Law, but may be taken a-'way by Act of Parliament; for many points of 'the Common-Law (*de facto*) have, and (*de jure*) 'any point may be taken away. How can that be 'called a Fundamental, which hath and may be re-'moved, and yet the Statute Laws stand firm and 'Stable! It is contrary to the Nature of a Funda-'mental, for the Building to stand, when the Foun-'dation is taken away.

All which, is mere wrangling about the Metaphor of a Foundation and a Superstructure, as if such expressions required an absolute Physical Truth as they do in the things from which they are taken.

It is already granted, that all Laws in a limited Government, but those of Nature, and right Rea-

son

ſon are alterable, becauſe the Governmen it ſelf is ſo, and in reſpect of which alone they may be called Fundamental, or Foundations of the Government, but theſe being altered, it would ceaſe to be the ſame kind of Government it was before.

I will not affirm, but the people of this Nation may give away their preſent Rights of not having any Laws made, or Taxes impoſed upon them without their conſent, or of not being perpetually kept in Priſon or put to death without legal Trial.

But theſe being altered, it would ceaſe to be limited and turn to an abſolute Monarchy, and all Statutes concerning any of theſe would be ſo far Superſtructives, as to ſignify nothing when the Foundations are taken away, and indeed how any Statute Law made by Parliament could ſignify any thing when the Parliament is gone, I know not, ſince all Laws after that would depend upon the ſole will of the Monarch.

His ſecond Reaſon is, 'That the Common-Law 'is generally acknowledged to be nothing elſe but 'common Uſage or Cuſtome, which by length of 'time only obtains Authority: ſo that it follows 'in time after Government, but cannot go before it, 'or be the Rule of Government by any Original 'Radical Conſtitution.

Which is not true, as the Author hath laid it down; for all the parts of the Common-Law do not depend upon meer Cuſtome or Uſage taken up after the Government inſtituted: and therefore his conſequence that follows from this is falſe. For ſome parts of the Common-Law of *England*, are without doubt as antient as the Goverment it ſelf. Thus, though ſome parts of our Comnion-Law may have proceeded from ſome later Cuſtomes, or particular Judgments and reſolutions of the Judges in

ſeveral

ſeveral Ages, yet without doubt, Property in Goods and Land and Eſtates of Inheritance, and the manner of their deſcent are as antient (ſince they came over with our *Saxon* Anceſtors) as the Government it ſelf, ſince ſome of the Laws. As, that Brethren by the half-Blood, ſhould not be Heirs to each other. That an Eſtate ſhould rather Eſcheat then aſcend to the Father, upon the death of his, could only proceed from the Cuſtome of the antient *Saxons*. For certainly, had we not been uſed to them, we ſhould ſcarce allow them to be reaſonable. But it is in nothing more viſible then in thoſe Tenures (which the modern *Civilians* call *Feudat*) which *L. Ca.* 3. §. 23. *Grotius* tells us, are not to be found but among the *Germans*, and thoſe Nations derived from them, as both our *Saxons* and *Angles* were. So likewiſe that Fundamental Conſtitution of ordering all publick Affairs in General Councils or Aſſemblies of the Men of note, and thoſe that had a ſhare in the Land. *de minoribus rebus Principes Conſultant, de majoribus omnes, ita tamen ut ex qnoque quorum penes plebem arbitrium eſt, apud Principes prætractantur.* In this great Council they tried Offenders in Capital Crimes. *Licet apud concilium accuſare quoque & diſcrimen capitis intendere*, nor was the power of their Kings or Prince abſolute, as appears by the paſſages in the ſame Author. *Nec regibus infinita aut libera poteſtas*, &c. ſpeaking of the manner of their holding theſe publick Councils after ſilence commanded by the Prieſts. *Mox Rex, vel Princeps prout ætas cuique prout nobilitas, prout decus bellorum prout facundia eſt audiuntur, autoritate ſuadendi, magis quam jubendi.* And

Tacit. de Mor. Ger. cap. 40.

Id. Cap. 12.

Id. Cap. 7.

Id. Cap. 11.

And though our first *Saxon* Kings might have more conferred on them then this, yet it is altogether improbable, that *Hengest* and the rest of those Princes who erected an Heptarchy in this Island, comeing hither not as Monarchs over Subjects, but as Leaders of Voluntiers, who went to seek a new Country, should be so fond of a Government they never knew, as to give these their Gennerals an absolute despetick power over their persons and Estates, which they never had in their own Country; and by which Liberty, they had so long defended it against the utmost effects of the Roman Empire; therefore says the same Author, *Ne Parthi quidem sepius admonuere, quippe Regno Arsacis acrior est Germanorum Libertas.* The sence of which is, The *Parthians* themselves have not oftner rebuked us; for the *German*-Liberty is harder to be dealt with then the Monarchy of *Arsaces*. And as for the Antiquity and usefulness of these great Councils the Author himself hath confessed enough for our purpose, though he will not have our Parliament antienter then about 'the time of the Conquest, because until those days 'we cannot hear it was entirely united into one 'Kingdom, but it was either divided into several 'Kingdoms, or Governed by several Laws, as 'when *Julius Cæsar* Landed, he found four Kings 'in *Kent*. The *Saxons* divided us into seven King-'doms: and when they were united into a Monar-'chy, they had the *Danes* for their Companions, 'or Masters in the Empire, till *Edward* the Con-'fessors days. Since whose time the Kingdom of '*England* hath remained as it does.

Id. Cap 37.

Pat. p. 116, 117.

In which passage the Author hath discovered, either a great deal of Ignorance, or inadvertency in the

the History and Government of his Country. For first he Confesses that the English *Saxons* had a Meeting, which they called the Assembly of the Wise, termed in *Latine*, *Conventus Magnatum*, or *Præsentia Regis*, *Procerumque Prelatorum Collectorum*, or in general, *Magnum*, or *Commune concilium*, &c. All which Meetings may in a general sence be termed Parliaments: yet he will not allow, there could be any Parliaments assembled of the general Estates of the whole Kingdom, for the reason he gives us before. What he means by, *until about the time of the Conquest*, I know not; but this is certain, that from the time of King *Egbert*, who is reckoned the first Monarch, the great Council, or *Wittena Gemore* consisted of the General Estates of the *West-Saxon*-Kindom, and if the whole people of *England* had not their Representatives there, it was because they were represented by their Tributary Princes or Kings, who Governed Subordinately to this Monarch, until the coming of the *Danes*. Thus the West-angles had their particular Kings in the time of King *Ethelwolf* St. *Edmund* the last King being Conquered by the *Danes*. So likewise had the *Mercians* their King *Beorcod*; their last King being driven out by the same Invaders about the same time, and after the Kingdom was at Peace again, and the *Danes* in great part subdued or quiet, King *Alfred* Re-conquering the Mercian-Kingdom, gave it in Marriage to a *Saxon* Nobleman called *Etheldred*, who had Married his Daughter *Elsteda*, who was long after her Husbands Death Lady, or Queen of the *Mercians*; yet did these feudatory Princes always appear and make a Part in the *Wittena Gemore* or great Council of the Monarch, thus we may find in *Ingulphus* that *Withlafe* King of the *Mercians*

Rerum Anglick. Scriptores post Bedam. Ed Fra. P. 857.

cians made a promiſe of the Lands and Liberties of the Abby of *Croyland*, (which he after confirms by his Charter) *in Priſentia Dominorum meorum Egberti Regis Weſto-Saxoniæ & Athelwolwaſij filij ejus, coram pontificibus & proceribus totius Angliæ, in Civitate Lundini (ubi omnes Congregati ſumas* pro conſilio *capiendo contra Danicos Pyratas Littora Angliæ infeſtantes*) which certainly was a great Council. And that theſe Kings were tributary to the Weſt *Saxon* Monarch, the ſame Author tells a little further, that *Bertulph* Brother of *Witlafe*, ſucceeded his Nephew *Wimund*, and was Tributary to *Athelwolf* King of Weſt *Saxony*; and by his Charter confirms the ſame Lands and Liberties to the ſaid Monaſtery which had been granted by his Predeceſſors: and this was done and confirmed, *unanimi conſenſu totius præſentis concilij hic apud Kingsbury Anno incar Domini* 881. *&c. pro Regni negotis congregati*, and is thus ſubſcribed, *Ego Olfiac Pincerna, & Legatus Domini mei Regis* Ethelwolf, *& Filiorum ſuorum nomine illorum & omnium Weſtſaxonum iſtum Chirographum Regis Bertulphi plurimum Confirmavi. Ego Bertulphus Rex Mericorum palam omnibus prelatis & Proceribus Regni mei.* Which ſhews us, that beſides the General Council of the whole Kingdoms theſe Mercian Tributary Kings had a Particular Council or Parliament of their own Kingdom without whoſe conſent as alſo of their Paramount Monarch they could not part with the Lands, and Royalties belonging to their Crown. So likewiſe in the ſame Author, *Beorced* King of the *Mercians*, *Anno Domini* 868 confirms his Charter to the ſame Monaſtery at *Snotringham, coram fratribus, & amicis & omni populo meo in obſidione Paganorum Congregatis.* To which likewiſe his ſupreme Monarch *Elthred* King of the Weſt-*Saxons*, gives his conſent, and ſubſcribes after

Id. p. 860, 861.

ter the Biſhops: the like form we find in the paſſing of all the other Charters to this Monaſtery, quoted by the ſaid Author which are all of them confirmed by the *King* then Reigning, *& in præſentia Archiepiſcop. Epiſcop. Procerum* (or *optimatum Regni Collectorum.* And before the *King*dom came to be united under one ſupreme *King* or Monarch, there was alſo one great Council or Synod of the whole *Kingdom*, where the chief and moſt powerful *King* or Monarch of the Heptarchy preſided, and in which they made their general Eccleſiaſtical Canons, and alſo Civil Laws that were binding to the whole People of *England*, and to which Perſons that had been grieved or wronged by their particular *King*s appealed, and were righted, and to this general *Wittena Gemote*, that antient Writer *Will. Malmsbury*, ſpeaking of the antient Cuſtoms and Laws of *England* ſays were made *per generalem Senatum & populi Conventum & edictum:* therefore we find the firſt Synod or Council of *Cloveſho*, called by *Ethelbald King* of the *Mercians*, who was then chief *King* or Monarch as they called him of the Engliſh *Saxons*, and at which were preſent the ſaid *King*, with all his Princes and great Men: as alſo all the Biſhops of this Iſland: but it more plainly appears in the ſecond Council held at the ſame place, called by *Beornulf King* of *Mercia*, who preſided therein. You will find one of the firſt things they did, was to inquire whether any perſon had been unjuſtly dealt with, or unjuſtly ſpoil'd or oppreſt, whereupon *Wulfred* Arch-Biſhop of *Canterbury* complain'd of the violence and Avarice of *Kenwulf* late *King* of the Weſt-*Saxons*, which being fully proved, the ſaid Council ordered *Kenedrith* the *Abbeſs*, the

Anno Chriſt. 747.

Malm. *de geſt. pontific.*

Spelman. *Council.* p. 332.

daughter, and Heir of the ſaid *King*, to make ſatisfaction to the ſaid Arch-Biſhop: which was done accordingly, out of the Lands of the ſaid *King*, ſee it at large in *Spelmans* Councils. and Mr. *Somner* (that Learned Antiquary) in his Gloſſary to the *decem Scriptores* is clearly of opinion, that this was all one with a Parliament *Synodus magna. Parliamentum nuncupatur.* So likewiſe the Canons of the Synode or Council of *Catchyck*, *Annol*, were confirmed by *Offa* King of the *Mercians*, then Chief Monarch of this Iſland. *Tam Rex quam Principes ſui cum ſenatoribus terræ decreta ſigno Cracis firmarunt.* And further that each of the Kingdoms of the Heptarchy had its particular Councils or *Wittena Gemotes* appears by that famous Council called by *Ethelbert* King of *Kent*, about Six Years after his Reception of the Chriſtian Religion, which was called *communi concilium tam Cleri. quam Populi*: And no doubt this cuſtom came not in with Chriſtianity: the Clergy onely here ſucceeding in the room of the *Pagan* Prieſts, who among the *Germans* had always a place in their common Councils as we find in *Tacitus*. So likewiſe the firſt Laws we have extant were made by *Ina* King of the Weſt-*Saxons*, *Per commune concilium & aſſenſum omnium Epiſcoporum, & Principum Procerum, comitum, & omnium Sapientum, Seniorum, & Populorum totius Regni*: And whoever will but examine the ſaid Collection of Sr. *Henry Spelman*, will find almoſt all the Eccleſiaſtical Conſtitutions confirmed, if not made in the *Wittena Gemote*, the Great Synode or Council. So that what this Author ſays of the difference of the Laws, and Cuſtoms of the ſeveral Kingdoms during the Heptarchy, makes nothing

Spelman *Concil*, pag. 393.

See the paſſage before Cited, p. Spelman, *Con.* pag. 126.

thing againſt us, as long as we can prove that in the main, the Government of them all was alike in the three great *Liberties* of the *Subjects*, *viz.* Trial by a Mans equals, and abſolute Propriety in *Lands*, and *Goods* which the *Kings* could not juſtly take from them; and a Right to joyne in the making of all *Laws*, and raiſing Publick Taxes, or Contributions for War. So that without doubt theſe *Wittena Gemotes*, or great Councils were Ordained for ſome Nobler and Higher purpoſe, then either to give the *King* advice, what Wars to make, or what *Laws* to make, or barely to Remonſtrate their grievances (as this and ſome other Modern Authors would have it) for what *King* would call ſo great a Multitude thoſe Antient Parliaments conſiſted of) to be his Councellors: Or would call together the whole Body of a Nation, only to be made acquainted with their grievances, which he might have known with greater eaſe to himſelf, and leſs charge to the *Subjects*; by having them found by the Grand Inqueſt in the County-Court: And ſo to have been preſented to him by the Earl, or Alderman of each particular County; whereas we find theſe great Councils imploy'd in buſineſſes of a higher Nature; ſuch as the confirmation of the *Kings* Charters, the Propoſing of *Laws*, the Election of Archbiſhops, & other great Officers: So that the Higher any Man will look back, the more large, & uncontroulable he will find the Power of this great Aſſembly: Since before the Conqueſt, and afterwards too, we find them to have often Elected *Kings*, when the Children of their laſt *King* were either Minors, or ſuppoſed unfit to Govern. So that whoever will take the pains to conſult our Ancient *Saxon*, and *Engliſh* Hiſtorians, will find that there was never Anciently any Fundamental, or unalterable *Law* of *Succeſſion*: nor was it fixed for

any two Discents in a right *Line* from Father to *Son* without interruption, until *Henry* the Third: and then it lasted so but Four Generations reckoning him for the first. And as for these particular *Laws*, or Customs the Author mentions whether *King Edgar*, or *Alfred*, first Collected them, as were also Corrected and Confirmed by both the *Edwards*, to wit, the Elder and the Confessor; they still owed their Authority to the *King*, and his Barons and his People as *Malmesbury* before asserts. As for the *Danish Laws*, they never prevail'd, but in those Countrys which the *Danes* intirely Conquered, which consisted mostly of them: as *Norfolk*, *Suffolk*, and *Cambridge-shire*; but as for the rest of *England* it was governed by its own *Laws*, and enjoyed its Ancient Customs in the Reign of *King Knute* and his Successors of the *Danish* Race. But to come to the Authors next Reason why there can be no *Fundamental Laws in this Kingdom*, viz. *Because the Common Law being* unwritten, *doubtful and difficult, cannot but be an uncertain Rule to govern by, which is against the Nature of a Rule*, which always ought to be certain. This is almost the same Argument as the *Papists* make use of against the *Scriptures* being a Rule of Faith, only their Reason is that the *Scriptures* are obscure, because they are Written and need an Expositor, *viz.*, The Church, or Tradition; but with Authors it is contrary, the *Law* is doubtful, because unwritten, whereas all that understand any thing of the Nature of the *Laws* of *England*, know very well that the Common *Law*, whose Authority depends not on any set Form of Words, but the *Sence* and Reason

Vi. Lambert *de priscis Anglorum Legibus*, p. 19.

See the Charter of K. Knute quoted by Mr. Petyt. *in his said Treatise* pag. 146.

ſon of the *Law* is much leſs doubtful, and makes fewer Diſputes then the *Statute-Law*; but though it be granted that many things in the *Common Law*, are doubtful and difficult; yet in the Main and Fundamental parts of it, but juſt now recited, it is plain enough: (As the *Scriptures* though doubtful or obſcure in ſome things; yet are plain and certain in all Points neceſſary for *Salvation*; and why it is harder for an ordinary *Countrey* Fellow in a *Civil* Government, to know when he is *Condemned* to be Hang'd without trial or to have his Goods, or Money taken from him, by a Fellow in a Red-coat without any *Law*, then for him to judg in the *State* of Nature, when another Man lies with his Wife, or goes about to Rob or Murther him I know not. His laſt Reaſon againſt making *Common Law*, only to be the Foundation, when *Magna Charta* is excluded from being (according to Mr. *H.*) a Fundamental *Law*, and alſo all 'other *Statutes*, from being limitations to Monarchy, ſince the 'Fundamental *Laws* only are to be judg; and theſe 'are *Statute Laws* or *Superſtructures*. This is alſo meer Sophiſtry, ſince no Man in Metaphors or Similitudes ever expects an abſolute Truth; but what if the great part of the *Magna Charta* were Fundamental *Laws* before either *King Stephen*, or *King John* granted it, and that they did but reſtore what ſome of their Predeceſſors had before by oppreſſion taken from their Subjects; ſince there is little or none of it, but was part of *King Edward's Laws*, and conſequently the Ancient *Saxon Law* before the Conqueſt; and the like may be ſaid of all other Conſtitutions in limited Monarchies; as ſuppoſe, in *Denmark*, the Crown which was before Elective, is now by the Conceſſion of the Eſtates, become Succeſſive; I believe no Men of this Au-

thors Opinion will deny, that this is not now a Fundamental *Law* in that *Kindom*, and can never be altered without the Consent of the *King* and the Estates, and yet this is a *Law* that follows after the Government was Instituted; nor can I see any Reason, why this Rule may not hold as well on the Peoples side, as the *Kings*. Why Rules of Play may not be made as well after the Gamesters are in at Play, as when they first began; and may not be as well called Fundamental Laws of the Game; since if they are not observed, it may be lawful for any of the Gamesters to fling up his Cards, and play no more, though he be at play with (the Authors Natural Monarch) his own Father.

But our Author will not leave off so, but must give us one stabing Paragraph more against Fundamental Laws, which is thus, 'T*ruely the Conscience of all Mankind is a pretty large Tribunal*, for these 'Fundamental Laws to pronounce Sentence in. It 'is very much that Laws which in their own Nature 'are dumb and always need a Judg to pronounce 'Sentence, should now be able to speak, and pro-'nounce Sentence themselves: Such a Sentence sure-'ly must be upon the hearing of one Party only; 'for it is impossible for a Monarch to make his De-'fence and Answer, and produce his Witnesses: 'in every Mans Conscience in each Mans Cause; 'who will but question the Legality of the Monarchs 'Government. Certainly the Sentence cannot but 'be unjust, where but one Mans Tale is heard.

The first Sentence of this Paragraph is Answered sufficiently in the Observation upon the last Reason; but one. As for Written *Laws*, every Body knows they are a dumb *Letter*; as they lie in Ink & Paper, but as they come to be from thence Copied out and fixed in Mens Memories they are not dumb, neither always needs

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a Judg to pronounce Sentence, but are able enough to ſpeak oftentimes againſt the Sentence of an unjuſt Judg, and all the Standers by can eaſily tell if a Judg ſhould go about to Trie and Condemn a Man without ever Impanelling a Jury, nor needs there any Defence for the Judg in this caſe; but that a Man may ſafely give his Sentence in this *Caſe* without hearing the Judges Reaſon; ſince it is plain there can be none given. But as for the Monarch, it is ſuppoſed that he hath already made his Defence by his Atturney, and produced his Witneſſes when the Subject Petitioned his Judges to right him in what he conceived to be an Oppreſſion. So that the *Sentence cannot be unjuſt, where but one Mans Tale is heard.* But if the Judges in this *Caſe* (as in that of Ship-Money) cannot convince the Plantiff, but that he is oppreſſed contrary to *Law*. It is neither his nor their Judgment that can alter the *Caſe*: But if he can have no other remedy, he muſt even go home and expect better opportunities of being righted, as when there are honeſter Judges; or the calling of a Parliament, one of whoſe ends is to redreſs grievances of that kind by repreſenting to the *King* the faults and tranſgreſſions of his Miniſters, who only are puniſhable, and anſwerable for the injuſtice; ſince the *King* in his own Perſon can do none (as I have often affirmed) as for Mr. *H*'s concluſion, that every man muſt oppoſe or not oppoſe the Monarch, acoording to his own *Conſcience*, when he can have no other redreſs, I do not approve of it. For I will not ſuppoſe any time (inwhich this Nation is not oppreſed by a ſtanding Army, or Men of different Principles in Religion and Goverment;) but the Subject may find redreſs, if not at one time, yet at another. But the other part of the diſpute between our Author and Mr. *H*. whether this Power

of every Mans judging of the illegal Acts of the Mo-
'narch argues not a Superiority of those who Judg,
'over him who is Judged, because it is not Autho-
rative and Civil, but Moral residing in Reasonable
Creatures, and lawful for them to execute, which
is not so hard to understand as the Author makes it,
if we take this Word *Moral* (as it is plain Mr. *H.*
uses it) in contradiction to Civil Power, which
is such a right of acting as every private Man hath,
though he hath no Civil Authority. For a
Mans bare judging of the justice and injustice of
all Actions that concern him, or any other man, are
inseparable from the Nature of Man? whether they
are ordered by a Prince, or private Man; and a
Princes commanding this or that to be done, or
giving his judgment this way, or that way, cannot
alter these settled Rules whereby Men judg of right
and wrong. So that if this Author or his Friends
will make use of Mr. *Hobs*'s Arguments of the neces-
sity of the Judgment of one Man in all Points what-
ever, they must likewise take what follows, that
there is likewise no good, or evil, or right, or
wrong in the state of Nature, but what the Mo-
narch judges to be so; and when that is done, if the
Authors Friends have any Religion, let them see
what they will get by it; but the Author supposes
he hath sufficient advantage over Mr: *H.* because he
hath laid it down in the Page before going; 'That
'resistance ought to be made, and every Man must
'oppose, or not oppose, according as in Conscience
'he can acquit, or condemn the Acts of the Go-
'vernour. For (says the Author) if it enable
'a Man to resist, and oppose his *Governor without*
'*Question* 'tis Authoritative, and Civil. As for Mr.
Hobs's Assertion) I will not take upon me to med-
dle in so nice a Point, though he hath in all his
work

work ſuppoſed ſuch reſiſtance lawfull only in limited, or mixt Monarchies, and not in abſolute ones; and likewiſe then only when all other ways, and means hvae proved ineffectual; and of this opinion likewiſe the Author of the Excellent Poem, called, *Coopers Hill, ſeems to have been*; which I rather take notice of, becauſe the Author was never look't upon, but as a great Friend to Monarchy: and this Poem it ſelf ſpeaks him no *Presbyterian*. Both the Verſes and Sence are ſo good, that perhaps it may refreſh the Reader tired with Reading ſo much drie Arguments to run them over; ſpeaking of the King's hunting the Stag over *Runny-Mead*, where the great Charter was Seal'd, he falls into this reflection.

This a more innocent, and happy Chace,
Then when of Old, but in the ſelf ſame Place;
Fair Liberty purſued, and meant a Prey,
To lawleſs Power, here turned, and ſtood at Bay:
When in that remedy all hope was plac't,
Which was, or ſhould have been at leaſt the laſt.
Here was that Charter Seal'd wherein the Crown,
All marks of Arbitrary Power lays down:
Tyrant, and Slave, thoſe Names of hate and fear,
The happier Style of King, and Subject bear:
Happy, when both to the ſame Center move,
When Kings give Liberty, and Subjects love.
Therefore not long in force this Charter ſtood
Wanting that Seal, it muſt be ſeal'd in Blood.
The Subjects Armed, the more their Princes gave,
Th' advantage only took the more to crave:
Till Kings by giving, give themſelves away,
And even that Power, that ſhould deny betray.
Who gives conſtrain'd, him, his own fear reviles;
Not thankt, but ſcorn'd; nor are they gifts, but ſpoiles.

Thus

Thus Kings by grasping more then they could hold;
First made their subjects by oppression bold:
And Popular sway by forcing Kings to give
More then was fit for Subjects to receive,
Ran to the same extreams, and one excess,
Made both by striving to be greater, less.

The mischiefs of which extremes if rightly considered, would make all wise Princes, and good Subjects contented with their share; and endeavour to keep the Ballance even, and not to let it incline to either side. As to *Magna Charta*, I shall only add, that the Defence which the Nobility and People made of their Antient Rights was not condemned or declared Rebellion, either by *Magna Charta*, or any other Statute; but on the contrary, the breakers thereof were declared *ipso facto*, excommunicated the solemn form of which (and where the King himself who had so often broke his Oath bore a part) see in *Mat. Paris.* Anno 125. But to return to our Author (from whom I have a little degressed) I think he is mistaken in affirming all Power which enables in some cases a Man to resist or oppose his Governors, must be Authoritative and Civil: Therefore I shall put the same case again which I did about the beginning of these Observations concerning the Natural Power of Fathers: Suppose a Son cannot otherwise preserve his own Life, or that of his Mother, or Brothers from the rage of his mad or drunken Father; but by holding him, or binding him, if need be; I suppose no reasonable Man will deny the lawfullness of this action; and yet this Power over his Fathers Person is not Authoritative, or Civil, but Moral, and which the Son does exercise not as Superior to his Father, but as a Rational Creature obliged by the Laws of Na-

Nature, to preſerve his own being, and to endeavour the good preſervation of his Parents and Relations, not againſt Paternal Authority (which is always Rational, and for the good of the Family) but Brutiſh, Irrational force: Which God gives everyMan a right to judg of; ſo likewiſe if a Prince prove either a Madman, or a ſtark Fool, the power which their Subjects exerciſe in the ordering him, or confining him, and appointing Regents, or Protectors to Govern for him, and in his Name, is not Authoritative, or Civil, ſince the Prince himſelf who is the Fountain of all Authority, gave them no ſuch power, and therefore muſt be Natural, or Moral or reſiding in them as reaſonable Creatures. And of this we have had divers examples. Thus the *French* were forced to confine their Mad King *Charles* VI. and appoint his Queen to be Regent during his Diſtraction. So likewiſe *Joan* Queen of *Caſtile*, falling Diſtracted upon the Death of Her Husband *King Philip* I. Her Father *Ferdinand* governed in Her right; and after His deceaſe, Her Son *Charles* afterwards Emperor (ſhe continuing bereft of her underſtanding) was admitted *King* of *Caſtile*. And what hath been done lately in *Portugal*, is ſo notorious, that it needs not a particular Recital. So then Mr. *Hs.* expreſſion, That this is a Moral Judgment, reſiding in reaſonable Creatures, and lawful for them to execute, may not ſeem ſo abſurd as to imply what our Author endeavours to draw from *thence, that Authoritative*, and Civil *Judgment does not* reſide in *reaſonable Creatures*, nor can *be Lawfully* executed: ſince a Reaſonable Creature may be endued with another Power of acting precedent to that of the Civil.

So I ſhall likewiſe leave it to the Judgment of the impartial Reader, whether this concluſion fits

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ſo well with Anarchy as the Author will have it. As alſo whether Mr. *H.* take away all Government by leaving every Man to his own Conſcience to judg when the Prince oppreſſes him; for elſe how could he ſue for relief to the Prince himſelf; and ſo all actions a Prince did, or commanded would be juſt, and lawful though never ſo contrary to Reaſon, or poſitive Law. And ſo there would be truly (as Mr. *Hobs* aſſerts) no other meaſure of good, and evil, right or wrong but the Princes will.

But as I have no where maintained with Mr. *H.* in his Treatiſe, which our Author writes againſt, that ours is a mixt Monarchy though limited by Law; and therefore ſhall not maintain as he does the *King* to be one of the Three Eſtates (according to the Opinions held during the late Wars. So on the other ſide, that there is, and ever hath been ſuch a Government as a mixt Monarchy in ſome Countreys, I hope I have made out (notwithſtanding what this Author ſays to the contrary: and that theſe might more properly be called a mixt Monarchy, then mixt Ariſtocracy, or mixt Democracy. Since all Governments of this kind, take their denomination from the moſt Honourable and Predominant part in it, in whom the Executive or Authoritative part reſides.

And though perhaps ſome of theſe Governments may not ſeem ſo firm, ſo regular, and well conſtituted as others, it does not therefore follow that they are meer Anarchies, or that all mixtures, and limitations of Monarchy are vain, or unlawful as our *Author* imagines.

For a further proof of which, I will not give you my own ſence alone, but likewiſe of that eminent Civil Lawyer Mr. *Pufendorf* now or very lately Gretian Profeſſor in the Univerſity of *Upſal*, in his excellent work *De Jure Naturæ, & Gentium*, De-

Dedicated to *Charles* the 10th, now King of *Sweden*, and certainly holding a place of such profit and Credit in his Dominions, he would be too prudent to speak any thing prejudicial to Monarchy, or contrary to the Government of *Sweden* in particular. But to return to the matter in the above-mentioned Treatise, which for the benefit of those that cannot easily procure the Latine Original *Lib.* 7. *Cap.* 5. where speaking before of the several kinds of mixt Governments or Common-wealths. §. 14. He expresses himself to this purpose, as near as I can Translate it. Yet however, as I will not envy the commendation of constancy in any that will obstinately maintain the name of a mixt Common-wealth (to those sorts of Government he had before recited. So it seems to us more ready, and easie for the demonstrating divers *Phænomena* in certain Common-wealths, if we rather call those irregular Common-wealths, in which neither one alone of the three irregular Forms is found, neither an absolute Disease, or παρεκβασεις takes place, and which yet cannot be strictly referred to distinct confederate States. Concerning which, it is generally to be observed, that they depart in this from a regular Common-wealth, whilst in them all things do not seem to proceed as it were from one Soul, and will, neither to be governed by one Common Authority. Yet they differ from the confederate State, in that they are not compounded of distinct and perfect Common-wealths as these are. Yet they are far from those things that they count Diseases in a Common-wealth, because a Disease that always carries with it as it were a shameful and unallowable pretence since it proceeds from the evil administration of a good Form of Government, or from Laws and Institutions ill contrived,

trived and put together. Whereas this irregularity does not only intrinsically affect the very Form it self, but also being publickly, and lawfully establish'd, dares shew it self openly and without shame. So that a Disease ought to be supposed as not intended by those, who first Instituted this Commonwealth; since the irregularity arose, or was Confirmed from the will or approbation of those of whom the Government was at first Constituted; as a building is one thing, whose design agrees with the Rules of Architecture, but either its materials are naught, or else thorough the carelesness of the Dwellers, the Roof gapes, and the Walls are ready to fall; and another thing where a Model, though differing from the common Rules of Building is de-designed by the Owner or Architect himself. Lastly, some of these irregularities may have continued from the very Constitution of the Commonwealth, & some have crept in by success of time, and by insensible degrees. So that it might happen that a regular Form could not well be Instituted from the very Original of the Commonwealth, or some remarkable mutation of it, either by the Founders, or Authors of that mutation; either thorough their unskilfulness, or because the urgency of their affairs, or temper of the People did not permit them to consider of the means of doing it otherwise; nay oftentimes thorough either the carelesness of those that Govern, or by some other 'occasion, a Disease in-'vades the Commonwealth, which when it hath taken 'such deep Root, that it cannot be expelled with 'out the destruction of the Government, there 'is nothing then to be done, then that the Disease 'should cease to be so by a Publick Sanction, and 'that which hitherto was Usurpation, Faction or 'Contumacy, may for the future become a Priviledge 'or right.

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So much of Irregular Governments or Monarchies. But in the next Chapter of the same Book, the same *Author* speaking of the rights of the Supreme power; where when he hath first proved, what it is that makes any Power be called *Supreme* in a Common-wealth, and that he who hath this Power must be free from punishment, and not obnoxious to humane Laws; and that he hath confuted the Long Parliaments distinction of a real and Personal Majesty, and that *Kings* properly so called must be Superior to all the *People*; and having answered the Objections to the contrary, at last he proceeds § 7 to shew what absolute Power is, and that it is not found alike in all Forms of Common-wealths, and gives us the true Original of limited Governments; his sence is so good, that I shall not much contract what he says, but give it you as it is, § 7. 8, 9, 10. Besides it is apparent enough, that in some Common-wealths the Royal *Authority* is free in the exercise of its *Acts*, but restrained to a certain Mode of acting, from whence arose the distinction of Empire into limited, and absolute, where in the first place it is to be explained, what is meant by the word absolute, which is so odious to those who have had their Education in free Common-wealths. Indeed the same word being ill interpreted, may incite some *Princes* to vex their *Subjects*, and to commit a great deal of wickedness. Flatterers adding fuel to the Fire, who are still ready to encourage the *Ambition*, and other Vices of their *Prince* at this rate. Sir, you are absolute, therefore if it pleases you, it is lawful: therefore you may tire out your own Subjects, and all your Neighbours with unnecessary Wars, that you may appear a mighty Monarch, and set forth your own Glory; therefore you may affront, and insult over whom you please, and drain

drain your Subjects with all sorts of Exactions, that you may have wherewith to serve your Luxury, or Ambition; according to the Flattery of *Anaxarchus* to *Alexander* upon the death of *Clitus*, that right and wrong do sit by *Jupiter*; that whatsoever the King does, ought to be accounted right, and just so that there are some who go about to establish the absolute right of Kings by Arguments, that seem to have no other Measure thereof, then impunity, and a License to vex their People. Therefore as by an absolute Liberty of particular Men is meant, their judging of their own affairs and actions, according to their own, and not anothers judgment: yet still supposing their Obligation to the Laws of Nature, And that this Liberty belongs to all Men, who are not as yet subject to anothers will: so where divers Men have United together into a perfect Commonwealth, it is necessary for the same liberty or faculty of appointing, resolving all means necessary for their own safety, should now exist in the Supreme Power, as in a common Subject: which Liberty is accompanied with the Highest Authority, or a right of prescribing those means to the Subjects, and of compelling them to their Duty; therefore in every Commonwealth properly so called, there must be an absolute Power at least habitual, though not always exercised, for it must be answerable to Superior, and to have a right of Judging of its own affairs by its own Judgment and will. Therefore that absolute Power implies nothing in its self unjust, or intolerable is easie to be perceived from the ends of instituting of Commonwealths. For indeed we never constituted them, that neglecting Natural right, things should be done out of a wicked, and perverse Lust or Humour; but that the security and safety of singulars may be more conveniently looked after by the

Plutarch. *ad Princi. indoct.*

the joint assistances of many. So that they might more safely and with more leasure live after the Laws of Nature, and Virtue.

Yet when this Supreme *Authority* is considered as it is conferred upon one Man, or one Council consisting of all, or few, as in its proper subject, it is not always free, and absolute, but in some places limited by certain laws; indeed in *Democracies* the difference between absolute, and limited Power seems not so easie to be observed, for although in every Democracy there must needs continue certain Institutions received by use, or establisht by written Laws, at what time, and by whom the *People* should be *Assembled*, and *Publick* business proposed, and Executed, since without such things, a Common-wealth cannot be understood, yet since that Council consists of all the Citizens, in whom the *Soveraign Authority* resides; nothing can hinder, but those Constitutions may be altered or abrogated at any time by the same *People* that made them.

But in *Aristocracies* and Monarchies, where there are some who command, and others who obey, and so a Right arises to these from the Promises and Commands of the other. There does plainly appear a difference between an absolute and limited power, he is therefore absolute who exercises his *Authority* according to his own discretion, and not according to the Rule of any certain, or perpetual Constitutions; but as the present condition of affairs require, and who does so provide for the safety of the *Common*-wealth, as its occasions direct him: from whence the word absolute is so far from implying any thing unjust or hateful in it self, or intolerable for Free-men; that it should rather lay upon such absolute Princes necessity of greater care and circumspection, if they

will acquit themselves of their Duty, and discharge their Consciences as they ought; then on those to whom a certain form of dispatching publick Affairs is prescribed. So *Dio Chrysost. Orati.* 62. describes an absolute Prince thus, "a good Prince covets nothing "because he supposes himself to possess all things, he "abstains from pleasures, since he may enjoy what-"soever he pleases. He is juster than others, as he "who is to be an example of Justice to others. He "takes pleasure in business, because he labours of "his own accord. He loves the Laws, because he "does not fear them; and of all these he rightly per-"swades himself: for who hath greater need of Pru-"dence, then he who deliberates of such great Af-"fairs? Who of more exact Justice, then he who is "above the Laws? Who of a more severe modesty, "than he to whom all things are Lawful? Who of "greater Fortitude, than he who keeps all things in "safety?

Yet because the Judgment of any one man in discerning that which truly conduces to the publick safety may be easily deceived, neither is there in all Men that strength of mind, that they may know how in so great a Liberty to govern their Passions and Lusts (as *Herodian Li.* 1. *Cap.* 4. well observes) that it is difficult in the highest Liberty for a Man to restrain himself, & as it were to bridle his own desires. Therefore it seemed most convenient to divers people, not to commit so great a power to one mans sole discretion, and he no more free from Errors than others, but rather more subject to Vices; and therefore would rather prescribe the Prince a certain Form or Method of dispatching of publick Affairs, after it was at first found out what sort of constitutions, or forms of dispatching publick Affairs did best suit with the Genius of the people, and the Nature

Nature of the Common-wealth to be conſtituted. Neither is there any injury done to the Prince, who was at firſt raiſed to that Dignity by the free conſent of the people upon thoſe conditions. For if it ſeemed grievous to take the ſupreme *Authority*, becauſe he could not manage it as he pleaſed, he might have refuſed it if he would; ſo the Conſcience of the Oath by which they are obliged upon their taking this *Authority* ought to reſtrain them and their Succeſſors from going about to make themſelves abſolute by ſecret Machinations and Deſigns: Much leſs to ſubvert the Laws of the Kingdom by force. *Since an Oath is not more Religiouſly to be obſerved by any than he whom it moſt chiefly concerns not to be perjured.* *Plin. Paneg.* For that is too weak which ſome maintain, that ſince Kings are ordained by God, who injoyns them a true diſcharge of their Duty, which cannot be performed without the exerciſe of the moſt abſolute power: and therefore God is to be ſuppoſed to have conferred ſuch a proportion of power on all Kings, as that they ought not to ſuffer the leaſt part thereof to be diminiſhed or circumſcribed, and that the People can neither rightly require or oblige their King to it; no more than there can honeſtly be made ſuch a bargain between a Husband and a Wife that he ſhould connive at her ſtolen pleaſures. But as we have already ſufficiently proved, that as all Civil Government is from God, yet is ſo left in Mans diſpoſal (at leaſt to thoſe that God did not give any particular Laws to) what ſort of Government they would ſet up (as *Phil. Melancthon* in his *Epitomy of Moral Philoſophy*, honeſtly teaches, *That the forms of Kingdoms are different, and in ſome places there are ſome degrees of Liberty more than in others: For God approves all Forms of Government that are agreeable*

agreeable to Right, Nature, and Reason; and as I think there is no where any Divine precept extant, that a free People being about to chuse it self a King, should chuse *Cajus* rather than *Titius*, no more is there any certain form Divinely establish'd, under which, and no other Authority, is to be conferred on Princes. Neither are these Men any way helped by that place of 1 *Sam.* 8. where some will have only the bare unjust practice of Kings, that the true right of all *Kings* is to be there described. But *Grotius*, Lib 1. c. 4. § 3. Taking a middle way lays down, that there the bare actions of a King is described, yet what hath the effect of a right, to wit an Obligation of *non* resistance: So that however a *King* may act against his Duty when he commits such things; yet that *his* Subject sought no more to resist, than if he had acted thus by the highest Right; and therefore it is added that the People pressed by those vexations should cry to God, because there remained no humane remedies. So that this was called the Right of the *King* in that sence as the *Roman Prætor* was sayed, *jus reddere*, to judg right, even then when he decreed unjustly; however I conceive the true sence of this place may be thus understood, there had been hitherto a Democracy among the *Hebrews*, but that which often resembled that sort of *Kingdome* which *Aristotle* calls Heroical. The Judges incited by a divine instinct did for the most part rescue the oppressed *People* from their Enemies, or else in *Peace* Judged Causes: but in other matters were rather endued with a power of perswading, than commanding, but yet their Equipage and State being small, was not born or encreased by any *Publick* Taxes; yet the *People* weary of this Government, would have a *King* after the manner of other Nations: That is, who should appear in great State, and Splen-

Splendour, and ſhould maintain a conſtant Guard, or at leaſt ſhould ſtill exerciſe his Subjects in Arms, that they might ſtill be able to meet their Enemies in the Field, ſee *Sam.* XIII. 2. XIV. 48, 52. Now *Samuel*, that the *People* might conſider of it ſoberly before hand, lays open to them the *Prerogatives* of ſuch a *King*: and the inconveniencies of that Government. You would have a *King* remarkable by a great deal of Splendour; but ſuch a one muſt be attended with a numerous Train, and ſo will take your Sons, and appoint them for himſelf, and to be his Horſemen, and to run before his Chariots. You would have a *King*. who ſhould maintain an Army; but it *will be neceſſary that he appoint him Captains over Hundreds, and Captains over Fifties*; and this muſt be of your Sons, who were uſed before to look after your own buſineſs only; the greatneſs of his affairs, and the ſtate of his Office, will not permit this *King* to till his own Land; Therefore of your *Sons* will he ſet ſome to Ear his Ground, and Reap his Harveſt, and to make his Inſtruments of War; and ſince beſides he muſt need a great deal of Attendance, and that it will not become the Dignity of his Wives, or Daughters, to look after the Houſhold-affairs. Therefore he will take your Daughters to be Confectioners, to be Cooks, and to be Bakers; he will likewiſe ſtand in need of many Servants to diſpatch the buſineſſes of War and Peace, and who all muſt have Salaries: and therefore he will take your Fields, and your Vineyards and your Olive-Yards, and give them to your Servants: and to this purpoſe he will take the Tenth of your Seed, and of your Vineyards, and give to his Officers, and to his Servants, and he will likewiſe when he hath need, take your Men-ſervants, and your Maid-ſervants, and your young Men, and your Aſſes, and

put them to his work. In ſhort he ſays no more than this; If you will have a King, he muſt be maintained like a King, and a certain Revenue appointed for this end; of which burthen if you are afterwards a weary, you ſhall not be able to Depoſe him again, ſince he obtain'd the Kingdom by your choice and conſent, and ſo cannot be taken from him. So that it is plain, that this place does not at all ſerve to Patronize evil Princes; ſo neither that there is here any limited Power conferred by God after the manner of a conſtant and unalterable Precept, and of which no conſtitutions can diminiſh any part; ſince here only the neceſſary Charges and Burthens as well of an abſolute, as of a limited Royalty are deſcribed; therefore it is wholly in the will of a free People, whether they will have an abſolute Power, or will deliver it with certain Laws, ſo that thoſe Laws contain nothing that is wicked, or which may deſtroy the ends of Government; for although Men at the beginning did freely enter into a civil Society, yet ſince they were before obliged to the obſervation of the Law of Nature, they ought to Conſtitute ſuch Rules of Power, and civil Obedience which might be agreeable to that Law, and to the lawful ends of all Common-wealths.

But as it may rightly be underſtood, by what ſort of Promiſe, a Kingly Government may ceaſe to be abſolute (for every promiſe hath not that force) it is to be underſtood that a *King* upon his taking the *Kingom*, may oblige himſelf either by a General, or ſpecial Promiſe, which for the moſt part is confirmed by the Religion of an Oath. A General Promiſe may be made either tacitely or expreſly. A tacite Promiſe of Governing well is underſtood in the very acceptance of the *Kingdom*, although there were nothing expreſly Promiſed; yet moſt commonly this promiſe

miſe ought to be made expreſly not without an Oath & the ſolemnity of certain rights; neither is it unuſual that in this promiſe the Office of a *King* ſhould be deſcribed by a Periphraſis, or enumeration of the principal *Parts*; as ſuppoſe it be, that he will take care of the *Publick* ſafety; that he will defend the good, and puniſh the bad, that he will *Adminiſter* indifferent Juſtice, that he will oppreſs no Body, or the like. *Such Promiſſes* do not all detract from abſoluteneſs of his *Power*. ſince the *King* is indeed obliged by thoſe general *Promiſes*, to govern well; but what Method, or what means he ſhall make uſe of for this end is left to his will, and diſcretion; but a ſpecial promiſe, and in which both the Method, and means to be uſed in the *Adminiſtring* the Government are particularly expreſſed, ſeem to have a twofold *Power*; for one only obliges the Conſcience of the *King*; but the other makes the Obedience of the *Subjects* depend upon its performance, as upon an expreſs condition. *A Promiſe* of the firſt ſort is thus, If the *King* ſhould ſwear, for example, that he will not beſtow any Offices of truſt, on ſuch a ſort of Men, that he will not grant any *Priviledges* to any which ſhall redound to the prejudice of others, that he will make no new Laws, or impoſe new Taxes or Cuſtoms, or will not uſe Foreign *Souldiers*, or the like. Yet if there be no certain Council, or *Aſſembly* Couſtituted, which the *King* ſhould be obliged to conſult, whether the occaſions of the Common-wealth require he ſhould depart from thoſe Engagements (for there is ſtill in all of them, that tacite exception ſtill underſtood (unleſs the Safety of the Common-wealth the *Supreme* Law in all ſuch Engagements require otherwiſe) and which Council by its own right, and not precariouſly can take cognizance of thoſe affairs, and without whoſe conſent

ſent the Subjects cannot be obliged to obſerve the Kings commands in ſuch matters; here the Adminiſtration of the ſupreme Authority being reſtrained to certain Laws, if the King ſhall act otherwiſe (unleſs in caſes of great neceſſity,) he is without doubt guilty of the breach of his Oath; yet there does not therefore belong any power to the Subject to deny Obedience to the Kings commands, or of making thoſe actions void. For if the King do ſay, That the ſafety of the People, or ſome remarkable advantage to the Commonwealth requires him to break his Promiſe, as that preſumption always ought to go along with the Kings actions, the Subjects in this caſe have not any thing to reply: becauſe they have no faculty of taking Cognizance of thoſe actions, whether the neceſſity of the Common-wealth required them or not; from which this is apparent, that they do not take a ſufficient caution, if they will allow their King but a limited Power, and yet hath not Conſtituted ſome great Council, without whoſe conſent thoſe actions excepted cannot be exerciſed, or unleſs there lie upon the King a neceſſity of calling the Eſtates, whenever he deliberates upon the exerciſe of thoſe Legiſlative Powers, for that is better, than if it ſhould be neceſſary for the King to conſult ſome Council, conſiſting only of ſome few of his Subjects: ſince it may eaſily happen that the private advantages of thoſe few may differ from the publick good, and likewiſe, they for their own private Intereſt, may not agree in thoſe things which are truly beneficial for their Prince.

But the Authority of a King is more cloſly reſtrained, if it be expreſly agreed between the King and People upon the conferring the ſupreme power upon Him, or his Anceſtors that he ſhould Adminiſter it according to certain Fundamental Laws; and

and concerning those matters which he hath not absolute Power to dispose of, that he leave them to a great Council of the People, or Nobility, neither may decree any thing in those matters without their consent; and if they should be done otherwise, that the Subjects would not be obliged to observe his commands in such things; neither, yet is the Supreme Power rendred defective by such Fundamental Constitutions. For all the acts of Supreme Power may be exercised in such a Kingdom, as well as in an absolute one, unless that in the one, the King uses his own Judgment alone, as decisive, but in the other there is as it were a concomitant Cognizance remaining in the great Council, upon which power of the Supreme Authority it does not radically, but as it were conditionally depend, *& sine qua non*; neither are there in such a Commonwealth two distinct wills, for all things which the Common-wealth wills, it wills them by the Kings will alone; although it might happen form that limitation, that certain conditions not being observed, the King cannot legally will some things, and so wills them in vain; but neither does the King cease to have the supreme Power in such a Kingdom; or that this Council is therefore above the King. For these are no true consequences, that because this Person cannot do all things according to his own humour, therefore he hath not supreme Power. I am not obliged to obey this Man in all things, therefore I am his Superior, or Equal: and these are likewise very different; I am bound to perform what this Man pleases; because I have obliged my self to it by compact; and I am obliged to follow this Mans will, because he can enjoyn me thus by his supreme Authority. But supreme, and absolute are not one, and the same thing, for that denotes the absense of

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a Superiour, or an Equal in the ſame order or degree; but this a faculty of exerciſeing any right by a Mans own Judgment and Will; but what if there be added a Commiſſary clauſe; that if he ſhall do otherwiſe he ſhall forfeit his Kingdom; as the *Arogonians* of Old after the King had ſworn to their Priviledges, did promiſe him Obedience in this manner: We, who are of as great Power as thou, do Create thee our King and Lord on this condition that thou obſerve our Laws and Priviledges, if otherwiſe, not.

Vid. Horomani *Franco-gallia. C.* 12.

Here it is certain, that an abſolute King cannot be He to whom the Kingdom is thus committed under a Commiſſary Clauſe, or Condition: but that this King may have for all this a regal Power though limited, I ſee no reaſon to the contrary; for although we grant a Temporary Authority cannot be acknowledged for Supreme, becauſe it depends upon a poteſtative condition, and which can never be in the Princes power. Yet a King of this ſort abovemention'd is not therefore ſubject to the power of the People, with whom the cognizance is whether he keep his Oath, or not, for beſides that ſuch a Commiſſary Clauſe is wont to comprehend only ſuch plain things, which are evident to any Mans ſences; and ſo are not liable to diſpute. So that this power of taking cognizance does not at all ſuppoſe any Juriſdiction by which the Actions of the King as a Subject may be judged, but is nothing elſe, than a bare Declaration, whereby any Man takes notice that his manifeſt right is violated by another. See *Grotius*, Lib. 1. Cap. 3. § 16. And *Bæcler*, upon him: who are both of the ſame Opinion. *Grotius* indeed in the ſame place ſpeaks more obſcurely, when he ſays, That the Obligation ariſing from the promiſes of Kings,

*K*ings, does either fall upon the exercise of the act, or also directly upon the very power of it, if he act contrary to promises of the former sort, the act may be called unjust, and yet be valid; if against those of the latter, it is also void, as if he should have said, *S*ometimes a *K*ing promises not to use part of his *S*upreme Authority, but after a certain manner; and sometimes he plainly renounces some part thereof., concerning which there are two things to be observed; first that also some acts may be void, which are performed contrary to an Obligation of the former sorts; as for example, if a *K*ing swear not to impose any Taxes without the consent of the Estates. I suppose that such Taxes which the *K*ing shall Levy by his own will alone; to bevoid. *S*econdly, That in the latter form the parts of the supreme power, are divided.

But that the Nature of limited *K*ingdoms may more thoroughly be understood; it is to be observed, that the affairs which occur in Governning a Common-wealth are of two kinds; for of some of them it may be agreed beforehand, because whenever they happen they are still but of the same Nature: but of others, a certain Judgment cannot be made but at the time present, whether they are beneficial to the Publick or not; for that those circumstances which accompany them, cannot be forseen. Yet concerning both, that *P*eople may provide, that he to whom they have commited this limited *K*ingdom should not depart from the Common good in the former, whilst it prescribes perpetual Laws or Conditions which the *K*ing should be obliged to observe in the latter, whilst he is obliged to consult the assembly of his *P*eople or Nobility. Thus the *P*eople being satisfied of the truth of their Religion, and what sort of Ecclesiastical Government, or Ceremonies do best suit their Genius; so it is in *Sweden*,

may

may condition with the *King* upon his Inauguration, that he shall not change any thing in Religious matters by his sole Authority. So every Body being sensible, how often Justice would be injured, if Sentence should always be given by the sole Judgment of the Prince, *& ex aquo & bono*, without any written or known Laws, and that Passion, Interest, or unskilfulness would have too great a sway for avoiding this inconvenience, the people may oblige their King, that either he shall compose a Body of just Laws, or observe those that are already extant and also that Judgment be given according to those Laws, in certain Courts or Colledges of Justice, and that none but the most weighty Causes should come before the King by way of Appeal. So likewise, since it is well known how easily Riches obtained by the Labour of others, may be squandered away by Luxury or Ambition: therefore the Subjects Goods should not lie at their Princes mercy to sustain their Lusts. Some Nations have wisely assigned a certain Revenue to their Prince, such as they supposed necessary for the constant Charges of the Commonwealth; but if greater expences were necessary, they would have those referred to the Assembly of Estates. And since also some Kings are more desirous than they ought to be of Military Glory, and running themselves into unnecessary Wars, may put themselves and their Kingdoms in hazard, therefore some of them have been so cautious, that in the conferring the regal Dignity, they have imposed this necessity upon their Kings, that if they would make offensive Wars upon their Neighbours, they should first advise with their great Council; and so likewise it might be ordained concerning other matters

VI. *Tacit An. L.13.4.2.*

This is likewise the Law of *Sweden.*

matters, which the People judged neceſſary for the Common-wealth, leſt that if an abſolute power of ordering thoſe things, were left to the Prince, the common good of the People would perhaps be leſs conſidered.

And ſince the people would not leave to this limited King an abſolute power in thoſe Acts which are thus excepted, but that an Aſſembly, either of the whole people, or of thoſe that repreſent them divided into their ſeveral Orders; it is further to be obſerved, that the power of this Council, or Aſſembly, is not alike every where. For In ſome places the King himſelf though every where abſolute, may have appointed a Council, or Senate, without whoſe approbation he will not have his decrees to be valid. Which Senate without doubt will only have the Authority of Councellors, and though they may queſtion the Kings Grants or Decrees, and reject thoſe which they judg inconvenient, for the Common-wealth, yet they do not this by any inherent Right, but by a power granted them from the King himſelf. Who would this way prevent his decreeing any thing through haſt, imprudence, or the perſwaſion of Flatterers that might prove hurtful to his State: to which may be referred what *Plutarch* mentions in his Apothegms. 'That the *Ægyptian* Kings obſerve a 'Law, whereby they oblige their Judg- 'es by Oath, that if the King require 'an unjuſt Sentence from them, they 'ſhould refuſe him. And in the ſame place it is noted, that *Antigonus* 3. writ to his Cities, that if by his Letter he ſhould command anything contrary to his Laws, they ſhould not obey it, but ſhould think he failed thorough ignorance or miſinformation; and oftentimes importunate

Note the Antiquity of of this excellent Law.

Requests are eluded this way, whilst the Prince seems for quietness sake content to grant what he knows will be made void by this Senate or Court of Parliament, yet when the King is resolved that his Will shall hold good, and looks upon the contrary Reasons of this Parliament as not weighty enough to convince him, it cannot then any longer contradict the Kings Will; for it is not presumed that the *King* by constituting such a Court would irrevocably abdicate his Right of absolute power. So that this Senate or Parliament hath indeed but a Derivative power from the *King* to be limited as he himself shall please, although perhaps he will not exert this power but upon weighty considerations, nor does this Court make the power of the *King* less than absolute; since it only gives him occasion to review his own Acts, and as it were Appeals from himself, when surprised with Passions Prejudices, or misinformation to himself in a more indifferent and considerate Temper. The like may be said of the Assembly of Estates, if they meet only for this purpose that they should be the *Kings* greatest Council, by which the Requests and complaints of his People, which often times are concealed in his private Council, may come to the *Kings* ears; who is then left free to Enact what he thinks expedient, *Vid. Gro. Li. 1. c. 3. §. 10.* But a *Kingdom* is truely limited, when the Subjects at first conferred it on the *King*, on this condition, that he should assemble the Estates concerning some Acts, without whose consent this Decree should not be valid, yet it ought to be in the *Kings* power to call, and dissolve this Assembly, and to propose the business to be dispatcht therein unless we should go about to set up an irregular Common-wealth,

As it hath been often in France.

mon-wealth and leave the *King* no more than an empty Title, but if these States being so convocated, do of their own accord Propose those things which they conceive conducing to the good and safety of the *Kingdom*, yet the Decrees or Acts constituted concerning them, take their force from the *Kings* passing them. Yet such an assembly of Estates do differ from Counsellors properly taken in this, that although both of them can only move the *King* by reason only, yet the *King* may very well reject the Reasons of these latter, but not of the former, neither ought the *King* to think himself contemned, if these Estates do not consent to some things of his proposing. For as he promised at first to have always before his Eyes the good of the Common-wealth, of which a great many choice men are supposed to Judg more certainly than one. A *King* may most commonly blame his own imprudence, Passions, or ill Fortune, if the States happen to differ from him, from whence it likewise appears, that their fear is vain, who think that by this means, it is at the disposal of the Estates, whether the Common-wealth shall be safe or not. For it can scarcely be supposed, that the *King* should be so negligent, as to omit laying open to his Estates the necessities of the *Kingdom*, or that the Estates being fully satisfied of them, will ever go about to betray their own safety. But this is certain, since those who have conferred the limited power cannot be presumed either to intend to destroy or dissolve the Common-wealth; or by their confederacy to order things so, that the end of all *Common*-wealths, cannot be obtained in it, therefore there ought to be that favourable interpretation made of those *Conventions* that they really desire the common safety, and would by no means

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do any thing contrary thereunto; ſo likewiſe in making this compact, that whatſoever they have ſo agreed to, they are ſtill to be ſuppoſed to have that intention, that nothing ſhould be done by reaſon of thoſe conditions or parts which ſhould prejudice the common ſafety, and publick utility, or whereby the Convulſion or Diſſolution of the Common-wealth might follow. But if ſuch a chance ſhould happen, it would be moſt convenient, that if the affair will allow of delay, it ſhould be propoſed in the Aſſembly of Eſtates, but where this cannot be done, it may be the Kings Duty dexterouſly to correct thoſe complaints that may break out to the deſtruction of the Common-wealth, which alſo is of the the ſame force in reſpect of publick Laws, which the ſafety of the people and the ſupream Law commands ſometimes to be ſilent. As *Ageſilaus* commanded the Laws of *Licurgus* to ſleep for one day, that thoſe might return without ignominy that had fled at the Battel of *Levetra*.

Plut. in the Life of *Ageſilaus*.

However, Mr. *Hobs* will allow no diſtinction between limited power and abſolute, but will have all ſupreme power to be abſolute, when it is to be obſerved, that in all thoſe aſſertions which are too rudely laid down by him, there is a reſtriction to be added from the and of all Common-wealths, as in what he lays down in his *de Cive cap.* 5. §. 6. that he to whom in a Common-wealth there belongs the right of puniſhing, can by right compel all to all things he pleaſes, or as he expreſſes this limitation in the ſame place, which are neceſſary for the common peace and ſafety, and *Cap.* 6. §. 13. when by the right of the ſupreme Governour he ſays there is connected ſo great an obedience of all the Subjects as is requiſite for the Government of the Common-

Common-wealth, ſo when in the place aforegoing he ſaith, who ever hath ſo ſubjected his own will 'to that of the Prince, that he may do whatever he 'pleaſes, without puniſhment, as alſo make Laws, 'Judg differences, puniſh whom he pleaſes, & uſe the 'ſtrength & power of all men according to his own 'will, perform all theſe things by the higheſt right, 'he hath then granted him the greateſt power which 'can be granted. But it is now to be conſidered, by what intention, or on what grounds men were moved to inſtitute Common-wealths, from whence it is clear, that no body is underſtood to have conferred more power by his Will upon the Monarch, then a reaſonable man can judg neceſſary to that end: and that although the ordering what may conduce to this end in this or that occaſion, does not remain in thoſe that have transferred their power, but in him on whom that power is transferred, therefore the ſupream Ruler can compel the Subjects to all thoſe things which are really conduſing to the good of the Common-wealth, but he ought not to go about to compel them to thoſe things that are contrary to the ſafety of the Common-wealth, or againſt the Laws of Nature. And if he endeavours any ſuch thing, without doubt he tranſgreſſes the bounds of his power. Let us alſo conſider the Arguments by which the ſame Author in his *De Cive. Cap.* 6, §. 17. endeavours to prove that all limitation of Soveraign power is abſolutely vain, he ſays that aſſembly which preſcribed the Laws to the future King, muſt have had abſolute power, either habitually, or vertually. If the Aſſembly remains conſtantly, or adjourns their Meeting from Time to Time, to a certain day and place, their power will be perpetual, and ſo the King will not have the Supream power, but will be

only a bare Magistrate. Which we grant to be true, if that Assembly can meet by its own Right and Decree of any Affairs of the Common-wealth, and that the King be liable to give them an Account of his Actions. But if it absolutely dissolve it self, unless the Commonwealth be likewise dissolved, there must in like manner a power be left somewhere, of punishing those that transgress the Laws, which without absolute power cannot be performed. Which is false, as also the Argument by which he would prove it: for he who hath granted him by Right, so much power, that he can compel any of the Subjects by punishments, hath so great power that greater cannot be conferred by them. But for all this, whoever will but consider the end of all Common-wealths, and that those Subjects by the submission of their Wills and powers, did not immediately become senceless Machines: so that since they could grant the use of their united Forces to another upon condition, and are able to judg whether this condition be performed or not, so they can likewise withdraw their Forces again upon the breach of the condition, as likewise this is apparently false, that there is no better provision against the abuse of Authority, when it is granted limited, then when it is left absolute; for it is not true, that he who hath power enough to defend all Men (which all that are not Fools will easily grant their Prince) as also power enough to destroy them. The Commands of a General which are sufficient to make the Souldiers stout, to venture their Lives, against an Enemy, yet would be found of no force, if he should command them to draw their Swords against each other. So that prudent and worthy Princes though absolute, will comply with the Genius of their Subjects, and (ft-times will be sparing

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to urge them too far though for their own advantage, when they cannot be compelled to their Duty without some hazard to the Common-wealth. But those Subjects are not less discreet, who when they are satisfied, what is not expedient for their Common-wealth, have provided by Fundamental Laws, that they should not be compelled to it by their Princes power. So far speaks the judicious Mr. *Pufendorf* upon this Subject, which though somewhat prolix, I have thought fit to translate verbatim; because I would not be thought by going about to contract it, to put my own sence upon his words, and besides I know no man that hath writ more clearly of this Subject, in avoiding on one side an absolute despotick Monarchy, without falling into that Solacism in Politicks the division of the supreme power which he supposes truly inconsistant with Monarchy. So that if the Reader is not satisfied with what I have here writ upon this Subject. I am sorry his understanding and mine are not framed alike, nor shall be angry with him, if he like an absolute Monarchy better then that we live under. Provided, he will never Act any thing to produce publick disturbances: or to introduce it, either by force or fraud in this Kingdom. Yet shall wish him no greater Prerogative, then that of enjoying his own opinion, without imposing it upon others, who are not yet weary of their Estates and Liberties, which since the People of this Nation are not yet weary of. The World is wide enough, and there are Countries, where this which they admire as the primitive Government of the World, and that which they perhaps Reverence as the Primitive Religion is practised in its full splendor: and indeed are most suitable to each other. All the hurt I wish those Gentlemen, that they were all

ſetled in any of them, even which they like beſt. Whilſt all plain hearted Engliſh-men, notwithſtanding ſuch ſubtile diſcourſes, as thoſe of our Author, are reſolved to return the ſame Anſwer to them as the Temporal Lords did to the Biſhops long ſince upon another occaſion, *Nolumus Leges Angliæ mutari*, of which I hope there is as little fear, as there is or ever will be juſt occaſion for it. And ſo I ſhall quit my hands of this ungrateful task, without troubling my ſelf with his Diſcourſe of Witches. Since his other writings ſufficiently aſſure us that whatever he was in other Learning he was no Witch in Politicks, though he had Read Ariſtotle, might perhaps be better read in the Fathers and Schoolmen. or Civil-Law, than in the Laws of Nature, orthoſe of his own Countrey.

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256. l. 21. *Lavetra* r. *Leuetra* l. 27. and r. end 257. l. 7. perform r. performing *p.* 259. l. 30. *d.* yet weary of. Lesser errors in Orthography the Readers discretion may correct.

ADDENDA.

THe quotation in the Margin, *p.* 50. *vid. Mezeray Abrege Chronologique* belongs to *p.* 59. l. 22.

To *p.* 117. l. 5. That even in the Christian Religion, Men are Masters of their own lives: when Gods Glory or the avoiding of imminent sin requires it, see the examples of the primitive Martyrs *Eusebius Eccl. Hist. Lib.* 8. *Cap.* 9. 12. To *Chap.* 4. *p.* 123. l. 24. *And* that the French look upon their Kings to have but an usufructuary right in the Crown of *France*, appears from the Declaration of the *Assembly des Notables* called K. *Francis* I. 1527. to give their advice concerning the Redemption of his Children, and his return to *Spain*, the delivery of *Burgundy*, whereupon the three Estates answered a part. That his person belonged to the Realm, and not to himself, that *Burgundy* was a Member of the Crown of which he was but the *usufructuary* and so could neither dispose of the one nor the other. *Mezeray Abrege Chron. Francis* I. *Anno* 1527.

P. 151. l. 29. after Law, add the same Author (the Book is quoted there, but the Quotation omited) *Que quidem fuerint approbata consensu utentius & Sacramento Regam confirmata non possunt mutari nec destruitine communi consen u eorum omnium quorum consilio & consensu fuerint promulgata.*