

as the saying of Vertue in the Pastors, maketh Faith faile in the People: and partly from bringing of the Philosophy, and doctrine of *Aristotle* into Religion, by the Schoole-men; from whence there arose so many contradictions, and absurdities, as brought the Clergy into a reputation both of Ignorance, and of Fraudulent intention; and inclined people to revolt from them, either against the will of their own Princes, as in *France*, and *Holland*; or with their will, as in *England*.

1601 Lastly, amongst the points by the Church of *Rome* declared necessary for Salvation, there be so many, manifestly to the advantage of the Pope, and of his spirituall subjects, residing in the territories of other Christian Princes, that were it not for the mutuall emulation of those Princes, they might without warre, or trouble, exclude all forraign Authority, as easily as it has been excluded in *England*. For who is there that does not see, to whose benefit it conduceth, to have it believed, that a King hath not his Authority from Christ, unlesse a Bishop crown him? That a King, if he be a Priest, cannot Marry? That whether a Prince be born in lawfull Marriage, or not, must be judged by Authority from *Rome*? That Subjects may be freed from their Allegiance, if by the Court of *Rome*, the King be judged an Heretique? That a King (as *Chilperique of France*) may be deposed by a Pope (as Pope *Zachary*.) for no cause; and his Kingdome given to one of his Subjects? That the Clergy, and Regulars, in what Country soever, shall be exempt from the Jurisdiction of their King, in cases criminal? Or who does not see, to whose profit redound the Fees of private Masses, and Vales of Purgatory; with other signes of private interest, enough to mortifie the most lively Faith, if (as I sayd) the civill Magistrate, and Custome did not more sustain it, than any opinion they have of the Sanctity. Wis-



dome, or Probity of their Teachers? So that I may attribute all the changes of Religion in the world, to one and the same cause; and that is, unpleasing Priests; and those not onely amongst Catholics, but even in that Church that hath presumed most of Reformation.

CHAP. XIII

Of the NATURAL CONDITION of Mankind, as concerning their Felicity, and Misery

NATURE hath made men so equal, in the faculties of body, and mind; as that though there be found one man sometimes manifestly stronger in body, or of quicker mind then another; yet when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereupon claim to himselfe any benefit, to which another may not pretend, as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others, that are in the same danger with himselfe.

And as to the faculties of the mind, (setting aside the arts grounded upon words, and especially that skill of proceeding upon generall, and infallible rules, called Science; which very few have, and but in few things; as being not a native faculty, born with us; nor attained, (as Prudence,) while we look after somewhat els,) I find yet a greater equality amongst men, than that of strength. For Prudence, is but Experience; which equall time, equally bestowes on all men, in (611) those things they equally apply themselves unto. That which may perhaps make such equality incredible, is but a vain conceipt of ones owne wisdom, which almost all men

From Thomas Hobbes, *Leviathan*,

(Oxford: Blackwell, 1960), 729pp.



Written in 1651

1651

and written in 1651

think they have in a greater degree, than the Vulgar; that is, than all men but themselves, and a few others, whom by Fame, or for concurring with themselves, they approve. For such is the nature of men, that howsoever they may acknowledge many others to be more witty, or more eloquent, or more learned; Yet they will hardly believe there be many so wise as themselves: For they see their own wit at hand, and other mens at a distance. But this proveth rather that men are in that point equal, than unequal. For there is not ordinarily a greater signe of the equal distribution of any thing, than that every man is contented with his share.

From this equality of ability, ariseth equality of hope in the attaining of our Ends. And therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies; and in the way to their End, (which is principally their owne conservation, and sometimes their delectation only,) endeavour to destroy, or subdue one another. And from hence it comes to passe, that where an Invader hath no more to feare, than an other mans single power; if one plant, sow, build, or possesse a convenient Seat, others may probably be expected to come prepared with forces united, to dispossesse, and deprive him, not only of the fruit of his labour, but also of his life, or liberty. And the Invader again is in the like danger of another.

And from this diffidence of one another, there is no way for any man to secure himselfe, so reasonable, as Anticipation; that is, by force, or wiles, to master the persons of all men he can, so long, till he see no other power great enough to endanger him: And this is no more than his owne conservation requireth, and is generally allowed. Also because there be some, that taking pleasure in contemplating their own power in the acts of

conquest, which they pursue farther than their security requires; if others, that otherwise would be glad to be at ease within modest bounds, should not by invasion increase their power, they would not be able, long time, by standing only on their defence, to subsist. And by consequence, such augmentation of dominion over men, being necessary to a mans conservation, it ought to be allowed him.

Againc, men have no pleasure, (but on the contrary a great deale of griefe) in keeping company, where there is no power able to over-awe them all. For every man looketh that his companion should value him, at the same rate he sets upon himselfe: And upon all signes of contempt, or undervaluing, naturally endeavours, as far as he dares (which amongst them that have no common power, to keep them in quiet, is far enough to make them destroy each other,) to extort a greater value from his contemners, by donnage; and from others, by the example.

So that in the nature of man, we find three principall causes of quarrell. First, Competition; Secondly, Diffidence; Thirdly, Glory.

162) The first, maketh men invade for Gain; the second, for Safety; and the third, for Reputation. The first use Violence, to make themselves Masters of other mens persons, wives, children, and cattell; the second, to defend them; the third, for trifles, as a word, a smile, a different opinion, and any other signe of undervalue, either direct in their Persons, or by reflexion in their Kindred, their Friends, their Nation, their Profession, or their Name.

Hereby it is manifest, that during the time men live without a common Power to keep them all in awe, they are in that condition which is called Warre; and such a warre, as is of every man, against every man. For WARRE, consisteth not in

Handwritten note: *From the beginning of the world*

Out of Civil States, there is always Warre of every one against every one



Battell onely, or the act of fighting; but in a tract of time, wherein the Will to contend by Battell is sufficiently known: and therefore the notion of Time, is to be considered in the nature of Warre; as it is in the nature of Weather. For as the nature of Foulle weather, lyeth not in a showre or two of rain; but in an inclination thereto of many dayes together: So the nature of War, consisteth not in actuall fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary. All other time is P A C E.

The Incommodities of such a War  
 Whatsoever therefore is consequent to a time of Warre, where every man is Enemy to every man; the same is consequent to the time, wherein men live without other security, than what their own strength, and their own invention shall furnish them withall. In such condition, there is no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society: and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.

It may seem strange to some man, that has not well weighed these things; that Nature should thus dissociate, and render men apt to invade, and destroy one another: and he may therefore, not trusting to this Inference, made from the Passions, desire perhaps to have the same confirmed by Experience. Let him therefore consider with himselfe, when taking a journey, he armes himselfe, and seeks to go well accompanied; when going to sleep, he locks his dores; when even in his house he

locks his chests; and this when he knows there bee Lawes, and publike Officers, armed, to revenge all injuries shall bee done him; what opinion he has of his fellow subjects, when he rides armed; of his fellow Citizens, when he locks his dores; and of his children, and servants, when he locks his chests. Does he not there as much accuse mankind by his actions, as I do by my words? But neither of us accuse mans nature in it. The Desires, and other Passions of man, are in themselves no Sin. No more are the Actions, that proceed from those Passions, till they know a Law that forbids them: which till Law be made they cannot know: nor can any Law be made, till they have agreed upon the Person that shall make it.

1631 It may peradventure be thought, there was never such a time, nor condition of warre as this; and I believe it was never generally so, over all the world: but there are many places, where they live so now. For the savage people in many places of America, except the government of small Families, have no government at all; and live at this day in that brutish manner, as I said before. Howsoever, it may be perceived what manner of life there would be, where there were no common Power to feare; by the manner of life, which men that have formerly lived under a peacefull government, use to degenerate into, in a civil Warre.

But though there had never been any time, wherein particular men were in a condition of warre one against another; yet in all times, Kings, and Persons of Sovereigne authority, because of their Independency, are in continuall jealousies, and in the state and posture of Gladiators; having their weapons pointing, and their eyes fixed on one another; that is, their Forts, Garrisons, and Guns upon the Frontiers of their Kingdomes; and con-



that renounceth, or passeth away his Right, giveth not to any other man a Right which he had not before; because there is nothing to which every man had not Right by Nature: but onely standeth out of his way, that he may enjoy his own original Right, without hindrance from him; not without hindrance from another. So that the effect which redoundeth to one man, by another mans defect of Right, is but so much diminution of impediments to the use of his own Right original.

*Renouncing a Right what it is*

Right is layd aside, either by simply Renouncing it; or by Transferring it to another. By Simply RENOUNCING; when he cares not to whom the benefit thereof redoundeth. By TRANSFERRING; when he intendeth the benefit thereof to some certain person, or persons. And when a man hath in either manner abandoned, or granted away his Right; then is he said to be OBLIGED, or BOUND, not to hinder those, to whom such Right is granted.

*Transferring a Right what it is*

Ought, and it is his DUTY, not to make voyd that voluntary act of his own; and that such hindrance is INJUSTICE, and INJURY, as being *Sine Jure*; the Right being before renounced, or transferred. So that *Injury*, or *Injustice*, in the controversies of the world, is somewhat like to that, which in the disputations of Scholers is called *Absurdity*. For as it is there called an Absurdity, to contradict what one maintained in the Beginning; so in the world, it is called Injustice, and Injury, voluntarily to undo that, which from the beginning he had voluntarily done. The way by which a man either simply Renounceth, or Transferreth his Right, is a Declaration, or Signification, by some voluntary and sufficient signe, or signes, that he doth so Renounce, or Transferre; or hath so Renounced, or Transferred the same, to him that accepteth it. And these Signes are either Words onely, or Actions onely; or (as it

*Obligation*

*Duty*

*Injustice*

be a help unto him, in preserving his life against his enemies; It followeth, that in such a condition, every man has a Right to every thing; even to one anothers body. And therefore, as long as this naturall Right of every man to every thing endureth, there can be no security to any man, (how strong or wise soever he be) of living out the time, which Nature ordinarily alloweth men to live. And consequently it is a precept, or generall rule of Reason, *That every man, ought to endeavour Peace, as farre as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages of Warre.* The first branch of which Rule, containeth the first, and Fundamental Law of Nature; which is, *to seek Peace, and follow it.* The Second, the summe of the Right of Nature; which is, *By all means we can, to defend our selves.*

*The Fundamentall Law of Nature*

*The second Law of Nature*

From this Fundamental Law of Nature, by which men are commanded to endeavour Peace, is derived this second Law; *That a man be willing, when others are so too, as farre forth, as for Peace, and (63) defence of himselfe he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe.* For as long as every man holdeth this Right; of doing any thing he liketh; so long are all men in the condition of Warre. But if other men will not lay down their Right, as well as he; then there is no Reason for any one, to devest himselfe of his; For that were to expose himselfe to Prey, (which no man is bound to) rather than to dispose himselfe to Peace. This is that Law of the Gospel; *Whatsoever you require, that others should do to you, that do ye to them.* And that Law of all men, *Quod tibi fieri non vis, alteri ne feceris.* To lay downe a mans Right to any thing, is to devest himselfe of the Liberty, of hindring another of lay downe a Right the benefit of his own Right to the same. For he

There is difference, between transferring of Right to the Thing; and transferring, or tradition, that is, delivery of the Thing it self. For the Thing may be delivered together with the Translation of the Right; as in buying and selling with ready money; or exchange of goods, or lands; and it may be delivered some time after.

Again, one of the Contractors, may deliver the Thing contracted for on his part, and leave the other to perform his part at some determinate time after, and in the mean time be trusted; and then the Contract on his part, is called FACT, or COVENANT: Or both parts may contract now, to perform hereafter; in which cases, he that is to perform in time to come, being trusted, his performance is called *Keeping of Promise, or Faith*; and the faying of performance (if it be voluntary) *Violation of Faith*.

When the transferring of Right, is not mutual; but one of the parties transferreth, in hope to gain thereby friendship, or service from another, or from his friends; or in hope to gain the reputation of Charity, or Magnanimity; or to deliver his mind from the pain of compassion; or in hope of reward in heaven; This is not Contract, but GIFT, FAVOR, GRACE: which words signifie one and the same thing.

Signes of Contract, are either *Expresse*, or by *Inference*. *Expresse*, are words spoken with understanding of what they signifie: And such words are either of the time *Present*, or *Past*; as, *I Give, I Grant, I have Given, I have Granted, I will that this be yours, Or of the future*; as, *I will Give, I will Grant*: which words of the future, are called *PROMISE*.

Signes by Inference, are sometimes the consequence of Words; (67) sometimes the consequence of Silence; sometimes the consequence of Actions; sometimes the consequence of Forbearing an Action; and generally a signe by Inference, of any

happeneth most often) both Words and Actions. And the same are the BONDS, by which men are bound, and obliged: Bonds, that have their strength, not from their own Nature, (for nothing is more easily broken then a mans word,) but from Feare of some evill consequence upon the rupture.

Whensoever a man Transferreth his Right, or Renounceth it; it is either in consideration of some Right reciprocally transferred to himselfe; or for some other good he hopeth for thereby. For it is a voluntary act; and of the voluntary acts of every man, the object is some Good to himselfe. And therefore there be some Rights, which no man can be understood by any words, or other signes, to have abandoned; or transferred. As first a man cannot lay down the right of resisting them, that assault him by force, to take away his life; because he cannot be understood to sime thereby, at any Good to himselfe. The same may be sayd of Wounds, and Imprisonment; both because there is no benefit consequent, to such patience; as there is to the patience of suffering another to be wounded, or imprisoned; as also because a man cannot tell, when he seeth men proceed against him by violence, whether they intend his death for not. And lastly the motive, and end for which this renouncing, and transferring of Right is introduced, is nothing else but the security of a mans person, in his life, and in the means of so preserving life, as not to be weary of it. And therefore if a man by words, or other signes, seem to depoyle himselfe of the End, for which those signes were intended; he is not to be understood as it he meant it, or that it was his will; but that he was ignorant of how such words and actions were to be interpreted.

The mutual transferring of Right, is that which men call CONTRACT.

is to be understood as if he intended the Right should pass: for unless he had been content to have his words so understood, the other would not have performed his part first. And for that cause, in buying, and selling, and other acts of Contract, a Promise is equivalent to a Covenant; and therefore obligatory.

He that performeth first in the case of a Contract, is said to *MERIT* that which he is to receive by the performance of the other; and he hath it as *DUE*. Also when a Prize is propounded to many, which is to be given to him only that winneth; or money is thrown amongst many, to be enjoyed by them that catch it; though this be a Free gift; yet so to Win, or so to Catch, is to *Merit*, and to have it as *DUE*. For the Right is transferred in the Propounding of the Prize, and in throwing down the money; though it be not determined to whom, but by the Event of the contention. But there is between these two sorts of Merit, this difference, that in Contract, I Merit by virtue of my own power, and the Contractors need; but in this case of Free gift, I am enabled to Merit only by the benignity of the Giver: In Contract, I merit at the Contractors hand that hee should depart with his right; In this case of Gift, I Merit not that the giver should part with his right; but that when he has parted with it, it should be mine, rather than anothers. And this I think to be the meaning of that distinction of the Schooles, between *Meritum congrui*, and *Meritum condigni*. For God Almighty, having promised Paradise to those men (hoodwinkt with carnal desires,) that can walk through this world according to the Precepts, and Limits prescribed by him; they say, he that shall so walk, shall Merit Paradise *Ex congruo*. But because no man can demand a right to it, by his own Righteousness, or any other power in himselfe, but by the Free Grace of God.

Contract, is whatsoever sufficiently argues the will of the Contractor.

Words alone, if they be of the time to come, and contain a bare promise, are an insufficient signe of a Free-gift and therefore not obligatory. For if they be of the time to Come, as, *To morrow I will Give*, they are a signe I have not given yet, and consequently that my right is not transferred, but remaineth till I transerre it by some other Act. But if the words be of the time Present, or Past, as, *I have given*, or *do give to be delivered to morrow*, then is my to morrows Right given away to day; and that by the vertue of the words, though there were no other argument of my will. And there is a great difference in the signification of these words, *Vok hoc tuum esse eras*, and *Gras dabo*; that is, between *I will that this be thine to morrow*, and, *I will give it thee to morrow*: For the word *I will*, in the former manner of speech, signifies an act of the will Present; but in the later, it signifies a promise of an act of the will to Come; and therefore the former words, being of the Present, transerre a future right; the later, that be of the Future, transerre nothing. But if there be other signes of the Will to transerre a Right, besides Words; then, though the gift be Free, yet may the Right be understood to pass by words of the future: as if a man propound a Prize to him that comes first to the end of a race, The gift is Free; and though the words be of the Future, yet the Right passeth: for if he would not have his words so be understood, he should not have let them runne.

In Contracts, the right passeth, not onely where the words are of the time Present, or Past; but also where they are of the Future: because all Contract is mutuall translation, or change of Right; and therefore he that promiseth onely, because he hath already received the benefit for which he promiseth

Free gift passeth by words of the Present or Past

Signes of Contract are words both of the Past, Present, and Future

only; they say, no man can Merit Paradise ex condigno. This I say, I think is the meaning of that distinction; but because Disputers do not agree upon the signification of their own termes of Art, longer than it serves their turn; I will not affirm any thing of their meaning: onely this I say; when a gift is given indefinitely, as a prize to be contended for, he that winneth Meriteth, and may claime the Prize as Due.

If a Covenant be made, wherein neither of parties performe presently, but trust one another; in the condition of mee Nature, (which is a condition of Warre of every man against every man,) upon any reasonable suspicion, it is Voyd; But if there be a common Power set over them both, with right and force sufficient to compell performance; it is not Voyd. For he that performeth first, has no assurance the other will performe after; because the bonds of words are too weak to bridle mens ambition, avarice, anger, and other Passions, without the feare of some coercive Power; which in the condition of mee Nature, where all men are equall, and judges of the justnesse of their own fears cannot possibly be supposed. And therefore he which performeth first, does but betray himselfe to his enemy; contrary to the Right (he can never abandon) of defending his life, and means of living.

But in a civill estate, where there is a Power set up to constrain those that would otherwise violate their faith, that feare is no more reasonable; and for that cause, he which by the Covenant is to perform first, is obliged so to do.

The cause of feare, which maketh such a Covenant Invalid, must be alwayes something arising after the Covenant made; as some new fact, or other signe of the Will not to performe: else it cannot make the Covenant voyd. For that which could not

Covenants of  
Mutuall  
Trust, when  
Invalid

hinder a man from promising, ought not to be admitted as a hindrance of performing.

He that transferreth any Right, transferreth the Means of enjoying it, as farre as lyeth in his power. As he that selleth Land, is understood to transferre the Herbage, and whatsoever grows upon it; Nor can he that sells a Mill turn away the Stream that drives it. And they that give to a man the Right of government in Sovereignty, are understood to give him the right of levying money to maintain Soldiers; and of appointing Magistrates for the administration of Justice.

To make Covenant with brut Beasts, is impossible; because not understanding our speech, they understand not, nor accept of any (69) translation of Right; nor can translate any Right to another: and without mutuall acceptation, there is no Covenant.

To make Covenant with God, is impossible, but by Mediation of such as God speaketh to, either by Revelation supernaturall, or by his Lieutenants that govern under him, and in his Name: For otherwise we know not whether our Covenants be accepted, or not. And therefore they that Vow any thing contrary to any law of Nature, Vow in vain; as being a thing unjust to pay such Vow. And if it be a thing commanded by the Law of Nature, it is not the Vow, but the Law that binds them.

The matter, or subject of a Covenant, is alwayes something that falleth under deliberation; (For to Covenant, is an act of the Will; that is to say an act, and the last act, of deliberation;) and is therefore alwayes understood to be something to come; and which is judged Possible for him that Covenanteth, to performe.

And therefore, to promise that which is known to be Impossible, is no Covenant. But if that prove impossible afterwards, which before was thought

Right to the  
End, Containeth  
the Right to  
the Means

No Cove-  
nant with  
Beasts

Nor with  
God without  
speciall Re-  
velation

No Cove-  
nant, but of  
Possible and  
Future

possible, the Covenant is valid, and bindeth, (though not to the thing it selfe,) yet to the value; or, if that also be impossible, to the unfeigned endeavour of performing as much as is possible: for to more no man can be obliged.

Men are freed of their Covenants two wayes; by Performing; or by being Forgiven. For Performance, is the naturall end of obligation; and Forgiveness, the restitution of liberty; as being a retransferring of that Right, in which the obligation consisted.

Covenants entred into by fear, in the condition of meer Nature, are obligatory. For example, if I Covenant to pay a ransom, or service for my life, to an enemy; I am bound by it. For it is a Contract, wherein one receiveth the benefit of life; the other is to receive mony, or service for it; and consequently, where no other Law (as in the condition, of meer Nature) forbiddeth the performance, the Covenant is valid. Therefore Prisoners of warre, if trusted with the payment of their Ransome, are obliged to pay it: And if a weaker Prince, make a disadvantageous peace with a stronger, for feare; he is bound to keep it; unlesse (as hath been sayd before) there ariseth some new, and just cause of feare, to renew the war. And even in Common-wealths, if I be forced to redeem my selfe from a Theefe by promising him mony, I am bound to pay it, till the Civill Law discharge me. For whatsoever I may lawfully do without Obligation, the same I may lawfully Covenant to do through feare: and what I lawfully Covenant, I cannot lawfully break.

A former Covenant, makes voyd a later. For a man that hath passed away his Right to one man to day, hath it not to passe to morrow to another: and therefore the later promise passeth no Right, but is null.

*The former Covenant to one, makes voyd the later to another*

A Covenant not to defend my selfe from force, by force, is alwayes voyd. For (as I have shewed before) no man can transfere, or lay down his Right to save himselfe from Death, Wounds, and Imprisonment, (the avoyding whereof is the onely end of laying 170 down any Right, and therefore the promise of not resisting force, in no Covenant transferreth any right; nor is obliging. For though a man may Covenant thus, *Unlesse I do so, or so, kill me; he cannot Covenant thus, Unlesse I do so, or so, I will not resist you, when you come to kill me.* For man by nature chooseth the lesser evil, which is danger of death in resisting; rather than the greater, which is certain and present death in not resisting. And this is granted to be true by all men, in that they lead Criminals to Execution, and Prison, with armed men, notwithstanding that such Criminals have consented to the Law, by which they are condemned.

A Covenant to accuse ones selfe, without assurance of pardon, is likewise invalide. For in the condition of Nature, where every man is Judge, there is no place for Accusation: and in the Civill State, the Accusation is followed with Punishment; which being Force, a man is not obliged not to resist. The same is also true, of the Accusation of those, by whose Condemnation a man falls into misery; as of a Father, Wife, or Benefactor. For the Testimony of such an Accuser, if it be not willingly given, is præsumed to be corrupted by Nature; and therefore not to be received: and where a mans Testimony is not to be credited, he is not bound to give it. Also Accusations upon Torture, are not to be reputed as Testimonies. For Torture is to be used but as means of conjecture, and light, in the further examination, and search of truth: and what is in that case confessed, tendeth to the ease of him that is Tortured; not to the informing of the Torturers:

*A mans Covenant not to defend himselfe, is voyd*

*No man is obliged to accuse himselfe*

and therefore ought not to have the credit of a sufficient Testimony; for whether he deliver himself by true, or false Accusation, he does it by the Right of preserving his own life.

*The End of an Oath*

The force of Words, being (as I have formerly noted) too weak to hold men to the performance of their Covenants; there are in mans nature, but two imaginable helps to strengthen it. And those are either a Feare of the consequence of breaking their word; or a Glory, or Pride in appearing not to need to breake it. This later is a Generosity too rarely found to be presumed on, especially in the pursuers of Wealth, Command, or sensuall Pleasure; which are the greatest part of Mankind. The Passion to be reckoned upon, is Fear; whereof there be two very generall Objects: one, The Power of Spirits Invisible; the other, The Power of those men they shall therein Offend. Of these two, though the former be the greater Power, yet the feare of the later is commonly the greater Feare. The Feare of the former is in every man, his own Religion: which hath place in the nature of man before Civill Society. The later hath not so; at least not place enough, to keep men to their promises; because in the condition of meer Nature, the inequality of Power is not discerned, but by the event of Battell. So that before the time of Civill Society, or in the interruption thereof by Warre, there is nothing can strengthen a Covenant of Peace agreed on, against the temptations of Avarice, Ambition, Lust, or other strong desire, but the feare of that Invisible Power, which they every one Worship as God; and Feare as a Revenger of their perfidy. All therefore that can be done is to put one another to swear by the God he feareth: between two men not subject to Civill Power, is to Which Swearing, or OATH, is a *Forme of Speech*, added to a Promise; by which he that promiseth, signifieth, that unlesse he performe, he renounceth the

mercy of his God, or calleth to him for vengeance on himselfe. Such was the Heathen Forme, Let Jupiter kill me else, as I kill this Beast. So is our Forme, I shall do thus, and thus, so help me God. And this, with the Rites and Ceremonies, which every one useth in his own Religion, that the feare of breaking faith might be the greater.

By this it appears, that an Oath taken according to any other Forme, or Rite, then his, that sweareth, is in vain; and no Oath: And that there is no Swearing by any thing which the Swearer thinks not God. For though men have sometimes used to swear by their Kings, for feare, or flattery; yet they would have it thereby understood, they attributed to them Divine honour. And that Swearing unnecessarily by God, is but prophaning of his name: and Swearing by other things, as men do in common discourse, is not Swearing, but an impious Custome, gotten by too much vehemence of talking.

It appears also, that the Oath taken according to the Obligation. For a Covenant, if lawfull, binds in the sight of God, without the Oath, as much as with it: if unlawfull, bindeth not at all; though it be confirmed with an Oath.

*An Oath adds nothing to the Obligation*

### Of other Lawes of Nature

FROM that law of Nature, by which we are obliged to transfere to another, such Rights, as being retained, hinder the peace of Mankind, there followeth a Third; which is this, *That men performe their Covenants made: without which, Covenants are in vain, and but Empty words; and the Right of all*

*The third Law of Nature Justice*

consisteth in keeping of valid Covenants; but the Validity of Covenants begins not but with the Constitution of a Civill Power, sufficient to compell men to keep them: And then it is also that Propriety begins.

The Foole hath said in his heart, there is no such thing as Justice; and sometimes also with his tongue; seriously alleging, that every mans conservation, and contentment, being committed to his own care, there could be no reason, why every man might not do what he thought conduced thereunto; and therefore also to make, or not make; keep, or not keep Covenants, was not against Reason, when it conduced to ones benefit. He does not therein deny, that there be Covenants; and that they are sometimes broken, sometimes kept; and that such breach of them may be called Injustice, and the observance of them Justice: but he questioneth, whether Injustice, taking away the feare of God, (for the same Foole hath said in his heart there is no God,) may not sometimes stand with that Reason, which dictateth to every man his own good; and particularly then, when it conduceth to such a benefit, as shall put a man in a condition, to neglect not onely the dispraise, and revilings, but also the power of other men. The Kingdome of God is gotten by violence: but what if it could be gotten by unjust violence? were it against Reason so to get it, when it is impossible to receive hurt by it? and if it be not against Reason, it is not against Justice: or else Justice is not to be approved for good. From such reasoning as this, Successful wickednesse hath obtained the name of Vertue: and some that in all other things have disallowed the violation of Faith; yet have allowed it, when it is for the getting of a Kingdome. And the Heathen that believed, that Saturn was deposed by his son Jupiter, believed nevertheless the same Jupiter to be the avenger of

men to all things remaining, wee are still in the condition of Warre.

And in this law of Nature, consisteth the Foundation and Originall of JUSTICE. For where no Covenant hath preceded, there hath no Right been transferred, and every man has right to every thing; and consequently, no action can be Unjust. But when a Covenant is made, then to break it is Unjust: And the definition of INJUSTICE, is no other than the *not Performance of Covenant*. And whatsoever is not Unjust, is *Just*.

But because Covenants of mutuall trust, where there is a feare of not performance on either part, (as hath been said in the former Chapter,) are invalid; though the Originall of Justice be the making of Covenants; yet Injustice actually there can be none, till the cause of such feare be taken away; which while men are in the naturall condition of Warre, cannot be done. Therefore before the names of Just, and Unjust can have place, there must be some coercive Power, to compell men equally to the performance of their Covenants, by the terrour of some punishment, greater than the benefit they expect (72) by the breach of their Covenant; and to make good that Propriety, which by mutuall Contract men acquire, in recompence of the universall Right they abandon: and such power there is none before the erection of a Commonwealth. And this is also to be gathered out of the ordinary definition of Justice in the Schooles: For they say, that *Justice is the constant-Will of giving to every man his own*. And therefore where there is no *Own*, that is, no Propriety, there is no Injustice; and where there is no coercive Power erected, that is, where there is no Commonwealth, there is no Propriety; all men having Right to all things: Therefore where there is no Commonwealth, there nothing is Unjust. So that the nature of Justice,

Injustice: Somewhat like to a piece of Law in *Cokes Commentaries on Littleton*; where he says, If the right Heire of the Crown be attained of Treason; yet the Crown shall descend to him, and *eo instante* the Atteynder be voyd: From which instances a man will be very prone to inferre; that when the Heire apparent of a Kingdome, shall kill him that is in possession, though his father; you may call it Injustice, or by what other name you will; yet it can never be against Reason, seeing all the voluntary actions of men tend to the benefit of themselves; and those actions are most Reasonable, that conduce most to their 1731 ends. This specious reasoning is nevertheless false.

For the question is not of promises mutual, where there is no security of performance on either side; as when there is no Civill Power erected over the parties promising; for such promises are no Covenants: But either where one of the parties has performed already; or where there is a Power to make him performe; there is the question whether it be against reason, that is, against the benefit of the other to performe, or not. And I say it is not against reason. For the manifestation whereof, we are to consider; First, that when a man doth a thing, which notwithstanding any thing can be foreseen, and reckoned on, tendeth to his own destruction, howsoever some accident which he could not expect, arriving may turne it to his benefit; yet such events do not make it reasonably or wisely done. Secondly, that in a condition of Warr, wherein every man to every man, for want of a common Power to keep them all in awe, is an Enemy, there is no man can hope by his own strength, or wit, to defend himselfe from destruction, without the help of Confederates; where every one expects the same defence by the Confederation, that any one else does; and therefore he which

declares he thinks it reason to deceive those that help him, can in reason expect no other means of safety, than what can be had from his own single Power. He therefore that breaketh his Covenant, and consequently declareth that he thinks he may with reason do so, cannot be received into any Society, that unite themselves for Peace and Defence, but by the error of them that receive him; nor when he is received, be retained in it, without seeing the danger of their error; which errors a man cannot reasonably reckon upon as the means of his security: and therefore if he be left, or cast out of Society, he perisheth; and if he live in Society, it is by the errors of other men, which he could not foresee, nor reckon upon; and consequently against the reason of his preservation; and so, as all men that contribute not to his destruction, forbear him solely out of ignorance of what is good for themselves.

As for the Instance of gaining the secure and perpetuall felicity of Heaven, by any way; it is frivolous: there being but one way imaginable; and that is not breaking, but keeping of Covenant.

And for the other Instance of attaining Sovereignty by Rebellion; it is manifest, that though the event follow, yet because it cannot reasonably be expected, but rather the contrary; and because by gaining it so, others are taught to gain the same in like manner, the attempt thereof is against reason. Justice therefore, that is to say, Keeping of Covenant, is a Rule of Reason, by which we are forbidden to do any thing destructive to our life; and consequently a Law of Nature.

There be some that proceed further; and will not have the Law of Nature, to be those Rules which conduce to the preservation of mans life on earth; but to the attaining of an eternall felicity after death; to which they think the breach of Covenant may

conduce; and consequently be just and reasonable; (such are they that think it a work of 174) merit to kill, or depose, or rebell against, the Sovereign Power constituted over them by their own consent.) But because there is no naturall knowledge of mans estate after death; much lesse of the reward that is then to be given to breach of Faith; but onely a believe grounded upon other mens saying, that they know it supernaturally, or that they know those that knew them, that knew others, that knew it supernaturally; Breach of Faith cannot be called a Precept of Reason, or Nature.

Others, that allow for a Law of Nature, the keeping of Faith, do nevertheless make exception of certain persons; as Heretiques, and such as use not to performe their Covenant to others: And this also is against reason. For if any fault of a man, be sufficient to discharge our Covenant made; the same ought in reason to have been sufficient to have hindered the making of it.

The names of Just, and Injust, when they are attributed to Men, signifie one thing; and when they are attributed to Actions, another. When they are attributed to Men, they signifie Conformity, or Inconformity of Manners, to Reason. But when they are attributed to Actions, they signifie the Conformity, or Inconformity to Reason, not of Manners, or manner of life, but of particular Actions. A just man therefore, is he that taketh all the care he can, that his Actions may be all just: and an Unjust man, is he that neglecteth it. And such men are more often in our Language stiled by the names of Righteous, and Unrighteous; then Just, and Unjust; though the meaning be the same. Therefore a Righteous man, does not lose that Title, by one or a few unjust Actions, that proceed from sudden Passion, or mistake of Things, or Persons: not does an Unrighteous man, lose his character, for such

*Covenant is not discharged by the Vice of the Person to whom they are made*

*Justice of Men, & Justice of Actions what*

Actions, as he does, or forbears to do, for feare: because his Will is not framed by the Justice, but by the apparant benefit of what he is to do. That which gives to humane Actions the relish of Justice, is a certain Noblenesse or Gallantnesse of courage, (rarely found,) by which a man scorns to be beholdng for the contentment of his life, to fraud, or breach of promise. This Justice of the Manners, is that which is meant, where Justice is called a Vertue; and Injustice a Vice.

But the Justice of Actions denominates men, not just, but *Guiltesse*: and the Injustice of the same, (which is also called Injury,) gives them but the name of *Guilty*.

Again, the Injustice of Manners, is the disposition, or aptitude to do Injurious; and is Injustice before it proceed to Act; and without supposing any individual person injured. But the Injustice of an Action, (that is to say Injury,) supposeth an individual person injured; namely him, to whom the Covenant was made: And therefore many times the Injury is received by one man, when the damage redoundeth to another. As when the Master commandeth his servant to give money to a stranger; if it be not done, the Injury is done to the Master, whom he had before Covenanted to obey; but the damage redoundeth to the stranger, to whom he had no Obligation; and therefore could not Injure him. And so also in Common-wealths, private men may remit to one another their debts; but not robberies or other violences, whereby they are damaged; because the detaining of Debt, is an Injury to themselves; but Robbery and Violence, are Injuries to the Person of the Common-wealth.

Whatsoever is done to a man, conformable to his own Will signified to the doer, is no Injury to him. For if he that doeth it, hath not passed away his originall right to do what he please, by some Ante-

*Nothing done to a man, by his own consent can be Injury*

cedent Covenant, there is no breach of Covenant; and therefore no Injury done him. And if he have; then his Will to have it done being signified, is a release of that Covenant: and so again there is no Injury done him.

Justice Commutative, and Distributive

Justice of Actions, is by Writers divided into *Commutative*, and *Distributive*; and the former they say consisteth in proportion Arithmetical; the later in proportion Geometrical. Commutative therefore, they place in the equality of value of the things contracted for; And Distributive, in the distribution of equal benefit, to men of equal merit. As if it were Injustice to sell dearer than we buy; or to give more to a man than he merits. The value of all things contracted for, is measured by the Appetite of the Contractors: and therefore the just value, is that which they be contented to give. And Merit (besides that which is by Covenant, where the performance on one part, meriteth the performance of the other part, and falls under Justice Commutative, not Distributive,) is not due by Justice; but is rewarded of Grace onely. And therefore this distinction, in the sense wherein it useth to be expounded, is not right. To speak properly, Commutative Justice, is the Justice of a Contractor; that is, a Performance of Covenant, in Buying, and Selling; Hiring, and Letting to Hire; Lending, and Borrowing; Exchanging, Bartering, and other acts of Contract.

And Distributive Justice, the Justice of an Arbitrator; that is to say, the act of defining what is Just. Wherein, (being trusted by them that make him Arbitrator,) if he performe his Trust, he is said to distribute to every man his own: and this is indeed Just Distributive, and may be called (though improperly) Distributive Justice; but more properly Equity; which also is a Law of Nature, as shall be shewn in due place.

As Justice dependeth on Antecedent Covenant; so does GRATITUDE depend on Antecedent Grace; that is to say, Antecedent Free-gift: and is the fourth Law of Nature; which may be conceived in this Forme, *That a man which receiveth Benefit from another of meer Grace, Endeavour that he which giveth it, have no reasonable cause to repent him of his good will.* For no man giveth, but with intention of Good to himselfe; because Gift is Voluntary; and of all Voluntary Acts, the Object is to every man his own Good; of which if men see they shall be frustrated, there will be no beginning of benevolence, or trust; nor consequently of mutuall help; nor of reconciliation of one man to another; and therefore they are to remain still in the condition of War; which is contrary to the first and Fundamental Law of Nature, which commandeth men to *Seek Peace.* The breach of this Law, 1761. is called *Ingratitude*; and hath the same relation to Grace, that Injustice hath to Obligation by Covenant.

The fifth, Mutuall accommodation, or Com-  
pleasance

A fifth Law of Nature, is *COMPLEASANCE*; that is to say, *That every man strive to accommodate himselfe to the rest.* For the understanding whereof, we may consider, that there is in mens apnesse to Society; a diversity of Nature, rising from their diversity of Affections; not unlike to that we see in stones brought together for building of an Edifice. For as that stone which by the asperity, and irregularity of Figure, takes more room from others, than it selfe fills; and for the hardnesse, cannot be easily made plain, and thereby hindereth the building, is by the builders cast away as unprofitable, and troublesome: so also, a man that by asperity of Nature, will strive to retain those things which to himselfe are superfluous, and to others necessary; and for the stubbornness of his Passions, cannot be corrected, is to be left, or cast out of Society, as cumbersome thereunto. For seeing every man, not

onely by Right, but also by necessity of Nature, is supposed to endeavour all he can, to obtain that which is necessary for his conservation; He that shall oppose himselfe against it, for things superfluous, is guilty of the warre that thereupon is to follow; and therefore doth that, which is contrary to the fundamentall Law of Nature, which commandeth to seek Peace. The observers of this Law, may be called SOCIABLE, (the Latines call them Comitati.) The contrary, Subborn, Intractable, Froward, Intractable.

A sixth Law of Nature is this, That upon caution of the Future time, a man ought to pardon the offences past of them that repenting, desire it. For PARDON, is nothing but granting of Peace; which though granted to them that persevere in their hostility, be not Peace, but Fears; yet not granted to them that give caution of the Future time, is signe of an aversion to Peace; and therefore contrary to the Law of Nature.

A seventh is, That in Revenues, (that is, retribution of Evil for Evil,) Men look not at the greatness of the evill past, but the greatness of the good to follow. Whereby we are forbidden to inflict punishment with any other designe, than for correction of the offender, or direction of others. For this Law is consequent to the next before it, that commandeth Pardon, upon security of the Future time. Besides, Revenge without respect to the Example, and profit to come, is a triumph, or glorying in the hurt of another, tending to no end; (for the End is always somewhat to Come;) and glorying to no end, is vain-glory, and contrary to reason; and to hurt without reason, tendeth to the introduction of Warre; which is against the Law of Nature; and is commonly stiled by the name of Cruelty.

And because all signes of hatred, or contempt, provokes to fight; inasmuch as most men choose

rather to hazard their life, than not to be revenged; we may in the eighth place, for a Law of Nature, set down this Precept; That no man by deed, word, countenance, or gesture, declare Hatred, or Contempt of another. The breach of which Law, is commonly called Continuity.

The question who is the better man, has no place in the condition of meer Nature; where, (as has been shewn before,) all men are equall. 177 The inequality that now is, has bin introduced by the Lawes civill. I know that Aristotle in the first booke of his Politiques, for a foundation of his doctrine, maketh men by Nature, some more worthy to Command, meaning the wiser sort (such as he thought himselfe to be for his Philosophy;) others to Serve, (meaning those that had strong bodies, but were not Philosophers as he;) as if: Master and Servant were not introduced by consent of men, but by difference of Wit: which is not only against reason; but also against experience. For there are very few so foolish, that had not rather governe themselves, than be governed by others: Nor when the wise in their own conceit, contend by force, with them who distrust their owne wisdom, do they alwaies, or often, or almost at any time, get the Victory. If Nature therefore have made men equall, that equalitie is to be acknowledged: or if Nature have made men unequal; yet because men that think themselves equall, will not enter into conditions of Peace, but upon Equall termes, such equalitie must be admitted. And therefore for the ninth law of Nature, I put this, That every man acknowledge other for his Equall by Nature. The breach of this Precept is Pride.

On this law, dependeth another, That at the entrance into conditions of Peace, no man require to reserve to himselfe any Right, which he is not content should be reserved to every one of the rest. As it is

The ninth, against Pride

some men shamed  
the law is good  
the law is good  
the law is good

The tenth against Arrogance

necessary for all men that seek peace, to lay down certain Rights of Nature; that is to say, not to have libertie to do all they list: so is it necessarie for many life, to retaine some; as right to governe their owne bodies; enjoy aire, water, motion, waies to go from place to place; and all things else without which a man cannot live, or not live well. If in this case, at the making of Peace, men require for themselves, that which they would not have to be granted to others, they do contrary to the precedent law, that commandeth the acknowledgment of natural equalitie, and therefore also against the law of Nature. The observers of this law, are those we call *Modest*, and the breakers *Arrogant* men. The Greeks call the violation of this law *περνεξία*; that is, a desire of more than their share.

Also if a man be trusted to judge between man and man, it is a precept of the Law of Nature, that he *deale Equally* between them. For without that, the Controversies of men cannot be determined but by Warre. He therefore that is partiall in judgment, doth what in him lies, to detour men from the use of Judges, and Arbitrators; and consequently, (against the fundamentall Lawe of Nature) is the cause of Warre.

The observance of this law, from the equal distribution to each man, of that which in reason belongeth to him, is called *EQUITY*, and (as I have sayd before) distributive Justice: the violation, *Acception of persons*, *προσωποληψία*.

And from this followeth another law, That such things as cannot be divided, be enjoyed in Common, if it can be; and if the quantity of the thing permit, without *Stint*; otherwise *Proportionably to the number of them that have Right*. For otherwise the distribution is Unequall, and contrary to Equitie.

But some things there be, that can neither be divided, nor enjoyed in common. Then, The Law

The eleventh Equity

The twelfth, Equall use of things Common

The thirteenth, of Lot

of Nature, which prescribeth Equity, requireth, That the Entire Right; or else, (making the use alternate,) the First Possession, be determined by Lot. For equal distribution, is of the Law of Nature; and other means of equal distribution cannot be imagined. Of Lots there be two sorts, *Arbitrary*, and *Naturall*. Arbitrary, is that which is agreed on by the Competitors: *Naturall*, is either *Primogeniture*, (which the Greek calls *Κληρονομία*, which signifies, Given by Lot;) or *First Seisure*.

And therefore those things which cannot be enjoyed in common, nor divided, ought to be adjudged to the First Possessor; and in some cases to the First-Borne, as acquired by Lot.

It is also a Law of Nature, That all men that mediate Peace, be allowed safe Conduct. For the Law that commandeth Peace, as the *End*, commandeth intercession, as the *Means*; and to Intercession the Means is safe Conduct.

And because, though men be never so willing to observe these Lawes, there may nevertheless arise questions concerning a mans action; First, whether it were done, or not done; Secondly (if done) whether against the Law, or not against the Law; the former whereof, is called a question *Of Fact*; the later a question *Of Right*; therefore unless the parties to the question, Covenant mutually to stand to the sentence of another, they are as farre from Peace as ever. This other, to whose Sentence they submit, is called an *ARBITRATOR*. And therefore it is of the Law of Nature, That they that are at controversie, submit their Right to the judgement of an Arbitrator.

And seeing every man is presumed to do all things in order to his own benefit, no man is a fit Arbitrator in his own cause; and if he were never so fit; yet Equity allowing to each party equal benefit, if one be admitted to be Judge, the other is to be

The fourteenth, of Primogeniture, and First settling

The fifteenth, of Mediators

The sixteenth, of Submission to Arbitriment

The seventeenth, No man is his own Judge

part of the ballance, and his own into their place, that his own passions, and self-love, may adde nothing to the weight; and then there is none of these Lawes of Nature that will not appear unto him very reasonable.

The Lawes of Nature oblige in *foro interno*; that is to say, they bind to a desire they should take place: but in *foro externo*; that is, to the putting them in act, not always. For he that should be modest, and tractable, and performe all he promises, in such time, and place, where no man els should do so, should but make himselfe a prey to others, and procure his own certain ruine, contrary to the ground of all Lawes of Nature, which tend to Natures preservation. And again, he that having sufficient Security, that others shall observe the same Lawes towards him, observes them not himselfe, seeketh not Peace, but War; & consequently the destruction of his Nature by Violence.

And whatsoever Lawes bind in *foro interno*, may be broken, not onely by a fact contrary to the Law but also by a fact according to it, in case a man think it contrary. For though his Action in this case, be according to the Law; yet his Purpose was against the Law; which where the Obligation is in *foro interno*, is a breach.

The Lawes of Nature are Imutable and Eternall; For Injustice, Ingratitude, Arrogance, Pride, Iniquity, Acceptation of persons, and the rest, can never be made lawfull. For it can never be that Warre shall preserve life, and Peace destroy it.

The same Lawes, because they oblige onely to a desire, and endeavour, I mean an unfeigned and constant endeavour, are easie to be observed. For in that they require nothing but endeavour; he that endeavoureth their performance, fulfilleth them; and he that fulfilleth the Law, is just.

And the Science of them, is the true and onely Philosophy

And yet Easie

The Science of these Lawes, is the true Morall Philosophy

admitted also; & so the controversie, that is, the cause of War, remains, against the Law of Nature. For the same reason no man in any Cause ought to be received for Arbitrator, to whom greater profit, or honour, or pleasure apparently ariseth out of the victory of one party, than of the other: for hee hath taken (though an unavoidable bribe, yet) a bribe; and no man can be obliged to trust him. And thus also the controversie, and the condition of War remaineth, contrary to the Law of Nature.

The eighth, no man to be Judge, that has in him a natural cause of Partiality

And in a controversie of *Fact*, the Judge being to give no more credit to one, than to the other, (if there be no other Arguments) must give credit to a third; or to a third and fourth; or more: For else the question is undecided, and left to force, contrary to the Law of Nature.

The ninth, of Witnesses

These are the Lawes of Nature, dictating Peace, for a means of the conservation of men in multitudes; and which onely concern the doctrine of Civill Society. There be other things tending to the destruction of particular men; as Drunkenness, and all other parts of Intemperance; which may therefore also be reckoned amongst those things which the Law of Nature hath forbidden; but are not necessary to be mentioned, nor are pertinent enough to this place.

And though this may seem too subtile a deduction of the Lawes of Nature, to be taken notice of by all men; whereof the most part are too busie in getting food, and the rest too negligent to understand; yet to leave all men unexcusable, they have been contracted into one easie sum, intelligible, even to the meanest capacity; and that is, *Do not that to another, which thou wouldst not have done to thy selfe*; which sheweth him, that he has no more to do in learning the Lawes of Nature, but, when weighing the actions of other men with his own, they seem too heavy, to put them into the other

A Rule, by which the Lawes of Nature may easily be examined

Moral Philosophy. For Morall Philosophy is nothing else but the Science of what is Good, and Evil, in the conversation, and Society of mankind. Good, and Evil, are names that signifie our Appetites, and Aversions; which in different tempers, customes, and doctrines of men, are different: And divers men, differ not onely in their Judgement, on the senses of what is pleasant, and unpleasant to the tast, smell, hearing, touch, and sight; but also of what is conformable, or disagreeable to Reason, in the actions of common life. Nay, the same man, in divers times, differs from himselfe; and one time praiseth, that is, calleth Good, what another time he dispraiseth, and calleth Evil: (89). From whence arise Disputes, Controversies, and at last War. And therefore so long a man is in the condition of meer Nature, (which is a condition of War,) as private Appetite is the measure of Good, and Evil: and consequently all men agree on this, that Peace is Good, and therefore also the way, or means of Peace, which (as I have shewed before) are Justice, Gratitude, Modesty, Equity, Mercy, & the rest of the Laws of Nature, are good; that is to say, Morall Vertues; and their contrarie Vices, Evil. Now the science of Vertus and Vice, is Morall Philosophie; and therefore the true Doctrine of the Lawes of Nature, is the true Morall Philosophie. But the Writers of Morall Philosophie, though they acknowledge the same Vertues and Vices; Yet not seeing wherein consisted their Goodnesse; nor that they come to be praised, as the meanes of peaceable, sociable, and comfortable living; place them in a mediocrity of passions: as if not the Cause, but the Degree of daring, made Fortitude; or not the Cause, but the Quantity of a gift, made Liberality.

These dictates of Reason, men use to call by the name of Lawes; but improperly: for they are but

Conclusions, or Theoremes concerning what conduceth to the conservation and defence of themselves; wheras Law, properly is the word of him, that by right hath command over others. But yet if we consider the same Theoremes, as delivered in the word of God, that by right commandeth all things; then are they properly called Lawes.

## CHAP. XVI

## OF PERSONS, AUTHORS, and things Personated.

**A** PERSON, is he whose words or actions are considered, either as his own, or as representing the words or actions of an other man, or of any other thing to whom they are attributed, whether Truly or by Fiction. When they are considered as his owne, then is he called a *Naturall Person*: And when they are considered as representing the words and actions of an other, then is he a *Feigned or Artificiall person*.

*The word Person, whence*

The word Person is latine; instead whereof the Greeks have *πρόσωπον*, which signifies the Face, as *Persona* in latine signifies the disguise, or outward appearance of a man, counterfeited on the Stage; and sometimes more particularly that part of it, which disguiseth the face, as a Mask or Visard: And from the Stage, hath been translated to any Representer of speech and action, as well in Tribunalls, as Theaters. So that a *Person*, is the same that an *Actor* is, both on the Stage and in common Conversation; and to *Personate*, is to Act, or Represent himselfe, or an other; and he that acteth another, is said to beare his Person, or act in his name; (in which sence Cicero useth it where he saies, *Unus sustinet tres Personas; Mei, Adversarii, & Judicis*, I beare three Persons; my own, my Adversaries, and

# OF COMMON-WEALTH

## CHAP. XVII Of the Causes, Generation, and Definition of a COMMON-WEALTH

THE final Cause, End, or Designe of men, (who naturally love Liberty, and Dominion over others,) in the introduction of that restraint upon themselves, (in which wee see them live in Common-wealths,) is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of Warre, which is necessarily consequent (as hath been shewn) to the naturall Passions of men, when there is no visible Power to keep them in performance of their Covenants, and observation of those Lawes of Nature set down in the fourteenth and fiftenth Chapters.

Chap. 13

For the Lawes of Nature (as Justice, Equity, Modesty, Mercy, and (in summe) doing to others, as we would be done to,) of themselves, without the terrour of some Power, to cause them to be observed, are contrary to our naturall Passions; that carry us to Partiality, Pride, Revenge, and the like. And Covenants, without the Sword, are but Words, and of no strength to secure a man at all. Therefore notwithstanding the Lawes of Nature, (which every one hath then kept, when he has the will to keep them, when he can do it safely,) if there be no Power erected, or not great enough for our

### Of MAN

Part I times, and in cases of the greatest consequence, a mute Person, and unapt, as for many things else, so for the government of a Multitude, especially in time of Warre.

Of Authors there be two sorts. The first simply so called; which I have before defined to be him, that owneth the Action of another simply. The second is he, that owneth an Action, or Covenant of another conditionally; that is to say, he undertaketh to do it, if the other doth it not, at, or before a certain time.

And these Authors conditionall, are generally called SURETYES, in Latine *Fidejussores*, and *Sponsores*; and particularly for Debt, *Predes*; and for Appearance before a Judge, or Magistrate, *Vades*. 1851

strength, they do not help, but hinder one another; and reduce their strength by mutuall opposition to nothing: whereby they are easily, not onely subdued by a very few that agree together; but also when there is no common enemy, they make warre upon each other, for their particular interests. For if we could suppose a great Multitude of men to consent in the observation of Justice, and other Lawes of Nature, without a common Power to keep them all in awe; we might as well suppose all Man-kind to do the same; and then there neither would be, nor need to be any Civill Government, or Common-wealth at all; because there would be Peace without subjection.

Nor is it enough for the security, which men desire should last all the time of their life, that they be governed, and directed by one judgement, for a limited time; as in one Battell, or one Warre. For though they obtain a Victory by their unanimous endeavour against a forraign enemy; yet afterwards, when either they have no common enemy, or he that by one part is held for an enemy, is by another part held for a friend, they must needs by the difference of their interests dissolve, and fall again into a Warre amongst themselves.

It is true, that certain living creatures, as Bees, and Ants, live sociably one with another, (which are therefore by Aristotle numbred amongst Political creatures;) and yet have no other direction, than their particular judgements and appetites; nor speech, whereby one of them can signifie to another, what he thinks expedient for the common benefit: and therefore some man may perhaps desire to know, why Man-kind cannot do the same. To which I answer,

First, that men are continually in competition for Honour and Dignity, which these creatures are not; and consequently amongst men there ariseth on

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security; every man will and may lawfully rely on his own strength and art, for caution against all other men. And in all places, where men have lived by small Families, to robbe and spoyle one another, has been a Trade, and so farre from being reputed against the Law of Nature, that the greater spoyles they gained, the greater was their honour; and men observed no other Lawes therein; but the Lawes of Honour; that is, to abstain from cruelty, leaving to men their lives, and instruments of husbandry. And as small Families did then; so now do Cities and Kingdomes which are but greater Families (for their own security) enlarge their Dominions, upon all pretences of danger, and fear of Invasion, or assistance that may be given to Invaders, endeavour as much as they can, to subdue, or weaken their neighbours, by open force, and secret arts, for want of other Caution, justly; and are remembered for it in after ages with honour.

Nor is it the joyning together of a small number of men, that gives them this security; because in small numbers, small additions (86) on the one side or the other; make the advantage of strength so great, as is sufficient to carry the Victory; and therefore gives encouragement to an Invasion. The Multitude sufficient to confide in for our Security, is not determined by any certain number, but by comparison with the Enemy we feare; and is then sufficient, when the odds of the Enemy is not of so visible and conspicuous moment, to determine the event of warre, as to move him to attempt.

And be there never so great a Multitude; yet if their actions be directed according to their particular judgements, and particular appetites, they can expect thereby no defence, nor protection, neither against a Common enemy, nor against the injuries of one another. For being distracted in opinions concerning the best use and application of their

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Nor from a  
the confu-  
sion of a few  
men or fami-  
lies:

Nor from a  
great Mul-  
titude, unless  
directed by  
one judg-  
ment:

And that  
continually  
Why certain  
creatures  
without rea-  
son, or speech  
do neverthe-  
lesse live in  
Society, with-  
out any con-  
fusive Power

that ground, Envy and Hatred, and finally Warre; but amongst these not so.

Secondly, that amongst these creatures, the Common good differeth not from the Private; and being by nature inclined to their private, they procure thereby the common benefit. But man, whose Joy consisteth in comparing himselfe with other men, can relish nothing but what is eminent.

Thirdly, that these creatures, having not (as man) the use of reason, do not see, nor think they see any fault, in the administration of 187) their common businesse: whereas amongst men, there are very many, that thinke themselves wiser, and abler to govern the Publique, better than the rest; and these strive to reforme and innovate, one this way, another that way; and thereby bring it into Distraction and Civill warre.

Fourthly, that these creatures, though they have some use of voice, in making knowne to one another their desires, and other affections; yet they want that art of words, by which some men can represent to others, that which is Good, in the likeness of Evil; and Evil, in the likeness of Good; and augment, or diminish the apparent greatness of Good and Evil; discontenting men, and troubling their Peace at their pleasure.

Fifthly, irrational creatures cannot distinguish betweene Injury, and Damage; and therefore as long as they be at ease, they are not offended with their fellows: whereas Man is then most troublesome, when he is most at ease: for then it is that he loves to shew his Wisdom, and controule the Actions of them that governe the Common-wealth.

Lastly, the agreement of these creatures is Naturall; that of men, is by Covenant only, which is Artificiall; and therefore it is no wonder if there be somewhat else required (besides Covenant) to make their Agreement constant and lasting; which

is a Common Power, to keep them in awe, and to direct their actions to the Common Benefit.

The only way to erect such a Common Power, as may be able to defend them from the invasion of Forraigners, and the injuries of one another, and thereby to secure them in such sort, as that by their owne industrie, and by the fruites of the Earth, they may nourish themselves and live contentedly; is, to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will: which is as much as to say, to appoint one man, or Assembly of men, to beare their Person; and every one to owne, and acknowledge himselfe to be Author of whatsoever he that so beareth their Person, shall Act, or cause to be Acted, in those things which concerne the Common Peace and Safetie; and therein to submit their Wills, every one to his Will, and their Judgements, to his Judgment. This is more than Consent, or Concord; it is a reall Unitie of them all, in one and the same Person, made by Covenant of every man with every man, in such manner, as if every man should say to every man, *I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorise all his Actions in like manner.* This done, the Multitude so united in one Person, is called a COMMON-WEALTH, in latine CIVITAS. This is the Generation of that great LEVIATHAN, or rather (to speake more reverently) of that *Mortall God*, to which wee owe under the *Immortall God*, our peace and defence. For by this Authoritie, given him by every particular man in the Common-Wealth, he hath the use of so much Power and Strength 188) conferred on him, that by terror thereof, he is enabled to forme the wills of them all, to Peace at home, and mutuall ayd against

Part II OF COMMON-WEALTH Chap. 18  
their enemies abroad. And in him consisteth the Essence of the Common-wealth; which (to define it) is One Person, of whose Acts a great Multitude, by mutual Covenants one with another, have made themselves every one the Author, to the end he may use the strength and means of them all, as he shall think expedient, for their Peace and Common Defence.

Sovereign, and Subject, what  
And he that carryeth this Person, is called SOVERAIGNE, and said to have Sovereign Power; and every one besides, his SUBJECT.

The attaining to this Sovereign Power, is by two ways. One, by Naturall force; as when a man maketh his children, to submit themselves, and their children to his government, as being able to destroy them if they refuse; or by Warre subdueth his enemies to his will; giving them their lives on that condition. The other, is when men agree amongst themselves, to submit to some Man, or Assembly of men, voluntarily, on confidence to be protected by him against all others. This later, may be called a Politicall Common-wealth or Commonwealth by Institution; and the former, a Commonwealth by Acquisition. And first, I shall speak of a Commonwealth by Institution.

CHAP. XVIII  
OF THE RIGHTS OF SOVERAIGNES  
BY INSTITUTION

The act of Instituting a Commonwealth, what  
A Commonwealth is said to be Instituted, when a Multitude of men do Agree, and Covenant, every one, with every one, that to whatsoever Man, or Assembly of Men, shall be given by the major part, the Right to Present the Person of them all, (that is to say, to be their Representative) every one, as well he

that Voted for it, as he that Voted against it, shall Authorise all the Actions and Judgements, of that Man, or Assembly of men, in the same manner, as if they were his own, to the end, to live peaceably amongst themselves, and be protected against other men.

From this Institution of a Common-wealth are derived all the Rights, and Faculties of him, or them, on whom the Sovereign Power is conferred by the consent of the People assembled.

First, because they Covenant, it is to be understood, they are not obliged by former Covenant to any thing repugnant hereunto. And Consequently they that have already Instituted a Commonwealth, being thereby bound by Covenant, to own the Actions, and Judgements of one, cannot lawfully make a new Covenant, amongst themselves, to be obedient to any other, in any thing whatsoever, without his permission. And therefore, they that are subjects to a Monarch, cannot without his leave cast off Monarchy, and return to the confusion of a disunited Multitude; nor transfere their Person from him that beareth it, to another Man, or other Assembly of men: for they 1891 are bound, every man to every man, to Own, and be reputed Author of all, that he that already is their Sovereign, shall do, and judge fit to be done; so that any one man dissenting, all the rest should break their Covenant made to that man, which is injustice: and they have also every man given the Sovereignty to him that beareth their Person; and therefore if they depose him, they take from him that which is his own, and so again it is injustice. Besides, if he that attempteth to depose his Sovereign, be killed, or punished by him for such attempt, he is author of his own punishment, as being by the Institution, Author of all his Sovereign shall do: And because it is injustice for a man to do any thing, for which

The Consequences to such Institution, are  
1. The Subjects cannot change the form of government.

he may be punished by his own authority, he is also upon that title, unjust. And whereas some men have pretended for their disobedience to their Sovereign, a new Covenant, made, not with men, but with God; this also is unjust: for there is no Covenant with God, but by mediation of some body that representeth Gods Person; which none doth but Gods Lieutenant, who hath the Sovereignty under God. But this pretence of Covenant with God, is so evident a lye, even in the pretenders own consciences, that it is not onely an act of an unjust, but also of a vile, and unmanly disposition.

Secondly, Because the Right of bearing the Person of them all, is given to him they make Sovereign, by Covenant onely of one to another, and not of him to any of them; there can happen no breach of Covenant on the part of the Sovereign; and consequently none of his Subjects, by any pretence of forfeiture, can be freed from his Subjection. That he which is made Sovereign, maketh no Covenant with his Subjects before-hand; is manifest; because either he must make it with the whole multitude, as one party to the Covenant; or he must make a severall Covenant with every man. With the whole, as one party, it is impossible; because as yet they are not one Person: and if he make so many severall Covenants as there be men, those Covenants after he hath the Sovereignty are voyd, because what act soever can be pretended by any one of them for breach thereof, is the act both of himselfe, and of all the rest, because done in the Person, and by the Right of every one of them in particular. Besides, if any one, or more of them, pretend a breach of the Covenant made by the Sovereign at his Institution; and others, or one other of his Subjects, or himselfe alone, pretend there was no such breach, there is in this case, no Judge to decide the controversie: it

2. Sovereign  
Power cannot  
not be forfeited

returns therefore to the Sword again; and every man recovereth the right of Protecting himselfe by his own strength, contrary to the designe they had in the Institution. It is therefore in vain to grant Sovereignty by way of precedent Covenant. The opinion that any Monarch receiveth his Power by Covenant, that is to say on Condition, proceedeth from want of understanding this easie truth, that Covenants being but words, and breath, have no force to oblige, contain, constrain, or protect any man, but what it has from the publique Sword; that is, from the untied hands of that Man, or Assembly of men that hath the Sovereignty, and whose actions are avouched by them (90) all, and performed by the strength of them all, in him united. But when an Assembly of men is made Sovereign; then no man imagineth any such Covenant to have part in the Institution; for no man is so dull as to say, for example, the People of Rome, made a Covenant with the Romans, to hold the Sovereignty on such or such conditions; which not performed, the Romans might lawfully depose the Roman People. That men see not the reason to be alike in a Monarchy, and in a Popular Government, proceedeth from the ambition of some, that are kinder to the government of an Assembly, whereof they may hope to participate, than of Monarchy, which they despair to enjoy.

Thirdly, because the major part hath by consenting voices declared a Sovereign; he that dissented must now consent with the rest; that is, be contented to avow all the actions he shall do, or else justly be destroyed by the rest. For if he voluntarily entered into the Congregation of them that were assembled, he tacitely declared thereby his will (and therefore should ordayne; and therefore if he refuse to stand thereto, or make Protestation against any of

3. No man  
can without  
injustice  
protest against  
the Institution  
of the Sovereign  
de-  
clared by the  
major part.

their Decrees, he does contrary to his Covenant, and therefore unjustly. And whether he be of the Congregation, or not; and whether his consent be asked, or not, he must either submit to their decrees, or be left in the condition of warre he was in before; wherein he might without injustice be destroyed by any man whatsoever. Subject is, by this Fourthly, because every Subject is, by this Institution, Author of all the Actions, and Judgements of the Sovereigne Instituted; it follows, that whatsoever he doth, it can be no injury to any of his Subjects; nor ought he to be by any of them accused of Injustice. For he that doth any thing by authority from another, doth therein no injury to him by whose authority he acteth: But by this Institution of a Common-wealth, every particular man is Author of all the Sovereigne doth; and consequently he that complaineth of injury from his Sovereigne, complaineth of that whercof he himselfe is Author; and therefore ought not to accuse any man but himselfe; no nor himselfe of injury; because to do injury to ones selfe, is impossible. It is true that they that have Sovereigne power, may commit Iniquity; but not Injustice, or injury in the proper signification.

Fifthly, and consequently to that which was said last, no man that hath Sovereigne power can justly be put to death, or otherwise in any manner by his Subjects punished. For seeing every Subject is Author of the actions of his Sovereigne; he punisheth another, for the actions committed by himselfe. And because the End of this Institution, is the Peace and Defence of them all; and whatsoever his right to the End, has right to the Means; it belongeth to the Sovereigne Man, or Assembly that hath the Sovereignty, to be Judge both of the meanes of Peace and Defence; and also of the hindrances, and disturbances of the same; and to do whatsoever he

4. The Sovereign Actions cannot be justly accused by the Subject

5. Whatsoever the Sovereigne doth, is punishable by the Subject

6. The Sovereigne is Judge of what is necessary for the Peace and Defence of his Subjects

shall think necessary to be done, both before hand, for the preserving of Peace and Security, by prevention of Discord at home and 1911 Hostility from abroad; and, when Peace and Security are lost, for the recovery of the same. And therefore,

And Judge of what Decrees are fit to be taught them

Sixty, it is annexed to the Sovereignty, to be Judge of what Opinions and Doctrines are averse, and what conducing to Peace; and consequently, on what occasions, how farre, and what, men are to be trusted withall, in speaking to Multitudes of people; and who shall examine the Doctrines of all bookes before they be published. For the Actions of men proceed from their Opinions; and in the governing of Opinions, consisteth the well governing of mens Actions, in order to their Peace, and Concord. And though in matter of Doctrine, nothing ought to be regarded but the Truth; yet this is not repugnant to regulating of the same by Peace. For Doctrine repugnant to Peace, can no more be True, than Peace and Concord can be against the Law of Nature. It is true, that in a Common-wealth, where by the negligence, or unskillfulness of Governours, and Teachers, false Doctrines are by time generally received; the contrary Truths may be generally offensive; Yet the most sudden, and rough busling in of a new Truth, that can be, does never breake the Peace, but only sometimes awake the Warre. For those men that are so remissly governed, that they dare take up Armes, to defend, or introduce an Opinion, are still in Warre; and their condition not Peace, but only a Cessation of Armes for feare of one another; and they live as it were, in the precincts of bataille continually. It belongeth therefore to him that hath the Sovereign Power, to be Judge, or constitute all Judges of Opinions and Doctrines, as a thing necessary to Peace, thereby to prevent Discord and Civill Warre.

that end; and to levy money upon the Subjects; to defray the expenses thereof. For the Power by which the people are to be defended, consisteth in their Armies; and the strength of an Army, in the union of their strength under one Command; which Command the Sovereign Instituted, therefore hath; because the command of the Militia, without other Institution, maketh him that hath it Sovereign. And therefore whosoever is made General of an Army, he that hath the Sovereign Power is always Generalissimo.

Tenthly, is annexed to the Sovereignty, the choosing of all Councillours, Ministers, Magistrates, and Officers, both in Peace, and War. For seeing the Sovereign is charged with the End, which is the common Peace and Defence; he is understood to have Power to use such Means, as he shall think most fit for his discharge.

Eleventhly, to the Sovereign is committed the Power of Rewarding with riches, or honour; and of Punishing with corporal, or pecuniary punishment, or with ignominy every Subject according to the Law he hath formerly made; or if there be no Law made, according as he shall judge most to conduce to the encouraging of men to serve the Common-wealth, or deterring of them from doing dis-service to the same.

Lastly, considering what values men are naturally apt to set upon themselves; what respect they look for from others; and how little they value other men; from whence continually arise amongst them, Emulation, Quarrells, Factions, and at last Warre, to the destroying of one another, and diminution of their strength against a Common-Enemy; It is necessary that there be Lawes of Honour, and a publique rate of the worth of such men as have deserved, or are able to deserve well of the Common-wealth; and that there be force in the

10. And of choosing all Councillours, and Ministers, both of Peace, and Warre:

11. And of Rewarding, and Punishing, and that (where no former Law hath determined the measure of it) arbitrary:

12. And of Honour and Order

Seventhly, is annexed to the Sovereignitic, the whole power of prescribing the Rules, whereby every man may know, what Goods he may enjoy and what Actions he may doe, without being molested by any of his fellow Subjects: And this is it men call Propriety: For before constitution of Sovereign Power (as hath already been shewn) all men had right to all things; which necessarily causeth Warre; and therefore this Proprietic, being necessary to Peace, and depending on Sovereign Power, is the Act of that Power, in order to the publique peace. These Rules of Propriety (or *Morum* and *Tuum*) and of Good, Evil, Lawfull, and Unlawfull in the actions of Subjects, are the Civill Lawes, that is to say, the Lawes of each Common-wealth in particular; though the name of Civill Law be now restrained to the antient Civill Lawes of the City of Rome; which being the head of a great part of the World, her Lawes at that time were in those parts the Civill Law.

Eightly, is annexed to the Sovereignitic, the Right of Judicature; that is to say, of hearing and deciding all Controversies, which may arise concerning Law, either Civill, or Naturall, or concerning Fact. For without the decision of Controversies, there is no protection of one Subject, against the injuries of another; the Lawes concerning *Morum* and *Tuum* are in vaine; and to every man remaineth, from the naturall and necessary appetite of his own conservation, the right of protecting himselfe by his private strength, which is the condition of Warre; and contrary to the end for which every Common-wealth is instituted.

Ninthly, is annexed to the Sovereignitic, the Right of making Warre, and Peace with other Nations, and Common-wealths; that is to say, of judging when it is for the publique good, and how great forces are to be assembled, armed, and payd for

7. The Right of making Rules, whereby every man may know what is so his owne, as no other Subject injuriously take it from him

8. To him also belongeth the Right of all Judicature and decision of Controversies:

9. And of making War, and Peace, as he shall think best:

hands of some or other, to put those Laws in execution. But it hath already been shewn, that not only the whole Militia, or forces of the Commonwealth; but also the Judicature of all Controversies, is annexed to the Sovereignty. To the Sovereign therefore it belongeth also to give titles of Honour; and to appoint what Order of place, and dignity, each man shall hold; and what signes of respect, in publique or private meetings, they shall give to one another.

These are the Rights, which make the Essence of Sovereignty; and which are the marks, whereby a man may discern in what Man, or Assembly of men, the Sovereign Power is placed, and resideth. For these are incommunicable, and inseparable. The Power to coyn Mony; to dispose of the estate and persons of Infant heirs; to have preemption in Markets; and all other Statute Prerogatives, may be transferred by the Sovereign; and yet the Power to protect his Subjects be retained. But if he transferre the Militia, he retains the Judicature in vain, for want of execution of the Lawes: Or if he grant away the Power of raising Mony; the Militia is in vain, or if he give away the government of Doctrines, men will be frighted into rebellion with the feare of Spirits. And so if we consider any one of the said Rights, we shall presently see, that the holding of all the rest, will produce no effect in the conservation of Peace and Justice, the end for which all Common-wealths are Instituted. And this division is it; whereof it is said, a Kingdom divided in it self cannot stand: For unless this division precede, division into opposite Armies can never happen. If there had not first been an opinion received of the greatest part of England, that the Powers were divided between the King, and the Lords, and the House of Commons, the people had never been divided, and fallen into this Civil

Warre; first between those that disagreed in Politiques; and after between the Dissenters about the liberty of Religion; which have so instructed men in this point of Sovereign Right, that there be few now (in England) that do not see, that these Rights are inseparable, and will be so generally acknowledged, at the next return of Peace; and so continue, till their miseries are forgotten; and no longer, except the vulgar be better taught than they have hether to been.

And because they are essentiall and inseparable Rights, it follows necessarily, that in whatsoever words any of them seem to be granted away, yet if the Sovereign Power it selfe be not in direct termes renounced, and the name of Sovereign no more given by the Grantees to him that Grants them, the Grant is voyd: for when he has granted all he can, inseparably annexed therunto.

This great Authority being Indivisible, and inseparably annexed to the Sovereignty, there is little ground for the opinion of them, that say of Sovereign Kings, though they be *singulis majoris*, of greater Power than every one of their Subjects, yet they be *Universis minoris*, of lesse power than them all together. For if by all together, they mean not the collective body as one person, then all together, and every one, signifie the same; and the speech is absurd. But if by all together, they understand them as one Person (which person the Sovereign bears,) then the power of all together, is the same with the Sovereigns power; and so again the speech is absurd: which absurdity they see well enough, when the Sovereignty is in an Assembly of the people; but in a Monarch they see it not; and yet the power of Sovereignty is the same in whomsoever it be placed.

And as the Power, so also the Honour of the

And can by no Grant, passe away without direct renouncing of the Sovereign Power

The Power and Honour of Subjects vanisheth in the presence of the Sovereign

Sovereign, ought to be greater, than that of any, or all the Subjects. For in the Sovereignty is the fountain of Honour. The dignities of Lord, Earle, Duke, and Prince are his Creatures. As in the presence of the Master, the Servants are equal, and without any honour at all; So are the Subjects in the presence of the Sovereign. And though they shine some more, some lesse, when they are out of his sight; yet in his presence, they shine no more than the Starres in presence of the Sun.

*Sovereigns Power not so hurtfull as the want of it, and the hurt proceeds for the greatest part from not submitting readily, to a*

194) But a man may here object, that the Condition of Subjects is very miserable; as being obnoxious to the lusts, and other irregular passions of him, or them that have so unlimited a Power in their hands. And commonly they that live under a Monarch, think it the fault of Monarchy; and they that live under the government of Democracy, or other Sovereign Assembly, attribute all the inconvenience to that forme of Common-wealth; whereas the Power in all formes, if they be perfect enough to protect them, is the same; not considering that the estate of Man can never be without some incommodity or other; and that the greatest, that in any forme of Government can possibly happen to the people in general, is scarce sensible, in respect of the miseries; and horrible calamities, that accompany a Civill Warre; or that dissolute condition of masterlesse men, without subjection: to Lawes, and a coercive Power to tye their hands from rapine, and revenge: nor considering that the greatest pressure of Sovereign Governours, proceedeth not from any delight, or profit they can expect in the damage, or weakening of their Subjects, in whose vigor, consisteth their own strength and glory; but in the restiveness of themselves, that unwillingly contributing to their own defence, make it necessary for their Governours to draw from them what they can in time of Peace,

that they may have means on any emergent occasion, or sudden need, to resist, or take advantage on their Enemies. For all men are by nature provided of notable multiplying glasses, (that is their Passions and Self-love) through which, every little payment appeareth a great grievance; but are destitute of those prospective glasses, (namely Morall and Civill Science,) to see a farre off the miseries that hang over them, and cannot without such payments be avoided.

195) There be other names of Government, in the

CHAP. XIX

Of the severall Kinds of Common-wealth by Institution, and of Succession to the Sovereignty

196) THE difference of Common-wealths, consisteth

197) in the difference of the Sovereign, or the Person representative of all and every one of the Multitude. And because the Sovereignty is either in one Man, or in an Assembly of more than one; and into that Assembly either Every man hath right to enter, or not every one, but Certain men distinguished from the rest; it is manifest, there can be but Three kinds of Common-wealth. For the Representative must needs be One man, or More; and if more, then it is the Assembly of All, or but of a Part. When the wealth is a MONARCHY: when an Assembly of All that will come together, then it is a DEMOCRACY, or Popular Common-wealth: when an Assembly of a Part onely, then it is called an ARISTOCRACY. Other kind of Common-wealth there can be none: For either One, or More, or All must have the Sovereign Power (which I have shewn to be indivisible) entire. 198) There be other names of Government, in the

*The different Formes of Common-wealths but three*

*Tyranny and Oligarchy, but different names of Monarchy, and Aristocracy*

this so manifest a truth; should of late be so little observed; that in a Monarchy, he that had the Sovereignty from a descent of 600 years, was alone called Sovereign, had the title of Majesty from every one of his Subjects, and was unquestionably taken by them for their King; was notwithstanding never considered as their Representative; that name without contradiction passing for the title of those men; which at his command were sent up by the people to carry their Petitions, and give him (if he permitted) their advise. Which may serve as an admonition, for those that are the true, and absolute Representatives of a People, to instruct men in the nature of that Office, and to take heed how they admit of any other general Representation upon any occasion whatsoever, if they mean to discharge the truth committed to them.

The difference between these three kinds of Common-wealth, consisteth not in the difference of Power; but in the difference of Convenience, or Aptitude to produce the Peace, and Security of the people; for which end they were instituted. And to compare Monarchy with the other two, we may observe; First, that whosoever beareth the Person of the people, or is one of that Assembly that beareth it, beareth also his own naturall Person. And though he be carefull in 1961 his politique Person to procure the common interest; yet he is more, or no less carefull to procure the private good of himselfe, his family, kindred and friends; and for the most part, if the publique interest chance to crosse the private, he prefers the private: for the Passions of men, are commonly more potent than their Reason. From whence it follows, that where the publique and private interest are most closely united, there is the publique most advanced. Now in Monarchy, the private interest is the same with the publique. The riches, power, and honour of a

Histories, and books of Policy; as Tyranny, and Oligarchy: (But they are not the names of other Formes of Government, but of the same Forme mistak'd.) For they that are discontented under Monarchy, call it Tyranny; and they that are displeas'd with Aristocracy, call it Oligarchy: So also, they which find themselves griev'd under a Democracy, call it Anarchy, (which signifies want of Government;) and yet I think no man believes, that want of Government, is any new kind of Government; nor by the same reason ought they to believe, that the Government is of one kind, when they like it, and another, when they dislike it, or are oppress'd by the Governours.

It is manifest, that men who are in absolute liberty, may, if they please, give Authority to One man, to represent them every one; as well as give such Authority to any Assembly of men whatsoever; and consequently may subject themselves, if they think good, to a Monarch, as absolutely, as to any other Representative. Therefore, where there is already erected a Sovereign Power, there can be no other Representative of the same people, but only to certain particular ends, by the Sovereign limited. For that were to erect two Sovereigns; and every man to have his person represented by two Actours, that by opposing one another, must needs divide that Power, which (if men will live in Peace) is indivisible; and thereby reduce the Multitude into the condition of Warsse, contrary to the end for which all Sovereignty is instituted. And therefore as it is absurd, to think that a Sovereign Assembly, inviting the People of their Dominion, to send up their Deputies, with power to make known their Advise, or Desires, should therefore hold such Deputies, rather than themselves, for the absolute Representative of the people; so it is absurd also, to think the same in a Monarchy. And I know not how

Subordinate Representatives live dangerous

Comparison of Monarchy, with Societies

Monarch arise onely from the riches, strength and reputation of his Subjects. For no King can be rich, nor glorious, nor secure; whose Subjects are either poore, or contemptible, or too weak through want, or dissention, to maintain a war against their enemies; Whereas in a Democracy, or Aristocracy, the publique prosperity conferres not so much to the private fortune of one that is corrupt, or ambitious, as doth many times a perfidious advice, a treacherous action, or a Civill warre.

Secondly, that a Monarch receiveth counsell of whom, when, and where he pleaseth; and consequently may heare the opinion of men versed in the matter about which he deliberates, of what rank or quality soever, and as long before the time of action, and with as much secrecy, as he will. But when a Sovereigne Assembly has need of Counsell, none are admitted but such as have a Right thereto from the beginning; which for the most part are of those who have bene versed more in the acquisition of Wealth than of Knowledge; and are to give their advice in long discourses, which may, and do commonly excite men to action, but not governe them in it. For the *Understanding* is by the flame of the Passions, never enlightened, but dazled: Nor is there any place, or time, wherein an Assemblée can receive Counsell with secrecy, because of their owne Multitude.

Thirdly, that the Resolutions of a Monarch, are subject to no other Inconstancy, than that of Humane Nature; but in Assemblies, besides that of Nature, there ariseth an Inconstancy from the Number. For the absence of a few, that would have the Resolution once taken, continue firme, (which may happen by security, negligence, or private impediments,) or the diligent appearance of a few of the contrary opinion, undoes to day, all that was concluded yesterday.

Fourthly, that a Monarch is himselfe, out of envy, or interest; but an Assembly may; and that to such a height, as may produce a Civill Warre.

Fifthly, that in Monarchy there is this inconvenience; that any Subject, by the power of one man, for the enriching of a favourite or flatterer, may be deprived of all he possesseth; which I confesse is a great and inevitable inconvenience. But the same may as well happen, where the Sovereigne Power is in an Assembly: For their power is the same; and they are as subject to evill Counsell, and to be seduced by Orators, as a Monarch by Flatterers; and becoming one an others Favorites, serve one anothers Covetousnesse and Ambition by turns. And whereas the Favorites of Monarchs, are few, and they have none els to advance but their owne Kindred; the Favorites of an Assembly, are many; and the Kindred much more numerous, than of any Monarch. Besides, there is no Favourite of a Monarch, which cannot as well succour his friends, as hurt his enemies: But Orators, that is to say, Favorites of Sovereigne Assemblies, though they have great power to hurt, have little to save. For to accuse, requires lesse Eloquence (such is mans Nature) than to excuse; and condemnation, than absolution more resembles Justice.

Sixthly, that it is an inconvenience in Monarchie, that the Sovereignie may descend upon an Infant, or one that cannot discern between Good and Evill: and consisteth in this, that the use of his Power, must be in the hand of another Man, or of some Assembly of men, which are to governe by his right, and in his name; as Curators, and Protectors of his Person, and Authority. But to say there is inconvenience, in putting the use of the Sovereign Power, into the hand of a Man, or an Assembly of

men; is to say that all Government is more Inconvenient, than Confusion, and Civill Warre. And therefore all the danger that can be pretended, must arise from the Contention of those, that for an office of so great honour, and profit, may become Competitors. To make it appear, that this inconvenience, proceedeth not from that forme of Government we call Monarchy, we are to consider, that the precedent Monarch, hath appointed who shall have the Tuition of his Infant Successor, either expressly by Testament, or tacitly, by not controlling the Customs in that case received: And then such inconvenience (if it happen) is to be attributed, not to the Monarchy, but to the Ambition; and Injustice of the Subjects; which in all kinds of Government, where the people are not well instructed in their Duty, and the Rights of Sovereignty, is the same. Or else the precedent Monarch, hath not at all taken order for such Tuition; And then the Law of Nature hath provided this sufficient rule, That the Tuition shall be in him, that hath by Nature most interest in the preservation of the Authority of the Infant, and to whom least benefit can accrue by his death, or diminution. For seeing every man by nature seeketh his own benefit, and promotion; to put an Infant into the power of those, that can promote themselves by his destruction, or damage, is not Tuition, but Trechery. So that sufficient provision being taken, against all just quarrell, about the Government under a Child, if any contention arise to the disturbance of the publique Peace, it is not to be attributed to the forme of Monarchy, but to the ambition of Subjects, and ignorance of their Duty. On the other side; there is no great Common-wealth, the Sovereignty whereof is in a great Assembly, which is not, as to consultations of Peace, and Warre, and making of Lawes, in the same condition, as if the

Government were in a Child. For as a Child wants the judgement to dissent from counsell given him, and is thereby necessitated to take the advise of them, or him, to whom he is committed: So an Assembly wanteth the liberty, to dissent from the counsell of the major part, be it good, or bad. And as a Child has need of a Tutor, or Protector, to preserve his Person, and Authority: So also (in great Common-wealths) the Sovereign Assembly, in all great dangers and troubles, have need of *Custodes libertatis*; that is of Dictators, or Protectors of their Authority; which are as much as Temporary Monarchs; to whom for a time, they may commit the entire exercise of their Power; and have (at the end of that time) been ofner deprived thereof, than Infant Kings, by their Protectors, Regents, or any other Tutors. . . . .

Though the Kinds of Sovereignie be, as I have now shewn, but three; that is to say, Monarchie, where One Man has it; or Democracie, where the generall Assembly of Subjects hath it; or Aristocracie, where it is in an Assembly of certain persons nominated, or otherwise distinguished from the rest: Yet he that shall consider the particular Common-wealthes, that have been, and are in the world, will not perhaps easily reduce them to three, and may thereby be inclined to think there be other Formes, arising from these mingled together. As for example, Elective Kingdomes; where Kings have the Sovereigne Power put into their hands for a time; or Kingdomes, wherein the King hath a power limited: which Governments, are nevertheless by most Writers called Monarchie. Likewise if a Popular, or Aristocraticall Common-wealth, subdue an Enemies Countrie, and govern the same, by a President, Procurator, or other Magistrate; this may seeme perhaps at first sight, to be a Democraticall, or Aristocraticall Government. But it is

or Aristocracy; as of old time in *Sparta*; where the Kings had a privilege to lead their Armies; but the Sovereignty was in the *Ephori*.

Thirdly, whereas heretofore the Roman People, governed the land of *Judea* (for example) by a President; yet was not *Judea* therefore a Democracy; because they were not governed by any Assembly, into which, any of them, had right to enter; nor by an Aristocracy; because they were not governed by any Assembly, into which, any man could enter by their Election; but they were governed by one Person, which though as to the people of *Rome* was an Assembly of the people, or Democracy; yet as to people of *Judea*, which had no right at all of participating in the government, was a Monarch. For though whete the people are governed by an Assembly, chosen by themselves out of their own number, the government is called a Democracy, or Aristocracy; yet when they are governed by an Assembly, not of their own choosing, tis a Monarchy; not of One man, over another man; but of one people, over another people.

Of the Right of Succession

Of all these Formes of Government, the matter being mortall, so that not onely Monarchs, but also whole Assemblies dy, it is necessary for the conservation of the peace of men, that as there was order taken for an Artificiall Man, so there be order also taken, for an Artificiall Eternity of life; without which, men that are governed by an Assembly, should return into the condition of Warre in every age; and they that are governed by One man, as soon as their Governour dyeth. This Artificiall Eternity, is that which men call the Right of Succession.

There is no perfect forme of Government, where the disposing of the Succession is not in the present Sovereign. For if it be in any other particular Man, or private Assembly, it is in a person subject, and

not so. For Elective Kings, are not Sovereignes, but Ministers of the Sovereigne; nor limited Kings Sovereignes, but Ministers of them that have the Sovereigne Power: Nor are those Provinces which are in subjection to a Democracy, or Aristocracie of another Common-wealth, Democratically, or Aristocratically governed, but Monarchically.

And first, concerning an Elective King, whose power is limited to his life, as it is in many places of Christendome at this day; or to certaine Yeares or Moneths; as the Dictators power amongst the Romans; If he have Right to appoint his Successor, he is no more Elective but Hereditary. But if he have no Power to elect his Successor, then there is some other Man, or Assembly known, which after his decease may elect a new; or else the Common-wealth dieth, and dissolveth with him, and returneth to the condition of Warre. If it be known who have the power to give the Sovereigntie after his death, it is known also that the Sovereigntie was in them before: For none have right to give that which they have not right to possess, and keep to themselves, if they think good. But if there be none that can give the Sovereigntie, after the decease of him that was first elected; then has he power, may he is obliged by the Law of Nature, to provide, by establishing his Successor, to keep those that had trusted him with the Government, from relapsing into the miserable condition of Civill warre. And consequently, he was, when elected, a Sovereign absolute.

Secondly, that King whose power is limited, is not superiour to him, or them that have the power to limit it; and he that is not superiour, is not supreme; that is to say not Sovereign. The Sovereignty therefore was alwaies in that Assembly which had the Right to Limit him; and by consequence the government not Monarchy, but either Democracy,

may be assumed by the Sovereign at his pleasure; and consequently the Right is in himselfe. And if it be in no particular man, but left to a new choyce; then is the Common-wealth dissolved; and the Right is in him that can get it; contrary to the intention of them that did Institute the Common-wealth, for their perpetuall, and not temporary security.

In a Democracy, the whole Assembly cannot faile, unless the Multitude that are to be governed faile. And therefore questions of the right of Succession, have in that forme of Government no place at all.

In an Aristocracy, when any of the Assembly dyeth, the election of another into his room belongeth to the Assembly, as the Sovereign, to whom belongeth the choosing of all Counsellours, and Officers. For that which the Representative doth, as Actor, every one of the Subjects doth, as Author. And though the Sovereign Assembly, may give Power to others, to elect new men, for supply of their Court; yet it is still by their Authority, that the Election is made; and by the same it may (when the publique shall require it) be recalled.

¶ 1100. The greatest difficultie about the right of Succession, is in Monarchy: And the difficultie ariseth from this, that at first sight, it is not manifest who is to appoint the Successor; nor many times, who it is whom he hath appointed. For in both these cases, there is required a more exact ratiocination, than every man is accustomed to use. As to the question, who shall appoint the Successor, of a Monarch that hath the Sovereign Authority; that is to say, who shall determine of the right of Inheritance, (for Elective Kings and Princes have not the Sovereign Power in propriety, but in use only,) we are to consider, that either he that is in possession, has right to dispose of the Succession, or else that

right is again in the dissolved Multitude. For the death of him that hath the Sovereign power in propriety, leaves the Multitude without any Sovereign at all; that is, without any Representative in whom they should be united, and be capable of doing any one action at all: And therefore they are incapable of Election of any new Monarch; every man having equall right to submit himselfe to such as he thinks best able to protect him, or if he can, protect himselfe by his owne sword; which is a returne to Confusion, and to the condition of a War of every man against every man, contrary to the end for which Monarchy had its first Institution. Therefore it is manifest, that by the Institution of Monarchy, the disposing of the Successor, is alwaies left to the Judgment and Will of the present Possessor.

¶ And for the question (which may arise sometimes) who it is that the Monarch in possession, hath designed to the succession and inheritance of his power; it is determined by his expresse Words, and Testament; or by other tacite signes sufficient.

¶ By expresse Words, or Testament, when it is declared by him in his life time, *viva voce*, or by Writing; as the first Emperours of Rome declared who should be their Heires. For the word Heire does not of it selfe imply the Children, or nearest Kindred of a man; but whomsoever a man shall any way declare, he would have to succeed him in his Estate. If therefore a Monarch declare expressly, that such a man shall be his Heire, either by Word or Writing, then is that man immediately after the decease of his Predecessor, Invested in the right of being Monarch.

But where Testament, and expresse Words are wanting, other naturall signes of the Will are to be followed: whereof the one is Custome. And therefore where the Custome is, that the next of Kindred absolutely succeedeth, there also the next of

Succession  
passeth by ex-  
presse Words;

Or, by not  
controlling a  
Custome;

Kindred hath right to the Succession; for that, if the will of him that was in possession had been otherwise, he might easily have declared the same in his life time. And likewise where the Custome is, that the next of the Male Kindred succeedeth, there also the right of Succession is in the next of the Kindred Male, for the same reason. And so it is if the Custome were to advance the Female. For whatsoever Custome a man may by a word controule, and does not, it is a naturall signe he would have that Custome stand. But where neither Custome, nor Testament hath preceded, there it ston is to be understood, First, that a Monarchs will is, that the government remain Monarchical; because he hath approved that government in himselfe. Secondly, that a Child of his own, Male, or Female, be preferred before any other; because men are presumed to be more inclined by nature, to advance their own children, than the children of other men; and of their own, rather a Male than a Female; because men, are naturally fitter than women, for actions of labour and danger. Thirdly, where his own Issue faileth, rather a Brother than a stranger; and so still the neerer in blood, rather than the more remote, because it is alwayes presumed that the neerer of kin is the neerer in affection; and tis evident that a man receives alwayes, by reflexion, the most honour from the greatnesse of his neerer kindred.

To dispose of the Succession, though to a King of another Nation, not his own; which is a new way of speaking the same language do commonly understood. one another, may turn to the oppression of his Subject; which is indeed a great inconvenience:

but it proceedeth not necessarily from the subjection to a strangers government; but from the unskillfulness of the Governours, ignorant of the true rules of Politiques. And therefore the Romans when they had subdued many Nations, to make their Government digestible, were wont to take away that grievance, as much as they thought necessary, by giving sometimes to whole Nations, and sometimes to principall men of every Nation they conquered, not onely the Privileges, but also the Name of Romans; and took many of them into the Senate, and Offices of charge, even in the Roman City. And this was it our most wise King, King James, aynd at, in endeavouring the Union of his two Realms of England and Scotland. Which if he could have obtained, had in all likelihood prevented the Civill warres, which make both those Kingdomes at this present, miserable. It is not therefore any injury to the people, for a Monarch to dispose of the Succession by Will; though by the fault of many Princes, it hath been sometimes found inconvenient. Of the lawfulness of it, this also is an argument, that whatsoever inconvenience can arrive by giving a Kingdome to a stranger, may arrive also by so marrying with strangers, as the Right of Succession may descend upon them: yet this by all men is accounted lawfull.

Of Dominion PATERNALL, and DESPOTICALL

A Common-wealth by Acquisition, is that, where the Sovereign Power is acquired by Force; And it is acquired by force, when men singly, or many together by plurality of voyces, for feare of death, or

A Common-wealth by Acquisition

avoided. Fourthly, in Deliberations that ought to be kept secret, (whereof there be many occasions in Publick Business.) the Counsellors of many, and especially in Assemblies, are dangerous; And therefore great Assemblies are necessitated to commit such affaires to lesser numbers, and of such persons as are most versed, and in whose fidelity they have most confidence.

To conclude, who is there that so far approves the taking of Counsell from a great Assembly of Counsellors, that wisheth for, or would accept of their pains, when there is a question of marrying his Children, disposing of his Lands, governing his Household, or managing his private Estate, especially if there be amongst them such as wish not his prosperity? A man that doth his business by the help of many and prudent Counsellors, with every one consulting apart in his proper element, does it best, as he that useth able Seconds at Tennis play, placed in their proper stations. He does next best, that useth his own judgement only; as he that has no Second at all. But he that is carried up and down to his business in a framed Counsell, which cannot move but by the plurality of consenting opinions, the execution whereof is commonly (out of envy, or interest) retarded by the part dissenting, does it worst of all, and like one that is carried to the ball, though by good Players, yet in a Wheele-barrough, or other frame, heavy of it self, and retarded also by the inconcurrent judgements, and endeavours of them that drive it; and so much the more, as they be more that set their hands to it; and most of all, when there is one, or more amongst them, that desire to have him lose. And though it be true, that many eyes see more then one; yet it is not to be understood of many Counsellors; but then only, when the final Resolution is in one man. Otherwise, because many eyes see the same thing in

divers lines, and are apt to look asquint towards their private benefit; they that desire not to misse their mark, though they look about with two eyes, yet they never ayme but with one; And therefore no great Popular Common-wealth was ever kept up; but either by a forraign Enemy that united them; or by the reputation of some one eminent Man amongst them; or by the secret Counsell of a few; or by the mutuall care of equall factions; and not by the open Consultations of the Assembly. And as for very little Common-wealths, be they Popular, or Monarchical, there is no humane wisdom can uphold them, longer then the Jealousy lasteth of their potent Neighbours.

## CHAP. XXVI

## Of CIVILL LAWS.

BY CIVILL LAWS, I understand the Lawes, that they are Members, not of this, or that Common-wealth in particular, but of a Common-wealth. For the knowledge of particular Lawes is not belongeth to them, that professe the study of the Lawes of their severall Countries; but the knowledge of Civill Law in general, to any man. The antient Law of Rome was called their *Civill Law*, from the word *Civitas*, which signifies a Common-wealth: And those Countries, which having been under the Roman Empire, and governed by that Law, retain still such part thereof as they think fit, call that part the Civill Law, to distinguish it from the rest of their own Civill Lawes. But that is not it I intend to speak of here; my designe being not to shew what is Law

Civill Law  
what

here, and there; but what is Law; as Plato, Aristotle, Cicero, and divers others have done, without taking upon them the profession of the study of the Law.

And first it is manifest, that Law in general, is not Counsel, but Command; nor a Command of any man to any man; but only of him, whose Command is addressed to one formerly obliged to obey him. And as for Civill Law, it addeth only the name of the person Commanding, which is *Persona Civitatis*, the Person of the Commonwealth. Which considered, I define Civill Law in this manner. CIVILL LAW, Is to every Subject, those Rules, which the Common-wealth hath Commanded him, by Word, Writing, or other sufficient Sign of the Will, to make use of, for the Distinction of Right, and Wrong; that is to say, of what is contrary, and what is not contrary to the Rule.

In which definition, there is nothing that is not at first sight evident. For every man seeth, that some Lawes are addressed to all the Subjects in general; some to particular Provinces; some to particular Vocations; and some to particular Men; and are therefore Lawes, to every of those to whom the Command is directed; and to none else. As also, that Lawes are the Rules of Just, and Unjust; nothing being reputed Unjust, that is not contrary to some Law. Likewise, that none can make Lawes but the Common-wealth; because our Subjection is to the Common-wealth only; and that Commands, are to be signified by sufficient Signs; because a man knows not otherwise how to obey them. And therefore, whatsoever can from this definition, by necessary consequence be deduced ought to be acknowledged for truth. Now I deduce from it this that followeth.

The Sovereign is the Legislator: . . . 1. The Legislator in all Common-wealths, is only

the Sovereign, be he one Man, as in a Monarchy, or one Assembly of men, as in a Democracy, or Aristocracy. For the Legislator, is he that maketh the Law. And the Common-wealth only, prescribes, and commandeth the observation of those rules, which we call Law: Therefore the Common-wealth is the Legislator. But the Common-wealth is no Person, nor has capacity to doe any thing, but by the Representative, (that is, the Sovereign;) and therefore the Sovereign is the sole Legislator. For the same reason, none can abrogate a Law made, but the Sovereign; because a Law is not abrogated, but by another Law, that forbiddeth it to be put in execution.

And not Subject to Civill Law

2. The Sovereign of a Common-wealth, be it an Assembly, or one Man, is not Subject to the Civill Lawes. For having power to make, and repeale Lawes, he may when he pleaseth, free himselfe from that subjection, by repealing those Lawes that trouble him, and making of new; and consequently he was free before. For he is free, that can be free when he will: Nor is it possible for any person to be bound to himselfe; because he that can bind, can release; and therefore he that is bound to himselfe onely, is not bound.

Use, a Law not by vertue of Time, but of the Sovereigns consent

3. When long Use obtaineth the authority of a Law, it is not the Length of Time that maketh the Authority, but the Will of the Sovereign signified by his silence, (for Silence is sometimes an argument of Consent;) and it is no longer Law, then the Sovereign shall be silent therein. And therefore if the Sovereign shall have a question of Right grounded, not upon his present Will, but upon the Lawes formerly made; the Length of Time shall bring no prejudice to his Right; but the question shall be judged by Equity. For many unjust Actions, and unjust Sentences, go uncontrolled a longer time, than any man can remember. And our Lawyers

account no Customes Law, but such as are reasonable, and that evil Customes are to be abolished: But the Judgement of what is reasonable, and of what is to be abolished, belongeth to him that maketh the Law; which is the Sovereign Assembly, or Monarch.

4. The Law of Nature, and the Civill Law, contain each other, and are of equall extent. For the Lawes of Nature, which consist in Equity, Justice, Gratitude, and other morall Vertues on these depending, in the condition of meer Nature (as I have said before in the end of the 15th Chapter) are not properly Lawes, but qualities that dispose men to peace, and to obedience. When a Common-wealth is once settled, then are they actually Lawes, and not before; as being then the commands of the Common-wealth; and therefore also Civill Lawes: For it is the Sovereign Power that obliges men to obey them. For in the differences of private men, to declare what is Equity, what is Justice, and what is morall Vertue, and to make them binding, there is need of the Ordinances of Sovereign Power, and Punishments to be ordained for such as shall break them; which Ordinances are therefore part of the Civill Law. The Law of Nature therefore is a part of the Civill Law in all Common-wealths of the world. Reciprocally also, the Civill Law is a part of the Dictates of Nature. For Justice, that is to say, Performance of Covenant, and giving to every man his own, is a Dictate of the Law of Nature. But every subject in a Common-wealth, hath covenanted to obey the Civill Law, (either one with another, as when they assemble to make a common Representative, or with the Representative it selfe one by one, when subdued by the Sword they promise obedience, that they may receive life.) And therefore Obedience to the Civill Law is part also of the Law of Nature: Civill, and Naturall Law are not

The Law of Nature, and the Civill Law contain each other

different kinds, but different parts of Law; whereof one part being written, is called Civill, the other unwritten, Naturall. But the Right of Nature, that is, the naturall Liberty of man, may by the Civill Law be abridged, and restrained: nay, the end of making Lawes, is no other, but such Restraint; without the which there cannot possibly be any Peace. And Law was brought into the world for nothing else, if 1391 but to limit the naturall liberty of particular men, in such manner, as they might not hurt, but assist one another, and joyn together against a common Enemy.

5. If the Sovereign of one Common-wealth, subdute a People that have lived under other written Lawes, and afterwards govern them by the same Lawes, by which they were governed before; yet those Lawes are the Civill Lawes of the Victor, and not of the Vanquished Common-wealth. For the Legislator is he, not by whose authority the Lawes were first made, but by whose authority they now continue to be Lawes. And therefore where there be divers Provinces, within the Dominion of a Common-wealth, and in those Provinces diversity of Lawes, which commonly are called the Customes of each severall Province, we are not to understand that such Customes have their force, onely from Length of Time; but that they were antiently Lawes written, or otherwise made known, for the Constitutions, and Statutes of their Sovereigns; and are now Lawes, not by vertue of the Prescription of time, but by the Constitutions of their present Sovereigns. But if an unwritten Law, in all the Provinces of a Dominion, shall be generally observed, and no iniquity appear in the use thereof; that Law can be no other but a Law of Nature, equally obliging all man-kind.

Provinciall Lawes are not made by Customes, but by the Sovereign Power

Some fooll opinions of Lawyers concerning making of Lawes.

6. Seeing then all Lawes, written, and unwritten, have their Authority, and force, from the Will of

account no Customes Law, but such as are reasonable, and that evil Customes are to be abolished: But the Judgement of what is reasonable, and of what is to be abolished, belongeth to him that maketh the Law; which is the Sovereign Assembly, or Monarch.

4. The Law of Nature, and the Civill Law, contain each other, and are of equall extent. For the Lawes of Nature, which consist in Equity, Justice, Gratitude, and other morall Vertues on these depending, in the condition of meer Nature (as I have said before in the end of the 15th Chapter) are not properly Lawes, but qualities that dispose men to peace, and to obedience. When a Common-wealth is once settled, then are they actually Lawes, and not before; as being then the commands of the Common-wealth; and therefore also Civill Lawes: For it is the Sovereign Power that obliges men to obey them. For in the differences of private men, to declare what is Equity, what is Justice, and what is morall Vertue, and to make them binding, there is need of the Ordinances of Sovereign Power, and Punishments to be ordained for such as shall break them; which Ordinances are therefore part of the Civill Law. The Law of Nature therefore is a part of the Civill Law in all Common-wealths of the world. Reciprocally also, the Civill Law is a part of the Dictates of Nature. For Justice, that is to say, Performance of Covenant, and giving to every man his own, is a Dictate of the Law of Nature. But every subject in a Common-wealth, hath covenanted to obey the Civill Law, (either one with another, as when they assemble to make a common Representative, or with the Representative it selfe one by one, when subdued by the Sword they promise obedience, that they may receive life.) And therefore Obedience to the Civill Law is part also of the Law of Nature: Civill, and Naturall Law are not

The Law of Nature, and the Civill Law contain each other

the Common-wealth; that is to say, from the Will of the Representative; which in a Monarchy is the Monarch, and in other Common-wealths the Sovereign Assembly; a man may wonder from whence proceed such opinions, as are found in the Books of Lawyers of eminence in severall Common-wealths, directly, or by consequence making the Legislative Power depend on private men, or subordinate Judges. As for example, That the Common Law, hath no Controuler but the Parliament; which is true onely where a Parliament has the Sovereign Power, and cannot be assembled, nor dissolved, but by their own discretion. For if there be a right in any else to dissolve them, there is a right also to controule them, and consequently to controule their controulings. And if there be no such right, then the Controuler of Lawes is not Parliamentum, but Rex in Parlamento. And where a Parliament is Sovereign, if it should assemble never so many, or so wise men, from the Countries subject to them, for whatsoever cause; yet there is no man will believe, that such an Assembly hath thereby acquired to themselves a Legislative Power. Item, that the two arms of a Common-wealth, are Force, and Justice; the first whereof is in the King; the other deposited in the hands of the Parliament. As if a Common-wealth should consist, where the Force were in any hand, which Justice had not the Authority to command and govern.

7. That Law can never be against Reason, our Lawyers are agreed; and that not the Letter, (that is, every construction of it,) but that which is according to the Intention of the Legislator, is the Law. And it is true; but the doubt is, of whose Reason it is, that shall be received for Law. It is not meant of any private Reason; for 1140<sup>l</sup> then there would be as much contradiction in the Lawes, as there is in the Schooles; nor yet, (as Sr. Ed. Coke

makes it,) an Artificiall perfection of Reason, gotten by long study, observation, and experience, (as his was.) For it is possible long study may increase, and confirm erroneous Sentences; and where men build on false grounds, the more they build, the greater is the ruine: and of those that study, and observe with equal time, and diligence, the reasons and resolutions are, and must remain discordant; and therefore it is not that *Juris prudentia*, or wisdom of subordinate Judges; but the Reason of this our Artificiall Man the Common-wealth, and his Command, that maketh Law: And the Common-wealth being in their Representative but one Person, there cannot easily arise any contradiction in the Lawes; and when there doth, the same Reason is able, by interpretation, or alteration, to take it away. In all Courts of Justice, the Sovereign (which is the Person of the Common-wealth) is he that judgeth: The subordinate Judge, ought to have regard to the reason, which moved his Sovereign to make such Law, that his Sentence may be according therunto; which then is his Sovereigns Sentence; otherwise it is his own, and an unjust one.

8. From this, that the Law is a Command, and a Command consisteth in declaration, or manifestation of the will of him that commandeth, by voyce, writing, or some other sufficient argument of the same, we may understand, that the Command of the Common-wealth, is Law onely to those, that have means to take notice of it. Over naturall fooles, children, or mad-men there is no Law, no more than over brute beasts; nor are they capable of the title of just, or unjust; because they had never power to make any covenant, or to understand the consequences thereof; and consequently never took upon them to authorise the actions of any Sovereign, as they must do that make to themselves a Common-wealth. And as those from whom Nature, or

*Law made, if not also made known, is no Law*

Accident hath taken away the notice of all Law, generally; so also every man, from whom any accident, not proceeding from his own default, hath taken away the means to take notice of any particular Law, is excused, if he observe it not; And to speak properly, that Law is no Law to him. It is therefore necessary, to consider in this place, what arguments, and signs be sufficient for the knowledge of what is the Law; that is to say, what is the will of the Sovereign, as well in Monarches, as in other formes of government.

And first, if it be a Law that obliges all the Subjects without exception, and is not written; nor otherwise published in such places as they may take notice thereof, it is a Law of Nature. For whatsoever men are to take knowledge of for Law, not upon other mens words, but every one from his own reason, must be such as is agreeable to the reason of all men; which no Law can be, but the Law of Nature. The Lawes of Nature therefore need not any publishing, nor Proclamation; as being contained in this one Sentence, approved by all the world, *Do not flit to another, which thou thinkest unreasonable to be done by another to thy selfe.* Secondly, if it be a Law that obliges only some condition of men, or one particular man, and be not written, nor published by word, then also it is a Law of Nature; and known by the same arguments, and signs, that distinguish those in such condition, from other Subjects. For whatsoever Law is not written, or some way published by him that makes it Law, can be known no way, but by the reason of him that is to obey it; and is therefore also a Law not only Civill, but Naturall. For Example, if the Sovereign employ a Publique Minister, without written Instructions what to doe; he is obliged to take for Instructions the Dictates of Reason; As if he make a Judge, The Judge is to take

Unwritten Lawes are all of them Lawes of Nature

OF COMMONWEALTH. that his Sentenceought to be according to the reason of his Sovereign, which being alwaies understood to be Equity, he is bound to it by the Law of Nature; Or if an Ambassador, he is (in all things not contained in his writtē Instructions) to take for Instruction that which Reason dictates to be most conducing to his Sovereigns Interest; and of all other Ministers of the Sovereignty, publique and private. All which Instructions of naturall Reason may be comprehended under one name of Fidelity; which is a branch of naturall Justice. The Law of Nature excepted, it belongeth to the Science of all other Lawes, to be made known, to every man that shall be obliged to obey them, either by word, or writing, of some other act, known to proceed from the Sovereign Authority. For the will of another cannot be understood, but by his own word; or act; or by conjecture taken from his scope and purpose; which in the person of the Common-wealth, is to be supposed; alwaies consonant to Equity and Reason. And in antient time, before Letters were in common use, the Lawes were many times put into verse; that the rude people taking pleasure in singing, or reciting them, might the more easily retaine them in memory. And for the same reason Solimon adviseth a man, to bind the ten Commandements upon his ten fingers. And for the Law which Moses gave to the people of Israel, it the renewing of the Covenant, he biddeth them to teach it their Children, by discoursing of it both at home, and upon the way; at going to bed, and arising from bed; and to write it upon the posts, and gates of their houses; and to assemble the people, man, woman, and child, to heare it read. Nor is it enough the Law be written, and published; but also that there be manifest signs, that it proceedeth from the will of the Sovereign; For private men, when they have, or think they have,

force enough to secure their unjust designs, and convey them safely to their ambitious ends, may publish for Lawes what they please, without, or against the Legislative Authority. There is therefore requisite, not only a Declaration of the Law, but also sufficient signs of the Author, and Authority. The Author, or Legislator is supposed in every Common-wealth to be evident, because he is the Sovereign, who having been Constituted by the consent of every one, is supposed by every one to be sufficiently known. And though the ignorance, and security of men be such, for the most part, as that when 1142] the memory of the first Constitution of their Common-wealth is worn out, they doe not consider, by whose power they use to be defended against their enemies, and to have, their industry protected, and to be righted when injury is done them; yet because no man that considers, can make question of it, no excuse can be derived from the ignorance of where the Sovereignty is placed, And it is a Dictate of Naturall Reason, and consequently an evident Law of Nature, that no man ought to weaken that power, the protection whereof he hath himself demanded, or wittingly received against others. Therefore of who is Sovereign, no man, but by his own fault, (whatsoever evil men suggest) can make any doubt. The difficulty consisteth in the evidence of the Authority derived from him; The removing whereof, dependeth on the knowledge of the publique Registers, publique Counsels, publique Ministers, and publique Seales; by which all Lawes are sufficiently verified; Verified, I say, not Authorised: for the Verification, is but the Testimony and Record; not the Authority of the Law; which consisteth in the Command of the Sovereign only.

*Difference between Verifying and Authorising*

*The Law Verified by the subordinate Judge*

If therefore a man have a question of Injury, depending on the Law of Nature; that is to say, on

common Equity; the Sentence of the Judge, that by Commission hath Authority to take cognisance of such causes, is a sufficient Verification of the Law of Nature in that individuall case. For though the advice of one that profeseth the study of the Law, be usefull for the avoyding of contention; yet it is but advice: tis the Judge must tell men what is Law, upon the hearing of the Controversy.

*By the Publick Register*

But when the question is of injury, or crime, upon a written Law; every man by recourse to the Registers, by himself, or others, may (if he will) be sufficiently informed, before he doe such injury, or commit the crime, whether it be an injury, or not: May he ought to doe so: For when a man doubts whether the act he goeth about, be just, or unjust; and may informe himself, if he will; the doing is unlawfull. In like manner, he that supposeth himself injured, in a case determined by the written Law, which he may by himself, or others see and consider; if he complaine before he consults with the Law, he does unjustly, and bewrayeth a disposition rather to vex other men, than to demand his own right.

*By Letters Patent, and Publicke Seale.*

If the question be of Obedience to a publique Officer; To have seen his Commission; with the Publicke Seale, and heard it read; or to have had the means to be informed of it; if a man would, is a sufficient Verification of his Authority. For every man is obliged to doe his best endeavour, to informe himself of all written Lawes, that may concerne his own future actions.

*The Interpretation of the Law dependeth on the Sovereign Power*

The Legislator known; and the Lawes, either by writing, or by the light of Nature, sufficiently published; there wanteth yet another very material circumstance to make them obligatory. For it is not the Letter, but the Intendment, or Meaning; that is to say, the authentique Interpretation of the Law (which is the sense of the Legislator,) in which the

which I have written in this Treatise, concerning the Morall Vertues, and of their necessity, for the procuring, and maintaining peace, though it bee evident Truth, is not therefore presently Law; but because in all Common-wealths in the world, it is part of the Civill Law: For though it be naturally reasonable; yet it is by the Sovereigne Power that it is Law: Otherwise, it were a great error, to call the Lawes of Nature unwritten Law; whereof wee see so many volumes published, and in them so many contradictions of one another, and of themselves.

*The Interpreter of the Law is the Judge giving sentence viva voce in every particular case*

The Interpretation of the Law of Nature, is the Sentence of the Judge constituted by the Sovereign Authority, to heare and determine such controversies, as depend thereon; and consisteth in the application of the Law to the present case. For in the act of Iudicature, the Judge doth no more but consider, whether the demand of the party, be consonant to naturall reason, and Equity; and the Sentence he giveth, is therefore the Interpretation of the Law of Nature; which Interpretation is Authentique; not because it is his private Sentence; but because he giveth it by Authority of the Sovereign, whereby it becomes the Sovereigns Sentence; which is Law for that time, to the parties pleading.

*The Sentence of a Judge, does not bind him, or another Judge & give like Sentence in like Cases ever after*

(144) But because there is no Judge Subordinate, nor Sovereign, but may erre in a Judgement of Equity; if afterward in another like case he find it more consonant to Equity to give a contrary Sentence, he is obliged to doe it. No mans error becomes his own Law; nor obliges him to persist in it. Neither (for the same reason) becomes it a Law to other Judges, though sworn to follow it. For though a wrong Sentence given by authority of the Sovereign, if he know and allow it, in such Lawes as are mutable, be a constitution of a new Law, in cases, in which every little circumstance is the same; yet in Lawes immutable, such as are the Lawes of

nature of the Law consisteth; And therefore (143) the Interpretation of all Lawes dependeth on the Authority Sovereign; and the Interpreters can be none but those, which the Sovereign, (to whom only the Subject oweth obedience) shall appoint. For else, by the craft of an Interpreter, the Law may be made to beare a sense, contrary to that of the Sovereign; by which means the Interpreter becomes the Legislator.

All Lawes, written, and unwritten, have need of Interpretation. The unwritten Law of Nature, though it be easy to such, as without partiality, and passion, make use of their naturall reason, and therefore leaves the violaters thereof without excuse; yet considering there be very few, perhaps none, that in some cases are not blinded by self love, or some other passion, it is now become of all Lawes the most obscure; and has consequently the greatest need of able Interpreters. The written Lawes, if they be short, are easily mis-interpreted, from the divers significations of a word, or two: if long, they be more obscure by the diverse significations of many words: in so much as no written Law, delivered in few, or many words, can be well understood, without a perfect understanding of the final cause, for which the Law was made; the knowledge of which final causes is in the Legislator. To him therefore there can not be any knot in the Law, insoluble; either by finding out the ends, to undoe it by; or else by making what ends he will, (as Alexander did with his sword in the Gordian knot) by the Legislative power; which no other Interpreter can doe.

The Interpretation of the Lawes of Nature, in a Common-wealth, dependeth not on the books of Morall Philosophy. The Authority of writers, without the Authority of the Common-wealth, maketh not their opinions Law, be they never so true. That

*All Lawes need Interpretation*

*The Authentick Interpretation of Law is not that of writers*

Nature, they are no Lawes to the same, or other Judges, in the like cases for ever after. Princes succeed one another; and one Judge passeth, another commeth; nay, Heaven and Earth shall passe; but not one title of the Law of Nature shall be; for it is the Eternal Law of God. Therefore all the Sentences of precedent Judges that have ever been, cannot all together make a Law contrary to naturall Equity: Nor any Examples of former Judges, can warrant an unreasonable Sentence, or discharge the present Judge of the trouble of studying what is Equity (in the case he is to Judge,) from the principles of his own naturall reason. For example sake, 'Tis against the Law of Nature, To punish the Innocent; and Innocent is he that acquitteth himselfe Judicially, and is acknowledged for Innocent by the Judge: Put the case now, that a man is accused of a capital crime, and seeing the power and malice of some enemy, and the frequent corruption and partiality of Judges, runneth away for feare of the event, and afterwards is taken, and brought to a legall trial, and maketh it sufficiently appear, he was not guilty of the crime, and being thereof acquitted, is nevertheless condemned to lose his goods; this is a manifest condemnation of the Innocent. I say therefore, that there is no place in the world, where this can be an interpretation of a Law of Nature, or be made a Law by the Sentences of precedent Judges, that had done the same. For he that judged it first, judged unjustly; and no Injustice can be a pattern of Judgement to succeeding Judges. A written Law may forbid innocent men to fly, and they may be punished for flying: But that flying for feare of injury, should be taken for presumption of guilt, after a man is already absolved of the crime Judicially, is contrary to the nature of a Presumption, which hath no place after Judgement given. Yet this is set down by a great

Lawyer for the common Law of England. If a man (saith he) that is Innocent, be accused of Felony, and for feare flyeth for the same; albeit he judicially acquitteth himselfe of the Felony; yet if it be found that he fled for the Felony, he shall notwithstanding his Innocency, forfeit all his goods, chattells, debts, and duties. For as to the Forfeiture of them, the Law will admit no prooffe against the Presumption in Law, grounded upon his flight. Here you see, An Innocent man, Judicially acquitted, notwithstanding his Innocency, (when no written Law forbod him to fly) after his acquittall, upon a Presumption in Law, condemned to lose all the goods he hath. If the Law ground upon his flight a Presumption of the fact, (which was Capital,) the Sentence ought to have been Capital; if the Presumption were not of the Fact, for what then ought he to lose his goods? This therefore is no Law of England; nor is the condemnation grounded upon a Presumption of Law, but upon the Presumption of the Judges. It is also against Law, to say that no Prooffe shall be admitted against a Presumption of Law. For all Judges, Sovereign and subordinate, if they refuse to heare Prooffe, refuse to do Justice; for though the Sentence be just, yet the Judges that condemn without hearing the Prooffes offered, are Unjust Judges; and their Presumption is but Prejudice; which no man ought to bring with him to the Seat of Justice, whatsoever precedent Judgements, or examples he shall pretend to follow. There be other things of this nature, wherein mens Judgements have been perverted, by trusting to Precedents: but this is enough to shew, that though the Sentence of the Judge, be a Law to the party pleading, yet it is no Law to any Judge, that shall succeed him in that Office.

In like manner, when question is of the Meaning of written Lawes, he is not the Interpreter of them, that writeth a Commentary upon them. For

Commentaries are commonly more subject to cavill, than the Text; and therefore need other Commentaries; and so there will be no end of such Interpretation. And therefore unless there be an Interpreter authorised by the Sovereign, from which the subordinate Judges are not to recede, the Interpreter can be no other than the ordinary Judges, in the same manner, as they are in cases of the unwritten Law; and their Sentences are to be taken by them that plead, for Lawes in that particular case; but not to bind other Judges, in like cases to give like judgements. For a Judge may erre in the Interpretation even of written Lawes; but no error of a subordinate Judge, can change the Law, which is the generall Sentence of the Sovereigne.

*The difference between the Letter and Sentence of the Law*  
 In written Lawes, men use to make a difference between the Letter, and the Sentence of the Law: And when by the Letter, is meant whatsoever can be gathered from the bare words, 'tis well distinguished. For the significations of almost all words are either in themselves, or in the metaphorical use of them, ambiguous; and may be drawn in argument, to make many senses; but there is onely one sense of the Law. But if by the Letter, be meant the literal sense, then the Letter, and the Sentence or intention of the Law, is all one. For the literal sense is that, which the Legislator intended, should by the letter of the Law be signified. Now the Intention of the Legislator is alwayes supposed to be Equity: For it were a great contumely for a Judge to think otherwise of the Sovereigne. He ought therefore, if the Word of the Law doe not fully authorise a reasonable Sentence, to supply it with the Law of Nature; or if the case be difficult, to respit judgement till he have received more ample authority. For Example, a written Law ordaineth, that he which is thrust out of his house by force, shall be

restored by force: It happens that a man by negligence leaves his house empty, and returning is kept out by force, in which case there is no special Law ordained. It is evident, that this case is contained in the same Law: for else there is no remedy for him at all; which is to be supposed against the Intention of the Legislator. Again, the word of the Law, commandeth to Judge according to the Evidence: A man is accused falsly of a fact, which the Judge saw himself done by another; and not by him that is accused. In this case neither shall the Letter of the Law be followed to the condemnation of the Innocent, nor shall the Judge give Sentence against the evidence of the Witnesses; because the Letter of the Law is to the contrary: but procure of the Sovereign that another be made Judge, and himselfe Witness. So that the incommody that follows the bare words of a written Law, may lead him to the Intention of the Law, whereby to interpret the same the better; though no Incommody can warrant a Sentence against the Law. For every Judge of Right, and Wrong, is not Judge of what is Commodious, or Incommodious to the Common-wealth.

*The abilities required in a Judge*

The abilities required in a good Interpreter of the Law, that is to say, in a good Judge, are not the same with those of an Advocate; namely the study of the Lawes. For a Judge, as he ought to take notice of the Fact, from none but the Witnesses; so also he ought to take notice of the Law, from nothing but the Statutes, and Constitutions of the Sovereign, alledged in the pleading, or declared to him by some that have authority from the Sovereign Power to declare them; and need not take care before-hand, what hee shall judge; for it shall be given him what hee shall say concerning the Fact, by Witnesses; and what hee shall say in point of Law, from those that shall in their pleadings shew

it, and by authority interpret it upon the place. The Lords of Parliament in England were Judges, and most difficult causes have been heard and determined by them; yet few of them were much versed in the study of the Lawes, and fewer had made profession of them: and though they consulted with Lawyers, that were appointed to be present there for that purpose; yet they alone had the authority of giving Sentence. In like manner, in the ordinary trials of Right, Twelve men of the common People, are the Judges, and give Sentence, not onely of the Fact, but of the Right; and pronounce simply for the Complainant, or for the Defendant; that is to say, are Judges not onely of the Fact, but also of the Right: and in a question of crime, not onely determine whether done, or not done; but also whether it be *Murder*, *Homicide*, *Felony*, *Assault*, and the like, which are determinations of Law: but because they are not supposed to know the Law of themselves, there is one that hath Authority to enforce them of it, in the particular case they are to Judge of. But yet if they judge not according to that he tells them, they are not subject thereby to any penalty; unlesse it be made appear, they did it against their consciences, or had been corrupted by reward.

The things that make a good Judge, or good Interpreter of the Lawes, are, first, *A right understanding* of that principall Law of Nature called *Equity*; which depending not on the reading of other mens Writings, but on the goodness of a mans own naturall (147) Reason, and Meditation, is presumed to be in those most, that have had most leisure, and had the most inclination to meditate thereon. Secondly, *Contempt of unnecessary Riches*, and Preferments. Thirdly, *To be able in judgement to devert himselfe of all feare, anger, hatred, love, and compassion*. Fourthly, and lastly, *Patience to heare;*

diligent attention in hearing; and memory to retain, digest and apply what he hath heard.

Divisions of Law

The difference and division of the Lawes, has been made in divers manners, according to the different methods, of those men that have written of them. For it is a thing that dependeth not on Nature, but on the scope of the Writer; and is subservient to every mans proper method. In the Institutions of *Justinian*, we find seven sorts of Civill Lawes. 1. The *Edicts*, *Constitutions*, and *Epistles of the Prince*, that is, of the Emperour; because the whole power of the people was in him. Like these, are the Proclamations of the Kings of England.

2. The *Decrees of the whole people of Rome* (comprehending the Senate,) when they were put to the Question by the Senate. These were Lawes, at first, by the vertue of the Sovereign Power residing in the people; and such of them as by the Emperours were not abrogated, remained Lawes by the Authority Imperiall. For all Lawes that bind, are understood to be Lawes by his authority that has power to repeal them. Somewhat like to these Lawes, are the Acts of Parliament in England.

3. The *Decrees of the Common people* (excluding the Senate,) when they were put to the question by the *Tribune* of the people. For such of them as were not abrogated by the Emperours, remained Lawes by the Authority Imperiall. Like to these, were the Orders of the House of Commons in England.

4. *Senatiss consulta*, the *Orders of the Senate*; because when the people of Rome grew so numerous, as it was inconvenient to assemble them; it was thought fit by the Emperour, that men should Consult the Senate in stead of the people: And these have some resemblance with the Acts of Councell.

5. The *Edicts of Pretors*, and (in some Cases) of the *Courts* *Ædiles*: such as are the Chief Justices in the Courts of England.

or liberty of action: and these speak to all the Subjects. *Penal* are those, which declare, what Penalty shall be inflicted on those that violate the Law; and speak to the Ministers and Officers ordained for execution. For though every one ought to be informed of the Punishments ordained beforehand for their transgression; nevertheless the Command is not addressed to the Delinquent, (who cannot be supposed will faithfully punish himself,) but to publique Ministers appointed to see the Penalty executed. And these Penal Lawes are for the most part written together with the Lawes Distributive; and are sometimes called Judgements. For all Lawes are generall Judgements, or Sentences of the Legislator; as also every particular Judgement, is a Law to him, whose case is Judged.

*Divine Positive Lawes* (for Naturall Lawes being Eternall, and Universall, are all Divine,) are those, which being the Commandments of God, (not from all Eternity, not universally addressed to all men, but onely to a certain people, or to certain persons,) are declared for such, by those whom God hath authorised to declare them. But this Authority of man to declare what be these Positive Lawes of God, how can it be known? God may command a man by a supernaturall way, to deliver Lawes to other men. But because it is of the essence of Law, that he who is to be obliged, be assured of the Authority of him that declareth it, which we cannot naturally take notice to be from God, *How can a man without supernaturall Revelation be assured of the Revelation received by the declarer? and how can he be bound to obey them?* For the first question, how a man can be assured of the Revelation of another, without a Revelation particularly to himselfe, it is evidently impossible: For though a man may be induced to believe such Revelation, from the Miracles they see him doe, or from seeing the

6. *Responsa Prudentium*; which were the Sentences, and Opinions of those Lawyers, to whom the Emperour gave Authority to interpret the Law, and to give answer to such as in matter of Law demanded their advice; which Answers, the Judges in giving Judgement were obliged by the Constitutions of the Emperour to observe: And should be like the Reports of Cases Judged, if other Judges be by the Law of *England* bound to observe them. For the Judges of the Common Law of *England*, are not properly Judges, but *Juris Consulti*; of whom the Judges, who are either the Lords, or Twelve men of the Country, are in point of Law to ask advice.

7. Also, *Unwritten Customes*, (which in their own nature are an imitation of Law,) by the tacite consent of the Emperour, in case they be not contrary to the Law of Nature, are very Lawes.

Another division of Lawes, is into *Naturall* and *Positive*. *Naturall* are those which have been Lawes from all Eternity; and are called not onely *Naturall*, but also *Morall* Lawes; consisting in the Morall Vertues, as Justice, Equity, and all habits of the mind that conduce to Peace, and Charity; of which I have already spoken in the fourteenth and fiftenth Chapters.

*Positive*, are those which have not been from Eternity; but have been made Lawes by the Will of those that have had the Sovereign Power over others; and are either written, or made known to men, by some other argument of the Will of their Legislator.

Again, of Positive Lawes some are *Humane*, some *Divine*: And of Humane positive lawes, some are *Distributive*, some *Penal*. *Distributive* are those that determine the Rights of the Subjects, declaring to every man what it is, by which he acquireth and holdeth a propriety in lands, or goods, and a right

the obedience they owe to their Parents; who (if they be Subject to no other earthly power, as here in the case of *Abraham*) have Sovereign power over their children, and servants. Again, where God saith to *Abraham*, *In thee shall all Nations of the earth be blessed: For I know thou wilt command thy children, and thy house after thee to keep the way of the Lord; and to observe Righteousness and Judgement*; it is manifest, the obedience of his Family, who had no Revelation, depended on their former obligation to obey their Sovereign. At Mount *Sinai* *Moses* only went up to God; the people were forbidden to approach on pain of death; yet were they bound to obey all that *Moses* declared to them for Gods Law. Upon what ground, but on this submission of their own, *Speak thou to us, and we will heare thee; but let not God speak to us, lest we dye?* By which two places it sufficiently appeareth, that in a Common-Wealth, a subject that has no certain and assured Revelation particularly to himself concerning the Will of God, is to obey for such, the Command of the Common-wealth: for if men were at liberty; to take for Gods Commandments, their own dreams, and fancies, or the dreams and fancies of private men; scarce two men would agree upon what is Gods Commandment; and yet in respect of them, every man would despise the Commandments of the Common-wealth. I conclude therefore, that in all things not contrary to the Morall Law, (that is to say, to the Law of Nature,) all Subjects are bound to obey that for divine Law, which is declared to be so, by the Lawes of the Common-wealth. Which also is evident to any mans reason; for whatsoever is not against the Law of Nature, may be made Law in the name of them it so; that have the Sovereign power; and there is no reason men should be the lesse obliged by it, when tis propounded in the name of God. Besides, there is

Extraordinary sanctity of his life, or from seeing the Extraordinary wisdom, or Extraordinary felicity of his Actions, all which are marks of God extraordinary favour; yet they are not assured evidence of special Revelation. Miracles are Marvellous works: but that which is marvellous to one, may not be so to another: Sanctity may be feigned; and the visible felicities of this world, are most often the work of God by Naturall, (149) and ordinary causes. And therefore no man can infallibly know by naturall reason, that another has had a supernaturall revelation of Gods will; but only a belief every one (as the signs thereof shall appeare greater, or lesse) a firmer, or a weaker belief. But for the second, how he can be bound to obey them; it is not so hard. For if the Law declared, be not against the Law of Nature (which is undoubtedly Gods Law) and he undertake to obey it, he is bound by his own act; bound I say to obey it; but not bound to believe its for mens beliefs, and interior cogitations, are not subject to the commands, but only to the operation of God, ordinary, or extraordinary Faith of Supernaturall Law, is not a fulfilling, but only an assenting to the same; and not a duty that we exhibite to God, but a gift which God freely giveth to whom he pleaseth; as also Unbelief is not a breach of any of his Lawes; but a rejection of them all, except the Law Naturall. But this that I say, will be made yet clearer, by the Examples, and Testimonies concerning this point in holy Scripture. The Covenant God made with *Abraham* (in a Supernaturall manner) was thus, *This is the Covenant which thou shalt observe between Me and Thee and thy Seed after thee. Abraham* Seed had not this revelation, nor were yet in being; yet they are a party to the Covenant, and bound to obey what *Abraham* should declare to them for Gods Law; which they could not be, but in vertue of

no place in the world where men are permitted to pretend other Commandments of God, than are declared for such by the Common-wealth. Christian States punish those that revolt from Christian Religion; and all other States, those that set up any Religion by them forbidden. For in whatsoever is not regulated by the Common-wealth, is Equally (which is the Law of Nature, and therefore an eternal Law of God) that every man equally enjoy his liberty.

There is also another distinction of Laws, into *Fundamentall*; and *not Fundamentall*: but I could never see in any Author, what a *Fundamentall Law* signifyeth. Nevertheless one may very reasonably distinguish Laws in that manner.

For a *Fundamentall Law* in every Common-wealth, is that, which being taken away, the Common-wealth faileth, and is utterly dissolved; as a building whose Foundation is destroyed. And therefore a *Fundamentall Law* is that, by which Subjects are bound to uphold whatsoever power is given to the Sovereign; whether a Monarch, or a Sovereign Assembly, without which the Common-wealth cannot stand, such as is the power of War and Peace, of Judicature, of Election of Officers, and of doing whatsoever he shall think necessary for the Publique good. Not *Fundamentall* is that the abrogating whereof, draweth not with it the dissolution of the Common-wealth; such as are the Laws concerning Controversies between subject and subject, Thus much of the Division of Laws. I find the words *Lex Civilis*, and *Jus Civile*, that is, *Law* and *Right Civil*, promiscuously used for the same thing, even in the most learned Authors; which nevertheless ought not to be so. For *Right is Liberty*, namely that Liberty which the Civil Law leaves us: But *Civill Law* is an *Obligation*; and takes from us the Liberty which the Law of Nature gave

Nature gave a Right to every man to settle himself by his own strength, and to invade a suspected neighbour, by way of prevention; but the Civil Law takes away that Liberty, in all cases where the protection of the Law may be safely sayd for. Inasmuch as *Lex* and *Jus*, are as different as *Obligation* and *Liberty*.

Likewise *Laws* and *Charters* are taken promiscuously for the same thing. Yet *Charters* are Donations of the Sovereign; and not *Laws*, but exemptions from Law. The phrase of a Law is *Jubeo, Injingo, I Command, and Enjoy*: the phrase of a Charter is *Dedi, Concessi, I have Given, I have Granted*: but what is given or granted, to a man, is not forced upon him, by a Law. A Law may be made to bind All the Subjects of a Common-wealth: a Liberty, or Charter is only to One man, or some One part of the people. For to say all the people of a Common-wealth, have Liberty in any case whatsoever; is to say, that in such case, there hath been no Law made; or else having been made, is now abrogated.

## CHAP. XXVII

## Of CRIMES, EXCUSES, and EXTENUATIONS

A *Sinne*, is not only a Transgression of a Law, but Also any Contempt of the Legislator. For such Contempt, is a breach of all his Lawes at once. And therefore may consist, not onely in the Commission of a Fact, or in the Speaking of Words by the Lawes forbidden, or in the Omission of what the Law commandeth, but also in the *Intention*, or purpose to transgresse. For the purpose to breake the Law, is some degree of Contempt of him, to whom it

Another division of *Laws*

A *Fundamentall Law* is that

Difference between *Law* and *Right*

Part II Of COMMON-WEALTH Chap. 30  
able. But when the Power of an Assembly is once suppressed, the Right of the same perisheth utterly; because the Assembly it self is extinct; and consequently, there is no possibility for the Sovereignty to re-enter. (1751)

CHAP. XXX

Of the OFFICE of the Sovereign Representative

**T**HE OFFICE of the Sovereign, (be it a Monarch, or an Assembly,) consisteth in the end, for which he was trusted with the Sovereign Power, namely the procuration of the safety of the people; to which he is obliged by the Law of Nature, and to render an account thereof to God, the Author of that Law, and to none but him. But by Safety here, is not meant a bare Preservation, but also all other Contentments of life, which every man by lawful Industry, without danger, or hurt to the Commonwealth, shall acquire to himselfe.

And this is intended should be done, not by care applied to Individualls, further than their protection from injuries, when they shall complain; but by a generall Providence, contained in publique Instruction, both of Doctrine, and Example; and in the making, and executing of good Lawes, to which individual persons may apply their own cases. And because, if the essentiall Rights of Sovereignty (specified before in the eighteenth Chapter) be taken away, the Common-wealth is thereby dissolved, and every man returneth into the condition; and calamity of a warre with every other man, (which is the greatest evil that can happen in this life;) it is the Office of the Sovereign, to maintain those Rights entire; and consequently against

Part II Of COMMON-WEALTH Chap. 30

his duty. First, to transferre to another, or to lay from himselfe any of them. For he that deserteth the Means, deserteth the Ends; and he deserteth the Means, that being the Sovereign, acknowledgeth himselfe subject to the Civill Lawes; and renounceth the Power of Supreme Judicature; or of making Warre, or Peace by his own Authority; or of judging of the Necessities of the Commonwealth; or of levying Mony, and Souldiers, when, and as much as in his own conscience he shall judge necessary; or of making Officers, and Ministers both of Warre, and Peace; or of appointing Teachers, and examining what Doctrines are conformable, or contrary to the Defence, Peace, and Good of the people. Secondly, it is against his Duty, to let the people be ignorant, or misinformed of the grounds, and reasons of those his essentiall Rights; because thereby men are easie to be seduced, and drawn to resist him, when the Commonwealth shall require their use and exercise.

And the grounds of these Rights, have the rather need to be diligently, and truly taught; because they cannot be maintained by any Civill Law, or terrour of legal punishment. For a Civill Law, that shall forbid Rebellion, (and such is all resistance to the essentiall Rights of Sovereignty,) is not (as a Civill Law) any obligation, (1761) but by vertue onely of the Law of Nature, that forbiddeth the violation of Faith; which naturall obligation if men know not, they cannot know the Right of any Law the Sovereign maketh. And for the Punishment, they take it but for an act of Hostility; which when they think they have strength enough, they will endeavour by acts of Hostility, to avoyd.

As I have heard some say, that Justice is but a word, without substance; and that whatsoever a man can by force, or art, acquire to himselfe, (not onely in the condition of warre, but also in a Com-

Or not to the people taught the grounds of them

Objection of those that there are in Principles of Reason for absolute Sovereignty

mon-wealth) is his own, which I have already shewed to be false: So there be also that maintain, that there are no grounds, nor Principles of Reason, to sustain those essential Rights, which make Sovereignty absolute. For if there were, they would have been found out in some place, or other; whereas we see, there has not hitherto been any Common-wealth, where those Rights have been acknowledged, or challenged. Wherein they argue as ill, as if the Savage people of America, should deny there were any grounds, or Principles of Reason, so to build a house, as to last as long as the materials, because they never yet saw any so well built. Time, and Industry, produce every day new knowledge. And as the art of well building, is derived from Principles of Reason, observed by industrious men, that had long studied the nature of materials, and the divers effects of figure, and proportion, long after mankind began (though poorly) to build: So, long time after men have begun to constitute Common-wealths, imperfect, and apt to relapse into disorder: there may, Principles of Reason be found out, by industrious meditation, to make their constitution (excepting by external violence) everlasting. And such are those which I have in this discourse set forth: Which, whether they come not into the sight of those that have Power to make use of them, or be neglected by them, or not, concerneth my particular interest, at this day, very little. But supposing that these of mine are not such Principles of Reason; yet I am sure they are Principles from Authority of Scripture; as I shall make it appear, when I shall come to speak of the Kingdome of God, (administred by Moses) over the Jewes, his peculiar people by Covenant.

Objection from the Incapacity of the vulgar  
 But they say again, that though the Principles be right, yet Common-people are not of capacity

enough to be made to understand them. I should be glad, that the Rich, and Potent Subjects of a Kingdome, or those that are accounted the most Learned, were no lesse incapable than they. But all men know, that the obstructions to this kind of doctrine proceed not so much from the difficulty of the matter, as from the interest of them that are to learn. Potent men, digest hardly any thing that setteth up a Power to bridle their affections; and Learned men, any thing that discovereth their errors, and thereby lesseneth their Authority: whereas the Common-peoples minds, unless they be tainted with dependance on the Potent, or scribbled over with the opinions of their Doctors, are like clean paper, fit to receive whatsoever by Publique Authority shall be imprinted in them. Shall whole Nations be brought to acquiesce in 1771 in the great Mysteries of Christian Religion, which are above Reason; and millions of men be made believe, that the same Body may be in innumerable places, at one and the same time, which is against Reason; and shall not men be able, by their teaching, and preaching, protected by the Law, to make that received, which is so consonant to Reason, that any unprejudicated man, needs no more to learn it, than to hear it? I conclude therefore, that in the instruction of the people in the Essentiall Rights (which are the Naturall, and Fundamentall Lawes) of Sovereignty, there is no difficulty, (whilst a Sovereign has his Power entire,) but what proceeds from his own fault, or the fault of those whom he trusteth in the administration of the Common-wealth; and consequently, it is his Duty, to cause them so to be instructed; and not onely his Duty, but his Benefit also, and Security, against the danger that may arrive to himselfe in his naturall Person, from Rebellion.

Subjects are to be taught, not to affect change of Government  
 And (to descend to particulars) the People are to

be taught, First, that they ought not to be in love with any forme of Government they see in their neighbour Nations, more than with their own, nor (whatsoever present prosperity they behold in Nations that are otherwise governed than they,) to desire change. For the prosperity of a People ruled by an Aristocraticall, or Democraticall assembly, cometh not from Aristocracy, nor from Democracy, but from the Obedience, and Concord of the Subjects; nor do the people flourish in a Monarchy, because one man has the right to rule them, but because they obey him. Take away in any kind of State, the Obedience, (and consequently the Concord of the People,) and they shall not onely not flourish, but in short time be dissolved. And they that go about by disobedience, to doe no more than reforme the Common-wealth, shall find they do thereby destroy it; like the foolish daughters of *Parus* (in the fable;) which desiring to renew the youth of their decrepit Father, did by the Counsel of *Medea*, cut him in pieces, and boyle him together with strange herbs, but made not of him a new man. This desire of change, is like the breach of the first of Gods Commandements: For there God sayes, *Non habebis Deos alienos*; Thou shalt not have the Gods of other Nations; and in another place concerning Kings, that they are Gods.

(Secondly, they are to be taught, that they ought not to be led with admiration of the vertue of any of their fellow Subjects, how high soever he stand, nor how conspicuously soever he shine in the Common-wealth; nor of any Assembly, (except the Sovereign Assembly,) so as to deferre to them any obedience, or honour, appropriate to the Sovereign onely, whom (in their particular stations) they represent; nor to receive any influence from them, but such as is conveyed by them from the Sovereign Authority. For that Sovereign, cannot

be imagined to love his People as he ought, that is not jealous of them, but suffers them by the flattery of Popular men, to be seduced from their loyalty, as they have often been, not onely secretly, but openly, so as to proclaime Marriage with them *in facie Ecclesie* by Preachers; and by publishing the same in the open streets: which (1778) may fitly be compared to the violation of the second of the ten Commandments.

Thirdly, in consequence to this, they ought to be informed, how great a fault it is, to speak evill of the Sovereign Representative, (whether One man, or an Assembly of men;) or to argue and dispute his Power, or any way to use his Name irreverently, whereby he may be brought into Contempt with his People, and their Obedience (in which the safety of the Common-wealth consisteth) slackened. Which doctrine the third Commandement by resemblance pointeth to.

Fourthly, seeing people cannot be taught this, nor when tis taught, remember it, nor after one generation past, so much as know in whom the Sovereign Power is placed, without setting a part from their ordinary labour, some certain times, in which they may attend those that are appointed to instruct them; It is necessary that some such times be determined, wherein they may assemble together, and (after prayers and praises given to God, the Sovereign of Sovereigns) hear those their Duties told them, and the Positive Lawes, such as generally concern them all, read and expounded, and be put in mind of the Authority that maketh them Lawes. To this end had the *Jewes* every seventh day, a *Sabbath*, in which the Law was read and expounded; and in the solemnity whereof they were put in mind, that their King was God; that having created the world in six dayes, he rested the seventh day; and by their resting on it from their labour,

*Nor to Dispute  
the Sovereign  
Power;*

*And to have  
dayes set apart  
to learn their  
Duty;*

*Not adhere  
(against the  
Sovereign) to  
Popular men;*

that that God was their King, which redeemed them from their servile, and painfull labour in Egypt, and gave them a time, after they had joyced in God, to take joy also in themselves, by lawfull recreation. So that the first Table of the Commandements, is spent all, in setting down the summe of Gods absolute Power; not onely as God, but as King by pact, (in peculiar) of the Jewes; and may therefore give light, to those that have Sovereign Power conferred on them by the consent of men, to see what doctrine they Ought to teach their Subjects.

And because the first instruction of Children, dependeth on the care of their Parents; it is necessary that they should be obedient to them, whilst they are under their tuition; and not onely so, but that also afterwards (as gratitude requireth,) they acknowledge the benefit of their education, by external signes of honour. To which end they are to be taught, that originally the Father of every man was also his Sovereign Lord, with power over him of life and death; and that the Fathers of families, when by instituting a Common-wealth, they resigned that absolute Power; yet it was never intended, they should lose the honour due unto them for their education. For to relinquish such right, was not necessary to the Institution of Sovereign Power; nor would there be any reason, why any man should desire to have children, or take the care to nourish, and instruct them, if they were afterwards to have no other benefit from them, than from other men. And this accordeth with the fifth Commandement.

And to avoid doing of Justice to be taught, which (consisting in taking Injury: from no man what is his) is as much as to say, to cause men to be taught not to deprive their Neighbours, by violence, or fraud, of any thing which by the Sovereign Authority is theirs. Of things held in

propriety, those that are dearest to a man are his own life, & limbs; and in the next degree, (in most men,) those that concern conjugal affection; and after them riches and means of living. Therefore the People are to be taught, to abstain from violence to one anothers person, by private revenges; from violation of conjugal honour; and from forcible rapine, and fraudulent surreption of one anothers goods. For which purpose also it is necessary they be shewed the evil consequences of false Judgement, by corruption either of Judges or Witnesses, whereby the distinction of propriety is taken away, and Justice becomes of no effect: all which things are intimated in the sixth, seventh, eighth, and ninth Commandements.

Lastly, they are to be taught, that not onely the unjust facts, but the designs and intentions to do them, (though by accident hindered,) are Injustice; which consisteth in the pravity of the will, as well as in the irregularity of the act. And this is the intention of the tenth Commandement, and the summe of the Second Table; which is reduced all to this one Commandement of mutuall Charity. *Thou shalt love thy neighbour as thy selfe*; as the summe of the first Table is reduced to *the love of God*; whom they had then newly received as their King.

As for the Means, and Conduits, by which the people may receive this Instruction, wee are to search, by what means so many Opinions, contrary to the peace of Man-kind, upon weak and false Principles, have nevertheless been so deeply rooted in them. I mean those, which I have in the precedent Chapter specified: as That men shall judge of what is lawfull and unlawfull, not by the Law it selfe, but by their own Consciences; that is to say, by their own private Judgements: That Subjects sinne in obeying the Commands of the Common-wealth, unless they themselves have first

And to do  
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The use of  
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judged them to be lawful: That their Propriety in their riches is such, as to exclude the Dominion, which the Common-wealth hath over the same: That it is lawful for Subjects to kill such, as they call Tyrants: That the Sovereign Power may be divided, and the like; which come to be instilled into the People by this means. They whom necessity, or covetousnesse keepeth attent on their trades, and labour; and they, on the other side, whom superfluity, or sloth carrieth after themselves, whose greatest pleasures, (which two sorts of men take in the greatest part of Man-kind) being diverted from deep meditation, which the learning of truth, not onely in the matter of Naturall Justice, but also of all other Sciences necessarily requireth, receive the Notions of their duty, chiefly from Divines in the Pulpit, and partly from such of their Neighbourhood, or familiar acquaintance, as having the Faculty of discoursing readily, and plausibly, seem wiser and better learned in cases of Law, and Conscience, than themselves. And the Divines, and such others as make shew of Learning, derive their (I 180) knowledge from the Universities, and from the Schooles of Law; or from the Books, which by men eminent in those Schooles, and Universities have been published. It is therefore manifest, that the Instruction of the people, dependeth wholly on the right teaching of Youth in the Universities. But are not (may some man say) the Universities of *England* learned enough already to do that? or is it you will undertake to teach the Universities? Hard questions. Yet to the first, I doubt not to answer; that till towards the later end of *Henry the eighth*, the Power of the Pope, was always upheld against the Power of the Common-wealth, principally by the Universities; and that the doctrines maintained by so many Preachers, against the Sovereign Power of the King, and by so many Lawyers, and others, that had

their education there, is a sufficient argument, that though the Universities were not authors of those false doctrines, yet they knew not how to plant the true. For in such a contradiction of Opinions, it is most certain, that they have not been sufficiently instructed; and 'tis no wonder, if they yet retain a relish of that subtle liquor, wherewith they were first seasoned, against the Civill Authority. But to the later question, it is not fit, nor needful, for me to say either I, or No; for any man that see what I think, if the safety of the People, requireth further, may say him, or them that have the Sovereign Power, that Justice be equally administered to all degrees of People; that is, that as well the rich, and mighty, as the poor and obscure Persons, may be righted of the Injuries done them; so as the great, may have no greater hope of impunity, when they doe violence, dishonour, or any Injury to the meaner sort, than when one of these, does the like to one of them: For in this consisteth Equity; to which, as being a Precept of the Law of Nature, a Sovereign is as much subject, as any of the meanest of his People. All breaches of the Law, are offences against the Common-wealth; but there be some, that are also against private Persons. Those that concern the Common-wealth onely, may without breach of Equity be pardoned; for every man may pardon what is done against himselfe, according to his own discretion. But an offence against a private man, cannot in Equity be pardoned, without the consent of him that is injured; or reasonable satisfaction.

The Inequality of Subjects, proceedeth from the Acts of Sovereign Power; and therefore has no more place in the presence of the Sovereign; that is to say, in a Court of Justice, then the Inequality between Kings, and their Subjects, in the presence of the King of Kings. The honour of great Persons;

is to be valued for their beneficence, and the ayde they give to men of inferiour rank, or not at all. And the violences, oppressions, and injuries they do, are not extenuated, but aggravated by the greatness of their persons; because they have least need to commit them. The consequences of this partiality towards the great, proceed in this manner. Impunity maketh Insolence; Insolence Hatred; and Hatred, an Endeavour to pull down all oppressing and contumelious greatness, though with the ruine of the Common-wealth.

*Equall Taxes*

1181] To Equall Justice, appertaineth also the Equall imposition of Taxes; the Equality wheredependeth not on the Equality of riches, but on the Equality of the debt, that every man oweth to the Common-wealth for his defence. It is not enough for a man to labour for the maintenance of his life; but also to fight, (if need be,) for the securing of his labour. They must either do as the Jewes did after their return from captivity, in re-edifying the Temple, build with one hand, and hold the Sword in the other; or else they must hire others to fight for them. For the Impositions that are layd on the People by the Sovereign Power, are nothing else but the Wages, due to them that hold the publique Sword, to defend private men in the exercise of severall Trades, and Callings. Seeing then the benefit that every one receiveth thereby, is the enjoyment of life, which is equally dear to poor, and rich; the debt which a poor man oweth them that defend his life, is the same which a rich man oweth for the defence of his; saving that the rich, who have the service of the poor, may be debtors not onely for their own persons, but for many more. Which considered, the Equality of Imposition, consisteth rather in the Equality of that which is consumed, than of the riches of the persons that consume the same. For what reason is there, that he which laboureth

much, and sparing the fruits of his labour, consumeth little, should be more charged, then he that living idly, getteth little, and spendeth all he gets; seeing the one hath no more protection from the Common-wealth, then the other? But when the Impositions, are layd upon those things which men consume, every man payeth Equally for what he useth: Nor is the Common-wealth defrauded, by the luxurious waste of private men.

*Publique Charity*

And whereas many men, by accident unavoidable, become unable to maintain themselves by their labour; they ought not to be left to the Charity of private persons; but to be provided for, (as farforth as the necessities of Nature require,) by the Lawes of the Common-wealth. For as it is Uncharitableness in any man, to neglect the impotent; so it is in the Sovereign of a Common-wealth, to expose them to the hazard of such uncertain Charity.

*Prevention of Idleness*

But for such as have strong bodies, the case is otherwise: they are to be forced to work; and to avoyd the excuse of not finding employment, there ought to be such Lawes, as may encourage all manner of Arts; as Navigation, Agriculture, Fishing, and all manner of Manufacture that requires labour. The multitude of poor, and yet strong people still increasing, they are to be transplanted into Countries not sufficiently inhabited: where nevertheless, they are not to exterminate those they find there; but constrain them to inhabit closer together, and not range a great deal of ground, to snatch what they find; but to court each little Plot with art and labour, to give them their sustenance in due season. And when all the world is overcharged with Inhabitants, then the last remedy of all is Warre; which provideth for every man, by Victory, or Death.

*Good Lawes what*

To the care of the Sovereign, belongeth the making

the Law, is multiplication of ambiguity: Besides it seems to imply, (by too much diligence,) that whosoever can evade the words, is without the compass of the Law. And this is a cause of many unnecessary Processes. For when I consider how short were the Lawes of antient times; and how they grew by degrees still longer; me thinks I see a contention between the Penners, and Pleaders of the Law; the former seeking to circumscribe the later; and the later to evade their circumscriptions; and that the Pleaders have got the Victory. It belongeth therefore to the Office of a Legislator, (such as is in all Common-wealths the Supreme Representative, be it one Man, or an Assembly,) to make the reason Perpicuous, why the Law was made; and the Body of the Law it selfe, as short, but in as proper, and significant termes, as may be.

It belongeth also to the Office of the Sovereign, to make a right application of Punishments, and Rewards. And seeing the end of punishing is not revenge, and discharge of choler; but correction, either of the offender, or of others by his example; the severest Punishments are to be inflicted for those Crimes, that are of most Danger to the Publique; such as are those which proceed from malice to the Government established; those that spring from contempt of Justice; those that provoke Indignation in the Multitude; and those, (183) which unpunished, seem Authorised, as when they are committed by Sonnes, Servants, or Favorites of men in Authority: For Indignation carrieth men not onely against the Actors, and Authors of Injustice; but against all Power that is likely to protect them; as in the case of *Tarquin*; when for the Insolent act of one of his Sonnes, he was driven out of *Rome*, and the Monarchy it selfe dissolved. But Crimes of Infirmy, such as are those which proceed from great provocation, from great fear, great need,

ing of Good Lawes. But what is a good Law? By a Good Law, I mean not a (182) Just Law: for no Law can be Unjust. The Law is made by the Sovereign Power, and all that is done by such Power, is warranted, and owned by every one of the people; and that which every man will have so, no man can say is unjust. It is in the Lawes of a Common-wealth, as in the Lawes of Gaming: whatsoever the Gamesters all agree on, is Injustice to none of them. A good Law is that, which is *Needfull*, for the Good of the People, and withall *Perpicuous*.

For the use of Lawes, (which are but Rules Authorised) is not to bind the People from all Voluntary actions; but to direct and keep them in such a motion, as not to hurt themselves by their own impetuous desires, rashnesse, or indiscretion as Hedges are set, not to stop Travellers, but to keep them in the way. And therefore a Law that is not Needfull, having not the true End of a Law, is not Good. A Law may be conceived to be Good, when it is for the benefit of the Sovereign; though it be not Necessary for the People; but it is not so. For the good of the Sovereign and People, cannot be separated. It is a weak Sovereign, that has weak Subjects; and a weak People, whose Sovereign wanted Power to rule them at his will. Unnecessary Lawes are not good Lawes; but trapps for Money: which where the right of Sovereign Power is acknowledged, are superfluous; and where it is not acknowledged, insufficient to defend the People.

The Perspicuity, consisteth not so much in the words of the Law it selfe, as in a Declaration of the Causes, and Motives, for which it was made. That is it, that shewes us the meaning of the Legislator; and the meaning of the Legislator known, the Law is more easily understood by few, than many words. For all words, are subject to ambiguity, and therefore multiplication of words in the body of

Such as are Necessary

Such as are Perpicuous

Punishment

may be differed, by such ways as that, yet the danger grows still the greater, and the Publick more assured. It is therefore against the Duty of the Sovereign, to whom the Publick Safety is committed, to Reward those that aspire to greatness by disturbing the Peace of their Country, and not rather to oppose the beginnings of such men, with a little danger, than after a longer time with greater.

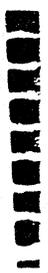
Count. flourish

Another Businessse of the Sovereign, is to choos good Counsellours; I mean such, whose advice he is to take in the Government of the Common-wealth. For this word Counsell, is a word signifi- cing, that all Assemblies of men that sit together, not onely to deliberate what is to be done hereafter, but also to judge of Facts past, and the Lawes for the present. I therefore here in the first place only: And in this sense there is no office of Counsell, neither in a Democritical, Aristoc- ratick, or Monarchical Government, as are the Counsell- ours therefore is proper to Monarchy, in which the Sovereign that inclineth not to make choice of those, that in every kind are the most able, dischargeth not his Office as he should. The most able Counsellours, are they that have the hope of benefit by giving evill Counsell, and the knowledge of those things that conduce to the Peace, and Defence of the Common-wealth. It is a hard matter to know who expecteth benefit from publick troubles; but the signes that guide to a just suspicion, is the soothing of the people in their unreasonable, or irremediable grievances, by men whose estates are not sufficient to discharge their accustomed expences, and may easily be observed by any one whom it concerns to know it. But to know, who has most knowledge of the Publick

or from ignorance whether the fact be a great Crime, or not, there is place many times for Lenity, without prejudice to the Common-wealth; and Lenity when there is such place for it, is required by the Law of Nature. The Punishment of the Leader and teachers in a Commotion; not the poore seduced People, when they are punished, can profit the Common-wealth by their example. To be severe to the People, is to punish that ignorance, which may in time be repaired to the Sovereign, whose fault it was, they were no better instructed.

Rewards

In like manner it belongeth to the Office, and Duty of the Sovereign, to Reward the ways so, as there may arise from their benefit to the Common-wealth; what in consisteth their Use, and End; and is then done, when they that have served the Common-wealth are with as little expence of the Common-wealth, as is possible, so well recompensed, as others thereby may be encouraged, both to serve the same as faithfully as they can, and to study the arts by which they may be enabled to do it better. To buy with Money, or Preferment, from a Popular ambitious Subject, to be quick, and set from making ill impressions in the minds of the people, has nothing of the nature of Rewards; (which is ordained for incentive, but for service past;) nor a signe of Gratitude, but of Fear: nor does it tend to the Benefit, but to the Damage of the Publick. It is a contention with Ambition, like that of Hercules with the Monster Hydra, which having many heads, for every one that was vanquished, there grew up three. For in like manner, when the stubbornness of one Popular man, is overcome with Reward, there are many more (by the Example) that do the same Mischief, in hope of like Benefit: and as all sorts of Manufacture, so also Malice encreaseth by being vendible. And though sometimes a Civill warre,



affaires, is yet harder; and they that know them, need them a great deal the lesse. (For to know, who knows the Rules almost of any Art, is a great degree of the knowledge of the truth of another no man can be assured of the truth of another Rules, but he that is first taught to understand them. But the best signes of Knowledge of any Art, are much conversing in it, and constant good effects of it. Good Counsell comes not by Lot, nor by Inheritance; and therefore there is no more reason to expect good Advice from the rich, or noble, in matter of State, than in delineating the dimensions of a forresse; unlesse we shall think there needs no method in the study of the Politiques, (as there does in the study of Geometry,) but onely to be looken on; which is not so. For the Politiques is the harder study of the two. Whereas in these parts of Europe, it hath been taken for a Right of certain persons, to have place in the highest Council of State by Inheritance; it is derived from the Conquests of the antient Germans; wherein many absolute Lords Joyning together to conquer other Nations, would not enter in to the Confederacy, without such Priviledges, as might be marks of difference in time following, between their Posterity, and the Posterity of their Subjects; which Priviledges being inconsistent with the Sovereign Power, by the favour of the Sovereign, they may seem to keep; but considering for them as their Right, they must needs by degrees let them go, and have at last no further honour, than adhereth naturally to their abilities. And how able soever be the Counsellours in any affaire, the benefit of their Counsell is greater, when they give every one his Advice; and the reasons of it apart, than when they do it in an Assembly, by way of Orations; and when they have premeditated, than when they speak on the sudden; both because they have more time, to survey the

consequences of action; and are lesse subject to be carried away to contradiction, through Envy, Emulation, or other Passions arising from the difference of opinion.

The best Counsell, in those things that concern not other Nations, but onely the ease, and benefit the Subjects may enjoy, by Lawes (185) that look onely inward, is to be taken from the generall informations, and complaints of the people of each Province, who are best acquainted with their own wants, and ought therefore, when they demand nothing in derogation of the essentiall Rights of Sovereignty, to be diligently taken notice of. For without those Essentiall Rights, (as I have often before said,) the Common-wealth cannot at all subsist.

Comm

A Commander of an Army in chiefe, if he be not Popular, shall not be beloved, nor feared: as he ought to be by his Army; and consequently cannot performe that office with good success. He must therefore be Industrious, Valiant, Affable, Liberal, and Fortunate, that he may gain an opinion both of sufficiency, and of loving his Souldiers. This is Popularity, and breeds in the Souldiers both desire, and courage, to recommend themselves to his favour; and protects the severity of the General, in punishing (when need is) the Mutinous, or negligent Souldiers: But this love of Souldiers, (if caution be not given of the Commanders fidelity,) is a dangerous thing to Sovereign Power; especially when it is in the hands of an Assembly not popular. It belongeth therefore to the safety of the People, both that they be good Conductors, and faithfull Subjects, to whom the Sovereign Commits his Armies.

But when the Sovereign himselfe is Popular; that is, revered and beloved of his People, there is no danger at all from the Popularity of a Subject. For Souldiers are never so generally unjust, as to

## CHAP. XXXI

OF THE KINGDOM OF GOD  
BY NATURE

THAT the condition of meer Nature, that is to say, of absolute Liberty, such as is theirs, that neither are Sovereigns, nor Subjects, is Anarchy, and the condition of Warre: That the Precepts, by which men are guided to avoyd that condition, are the Lawes of Nature: That a Common-wealth, without Sovereign Power, is but a word, without substance, and cannot stand: That Subjects, to Sovereigns, simple Obedience in all things, without their obedience is not reputed to the Lawes of God, I have sufficiently proved: That which I have already written. There wants only, for the evidence of Civill duty, to know what are those Lawes of God. For with out that, a man knows not when he is commanded any thing by the Civill Power, whether it be contrary to the Law of God, or not: and so, either by too much civill obedience, offends the Divine Majesty, or through feare of offending God, transgresses the commandements of the Common-wealth. To avoyd both these faults, it is necessary to know what are the Lawes of God: And since the knowledge of the Lawes of God, is the knowledge of the Sovereign Power, I shall say something in that which falleth under the KINGDOM OF GOD.

God is King, let the Earth rejoyce, saith the Psalmist. And again, God is King though the Nations be angry; and he that sitteth on the Cherubins, though the earth be moved. Whether men will or not, they must be subject always to the Divine Power. By denying the Existence, or Providence of God, men may shake off their Ease, but not their Yoke. But to call

side with their Captain; though they love him, against their Sovereign, when they love not only his Person, but also his Cause. And therefore those, who by violence have at any time suppressed the Power of their lawfull Sovereign, before they could settle themselves in his place, have been always put to the trouble of contriving their Titles, to save the People from the shame of receiving them. To have a known Right to Sovereign Power, is so popular a quality, as he that has it needs no more, for his own part, to turn the hearts of his Subjects to him, but that they see him able absolutely to govern his own Family: Now, on the part of his enemies, but a disbanding of their Armies. For the greatest and most active part of Mankind, has never hitherto been well contented with the present.

Concerning the Offices of one Sovereign to another, which are comprehended in that Law, which is continually called the Law of Nations, I need not say any thing in this place; because the Law of Nations, and the Law of Nature, is the same thing. And every Sovereign hath the same Right, in procuring the safety of his People, that any particular man can have, in procuring the safety of his own Body. And the same Law, that dictateth to men that have no Civill Government, what they ought to do, and what to avoyd in regard of one another, dicateth the same to Common-wealths, that is, to the Constitution of Sovereign Powers, and Sovereign Assemblies; there being no Court of Natural Justice, but in the Conscience only; where not Man, but God reigneth; whose Lawes, (such as them as oblige all Mankind,) in respect of God, as he is the Author of it: So Nature, are Natural; and in respect of the same God, as he is King of Kings, are Lawes. But of the Kingdome of God, as King of Kings, and as King also of a peculiar People, I shall speak in the rest of this discourse.

