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Thomas Gordon, *An Essay on Government* [1747]



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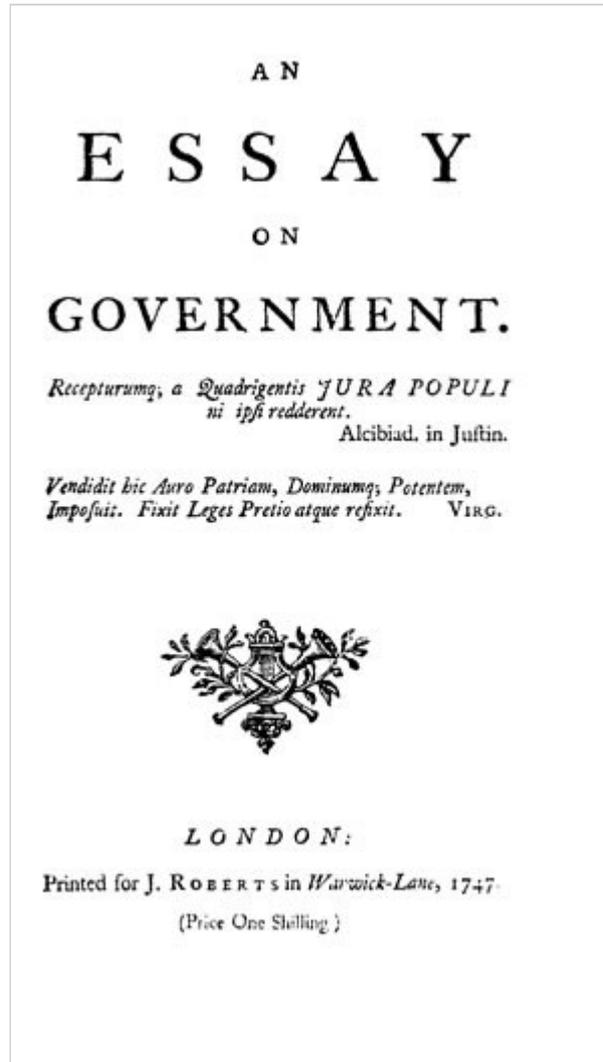
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8335 Allison Pointe Trail, Suite 300
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Author: [Thomas Gordon](#)

About This Title:

Gordon takes issue with some of the main natural law theorists, Pufendorf, Barbeyrac and Grotius, over the right of subjects to obey a tyrannical king or of slaves to obey their master. Gordon goes to the root of the problem by discussing the origin of the state in one of more supposed “contracts” between the people and a sovereign king. He concludes that even if a contract does exist it does not therefore allow a tyrant king to act unchecked.

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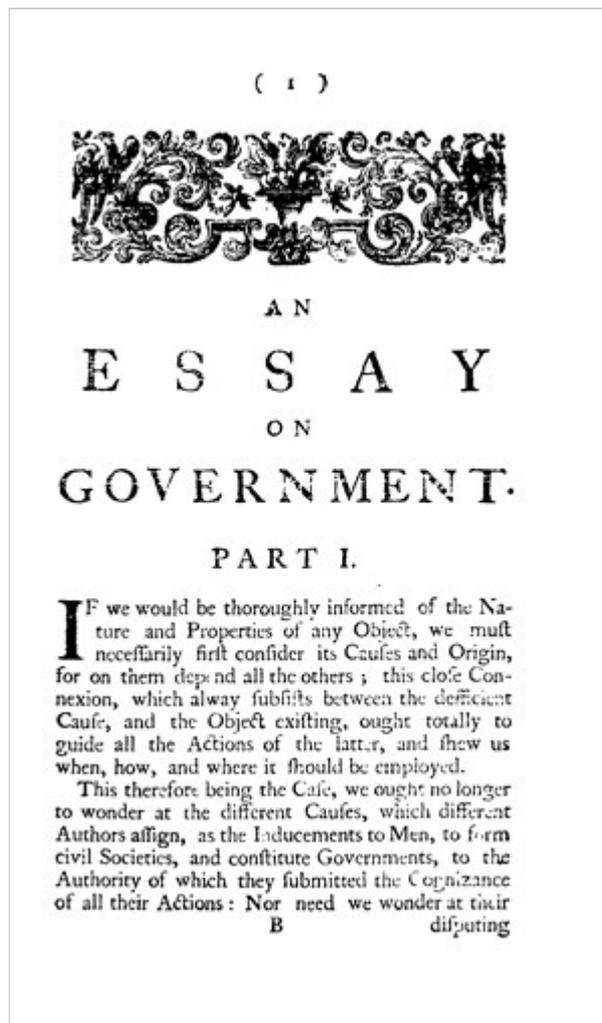


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ERRATA.

PAge 1. 1. 5. *for* defficient *read* efficient. P. 10. 1. 3. *read* vacating to other Affairs. P. 11. at the Bottom, *Puffendorf* droit de la Nature. P. 18. 1. 28. *for* Thing *read* King. P. 25. 1. 10. *for* Things *read* Kings. P. 32. *for* Quereta *read* Querela. P. 35. *for* Pattern *read* Patron. P. 44. *for* plenojue *read* pleno-jure.

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TO Sir **ROBERT KING**, Bart.

SIR,

IT is very unusal to prefix Dedications to Treatises of this Size, as even the Generality of Authors expect not Rewards for such trivial Oblations, and they are of too *Swiss*-like a Temper to flatter without Pay.

But as I have neither their Motives, nor intend to use their dedicatory Stile, I hope I may venture to go out of their Path, and by following the Dictates of an affectionate Vanity, publickly boast of your Friendship and Patronage.

As the present Sheets, will not be perused by you till in Print, excuse me if I trouble you with the first Motive that induced me to write them; you may remember at the Time of the Dissolution of the last Parliament, a Pamphlet was published, addressed to one of the two Parties now dividing these Kingdoms, exhorting them to join and unite to an amphibious Sect, in order to wrest our Constitution from its original Basis; and in its Room, raise a Scheme of Arbitrary Power.

I own, I felt Indignation at Reading this *Anti-Phillipie*; which to me seemed to be a sounding the Trumpet of Despoticism, and I could not but be shocked, to hear a Man complain of the too great Liberty of the Press; while he himself, is the most flagitious Abuser of that Liberty he would restrain.

This Freedom may very truly be said to be a characteristical Badge of the Freedom of the State, as by that alone Liberty of thinking is preserved; the Deprivation of which, is always attended with the Loss of Freedom of Speech, and the next Consequence is the Loss of free Agency. When we are unaccustomed to these three Privileges, I wonder what Remains can possibly be left of publick Liberty, but a Shadow and a Name?

If the Press by being unrestrained is sometimes the Minister of evil Men, as in the Case of the ever memorable *Letter to the Tories*; it is always ready to assist the honest Man to confute such Principles. A Doctrine that cannot be refuted, ought to be propagated; and while an even Liberty is allowed to all Men to communicate their Thoughts to the Publick, there is no Danger, that any one will be able to impose any ridiculous Systems on the World. Besides, is it not a sufficient Check on Men, that they are punishable in an exemplary Manner, for publishing any thing contrary to the Laws of their Country; should their Foolhardiness lead them into any Attempts of that Sort!

The Author of the Pamphlet, I have been mentioning, hath not, it is true, afforded any thing to lay hold of, nor by laying down any direct Principles, enabled his Adversaries to enter into a fair Dispute with him; but only in seeming Arguments, traduces the constant Friends of Liberty, and is shocked at the too great Freedom his fellow

Subjects enjoy; whom he seems desirous to see reduced to the more salutary State of *Persian Slavery*, and *Gallic Penury*.

But, one Way seemed to me to be left to refer this important Cause to the Decision of the Publick, and by fairly stating the Grounds and Principles of Whiggism, leave the Author the Liberty to examine and attack them, and at the same time declare the System of the Party, whose chief he now assumes to be, and leave to the Judgment of the World, the Preferableness of their Tenets.

If this Part, should fortune to meet with your Approbation, the Sequel which contains some Considerations on the different Branches of the civil Power, shall soon appear.

This Work, I could have wished undertaken by an abler Hand; but I thought by flinging the first Dart, I might engage more formidable Champions, to espouse the glorious Cause.

Had the Dictates of my own Heart been followed on this Occasion, and had not the Fear of offending your Modesty, restrained me from writing the Truth, I might have employed this Time in drawing your Character, in all its Beauties. This Employment would have been so pleasant, and agreeable to me, that it would necessarily have protracted this Dedication beyond the usual Length. Besides, I am so selfish, as rather to let Mankind be ignorant of your good Qualities, than by publicly declaring them, run the Risk of loosing the most valuable Blessing I ever enjoyed, the Friendship of a worthy generous discerning Man.

You will easily see this Address, is not to the Senator, the Man of Quality, or the Man of Property; but to the warm and disinterested Friend: And comes not from the Motives of an Author, but entirely from the Heart, of, *SIR*,

Your most obliged,
and most obedient
Humble Servant,

T. Gordon.

Middle Temple,

Nov. 1. 1747.

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AN ESSAY ON GOVERNMENT.

PART I.

IF we would be thoroughly informed of the Nature and Properties of any Object, we must necessarily first consider its Causes and Origin, for on them depend all the others; this close Connexion, which alway subsists between the defficient Cause, and the Object existing, ought totally to guide all the Actions of the latter, and shew us when, how, and where it should be employed.

This therefore being the Case, we ought no longer to wonder at the different Causes, which different Authors assign, as the Inducements to Men, to form civil Societies, and constitute Governments, to the Authority of which they submitted the Cognizance of all their Actions: Nor need we wonder at their disputing so warmly about which of the different Forms of Government is to claim the first Rank of Antiquity.

Some attribute the Institution to a natural Appetite, some to the Avarice, Force or Ambition of Particulars, and others to the Apprehensions Men lay under from the Dangers they were exposed to from their Fellow-Creatures.

Some too regarding a Democracy, as the most ancient Form of Government; others preferring Aristocracy; and a third placing Monarchies before either of the former.

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SECT. I.

MOST Authors agree that the first Constitution of Governments, was originally owing to the Depravity and Treachery of Mankind, Vices inherent in Nature, and co-eval with the Creation; but whether these were the direct Causes, or only the mediate ones, will be the most important Question on this Occasion, and indeed the only one; for few pretend to say, that there can be any Reason, to regard a natural Appetite of Mankind to live in a civil State, as the Motive which caused them to found such Societies; because no one can pretend to discover such Appetite really existing, and the many Nations, (if they may be so called) which still live without any Idea or Desire to enter into such a State, are a Proof of the contrary. All therefore that can be allowed to these Authors, is, that Man is very capable of entering into a civil Government, not that he is desirous of it.

Barbeyrac and *Titius* agree in attributing the Foundation of States, directly to the Pravity of some Particulars, who, induced by Avarice and Ambition, and assisted by an external Force, compelled their Fellow Creatures first to submit the Cognizance of their Actions to a foreign Authority; and *Barbeyrac*, to confirm this Opinion, cites the Example of *Nimrod* or *Ninus*, whom he regards as the first Founder of a State.

As for the last Part of the Argument which is the Example, we only have the bare Dictum of *Barbeyrac*, to shew that he was the first Governor of the Sons of Men; nor secondly are we informed of the Extent of the Power of this imaginary Monarch---so that he cannot by any Means be admitted to be the first Founder of States, especially when we consider the strong presumptive Proof there is of a prior State, nay, long prior to this pretended Proto-Monarch; for he, by all Accounts, liv'd after the Flood three Generations: Now before the Flood we meet with Men who are spoke of in Scripture, as the Leaders of some State. *Gen. c. 6.v.4.* mentions Men who became mighty Men, and were of old Men of Renown. "What else can be meant by this, than by the Name give to *Nimrod* of" a *Hunter of Men* appeareth not to me, for the former in all Probability were the Leaders of Cities and Armies as well as the latter.

Two very great Inconveniencies will arise in assenting to these Authors in this Point, and which possibly they considered not in all their Extent. I. They make that the Cause, which can only be a Consequence, of the first Introduction of States, namely Ambition, which is only the Thirst of Power or Pre-eminence, and which attributes these Constitutions first introduced in the World, but being before unknown, were consequently undesired.

And if they attribute these stupendous Structures, which have been so often changed, repaired, beautified, and defaced, but never totally destroyed, to meer Force (without entering into the Improbability of such a Fact) they thereby open a Mine to sap and overturn them all, and they in fact tell us, we are no longer obliged to obey our sovereign Magistrate, ---for by the Law of Nature, all Contracts we enter into, through an immediate Fear of an impending Danger, either with the Party that causes such Fear, or any other through his Compulsion, are null, and of no Force; and we are at

Liberty to break them, on the first Opportunity we can with Safety to ourselves; --- and this Rule of Reason is so absolute, that no written Law can repeal it, no Prescription render it obsolete, nor Oath, or Surrender of the Privilege of making use of it, deprive us of the Benefits it gives us.

If therefore we admit that our Fore-fathers were compell'd, by some one among them more formidable than the rest, to constitute Governments, and grant to any Being a supreme Power; we must also allow, that such Constitution was illegal, and such Being could not acquire any Thing, with Justice, by such Grant; consequently, we their Successors have a right to re-demand whatsoever he may have usurped by the Pretext of such Grant, and in Case of Refusal, wrest it from his Hands by Force, and punish him for his Obstinacy, nay, call him to an Account for all his Actions, and compell him to restore what he may have thereby taken from us or our Parents; whither such a Principal tends, and what would be the ill Consequence of preaching such a Doctrine, to any Persons who think for themselves, and have the least Love for Liberty, I leave to any one to judge. Let us see therefore, if we can find no other Foundation for the Constitution of States.

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SECT. II.

NO Cause can be better assigned, than the Fear which Men lay under, of the Ills they might suffer, from their Neighbour's* Power and Wickedness; and which Fear was grounded, even on the Experience of those Inconveniencies they were inevitably subject to in the State of Nature†. As there is no Improbability, in supposing this to have been the first Motive, which Mankind had to form Governments, so neither is the establishing it as such, liable to any great Objection, or ill Consequence: For tho' Contracts entered into through Fear, are void, yet three essential Requisites are wanting in the present Case, which intirely take it out of the Reason and Force of that Maxim. And 1. The Fear which may be objected against the Validity of a Contract, must be immediate. 2. The Danger must be actually impending, and of a Nature to shock the most resolute Man. And 3. The Contract, as we said before, must be entered into, (from an Apprehension of the ill Consequence of disobeying the menacing Party) either with the Menacer or with his Privity. But as it is evident, that all these are here wanting, we may easily conclude that the Contractors are not depriv'd of free Agency, consequently are bound by the Conventions, they may enter into. Suppose a Power was apprehensive of an Attack from any other, and to defend itself made a Treaty with a Third, in which mutual Services were stipulated; the latter Power performs his Part of the Engagement; will any Lawyer, or indeed any Man in his Senses, pretend to say, the Fear the first Power was under, can be a Pretence sufficient, to justify him in the Non-performance of the most minute Article, on his Side, provided only they were consistent with the Laws of Nature.

Undoubtedly if we could imagine a Society, wherein Men had no other Law to guide their Actions, than those of natural Reason, nor no other Check on their Passions, than the Fear of receiving Punishments, from the divine Promulgator of those Laws, we should easily confess it the happiest that could possibly exist, and prefer it far beyond those wherein Men are kept to their Duty, (with more Difficulty than Hounds or Horses are broke) by the Fear of Scourges, Axes and Halters. But it is impossible for us, even to have the Idea of such a State, as we know too well the Nature of Man, how apt to be misled by his Appetites and Passions, how easy to be deceived in his Notions of Good and Evil, how prone to Vengeance, how slow to forgive, how little affected with the remote and uncertain Punishments, which attend the Transgressors of the natural Law in a future State, and how ready (if even sometimes the Reward of Crimes happens to be bestowed in this World,) to attribute them to some other Cause.

If such be the Nature of our Dispositions, no Wonder if soon in the State of Nature, when one Man attack'd another, either in his Property, or Family, (both which Rights were prior and antecedent to the Constitution of States,) the Attacked defended himself by Violence, retorted the Injury, and carried this Violence farther than he ought by the Laws of Nature, and by that Means introduced perpetual Warfare and Disputes; nay, this Opinion we have confirmed in some Measure by Holy Writ, so early as under our Fore-father *Adam*, whose Child *Cain* did not abstain even from Fratricide, to put his Brother *Abel* out of the Way, who stood between him and the

Favour of the Almighty, and by that Means, as he imagined, decreased the Prosperity of his temporal Affairs.

If two or three could not live in the World, without having Variances, and entertaining hostile Dispositions, we may easily imagine that these decreased not, as the World became more populous, but augmented gradually as the Number of the Sons of Earth increased, till they came to that Height, as not to permit a Man to rest assured of any Thing he possessed, and compell'd every one to have perpetually Recourse to Violence, to protect and preserve his Possessions and Family: As every one felt the Grievance of this State, no Wonder if they all soon turned their Thoughts to remedy it, and consented to those Measures which were most probable to have such an Effect, and agreed to refer their Disputes and Variances, to the amicable Decision of an Arbitrator: As the World was not then increased beyond the Connexions of one Family, tho' that was pretty numerous, who then could be found more proper than the common Parent of all the Disputants, whose Attachment to all Parties being equal, his Judgments might the more justly be presumed to be impartial, and to whom, by Reason of the natural Affection they must naturally have for him, they would more willingly confer this Mark of Superiority—when he came to die, then his Authority was again divided among the different Fathers of Families, each deciding the Differences of his several Children.

And this Grant of a Power to judge Causes seems to have laid the first Foundation of Governments, and on it they all may be said to be built, not only without hurting their main Structures, but even without depriving them of any of their distinct Parts; how probable such an Account may be, I must leave to the Judgment of the Reader.

This Power originally was only a Right of giving an Opinion on the Matter of Dispute, unattended with any coercive one, of putting in Execution the Sentence pronounced, because it was not imagined that the Party who was condemned, would persist in his Attempts after such Sentence; but Experience soon convinced Mankind of their Error, and shew'd them that this Remedy was a very weak one, and by no Means sufficient for the Evil: This therefore induced them to go one Step further, and part with a Degree of their natural Liberty, by granting to their Arbitrators the Power of putting their Sentences in Execution, and compelling the Refractory to obey their Orders.

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SECT. III.

THIS Remedy thus amended, served, while the World was in its Infancy, and the Produce of the Earth yielded the Inhabitants wherewith to live, within their several Family Districts; but when some Families began to be too populous to subsist on their Portions, without travelling farther, Disputes began to break out between the particular Members of different Families, which could not be decided in the common Manner, because the Parties acknowledged not a common Superior. These could be appeased by no other Means, than the appointing an universal Arbitrator, who might decide all Disputes between any Parties whatsoever.

But as this Power carried with it a Degree of Superiority over the rest, which Men are naturally very averse to submit to, in any one, especially when no Ties of natural Affection, or Gratitude, intervene, to balance their strong Love for those valuable Rights of universal Equality, and natural Independency, it is hardly to be imagined, that they would consent, to vest any one Man, naturally their Equal, with this Power; nor can it be thought, they would more readily lodge it in the universal Assembly of the Fathers of Families, exclusive of themselves, because they were under no natural Obligation to the major Part of the Members of such Assembly.

To sooth their Humour, and at the same Time both preserve Liberty, and prevent Licentiousness, an artificial Being was to be found out, who might answer all the Ends of a natural Superior, without being liable to the Objection of one Man's assuming an Authority over another; and where else could this possibly be found out, than in the universal Assembly of all the Members of the different Families? to which Assembly, the Right of deciding all Disputes was translated from the several Fathers with whom it was before intrusted.

The Difficulty of convening so numerous an Assembly, or rather the Inconvenience the Majority of the Members found, in absenting themselves, from their private Affairs to decide every Dispute that might arise, by Degrees tacitly restored this Power to the Elders, who could best spare Time to attend the Meeting, as their Age prevented them from vacating other Affairs: But yet tho' they exercised this Power solely, it was far from being exclusive of the other Members, who could not, by Disuse, lose a Right, which by Nature was inherent in them: And an Incident which happened in a much later Period of Time, will be a very corroborating Proof of this Notion; we find both by the *Roman* Laws, Antiquities and History, that the paternal Power was carried to a much greater Height there than in any other State,—but yet we at the same Time find, that the unemancipated Sons had not only Voices in the *Comitiæ*, or General Assembly of the People, but Seats in the Senate, and were capable of bearing the highest Magistracy, tho' for a long while, even the last of these Prerogatives, did not by any Means impair or lessen the Power a Father had over his Children* .

These were the Motives which first induced Men to submit their Actions to the Cognizance of a superior Being, and by this Method were they prevailed upon to

constitute a Superior, because thereby they preserved their natural Rights of Equality, and had, or might have an actual Share, in all the Actions of the supreme Power: And thus we see, that of all Forms of Government the Democratic is the most antient, and that the supreme Power is vested in the Breast of the People—But let us trace this Matter a little further.

In Process of Time many new Colonies went out and formed Societies, resembling that from whence they came: After which, incited by Avarice, whole Colonies began to attack each other. The Power of Arbitration, the Execution of which was devolved to the Elders, could not be of any Service to preserve a Community from these Attacks; it was necessary therefore for the particular Members of each Colony or State, to surrender up another Degree of their natural Liberty to the universal Assembly, and agree on Measures to defend themselves, and constitute an executive Power to put those Measures in Execution, and permit this Power to do certain Things for the Good of the Community, and at the Order of the universal Assembly, as the Exigency of the Case demanded, which were restrictive of the natural Liberty of Particulars. Of this Nature was the military Power—But when once the Danger was removed, and the executive Magistrate had obey'd the Orders of the People, this extraordinary Power ceased, and could not be executed unless they received new Orders; so that whether this Power was lodged with one, whether with a select few, it can no ways prove that the supreme Power is not vested in the People.

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SECT. IV.

BEfore we proceed any further, let us consider the Arguments of *Titius* and *Barbeyrac*, by which they endeavour to confute *Puffendorf**, who attributes the forming of States, to the above-mentioned Apprehensions which Mankind had of the Dangers they were liable to, from each other.

They first say that “the Dangers Men had to fear, were not so immediate or great as to compell them to form themselves into Societies; or if they were, why could they not secure themselves by defensive Treaties and Confederacies, to protect themselves from all Aggressors.”

Barbeyrac dwells long on the first Objection, saying “those who make the Apprehensions of Men the Cause of forming Governments, consider not the Simplicity of the Times in which they first took Birth, but attend too much to the present Situation of Things. The World at that Time was not very populous, and Sensuality and Luxury not having yet increased the Necessities or rather Passions of Mankind, every one might easily obtain wherewithal to satisfy himself, and could have no other Motive than unbridled Malice to induce him to invade the Property of others.”

Tho’ the Demands of Men were not so very extensive, nor their Desires so numerous as they are since become, yet the Objects wherewith those Demands were to be satisfied were fewer, and the Matter to answer those Demands more confined, so that the Proportions were pretty much the same.

Besides, it is saying a great deal, to assert that Sensuality and Luxury existed not at the Time of forming Communities, especially if they be considered as of so late a Date as the Days of *Nimrod*, who lived three Generations after the Flood, which was a Work of the Almighty, merely to punish our antedeluvian Ancestors for their Luxury and Lust: But we find these Vices crept into the World with the Serpent.

But if Lust, Sensuality and Luxury were not known, it is highly probable that Idleness and Indolence might exist—for we find that almost immediately after the Creation, Man was obliged to use some Industry to procure himself Subsistence.—Those therefore, whose Indolence had been such as to neglect these necessary Pains, finding the ill Effects thereof, and seeing the comfortable Provisions of the industrious Man, soon began to covet them, and That Covetousness was naturally followed by Endeavours to possess himself of them.

But let us suppose the Sufficiency of the Produce of the Earth to answer the Desires of Man; let us admit that Luxury and Sensuality were Vices unknown, and that the Earth produc’d spontaneously, or at least that all Men were equally industrious, yet we shall find that there was that unbridled Malice in the Nature of Man, sufficient to induce him to attack his Fellow-creatures — If we impute the Murder of *Abel* only to a Jealousy of his Brother, what shall we call that Jealousy but Malice? — What Reason

have we to imagine ourselves so much more wicked than our Fore-fathers? In Cases where the Motives and Objects are the same, why are we to presume they would pursue more righteous Measures to obtain their Ends? Are they to be supposed to have been assisted with the divine Conversations and Advice in every Particular? No, it would have been an Affront to the Almighty to imagine that Persons blest with an immediate Intercourse with the supreme Being, could be guilty of the Crimes, either of a *Cain* or of a *Ham*—besides we have the Advantage over them of having a Law revealed to us by the Son of God, which may serve as a Guide and Director to every Particular in the most minute Actions of his Life; tho' 'tis true, if we do err, we are more inexcusable on this Account, as we ought to be less prone to Error. It is the most common Saying with Divines and Philosophers, that the World grows daily worse and worse; why they say so, is only that they may indulge their own Spleen and rail at the Vices of Mankind, which while they increase in minute Circumstances, decrease in the more material. If Luxury and Oftentation have greater Sway than heretofore, which if we give any Credit to the most ancient Writers they have not, yet Villainy is obliged at least to put on a Mask, Rapine is unknown, and Murders and Assassinations are less frequent; nay, we meet with the Names of Crimes in Authors which we now are puzzled to find out the Meaning of. Indeed *Barbeyrac* hath before proved the very Point we are here contending for, by attributing these Constitutions to the Designs of some ambitious Man, aided and assisted by Force: Now whether Ambition be deem'd a Species of Sensuality or Luxury, or of unbridled Malice, it plainly proves that our Ancestors had Occasion enough to guard themselves from the Vices and Malice of each other; for can there be a higher Pitch of Malice and Wickedness than to endeavour forcibly to reduce those under our Power, over whom we can have no Pretence to usurp an Authority, and who are by Nature and Right our Equals; so we may readily conclude that at the Time of forming Societies, there were Dangers both great enough and immediately to be apprehended, to make Men think of some Means to avoid them. But say the Objectors, “admitting the Dangers to be such, yet there were other Remedies whereby they might secure themselves, such as defensive Alliances and Confederacies.”—The Mischiefs that Men first felt from living in a natural State, arose probably from the very Thing which these Confederacies are entered into for, namely, the transgressing the Limits which the Law of Nature hath set to the Privilege it gives us of defending ourselves when attacked, and repelling Force by Force; Societies were entered into to preserve Mens Possessions by peaceable Means; these Confederacies seem only intended to enable Men to transgress further than they would without them—Besides, the first Violence and Wrongs which were felt, were from Particular to Particular; and indeed, these Treaties would be then superfluous, for the Force and Abilities of Men are pretty much upon a Par, and especially at a Time when they all lived under one Climate, breathed the same Air, eat the Productions of the same Soil, and their Education, if any, was similar in all; so that if Preservation of their Rights had been their only Aim, they had, as *Barbeyrac* observes, no Occasion to be apprehensive; but a peaceable and quiet Preservation, was the Object they had in View, and their End could only be answered, by submitting their Dispute to peaceful and amicable Decisions.

But admitting, for Argument's Sake, that there were such Treaties and Conventions, the very entering into those Contracts, was forming a Species of Government; for we cannot imagine the Contractors to be so few as two or three, nay, let there be never so

few, there must be a Meeting to contract such Treaty.—In Case of an Attack they must act jointly, and with some Correspondence, or their Treaty would be of no Force; and whether this Correspondence was carried on by special Meetings, or by general Rules agreed on at the first Establishment, it must resemble a Government in all its Parts; besides there must be some Being, either natural or political, to execute the Orders of the Contractors; and what are all these Essentials, but the Requisites of Government? what are the Characteristicks of the latter we shall see hereafter, and we shall find that a Convention, Members, an Assembly, and an executive Power are the chief Ingredients to compose it.—Thus far in Answer to the Objection; whether it be answered satisfactorily or no I pretend not to say.

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SECT. V.

TO return to the main subject.--We have endeavoured to shew that the Rise of Governments was owing originally, partly to an Experience of the Confusion which naturally arose from Mens being Judges in their own Cause, and their own Avengers; partly to the Apprehension of the ill Consequence of such a Practice continuing.—2. That such Government was first lodged with the Fathers of Families, as to the particular Point of the judiciary Power, and that afterwards, when this Power required to be extended, each Man agreed to submit his Actions to the Cognizance of the universal Assembly of the People where he lived.--3. That finding the universal Assembly could not conveniently meet on every Occasion, they tacitly deputed an executive Magistrate to perform their Orders, and to whom by Degrees they imparted some other Parts of their Power; what these Parts were, and what they reserved to themselves, will be considered more properly in another Place; at present let us examine the Nature of the Convention Men enter into, in forming Governments, and how many there are.

Puffendorf first places a Contract whereby each Particular agrees with all the rest, to join in one Body to provide for their mutual Security.

After this a Form of Government is agreed on; and,

Lastly, An Engagement entered into between the supreme Power established by that Form, and the particular Members; the one to rule according to Law, the others to obey.

This Author makes the first Contract of much too restrained a Nature; which perceiving, he endeavours to amend the Breach, by supposing this second Convention; for which there would have been no Occasion, had he made the Contract of a sufficient Extent.—Besides, hereby, he makes the Federative Powers the ancientest Part of a regular Government, whereas in Truth and all Probability, the judiciary one is to be preferred. Let us therefore establish as the Basis of all Governments, that Contract, whereby each Particular agrees with all the rest, to submit his Actions to the Guide and Direction of the universal Assembly, provided they do so likewise, and that the Ordinances of such an Assembly, be not contrary to the Dictates of the natural Law: Which being the Case, we shall find little or no Occasion to suppose any second Convention: For from this Source alone may we deduce all the Obligations incumbent on the Members of any State.—And we need not search out either for an Ordinance to regulate the Form of Government, or for any second Convention to compell the supreme Power or Magistrate to protect the Particulars, or the Particulars to be faithful to the Magistrate: For by this original Convention, to submit to the Authority of the universal Assembly, that Assembly is vested with supreme Power, and if that Assembly thinks fit to chuse out one or more Particulars to execute their Orders, those Particulars, are obliged to accept the Office, and execute it according to the Limits prescribed to them, and the others being bound to obey them, so long as they keep within those Limits; they being to be regarded as

the Representatives of the supreme Power.—And by laying down this Convention as the Foundation of Governments, we avoid the Inconvenience, (which it is imagined may arise from the supposing only one Contract:) That in such Case the executive Power, would lie under no Obligation to the Particulars with whom he hath entered into no Contract.—For here by the very Acceptance of the Charge he promises to execute it according to the Laws and Limits prescribed by his Constituents, whose Laws, when meerly a Particular, he had engaged to observe, and no Change of Condition can cancel that fundamental Obligation, which every one who pretends to the Title of a just or honest Man, must always fulfil, as it depends on a Principle of the natural Law, *viz.* the inviolably keeping ones promises. If therefore he exceeds the Limits which these Constituents have prescribed to him, his Actions are no longer to be regarded, as flowing from their Orders, or authorized by the Sanction of their Power, but proceeding from the arbitrary Will of a Particular, whom his Fellow-Subjects are under no Obligation to yield Obedience to, whether active or passive.

The second Argument by which the Notion of this latter Contract is supported, is the Administration of the Oath of Coronation to a Prince, and Allegiance to a Subject.—But these can only be regarded as express Renewals of the Obligations, which were before tacitly incumbent on the Parties; for scarce any Man will venture to assert, that the not taking the Coronation Oath, either prevents a Thing from being regarded as such, or enables him to break the Laws and act like a Tyrant; or that a Subject may not be found guilty of High Treason, though he never knew that there was an Oath of Allegiance, at least never took it:—For should this Doctrine prevail, that the Coronation is the Acceptance of the Trust in the former Case, the Time between an Inauguration and Coronation, would resemble the *Persian Interregna*. Where, after the Death of the King, the People live five Days in a State of Anarchy, that they might afterwards better relish the Sweets of a civil Government, and should the Oath of Allegiance be regarded as the sole Cement of the Convention between the Prince and the People, there is no Nonjuror, or even common Man who hath not taken the Oaths, but might live as licentiously as he should please, committing all manner of Enormities, and plotting the Destruction of the State with Impunity.

Puffendorf, to prove the absolute Necessity of a latter Convention, puts the Case of a Stranger who comes to settle in any State, and “He, says the Baron, is only bound to take the Oath of Allegiance (or in his Words) to obey the Prince; but enters into no Engagements with Particulars, to be faithful towards the Sovereign.”—If by the Sovereign he means here either the supreme Power or the executive Magistrate, it will make very little Alteration. For the Convention a Stranger enters into with the Prince as an executive Magistrate, is as much a Convention with the People, as if he had entered into it with them nominally.—For a King must be always regarded as the Representative of the People, for in his Hands is the executive Part, federative Power, lodged; and there would be just as much Reason to say, that Principals acquire no Right by the Conventions, which their Deputies enter into in their Name, as to imagine a Submission, and Engagement entered into with the Magistrate, implies not a Submission and Engagement to the supreme Power, *i. e.* the People. So if the Author by the Prince, means the supreme Power, and not the executive Magistrate, yet the former Convention is by such Oath entered into; for as the executive Magistrate is the Representative of the supreme Power, so is the latter in public Matters, the

Representative of each Particular, who is equally burthened or eased and benefited by his Contracts. Why is it that the Stranger enters into such an Engagement? because those are the Terms on which only he can be received as a Member of the State, by the supreme Power, whose Will the Particulars have agreed to obey. Besides, what is this Engagement? Why to be faithful to the supreme Power: (*i. e.* Submit his Actions to the Cognizance thereof, which is the very Purport of the first Contract.) And consequently obey the executive Magistrate, so long as the latter guides his Actions by the Laws and Regulations, which the former have prescribed to him; for if he exceeds them, the tacit or perhaps express Obligation he lieth under to the supreme Power (the People) binds him not only not to obey, but even resist him in such flagitious Attempts.—If he contracts expressly with the supreme Power, he consequently enters into the original Contract, with all the particular Members.—For without the Authority of the supreme Power, or without the original Convention, neither executive Magistrate or supreme Power can exist.—Indeed if this Submission of a Foreigner be only in Fact as well as Form to the executive Magistrates; the Inconveniencies which would arise, are numberless; for hereby, he would be under no Obligations to Particulars, and might commit enormous Crimes against them with Impunity; sheltering himself under the pretended Orders of the acting Power. That such pretended Orders would be no Protection for him, (which they would be, if he was not under some Obligation to other than such Magistrate) needs no Proof; so that taking this Obligation to be entered into with the* Prince or with the acting Magistrate, yet we must necessarily admit it to contain an Obligation both to the Particulars, and supream Power. See *Puff.* Lib. 7. C. 2. §. 7.

But still this Author goes on further, (says he) “if we found the whole Obligation on one Convention between the particular Members, we shall be at a Loss to find any Foundation for the Duty we owe our Sovereign, the Convention will run thus: *Transfer my Right to the supreme Power in your Favour, provided you will transfer yours to him in mine;* and by this Means each Particular makes his Performance depend on the Performance of all the rest; so that if one disobeys him, the others are immediately freed from this Obedience.”--The conforming our Wills and Actions to the Will of the supreme Power, or Majority of the Members of the universal Assembly, is, as I before said, the Object of the first Convention, which is what I suppose the Author means, by yielding up a Right.—But this Convention is not entered into between one and one, or one and all singularly; but between one and all collectively.—So that though the Disobedience of one Man might free me, had the Contract been only with him; yet in this Case, cannot the Obligation be dissolved, till all, at least the Majority, resist and disobey, which then cannot be called Disobedience;—as the Acts of the Majority†, are Acts of the supreme Power, and the Minority, are ever obliged to submit themselves, by their own Contracts.—Now if the Majority chuse a third subordinate Power to execute their Orders, the Particulars ought to aid and assist such Power, in all the legal Steps he shall think necessary to the Performance of his Duty.

If on the other Hand, this latter Convention is considered as one entered into between the supream Power or the People collectively, and the executing Magistrate, it will be liable to many more Inconveniencies than the other, nor can it indeed subsist. For, *First*, the Magistrate cannot by this Contract, enter into a stronger Obligation to

perform his Office faithfully, than that which the former one laid him under; nor is it probable, that the People would wantonly, and without Consideration, submit themselves to their Subject as a Superior, to whom before they were all equal as Particulars, superior as a collective Body, and quit an Independency, which the Generality before enjoyed in Reality, and the Particulars nominally; and which we are all by Nature so fond of.

Nor indeed, can they promise Fidelity to such Magistrate, though they be never so much inclined so to do; for their Trust is of a Nature, not to be generally delegated, and as the Submission to them, is made with an Intent that they shall protect Particulars, so cannot they put this Protection out of their Power; but this they do by constituting a superior, over whose Actions they can have no Cognizance.---And the yielding of Fealty, is incompatible with the Characteristick of a superior, consequently, this general Promise of Fealty to the civil Magistrate by the People collectively taken, is incompatible with their Trust, and that Protection, which they owe to their Constituents.—And it is remarkable, that the Parliament of *England*, never perform Fealty, or take Oaths collectively as a Body, though each Member doth it particularly.

This, I think, may be sufficient to prove, that one Convention or Agreement between the particular Members, is sufficient to form a regular State; and wherein all the Parts of Power may be found, and whereby we may lay a sure Foundation for all the Duties Men owe to each other, as Members of a civil Society: As for the Ordinances which first regulated the Form of distributing Justice, that can by no Means be regarded as a Convention, for indeed it was a long Time tacit, till the Encroachments of wicked and impious Magistrates made it necessary, to settle the express Limits of the executive Power.

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SECT. VI.

AS the judiciary Power was the sole, which Government had Occasion for originally, and the Exercise of it, as we before said, had by the Negligence of the Young, been totally devolved on the Elders of the State.—So when they found they wanted other Powers, and new Authorities to preserve the Community, no Wonder if they entrusted the leading the Forces voted by the Authority of the People, and which were in Truth, no others than the People themselves taking Arms, to the same Elders, who finding this Power of a Nature more easily and speedily to be executed by one, they chose such a one out of their own Body, who was accountable to them in like Manner as they were responsible to their supreme Constituents the People.

To this Election of a General, do many attribute the Rise not only of Monarchies, but of Governments; but was the Power of absolute Monarchs to be reduced to the same Plan, as that of these their pretended Predecessors; it will not be unreasonable to guess, that the Advocates of these Tyrants, would soon yield up their Pretensions to any Connexion with them; and chuse to lay the Foundation of this Tyranny, for it deserves not to be called Government: In some later, but more absolute Ruler, that this Power of a General, could not be considered as a Government will be without Difficulty allow'd of, if we do but reflect that in all Governments, the legislative federative and executive Power, are absolutely essential to its Being.—Now that these Generals were not intrusted with these Characteristicks of Supremacy, *Barbeyrac* himself allows, by what he observes of the first Generals, who were dignified with the Title of Kings, whom he imagines to have been Founders of Government; whose Province, he says, “was only to decide Causes, and command Armies.”—But where then is the Legislative, where the other more important Part of the federative Power, the making of War and of Peace; for as soon as Wars were introduced into the World, we may without any bold Guess, imagine, that the Making of Peace and Treaties between the belligerent Powers, began to be usual, at least we find this to be the Case so early as the *Trojan* War. But this Power was not lodged in the Breast of the King, as it is no Ways an incident to the Right of deciding Causes, or commanding Armies (which are only subordinate Branches of the legislative and executive Power.) As these Powers therefore must have been lodged somewhere, it must be with the People, or the Constituents of such General, consequently such Appointment of a General, cannot be regarded as the forming a Society, nor can the Advocates for absolute Monarchy, cite it as a Precedent for shelter to that illegal and inconsistent Tyranny.

But *Isocrates* in his *Panathenaicks*, is called in as arguing strongly for the Antiquity of Monarchy, the Passage is this P. 443.—“We will go back, says the Orator, to that Time, when *Democracies*, and *Aristocracies* were not mentioned, but Monarchs governed both the People of *Barbary*, and all the Cities of *Greece*.” But this Passage can never prove these Things to have had any other Authority, than That we have just been mentioning: That is, the Power of executing the judiciary Laws, *i. e.* of deciding Causes, and the executive one of leading the Armies of the State: a Quotation from *Dionysius Harlicarnasseus*, placed by *Barbeyrac* immediately before the precedent one, not only shews their Authority to have been of no greater Extent than this; but

likewise proves that there must have been a Time more ancient than that of which *Isocrates* here speaks. “Originally, says he, all the Cities of *Greece* were governed by Kings, with this Difference, that these exercised not an absolute despotic Power like the *Barbarians*, but according to the Customs and Laws of their Country; so that he passed for the best King, who most religiously observed the Laws and departed least from the Customs of the Country, (which *Homer* tells us, by calling them distributors of Justice;) these Kingdoms subsisted long, being administered under fundamental Law, and certain Condition, as at *Sparta*.—But some Kings having abused their Trust, and quitted the Path of the Law, governed themselves arbitrarily and despotically, so that most of the *Grecian* States grew weary of them and revoked their Power.”

This Paragraph in more than one or two Places mentions the Laws, by which these Kings ought to have governed—Now surely these Laws which were to guide and direct the Actions of the Kings, must be made by some antecedent and superior Power to any King; for if They were intirely possessed of the legislative Power, what one King enacted could by no sort of Reason bind the other who had the same Power as his Successor, and Obligations of all Sorts may be dissolved by the same Power and Authority as contracts them; and if the supreme Power was lodged in the Hands of these Kings, they could not act arbitrarily nor despotically, for every one of their Acts would be an Act of the Legislature, tho’ it tended to the Breach of a Law of some former Legislator--Or supposing that these Laws were made by the Particulars at the Institution of a King, they must have either reserved their Authority in those Points or transferr’d it; had they transferr’d it to him, they could not tacitly or expresly prohibit him from the breaking those Laws, when once he had the same Power as the Makers who oblige him to observe them, and consequently they could not be justified in avenging the Breaches of them, unless accompanied with the Violation of the natural Law:—Had they on the other Hand preserved their Power, that Power must be superior to the regal one at that time, and still must have continued so, tho’ not perpetually in Use—And the particular Word which the Author makes use of, plainly demonstrates this to have been the Case; “the *Greeks* say he revoked their Power”—a Word which rather implies a judicial and conserted Repeal than a tumultuous and violent Expulsion, and at the same Time conveys an Idea of such Revocation being made, not only by Constituents but Superiors.

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SECT. VII.

Thus much, I fear too much, to defeat the false Pretensions of Monarchy to Antiquity: Let us now consider what further Progress was made in forming Governments, and finding Means for regulating and preserving them.

For a long Time as Armies were solely composed of the Members of the State, and as they served without Fee or Reward they required not an extraordinary Expence to be kept on Foot, till at length it was found necessary, not only to recompense those who lost their Time by following their military Employments, but to raise Mercenaries in Order thereby to prevent the Grounds at home becoming barren, and the Depopulation of the State by the long Absence of Husbands from their Wives.—This additional Charge required some Means to support it, the supreme Power therefore found it necessary to levy Taxes on the Particulars, and entrust the civil Magistrate with the Raising and Management of them, subject to accounting for such Management—That the People originally imposed all Taxes appears not only from Probability, but from the Nature of those antient Taxes we hear of in the *Roman* History, which were all very reasonable and proportionable to the Conditions of every one, and most of them perpetual, being neither arbitrary nor changeable* .

The superior Assembly (for to the executing Elders I give that Name,) having thus got Possession of the Nerves and Sinews of the State, had it more easily in their Power to betray their Trust and arrogate to themselves an Authority to which they had no Pretensions of Right, and usurp daily on the supreme Prerogatives of the People, by performing those Functions, which belonged solely to their Constituents, which they more easily could do, because the Increase of the Number of Citizens rendered the Meetings, of the supreme Council, more populous, more inconvenient; in some States the People were prevailed on to leave the convening of them, (on any Occasion that might require their Authority,) to the Senate whose Behaviour soon convinced them that their Credulity had been their Ruin, and their Magistrates by gradually increasing their own Power and decreasing the frequent Convening of the People, soon usurped all the Power and thus introduced Aristocracies into the World. To the great Number of Citizens who had a Right to assist at the *Comitiæ* do all Authors impute the Loss of the *Roman* Liberty, for by that Means the Senate got into their Hands those Branches of Power, I may say Tyranny, which the People had in the Infancy of the Republick made such glorious and successful Struggles to take from them.

By the long intrusting the supreme Magistrate with the Power of assembling and dissolving Parliaments at his Will, has this Nation been more than once in Danger of losing its Liberty.

Other People, indeed, had the Prudence to preserve themselves, by removing this Difficulty and Inconvenience of assembling the supreme Power, which they did by dividing themselves into Tribes* , and chusing Deputies from Time to Time to represent them, and this in most Places proved effectual.

Out of that tyrannical Form of Government an Aristocracy, sprung that still more tyrannical one, a Monarchy, either through the Ambition and Perfidy of some favourite General, or by Reason of the Dissentions of the Senators, or chiefly from the cruel and inhuman Oppositions of the Men in Power. No Wonder therefore, especially in the last Case, if the first Monarch found so little Resistance from the Particulars, who thought that there was very little Difference in being Slaves to the Will of one, or Power of many Masters, and had no Motive strong enough to make them resist the Charm of Novelty and trying the Experiment of a Change, which could not hurt tho' it might better their Condition: To this Way of reasoning the *French* King is now beholden for his Throne, for had not the common People felt more the Oppressions of the Nobility and Clergy than those of the King himself, they would not have remained in that lukewarm State of Tranquility, which they did during the civil Wars against *Mazarin*, but heartily have joined those who at that time made such glorious Struggles to recover their Liberty.

In some Places the Tyrants preserved the Name of the Senate, nay, even flattered them with the Appearance of sharing their Authority; by this Means engaging the Rich to assist them in preserving their ill-gotten Power, and making them the Instruments of their Oppression. In those States which preserved their Liberty by reducing the Number of the particular Members of the supreme Power, the executive Power remained some Time in the Hands of the superior Assembly, the Members of which again increasing, made it necessary to limit their Number, but that Expedient not serving to prevent the many Dissentions which clogged and obstructed the executing the Orders of Government, the supreme Power conferr'd this Trust on one Member, giving him the superior Assembly for a Council; and on such a Scheme of Power with some Alterations is formed the Government of Kings, Lords and Commons.

Very probably at the first Institution of this Dignity it was only temporary, after that it was given for Life; but as every one aspired to gain that Trust, the Elections gave Room to many civil Feuds, Parties and Dissentions; to remedy which a Pre-election was found out by making this Trust hereditary, and either extending this Privilege to the Female, or restraining it solely to the Male Descendants of the present Chief.

Thus these chief forms of Government (if to comply with Custom we must call the two Tyrannies by that Name) arose, the first founded on the Fears and Apprehensions Mankind lay under from each other —and from a Desire to maintain their Possessions peaceably: The second from their Perfidy; and the last from Ambition and a Combination of Vices.

Tho' this Account may to me seem very methodical and rational, it may no doubt be liable to many Objections, but I think it may be said, that there is in it no Opening to attack the Validity of the Convention whereon these Institutions are founded; nor doth it introduce any Arguments whereby to countenance either despotic Tyranny, or what is almost as bad anarchical Licentiousness.

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SECT. VIII.

SOME People to fortify the unjustifiable Power of Monarchs, think to establish them on a very sure Foundation, by making the Delegation and Appointment of God their main Pillar, and by this Means, not only traiterously destroy the supreme Power of the People, but give a Licence and Power to the executive Magistrate to break all his Oaths and trample them under his Feet, and even transgress the Laws of Nature and divine Revelation.

For if this Power comes immediately from God, they are answerable for the Exercise of it only to him, unless therefore the Divinity be affected, or the more important Points of Priestcraft and priestly Revenues, these holy Sycophants (for the Broachers of this Doctrine are all of the Tribe of *Levi*) declare the Magistrate is free from all Obligations or Ties whatsoever.

Tho' this Doctrine is of all the most ridiculous, yet by rejecting it we are far from saying that we are under no Obligation to God to obey the supreme Power, as it arises from that Duty which the natural Law, of which he is the Promulgator, imposes on us, of observing our Promises, and fulfilling our Agreements; thus, indeed, God may be said to be mediately the Preserver of Governments, immediately he can never be regarded as the Author and Founder of them.

But as every Being either natural or political must have some Creator, so must Governments owe their Rise to some Person or other: If therefore the Almighty instituted not this Power, it must have been the Work of Men, *i. e.* the People, and indeed, they alone could do it, for no Man can be deprived of the least Degree of his natural Liberty without a Pre-consent, either tacit or express.

And even *Grotius*, who is far from being an Opposer of the royal Power, as we shall see immediately, makes no Scruple of denying this divine and supernatural Cause, his Words are these,—“We must remember (B. 1. C. 4. § 7. *de Jure Belli & Pacis*) that at first Men, convinced of the Inability of separate Families to defend themselves from violent Injuries, and not by any Precept from God, formed States, and from thence arose civil Power.

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SECT. IX.

LET us now consider the different Arguments, whereby the above learned Author attempts to prove, that the supreme Power may be transferred from the People to some other Being.

“A Man, says he, as appears by the *Hebrew* and *Roman* Laws, may reduce himself into private Servitude — Why therefore may not a People who are their own Masters transfer their Right over, in such a Manner as to leave no Part of it in themselves.

First let us observe, that the Case of a People and a private Man are vastly different, the former being intrusted with Rights which cannot be surrendered; and that a Man may be possessed of such, no one need doubt, for in a municipal Law we have Instances of them, such was with the *Romans* the *Quereta Inofficiosi*, such among us many of the royal Prerogatives, which tho' his Majesty is possessed of, he cannot grant away* .

What is done in a civil State is not always allowable in the natural one, as many Institutions unknown in the latter prevail in the former, but we are always to consider Governments as in a State of Nature, the very § *Servi autem Inst. de Jure Pers.* which *Grotius* cites to prove the Legality of such a Contract, positively mentions but two Ways of acquiring Slaves, the one by the civil Law, the other by the Law of Nations; the former is the only one to which this Surrender can be compared, the latter depending intirely on Force and Right of Conquest, of which we shall speak hereafter.

So that this Kind of Surrender cannot receive any Sanction from the Authority of *Justinian*, nor will it receive any from the Authority of *Moses*, as we are to suppose the People as a Body existing in the State of Nature; let us, however, consider only the Nature of the Servitude allowed either by the *Roman* or *Hebrew* Law, and that of which the Writers on the natural Rights of Mankind speak, and the Fallacy of this Argument will soon appear.

It is very true that the *Roman* Law gave to the Masters a more exorbitant Power over their Slaves, than any other, but if one Part of that Law is taken to establish and maintain this Argument, we may make like Use of another Part to overturn it; if by the old *Roman* Law a Master might kill a Slave with Impunity, by the later Constitutions of *Antoninus Pius*, *Constantine*, and *Justinian*, this Right was abolished, and an Action given to a Slave against his Master for immoderate Chastisement of him* ; so that even admitting this Institution of the *Roman* Law as a Precedent for the Surrender of a People's Right, it appears that they must even by that, reserve some of their natural Rights.

The Case of *Hebrew* Slaves is widely different from that of the *Roman*; the voluntary Slavery, *i. e.* by Contract, was only for six Years, nor could the Master kill or maim his Slave, for in one Case he was regarded as a Homicide, in the other the Slave was free† . But all Kind of Slavery by Contract between *Hebrew* and *Hebrew*, seems to be

expresly forbid by the Law of *Levit.* xxv. 39, 40. *And if thy Brother that dwelleth by thee be waxen poor, thou shalt not compell him to serve as a bond Slave but a hired Servant and a Sojourner, he shall be with thee till the Year of Jubilee—And 42. For they are my Servants which I have brought forth out of the Land of Egypt, they shall not be sold as Bond-men. And 44. Both thy Bond-men and thy Bond-maids which thou shalt have, shalt be of the Heathen round about you.* If therefore the *Hebrew* Servitude be considered as a Precedent for absolute Monarchy, we shall find it still weaker than the former, for hereby Slavery between Equals is forbidden, and the Permission with Regard to the Heathens can only be considered as a Consequence of the revealed Law, for in the State of Nature all Men are equally Orthodox, equally Heretick, equally Jews and equally Pagans; nay, even these could not be used with Rigour by their Masters, as the above Passage of *Exodus* shews.

Let us now consider what is the Surrender allowed by the natural Law, and what are the Bounds thereof; and that on this Occasion the Argument of the Author may be taken in its full Extent—Let us examine what he himself says in another Part of this Work, concerning this Servitude, (L. ii. c. 5. § 27.) “Perfect Servitude, says he, is that in which a Man is obliged to work perpetually for another, in Consideration of Food and Raiment* to be given him”—Without going any further, we find that the Slave here reserves a Right of exacting Food and Raiment, and it is upon the Certitude of this Provision that he argues to prove the Equity of such a Contract—That being the Case, supposing the Master denies these Necessaries to a Slave, the other is certainly justified in refusing any longer to assist him with his Work and Labour, for in a State of Nature there can be no Application to a Superior to compell the Performance of this Contract; consequently a Man cannot sell himself to another without reserving some Part of his Right. But if the Master is obliged to give the Servant Necessaries, where shall we find out the Right or even Impunity which he hath of putting him to Death: For in the 28th § of this Chapter *Grotius* admits in the Master the latter but not the former, and at the same time bountifully makes a Compliment thereof to absolute Monarchs—By Impunity he must mean either an Obligation of the Slave to suffer tamely, and without Resistance or offering any Kind of Injury to his Master, or nothing at all; for in a State of Nature of which he is now speaking, Punishments are unknown, and every one hath an equal Right to Impunity from a third Person of every Action he hath committed, and surely he could never mean that the Almighty would not punish a Master for such an Act. But if by Impunity this passive Obedience of the Slave is meant, we may venture to say, that as great a Man as he was, he was either asleep when he wrote this Paragraph, or suffered himself to be misled by a Desire of flattering his Pattern *Lewis XIII.*—For no Man can receive an Injury unless he before is possessed of a Right; now he hath allowed in express Terms in this Paragraph that a Master may injure his Slave, consequently the latter must have a Right; if he hath a Right over any Object, he hath an equal Right to protect it against any Aggressor, consequently may resist his Master if he attacks him in any of those Rights. Let this Matter therefore be taken on the footing of natural Servitude, we find it impossible for a Person to give himself up to another, without reserving some of the essential Rights of Nature; and certain tacit Limitations are established; if therefore a Particular cannot do this, consequently a People if resembled to a Particular in this Case, cannot.

Thus much has been said, on a Supposition that such Contract of perpetual Servitude is permitted by the Law of Nature, tho' much may be said to shew it to be unknown and prohibited, at least the Manner of some and most modern Nations seem to condemn this Practice—*Grotius* himself in a Note tells us, not only, that the ancient *Egyptians* who by all Accounts were the first civilized People, prohibited it; but quotes from *Plutarch* a Law of *Solon* to the same Effect: It would be pedantry to prove the Disuse of this voluntary Slavery among Christians. I shall only quote one Passage from a celebrated Author, to shew the Horror we have of this State—“*Inter Christianos ferè abolita in universum Servitute, usque adeo ut si Servus Regionum nostrarum & plurium Gentium aliarum Fines intraverit, etiam invito Domino possit confestim ad Libertatem proclamare—Nec cuiquam Mortalium nunc liceat sese venundare, aut alia Ratione Servitutis jure semet alteri addicere**.”

If therefore by all the Laws we meet with, no Man can totally transfer a Right over to a third, how much less can he transfer those of his Posterity; certainly he cannot give over them a Power, which he hath not over himself; nay, it is the Opinion of *Puffendorf* that the Children of contract Slaves cannot by the Law of Nature be made so, without an express Limitation in the Contract; but the Nutriture which they receive must be regarded as Part of that which the Master owed to the Parents—If therefore it is against the Law of Nature to make them Slaves by express Contract, from what Part then are we to trace the Branch of paternal Power, which authorizes the Sale of them? *Puffendorf* himself reckons it not as one of the Parts of that Power; the *Old Roman* Law it is true permitted it, the *New* restraining it to Cases of extream Necessity, and* Want of the Parents, and then only to Children first born—But as to Children unborn, no one can think even that Law to have allowed such Sale, as the Parents could not possibly foresee whether at the Time of their Birth they might not be able to maintain them out of their *Peculia*. But the present Laws of almost all Nations, deprive them even of that Right left them by the Code, and therein more strictly follow the Law of Nature†.

If therefore this intire Surrender of Rights by a People, be compared to the Reduction of a Particular into private Servitude, we see that it cannot be absolute, it cannot bind their Posterity: If it is not absolute, the Moment the Grantee begins to transgress the Limits which are tacitly set to the Grant, they have all a Right to resist and call him to Account: But to whom is this Account to be given? Why, no one, as the Grantee acknowledges no superior; consequently with Regard to him the People are reduced into a State of Nature, their Government is dissolved and perpetual Confusion and Sedition introduced.

Thus if there be no Power superior to the executive Magistrate, it may often happen that a Particular falsly thinking himself injured, may take up Arms and form a Party to redress his imagined Grievance. Is it not much better therefore to have some Power superior to the executive Magistrate, to whom the injured may have Recourse for Redress, and by leaving this Supremacy in the Hands of the People as it ought always to be, prevent the Magistrate from daring to injure Particulars, or punish the latter for any seditious Attempts whatsoever.

But indeed we have wasted too much Time in confuting this Objection, as there can be no Instance given of a People ever voluntarily surrendering themselves in this Manner.

Secondly, says *Grotius*, “as there are different Ways of living, one better than another, and each Man may chuse the Way of Life which is most agreeable to him; so may a People chuse what Form of Government they like best; neither are we to judge what is right on the Goodness of the Form (for different Opinions will then arise,) but on the Will of the People.”

The Author here places the supreme Power in the Hands of the People, that he may with more Facility deprive them of it. We admit that it is in their Breast to chuse what Form of Government they please; but by Forms, are only to be understood, Forms of administring it: But the Government itself must always stand upon the same Principles, and is ever on the same; as, to pursue the Author’s Simily, the Life of natural Beings is always alike, tho’ the Means of preserving it be different—With this Explanation the Author’s Hypothesis may be allowed, and yet thereby it can never prove that the supreme Power is not in the People—For those who administer the Government are always liable to the Orders of their Constituents, and this Kind of Monarchy or Appointment, of a sole executive Magistrate, depends not on a Transfer of the intire Right of the People, but a Delegation of some particular Branches of those Rights.

For as to the Choice which the People must make of submitting servily to one or more Persons, it is not what can properly be called the Choice of a Form of Government, but the immediate Introduction of Tyranny, and a paving a Way to Anarchy and Confusion, for the two latter generally are the Consequences of the former; it being very remarkable that those People who live under despotic Rule, when once they shake off the Fear thereof, assume a Temper of Mind tyrannical in proportion to their former Servility, and set no Bounds to their Licentiousness, but as before they were almost on a footing with Beasts, they then assume to themselves a Power almost superior to that of the Divinity.

Indeed if the Choice of Government is once allowed by the People, I cannot see how they can be deprived of a Power of changing their Mind, for no one ever freely chuses to set another over him—And if what, indeed, appears a Contradiction in Terms be hereby meant, that in Reality as to point of Dignity the People are superior, tho’ inferior in Point of Power; yet that will not hold Good in this Case, for the Constituents taken together must always be regarded as superior to the Constituted, to whom the latter are bound to render an Account of their Actions, if they are any Way contrary to the Instruction they received.

But of what Use can so ridiculous a Choice or voluntary Surrender of Right be to a People, or in what Manner can it promote a Scheme or Design of instituting civil Government?—For can there be more Safety in having Resort for Protection to one single Man than to a collective Body? Or can more Impartiality to Particulars be expected from the Decision of one than of many?—Besides is it not much more probable, that where the Supremacy is in the People, and every one hath a Share in the

Government, the Taxes and Burthens thereof will be easier, as every one will be more careful in assembling, as he knows he must pay a Share; than under an arbitrary Tyrant, who being free from all those Charges himself, may trifle away the Estates and Lives of his Subjects, without any Advantage accruing to them, but merely to satisfy his own inordinate Avarice or Ambition.

“But there are many Cases, says the Author, wherein a People may intirely resign and surrender to another the Rights of Empire. 1. Because being in Danger of their Lives they have no other Means of Defence. 2. When pressed with Want they cannot obtain other Conditions.”

The Author here mentions the Surrender which the *Campani* made of themselves to the *Romans*, when they could obtain the Assistance of the latter on no other Terms—But by this nothing more can be meant, than the submitting themselves to the *Romans* as an executive Power, or rather the incorporating themselves into that State; or more probably is meant a perpetual Engagement with them, never on any pretence to assist their Enemies, *Liv.* vii. 31.

That the last was the Case, appears most probable from the Manner in which the *Roman* Consuls addressed the Ambassadors of that people, *Liv.* xxiii. 4. after the Battle of *Cannæ*: Calling them not only Allies, but reproaching to them the Communication which they had obtained of the Quiritial Rights.

The first Case here mentioned is that of Conquest, in this place therefore we must consider how far the Right of Conquest may extend; but let it only be remarked, that supposing there be any thing legal in that Title, which obliges the Conquered to submit absolutely to the Conqueror; they are no longer to be considered as a People, nor is this Submission, an Institution of a new Form of Government, but a Dissolution of the Old; for as an Institution, it never can take Place, having that indelible Blot in it, of a Convention, entered into merely through Compulsion or the Apprehensions of an impending Danger. Whether a Conqueror hath a Right to extend his Power so far over a conquered State, as to dissolve the Government thereof, will be the sole Question.

Two Nations at War, resemble two Particulars in a State of Nature, attacking each other, and defending themselves by Violence; if we consider therefore the Limits the natural Law hath set to a violent Defence in the State of Nature, we shall at the same Time, see what Limits a Conqueror should observe in his Treatment of the Conquered.

All Authors agree, that in a State of Nature, a Man is allowed to defend himself, whenever he is attacked, and continue that Defence till he is out of Danger, hath obtained Reparation of Damages, and sufficient Security from the Offender, for his future good Behaviour; and if he carries his Violence beyond these Limits, he becomes the Aggressor: As for Punishment of Crimes, no one hath a Right of inflicting, but a Superior, which is a Word unknown as to temporal Affairs, in a State of Nature.

Now if two Nations at War, resemble two Particulars at Variance in a State of Nature, the Rules to be observed must be the same; and it is hardly to be imagined, that this Dissolution of either, is necessary for the other's Security; for when a People are reduced to so low an Ebb as that, their Conquerors have it in their Power to compel them to forego their natural Liberty; they must be a considerable time in recruiting their Strength, before they will be able to renew their Attack, and that very Impotency is of Security enough to a Conqueror.—Will any one pretend to say, that a Man in a natural State, may after disarming his Enemy, and having reduced him to a Condition to beg his Life, be entitled to kill him? no certainly; why therefore, should a Conqueror enjoy a greater Privilege? but to give this Objection its full Force, let us see what *Grotius** in another Place says, of this Kind of Acquisition of Empire.

The principal Argument he makes use of, is, that as one Man may be reduced into Slavery, when conquered in War, so may a whole State.—The Reason which he himself gives for the introducing Servitude into the World, fully answers all the Arguments of this Sort; for (says he, C. 7. B. 3. §. 5.) the Obligation of the Slave, is founded on this Principle, that they are bound to serve their Captors, because when they had it in their Power, they did not destroy them, as they might have done.

But as Dissolution of Governments, is tantamount to a natural Death of a Man, by what Right can they be acquired by Conquest, as by this very Acquisition, the very Object on the Consideration of which a Man is obliged to submit to Servitude, is taken away.

Another Reason of this Practice indeed is given at present, which can be the only one assigned; that the making Men slave, is only made use of by Way of Reprisals; but as States, though similar to natural Beings, with Respect to each other, are not so with Regard to the particular Members; no Conqueror can be justified in usurping the Government of a conquered State, because that his Subjects had before been treated as Slaves by them; though as to the Particulars, that Right is allowable: Conquest, therefore can be only properly admitted to take Place in Cases, where the Conquered had before made use of that Title to enslave the now Victor, a Case which it is hard to imagine will ever exist.

As for the Case our Author puts of a People fallen into great Necessity, and selling themselves to some one or other: It is very hard to imagine a People reduced to that low Ebb; but if that be ever so, the Government must necessarily first be dissolved, and such a Contract must be regarded as a Sale of the different Particulars, under the Restriction mentioned above.

After these two, our Author puts a Case of a Father of a Family, who, possessed of large Demesnes, will not receive any into them, unless on the Terms of being vested with supreme Power.—But this Case is not the Constitution of a Government, but the Acquisition of Tyrants, neither are they to be called a People, neither can we easily suppose an Institution of this Kind; for at the Time of entering into civil Societies, Men were possessed of little more than what yielded them necessary Provisions, to maintain themselves, and their Families; neither, supposing any to be possessed of such large Lands, can we imagine, that many Men would be so weak, as to purchase a

Share of them on those Conditions, at a Time, when so large a Part of the Earth was uncultivated, and unoccupied, which they might take Possession of without Molestation.

At present, it is impossible for such Case to exist, since no Man possesses any Spot of Ground *Pleno jure*, but some State or other claims eminent Property over all the Lands in the habitable World.

The next Case our Author puts is of a Master, who having many Slaves, will only manumitt them on this Condition. What a way of arguing is this.—For either the Master must be himself subject to some supreme Power, or be independant, and in a State of Nature: If he be subject to a supreme Power, I would fain know, what Power there is, who would permit such Conditions to be annexed to Manumission? If our Author speaks of one in a natural State, what Right hath a Man to have any Slaves at all; or admitting that he hath, what would such Slaves be the better by a Manumission, when loaded with these Conditions? And what would the Terms of the Grant be? Why this, *I free you from Slavery, provided you let me preserve the same Power over you, which I have at present*. Doth not every one know, that by all Manner of Laws, Conditions so clearly repugnant to the Body of the Grant are void; and in either of these Cases, where are we to find the original Convention of the Particulars to each other, without which, no Society can subsist?

Being hard pressed for Arguments, whereby to deprive the People of their Supremacy, he tells us that some Men are by Nature Slaves, *i. e.* fit for Slavery; so some People are fitter to be governed than govern. Though this is a Notion which can have but very little Weight, let it be for once granted, yet it doth not follow from thence that those People are to be made Slaves, as they will be, if they are to have one single Man set over them accountable to no one for his Actions.

In some Case, again he says, it may be expedient for a People to submit itself to the Government of one Man, as the Case of the *Roman* Commonwealth under *Augustus*.

No one pretends to say, that the supreme Power is lodged in such a Manner in the Hands of the People that they are always to execute it, (though the oftner they do the better) but all that is contended for, is that they should have such a Supremacy, as may be a Check on the executive Magistrate, and prevent him from doing any thing which exceeds the Limits of the Commission they have intrusted him with, and at the same Time, call him to account, and punish him for his Misdeeds.

Where the Necessity was for the *Roman* Commonwealth to be reduced under despotick Government at that time, the Author only tells us, by inserting in his Notes a Quotation from *Seneca*, in which he imputes this Necessity chiefly to the depraved Manners of his Countrymen, and their Corruption; Causes which have been assigned, with Justice, for the Ruin of many States; but few doubt but that those Causes might have been removed by other Means, which might receive the Name of Remedies; but what Name shall we give to that Medicine, which instead of healing particular Wounds, destroys the whole Body?—Poison it must be called, and the Administer of it a Murderer.—But *Rome* was not at that low Ebb of Slavery, under that Emperor,

though he had waded to the Throne through the Blood of her best Citizens, as she afterwards was; the People were then in Possession not only of the Forms, but of some of the Essentials of Supremacy, for he scarce ever attempted any considerable Action, or Alteration of the Laws, without first asking their Consent, and in some Cases they had Resolution enough to deny it him; to mention only the Instance of the *Julian Pappian Pappæan* Law, which he was forced to propose a second Time, before he could get it passed* .

It is indeed declaring one self an Advocate for Tyranny, to instance the State of the *Roman* Commonwealth, even under *Augustus*, as a Precedent for absolute Monarchies, for he had not the least Shadow of a Title to the Post he usurped, not a Surrender of the People, not a free Choice of such a Government; for many had been fighting against the Usurpation of his Uncle, among whom were all those, who had any Property to lose, not even the specious Plea of Conquest, or Purchase of Victuals, Lands or Freedom; so that all his Power was direct Tyranny and Usurpation, and every private *Roman* Citizen had a Right to destroy him, and punish him for his Iniquity; and that many thought so, though they failed in the glorious Execution of their Design, appears from the whole History of his Reign.

The next Argument *Grotius* makes use of, is, “that as private Dominion is acquired by Conquest, so may the Publick, which is a Right of Governing independently.” This means no more than a Claim of Conquest, which we have answered before: I shall only remark here a very common Distinction, in the *Roman* Law, of Objects negotiable, and not negotiable; now free Persons were of the latter Species, and to these Governments are compared, consequently the latter are not to be acquired as Effects of the other Species.

After this, we must descend to consider what Consequence the Proof that formerly many People were subservient to another free People will be of in deciding this Point; all that seems to me to appear from thence is this, that the People of those had constituted the latter to be their executive Magistrate; and though by that Means they were bound to follow all those Orders of the latter, which were consonant to that Law, and agreeable to the Ends of Government, yet they were not deprived of their own Supremacy, which gave them a Right to resist any Acts of Tyranny and Oppression of the superior People, (*vid. Liv. 8. 21.*) though perhaps an irresistible external Power put it out of their Power to make use of it.

As to the Phrases of Scripture, and of profane Writers, who says Kings are set over People; that implies nothing more, that they are the Principal of the Particulars, not unaccountable for their Actions to the collective Body: A General is very truly said to be set over an Army, but for that Reason he is not exempted from being called to account before a Court Martial of inferior Officers.

These are the principal Arguments *Grotius* hath made use in order to flatter the *French* King and betray the Supremacy of the People, and these are the Answers which will occur almost to any one who thinks for himself.

FINIS.

Lately Published.

A SHORT REVIEW, of a Pamphle: lately published entitled, Considerations on the Law of Forfeitures.

[*]By Power is to be understood the natural Ability and Capacity of a Man to do Mischief, without any Reference to external Aid.

[†]And of the Impossibility there was for them to protect and preserve themselves and Possessions from the Attacks of their Neighbours without having Recourse to violent Means.

[*]§ 4. Inst. quib. mod. Jus Pat. Pot. sol.

[*]Puff. droit. de Lat. l. vii. c. 1. § 7. & Barb. Tit. Obs.

[*]By the Prince on all Occasions is meant the People, *i. e.* the supream Power.

[†]This is only to be understood of the Majority of the Members, composing the Assembly of the People.

[*]Heinn. Ant Rom. ad [Editor: illegible word] Tom. I. p. 621.

[*]By Tribes are here meant any inferior political Bodies.

[*]A special [Editor: illegible word] committed to the King, and not by him to [Editor: illegible word] [Editor: illegible word] to any other.

[*]L. Cor. de Sic.

[†]Exod. xxi. V. 26, 27.

[*]Aliis quæ Vita Necessitat exigit.

[*]Voet. ad Pandectas de Statu Hominum. p. 50.

[*]L [Editor: illegible word] C. de Pat qui Fil [Editor: illegible word].

[†][Editor: illegible word] Cod dict [Editor: illegible word] [Editor: illegible word].

[*]Grot. Jure Bell. &c. Lib. iii. c. 8. § 1.

[*][Editor: illegible word] in Aug Hein ad L. J P. P [Editor: illegible word] 2