CLASSICS OF LIBERTY: JOHN LOCKE, THE TWO TREATISES OF GOVERNMENT (1689, 1764)

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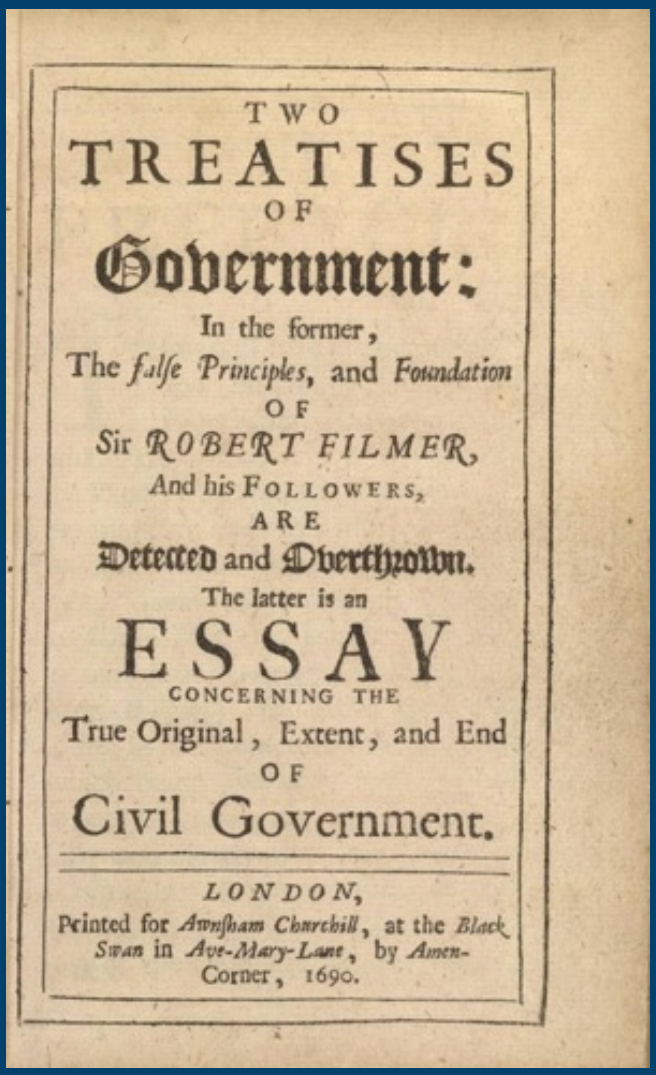

TWO
TREATISES
OF
Government:
In the former,
The *false Principles*, and *Foundation*
OF
Sir ROBERT FILMER,
And his FOLLOWERS,
ARE
Detected and Overthrown.
The latter is an
ESSAY
CONCERNING THE
True Original, Extent, and End
OF
Civil Government.

LONDON,
Printed for *Awnſham Churchill*, at the *Black Swan* in *Ave-Mary-Lane*, by *Amen-Corner*, 1690.

AN ENHANCED EDITION FROM
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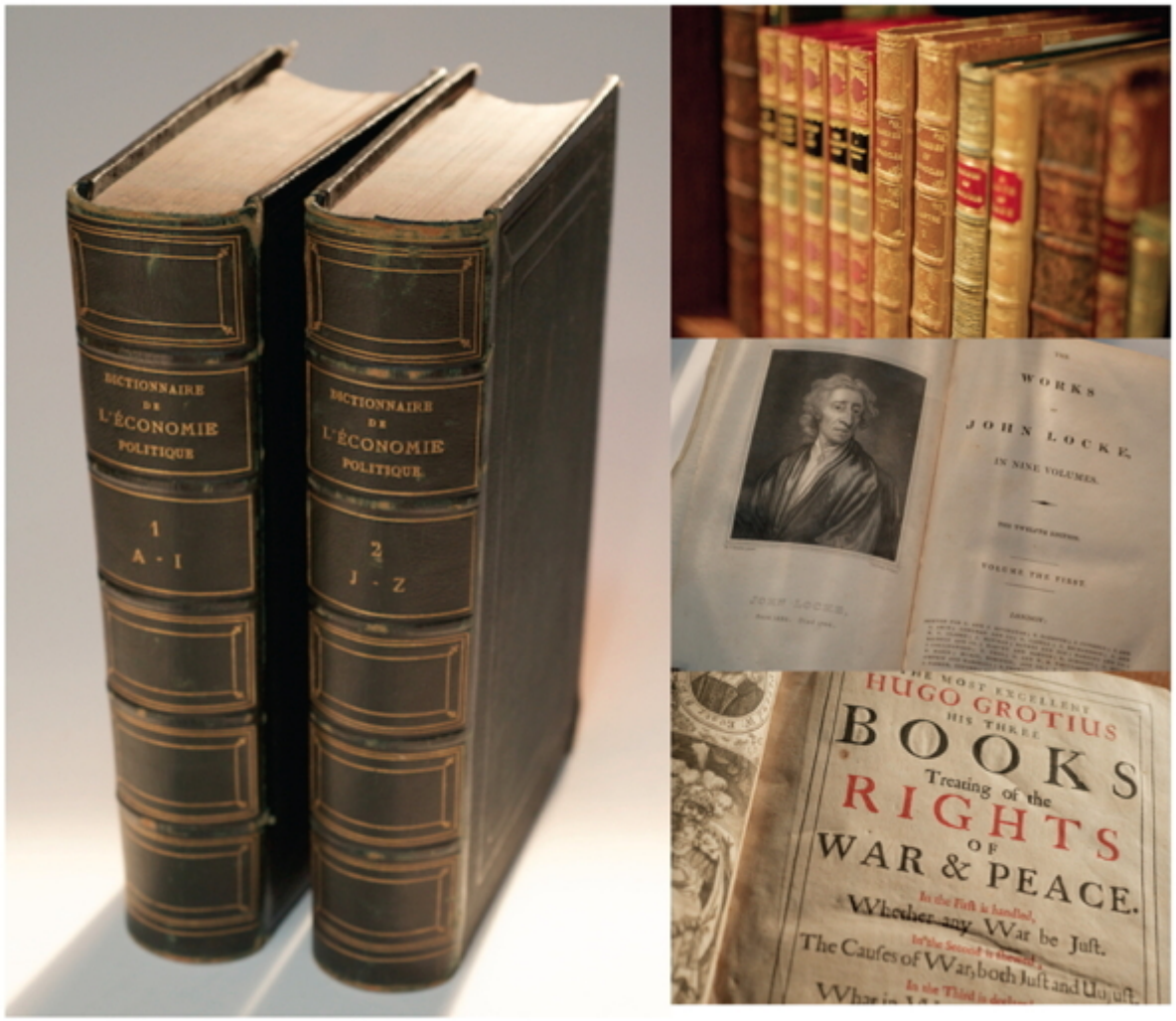

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AMAGI. The cuneiform inscription that appears in the logo and serves as a design element in all Liberty Fund books and websites is the earliest-known written appearance of the word freedom or liberty ("amagi" in Ancient Sumerian) It is taken from a clay document written about 2,300 B.C. in the Sumerian city-state of Lagash.

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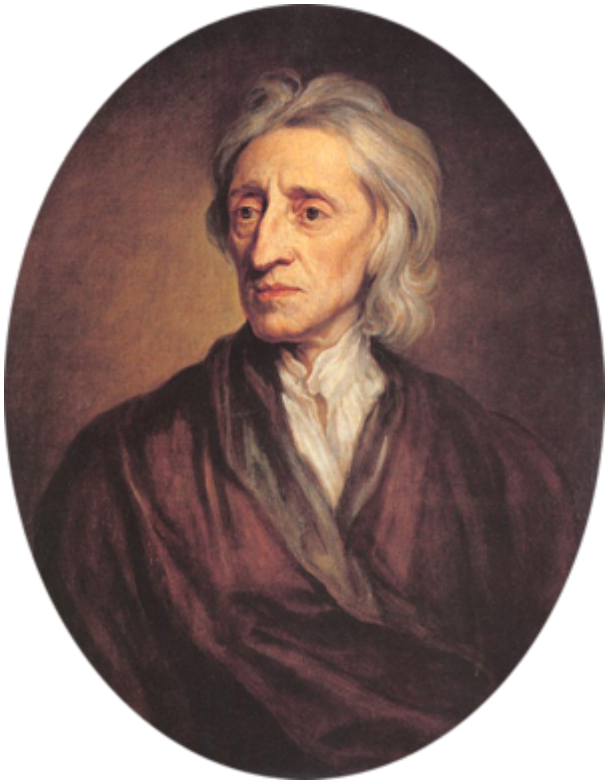
8335 Allison Pointe Trail, Suite 300
Indianapolis, Indiana 46250-1684

The Enhanced Edition of John Locke's *Two Treatises of Civil Government* (1689, 1764)

Introduction



This edition of Locke's *Two Treatises* combines the text from the Online Library of Liberty with supplementary material about Locke's political theory written by modern scholars. These essays discuss his theory of property and natural rights and refer to specific passages in the text. It is hoped that the combination of the two will assist those who wish to deepen their knowledge of this important political thinker.

The text we use is the Thomas Hollis edition of 1764 which circulated in the North American colonies prior to the Revolution and was an important vehicle for the transmission of ideas which were very important in the development of the colonists thinking about independence from Britain, limited government, and the protection of private property. We include the engraving Hollis had made of Locke which adorned the front of the book.

External links are indicated by putting the link in <>, for example to the <main Locke page> at the OLL. All other links are inteernal to this document.

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    - Chronology of Locke's Life and Work
    - *Literature of Liberty* editorial: The Importance of John Locke
    - Karen Vaughn, "John Locke's Theory of Property: Problems of Interpretation"
    - Eric Mack, "An Introduction to the Political Thought of John Locke"
- "Liberty Matters" online discussion: Eric Mack, “John Locke on Property”
- Locke's *Two Treatises* (1764 Hollis ed.)
    - Book I. Of Civil-Government
    - Book II. Of Government

About the Author: John Locke (1632-1704)↩

Nationality: English

Historical Period: The Early Modern Period

John Locke (1632-1704) was an English philosopher who is considered to be one of the first philosophers of the Enlightenment and the father of classical liberalism. In his major work *Two Treatises of Government* Locke rejects the idea of the divine right of kings, supports the idea of natural rights (especially of property), and argues for a limited constitutional government which would protect individual rights.

To read more by and about Locke go to the main page for <John Locke (1632-1704)> and the list of <study guides and essays> at the Online Library of Liberty

Groups:

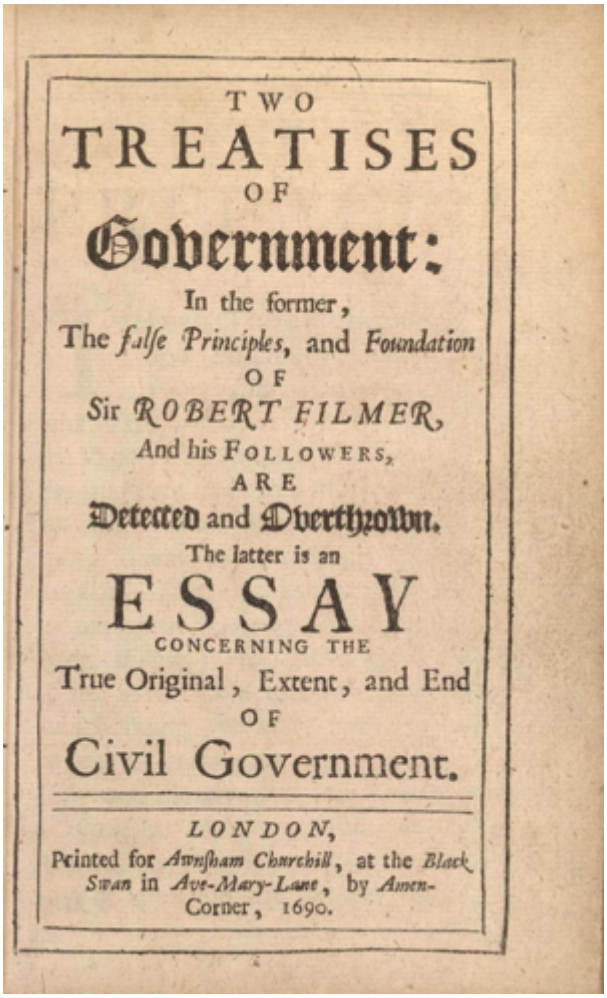
- <17th Century Natural Rights Theorists>
- <Pre-Smithina Economists>

Debates:

- <The Divine Right of Kings>
- <Religious Toleration>

Topcis: <The English Revolution>

About the Text ⮌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Edition Used

John Locke, *Two Treatises of Government,* ed. Thomas Hollis (London: A. Millar et al., 1764). <http://oll.libertyfund.org/titles/222>

About this Title

Locke's most famous work of political philosophy began as a reply to Filmer's defense of the idea of the divine right of kings and ended up becoming a defense of natural rights, especially property rights, and of government limited to protecting those rights. This 1764 edition is famous for being the edition which was widely read in the American colonies on the eve of the Revolution.

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Supplementary Material

[The engraving of Locke Thomas Hollis had made to adorn his North American edition. Note the Liberty Cap and the wreath of laurels. This was one of many Hollis had made of leading 17th century political thinkers and poets like Milton and Marvell.]

Chronology of Locke's Life and Work ⮌

Source: John Locke, *A Letter concerning Toleration and Other Writings*, edited and with an Introduction by Mark Goldie (Indianapolis: Liberty Fund, 2010). Chapter: <Chronology of Locke's Life>.

Also see a <Timeline of Locke's Life and Work>.

1632	Born at Wrington, Somerset, 29 August
1642	Outbreak of the Civil Wars
1643	Troops of Col. Popham, Locke's future patron, despoil Wells Cathedral
1645	Defeat of Charles I at Naseby by Oliver Cromwell
1647	Admitted to Westminster School, London
1648	Treaty of Westphalia ends European Thirty Years' War
1649	Execution of Charles I; England a republic
1651	Thomas Hobbes, *Leviathan*
1652	Elected a Student of Christ Church, Oxford
1652–67	Usually resident in Oxford
1655	Graduates as a bachelor of arts
1658	Graduates as a master of arts; death of Lord Protector Oliver Cromwell
1660	Restoration of monarchy under Charles II

1660–62 Writes *Two Tracts on Government*, against toleration (published1967)

1661–64 Lecturer in Greek, rhetoric, and moral philosophy

1662 Act of Uniformity reimposes Anglicanism; dissenting worship illegal

1663 Attends chemical and medical lectures

1663–64 Writes *Essays on the Law of Nature* (published 1954)

1665–66 Embassy secretary sent to the Elector of Brandenburg at Cleves (Kleve)

1666 Licensed to practice medicine

Granted dispensation to retain Studentship without taking holy orders

Great Fire of London

1667 Joins Lord Ashley's household; usually resident in London until1675.

Writes *Essay Concerning Toleration* (published 1876)

1668 Oversees lifesaving operation on Ashley

Elected a Fellow of the Royal Society

1669 Helps draft *The Fundamental Constitutions of Carolina*

1670 Baruch Spinoza, *Tractatus Theologico-Politicus*

1671 Secretary to the Lords Proprietors of Carolina (until 1675)

First drafts of *An Essay Concerning Human Understanding*

1672 Ashley created Earl of Shaftesbury and Lord Chancellor

Appointed secretary for ecclesiastical presentations (to 1673)

First visit to France

Samuel Pufendorf, *On the Law of Nature and Nations*

1673 Secretary to the Council of Trade and Plantations (to 1674)

Charles II's brother and heir, James, Duke of York, converts toCatholicism

Shaftesbury ousted from office; begins to lead opposition

1675 Shaftesburian manifesto, *A Letter from a Person of Quality*

Graduates as a bachelor of medicine

To France; chiefly resident at Montpellier until 1677; then mainlyParis

1676 Translates three of Pierre Nicole's *Essais de Morale*

1677 Repeal of writ *De haeretico comburendo,* abolishing burningfor heresy

Andrew Marvell, *An Account of the Growth of Popery*

1678 Popish Plot revealed; executions of Catholics follow (to 1681)

1679 Returns to England

Habeas Corpus Act

1679–81 Exclusion Crisis; Whigs seek to exclude Catholic heir from the throne

Whig victory in three general elections, but Whigs outmaneuveredby the king

1680 Signs London's "monster petition," demanding sitting of Parliament

1679–83 Resides in London, Oxford, and Oakley (James Tyrrell's home)

Writes *Two Treatises of Government*

1681 Writes a defense of toleration against Edward Stillingfleet

Assists Shaftesbury at the Oxford Parliament

Oxford Parliament dismissed; Charles summons no more parliaments

Beginning of royal and Tory backlash against Whigs and dissenters

Shaftesbury accused of treason; charge dismissed by a Whig grandjury

1682 Court coup against Whigs in City of London; Shaftesbury flees toHolland

1683 Death of Shaftesbury in Holland; Locke attends funeral in Dorset

Whig Rye House Plot, to assassinate the king, exposed

Executions of Lord William Russell and Algernon Sidney

Earl of Essex's suicide in the Tower; Whigs suspect state murder

Judgment and Decree of Oxford University against seditiousdoctrines

1683–89 Exile in Holland; lives mainly in Utrecht, Amsterdam, and Rotterdam

1684 Expelled *in absentia* from Studentship of Christ Church

1685 Death of Charles II; accession of James II and VII

Abortive rebellion of the Whig Duke of Monmouth; his execution

Louis XIV revokes Edict of Nantes; persecution of Huguenots

Writes *Epistola de Tolerantia (Letter Concerning Toleration)*

1686 Pierre Bayle, *Philosophical Commentary* on religious persecution

1687 James II issues Declaration of Indulgence (edict of toleration)

1688 Reviews Newton's *Principia Mathematica* for *Bibliothèqueuniverselle*

Culmination of resistance to James II's Catholicizing policies

"Glorious Revolution": invasion of England by William of Orange

James II overthrown and flees to France

1689 National Convention installs King William and Queen Mary

Nine Years' War against Louis XIV opens

Toleration Act: freedom of worship for Protestant dissenters

Returns to England; declines an ambassadorship

Appointed Commissioner of Appeals in Excise

Publication of *A Letter Concerning Toleration*

Publication of *Two Treatises of Government*

Publication of *An Essay Concerning Human Understanding*

1690 Battle of the Boyne: William defeats Jacobites in Ireland

Letter Concerning Toleration attacked by Jonas Proast

Publication of *A Second Letter Concerning Toleration*

1691 Publication of *Some Considerations of the . . . Lowering of Interest*

Settles at Oates in Essex in Damaris Masham's household

1692 Publication of *A Third Letter for Toleration*

Memorandum on the naturalization of immigrants

1693 Publication of *Some Thoughts Concerning Education*

1694 Founding of the Bank of England; invests 500

Triennial Act, requiring regular parliamentary elections

1695 Advises on the ending of press censorship and the recoinage

Publication of *The Reasonableness of Christianity*

The *Reasonableness* attacked by John Edwards; publishes *Vindication*

Publication of *Further Considerations Concerning . . . Money*

1696 Appointed a member of the Board of Trade and Plantations (to 1700)

The *Essay* attacked by Bishop Edward Stillingfleet

John Toland, *Christianity not Mysterious*

Pierre Bayle, *Historical and Critical Dictionary*

1697 Treaty of Ryswick: temporary peace with France

Publication of *Second Vindication of the Reasonableness of Christianity*

Publication of two replies to Stillingfleet in defense of the *Essay*

Composes *An Essay on the Poor Law*

Composes report on the government of Virginia

Composes *The Conduct of the Understanding*

Thomas Aikenhead hanged at Edinburgh, Britain's last heresy execution

1698 Molyneux's *Case of Ireland* cites *Two Treatises* indefense of Ireland

Algernon Sidney, *Discourses Concerning Government* (posthumous)

1701 Act of Settlement, ensuring Protestant (Hanoverian) succession

Renewal of war against France

1702 Final visit to London

Composes *A Discourse on Miracles*

Death of William III; accession of Queen Anne

World's first daily newspaper, in London

1703 First major critique of *Two Treatises,* by Charles Leslie

1704 Completes *A Paraphrase and Notes on the Epistles of St. Paul*

Battle of Blenheim: Duke of Marlborough's victory over France

Capture of Gibraltar begins Britain's Mediterranean naval dominance

Dies at Oates, 28 October; buried in High Laver churchyard, Essex

1705–7 Publication of *A Paraphrase and Notes on the Epistles of St.Paul*

1706 Publication of the unfinished *Fourth Letter for Toleration*

1710 First French and German editions of *A Letter Concerning Toleration*

1714 First edition of the *Works* of Locke

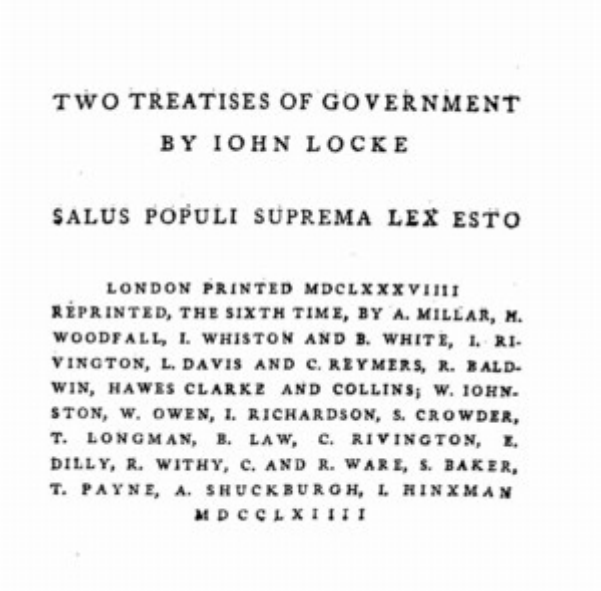
1743 First American edition of *A Letter Concerning Toleration*

1764 Voltaire's edition of *A Letter Concerning Toleration*

Thomas Hollis's edition of the *Two Treatises of Civil Government*

1765 Thomas Hollis's edition of the *Letters Concerning Toleration*

Literature of Liberty editorial: The Importance of John Locke↩


TWO TREATISES OF GOVERNMENT
BY IOHN LOCKE
SALUS POPULI SUPREMA LEX ESTO
LONDON PRINTED MDCLXXXVIIII
REPRINTED, THE SIXTH TIME, BY A. MILLAR, M. WOODFALL, I. WHISTON AND B. WHITE, I. RIVINGTON, L. DAVIS AND C. REYMERS, R. BALDWIN, HAWES CLARKE AND COLLINS; W. IOHNSTON, W. OWEN, I. RICHARDSON, S. CROWDER, T. LONGMAN, B. LAW, C. RIVINGTON, E. DILLY, R. WITHY, C. AND R. WARE, S. BAKER, T. PAYNE, A. SHUCKBURGH, L. HINXMAN
MDCCLXIIII

Source

This essay first appeared as an editorial in the journal< *Literature of Liberty: A Review of Contemporary Liberal Thought*, Spring 1980, vol. 3, No. 1>.

Editorial

John Locke (1632–1704) was identified by Joseph Schumpeter (History of Economic Analysis) as among the "Protestant Scholastics" of whom his forerunners were Hugo Grotius, Thomas Hobbes, and Samuel Pufendorf. This natural law tradition (Cf. Literature of Liberty, I, 4) was paralleled by René Descartes's *Discourse on Method* (1637). Descartes's emphasis on the principle of the uniformity of natural law had awakened Locke's interest in philosophy. Succeeding Descartes as the leading philosopher of the eighteenth century Enlightenment, "le sage Locke" remained a critical heir of Cartesian thought, and his philosophical growth drew inspiration from a wide range of other sources. The Scholastic Aristotelianism of Puritan Oxford, including Aquinas and Albertus Magnus, stimulated Locke's interest in scientific investigation, and in addition he sought to synthesize the best elements of the leading thinkers of seventeenth century philosophy.

The impact of the Arminianism of Holland was central to his tolerant religious thought as it had been for Grotius. Arminian interest in the foundations for a universal Christian church influenced Locke's *Two Treatises on Civil Government*. Locke's empiricism owed much to his contact with Robert Boyle, founder of the Royal Society, and to the school of Pierre Gassendi (1592–1655). Leibnitz considered Locke a leading Gassendist, and R. I. Aaron (1937) notes that Locke's *Essay on Human Understanding* becomes "more intelligible if read alongside Gassendi's works." Locke's scholarship suggests that a rational science of morals was possible within the limits set by Gassendists such as Francois Bernier's Christian epicureanism as contrasted with Hobbes's materialist hedonism.

Bernier, a fellow physician of Locke's, travelled to North Africa, the Near East, and India, and wrote

travel literature. Locke's own extensive knowledge of travel literature suggests that he may have edited a major series of voyage literature. On this topic, see William G. Batz, "The Historical Anthropology of John Locke," *Journal of the History of Ideas* 35(Oct.-Dec. 1947). This literature influenced Locke's concepts of the state of nature and of the historical origins of property which leads through Pufendorf and Locke to <Adam Smith> and <Lord Kames> in the Scottish Enlightenment.

On property Locke believed, with his fellow philosophers, that men had been given the earth, air, sunlight and rainfall to be used beneficially. But, the use of these common gifts required their possession in absolute property (*Second Treatise 34)*. Locke's theory of property begins with the absolute ownership which each man has in his own person. By mixing his labor with natural resources man makes these products his property (*Second Treatise 27*).

In contrast to Whig political philosophers, Locke did not appeal to English history in the form of the ancient constitution or a concrete original contract. From his extensive readings in cosmopolitan human history, Locke looked to sources which were human in a universal sense and found them in human reason and a rational law of nature. Human action and human freedom were determined by rational natural law. From natural law, Locke deduced that all men were created free and equal, that no man was made for another man's benefit, and all men had the natural rights to life, liberty, and property. If civil governments interfered or abused these rights, men had the right of political resistance to vindicate their rights. Locke's movement of political philosophy away from national historical precedents to man as man created the basis for eighteenth century Enlightenment political thought, especially influencing the <Scottish Enlightenment> (cf. Louis Schneider, ed., *The Scottish Moralists on Human Nature and Society,* Chicago: University of Chicago Press, 1967).

The influence of Locke's writings, especially the *Two Treatises,* has been enormous. Shortly after the original edition appeared, a French edition was published containing only the *Second Treatise,* less the first chapter. In that form it was reprinted a dozen times in France in the eighteenth century. Although American readers were nourished on the many reprints of the original editions until <the American Revolution>, the first American edition in 1773 followed the form of the French editions. In recent years a controversy among historians has debated the importance of Locke's political philosophy in the eighteenth century Atlantic revolutions. Until recently, his ideas were seen as a dominant influence on the American and French revolutions and the radical liberals in England. But some critics have claimed that Locke's ideas were either influential only through intermediaries or were eclipsed by the ideas of rival authors. These critics are, in turn, being challenged by historians whose scholarship has been restoring Locke's political philosophy to center stage in eighteenth century radical political thought. This debate stresses the need of a clearer understanding of Locke's ideas. On this see Ronald Hamowy, "Jefferson and the Scottish Englightenment" *William and Mary Quarterly* 36(October 1979), as well as Hamowy's forthcoming comments in the July, 1980 issue of the same journal.

Karen Vaughn, "John Locke's Theory of Property: Problems of Interpretation" ↩

CHAP. V.
Of PROPERTY.

§. 25. WHether we conſider natural *reaſon*, which tells us, that men, being once born, have a right to their preſervation, and conſequently to meat and drink, and ſuch other things as nature affords for their ſubſiſtence: or *revelation*, which gives us an account of thoſe grants God made of the world to *Adam*, and to *Noah*, and his ſons, it is very clear, that God, as king *David* ſays, *Pſal.* cxv. 16. *has given the earth to the children of men*; given it to mankind in common. But this being ſuppoſed, it ſeems to ſome a very great difficulty, how any one ſhould ever come to have a *property* in any thing: I will not content myſelf to anſwer, that if it be difficult to make out *property*, upon a ſuppoſition that God gave the world to *Adam*, and his poſterity in common, it is impoſſible that any man, but one univerſal monarch, ſhould have any *property* upon a ſuppoſition, that God gave the world to *Adam*, and his heirs in ſucceſſion, excluſive of all the reſt of his poſterity. But I ſhall endeavour to ſhew, how men might come to have a *property* in ſeveral parts of that which God gave to mankind in common, and that without any expreſs compact of all the commoners.

Introduction

Source

Karen Vaughn is an Austrian economist and political philosopher who has written on the work of John Locke and the history of Austrian economics in the United States.

This essay first appeared in the journal *Literature of Liberty: A Review of Contemporary Liberal Thought* , vol. III, no. 1, Spring 1980 published by the Cato Institute (1978-1979) and the Institute for Humane Studies (1980-1982) under the editorial direction of Leonard P. Liggio. It is republished with thanks to the original copyright holders. <Online at the OLL>.

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Karen Vaughn, "John Locke's Theory of Property: Problems of Interpretaton"

Table of Contents

The Problem: Locke, Liberalism, and Property

John Locke's major political analysis, *The Two Treatises of Government* (1690),[1] has long been hailed as a seminal work in the history of political liberalism. In the *Second Treatise* especially, it is generally recognized, Locke argues the case for individual natural rights, limited government depending on the consent of the governed, separation of powers within government, and most radically, the right of people within a society to depose rulers who fail to uphold their end of the social contract. While the history of the writing of the *Treatises* shows that it was first conceived and executed as a revolutionary tract,[2] its importance has far exceeded the specific revolutionary machinations which occasioned it. Although the nature of its influence on subsequent ideas is debated among scholars, few question its

powerful influence on French, American, and, to a lesser extent, Spanish revolutionaries in the eighteenth and nineteenth centuries.[3] As a work in political philosophy, its theoretical influence is no less acknowledged.

Despite the familiarity which even casual students of the history of political theory have with this much discussed and quoted work, there is little about it that has not aroused controversy among Locke scholars. What may seem obvious to the occasional reader provides a bone of contention for endless debate within academia. While this scholarly dissension may not distinguish Locke's writings from those of any other important thinker, it does create (or rather reflect) interesting problems of interpretation for anyone who would understand the roots of political liberalism. This is especially true in one of the most debated and controversial areas of Locke's political philosophy, his theory of property.

For most of the nineteenth and early twentieth century, Locke's theory of property as found in the *Second Treatise of Civil Government* was regarded as the cornerstone of classical liberalism.[4] His attempt to ground the right to property in natural law was seen to be an important device for asserting the rights of individuals against the state and for limiting the moral authority of the state in a crucial area of human endeavor. The theory of property was understood to be central to the structure of Locke's argument in the *Second Treatise* in that it serves as an explanation for the existence of government and a criterion for evaluating the performance of government. Locke's individualist, private property stance was not always admired or believed to be without flaw, but criticism was leveled within the context of Locke's claim to a place as a liberal philosopher. He was understood as a constitutionalist liberal who provided a mediocre defense of private property.

In the middle part of the twentieth century, the whole constitutional-limited government-liberal enterprise has been called into question, and part of the questioning process has been a renewed interest in the political philosophy of John Locke. Heralding the new interest in Locke were three studies that challenged Locke's credentials as a classical liberal and all based their challenge on a reading of Locke's theory of property. The works of Willmoore Kendall, Leo Strauss, and C.B. MacPherson all argued that Locke was not at all what he was supposed to be, and they thereby opened up a new investigation of the meaning and importance of Locke's theory of property in his political thought.

Locke's Theory of Property In Outline

The outline of Locke's theory of property in the *Second Treatise* is well-known. He begins his discussion of the origin of property in the state of nature, that pre-political state so familiar to seventeenth century philosophers.[5] In this state of nature, according to Locke, men were born free and equal: free to do what they wished without being required to seek permission from any other man, and equal in the sense of there being no natural political authority of one man over another. He quickly points out, however, that "although it is a state of liberty, it is not a state of license,"[6] because it is ruled over by the law of nature which everyone is obliged to obey. While Locke is not very specific about the content of the law of nature, he is clear on a few specifics. First, that "reason, which is that law, teaches all mankind who will but consult it," and second, that it teaches primarily that "being all equal and independent, no one ought to harm another in his life liberty or possessions."[7] Hence, right from the beginning of the essay, Locke places the right to possessions on the same level as the right to life, health, and liberty. While the right not to be harmed in one's life or liberty might have seemed self-evident to Locke's readers, the right not to be harmed in one's possessions might have seemed less so. Hence, Locke devotes all of Chapter V of his *Second Treatise* to tracing the steps by which reason

teaches that men ought not to be harmed in their possessions.

Appropriation in the State of Nature: Self-ownership and Labor

In Chapter V, Locke's premise, which he shared with most seventeenth century writers, was that God gave the earth and its fruits in common to men for their use. The problem he faced was to explain how commonly available resources can become legitimate private property which excludes the right of other men.[8] Locke begins his argument by identifying the one form of property against which no other man could possibly have a claim in a world of political equals, the property each man has in his own person. The idea of one having a property in himself was not peculiar to Locke. It was fairly common in seventeenth century writing and had been used extensively before Locke by Hugo Grotius. It was a definition of personality—that which constituted the individual, and it included one's body, actions, thoughts, and beliefs.[9] Locke built on this concept of self-ownership when he used it to explain how one derives a right to possess objects outside of one's self, his famous (or infamous) labor theory of property:

> . . . everyman has a property in his own Person. This no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joyned to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature placed it in, it hath by this labour something annexed to it, that excludes the common right of other men.[10]

Although Locke uses the term *labor* to characterize the act by which men create property, it is clear from the examples which follow that labor is defined very broadly. Labor, for Locke, includes picking up acorns from the ground, gathering apples from wild trees, tracking deer in the forest, and catching fish in the ocean;[11] labor ranges from simple acts of appropriation to production involving planning and effort. It is a creative and purposeful act that extends the limits of personality to physical objects previously in the common stock.[12]

After having established an individual's right to own property in the state of nature, Locke goes on to define the right to property broadly enough to include both "the fruits of the earth and the earth itself,"[13] both the goods one creates and the land one cultivates. Furthermore, perhaps to justify this strange doctrine to his readers, that "the property of labour should be able to over-balance the community of land,"[14] Locke goes on to claim that the right to private property worked to the advantage of the population as a whole. Locke argued that private property was not only moral, but useful, because "'tis labour indeed that puts the difference of value on every thing; and let any one consider, what the difference is between an acre of land planted with tobacco, or sugar, sown with wheat or barley; and an acre of the same land lying in common, without husbandry upon it, and he will find, that the improvement of labour makes the far greater part of the value."[15] The implication is that unassisted nature really provides very little that is useful to mankind. This can be interpreted tautologically since labor includes every act of appropriation and acorns lying on the ground have no value to human life until they are picked up and eaten, but Locke means more than this.

"I think it will be but a very modest computation to say, that of the products of the earth useful to the life of man, 9/10 are the effects of labour: nay, if we will rightly estimate things as they come to our use, and cast up the several expenses about them, what in them is purely owing to nature, and what to labour, we shall find, that in most of them 99/100 are wholly to be put on the account of labour."[16] In

fact, he argues that the raw materials of the goods men consume daily are really the least part of the pleasures enjoyed from them since "labour makes the far greatest part of the value of things we enjoy in this world."[17] Hence it should be no cause for complaint if natural law dictates that labor guarantees the right to property since labor is at least 9/10ths responsible for the value of goods created. God may have given the world to men, but in order to enjoy the gift, men have to create property by exercising their creative intelligence and their bodies in physical labor.[18]

Limits on Property in the State of Nature

While Locke argues that men have a right to create and enjoy their property, he also argues that there are limits to that right in the state of nature. The first limit is alluded to when he describes how property is created. He says, "Labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough and as good left in common for others."[19] The implication is that one's right to property is only clear and exclusive so long as it doesn't jeopardize anyone else's ability to create equivalent kinds of property for himself. Locke does not stress this limitation, but puts most of the force of the limitation on property on his next argument. As much property "as anyone can make use of to any advantage of life before it spoils; so much he may by his labour fix a property in. Whatever is beyond this, is more than his share, and belongs to others." The reason for this limit is that "Nothing was made by God for Man to spoil or destroy."[20]

Locke infers that as long as men heed the injunction not to allow anything to go to waste uselessly in their possession, there will in this early state of nature, be plenty of land and resources to go around for everyone. He argues further that originally in the state of nature, there was no incentive for anyone to try to accumulate more property than he could use since most goods were perishable.[21] In fact, Locke seems to describe an early state of existence in which populations were small and resources abundant although the general level of wealth was probably very low. There was no accumulation of wealth and relatively little land ownership in a basically nomadic population.

The Money Economy as a Means of Overcoming the Limits on Property

He apparently believes men found this original economic organization to be inconvenient because he describes a process by which men find a way to accumulate wealth by developing a money economy:

> He that gathered a hundred bushels of acorns or apples, had thereby a property in them; they were his goods as soon as gathered. He was only to look that he used them before they spoiled; else he took more than his share, and robbed others. . . . If he gave away a part to any body else, so that it perished not uselessly in his possession, these he also made use of. And if he also bartered away plumbs that would have rotted in a week, for nuts that would last good for his eating a whole year, he did no injury, he wasted not the common stock; destroyed no part of the portion of goods that belonged to others, so long as nothing perished uselessly in his hands. Again, if he would give his nuts for a piece of metal, pleased with its color; or exchange his sheep for shells, or wool for a sparkling pebble or a diamond, and keep those by him all his life, he invaded not the right of others, he might heap up as much of those durable things as he pleased; the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of any thing uselessly in it.

> And thus came in the use of money, some lasting thing that men might keep without spoiling, and that by mutual consent men would take in exchange for the truly useful, but perishable supports of life.[22]

Thus, although nature puts both a moral and an effective limit on the amount of property anyone can accumulate, the amount he can use without allowing anything to spoil, the limit is not defined by the amount of anything a person owns, but by the consequences of ownership. As long as nothing spoils in one's possession, it doesn't matter how much property anyone owns. Consequently, Locke reasons, men will try to find ways of storing their excess products by trading perishable goods for more durable ones that can be used in the future. In the course of this trading process, he implies, one commodity, the most durable and easily tradable one, eventually becomes commonly acceptable as a money commodity.[23] Locke describes this process as men consenting to use money, a form of agreement which enables men to avoid the disadvantages implicit in the original natural limits to property ownership in the state of nature.

The Need to Protect Property Leads to Government

While the use of money is a reasonable way of getting around the difficulties of storing wealth, its consequences are profound. Money permits the more "industrious and rational"[24] and therefore the more productive, to accumulate the products of their labor and thus to increase their wealth relative to the less industrious or talented. Furthermore, the growing accumulation of physical property and land puts pressure on natural resources and makes it increasingly less likely that any individual could find "enough and as good" land left over after appropriation by others. Hence overcoming the spoilage limitation also implies the end to the certainty that no one will be adversely affected by property ownership. Locke seems to argue that the consequences will be property disputes and increasing concern for personal safety, although these consequences follow as much from the growth of population as from increasing resource scarcity brought about by the introduction of money into the state of nature. The result, however, is that men will find it greatly to their advantage to come together to form a contract to enter into civil society and establish a government.[25]

The reason, then, that men form societies and governments is to protect their property which Locke takes to include life, liberty, and estate.[26] In the state of nature, with resource scarcity and men "no great observers of equity and justice,"[27] the ability to enjoy life, liberty, or one's estate becomes limited indeed. By agreeing to give up his right to be a judge in his own case, each man gains the benefits of increased order and security. Hence the ownership of private property is one of the major causes of the existence of the state. Once men form states, the government is expected to rule in the public good and not for its own good, and one of the ways it fulfills this charge is by regulating property so as to make it secure.[28] Should the government fail to meet its obligations, for instance by arbitrarily confiscating property, the citizens have the right to change the government.[29]

Difficulties of Interpretation in Locke Scholarship

This outline of Locke's theory of property and the relationship to the origin of government conceals a plethora of difficulties. Almost anyone who has taken the trouble to study carefully Locke's theory of property comes away with a great sense of puzzlement. The exposition seems fraught with inconsistencies and partially explained ideas. Locke seems to raise more problems than he solves and one cannot help but wonder not only what Locke meant to say, but also what he actually said. The problems are by no means trivial ones. The kinds of questions Locke scholars try to answer are some

of the most profound in political philosophy: Did Locke believe in natural law? What were the characteristics of the state of nature where men were presumed to live without government? Was it peaceful or chaotic, poverty stricken or comfortable? The answer to these questions implies a view of the contribution of government to human welfare. How much property did Locke think any one individual was entitled to own? Did he approve of acquisitive behavior? Why should men be willing to trade their natural freedom for the restrictions of civil society? Once they do, what is the status of property in civil society? Each of these questions appears to have conflicting answers in the text of Locke's *Two Treatises*.

It is, as a result, a fairly simply matter to justify any of a number of interpretations of Locke's theory of property by claiming that his statements which support one interpretation are the ones he really meant while the apparent contradictory statements were slips of the pen. It is a frustrating problem of Locke scholarship that such an interpretive process might be necessary and might even lead to a correct analysis of Locke's meaning. How one decides which statements Locke means and which are unimportant or slips is another question. Some have relied on minute textual exegeses, others have argued that Locke's *Treatises* can only be fully understood in relationship to his other work, and still others have argued that the text is a cover for a hidden meaning that must be ferreted out by breaking Locke's code.

The difficulties inherent in trying to discover what a thinker "really meant" apart from what he happened to write down can be well illustrated by examining the three unusual, even eccentric interpretations of Locke already alluded to, all of which claim to provide the real key to Locke's political philosophy: Willmoore Kendall's interpretation of Locke as a majority rule democrat, Leo Strauss's (and Richard Cox's) view of Locke as a secret Hobbesian, and, most important for Locke scholars, C.B. McPherson's analysis which labels Locke as a capitalist apologist by revealing the possessive nature of his individualism.

Kendall's Locke: the Rule of the Majority vs. Individual Property Rights

Willmoore Kendall's study, *John Locke and the Doctrine of Majority Rule* (1941) was intended to illuminate the general problem of the status of the principle of majority rule in societies. Kendall himself is obviously antagonistic to the doctrine insofar as it implies the ability of the majority to trample on the rights of minorities, so his characterization of Locke as "the captain of the team"[30] of majority rule democrats is not intended to be flattering. Particularly irksome to Kendall is the more common view that Locke was the "prince of individualists," the champion of individual rights against the state, of limited government and the sanctity of property: in short, the interpretation which we are advancing. Kendall makes his case for Locke's essential majority rule collectivism by examining "the most crucial of the 'natural' individual rights which he is thought to have defended," the natural right to property.[31]

Kendall argues that far from championing inalienable individual rights, Locke saw rights to be derived from social duties, that rights "inhere in the individual as related to other individuals in a community whose characteristicum is a complex of reciprocal rights and duties."[32] Hence, rights can be withdrawn by the community should the individual fail to perform the duty which guaranteed his right in the first place. The primary case in point to Kendall is the right to property. Although he agrees that Locke seems to give individuals an unquestioned right to the property they create by the mixing of their own labor with land in the state of nature. Kendall claims that "when Locke has to choose between the individual's right of property in that with which he has mixed his labor and the common right of men to their preservation, he unhesitatingly sacrifices the former to the latter."[33]

The crux of Kendall's argument is his reading and interpretation of Locke's justification of private property. Kendall argues that a truly individualistic natural right to property should include the assumption that a person's right to property is inviolable and that it can never legitimately be set aside for "the convenience and welfare of others."[34] This, Kendall correctly points out, Locke never meant to argue. It is fairly easy to show that Locke believed each man had a duty to preserve the lives of others "as much as he can" and "when his own Preservation comes not in competition."[35] Locke clearly places a moral responsibility on the part of property owners to engage in acts of charity in life-threatening situations. This in itself does not mitigate the individualist nature of the right to property, however, since it is not clear that a moral duty should be enforced by an agency outside of the individual.

More convincing evidence for Kendall's position are all the passages where Locke describes the benefits of property ownership for mankind as a whole. Kendall argues that the import of these passages is to make of property nothing more than an expedient for improving the lot of mankind; property ownership is justified not because it conforms with natural law per se, but because it is the best means to the end of preserving mankind. Kendall further strengthens his claim by arguing:

> Indeed, in his discussion of property in land, Locke's language appears to commit him to the view that the burden is always upon the exerciser of the right of property to prove that "others" will not suffer from the appropriation; and it is abundantly clear that he is thinking of the right of property simply as a function of one's duty to enrich mankind's common heritage.[36]

Here, Kendall has gone too far. It is unquestionable that Locke believed property ownership would always benefit society as a whole, but the justification was not one of expediency. The burden of proof was *not* always upon the property owner to prove that others will not suffer from the appropriation as Kendall claims.[37]

Locke's Two Arguments for Property: Natural Rights and Social Benefits

Locke's discussion of the origin of private property includes two sorts of arguments in favor of property. The first is the natural rights argument where self-ownership implies ownership of those goods created by men through labor. This right is absolute in that it follows from natural law and reason, although it is bounded by the limitation that no one may permit resources to spoil in his possession, and, possibly, that there be alternative opportunities for others to create their own property. The fact that there are limits to the right to property does not make it less individualistic, however. God may have given the world to men in common for their use, but God also gave to individuals the rights to create their own property and to make use of it "to any purpose." This is one of those happy occasions where natural law and individual rational perceptions of natural law generally coincide.

The second kind of argument in favor of private property is what Kendall calls the expedient. As we have seen, Locke calls attention to the productivity of labor by pointing out in various instances how labor contributes to the greatest part of the value of all things.

> Let anyone consider, what the difference is between an acre of land planted with tobacco or sugar, sown with wheat or barley; and an acre of the same land lying in common, without any husbandry upon it, and he will find that the improvement of labour makes the far greater part of the value.[38]

Labor produces far more of the value of products than does land:

> 'tis labour then which puts the greatest part of the value upon land, without which it would scarcely be worth anything: 'tis to that we owe the greatest part of all its useful products: for all that straw, bran, bread, of that acre of wheat, is more worth than the product of an acre of as good land, which lies waste, is all the effect of labour.[39]

These passages establish the relative importance of the contribution of labor to the production of things people value and help to explain why natural law would permit the "property of labour to over-ballance the community of land."[40] Locke further points out that the increased productiveness of private land over common land implies an increase in the economic well-being of the community as a whole:

> He that incloses land and has a greater plenty of the conveniencys of life from ten acres, than he could have from an hundred left to nature, may truly be said to give ninety acres to mankind. For his labour now supplies him with provisions out of ten acres which were but the product of an hundred lying in common.[41]

From passages such as these, Kendall concludes that Locke means to *justify* property ownership by the social benefits it confers, that the expediency arguments take precedence over the natural right arguments for property. This is not the case. The social benefits Locke describes are dividends of property ownership which he points out to quiet any grumblings from the "quarrelsome and contentious" who might be apt to challenge the natural right to property. In fact, Locke's discussion of the right to property is characteristic of his thought on many issues. There is both a natural right dictated by natural law (and obvious to anyone who will take the time to think about it) and a benefit that flows from observing natural law; everyone is better off with private property in the state of nature where "right and conveniency went together."[42] When right and conveniency don't go together, as happens in the state of nature after money comes into use, men establish civil governments to protect their right to enjoy the property created by each of them in the state of nature.

There may still be an argument to be made for Locke as a majority rule democrat within government where governments regulate the right to property,[43] but the case cannot be supported with Locke's theory of property in the state of nature.

Leo Strauss's Locke: Hobbesian Individualism, The Spirit of Capitalism, and Property

Whereas Kendall sees Locke as a majority rule democrat who does not deserve his reputation as an individualist champion, Leo Strauss offers the exact opposite interpretation in his influential *Natural Right and History* (1953). Here Strauss argues that Locke's theory of property is reflective of the individualism that leads to the "spirit of capitalism,"[44] an individualism that was a more advanced expression of the political philosophy of Hobbes.[45] Although Locke used the language of natural law and natural rights, of limitation on property and of charity, the language was simply a cover that allowed him to convey his true message while avoiding hostility on the part of the reader. According to Strauss, Locke really believed there is no genuine natural law, only conventional law, and there are "no natural principles of understanding: all knowledge is acquired; all knowledge depends on labor and is labor."[46] Locke in this reading is a hedonist, for whom the greatest good is "in having those things which produce the greatest pleasure"[47] —a materialist hedonist at that. Locke's true message in

his theory of property, according to Strauss, was that "covetousness and concupiscence, far from being essentially evil or foolish, are, if properly channeled, eminently beneficial and reasonable, much more so than 'exemplary charity'".[48] Strauss makes of Locke an early Mandeville when he claims "By building civil society on the 'low but solid ground' of selfishness or of certain 'private vices,' one will achieve much greater 'public benefits' than by futilely appealing to virtue, which is by nature "unendowned.'"[49] Going even further, Strauss makes Locke an early Adam Smith when he argues that Locke believed "restraint of the appetites is replaced by a mechanism whose effect is humane,"[50] the mechanism being money or, more accurately, a money economy.

Strauss's reading of Locke as a Hobbesian individualist is impressionistic at best. He communicates a feeling about the import of Locke's message with very little evidence produced from Lockean texts. Strauss's interpretation would not even be mentioned here did it not raise some interesting questions for Locke scholarship addressed by later writers. The first question is methodological and asks to what degree can we read through an author's published words to the underlying real meaning. Strauss reasons that if Locke appears contradictory, perhaps he was deliberately contradictory to serve his greater purpose. Strauss believes that Locke used the language of natural law and natural rights, charity, and restraint to make his message more pallatable to his audience. By reading Locke this way, of course, Strauss ignores or discounts all those passages which drove Kendall to see Locke as a collectivist in individualist clothing. Strauss and Kendall cannot both be right.

The second question raised by Strauss is substantive. Surely the elements Strauss chooses to emphasize are present in Locke's writings. To what degree, then is it correct to view Locke as embodying the "spirit of capitalism"?

Richard Cox and the Problem of Order in the State of Nature

The methodological question raised by Strauss was addressed with unmatched exuberance by Richard Cox in his relatively little known work, *Locke on War and Peace* (1960). Cox argues that Locke wrote the *Two Treatises* on two levels. The first level uses the conventional language of natural law and biblical teaching to convey the impression that he had a perfectly orthodox view of man's nature and his relationship to his fellow man. The second, deeper level of writing, however, actually was meant to convey exactly the opposite view, that man was a Hobbesian creature ruled by passions whose life would be at best "nasty, poor, brutish, ugly and short" without the institution of some kind of government to improve his lot, and that, to act effectively the government in power would have to take account of the natural base passions of man.

Cox's Hobbesian Locke: The Circumstantial Evidence

Cox bases his case for Locke's "secret writing" on two kinds of evidence. The circumstantial evidence that Locke hid his true meaning is marshalled from a reading of Locke's personality and the historical circumstances within which he wrote. All Locke scholars have remarked on Locke's extreme caution with regard to political matters. He rarely uttered a controversial word in the political arena, and when he did commit himself to writing, he refused to acknowledge his authorship. The same can be said about his views on religion which were suspected of being heterodox in the extreme. He did not relish open debate, and neither would he have been willing to lose his political influence as a result of being embroiled in too much public controversy. Even more importantly, where political writings were concerned, controversial doctrines were frequently held to be seditious doctrines and could lead the author straight to the gallows. This was the sad fate of Algernon Sidney, another writer of controversial political doctrine resembling Locke's.[51]

Locke's caution with regard to his political views reflects his rational response to the political uncertainties of his age, and provides acceptable evidence of his desire to write as much as possible in the language of the majority view. That the views Locke was trying to insinuate in his writings were Hobbesian, as Strauss and Cox maintain, does not necessarily follow. Recent research has established that Locke's immediate purpose in writing the *Two Treatises* happens to have been exactly the one he described, to refute Filmer's divine right of King's doctrine,[52] and "to establish the true, original and extent of civil government." The work was an integral part of his patron's, the Earl of Shaftesbury's, plot first to exclude the Catholic James II from the throne and finally to establish the Duke of Monmouth as the next King of England. Shaftesbury's plots were clearly treasonous and Locke had ample reason to exercise caution concerning the publication of his essays. Although originally written around 1683,[53] he waited until 1689–1690 to publish the esseys after James was deposed and Prince William of Orange safely ensconced on the throne. By then, it was safer for writers to propose that governments rested on contracts, but to add an extra margin of safety, Locke wrote an introduction presenting the *Treatises* "to make good the throne of King William" to be certain William couldn't perceive the *Treatises* as a threat to his sovereignty. Locke nevertheless continued vehemently to deny his authorship of the *Treatises* until he was on his death bed and had nothing further to lose by disclosure. His caution is adequately explained by the radical nature of his arguments for government by contract, the limited powers of even elected officials and the right of oppressed populations to change rulers. Given the historical background of the *Treatises*, it is unlikely that Locke would have gone to all that trouble of concealment solely because his views may have had some affinity to those of Hobbes.[54]

Cox's Hobbesian Locke: The Substantive Evidence

Cox's substantive evidence for the Hobbesian nature of Locke's thought depends upon a careful attempt to sort out the inconsistencies in the *Two Treatises* in order to break Locke's code. His reading is ingenious and partially, if not wholly convincing, resting as it does on Cox's interpretation of Locke's state of nature and the conditions of men in that natural state. Cox claims that far from describing an orderly and peaceful state of nature, Locke really intends to describe a natural state where conditions are so stark and dismal that individuals willingly escape to government.

Cox, as does Strauss implicitly, raises an interesting question. If the state of nature is so congenial as many readers of Locke believe, why do men give up their freedom willingly to government? Locke clearly states that there are inconveniences in the state of nature where men are all judges in their own disputes, and that "men are no great lovers of equity and justice."[55] He also states that men have a natural sociability that drives them into society.[56] Virtually no Locke scholar believes that Locke thought individuals could persist in the state of nature for very long. But why not? Cox argues, as we have seen, that Locke held a very Hobbesian view of the state of nature characterized by ongoing battles and extreme poverty.[57] As evidence of the poverty, Cox points to Locke's many statements about the great value of labor and the relative worthlessness of land; and he cites Locke's observations about the failure of men to observe the law of nature as evidence of their inherent brutality outside of civil society.[58] He insists that, given Locke's description of men in their natural condition, although they may in principle have a right to life, liberty, and property, they can meet the objective conditions necessary to enjoy these rights only in government.

Problems with Cox's View of Locke

Cox carries his reading of Locke a bit too far to be completely persuasive. In Locke's state of nature

there is certainly relative poverty and some strife, but the level of each is inversely correlated to the level of the other. In the earliest stages of existence before the introduction of money, there was no property accumulation, little land ownership, and, one can infer, a great deal of poverty (although this is not completely clear. Locke does talk as if men have as much as they "need" in this early time).[59] We have seen that the introduction of money increases wealth both for the "industrious and rational"[60] who accumulate large amounts of property, and for those who benefit only indirectly from the spillover benefits when others create property.[61] However, the cost to mankind of the use of money is the increasing dissension brought about by increasing resource scarcity and greater inequality of income. Although by using money, men tacitly consent to the unequal distribution of wealth and hence should have no cause for complaint, in fact "men *are* no great respectors of equity and justice" and the enjoyment of property becomes less and less secure. Contrary to Cox's argument, however, it isn't necessary that everyone act contrary to natural law: or to be in a constant state of war with everyone else in order for the state of nature to be intolerable. The level of disorder could conceivably become intolerable if only a small percentage of the population engages in criminal behavior.

An even more interesting problem concerns the possibility of disputes among otherwise law abiding men in the state of nature. If increasing populations and accumulations of wealth lead to a disappearance of the common property, as Locke supposes, there will no longer be "enough and as good" left for everyone, and there could easily be an increase in the number of property disputes in which the title to property is not immediately obvious to everyone. (Remember, it is *clear* that labor grants a title to property only where there is enough and as good left in common for others. Where this is no longer the case, perfectly honorable men could be unable to settle disputes about property ownership when each is judge in his own case. This reading would still result in rational humans desiring to leave an inconvenient state of nature, but it allows them to do so with more dignity. It also makes it seem more plausible that they could be rational enough to create property in the first place, and to enter into a contract as formal as necessary to begin civil society. Furthermore, this reading gives more credibility to the emphasis Locke places on the limitations of government. If the state of nature is really as mean and miserable as Cox believes, any government is better than no government, even for a short period of time, and Locke clearly did not believe that to be the case.

That Locke believed civil society to be preferable to the state of nature is unquestionable. However, it is equally unquestionable that he believed there were limits to the powers of government, which limits derived from men's condition in the natural state. When government tramples on the rights of individuals, especially when it confiscates the property it was organized to protect, men might very well reason that they would be better off with another government. Locke argued that men would never again revert to a state of nature once they contracted into civil society, but they would replace one government with another. In an age accustomed to claims of absolute monarchs, this contractual theory of government was a revolutionary statement. Men do have rights and they do have power to control the government to insure that the government operates in their interest rather than in its own interest. This is the radical political message of the *Second Treatise*, and a message that is not primarily Hobbesian.

MacPherson's Locke: Possessive Individualism and Property

The question of how much of Locke to take seriously in assessing his theory of property arises again in the work of C.B. MacPherson. In 1962, MacPherson published one of the most original and provocative studies of Locke's political philosophy. MacPherson's study of Locke was presented within the context of a treatise on *The Political Theory of Possessive Individualism* in which he argued that the distinctive feature of the individualism espoused by the classical liberal philosophers was its

possessive nature: its focus on the importance of private property to individualist political philosophy.[62] Hence, in MacPherson's work, the theory of property took center stage in his overall evaluation of Locke. MacPherson argued persuasively not only that Locke's political philosophy reflected the "spirit of capitalism" as had Strauss, but he claimed even more strongly that Locke consciously designed his theory of property to provide a rationale for the developing capitalist society of seventeenth century England. He saw Locke as one of the first apologists for capitalist appropriation and an advocate of the "dictatorship of the bourgeoisie."[63]

Because MacPherson's interpretation of Locke is radical and undeniably Marxist both in the structure of his argument and in his moral attitudes, it has aroused a good deal of adverse criticisms.[64] Nevertheless, the exposition is so tightly argued and the interpretation so coherent that it has significantly altered the course of Locke scholarship. No one can write about Locke after MacPherson without carefully considering his position. It is necessary for serious Locke scholars to contend with MacPherson, moreover, not because he is necessarily correct, but because he has managed to ask many significant questions that arise in Locke's theory of property and civil government.

Locke's Hidden Assumptions: "Possessive Individualism"

Despite the many inconsistencies which have been the bane of generations of Locke scholars, MacPherson claims that Locke's political theory becomes completely intelligible and consistent once Locke's hidden assumptions are made explicit. Locke's alleged hidden assumptions are all elaborations of what MacPherson calls "possessive individualism," the assumptions that people relate to each other primarily as owners, that individual freedom is a function of the possessions of individuals and that society is nothing but the sum of the "relations of exchange between proprietors." The culprit responsible for such a philistine society according to MacPherson is the very concept of self-ownership wherein the individual himself is seen as a property and as neither a moral whole nor a part of a larger social whole.[65]

The question of whether or not it is legitimate to interpret a scholar by relying on "hidden" or implicit assumptions is one that need not detain us here. It seems perfectly reasonable to assume that a writer may innocently fail to state all of his assumptions, as MacPherson says,[66] either because he believes they will be taken for granted by his readers or because he, himself, doesn't fully realize they are his assumptions. The pitfall of this kind of scholarship, however, is that one may inadvertently substitute one's own assumptions for those of the author and hence be severely mistaken about the author's true intent. This, I believe, is the case with MacPherson. His own judgments about the nature of the capitalist economy lead him to gross errors regarding Locke's view of the moral nature of society and man. The unfortunate result is that while his reading of Locke's theory of property is sound in many important particulars, his overall interpretation of Locke's theory of political society is mistaken.

Property and the Class Society

According to MacPherson, Locke's major achievement in his theory of property was "to base the property right on natural rights and natural law, and then to remove all the natural law limits from the property right."[67] He believes that Locke wanted to justify unlimited right to property in order to ground the primary feature of capitalist society, unequal ownership of property, in natural law. Further MacPherson sees Locke's justification of unequal ownership leading to the reprehensible conclusion that only property owners were full members of society, while the propertyless had fewer rights and an inherent incapacity to make the judgments and acquire the information necessary to function fully in

political society.[68] In other words, MacPherson's Locke envisions a society divided into two classes with the capitalists on top and the downtrodden workers scraping along the bottom under the yoke of political and economic oppression. MacPherson buttresses his case by pointing out the flaws in the Locke-as-constitutionalist approach: this approach emphasizes the limits Locke places on government in the interests of property, yet it overlooks the very great power Locke gave to the political community (his civil society) over individuals, e.g. the aspect of Locke that gave Kendall cause for complaint. To MacPherson, both features of Locke's work are consistent when it is realized that only property owners are full members of society and therefore have mutual interests which eliminate the need to specifically guarantee individual rights. All full members of society would thus agree on the content of individual rights, the foremost of which would be the right to property.[69]

MacPherson's careful reading of the origin of property in the *Second Treatise* is especially interesting, because he was the first to emphasize the great importance which the introduction of money makes to Locke's account of property in the state of nature. Hence, he divides his analysis into two parts: the early stage of nature before the introduction of money, and the post-money stage.

The Pre-Money Stage and Property Accumulation

In the first stage before the introduction of money, he notes the potential limitations to the ownership of property remarked on earlier,[70] the spoilage limitation ("as much as anyone can make use of to any advantage of life before it spoils; so much he may by his labor fix a property in"), the sufficiency limitation ("For labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others."), and he tentatively adds a third, the labor limitation ("Whatsoever he removes out of the state that nature hath provided, he hath mixed his labour with, and rained to it something that is his own, and thereby makes it his property").[71] He correctly points out that the spoilage limit was the most important (and confining) in Locke's system. If all men obeyed this limit in the early stage of the state of nature, sufficiency was assured.

MacPherson also correctly discerns that the introduction of money transforms the character of the limits to property ownership. He sees money as "transcending" the limits of property by enabling men to accumulate as much as the want without fear of spoilage.[72] Instead of viewing this as a benefit to men: however, MacPherson questions why anyone would want to accumulate more than he can make use of in the first place. Why do men want to store wealth when there is originally as much land as anyone could possibly want to work with? While anyone who considers the problems of poor harvests, the uncertain futures, and the pleasures of greater comfort, security, and convenience could readily supply an answer to this question, MacPherson claims Locke does not supply it. He specifically denies that Locke assumed men wanted more pleasure from the wealth they accumulate and instead argues that they want the wealth for its own sake. He claims that Locke was a mercantilist who believed the sole purpose of investment is to "beget further investment," and that the primary function of money is to serve as capital. The goal of accumulation, according to MacPherson, is wealth and power, and hence Locke "justified the specifically capitalist appropriation of land and money" as a natural right in the state of nature.[73]

Although there are grains of truth in MacPherson's description of Locke's mercantilism, his reading is far too simplistic to do justice to Locke. It is true that Locke did not offer an explanation for why men wish to accumulate property in the *Second Treatise* most likely because he took it for granted that his readers would be able to supply the reason from their own experience. MacPherson builds his case on

Locke's hidden assumptions, yet this most obvious one he overlooks. The desire for wealth is not unusual among men. It is certainly not generally conceived to be irrational. In Locke's economic writings, to which MacPherson selectively turns to support his argument, Locke clearly states that it is the plenty of the necessaries and conveniencies of life that constitute riches.[74] Wealth consists in the ability to enjoy an abundance and variety of goods. To claim that Locke believed in accumulation for its own sake is bad enough, but to further make him guilty of believing that money alone constituted wealth is to attribute to him an absurdity unfound in the history of economic thought. Locke did favor capital accumulation as a means of increasing wealth, and he did have a definite preference for an increasing money supply because he though it would be an aid to capital accumulation and increased wealth, but he never confused one with another in any meaningful sense.[75] MacPherson, however, accuses Locke not only of believing in a totally nonsensical view of accumulation, he also claims that Locke believed this to be the only true form of rationality.[76]

The Post-Money Stage and Property

MacPherson goes on to discuss the sufficiency limit and again points out that it is overcome by the introduction of money into the state of nature. The consent to use money implies men's consent to the consequences of a money economy: an unequal distribution of wealth and an end to economic sufficiency, or in our terminology, an end to resource abundance. In fact, we have already seen that population growth is as much responsible for the end of sufficiency in land as money, but certainly the introduction of money is a contributing factor. MacPherson correctly states that Locke does not find this situation troubling however, because of his belief that the other benefits of money economy more than compensate. Because of the increased economic activity made possible by the use of money, MacPherson agrees it will always be possible to find a way to make a living through commercial exchange even if all common land is appropriated, and hence Locke substitutes "sufficiency in making a living" for "sufficiency in land" as a requirement for legitimate property.[77] In fact, we can take this one step farther. Once money becomes a proxy for accumulated real wealth, as Locke understood, the total value of the stock of wealth that can be owned by members of a community is no longer limited by the amount of land to which it has access and hence everyone can be better off.

MacPherson complains, however, that even though Locke allows for the entire value of the wealth of the community to increase as a result of private ownership, there is no guarantee that this wealth will be equitably distributed. He shows that Locke makes the assumption that the standard of living of everyone will increase regardless of who owns the property ("a king of a large and fruitful territory there [in America] feeds, lodges and is clad worse than a day laborer in England"),[78] yet MacPherson still believes that Locke assumed landowners would gain at the expense of the landless masses who will be forced to alienate their labor in return for a subsistence income.

Evidence of the inferior status of the landless MacPherson finds in Locke's discussion of wage labor. MacPherson correctly points out that Locke took the existence of wage labor for granted even in the state of nature and hence never meant to describe strict labor limitation to property ownership. In the very beginning of the property chapter of the *Second Treatise* (Chapter V) when Locke is establishing the connection between labor and property rights he says, "Thus the grass my horse has bit; the turfs my servant has cut; and the ore I have digged in any place where I have a right to them in common with others, become my property."[79] While it might seem strange in a passage aimed at showing how labor creates the title to property to argue that the product of a servant's labor should belong to the employer, Locke seems to have treated it as entirely natural and understandable. If each man has a property in his own person, he has the right to sell the use of that property if he so wishes. In fact,

Locke specifically describes the nature of the wage relationship as contractual:

> for a Free-man makes himself a servant to another, by selling him for a certain time, the service he undertakes to do, in exchange for wages he is to receive: and though this commonly puts him into the family of his Master, and under the ordinary discipline thereof; yet it gives the master but a temporary power over him, and no greater, than what is contained in the contract between 'em.[80]

Obviously, a servant (or wage-earner) chooses to give up his right to the property he creates in return for a guaranteed wage. His labor subsequently is at his employer's direction and is a result of his employer's initiative, and the property which emerges from their productive efforts belong to the employer. Locke does not give a specific reason why a freeman would want to sell his labor to someone else when he could work for himself and acquire his own property. Presumably he believed a man would sell his labor only if it were to his advantage. Locke believed that not all men are equally capable, so he might have believed also that a less capable man would prefer working for another rather than taking the risk of having to live on what he could make for himself. MacPherson, as one might predict, sees the existence of wage labor in a much less benign light. He sees landless laborers forced to sell their labor to landed property owners, and concludes that "the continual alienation of labour for a bare subsistence wage, which he [Locke] asserts to be the necessary condition of wage-labourers throughout their lives, is in effect an alienation of life and liberty."[81]

Problems with MacPherson Class Rights Reading of Locke on Property

All the rhetoric in MacPherson's examination of Locke's theory of property aside, he shows a fine understanding of the mechanics of Locke's system. Although MacPherson is mistaken in his reading of Locke's view of the unlimited accumulation of property for its own sake, and the degree and source of inequity of property ownership in the state of nature, his basic analysis of the development of the property argument is correct. However, when MacPherson tries to show the implications of differential property ownership within civil society, he seriously distorts Locke's intentions. He tries to argue that beyond justifying unlimited accumulation of property, wage labor, and the implicit capitalist economy in the state of nature, Locke also "justifies, as natural, a class differential in rights and in rationality, and by doing so provides a positive moral basis for capitalist society, implying thereby that capitalism requires differential rights."[82] It is in this part of his exposition that his negative assessment of capitalism most interferes with his understanding of Locke's intentions.

MacPherson claims that Locke assumed first "that while the labouring class is a necessary part of the nation its members are not in fact full members of the body politic and have no claim to be so; and secondly, that the members of the labouring class do not and cannot live a fully rational life."[83] He includes both laboring poor and idle poor in his "labouring class." His argument is essentially that the poor (which includes "all who were dependent on employment or charity or the workhouse because they had no property of their own by which or on which to work")[84] because of the very poverty of their condition cannot lead a fully rational life in Locke's eyes. He substantiates his claim by pointing to the several passages in Locke's economic writing where Locke describes laborers as living from hand to mouth or at subsistence. Like Adam Smith later on, Locke also alludes to the mind dulling effects of most routine labor. MacPherson further argues that when rationality implies property accumulation. those without property cannot be fully rational.[85]

Locke's View of the Laboring Class

There are several grave errors in MacPherson's interpretation. First of all, Locke did not equate the laboring poor with the idle poor in his assessment of their moral status. He spared little sympathy for the idle poor who he believed were responsible for their own poverty. In fact, he recommended severe treatment of beggars by twentieth century standard, advocating forcing them into workhouses to teach them to earn their own living and to keep them from the public charge.[86] For the working poor, however, Locke had great respect, and he believed it was the government's repsonsibility to create a climate wherein workers had every opportunity to improve their income. The context of his statement about workers living from hand to mouth suggests that they were unable to save anything from their income, not that they were in dire economic straights.[87] MacPherson, however, quotes a particularly damning passage from Locke's economic writings, which seems to support his contention that Locke wanted to keep the workers down:

> the labourer's share [of national income], being seldom more than a bare subsistence, never allows that body of men, time, or opportunity to raise their thoughts above that, or struggle with the richer for theirs, (as one common interest) unless when some common and great distress, uniting them in one universal ferment, makes them forget respect, and emboldens them to carve to their wants with armed force: and then sometimes they break in upon the rich, and sweep all like a deluge. But this rarely happens but in the male-administration of neglected, or mismanaged government.[88]

The import of Locke's statement here, however, isn't to argue that governments should see to it that workers remain poor; it is to argue that only mismanaged governments disrupt the economy to the extent that workers are so badly off that they take to the streets in armed insurrection.

Locke Opposed to Rigid Class Standards

It is true that Locke believed workers would generally live at subsistence, that they would be poorer than merchants, farmers and landowners. It may even be true that he thought the laboring poor to be on the whole less intelligent and less industrious than those who are well off, although there is no direct evidence for this. It is not true, however, that Locke believed they were inherently less rational and had fewer political rights than property owners. For one thing, Locke realized that in a money using (MacPherson's capitalist) society, anyone could be a property owner. Everyone *was* a property owner by virtue of his self-ownership and this property in self could be extended to property in things and in money. Locke's real achievement was to extend the definition of property to include all forms of wealth, and hence to extend the possibility of property ownership beyond that of land. The capitalist economy that MacPherson is so bent on denigrating, enables men not only to make a living by "alienating" their labor, but also enables them to accumulate wealth if they are "industrious and rational" enough. Fortunes can be made and lost, and wealth transferred from the less able and lucky to the more able and lucky regardless of "class" background.

The assumption of rigid class boundaries is a major deficiency in MacPherson's reading of Locke. It is true that Locke never specifically described the upward mobile process, yet his economics is full of examples of changing fortunes. Merchants especially become wealthy because they are adventurous and able, and there is no presumption that they all come from some predetermined merchant class. Simple day laborers may be poorer than other groups in society, but they are better off than they would be without a "capitalist" economy, and they have the possibility through diligence, to pull away from the pack and make their way in the world, an alternative they would not have under a more feudalistic social structure.

MacPherson, however, denies that this could ever happen. He argues that Locke was inconsistent in his view of human rationality. On the one hand Locke assumed that men are equally rational and capable of looking after themselves. Here, he claims, Locke conceived of man in the image of the "rational bourgeois." However, MacPherson also argues, that as an elitist, "The seventeenth-century bourgeois observer could scarcely fail to see a deep-rooted difference between the rationality of the poor and that of the men of some property. The difference was in fact a difference in their ability or willingness to order their own lives according to the bourgeois moral code. But to the bourgeois observer this appeared to be a difference in men's ability to order their lives by moral rules as such."[89] Hence Locke was forced to conclude that even in the state of nature, some men were moral and rational and created property, and others were immoral and irrational and made the enjoyment of property "unsafe and insecure." Hence, according to MacPherson, differences in property, not only reflected differences in ability, but also differences in morality and in rationality. Once the ownership of property divided men into two classes, the differential rationality became inherent in the class. Thus within civil society, the less rational were to be tolerated, and well-treated, but were not to have full rights within a civil government aimed at protecting property.[90]

Locke's Expansive and Classless View of Property

This analysis fails as a reading of Locke primarily because it takes a very narrow view of the meaning of property as every other Locke scholar has commented. To Locke, property was not simply land. Although Locke specifically reiterates in several places within the *Second Treatise* that the cause for entry into civil society was the protection of property, by which he meant life, liberty, and estate, MacPherson consistently interprets him to mean solely estate, and landed estate at that. But even if Locke meant only estate by the term property, to him estate included the property one had in one's own person. This was in jeopardy for everyone in the state of nature, rich or poor. Furthermore, property ownership was not conceived of as limited to a few wealthy individuals on great tracts of land, as MacPherson seems to envision. He seems to suffer from some feudalistic preoccupation with great manors. In seventeenth century England, property, even landed property ownership was fairly widespread,[91] and when one considers the forms of property not tied to land (e.g. the commercial property belonging to the important merchant class) clearly Locke was not describing the principles of government which protect the few at the expense of the many. Rather Locke was concerned with the protection of the many from the excesses of the few who happened to wield political power. In his zeal to portray Locke as the wicked defender of an even more wicked capitalism. MacPherson misses the real thrust of Locke's argument which is to protect people, all whom are property owners in one sense or the other, from the wicked use of political power.

Seliger's Locke and the Welfare State

The approach of Strauss, Cox, and MacPherson in interpreting Locke has been attacked from many quarters. Peter Laslett calls MacPherson's reading "thoroughly unrealistic and occasionally unhistoric."[92] Alan Ryan provides a devastating critique of MacPherson by stressing the shared interests of the laborers and capitalists in political society in Locke's thought. He points convincingly to the absolute, arbitrary power of monarchs as Locke's real target and observes that all men have property that is subject to government encroachment. John Dunn argues that MacPherson's reading misses the traditional Christian elements in Locke's thought, specifically the importance of charity and duty, and presents as evidence Locke's notes on the just price to support his contention that Locke was concerned with economic justice in the Scholastic tradition. However, by far the most complete and convincing refutation of the whole Strauss-Cox-MacPherson reading of Locke as Hobbesian and

Marx-style capitalist is presented by Martin Seliger in the context of his investigation of *The Liberal Politics of John Locke* (1969).

Seliger's detailed reading of Locke is probably the most comprehensive treatment of Locke's political theory in the literature today. His volume is both an exegesis of Locke's writings and an attempt to investigate the nature of modern liberal political thought. Here, we will be most concerned with his reading of Locke's theory of property which he, too sees to be the linchpin of Locke's political thought.

Political Equality vs. Inequality of Property: the Need for Political Regulation of Property

Seliger begins by observing that most of the "confusions" found in Locke's theory of property stem from misinterpreting Locke's attitude toward equality. While it is clear that Locke posited *political* equality, in the state of nature, he never assumed there would be equality of possessions.[93] Hence, he had no need to "transcend" the law of nature to justify unequal wealth as MacPherson would have it. Locke presumed that differing natural capacities would lead to different amounts of property, and the use of money would simply enable men to *enlarge* their possessions, not to create inequality per se. Seliger is unique among Locke scholars in that he sees no problem with Locke's assumption that men would want to enlarge their possessions. Refreshingly, he understands the desire to accumulate property evidences good sense.[94] He also challenges MacPherson on the supposed inferiority of wage-labor in Locke. He, too, points out the contractual nature of the wage relationship and makes the important observation that in order for a person to hire labor, the employer must be able to exchange the fruits of his own labor acquired at some time past.[95] He further stresses, as we have noted, the Lockean assumption that there will be social and economic mobility.[96] Seliger's critique of MacPherson is devastating, yet Seliger's own interpretation of Locke's political philosophy is open to some criticism.

Seliger affirms that both the economic and political spheres depend upon consent and agreements among adults. However, he further argues that of the two spheres of agreement, the political sets limits for the economic and so is above the economic in importance. While Locke seems to emphasize the right to property above all other rights, his emphasis was symbolic. Just as his use of the broad definition of property is symbolic of the rights to life, liberty, and estate. Rather than having any special status, then, the enjoyment of property is subjected to political decisions just as any right is regulated by the political process.[97]

Seliger supports his contention by showing that Locke always describes freedom as bounded by law, either natural law in the state of nature, or conventional law within civil society. Law is necessary to "maximize" freedom, that is, to protect individuals from the arbitrariness of their fellow man. Law, according to Seliger's Locke, is a formalization of the public will, which itself is a resolution of the conflict among private wills. Within the legal code, one major tenet is that "people should have property" and should not have it subjected to the will of the government. To Seliger, Locke's major concern was to protect property from arbitrary political ruling, not simply to protect property per se.[98] His reading exactly captures the essence of Locke's understanding of the relationship between freedom and law, and it brings Locke once again into the tradition of placing constitutional limits on the ability of governments to control the property of its citizens. Seliger goes on, however, to claim further that Locke describes a *moral* supremacy of the political sphere, and it is here that his interpretation is open to serious challenge.

Seliger's Argument for Regulating Immoderate Holdings of Property

Seliger supports his view by once again going back to property in the state of nature. Here, he claims, Locke believes that the economic contract, (the agreement to use money) allows men to satisfy irrational desires and distorts intrinsic value of things while the political contract serves to overcome and regulate the anti-social results of these basically irrational pursuits.[99] He further contends that equality is a virtue and since there is a natural political equality postulated in Locke's writings but not a natural economic equality, he must have believed the economic sphere to be inferior to the political.

At first glance, Seliger's statements seem to make sense. Locke does use the language of irrational desires and distortion of intrinsic values. He describes an early stage of human existence "before the desire of having more than men needed, had altered the intrinsic value of things, which depends only on their usefulness to the life of man,"[100] and later he argues that "The greatest part of things really useful to the life of man . . . are generally things of short duration. . . . Gold, silver and diamonds are things that fancy or agreement hath put the value on, more than real use, and the necessary support of life."[101] In interpreting these passages, however, we can use a small dose of Strauss-Coxian reasoning. The language of intrinsic value is not an integral part of his argument and perhaps can be read as a sop to tradition. Even if we accept the premise that Locke really believed in some philosophical hierarchy of values, however, this does not necessarily imply that he disapproved of the changes in values brought about by money, or that the changes were irrational. In fact, all the evidence presented so far in this essay supports exactly the opposite view. Certainly, the concept of an intrinsic value of things that is morally superior to market values plays no role in his economic thought.[102] In Locke's economic writings, market price is specifically portrayed as reflecting the value of goods, and he sneers a bit at those who would try to connect prices with some preconceived view of intrinsic value.

Seliger's Argument for the Superiority of the Political over the Economic

Seliger's second argument for the moral superiority of the political over the economic realm is even less convincing. He claims that equality is a virtue and since Locke posits a natural political equality and not a natural economic equality, Locke must have been showing the moral superiority of political life over economic.[103] This is a somewhat surprising argument because there is no presumption in the *Two Treatises* that equality is a deciding factor in evaluating the moral status of a social order. Even if that were the case, it is not self-evident that the actual political order is more conducive to equality than the economic order. The whole issue is muddied by the fact that Seliger gives no discussion of the nature of equality (but then, neither does Locke). There is evidence, however, that if the equality Seliger has in mind is some notion of equal treatment, Locke did see a rough and ready sort of equality in economic interactions. In his short piece on the just price (mentioned earlier in connection with Dunn's criticism of MacPherson) Locke states that the market price is the just price, and that the economic activities of entrepreneurs in the marketplace will lead to a pretty "fair and equal account." Locke, with a minimum of stretching of context can be interpreted to have presumed some kind of equality of opportunity existing in the marketplace.[104]

Seliger's Argument that Locke Favored State Regulation of Economic Activity

Seliger goes on to argue, however, that the supposed moral superiority of the political order over the economic order is further evidenced by Locke's attitude toward economic regulation. This is a particularly important problem since Locke explicitly stated that labor gives title to property in the

state of nature, but "in governments the laws regulate the right of property."[105] Obviously, Locke means by this that ownership rights are subject to the protection of the laws of civil society, but Seliger also takes Locke to mean by the regulation of property, regulation of economic activity per se. Since Locke did not mention any instances of economic regulation in the *Two Treatises*, Seliger turns to the economic writings for specific instances of Locke's attitude toward state regulation of economic activity, but reads far more into Locke's statements about regulation than can be supported by the texts.

Seliger asserts that Locke did not in his economic writings oppose all forms of economic regulation, only ill-advised ones.[106] While this may be true in principle, in practice, it is difficult to find any regulation he did not describe as ill-advised. His opposition to interest rate regulation is well-known as is his conviction of the futility of price regulation in general.[107] Yet Seliger claims that Locke favored "not only legislation that removes encumbrances to all private initiative but . . . also [favored] limiting some for the benefit of others."[108] His only example of a direct control favored by Locke is the statement that it may be necessary to set legal rates of interest when "a kind of monopoly, by consent, has put this general commodity [money] into a few hands."[109] Here, Locke was conjecturing that previous legal interest rates had been set below market and had fostered a monopoly of loanable funds among London bankers which he then thought might justify setting a legal rate of interest below the monopoly rate. This is clearly not a laissez-faire policy prescription, yet neither is it an argument for "credit regulation" as Seliger suggests, nor is it typical of an attitude that favors limiting private initiative to "discourage the concentration of capital."[110] The message of this particular example seems to be that previous attempts to "limit private initiative" led to a perverse result and that England would have been better off had interest rates never been set below market rates in the first place. It certainly is stretching the passage beyond the breaking point to argue that it shows Locke's concern for preventing too great a concentration of capital for the sake of the public interest.

Locke Subordinates Government to Human Rights

Seliger's attempt to show the moral supremacy of the political over the economic sphere misses the point of Locke's writing. Locke's *Treatises*, like his economics contain both normative and descriptive passages. Much of Chapter V of the *Second Treatise*, the property chapter, is descriptive. It describes how autonomous individuals with the desire for ease, comfort, and enjoyment operate within the constraints set by nature to overcome the limitations of the economic environment. In Locke's thought, government is the logical arbiter of conflict exacerbated by economic growth. Government is not superior to the economic institutions evolved by reasonable men, government is a means to accomplish a desired end.

In his attempt to counter MacPherson's characterization of Locke as a partisan of an evil, unlimited, oppressive capitalism, Seliger has taken the tack of showing how Locke really believed in a limited, restrained form of welfare statism. Seliger's Locke endorses government which controls the alleged excesses of capitalism and metes out a measure of charity to those in distress.[111] He sees the importance of the original contract to involve the limitations on the arbitrary exercise of government power, but he does not stress, as Locke did, the limitations on the moral authority of government over at least one large area of social life: property creation and enjoyment. Seliger's Locke would be quite comfortable with modern western-style democratic governments where government undertook all manner of economic regulation and property transfers so long as it could be shown to represent the "manifest advantage of the public".[112] Seliger takes for granted that the advantage of the public will necessitate such measures.

Perhaps this is one more instance of a modern commentator anachronistically reading contemporary ideas back into the writings of an early political thinker, or perhaps Seliger is correct that the nature of contemporary liberalism was shaped by the implications of Locke's theory of property. Whichever alternative is the case, it is clear that Locke himself would have been horrified by the excesses of the modern welfare state on grounds both of efficiency and equity.

Locke the economist would have recognized the absurdity of much of the bureaucratic maze that controls current economic life, and would have railed against the foolish and inefficient forms of economic regulation to which the individuals within the modern welfare state are subject. Leo Strauss was essentially correct in his claim that Locke believed effective government would have to take account of the passions (or interests) of individual citizens in framing legislation. Locke's own economic pamphlets drive home the point again and again that regulation which fails to take incentives into account is worse than useless. Current legislation that erects disincentives to economic growth would probably have set him to writing tract after tract with titles like "Some Considerations of the Disastrous Consequences of Setting Up a Department of Energy and Lowering the Supply of Petroleum Products." Locke made extensive use of efficiency arguments in his economic and political writings because he valued wealth and economic growth as important human goals.

Locke would also very likely have been horrified by the fiscal structure of modern governments and here, his objection would be primarily on the grounds of equity. While he believed that governments had the right and duty to regulate property for the good of the whole of society, his basic premise was that "people should have property."[113] Citizens owned their property apart from the laws of the state; they voluntarily agreed to tax themselves through their elected representatives; and however one chooses to evaluate the true "voluntary" nature of such taxation, the principle Locke was establishing was that property owed its origin to individual right and initiative and not to the sufferance of the King or political concession. The King had no right to arbitrarily confiscate or reallocate property among citizens unless there was an overriding public interest. It is no doubt true that the "overriding public interest" without clear agreement on what constitutes such an interest provides the loophole for the modern welfare state. Locke himself presumed such an interest would be obvious, and limited to alleviating starvation and defense against the princes of other countries with whom Britain existed in a state of nature, or at worst, a state of war. C. B. MacPherson was essentially correct in arguing that Locke believed most people would agree on the proper limitations on government control over property, but not because he excluded all the poor and laboring classes from his definitions of "the people." Rather, Locke believed that most people would be property owners and would perceive that their wealth, lives and freedom would depend on limiting the prerogative of the King.

Much has been made of a passage in the *Second Treatise* in which Locke refers to "amor sceleratus habendi, evil concupiscence" as a cause of corruption in societies.[114] It is generally taken to refer to the lustful greed of selfish men and used to argue Locke's aversion to acquisitive behavior. Seliger considers this one more evidence of the irrational nature of economic wants. However, when the reference is taken in context, it clearly refers to the greed not of productive property owners, but to the greed of princes who lust after the wealth of their subjects and who need to be restrained by the wary public.

Locke could not imagine men living long in a state of nature because he couldn't imagine those ends being satisfied in a civilized manner without a government to referee disputes and to provide a legal setting. However, it is incumbent upon government to abstain from subverting the economic ends of its citizens by overstepping its mandate. In this important sense, government is subservient not to the economy per se, but to the wills of the people who above all desire to protect their lives, liberties and estate. This is the overriding message of the *Two Treatises of Government* and the relationship

between government and the citizen's property rights.

Endnotes

Full citations for works listed in the Endnotes may be found in the following Bibliography.

1. Peter Laslett, ed. *Two Treatises of Government* (Cambridge: Cambridge University Press, 1960). All references to Locke's *Second Treatise* are to Laslett's edition.

2. Laslett argues convincingly that Locke wrote the *Two Treatises* to provide intellectual support for Shaftesbury's revolutionary plotting during 1679–1681. Richard Ashcraft in a recent paper puts the date a bit later (1681–1683) which serves to intensify its revolutionary intent.

3. Laslett's Introduction to the *Two Treatises*, p. 3.

4. See Richard Schlatter, *Private Property: The History of an Idea* (London, 1951); Pascal Larkin, *Property in the 18th Century with Special Reference to England and John Locke* (Cork: Cork University Press, 1930); Sterling Lamprecht, *Moral and Political Philosophy of John Locke* (New York: Columbia University Press, 1918); and J. W. Gough, *Locke's Political Philosophy* (Oxford: Clarendon Press, 1950).

5. The state of nature construct was used by Thomas Hobbes, Hugo Grotius, and Samuel Pufendorf.

6. *Second Treatise*, p. 288.

7. *Second Treatise*, p. 289.

8. Grotius and Pufendorf, both of whom were familiar to Locke, argued that men received the right to property from the consent of the original communal owners in the state of nature. Locke on the other hand denies that this is true ownership simply by virtue of God's original gift. The major thrust of his argument however was not directed primarily against Grotius and Pufendorf, but against Robert Filmer who had argued in the *Patriarcha* that God gave the world absolutely to Adam from whom contemporary monarchs were directly descended and who therefore had the right to parcel out land as they saw fit by right of donation from Adam. See Locke's *Second Treatise*, p. 304.

9. This was especially apparent in Grotius for whom every individual was surrounding by the *Suum*, that which belongs to a person, or was "proper" to it. Included in the *Suum* were one's "life, limb and liberty . . . reputation and honor . . . [and] one's own actions." See Karl Olivecrona, "Appropriation in the State of Nature," p. 213.

10. *Second Treatise*, pp. 305–306.

11. *Second Treatise*, pp. 306–307.

12. Israel Kirzner has noted the entrepreneurial nature of the labor which creates property, as has Karen I. Vaughn. *John Locke. Economist and Social Scientist*. Chicago: University of Chicago Press, 1980.

13. *Second Treatise*, p. 308.

14. *Second Treatise*, p. 314.

15. *Second Treatise*, p. 314.

16. *Second Treatise*, p. 314.

17. *Second Treatise*, p. 315.

18. Many political theorists have assumed Locke was espousing a labor theory of value in an economic sense in the *Second Treatise* although there is no support for such a belief. See Karen I. Vaughn's article, (Winter, 1979).

19. *Second Treatise*, p. 306.

20. *Second Treatise*, p. 308.

21. *Second Treatise*, pp. 317–318.

22. *Second Treatise*, pp. 318–319.

23. This description of the development of a money commodity appeared in Hobbes' *Leviathan* (1651) and shows up again much later in Menger's *Principles of Economics* (The Free Press, Glencoe, Illinois, 1950), p. 279.

24. *Second Treatise*, p. 309.

25. *Second Treatise*, p. 377.

26. *Second Treatise*, p. 368.

27. *Second Treatise*, p. 368.

28. *Second Treatise*, pp. 371, 373, 430.

29. *Second Treatise*, pp. 430–431.

30. See Willmoore Kendall, *John Locke and the Doctrine of Majority Rule* (Urbana: University of Illinois Press, 1918), p. 62.

31. Kendall, *John Locke*, p. 69.

32. Kendall, *John Locke*, p. 69.

33. Kendall, *John Locke*, p. 71.

34. Kendall, *John Locke*, p. 71.

35. *Second Treatise*, p. 289.

36. Kendall, *John Locke*, p. 71.

37. Kendall, *John Locke*, p. 71.

38. *Second Treatise*, p. 314.

39. *Second Treatise*, p. 316.

40. *Second Treatise*, p. 314.

41. *Second Treatise*, p. 312.

42. *Second Treatise*, p. 320.

43. Consider, for example, Locke's *Second Treatise*, pp. 349–50. "For when any number of men have, by the consent of every individual, made a *community*, they have thereby made that *community* one Body, with a power to act as one body, which is only by the will and determination of the *majority*. For that which acts any community, being only the consent of the individuals of it, and it being necessary to that which is one body to move one way; it is necessary the body should move that way whither the greater force carries it, which is the *consent of the majority*." Locke's discussions of majority rule probably referred not only to the entire body politic, but also to the principle that in any legislative dispute, the majority of "Kings, Lords and Commons." The three ruling bodies should be decisive. See Lois G. Schwoerer's article, 1980.

44. See Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), p. 246.

45. Strauss, *Natural Right and History*, p. 248.

46. Strauss, *Natural Right and History*, p. 249.

47. Strauss, *Natural Right and History*, p. 249.

48. Strauss, *Natural Right and History*, p. 247.

49. Strauss, *Natural Right and History*, p. 247.

50. Strauss, *Natural Right and History*, p. 240.

51. Sidney was convicted of treason for writing against Filmer's *Patriarcha*. Sidney used many of the same arguments Locke had used in the *Second Treatise*. See Peter Laslett, pp. 32, 64.

52. This was Peter Laslett's major contribution in his introduction to the *Two Treatises*.

53. This is Richard Ashcraft's dating in a recent paper "Radicalism and Lockean Political Theory."

54. In fact, I agree with Richard Cox that Locke had absorbed and made use of Hobbesian ideas, but he cannot be viewed as simply an extension of Hobbes, nor does the history of Locke's concealment of his authorship support the contention that he did so solely to avoid being called a Hobbist.

55. *Second Treatise*, p. 368.

56. *Second Treatise*, pp. 336–337.

57. Richard Cox, *Locke on War and Peace*, pp. 104–105.

58. Cox, *Locke on War and Peace*, pp. 89–94.

59. *Second Treatise*, p. 319 "[Before the invention of money], what reason could anyone have there to enlarge his possessions beyond the use of his family and a plentiful supply to his consumption, either

in what their own Industry produced, or they could barter for like perishable, useful commodities, with others?"

60. *Second Treatise*, p. 309.

61. *Second Treatise*, p. 312.

62. See C. B. MacPherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Clarendon Press, 1962), p. 3.

63. See Alan Ryan's article, "Locks and the Dictatorship of the Bourgeoisie" (1965).

64. See, for example, Jacob Viner, "Possessive Individualism as Original Sin" (1963); Peter Laslett, "Market Society and Political Theory of John Locke" (1967); Alan Ryan, "Locke and the Dictatorship of the Bourgeoisie" (1965); Paul Marshall, "John Locke: Between God and Mammon" (1979); and Martin Seliger, *The Liberal Politics of John Locke* (1969).

65. MacPherson, *Political Theory*, p. 3.

66. MacPherson, *Political Theory*, p. 5.

67. MacPherson, *Political Theory*, p. 199.

68. MacPherson, *Political Theory*, p. 200.

69. MacPherson, *Political Theory*, p. 195.

70. MacPherson, *Political Theory*, p. 252.

71. MacPherson, *Political Theory*, p. 201.

72. MacPherson, *Political Theory*, p. 204.

73. MacPherson, *Political Theory*, p. 205–207.

74. On Locke's economic writings, see Vaughn's *John Locke*, Chapters II and III.

75. MacPherson makes the mystifying statement that Locke "identifies money and capital, and assimilates both to land," without any clarification about what this means either economically or politically.

76. MacPherson, *Political Theory*, p. 209–210.

77. MacPherson, *Political Theory*, p. 211.

78. MacPherson, *Political Theory*, p. 315.

79. *Second Treatise*, p. 307.

80. *Second Treatise*, p. 340.

81. MacPherson, *Political Theory*, p. 220.

82. MacPherson, *Political Theory*, p. 221. Although MacPherson never specifically explains why he believes capitalism requires differential rights, he probably has some vague idea that because incomes are unequal in capitalist societies this must be justified by differences in rights rather than in capacities.

83. MacPherson, *Political Theory*, p. 221–222.

84. MacPherson, *Political Theory*, p. 222.

85. MacPherson, *Political Theory*, p. 222.

86. See Fox-Bourne's biography for Locke's poor law reform.

87. Locke's *Some Considerations*, p. 34. For more on Locke's attitude toward the poor see the article by Vaughn (1979). Locke's *Some Considerations* appears in his *Several Papers Relating to Money, Interest and Trade, Etc*.

88. Locke, *Some Considerations*, p. 115.

89. MacPherson, *Political Theory*, pp. 245–246. MacPherson here seems to view all possible moral codes as equally valid: both the "bourgeoisie" code that preaches work hard, accumulate, and be well off, and one that says don't bother working very hard but depend on the efforts of others to sustain you. He also seems to be suggesting that there really were significant differences in rationality between rich and poor as well as differences in values.

90. MacPherson, *Political Theory*, pp. 446–447.

91. Laslett, *The World We Have Lost* (1965).

92. Laslett's, Introduction, p. 105.

93. Seliger, *The Liberal Politics of John Locke*, p. 144.

94. "Indeed, Locke's thoughts on this subject were those any sensible person would entertain." Seliger, *The Liberal Politics of John Locke*, p. 155.

95. Seliger, *The Liberal Politics of John Locke*, pp. 161–162.

96. Seliger, *The Liberal Politics of John Locke*, p. 164.

97. Seliger, *The Liberal Politics of John Locke*, pp. 165–167.

98. Seliger, *The Liberal Politics of John Locke*, pp. 167–170.

99. Seliger, *The Liberal Politics of John Locke*, pp. 171–172.

100. *Second Treatise*, p. 312.

101. *Second Treatise*, pp. 317–318.

102. On this, see Vaughn's *John Locke*.

103. Seliger, *The Liberal Politics of John Locke*, p. 172.

104. See John Dunn, *The Political Thought of John Locke*(Cambridge: Cambridge University Press, 1969), pp. 84–87; and Vaughn, *John Locke: Economist and Social Scientist*, pp. 123–131.

105. *Second Treatise*, p. 320.

106. Seliger, *The Liberal Politics of John Locke*, p. 173.

107. This is the major thrust of Locke's first economic essay, *Some Considerations*. For a more detailed discussion of regulation in Locke's thought see Vaughn, *John Locke: Economist and Social Scientist*, pp. 113ff.

108. Seliger, *The Liberal Politics of John Locke*, p. 173.

109. Locke, *Some Considerations*, p. 103.

110. Seliger, *The Liberal Politics of John Locke*, p. 174.

111. Seliger, *The Liberal Politics of John Locke*, p. 176.

112. Locke, *Some Considerations*, p. 13.

113. *Second Treatise*, p. 360.

114. After "(vain ambition, and amor sceleratus habendi, evil concupiscence, had corrupted mens' minds into a mistake of true power and honour) . . . Men found it necessary to examine more carefully the original and rights of government; and to find out ways to restrain the exorbitances, and prevent the abuses of that power which they having intrusted in another's hands only for their own good, they found was made use of to hurt them." *Second Treatise*, pp. 360–361. Laslett notes the correct interpretation of this passage.

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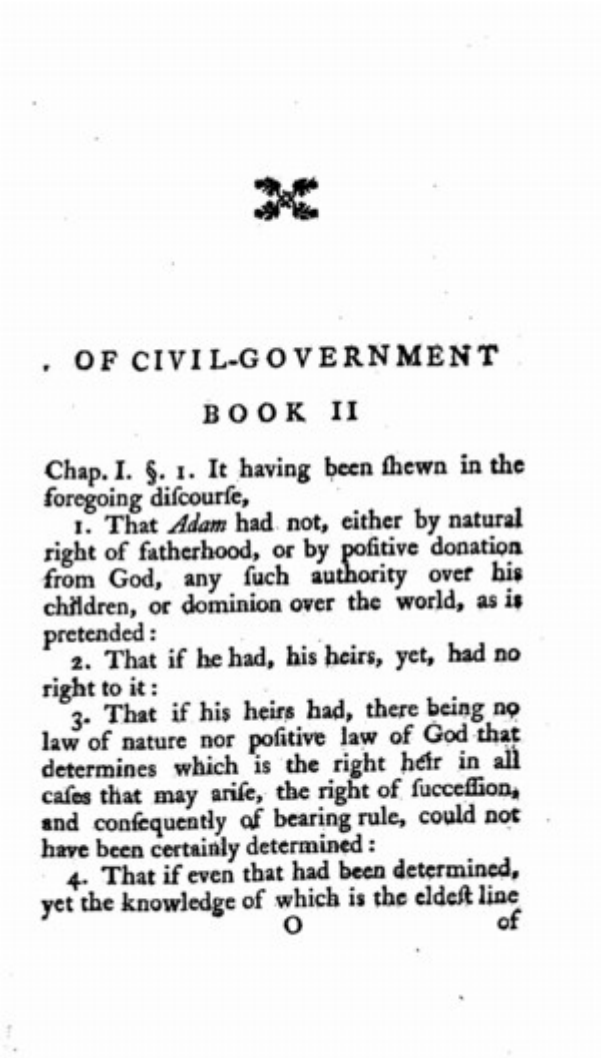

OF CIVIL-GOVERNMENT

BOOK II

Chap. I. §. 1. It having been ſhewn in the foregoing diſcourſe,

1. That *Adam* had not, either by natural right of fatherhood, or by poſitive donation from God, any ſuch authority over his children, or dominion over the world, as is pretended:

2. That if he had, his heirs, yet, had no right to it:

3. That if his heirs had, there being no law of nature nor poſitive law of God that determines which is the right heir in all caſes that may ariſe, the right of ſucceſſion, and conſequently of bearing rule, could not have been certainly determined:

4. That if even that had been determined, yet the knowledge of which is the eldeſt line

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Introduction

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This reading list is designed to introduce the reader to the many aspects of the political thought of the 17th century English philosopher <John Locke (1632-1704>). After a few introductory comments, this list proceeds by focusing on the most important chapters of Locke's *Second Treatise of Government*.

The Online Library of Liberty has a number of Locke's works online and this reading list will be linking to these works, especially the *<Two Treatises of Government>*, ed. Thomas Hollis (London: A. Millar et al., 1764).

John Locke is one of the names inscribed on the walls of the Goodrich Seminar Room at Wabash Collage. He was regarded by the founder of Liberty Fund as one of the key thinkers before the founding of the American Republic.

For additional information see:

- the <timeline of Locke's life and works>.
- for a brief biography of Locke's life, see the <Introduction> to the 1824 edition of his works.
- the <engraving of John Locke> made by the radical bookseller Thomas Hollis for his 1764 edition of *The Two Treatises of Government*.
- the bibliographical essay on <John Locke's Theory of Property> by Karen Vaughn.

For additional information about individuals mentioned in this reading list see the following:

- <John Locke (1632-1704>
- <Robert Filmer (1588-1653>)
- <Algernon Sidney (1622-1683)>
- <Thomas Hobbes (1588-1679)>
- Debate: <The Divine Right of Kings>

For works cited in this essay see:

- John Locke, <Two Treatises of Government (1689)>
- Robert Filmer, <Patriacha, or the Natural Power of Kings (1680)>
- Thomas Hobbes, <Leviathan (1651)>

The Text of the *Two Treatises of Government*

The First Treatise of Locke's *Two Treatises* — of which only one third of the original survives — was written against the pro-royalist doctrines of Sir Robert Filmer. Filmer's most notorious doctrine was that the absolute authority of Kings derives from the absolute paternal authority which Adam had over his descendants.

For additional reading see the <timeline and the debate about individual rights vs. the divine right of kings.>

Although Filmer wrote in the 1630s, 40s, and early 50s, many of his essays were republished in 1679 when once again there was in England major conflict between the friends and the enemies of unlimited monarchical power. Filmer's most systematic work, *Patriarcha*, was first published in 1680. Filmer's writings were sufficiently influential that Locke joined other liberal, anti-monarchical writers such as James Tyrrell and Algernon Sidney in composing critiques of Filmer's works.

Locke's *Second Treatise* is his own positive and systematic statement of a strongly individualistic political philosophy. While this portion of the *Two Treatises* also contains criticisms of Filmer, it includes as well powerful criticisms of the much more famous seventeenth century advocate of political authoritarianism, Thomas Hobbes. In the *Second Treatise*, Locke defends the crucial claims that:

- individuals possess natural rights to freedom;
- individuals can acquire property rights to the products of their labor;
- through the creation of money, mutually beneficial economic interaction among individuals greatly expands;
- but, with the complications of advanced commercial society, the inconveniences of the pre-political state of nature grow;
- hence, it becomes necessary for individuals to form political society and government so that their natural rights over themselves, their liberty, their labor, and their property will be better protected;

- political society and government derives its just authority from the consent of the governed;
- government forfeits its authority when it infringes upon the rights of its subjects or even when it fails to protect those rights;
- and, finally, in those circumstances of forfeiture, individuals and political society as a whole may resist unlawful government and replace it with a new and more suitable government.

Each of the next eleven entries comments on the themes and purposes of crucial chapters in the *Second Treatise* and provides passages from those chapters which nicely express those themes and purposes. The passages are marked by paragraph number.

Chapter I. (untitled)

This chapter is the bridge from the First Treatise to the Second Treatise. Locke reminds the reader of the main reasons for rejecting Filmer's defense of monarchical authority and points out the need to find a new basis for governmental authority. He rejects the idea — which he associated with Thomas Hobbes – that governmental authority can be founded on mere force and violence.

> §. 1. … it is impossible that the rulers now on earth should make any benefit, or derive any the least shadow of authority from that, which is held to be the fountain of all power, Adam's private dominion and paternal jurisdiction; so that he that will not give just occasion to think that all government in the world is the product only of force and violence, and that men live together by no other rules but that of beasts, where the strongest carries it, and so lay a foundation for perpetual disorder and mischief, tumult, sedition and rebellion, (things that the followers of that hypothesis so loudly cry out against) must of necessity find out another rise of government, another original of political power, and another way of designing and knowing the persons that have it, than what Sir Robert Filmer hath taught us.

Chapter II, Of the State of Nature

In this very dense and important chapter, Locke explains what he means when he says that, by nature, all men are equal and free.

Since we are all beings of the same fundamental character, we are equal in our rights. And, for Locke, this means that no individual is naturally subordinate to any other individual. No man is by nature master or ruler; no man is by nature servant or subject. Locke concludes that this means that, by our natures, we are each free to order our actions and dispose of our persons and possessions as we respectively see fit. Each man's freedom requires then that all other persons are obligated to allow that man to dispose of his person and possessions as he sees fit.

Locke provides a series of arguments for belief in a "law of nature" — at the core of which is this right to freedom. Several of these arguments are entangled in the passage below.

One argument in this passage is that an action in which one individual subordinates another to the first party's purposes is unjustified (and, hence, a wrong) if the second party does not exist for the first party's purposes. Since no man exists for the purposes of any other man, Locke concludes that all acts of subordination are unjustified (and wrong).

Locke also offers the strangely misdirected Workmanship of God argument. Since we are made by God, we are each the property of God. Hence, if any man destroys or enslaves another man, the first man trespasses upon God's property. Hence, the killing or enslavement is wrongful. The problem here

is that this argument does nothing to establish that men have the rights that Locke wants to say men have.

The third argument, which is in the last several lines of the passage below, seems to be that, since every person ought to pursue his own self-preservation and every one must somehow take account of this fact within his own conduct, each person should — in the course of pursuing his own self-preservation — not interfere with other persons pursuing their self-preservation. Each should abstain from invading others' rights and doing them harm.

In this chapter, Locke also argues that men in the state of nature, i.e., in their natural condition, have rights to enforce the law of nature. These rights of enforcement include the right of self-defense, the right to extract reparations from violators of the law of nature, and the right to punish those who have infringed upon others' rights.

> §. 6. … The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not one another's pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such subordination among us, that may authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for our's. Every one, as he is bound to preserve himself, and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind, and may not, unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another.

CHAP. III. Of the State of War

Since men are capable, at least to some degree, of recognizing and respecting one another's rights in the state of nature, that natural condition of mankind need not be a state of war of all upon all — as Hobbes thought it had to be.

In fact, Locke argues, just as we can have a state of peace within the state of nature, we can have a state of war when we are in a political state. We are in a political state (i.e., out of the state of nature) when there is some common power over us. But, if that common power treats its subjects unjustly — if it uses "force without right" — then that common power puts us into the state of war.

Thus, again contrary to Hobbes, fleeing from the state of nature does not at all guarantee escape from the state of war. Indeed, if we create a Hobbesian sovereign who may do to us anything he chooses, we are likely to be worse off than we would be in the state of nature.

Furthermore, and very characteristically, Locke insists that political rulers are always subject to the same fundamental norms as all other individuals. That is why when political rulers engage in force without right, they are simply engaged in larger scale criminality than normal, workaday criminals.

> §. 19. And here we have the plain difference between the state of nature and the state of war, which however some men have confounded, are as far distant, as a state of peace, good will, mutual assistance and preservation, and a state of enmity, malice, violence and

mutual destruction, are one from another. Men living together according to reason, without a common superior on earth, with authority to judge between them, is properly the state of nature. But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war: and it is the want of such an appeal gives a man the right of war even against an aggressor, tho' he be in society and a fellow subject.

§. 20. … for where-ever violence is used, and injury done, though by hands appointed to administer justice, it is still violence and injury, however coloured with the name, pretences, or forms of law

CHAP. V. Of PROPERTY

There are two chapters in the Second Treatise which stand out because of both the importance and the uniqueness of the arguments which they present. The first of these is chapter II which seeks to provide grounding arguments for a natural right to freedom (which, essentially, is a right of self-ownership).

The second is chapter V which seeks to provide grounding arguments for rights to external possessions ("estate").

Against Filmer, Locke has insisted that God has given the earth to all mankind; for this blocks Filmer's claim that God gave the earth to Adam. But Locke's insistence creates a problem for him. If the earth belongs to all mankind, must not everyone's permission be gotten before anything can be made into anyone's private property? Yet Locke accepts Filmer's argument that there never has been and never could be such a universal act of consent. So Locke must show how property in external possessions can arise without universal consent and in the face of the fact that in some sense God gave the earth to all mankind.

The doctrine which Locke develops in the face of these problems is ingenious and complex. Only a few of the highlights of that doctrine can be mentioned here. (And only a few key passages are cited below.)

Locke argues that we should not think that the initial common ownership of the earth requires individuals to get universal consent before using and appropriating. For, if we believed this, justice would require that people simply sit and starve — so as not to trespass on the common property of mankind at large. Rather, according to Locke, man's initial common ownership of the earth is much more like the common ownership of two children whose father has put a piece of meat before them. Each can take some of the meat without asking the permission of the other.

Suppose one of the children cuts off a piece of the meat and, say, cuts it into bit-sized pieces. What makes those pieces the rightful possession, i.e., the property of that child? Again, Locke's answer is not agreement (among the children). Rather the foundation of the child's property in the pieces of meat is the child's right over her own labor.

Everyone has a right over his (or her) own labor as part of everyone's right over his (or her) own person. In a famous metaphor, Locke says that the appropriator mixes his labor with a bit of nature and that labor is embedded or invested in the resulting object. Since the labor remains his, the object cannot be taken from the laborer without violating the laborer's rights. Hence, the person who has mixed and invested his labor has a right to the fruits of his labor… or to the pieces of meat she has cut.

Locke, however, says that there is some limits upon how much individuals may appropriate from

nature. The key limit is that individuals must leave "enough and as good" for others. Locke then develops a complex argument for why this proviso is generally not violated within a private property regime. Locke's crucial contention here is that this proviso is not even violated after the invention of money has lead to a complex commercial society in which there is a considerable degree of inequality in economic holdings. The crucial reason is that the development of commercial society, with its elaborate forms of private property and its far-reaching trade is beneficial to everyone.

> §. 25. Whether we consider natural reason, which tells us, that men, being once born, have a right to their preservation, and consequently to meat and drink, and such other things as nature affords for their subsistence: or revelation, which gives us an account of those grants God made of the world to Adam, and to Noah, and his sons, it is very clear, that God, as king David says, Psal. CXV. 16. has given the earth to the children of men; given it to mankind in common. But this being supposed, it seems to some a very great difficulty, how any one should ever come to have a property in any thing: …But I shall endeavour to shew, how men might come to have a property in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners.
>
> §. 27. Though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.
>
> §. 49. Thus in the beginning all the world was America, and more so than that is now; for no such thing as money was any where known. Find out something that hath the use and value of money amongst his neighbours, you shall see the same man will begin presently to enlarge his possessions.
>
> §. 50. … it is plain, that men have agreed to a disproportionate and unequal possession of the earth, they having, by a tacit and voluntary consent, found out a way how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus gold and silver, which may be hoarded up without injury to any one; these metals not spoiling or decaying in the hands of the possessor. This partage of things in an inequality of private possessions, men have made practicable out of the bounds of society, and without compact, only by putting a value on gold and silver, and tacitly agreeing in the use of money….

CHAP. VII. Of Political or Civil Society

In this chapter, Locke begins his account of the reasons for why men should and have exited the state of nature and formed political society. The key thesis is that difficulties are encountered in the state of nature because each individual has the right to exercise his private judgment about precisely what actions of others should be punished, precisely what the punishment should be for various infractions, and precisely who in particular deserves punishment. These difficulties will be overcome if individuals

"resign up" this right of private judgment with respect to the enforcement of the law of nature.

Through this process, individuals create an "umpire" who will interpret and enforce the basic rules of the social game. But the umpire does not create those basic rules; those basic rules remain the primary laws of nature which protect individuals' lives, liberties, and property.

It is especially important to realize that rational individuals in the state of nature would never set up anything like an absolute monarch to rule over them. For that would make each subject worse off than he was in the state of nature.

> §. 93. … as if when men quitting the state of nature entered into society, they agreed that all of them but one, should be under the restraint of laws, but that he should still retain all the liberty of the state of nature, increased with power, and made licentious by impunity. This is to think, that men are so foolish, that they take care to avoid what mischiefs may be done them by pole-cats, or foxes; but are content, nay, think it safety, to be devoured by lions.

CHAP. VIII. Of the Beginning of Political Societies

In this chapter, Locke continues his discussion of the transition from the state of nature to the state of political society. Actually, "political society" is a rather odd entity which is formed when any number of men mutually agree to surrender their rights to act as executors of the law of nature. Political society in turn establishes a particular governmental structure. So there is both a contract among those who form a given political society and a contract between that political society and those they entrust with governmental functions.

Locke emphasizes that within political authority and within any legislature which is set up by political society the majority rules — absent express agreement upon a different arrangement. It is important, however, to recognize that the scope of legitmate majority decision is severely limited.

The crucial point here — and in later chapters — is that, in forming political society, individuals have not surrendered their fundamental rights to life, liberty, and estate. They have resigned up their rights to operate as executors of the law of nature solely so that their respective rights to life, liberty, and estate will be made more secure. Hence, majority decisions which are not congruent with this purpose are not legitimized by the resigning up of those executive rights.

In the latter part of this chapter, Locke attempts to explain in more detail exactly how people have consented to political society or to government. Locke's account is far from persuasive. Hence, his conclusion that he has shown the legitimacy of at least a narrowly circumscribed government power is very much in doubt. Perhaps the weakest link in Locke's unpersuasive discussion is his (rather desperate) appeal to tacit consent.

> §. 119. The difficulty is, what ought to be looked upon as a tacit consent, and how far it binds, i. e. how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all. And to this I say, that every man, that hath any possessions, or enjoyment, of any part of the dominions of any government, doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it; whether this his possession be of land, to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and in effect, it reaches as far as the very being of any one within the territories of that government.

CHAP. IX. Of the Ends of Political Society and Government

In this chapter, Locke describes in more detail the deficiencies of the state of nature. Locke emphasizes that the authority of political society and of the legislature which it, in turn, creates only extends to promoting the "common good" which, according to Locke, consists in "secur[ing] every one's property, by providing against the three defects [see below] … that made the state of nature so unsafe and uneasy."

> §. 124. The great and chief end, therefore, of men's uniting into common-wealths, and putting themselves under government, is the preservation of their property. To which in the state of nature there are many things wanting.
>
> First, There wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them: for though the law of nature be plain and intelligible to all rational creatures; yet men being biassed by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.
>
> §. 125. Secondly, In the state of nature there wants a known and indifferent judge, with authority to determine all differences according to the established law: for every one in that state being both judge and executioner of the law of nature, men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat, in their own cases; as well as negligence, and unconcernedness, to make them too remiss in other men's.
>
> §. 126. Thirdly, In the state of nature there often wants power to back and support the sentence when right, and to give it due execution. They who by any injustice offended, will seldom fail, where they are able, by force to make good their injustice; such resistance many times makes the punishment dangerous, and frequently destructive, to those who attempt it.

CHAP. XI. Of the Extent of the Legislative Power

Having argued that political society and its legislative authority is justified on the basis of consent, Locke is still eager to insist on the highly limited purpose for which political society and government exist. Thus, he opens this chapter with the assertion that "the great end of men's entering into society [is] the enjoyment of their properties in peace and safety."

One reason that the state has no wider powers over its subjects than to power to protect their lives, liberties, and estates is that individuals cannot transfer to the government any more power than they have in the state of nature over themselves or over others; and in the state of nature, "no body has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another."

Political society and government are created to better delineate and protect people's fundamental natural rights. Thus, as Locke declares very forcefully in the passage below, those rights remain in exist and continue to serve as a standard for assessing the actions of all persons, including all legislators.

> §. 135. Though the legislative, whether placed in one or more, whether it be always in

being, or only by intervals, though it be the supreme power in every common-wealth; … It is not, nor can possibly be absolutely arbitrary over the lives and fortunes of the people: for it being but the joint power of every member of the society given up to that person, or assembly, which is legislator; it can be no more than those persons had in a state of nature before they entered into society, and gave up to the community:… The obligations of the law of nature cease not in society, but only in many cases are drawn closer, and have by human laws known penalties annexed to them, to inforce their observation. Thus the law of nature stands as an eternal rule to all men, legislators as well as others. The rules that they make for other men's actions, must, as well as their own and other men's actions, be conformable to the law of nature, i. e. to the will of God, of which that is a declaration, and the fundamental law of nature being the preservation of mankind, no human sanction can be good, or valid against it.

CHAP. XVI. Of CONQUEST

Locke has rejected two quite distinct arguments for authoritarian rule. The first was Filmer's patriarchal argument that monarchal power is to be understood on the model of the unlimited and undivided fatherly authority which originally resided in Adam. The second was Hobbes' argument that natural equal and free individuals in the state of nature would mutually surrender all of their rights in order to place themselves under the authority of a sovereign who retained all of his state of nature rights. In the chapter on conquest, Locke takes on another argument for authoritarian rule. This is the argument that legitimate authority is based on conquest.

For Locke, there are two significantly different cases; there is the case of unjust conquest and the case of just conquest. Locke argues that neither the unjust nor the just conquerer has the sort of authority which he has contended against.

In attacking the argument that legitimate authority can arise from unjust conquest, Locke is really attacking a second argument which Hobbes makes for his absolute sovereign. Hobbes argues that any conquerer has a right to kill those who he conquers. But the vanquished may get the conquerer to stay his hand by pledging their absolute obedience to the conquerer. Such a pledge, according to Hobbes, creates in the vanquished an obligation of absolute obedience. Locke argues against this by arguing that promises made under duress do not obligate the promise-maker. (see the first passage below)

Against the idea that just conquest gives the conquerer an absolute authority, Locke argues that just conquest only produces such authority over the particular aggressive individuals against whom the just conquerer has fought. According to Locke, "all the rest are innocent." (see the second passage below)

Finally, Locke again insists on his general principle that the same fundamental moral rules apply to political rulers as to all individuals. The only difference is that great rulers commit great crimes which, sadly, they are more likely to get away with than petty criminals are. (see the third passage below)

§. 186. …It remains only to be considered, whether promises extorted by force, without right, can be thought consent, and how far they bind. To which I shall say, they bind not at all; because whatsoever another gets from me by force, I still retain the right of, and he is obliged presently to restore. He that forces my horse from me, ought presently to restore him, and I have still a right to retake him. By the same reason, he that forced a promise from me, ought presently to restore it, i. e. quit me of the obligation of it; or I may resume it myself, i. e. chuse whether I will perform it: for the law of nature laying an obligation on me only by the rules the prescribes, cannot oblige me by the violation of her rules:

such is the extorting any thing from me by force. Nor does it at all alter the case to say, I gave my promise, no more than it excuses the force, and passes the right, when I put my hand in my pocket, and deliver my purse myself to a thief, who demands it with a pistol at my breast.

§. 179. …for the conquerors power over the lives of the conquered, being only because they have used force to do, or maintain an injustice, he can have that power only over those who have concurred in that force; all the rest are innocent; and he has no more title over the people of that country, who have done him no injury, and so have made no forfeiture of their lives, than he has over any other, who, without any injuries or provocations, have lived upon fair terms with him.

§. 176. …Should a robber break into my house, and with a dagger at my throat make me seal deeds to convey my estate to him, would this give him any title? Just such a title, by his sword, has an unjust conqueror, who forces me into submission. The injury and the crime is equal, whether committed by the wearer of a crown, or some petty villain. The title of the offender, and the number of his followers, make no difference in the offence, unless it be to aggravate it. The only difference is, great robbers punish little ones, to keep them in their obedience; but the great ones are rewarded with laurels and triumphs, because they are too big for the weak hands of justice in this world, and have the power in their own possession, which should punish offenders.

CHAP. XVIII. Of TYRANNY

Locke' final two chapters (XVIII and XIX) deal explicitly with the conditions under which forcible resistance to existing political rule is justified. Chapter XVIII, "Of Tyranny," deals primarily with resistance by particular individuals — in contrast to resistance by "political society."

Locke's basic position is that one has a right to engage in forcible resistance whenever one's rights are invaded and one has no effective appeal to the public system of law. If a private bandit or a public official has unjust taken one's property and one can effectively appeal to the public system of law for redress, one may not privately and forcibly seek redress. But if an official acts under the commission or order of the chief magistrate and, for that reason, one has no recourse to public law, one may forcibly resist. As one would expect of Locke, he emphasizes that the fact that the official's unlawful act was commissioned or ordered by the "prince" does not validate it at all.

Locke is concerned in this chapter to show that this doctrine of rightful private resistance will not unhinge desirable social order. Locke rejects the imputation that he favors individuals resisting whether they feel aggrieved. He insists that resistance is justified only when one is correct in one's judgment about official criminality. If one is wrong, one is unlikely to find support among one's fellow citizens and, hence, one is unlikely to cause much of a stir. In addition, if one is wrong, God will not be very happy when one comes before Him. Indeed, even if one is correct in one's judgment that governmental officials are violating one's rights and that one will have no effective appeal within the system of public law, one will probably be imprudentin attempting to resist.

Still, resistance will be both justified and prudent when governmental violations extend to more and more individuals or even when more and more individuals perceive that their lives, liberties, and estates are in danger.

§. 202. Where-ever law ends, tyranny begins, if the law be transgressed to another's harm; and whosoever in authority exceeds the power given him by the law, and makes use of the

force he has under his command, to compass that upon the subject, which the law allows not, ceases in that to be a magistrate; and, acting without authority, may be opposed, as any other man, who by force invades the right of another….

§. 203. May the commands then of a prince be opposed? may he be resisted as often as any one shall find himself aggrieved, and but imagine he has not right done him? This will unhinge and overturn all polities, and, instead of government and order, leave nothing but anarchy and confusion.

§. 204. To this I answer, that force is to be opposed to nothing, but to unjust and unlawful force; whoever makes any opposition in any other case, draws on himself a just condemnation both from God and man; and so no such danger or confusion will follow, as is often suggested…

§. 210. But if all the world shall observe pretences of one kind, and actions of another; arts used to elude the law… if the people shall find the ministers and subordinate magistrates chosen suitable to such ends, and favoured, or laid by, proportionably as they promote or oppose them: if they see several experiments made of arbitrary power, and that religion underhand favoured, (tho' publicly proclaimed against) which is readiest to introduce it; and the operators in it supported, as much as may be; and when that cannot be done, yet approved still, and liked the better: if a long train of actions shew the councils all tending that way; how can a man any more hinder himself from being persuaded in his own mind, which way things are going; or from casting about how to save himself….

CHAP. XIX. Of the Dissolution of Government

In this final chapter, Locke casts the right of resistance in terms of the rights of the political society which individuals formed when they mutually surrendered their rights to act as private enforcers of the laws of nature in order to overcome the inconveniences of the state of nature. It is political society which sets up the constitutional structure of government and which entrusts the individuals who occupy positions in that government with the task of protecting the rights of life, liberty, and estate of the members of political society.

Locke employs the common strategy of holding that justified resistance is not really rebellion — for the true rebels are those individuals who seek to undo the constitutional order which political society as created or who violate the trust that political society placed in them. Beyond attacking the established constitutional order, governmental officials — especially the king — can violate the trust put in them either by failing to protect the rights they are pledge to protect or by actually invading those rights. (Although Locke does not name names, many of the examples he gives of illicit tampering with the constitutional order — especially tampering with the independence and powers of Parliament — are actions actually conducted by Charles II or James II in the decade leading up the the Glorious Revolution of 1688.)

According to Locke, these acts by the true rebels cause a dissolution of government and, therefore, a complete nullification of any authority which the officials of the (former) government might be thought to have. Political society is back in a state of nature vis-a-vis these individuals. Indeed, it is in a state of war with these individuals; and since those individuals have initiated this state of war, political society may deal with them as any individual may deal with dangerous beasts.

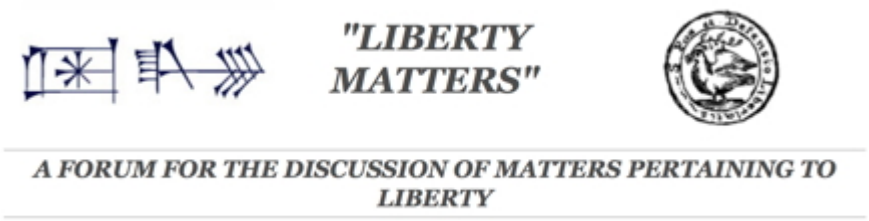
Locke is eager to emphasize that the dissolution of government is not to be confused with the

dissolution of political society. Political society remains in existence; its members do not return to a state of nature vis-a-vis one another. Locke wants to dissociate himself from the scary thought that his argument for resistance implies a return to a general state of nature — even if that return would be less scary than Hobbes thinks it would be.

Locke again forcibly rejects the idea that his doctrine is "destructive of the peace of the world." It is force without right which is the ultimate cause of whatever disorder ensues. And it is the wielders of lawless force who are to be blamed for the resulting disorder or bloodshed.

> §. 220. In these and the like cases, when the government is dissolved, the people are at liberty to provide for themselves, by erecting a new legislative, differing from the other, by the change of persons, or form, or both, as they shall find it most for their safety and good: for the society can never, by the fault of another, lose the native and original right it has to preserve itself, which can only be done by a settled legislative, and a fair and impartial execution of the laws made by it.
>
> §. 225. … such revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty, will be born by the people without mutiny or murmur. But if a long train of abuses, prevarications and artifices, all tending the same way, make the design visible to the people, and they cannot but feel what they lie under, and see whither they are going; it is not to be wondered, that they should then rouze themselves, and endeavour to put the rule into such hands which may secure to them the ends for which government was at first erected…
>
> §. 228. But if they, who say it lays a foundation for rebellion, mean that it may occasion civil wars, or intestine broils, to tell the people they are absolved from obedience when illegal attempts are made upon their liberties or properties, and may oppose the unlawful violence of those who were their magistrates, when they invade their properties contrary to the trust put in them; and that therefore this doctrine is not to be allowed, being so destructive to the peace of the world: they may as well say, upon the same ground, that honest men may not oppose robbers or pirates, because this may occasion disorder or bloodshed. If any mischief come in such cases, it is not to be charged upon him who defends his own right, but on him that invades his neighbours. If the innocent honest man must quietly quit all he has, for peace sake, to him who will lay violent hands upon it, I desire it may be considered, what a kind of peace there will be in the world, which consists only in violence and rapine; and which is to be maintained only for the benefit of robbers and oppressors. Who would not think it an admirable peace betwixt the mighty and the mean, when the lamb, without resistance, yielded his throat to be torn by the imperious wolf?

"Liberty Matters" online discussion: Eric Mack, “John Locke on Property”↩



Introduction

This was an online discussion which appeared in “Liberty Matters: A Forum for the Discussion of Matters pertaining to Liberty” on Liberty Fund’s Online Library of Liberty during the month of January, 2013. The online version of the discussion can be found <here> and ebook versions at <oll.libertyfund.org/titles/2517>. An archive of previous Liberty Matters discussion can be found at <http://oll.libertyfund.org/pages/liberty-matters>.

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Summary

John Locke (1632-1704) is a key figure in the history of classical-liberal thought. His *Second Treatise of Government* (1689) is the canonical text in political philosophy that most extensively and systematically advances the classical-liberal themes of individual liberty, natural rights, private property, deep suspicion of political power, radical limitations on the scope of legitimate political authority, and rightful resistance against unjust and arbitrary power. Locke’s next most important work in political theory, *A Letter Concerning Toleration* (1689), completes his fundamentally classical-liberal vision with arguments for religious toleration that readily generalize to the conclusion that the state has no authority to govern persons’ self-regarding actions or the activities of mutually consenting adults. This brief essay will examine the character and content of Locke’s central contentions about property.

Nevertheless, it is hard to avoid the conclusion that when Locke shifts from high philosophy to public policy – especially public policy concerning the less reputable members of society – liberty and property tend to get lost in the shuffle. When the poor escape from “negligent officers,” the untoward result is that they “are at liberty for a new ramble.” “Restraint of the debauchery” of the poor is a necessary step “towards setting the poor on work.” Despite Locke’s core devotion to property rights and despite the strong anti-paternalism and anti-moralism of his *A Letter Concerning Toleration*, in the “Essay on the Poor Law” (1697) Locke calls for “the suppressing of superfluous brandy shops and

unnecessary alehouses, especially in country parishes not lying upon great roads." However, liberty and property are not compromised along the great roads that Locke travels.

The Debate

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The online discussion consists of the following parts:

About the Authors

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- Eric Mack, <An Introduction to the Political Thought of John Locke>
- Eric Mack, <Locke on Toleration: Locke's A Letter Concerning Toleration>
- Eric Mack: <James Tyrrell on Authority and Liberty>

Jan Narveson is Distinguished Professor Emeritus of the University of Waterloo in Canada. He is the author of seven published books, notably *The Libertarian Idea* (1988 and 2001), *You and The State* (2008), and *This is Ethical Theory* (2010), and of several hundred articles and reviews in philosophical journals and collections. He has also been active in the presentation of classical music concerts (some 1,500 so far) as president of the Kitchener-Waterloo Chamber Music Society. He was elected a Fellow of the Royal Society of Canada in 1989; in 2003 he was made an Officer of the Order of Canada, which is that country's highest recognition of civilian achievement.

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Additional Material on Locke and his Political and Economic Thought

LEAD ESSAY: ERIC MACK, "LOCKE ON PROPERTY."

<John Locke (1632-1704>) is a key figure in the history of classical-liberal thought. His <*Second Treatise of Government* (1689) > is the canonical text in political philosophy that most extensively and systematically advances the classical-liberal themes of individual liberty, natural rights, private property, deep suspicion of political power, radical limitations on the scope of legitimate political authority, and rightful resistance against unjust and arbitrary power. Locke's next most important work in political theory, <*A Letter Concerning Toleration* (1689)>, completes his fundamentally classical-liberal vision with arguments for religious toleration that readily generalize to the conclusion that the state has no authority to govern persons' self-regarding actions or the activities of mutually consenting adults. This brief essay will examine the character and content of Locke's central contentions about property.[1]

Two salient features of Locke's political thought are his focus on <*natural rights*> and his focus on< *property*>. Locke holds that all humans who have reached the age of reason are equally free and independent beings; we are <"equal one amongst another without Subordination or Subjection "> (*ST* 4) and have basic moral claims against being subordinated to the ends of others <"as if we were made for one another's uses" > (*ST* 6). Each individual has ends of his own – his temporal and eternal happiness – to which he has reason to devote himself. Hence, each has reason to claim a right against interference in his pursuit of his own ultimate ends (*ST* 17); and each must acknowledge that others, who are his equals, have the same rights that he claims for himself. Hence, all are required by reason to affirm every adults' right to freedom (*ST* 6).

The Natural Right to Freedom

This natural right to freedom is not an unlimited Hobbesian liberty to do whatever one desires to do. For such a liberty in others would mean that one was open to utter subjection to them, and <"who could be free, when every other Man's Humour might domineer over him?"> (*ST* 57). Instead, each individual's natural right to freedom implies a natural obligation on the part of others to refrain from interference with that individual's pursuit of his temporal and eternal happiness. Each person's right to freedom is constrained by others' like rights to freedom.

How can the extent of each person's rightful freedom be codified so that no person's exercise of his right to freedom will be incompatible with any other person's exercise of his right to freedom? Locke saw that this codification requires the specification of what is *mine* and what is *thine*. My rightful freedom consists in my disposing as I see fit of what is *mine* (or at least *not thine*) <"without asking leave, or depending upon the Will of any other Man"> (*ST* 4). Your freedom requires that I not dispose of what is *thine* without your leave. A regime of compatible freedom depends on the identification of the fences that mark off mine from thine. Thus, for Locke, rights characteristically take the form of property. Property in its broad sense, i.e., rights to life, liberty, and estate, provide each individual with moral protection against subordination to other individuals *and* to the state. And property, especially in the sense of estate, provides the framework that allows and facilitates a peaceful and flourishing civil order. Locke's theory of rights to one's legitimately acquired holdings is an integral part of his more general view that each individual is morally entitled to pursue his own ends in his own chosen way. Religious freedom is, for instance, primarily a matter of the freedom of individuals in their religious practices to dispose of their own holdings (but not the holdings of others) as they see fit.

In the work that has done most in recent decades to revive interest in Locke's political philosophy, *Anarchy, State and Utopia* (1974)[2], Robert Nozick defends an essentially Lockean position on justice in holdings on the basis of a doctrine of natural rights. Moreover, like Locke, Nozick takes each

person's basic rights to be reflective of morally significant features of persons, viz., their existence as separate beings with distinct systems of ends. For both thinkers, in virtue of these morally significant features, individuals are not to be treated as objects or resources or means at the disposal of others; they are not to be subordinated to or sacrificed for others' ends. As long as an agent abides by this basic constraint, all others are required to allow him to pursue his own ends in his own chosen way. This is a very different sort of moral perspective from the consequentialist contention that there is some overarching social outcome--e.g., the maximization of the preservation of human life--that each person is bound to promote and that persons should be constrained in their conduct toward one another insofar and *only insofar* as constraint advances that maximization project. While Locke sometimes speaks as though our fundamental duty is to preserve mankind at large (at least when that is compatible with one's own self-preservation), he immediately parses this duty as a negative obligation not to <"take away, or impair the life, or what tends to the Preservation of the Life, the Liberty, Health, Limb or Goods of another."> (*ST* 6).[3]

The Rights of Property

Let us turn to Locke's vindication of the rights of property in the sense of estate. In the crucial chapter <"Of Property ," > as throughout the *Second Treatise,* Locke is writing in opposition to the authoritarian political theorists <Robert Filmer> and <Thomas Hobbes >. Despite their differences, both Filmer and Hobbes held that all property rights of citizens depend on the will of their sovereign and that, therefore, there can be no valid assertion of property rights against the will of the sovereign. Locke argues to the contrary that property rights do not depend on the will of the sovereign; indeed, no one can be said to have a *property* in any holding if another party, e.g., the sovereign, may deprive him of it without his consent (*ST* 138). In the 17th century the standard alternative to the view that property rights were created by the sovereign's will was the view that the earth was originally owned by all mankind in common *and* that it came to be divided into private property (or came to be open to private acquisition) through some sort of general consent. Filmer, however, provided powerful arguments against any such consent theory of private property rights, and Locke was convinced by these arguments. For this reason, Locke sets out< "to shew, how Men might come to have a *property* in several parts of that which God gave to Mankind in common, and that without any express Compact of all the Commoners" > (*ST* 25).

Locke himself continues to say that God had given the earth <"to Mankind in common "> because this was his most direct way of denying Filmer's claim that God had given the earth to Adam. Yet Locke sees that this language seems to imply that private property can only arise through general consent. Locke's solution was to argue that all that *should* be meant by saying that the earth was originally the common property of mankind is that no portion of the earth was the original property of anyone in particular (*ST* 26). *In effect*, the earth is originally *unowned*. Hence, individuals may take hold of and use portions of the natural world without having to obtain the consent of others. Locke argues that the earth must be originally unowned precisely because, if the earth *were* originally commonly owned in any substantive sense, universal consent *would* be needed before any individual could permissibly take up and use any portion of the earth. But then, since universal consent will never be attained, morality would require that everyone abstain from all uses and appropriations of natural materials. Morality would require that we all starve in the midst of a plentiful nature. <"If such a consent as that was necessary, Man had starved, notwithstanding the Plenty God had given him"> (*ST* 28). Locke concludes that, since morality *could not* require that we all starve, it cannot be that the earth is originally jointly owned by mankind.

Still, why not think that man is obligated to starve if he cannot get universal consent to engage in the private use or appropriation of parts of nature? Locke addresses this question in his little-read *<First*

Treatise.> His answer is cast largely in terms of God's intentions. God would not have created men with a need to use and appropriate portions of nature and surrounded men with a plentiful nature if He did not intend for men to use and appropriate parts of it (*FT* 86, *ST* 32-35). However, there is also a less theological version of this answer.[4] Each person's rational pursuit of (temporal) happiness centers on his desire for and rational pursuit of self-preservation; indeed, all persons rationally seek < "the comfortable preservation of their Beings" > (*FT* 87). For this reason, all persons have rights to pursue their comfortable preservation and, since the use or appropriation of portions of nature is necessary for the pursuit of comfortable preservation, all persons have rights to engage in such use or appropriation. Hence, people cannot be subject to natural obligations to forgo such life enhancing activities (*FT* 86-88).

We have here an inkling of an idea often found in classical-liberal thought, viz., that there is a *natural* right of property. This is not a right to particular natural objects or shares of such objects. For rights to particular objects or shares must be *acquired* through the right-holder's actions. Rather, the natural right of property is a right to make things one's own. It is a right not to be precluded from acquiring holdings and exercising discretionary control over them. Imagine a political order that prohibits people from engaging in activities that would generate private property rights. By definition, *that* prohibition would not violate any individual's *acquired* property rights. Yet that prohibition would violate persons' natural right of property. Locke recognizes the distinction between this background natural right of property and particular acquired property rights by noting in his *First Treatise* discussion of the natural right that <"in another place "> he will show how a person creates for himself <"a Property in any particular thing"> (*FT* 87). That other place is the *Second Treatise*'s chapter "Of Property," where Locke offers his famous labor-mixing account of particular property rights.

Locke begins that account with the affirmation of each person's natural right of self-proprietorship and, hence, each person's right to his own labor. <"Every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his"> (*ST* 27). Since nature itself is originally unowned, any individual may "mix " his labor with any portion of nature that is not being used or has not already been acquired by another. This mixing of labor involves the intentional transformation of some natural material for the sake of some future use by the transforming agent. Hence the labor is plausibly construed as invested in the transformed object rather than merely frittered away,[5] and the laborer retains his right to this invested labor. Since depriving the laborer of the transformed object violates that agent's rights, the agent who "mixes" his labor with some morally available natural material acquires a right to the altered object. The primary reason to respect the agent's freedom to dispose of the transformed object as he chooses is regard for that agent's rights, not regard for the overall social benefits of allowing the agent to enjoy this freedom.

"Mixing One's Labor"

A number of points should be made about Locke's labor-mixing account. First, as far as it goes, it is eminently plausible. If persons do have rights over their own persons and hence over their respective talents, efforts, and time, then they have moral claims against being deprived of objects in which they have invested their talents, efforts, and time. The wrong done to the agent whose invested labor is expropriated by another is morally on par with the wrong done to an agent who is coerced into supplying labor to another.

Second, it is far from obvious that *all* rights of initial acquisition can or need to be explained on the basis labor-mixing. As various conventions develop that define what counts as an *entitlement-generating* initial acquisition, it seems that individuals can acquire initial entitlements by engaging in

the activities specified by those conventions. Since those conventions enable people to make things their own, respect for the entitlements generated through those conventions seems to be required by the Lockean natural right of property.

Third, Locke provides no account of property rights that arise through voluntary transfer. Here too it seems that, rather than trying to fit all acquisitions of property rights into the labor-mixing paradigm, Locke would have done well to emphasize how conventions that define just transfer facilitate people making things their own and hence each person's natural right of property underwrites his claim to the holdings he has acquired in accordance with those conventions. The recognition of a Lockean natural right of making things one's own opens the door to a doctrine of property rights that is less centered on labor-mixing than Locke's actual discussion is.

Locke denies that it follows from his doctrine of just acquisition that <"any one may ingross as much as he will"> (*ST* 31). For Locke affirms two constraints on just acquisition, viz., a spoilage proviso and an <"enough, and as good "> proviso (*ST* 33). The spoilage proviso is tied to Locke's vision of the natural world having been provided to us by God who intends its use not its waste. According to this proviso, one's property rights do not extend to what will spoil in one's possession. If a third bushel of berries will just rot in my possession, I cannot claim just ownership of them even if I have labored to collect them. However, Locke provides two reasons for why the spoilage proviso has vanishingly little significance. The first is that before the existence of money no sensible person will gather more than he can consume or barter for some other perishable good. The second is that once money comes into existence, perishable holdings can be converted *without limit* into nonperishable holdings (*ST* 46).

"Enough and as Good"

The "enough and as good" proviso is more significant both in theory and practice. According to this proviso, individuals may not so extensively appropriate from nature that others are left without enough and as good to use for their own purposes. Many recent authors think that this proviso signals Locke's commitment to economic egalitarianism.[6] This is mistaken. To begin with, this proviso does not require that an individual be left with an *equal* share of the earth; it only requires that he be left with "*enough*." Moreover, "as good" is best read as requiring that each individual be left with "as good" a portion as would have been available to him had others not privately appropriated portions of the earth. The proviso cannot plausibly be read as imposing the crazy restriction that each individual be left "as good" a portion as has already be acquired by other individuals. That restriction would require that *no one* ever acquire the best portion – because that would leave not as good for others! As Nozick suggests, (*ASU* 174-82), the "enough and as good" proviso should not be understood as a demand for the equal division of the earth but rather as a demand that *in some sense* no one be made worse off by the initiation, expansion, and elaboration of private property. On Nozick's version of this proviso, no individual is to be made worse off along the dimension of *utility*. An individual has no just complaint if the operation of the overall system of private property does not impose a net utility loss on him or if he receives an appropriate utility-restoring compensation.

In contrast to Nozick, Locke is more consistently focused on *freedom*. His advocacy of the "enough and as good" proviso marks Locke's concern that the institution and deployment of private property may <"straiten "> (*ST* 36) some individuals, i.e., may fence them in (or out) in a morally impermissible way. What matters for Locke is not a baseline of utility that an individual would enjoy in a world that was still an open commons. Instead, what matters is a baseline of noninterference with that individual's employing his self-owned labor in pursuit of his comfortable preservation. The proviso is satisfied if and only if the institution, development, and elaboration of private property yields an economic environment that is at least as receptive to that individual's deploying his talents,

efforts, and time in pursuit of his comfortable preservation as the pre-property environment would have been. It is not too far off the mark to say that Locke is concerned with no one being worse off with respect to economic opportunity rather than with respect to utility per se.

Locke divides the institution, expansion, and elaboration of a regime of private property into two phases and argues that within each phase economic opportunity will on net expand for all – or nearly all – individuals. The first phase, which exists before the introduction of money, begins with mankind's transition from a hunter-gatherer to an agricultural existence. For Locke this corresponds to a transition from the land being treated as an open commons to its being divided via individual investments of labor into private holdings. How much land will a given head of family acquire in the transition from hunter-gathering to farming? Locke's answer is that: (1) a given rational agent will acquire no more land than is necessary to produce the goods that he or his family needs for consumption or can barter for needed consumption goods and (2) this amount of land will be very much *less* than the land that he or his family has needed for sustenance as hunter-gatherers. The reason so much less land will be needed is that labor, understood broadly as industrious activity, is the primary factor for all valuable human goods and labor will be vastly more effectively or intensively used in private agricultural endeavors than in hunter-gatherer meanderings. Thus as any head of family turns to agriculture and makes some portion of the earth his own, the amount of land he employs radically diminishes, and on net the amount of land available to others increases – whether they remain hunter-gatherers or turn to agriculture (*ST* 37). Notice that since economic gain accrues to people almost entirely on the basis of their industrious labor, one party's economic gain in no way implies another party's loss.

The Creation of Money

The second phase of the development of private property begins with the creation of money by way of "<fancy or agreement" > (*ST* 46). Money radically expands the scope of feasible exchange (*ST* 48) and enables people to store the greater available gains from production and trade. The prospect of these storable gains greatly encourages the more extensive development and deployment of industrious labor (*ST* 49). On the other hand, this prospect motivates individuals to invest in much more extensive holdings of natural materials than they sought to labor on before the introduction of money. The success of some people in this pursuit *will* preclude others from appropriating or perhaps even using enough and as good of the earth. More generally, in the monetary phase the economic inequality that is rooted in <"the different degrees of industry "> (*ST* 48) among men will become substantially more pronounced. So it looks as though the development of commercial society that is triggered by the introduction of money regularly violates the "enough and as good" proviso. Yet Locke maintains that this proviso will not – or will not often – be violated.

Locke's official argument for this conclusion depends on his claim that money arises through universal (albeit tacit) consent to gold and silver having economic value. Since it is obvious that once money exists, economic inequality will be more pronounced and some people will expand their holdings of the earth to the exclusion of others, consent to the existence of money must also be construed as consent to these outcomes. <"It is plain that Men have agreed to a disproportionate and unequal Possession of the Earth" > (*ST* 50). Hence, this argument runs, the proviso is not *violated* after the introduction of money because in the course of that introduction everyone has agreed to that proviso's suspension. Similarly, no one can justly complain about increased economic inequality because everyone has consented to this inequality as part of their agreeing to the establishment of money.

The problem here is not merely that there has been no such universal consent to money or inequality, but also that Locke himself has wisely disavowed any appeal to universal consent within his

justification of property rights. Can Locke escape these problems?

It looks like Locke can escape by focusing on the reason that individuals would have to consent to the introduction of money. For Locke, that reason must be that each party anticipates gaining in the course of the transition from the first phase to the second phase of the private property regime. <"For no rational Creature can be supposed to change his condition with an intention to be worse"> (*ST* 131). Why, according to Locke, would it be rational for each individual to agree to a transformation of human society that increases economic inequality and may leave that individual unable to appropriate (or even use) raw material? Locke's answer is that the industrious powers that such a transformation promotes and releases so increases wealth and opportunity that each individual can reasonably anticipate that he will gain from this transition even if he ends up with a smaller pro rata share. According to Locke, such gains can be expected if, but only if, a< "wise and godlike" ruler establishes "laws of liberty to secure protection and encouragement to the honest industry of Mankind"> (*ST* 42). Indeed, because of the enormous improvement generated by human labor in commercial societies, <"a King in a large and fruitful Territory [without private property and money] feeds, lodges, and is clad worse than a day Labourer in *England*."> (*ST* 41).[7] For the achievement of material prosperity, <"numbers of men [living under laws of liberty] are to be preferred to largenesse of dominions"> (ST 42).

How do these claims about the bountifulness of commercial society indicate that such a society generally satisfies the "enough and as good" proviso? Understood narrowly, the proviso is not satisfied. For it will not be uncommon for an individual to find himself precluded from using as enough and as good *raw* material as he would be able to use were the earth still an open (and hence undeveloped) commons. But understood more broadly, the proviso is generally satisfied. For all – or nearly all – individuals within commercial society will encounter a world of economic options that will be *at least* as receptive to their bringing their self-owned powers to bear in pursuit of their ends as they would encounter were the earth still an open commons.[8] Within commercial society, no individual – or almost no individual – will be "straitened" in his life-enhancing economic activities compared to the open-commons alternative. And the real point of the proviso is to rule out this sort of straitening of people. Note that the proviso understood broadly will be satisfied precisely because economic opportunity depends fundamentally on the positive-sum process of encouraging the development and exercise of industrious labor rather than the zero-sum process of fighting over given raw material. It is the vast expansion of industrious labor and opportunity that private property and expanded trade calls forth which also explains why commercial society enhances the material well-being of everyone – or nearly everyone.

Locke tells us that labor is <"*the great Foundation of Property*"> (*ST* 44). He means this in two distinct senses. First, the investment of labor is the source of initial property *rights*. Second, the investment of labor is the primary source of the *value* of rightfully held objects. And, of course, it is the creation, protection, and exercise of those rights that engender that value. Locke's emphasis on the extent to which economic value arises through labor often leads to the claim that Locke subscribed to the labor theory of economic value, i.e., the view that the exchange value of any item will (or will strongly tend to) be proportionate to the amount of labor that goes into the production of that item. However, this theory is tied to the idea that labor is in the final analysis one homogenous activity and that different amounts of this homogenous activity get poured into different objects that then have exchange value in proportion to the amount poured into them. There is no basis for thinking that Locke subscribed to this notion of labor or to the idea that the exchange value of any object is proportionate to the labor involved in producing it. Indeed, he tells us that the value of gold and silver depends on fancy and agreement and that the value of land depends on scarcity (*ST* 45).

Essay on the Poor Law (1697)

Although Locke asserts quite generally the satisfaction of the "enough and as good" proviso in commercial society, I have represented Locke as holding that the proviso is satisfied for all – *or almost all* – individuals, for it is difficult to imagine a philosophical *proof* that at all times and in all places the development of private property and free commerce straitens nobody. Moreover, in his 1697 < "An Essay on the Poor Law,"> [9] Locke seems to view at least some of the poor as people who have been deprived of the opportunity to work, i.e., who are worse off with regard to economic opportunity than they would have been were they still living in an open commons.[10] His proposed remedies are various measures to provide these impoverished individuals with employment opportunities – on merchant ships, in workhouses, and so on. And these are the sort of measures that are called for by the "enough and as good" proviso insofar as people's worsened positions are really the result of the development and exercise of private property rights.

However, in his Poor Law essay Locke does not merely recommend that the impoverished be *offered* employment. Rather, Locke proposes that the poor be *forced* to accept the employment opportunities offered. Within this essay at least, it is a settled point for Locke that the poor are to be maintained. "Everyone must have meat, drink, clothing, and firing. So much goes out of the stock of the kingdom, whether they work or no." [11] However, the nation cannot afford to provide these necessities unless, through their labor, the poor bear the burden of their own maintenance as much as possible. "[T]he true and proper relief of the poor … consists in finding work for them, and taking care they do not live like drones upon the labour of others." [12] It is easy here to accuse Locke of forgetting about the self-ownership right of the poor to refuse offered employment and of focusing instead on the policy of maintaining "the stock of the kingdom." Still, factors other than mere disregard for liberty are at work. Locke's hard-work ethos makes him unsympathetic to and suspicious of "idle vagabonds." He almost certainly sees any vagabond's rejection of offered employment as manifesting not so much a desire for liberty but, rather, a desire to live at the expense of others.

Nevertheless, it is hard to avoid the conclusion that when Locke shifts from high philosophy to public policy – especially public policy concerning the less reputable members of society – liberty and property tend to get lost in the shuffle. When the poor escape from "negligent officers," the untoward result is that they "are at liberty for a new ramble." [13] "Restraint of the debauchery" of the poor is a necessary step "towards setting the poor on work." Despite Locke's core devotion to property rights and despite the strong anti-paternalism and anti-moralism of his *A Letter Concerning Toleration*, in the "Essay on the Poor Law" Locke calls for "the suppressing of superfluous brandy shops and unnecessary alehouses, especially in country parishes not lying upon great roads." [14] However, liberty and property are not compromised along the great roads that Locke travels.

End Notes

[1] Citations from the *Second Treatise* (and the *First Treatise*) will be to paragraph numbers in Locke's *Two Treatises of Government*, 2nd edition, Peter Laslett, ed. (Cambridge: Cambridge University Press, 1967). Abbreviations: FT = First Treatise; ST = Second Treatise. [The links are to one of our online editions, the Thomas Hollis edition of 1764. The link will take you to the paragraph in which the quotation is located. The links enclosed in [link] are to the OLL website. Other links , such as to endnotes, are within this document .- Editor].

[2] Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974).

[3] The most sophisticated reading of Locke as a consequentialist is offered by A. John Simmons in

The Lockean Theory of Rights. According to Simmons' rule-consequentialist account, Lockean rights are norms general compliance with which maximizes the human preservation. I examine consequentialist sounding passages from the *Second Treatise* in *John Locke*, pp. 43-6, 52-3, 84-5, 93-4, and 97-8.

[4] It is often held that propositions about God are essential to Locke's arguments within political philosophy. See John Dunn's *The Political Thought of John Locke* and Jeremy Waldron's *God, Locke, and Equality*. In *John Locke*, I argue that these propositions are *not* essential to Locke's arguments. The standard Straussian position is that Locke *disbelieved* these claims and his disbelief is essential to his real convictions. See, e.g, Leo Strauss' *Natural Right and History*.

[5] Contrast this with Nozick's example of pouring one's can of tomato juice into the ocean. (*ASU* 175).

[6] For a striking instance of this contention, see Michael Otsuka's *Libertarianism without Inequality* (Oxford: Oxford University Press, 2005).

[7] This claim that *everyone* in a commercial society is better off than *everyone* in an open commons society is quite a bit bolder than Locke actually needs.

[8] See David Schmidtz's discussion in "The Institution of Property," *Social Philosophy and Policy*,Summer 1994, pp. 42-62.

[9] Reprinted in *Locke: Political Essays*, Mark Goldie, ed. (Cambridge: Cambridge University Press, 1997). An older version of this essay can be found in Fox Bourne's biography *The Life of John Locke* (1876), vol. 2, pp. 377-91 <PDF only>.

[10] Apparently *these* day-laborers are *not* better situated than kings of open commons societies.

[11] "Poor Law," p.189.

[12] Ibid.

[13] Ibid., p.185.

[14] Ibid., p.184.

RESPONSES AND CRITIQUES

1. Jan Narveson's Response to "Mack on Locke on Property"

Eric Mack sets forth with his characteristic elegance the essentials of Locke's philosophical outlook on political morality. He points out what is not always clearly appreciated, namely, that if each is to be free – and not just some few – then we need somehow to demarcate a domain, a sphere, within which the individual has complete authority: Others must apply for permission to enter that domain. So "regime of compatible freedom depends on the identification of the fences that mark off mine from thine. Thus for Locke, rights characteristically take the form of property. Property in its broad sense, that is, rights to life, liberty, and estate, provide each individual with moral protection against subordination to other individuals *and* to the state."

Accurately enough, he goes on to say that people have, in the view of Locke (and Nozick and others), "morally significant features" such that "individuals are not to be treated as objects or resources or means at the disposal of others." If an agent abides by that constraint in relation to others, they are required to "allow him to pursue his own ends in his own chosen way." The question is, though: Why *are* those features "morally significant"? What is it about those features that ground the principle in question? Bad accounts, or non-accounts (such as that these are "natural rights") abound.

We have a minor more-or-less scholarly difference regarding <Hobbes>, whom Mack classifies as an "authoritarian." That's certainly right on the strictly political level, but in Hobbes there is beneath this a moral level, set forth in (a) a depiction of the state of mankind without rules and (b) a list of fundamental moral rules beginning with one master rule, the First Law of Nature, calling upon all to refrain from violence against others. This, he thinks, is a< "rule of reason"> – a pregnant phrase in context. Locke too thinks that his Law of Nature, which I would argue has precisely the same content as Hobbes's First Law, is a pronouncement of reason, saying, <"Reason, which is that law, teaches that no one…."> How Hobbes becomes a sort of political authoritarian despite this total agreement in basic premises is a fascinating question. Hobbes's idea is that anybody contemplating the natural condition of mankind would see that what we need is a general rule, and specifically that one. Locke, on the other hand, seems to leave matters at a purely intuitive level or even, worse yet, a religious one.

Mack suggests that the salient passage in paragraph 26, which starts out with the communist-sounding proclamation that "the earth, and all inferior creatures, be common to all men" has the *effect* – as I think most of us would say – of really denying this: "*In effect*," Mack writes, "the earth is originally *unowned*." Now I agree that this is what Locke should have said, and I agree too that his slightly tortuous argument in that paragraph tries to works around to that conclusion. Still, what we should realize is that Locke isn't entitled to lean on any theological premises in the *Treatise*, and absent those, there is absolutely no reason to declare the earth to be primordially communist. The earth is just a bunch of stuff, and people are in fact able to put bits of it to their use. Since it *is* just a bunch of stuff, there is no *natural* reason why they should not go ahead and use it – and plenty of reason, "natural" enough, why they should, in the process, grant each other the moral status of *rights* to what they have thus selected and put to use. These reasons need to be spelled out, and Locke gets a very good start on this by arguing (as Mack says) that if we didn't, in effect, have this institution of property rights, relying instead on full-blown communism, mankind would have starved – a claim confirmed by the world's celebrated communist basket-cases, such as the vast starvation of early Maoist China in recent times.

But as Mack perceptively asks – well, why *aren't* we obligated to just go ahead and starve? He proposes a de-theologized answer: "all persons rationally see <"the comfortable preservation of their

Beings"> (*FT* 87).… [S]ince the use or appropriation of portions of nature is necessary for the pursuit of comfortable preservation, all persons have rights to engage in such use or appropriation."

Now if we look at it in this de-theologized way – as we of course should – then a question arises: If particular person Jones can, in some circumstances, appropriate bits of nature *at the expense of* his fellow man and *thereby* "preserve himself" – well, why shouldn't he do *that* – contrary to the requirements of the Law of Nature?

What this all hinges on is a recognition of a *natural* right, namely, a right of acquisition, "a right to make things one's own." There are two aspects of this needing discussion. The one that gets almost all the attention among recent scholars, in the wake of Nozick and others, is how we get *from* our natural right to general liberty *to* this right to acquire and then become the *owner*, in the appropriately normative sense, of what one acquires. Locke's famous derivation via our original right to ourselves, through our labor, to rights in things is the focus of this discussion, with many authors denying that the argument goes through, while others (including Mack and myself) think it does. But even if we are right, that leaves us with the more fundamental question: Why should we think each other to be "owners" of ourselves in the first place? (Hobbes's answer is clear: because if we don't, we'll be facing an awful state-of-nature situation.)

We get some light on this by following Mack's further discussion. Not all rights of individual acquisition need depend on "labor-mixing." "Various conventions develop" that, he holds, "*define* [my emphasis] what counts as an entitlement-generating initial acquisition." In ensuing discussion, considerable weight is put on this device. But doesn't this tread on thin ice? If ownership is a function literally of conventions, in at least some cases, doesn't that imply that the conventions could be other than they are, thus changing our rights – contrary to the original assertion of natural rights in this area?

Mack's next discussions concern the famous spoilage proviso and still more famous "enough and as good proviso" on acquisition. His discussion of the latter is elegant. We are not to acquire something if that would leave others in a *worse* condition than they would have been in a propertyless state of nature, of course -- but there is no restriction such that "each individual be left 'as good' a portion *as has already been acquired by other individuals*" (again, my emphasis). The more familiar egalitarian interpretation involves an illegitimate shift of baseline. That is a signal contribution, indeed, to the discussion of this much-vexed question. (In my own writing on this, I have arrived at a similar conclusion by a slightly different route.[1])

Mack notes that Nozick tends to put this in utility terms: No one to be left *worse off* than he or she would have been in the unmodified commons – but Mack proposes that Locke instead is concentrating on *freedom*, with the striking summary that "it is not too far off the mark to say that Locke is concerned with no one being worse off with respect to economic opportunity rather than with respect to utility per se." This is interesting and plausible; my question would only be whether there is really any difference for such creatures as we are. If there is – if we suppose that being fed intravenously forever without doing an ounce of effort represents a "level of utility" different from whatever might ensue from our own efforts -- then perhaps we should agree with Mack here.

Next he goes on to discuss the effects of the introduction of money as it bears on the proviso. Extensive commercial activity will, Mack agrees, really disenable *some* people from initial acquisition *of*, say, natural resources and land. How can this be all right? His answer is that, nevertheless, the new opportunities created by all this, as we might call it, "unnatural" activity more than compensates for any losses at the primitive level. Locke himself, as Mack notes, has already pointed out that a king in a country without exchange and property will be worse off than a day-laborer in the England of his day

(not to mention the contemporary poor, with their TVs, cell phones, indoor plumbing, and more).

Now he is careful to qualify this: "Almost" everyone, not absolutely everyone will thus benefit. That raises two questions. One has to do with interpersonal comparisons of benefit: Are we *sure* that people will be *better off* poor now than in a genuine "state of nature"? There's hope for a decent answer to that one. But another is more fundamental: What about those who exploit the compliance of most of us with Locke's natural law – the thieves and cutthroats (including the political ones) or those who have a natural preference for violence. It would be nice if we could show that such persons are irrational – but it's not obvious.

With respect to one sizable subset of that class of persons, Mack discusses Locke on the Poor Law. Those who fall into such poverty that they might really have been better off in a commons may, Locke thinks, actually be forced to work for their upkeep. (That is, if they can. We should note that it is totally implausible to think that the ones who *can't* would have done better in a common.) Mack observes that "it is hard to avoid the conclusion that when Locke shifts from high philosophy to public policy – especially public policy concerning the less reputable members of society – liberty and property tend to get lost in the shuffle." Yes, indeed. Just as he seems to underappreciate the contribution that his proposed restrictions on the scope of political authority would have (#38): <"*Thirdly*, The *Supreme Power cannot take* from any Man any part of his Property without his own consent."> It's pretty hard to square that with any government, let alone the limited one that Locke wants. Well, nobody's perfect!

Endnotes

[1] Narveson, "Property Rights: Original Acquisition and Lockean Provisos" in *Respecting Persons in Theory and Practice* (Rowman & Littlefield, 2002), 111-129.

2. Peter Vallentyne's Response to "Mack on Locke on Property"

It's a pleasure and an honor to comment on Eric Mack's superb piece on Locke. Mack has done more than almost any contemporary writer to develop the philosophical foundations of libertarian and classical-liberal theories of justice. Although I endorse a Lockean-inspired version of libertarianism, I am not a Lockean scholar. Consequently, in what follows I will not challenge Mack's wonderfully clear and insightful interpretation of Locke (which seems roughly correct to me). Instead, I will comment on some aspects of the theory of property that Mack attributes to Locke. My concern, that is, is with the *plausibility* of the theory and not with whether Locke actually held it.

Locke held that natural resources are initially unowned, that agents initially own themselves (and their labor power), and that agents have a moral power to acquire private property in natural resources by performing suitable actions (e.g., labor-mixing). I agree with him.

Property rights over a thing are a bundle of rights. At the core are *control rights*. These include a claim-right against others that they not use the thing without the owner's permission, and a liberty-right against others to use the thing. (No one else's permission is required for use as such.) Additional property rights include: the claim-right to compensation for the infringement of one's property rights, enforcement rights to prevent (and perhaps punish) infringements, the moral power to transfer the rights to others (by sale, gift, etc.), and an immunity to non-consensual loss as long as one is not infringing the rights of others. *Full ownership* of a thing is a maximally strong set of property rights (compatible with others having the same rights over other things).

Locke held that natural resources (land, air, oil, etc. in their natural state) are initially owned in common by everyone, which means they are unowned. This means that each agent has a moral liberty-right against all other agents to use natural resources. No one needs anyone's permission to use natural resources (no one has a claim-right against such use), although, of course, no one has a moral liberty to smash someone's head with a rock. Because the rock is unowned, no one's permission is needed to use it, but because you own your head, your permission is needed to smash it with the rock.

If natural resources are initially unowned in the fullest sense, then one has a moral liberty to poison all the water in the world or destroy all the plants. This, I claim, is implausible, when it adversely affects others. Even prior to appropriation, there are some moral limits on how one may use natural resources. My view, following that of Eric Roark,[1] is that, whatever restrictions there are on appropriation and ownership (addressed below), they also apply to use. I'm not sure what Locke's view was on this matter.

The fact that natural resources are initially unowned (a first-order issue concerning use) is compatible with several different higher-order conditions concerning the moral powers of individuals to acquire private property over natural resources (and the corresponding lack of moral immunities of others to the loss of their liberty-rights to use natural resources). One position is that there are no moral powers to appropriate. The commons must hold in perpetuity. Another is that only collective (e.g., majority) approval can give someone private property over natural resources. Locke rightly rejected these positions. He endorsed a unilateralist position, according to which an individual has the power to appropriate natural resources by performing a suitable action, as long as certain conditions hold. I agree. We will examine the required action and conditions below.

What conditions, then, are required for someone to acquire private property over natural resources? Locke seems to hold that labor-mixing is necessary. Mack wisely restricts labor-mixing to cases where there is "the intentional transformation of some natural material for the sake of some future use." This

helps avoid the problem (raised by Nozick[2]) that my picking an apple mixes my labor with the world, but surely that does not give me private ownership of the world. Still, I think that labor-mixing, even in this restricted sense, plays no essential role in the correct theory of appropriation. What is required is that the agent "stake a claim" to particular natural resources. Exactly what is required to stake a claim requires more attention than I can give here, but a paradigm case is publicly marking off an area and publicly stating that you are claiming specified rights over that area. Mack rightly notes that labor-mixing is not necessary, since "various conventions develop that define what counts as an *entitlement-generating* initial acquisition." I further add that labor-mixing plays a justificatory role for appropriation only where prevailing social conventions count such mixing as staking a claim.

It is often thought that ownership of natural resources with which one has mixed/invested one's labor follows from self-ownership, at least where the "enough and as good" proviso applies. Mack rightly interprets Locke as holding this view. I believe, however, that this view is mistaken. When I secretly trespass on your land to plant and cultivate some tomatoes, I do not acquire ownership of the land or even of the tomatoes. I have invested my labor in something that you own and have thereby forfeited any claim to its products. Likewise, when the land is in the commons, my self-ownership is fully compatible with my forfeiting the product to the commons. I do not deny that one acquires ownership of previously unowned natural resources when one stakes a suitable claim, and the proviso holds. I claim that this so because of an *independent* moral power, an independent right to property, and not because of one's self-ownership. Full self-ownership, that is, is compatible with natural resources being in the commons in perpetuity, with individuals having no powers of appropriation.

Full self-ownership does, of course, play a role in the justification of the ownership of one's *products*: If one owns all the factors of production (natural resources, capital, labor power), then one owns the product. This principle, however, does not give one ownership of natural resources, since they are not the products of one's labor or other assets.

Locke's proviso on appropriation requires that "enough and as good" be left for others. Mack gives the standard weak reading according to which this requires only that no one be worse off (net of any compensation provided) than she would have been had the resources remained in the commons. I agree that this is the best interpretation of Locke, but I believe that Locke's version of the proviso is too weak. I think it more plausible that an equally valuable share (net of compensation provided) must be left for others (or more radically: a share compatible with an equal opportunity for wellbeing). Natural resources were not created by any non-divine person, and I see little reason to hold that the benefits they provide should not be shared equally (or even to promote equality). I won't attempt to defend this view here.[3] I will merely note that the resulting left-libertarian theory differs from standard right-libertarian theories only with respect to the proviso. Moreover, given that both views hold that appropriation is just as long as suitable compensation is paid, the only difference is the amount of compensation owed.

As Mack indicates, Locke seems to hold that all agents have consented to the existence of money and thereby to the suspension of the proviso. This, however, seems to be an implausible view. Hardly any of the individuals alive today have consented to the existence of money in the sense needed for a valid contract. Moreover, even if they have validly consented to the existence of money, they have not consented to the suspension of the proviso. The former does not entail the latter. So Locke seems mistaken here.

Finally, let us turn to the limitations on private property. Locke seems to hold that the "enough and as good" proviso only applies to the initial act of appropriation. I would argue, however, that the relevant version of the proviso is plausible as an *ongoing limitation* on property rights in natural resources. I

claim, that is, that the property rights initially obtained by appropriation are (unlike those of self-ownership) conditional on the ongoing satisfaction of the proviso. Thus it is not enough initially to leave enough and as good for others in the relevant sense. If circumstances change (e.g., population growth, natural disaster), what was compatible with enough and as good may cease to be so and thus require greater, or less, compensation.[4] Thus even if no compensation to others was initially owed, some compensation may be owed at a later date. On this model, compensation is a periodic payment rather than a single payment at the time of initial appropriation.

Locke holds that private property does not include the right to exclude others from using resources one owns that would otherwise spoil. He does not, that is, give appropriators *full* private property in the appropriated resources. Others have a liberty-right to use them when they would otherwise spoil.

As Mack notes, Locke also holds that "all persons have rights to pursue their comfortable preservation" and thus have "rights to engage in such use or appropriation" of nature. I read this as holding that private property rights in natural resources do not include the claim-right that others not use one's resources when (1) they need to use someone's (less than full) private property, without permission, in order to meet their basic needs, and (2) the use of one's resources is compatible with one's comfortable preservation. Under these conditions, Locke held that others have a liberty-right to use one's private property.[5]

I'm inclined to reject both of the above limitations on property. If one satisfies the ongoing limitations of the more egalitarian "enough and as good" proviso that I would endorse, these additional limitations seem excessively restrictive. Of course, if one only endorses the more minimal proviso, then the additional limitations are more plausible.

Let me close by commenting on the role that property rights can play in the theory of moral permissibility. First, they might be advocated as merely *pro tanto* considerations that can be overridden by other moral considerations. On this view, a property right may be permissibly infringed when there is an overriding justification (e.g., to protect the rights of many others). Locke, I believe, implicitly held that property rights were *conclusive*, and not merely *pro tanto*, and in this he was right. Infringing a property right is always morally wrong. Second, property rights might be advocated as a theory of *justice*—understood as the *duties owed to individuals*—or as a full theory of moral permissibility. I'm fairly sure that Locke advocated only the former. As such, property rights are compatible with there being additional *impersonal moral constraints* (not owed to anyone). For example, I may not have a claim-right, against you, that you give me some food, but you may have an impersonal duty to do so. If so, it is wrong of you not to do so, even if perfectly just (and does not wrong me). Because I'm skeptical that there are any impersonal duties, I'm inclined to think that property rights exhaust the moral constraints. Here, I merely note that others may disagree.

In sum, Mack's excellent summary and interpretation of Locke makes clear the importance of Lockean theories of property. I fully endorse the Lockean framework, but I have questioned a few aspects of the specific version held by Locke.

Endnotes

[1] For a defense, see Eric Roark, "Applying Locke's Proviso to Unappropriated Natural Resources," *Political Studies* 60 (2012): 687-702.

[2] Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 174-78.

[3] See, for example, Michael Otsuka, *Libertarianism without Inequality* (Oxford: Clarendon Press, 2003); and Peter Vallentyne, Hillel Steiner, and Michael Otsuka, "Why Left-Libertarianism Isn't Incoherent, Indeterminate, or Irrelevant: A Reply to Fried", *Philosophy and Public Affairs* 33 (2005): 201-15.

[4] Interestingly, Nozick himself endorses this limitation view. For a defense, see Peter Vallentyne, "Nozick's Libertarian Theory of Justice," in *Anarchy, State, and Utopia—A Reappraisal*, edited by Ralf Bader and John Meadowcroft (Cambridge University Press, 2011), pp. 145-67.

[5] See, for example, A. John Simmons, *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992), sec. 6.3.

3. Michael Zuckert's Response to "Mack on Locke on Property"

It is difficult to disagree with Eric Mack's splendid little essay on Locke's property doctrine, so instead of taking issue with him I will attempt to supplement his essay by attempting to place the chapter on property more firmly within its context in the *Second Treatise*. Placing it so will allow me to confirm, reinforce, and perhaps extend some of Mack's most important conclusions.

Readers are sometimes puzzled by the placement of the chapter on property within the Treatises. It occurs in a series of chapters quite obviously devoted to fulfilling Locke's promise in 2 Tr2 to explain political power in such a way as to distinguish it clearly from < "that of a Father over his Children, a Master over his Servant, a Husband over his Wife, and a Lord over his Slave.>" The task of distinguishing these various powers was necessitated most obviously by Robert Filmer's doctrine, which identified all these powers with the power of fathers. After presenting what one might call the baseline situation, the state of nature where there is no political power of any sort, Locke proceeds in a series of chapters to discourse briefly on the various powers he identified in 2 Tr2. Thus in chapter 4, "Of Slavery," he explains how the power of a "Lord over his Slave" can legitimately arise, despite the natural freedom and equality of human beings. Chapter 6, "Of Paternal Power," clearly carries forward Locke's agenda by explaining the nature and limits of the power of fathers over children. Chapter 7, "Of Political or Civil Society," presents Locke's account of <"conjugal society," > that is, of the "power of a Husband over his Wife."

In the midst of these chapters elucidating the various relations or sorts of power that Locke means to distinguish from the <"power of a Magistrate over a Subject,"> or political power, comes the seemingly irrelevant and digressive chapter "Of Property." What is this chapter doing in this place? The key to answering that question lies in noticing that Locke has not in direct terms explained one of the sorts of power he had promised to explain in 2 Tr2: that of "a Master over his Servant." Locke has in mind something much broader than his words convey to a modern ear, for the master-servant relation, as he understands it, translates into what we would call the employer-employee relation. To explain that relation is to explain how some come to work for others in exchange for wages.

In chapter 7 Locke mentions in passing the master-servant relation in tracing out the chronological emergence of the different relations: <"The first society was between Man and Wife, which gave beginning to that between Parents and Children; to which, in time, that between Master and Servant came to be added."> In this chapter Locke proceeds to explain the conjugal relation, the first in time, but the penultimate relation discussed before Locke gets to his ultimate destination, the political relation of magistrate and subject. In the preceding chapter Locke had explained the paternal (or better put) parental relation. He will go on in chapter 7 to again touch very briefly on the master-servant relation, but only in the context of distinguishing it from the master-slave relation (2 T85):

> <Master and servant are Names as old as History>, but given to those of far different condition; for a Free-man makes himself a Servant to another, by selling him for a certain time, the Service he undertakes to do, in exchange for Wages he is to receive: … gives the Master but a Temporary Power over him, and no greater than what is contained in the Contract between men. But there is another sort of Servants, which by a peculiar Name we call Slaves, who being Captives taken in a just War, are, by the Right of Nature subjected to the Absolute Dominion and Arbitrary Power of their Masters.

Servants are free-men who exchange their labor for wages via contract; slaves are not free and do not relate to their masters via contract, as Locke explained in chapter 4. How men come to be slaves

Locke explained clearly in that chapter. But how do men come be servants, i.e., beings who sell their labor to others? That is *precisely* the task of chapter 5 to explain. It is not at all out of place, but it is the place where Locke presents the ground for this all-important economic relation.

This insight into the organizational placement of the discussion of property is not only helpful for confirming our general impression that Locke knew how to present his thought in an orderly and logically structured manner, but it also gives us a crucial insight into what the dominant point of chapter 5 is. To repeat, that point is to explain the genesis and nature of the employer-employee relation. Or perhaps better put, to show the legitimacy of that relation. This insight helps make clear that *the* point of the chapter "Of Propriety" is to show how, beginning from the claim that the earth <"belongs to mankind in common"> (which, as Mack rightly shows, means that the earth is originally unowned rather than jointly owned), we can arrive at a situation in which the whole earth is owned, and owned quite unequally, with some possessing a great deal more than they strictly need and others owning none of it. This does not mean these dispossessed men are entirely without property, however. As self-owners, they are < "Proprietor(s) of [their] own Person(s), and the actions or labour of it" > and thus have within themselves "the great Foundation of Property." (2 T44)

The history of property relations would seem to be a history of injustice or at least unfairness, for mankind moves from a situation where all have a right of preservation and an equal right to appropriate the goods needed for preservation from an unowned world to a situation where most have no right to appropriate anything directly from a world no longer "owned in common." But the point of Locke's chapter is to establish that this apparently unfair development is perfectly legitimate and to the benefit of everybody, i.e., genuinely a common good. I need not repeat the arguments by which Locke tries to show this, for Mack has laid them out exceedingly well in his essay.

One benefit of seeing the point of chapter 5 in this way is that it refutes C.B. Macpherson's claim that Locke is a mere unconscious mouthpiece for developing market relations in 17th-century England, unwittingly taking for granted the master-servant relation and merely importing it, untheorized, into his property doctrine. Locke was so far from unconscious of the master-servant relation that explaining it was his chief goal in the chapter on property.

This insight into the aim of chapter 5 confirms Mack's basic conclusions about the consequences of the introduction of money. The complete ownership of the world, which in a sense is equivalent to the expropriation of some from their primitive rights, is neither a denial of the rights of the expropriated (if we may even speak of them in that way) nor a disaster for them. As Mack rightly brings out, the landless retain their rights (as the right to sell their labor for wages) and their benefit (as the increased productivity that the unleashing of labor power made possible by the introduction of money). The landless retain "the great foundation of Property" in their labor power and do accrue property in the form of the wages they gain with their labor.

The assumption behind Locke's presentation of the mature post-money world is something like a full-employment economy. This is "ideal theory." Mack brings out very well Locke's implicit point that if this assumption of ideal theory is not met, there is a just basis for complaint by those both dispossessed and unemployed. As he says in 1 Tr42: <"As Justice gives every Man a Title to the product of his honest Industry, and the fair Acquisition's of his Ancestors descended to him; so Charity gives every Man a Title to so much out of another's Plenty, as well keep him from extreme want, where he has no means to subsist otherwise.">

Locke is in effect saying that "charity" is not something different from justice (as it traditionally was thought to be) but under the situation specified is a matter of justice or right. That is to say, what he is speaking about is not charity at all, but an en-titlement. This "right" to support for the otherwise resourceless connects to Mack's discussion of Locke's essay on the Poor Law. I believe that Locke's point is that the propertied should honor the right of the resourceless via a public policy rather than as helter-skelter individuals. As Mack makes clear, Locke outlines a kind of welfare policy that meets the obligations of providing support for those unable to support themselves in the wage economy without providing incentives for dependence or shirking. It is of some interest, I think, that <Thomas Paine>, a few generations later, picked up on Locke's basic argument and developed from it a more full-blown plan for something like a welfare state.

[For further discussion, interested readers might consult my forthcoming essay, "Two Paths from Revolution: Jefferson, Paine and the Radicalization of Enlightenment Thought" to appear in Simon Newman and Peter Ounf, eds., *Paine and Jefferson in the Age of Revolutions* (University Press of Virginia, forthcoming, 2013.)]

Placing chapter 5 in the context of the line of argument of this part of the *Second Treatise* has the further consequence of highlighting a feature of Locke's doctrine that does not always stand out, and which does not receive much notice in Mack's essay. As Locke emphasizes and Mack reports, Locke partly justifies the movement from the universal common to total but unequal ownership of the earth by claiming that all are better off than they would be in a pre-private property world: the famous day-laborer versus the Indian chief. Mack points out that it is not universally true that all are better off—the point Locke concedes in his proposal for a poor law. Mack, however, does not emphasize the other important aspect of Locke's thesis: Although all or almost all are indeed "better off" in the sense of materially better off, the members of society are far from *equally* better off, as Locke's emphasis on explaining the existence of a class of men who have no property but their persons and nothing to sell or barter but their labor. Civil society, commerce, and money raise all the boats, but some are way at the top of the wave and others in the trough. Locke does not take this as a justification for redistribution, in part for reasons not too far from Rawls's theory of justice—this is the arrangement from which all do benefit and therefore the inequality is justifiable and just.

Nonetheless, Locke's account brings out the nature of society and politics in a propertied society: It is a class society, and it is a politics of actual or potential class conflict. Locke may be correct that as a matter of political morality the property-less would be doubly wrong to attempt to expropriate the propertied, just as it would be wrong for the propertied to govern in such a way that the property in their persons of the otherwise property-less was endangered. That, precisely, is the political problem that comes to sight when focusing on the chapter on property as aiming to explain the existence and legitimacy of a free class of self-owning but otherwise property-less men.

THE CONVERSATION

1. Eric Mack's Reply to Jan Narveson (January 15, 2013)

I thank Jan Narveson for his generous, thoughtful, and thought-provoking comments. Narveson raises five or six really important issues, including concerns about whether there is any need to argue against the proposition that nature is the joint property of all mankind, concerns about how precisely to formulate Locke's "enough, and as good" proviso, and concerns about my non-Lockean willingness to assign a major role to conventional rules in the generation of legitimate property rights. [1]

However, at this point, I am going to focus almost entirely on one issue where I think there is a really deep philosophical disagreement between Narveson and myself. In doing so I hope to highlight a crucial and contentious feature of natural-rights doctrines – a feature that is much too readily taken to be a fundamental defect of such doctrines. To complement the discussion of the character of natural-rights theory, I will say a word or two about Narveson's alternative approach to vindicating really basic moral rules. Needless to say, I will only be dipping a toe or two into the depths.

The really deep philosophical dispute between Narveson and me concerns what sorts of reasons exist for endorsing or condemning actions, or for affirming or rejecting really basic moral principles or really basic rights. I think (and I construe Locke as thinking) that certain "morally significant features" of other people provide me with nonprudential and nonstrategic reasons to be circumspect in my conduct toward them. Because persons have these features they matter; and they matter in a way that limits what I may do to or with them. Natural-rights theories seek to identify core natural features of persons that explain why they have a status or standing that morally precludes their being subject to certain sorts of treatment. For Locke these morally significant features include others being one's moral equals, others not being made for one's own purposes, others having ultimate ends of their own that they are rational to advance, and others each having reason to claim freedom from interference as the crucial condition of their advancing their own ends. Natural-rights theorists think that such facts about others have moral import for one. They provide one with reason not to do certain things to other people – like destroying them, locking them up, or converting them into wall-hangings – which one is perfectly morally free to do to other sorts of entities.

Why is one morally precluded from destroying other people, locking them up, and converting them into wall-hangings? Why may they *demand* that one not subject them to such treatment? According to any natural-rights doctrine the crucial answer is *not* that such treatment would have untoward consequences – for the agent or for the subject or for society at large. Bad consequences for the agent may provide the agent with prudential reasons not to impose that treatment, and bad consequences for the subject or for society at large may provide the agent with reasons of benevolence not to impose that treatment. Nevertheless, the wrongness of imposing those sorts of treatment is not contingent upon that treatment having untoward consequences for the agent or the subject or society at large. The wrongness of imposing those sorts of treatment is not contingent on the agent having prudential reasons or reasons of benevolence for eschewing those kinds of treatment. That is why, according to the natural-rights theorist, one can know that one ought not to inflict such treatment without knowing that its infliction would have bad consequences for the agent or the subject or society at large. One can know that one ought not to inflict such treatment without knowing that it will have untoward consequences because one can *reason* from persons having traits like being one's moral equal, not being made for one's purposes, and so on *to* one's having reason not to inflict such treatment. Or so natural-rights theorists like Locke contend.

My point here is not that all these contentions are correct but rather that it is crucial to any (genuine)

natural-rights position that there are nonconsequentialist reasons against certain types of action – reasons that are provided to one by morally significant features of persons. One subscribes to the consequentialist conception of reasons if one believes (as many do) that all reason for or against actions is a matter of the value or disvalue of the consequences of those actions. And, if one subscribes to this consequentialist conception of reasons, one will think that the sort of reasons that have to exist for natural-rights doctrines to make sense simply do not exist. I believe that Narveson thinks that all purported natural-rights accounts of fundamental moral principles have to be "[b]ad accounts, or non-accounts" precisely because he subscribes to such a consequentialist conception of reasons.

However, this narrow conception of reasons is challenged by the thought that persons – beings who are one's moral equal, who are not made for one's purposes, and so on -- matter in a way that places moral limits on what one may do to or with them. Since natural-rights accounts incorporate this thought, invoking the consequentialist conception of reasons to dismiss natural-rights accounts illicitly presupposes a conception of reasons that natural-rights doctrines reject. This does not show that any natural-rights account is correct. It merely shows that dismissing all such accounts as bad accounts or as non-accounts on the basis that all reasons must be consequentialist in character fails to take the character of natural-rights positions seriously.

Narveson prefers a mutual-advantage account of basic moral rules. On this account a rule is justified if and only if we are all better off with general compliance. But the well-known problem with this approach is that (almost) every individual would be better off yet if others generally complied with the rule while he got to violate it when he can do so without being detected. (Narveson himself asks, "What about those who exploit the compliance of most of us with Locke's natural law…?") The problem is that if each individual is prepared to break the rule when doing so is more advantageous for him, and each knows that each is so prepared, we get general noncompliance – which is worse for everyone.

My contention is that we will get general compliance with nifty rules – like refrain from violence against nonviolent others – only if people take themselves to have nonconsequentialist reasons to abide by those rules. The perception that there are certain constraints on how one may treat other persons -- because they are persons – is a necessary catalyst for the general compliance that is mutually advantageous. As Locke put it in his early *Essays on the Law of Nature*, "Thus the rightness of an action does not depend on its utility; on the contrary, its utility is a result of its rightness." [2]

Endnotes

[1] On the conventional rules issue, see Eric Mack, "The Natural Right of Property," *Social Philosophy and Policy*, v.27 no.1 (Winter 2010), 53-79.

[2] *Essays on the Law of Nature*, 79-133, in *Locke: Political Essays*, Mark Goldie, ed. (Cambridge: Cambridge University Press, 1997), 133.

2. Jan Narveson's Comment on Eric Mack (January 15, 2013)

Eric Mack is right to think that we have a serious philosophical disagreement on the matter of the foundations of rights. We are in agreement (and everybody else is too, I hope!) that rights are natural in the sense that they aren't a matter of what some legislature or king decrees, but stem from how people are, how they relate to each other and their environment. He characterizes my counterview as:

“The wrongness of imposing those sorts of treatment“ is “contingent on the agent having prudential reasons or reasons of benevolence for eschewing those kinds of treatment.” I admit that I don't see how this could not be so. Why would we care about rights if the things they protected for us were things that just didn't matter to us? Eric says that persons “matter.” As a moral proposition, I agree: But matter how? On his view (or Kant’s comparable one), it seems that other people “mattering” is a *fact* about all of us. If it were so, why do some people kill others or take their stuff? I don’t see how the answer could be anything other than that morality is interpersonal -- it's the forming and inculcating of interpersonally authoritative rules of behavior. I can’t expect you to respect me and what matters to me if I won't in turn respect you and what matters to you. If that isn’t enough (and apparently for some it isn’t) to induce us both to make and keep the commitments of morality, then we are reduced to war -- and telling our enemies that they are bad people while they’re at it, though true, isn’t going to do any good unless there is some *reason* (that they can understand) *why* people who do the sorts of things they are doing are rationally regarded *as* bad.

It is *not* a “problem” with the social-contract view that while cooperation is better for all, noncooperation is often better for each. The fact that general noncooperation is far worse for everyone, including the noncooperating agent, tells us a lot -- in the end, I think, everything. It explains both why people often do evil and why we need to redouble our efforts to see to it that they don’t. But it does not in the least impugn that what they are doing is indeed wrong -- for wrongness is a matter of acting against rationally imposed rules for all. It not only doesn't need to be anything else, but it really can’t be.

3. Eric Mack’s Response to Peter Vallentyne (January 16, 2013)

I now thank Peter Vallentyne for his very gracious and challenging comments. I want to address several of the issues that Vallentyne raises. Most of these issues arise within the context of the debate – or, let us say, conversation – between theorists (like myself) who are labeled “right-libertarians” and theorists (like Vallentyne) who are labeled “left-libertarians.”[1] Moreover, since most, if not all, members of each of these philosophical sub-camps see themselves as endorsing “a Locke-inspired version of libertarianism,” one can also describe the philosophical conversation as being between “right-Lockeans” and “left-Lockeans.” This is not a conversation about exactly what John Locke actually believed but rather one about what is the best philosophical elaboration of the basic elements of Lockean political theory as those elements themselves are best understood.

Both “right-Lockeans” and “left-Lockeans” recognize in Locke and themselves affirm that <“every Man has a *Property* in his own *Person*. This no Body as any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his.”> [ST §27] This is a statement about each person’s natural (or original) moral condition. Each is <“Master of himself, and *Proprietor of his own Person*”> [ST §44] in the sense that each is morally at liberty to dispose as he sees fit of the elements that compose his person and each has rights against all others not to be prevented from disposing of his person as he sees fit.

For our current purposes, it is important to note that this affirmation of “self-ownership” is anti-egalitarian in the sense that individuals are ascribed rights over very unequal “shares” of personal resources. Some individuals will have rights over considerably more in the way of mental or physical capacities and levels of energy and get-going-ness than others. In addition, it looks as though the affirmed and rightful inequality in personal resources will in all likelihood generate inequalities in extra-personal holdings – in the number of acorns that people will gather, the extent of the fields that

they will cultivate and the crops that they will harvest, and the minerals they will mine and refine. As Locke says, <"Different degrees of Industry were apt to give Men Possessions in different Proportions…."> [ST §48]. And when the invention of money engenders more elaborate forms of labor and commerce, this inequality in extra-personal holdings will be enlarged. When individuals with rights over their talents, energy, and labor bring these factors to bear on the natural materials that surround them, we seem to get rightful inequalities of extra-personal holdings. Left-Lockeans, however, want to push back against these apparently anti-egalitarian implications. They want to find bases within a fundamentally Lockean approach for something like equality in the distribution of the blessings of nature – or even (in some left-Lockeans) something like equality in the distribution of all extra-personal holdings.

The Lockean text suggests four ways in which a Lockean might launch an argument for some degree – perhaps a very considerable degree – of mandated equality in extra-personal holdings. The least promising of these is Locke's advocacy of a spoilage proviso according to which, even if I have mixed my labor with some natural material – e.g., even if I have gathered all three of these bushels of berries – if some of the labor-invested material will spoil in my possession, others are morally at liberty to take that material. But, as Locke points out, the spoilage proviso provides little room for inequality reducing transfers of extra-personal holdings, for only the most irrational people will invest their labor in gathering more berries than they can consume without spoilage or can barter away for other consumption goods. And once money comes along, all those extra berries can readily be converted in to silver and gold coins that never spoil.

Locke tells us that the earth has been given to all mankind in common. There are two very strong interpretations of this claim, each of which seems to require something like an equal distribution of the blessings of nature. One interpretation is that we are all by nature joint-owners of the earth and hence any private appropriation requires everyone's agreement. The other interpretation is that each of such is naturally the owner of a discrete equal share of the earth. (Locke himself rejects both of these interpretations.) As I see it, the history of left-Lockeanism (or left-libertarianism) has largely been the history of people trying to defend one or another of these strong propositions and then trying to show the coherence of a system that includes one of these propositions and self-ownership. One of the striking things about Vallentyne's left-Lockeanism is that Vallentyne disavows both of these strong claims about original equal rights to nature and accepts the position of Locke (and of right-Lockeans) that nature is originally unowned.

Another opening for the insertion of equality into a Lockean system is Locke's claim that an individual who is in extreme want is morally at liberty to take the loaf of bread that she needs to avoid starvation from the otherwise rightful owner of that loaf. Vallentyne agrees, and so do I. Locke in fact seems to make a much stronger claim on behalf of the party in dire circumstances. In his *First Treatise* he declares that <"charity gives every Man a Title to so much out of another's plenty, as will keep him from extream want, where he has no means to subsist otherwise…."> [FT §42]. Notice that this moral-liberty argument goes beyond the spoilage proviso because the party who needs to take the loaf to avoid starvation may take the loaf even if it will not otherwise spoil.[2] On the other hand, the doctrine that people are not obligated to sit and starve or even that there is a duty of charity to prevent starvation hardly gets one to anything like an egalitarianism of extra-personal shares of nature.

Notice that in this *First Treatise* passage Locke says that the person in extreme want has a "Title" to what she needs to survive – albeit it is a title bestowed by charity and not by justice. This raises some of the same philosophical issues considered by Vallentyne toward the end of his remarks. Does the loaf-holder have a *duty* to hand the bread over to the starving individual? Does he at least have a *duty* to allow her to exercise her liberty to take the bread? If the loaf-holder has duties with respect to the

person in extreme want does that mean that she has claim-rights against the loaf-holder? In *A Letter Concerning Toleration*, Locke holds that although uncharitableness is a sin, it is not subject to punishment by the magistrate because uncharitable conduct is <"not prejudicial to other mens Rights…."> [3]

The fourth opening for something like the equal blessings of nature into a Lockean system is Locke's advocacy of the "enough and as good" proviso. The core idea of such a proviso is that people's acquisition of property and/or their decisions about how they will employ their property may not worsen the condition of others in some way. But in what way may people's condition not be worsened? And what is the baseline for determining whether a person's condition is worsened in the specified way? And what justifies any such proviso and how does the affirmed proviso fit into an overall Lockean political theory? All these are matters of complex debate. What is salient here is that Vallentyne's left-Lockean position turns on the inclusion of a bold "enough and as good" proviso. Vallentyne's proposed proviso requires that an equally valuable share of natural resources be left for each individual or that each individual receive due compensation for anything less than an equally valuable share being left for her.[4]

Vallentyne quite rightly notes that he cannot be expected to defend this claim in a short commentary on a short essay about Locke. So it would be unjust for me to launch a full-scale critique here. I will merely highlight three difficulties that I expect readers of this conversation to have. The first is the difficulty of determining what an equally valuable share of natural resources would be. The second is the difficulty of seeing why the benefits provided by natural resources should be shared equally. The third is the difficulty of thinking that raw nature, to any significant degree, provides us with benefits. An important Lockean doctrine is that what provides us with benefits is people doing things with raw stuff that would otherwise be worthless.

Endnotes

[1] For a variety of reasons, I dislike these "right"–"left" labels.

[2] A really interesting discussion of this issue of which Locke must have been aware appears in Hugo Grotius's great 1625 treatise, *The Rights of War and Peace*, (Indianapolis, IN: Liberty Fund, 2005), Bk.II, Ch.II, VI-IX. Editor's Note: Hugo Grotius, *The Rights of War and Peace*, edited and with an Introduction by Richard Tuck, from the Edition by Jean Barbeyrac (Indianapolis: Liberty Fund, 2005). Vol. 2. Bk. II CHAPTER II: VI: Of Things which belong in common to all Men. <http://oll.libertyfund.org/titles/1947#lf1032-02_label_144>.

[3] *A Letter Concerning Toleration*, ed. J. Tully (Indianapolis, IN: Hackett Publishing, 1983), 44. Editor's Note: Or see Liberty Fund's edition, John Locke, *A Letter concerning Toleration and Other Writings*, edited and with an Introduction by Mark Goldie (Indianapolis: Liberty Fund, 2010). <oll.libertyfund.org/titles/2375>.]

[4]Vallentyne might go further. He might require that each be left with a large enough share to provide her with an equal opportunity for wellbeing or receive due compensation for not being left with such a share.

4. Peter Vallentyne's Reply to Eric Mack (January 17, 2013)

I have no disagreements with Eric's excellent response to my commentary. I will here take the opportunity to reply, very briefly, to the three questions he raises at the end.

The first question concerns how the value of shares of natural resources is determined. I would defend an appeal to the competitive value (based on demand and supply) of the rights held over (unimproved) natural resources. There is some indeterminacy in this notion, but a suitable auction would be one example, as would be the market-clearing price in a suitable free market. This general approach is endorsed by Hillel Steiner and Henry George,[1] and some jurisdictions (e.g., Hong Kong, I believe) tax landowners on this basis.

Related to this is the third question, which concerns how raw natural resources could have any value apart from what people might do with them. I fully agree that their value so depends. The value of rights over some natural resources (e.g., beautiful beachfront) is higher than that of rights over other resources (e.g., ugly beachfront) precisely because there is more that people can or want to do with them.

The second, and remaining, question is why the value of natural resources should be shared equally. This is a more difficult question. If I were a moral realist, I would say that moral reality includes such a requirement (and of course I would need to justify this claim). I am not, however, a moral realist, and so I view this a matter of what moral principles we would endorse in a suitable reflective equilibrium (after much information gathering, reflection, discussion, etc.). I find full self-ownership plausible, but I also find a *limited* requirement for some form of substantive equality plausible. Some kind of egalitarian proviso on appropriation (and use) of natural resources seems like a plausible limited requirement. I fully recognize, however, that others (most others!) do not share this view. I thus view it, like all normative matters, as a matter for continued reflection and investigation. I should emphasize, however, that the issue of justification arises no matter what position one takes on the appropriation proviso. One can always ask why some specific proviso is the relevant one, rather than some other one, or none. The egalitarian proviso does not face, that is, any special burden of justification compared to other versions. They all face a very strong burden.

[1] Hillel Steiner, *An Essay on Rights* (Cambridge, MA: Blackwell Publishing, 1994). Henry George, *Progress and Poverty* (New York: Robert Schalkenbach Foundation, 1879). See the OLL edition: Henry George, *Progress and Poverty: An Inquiry into the Cause of Industrial Depressions and of Increase of Want with Increase of Wealth, The Remedy* (Garden City, NY: Doubleday, Page, & Co. 1912). <oll.libertyfund.org/titles/328>.

5. Eric Mack's Comment on Michael Zuckert (January 20, 2013)

I have already thanked Jan Narveson and Peter Vallentyne for their gracious and thought-provoking comments. I now thank Michael Zuckert, who, as is always the case, reveals to me interesting ways to look at philosophical texts and issues that would otherwise be beyond my ken. It is very gratifying to have such distinguished thinkers as commentators and friends.

Zuckert zooms in on what seems to be a curious feature of Locke's *Second Treatise*. Locke's treatise is very reasonably viewed as (among other things) a defense of an economic order in which owners of extra-personal productive resources employ individuals who possess little in the way of productive resources beyond themselves. Such an economic order will be shot through with employer-employee relationships – or, in Locke's language, with master-servant relationships. Moreover, Locke mentions master-servant relationships as one of the several types of relationship that are to be distinguished

from the political ruler-political subject relationship. Nevertheless, while Locke devotes good segments of chapters to the owner-slave, the parent-child, and the husband-wife relationships before going on to ruler-subject relationship, he does not seem to offer a comparable discussion of the master-servant relationship. Zuckert's resolution of this curiosity is that the chapter "Of Property" – which is located between chapters that focus on these other relationships – is in reality about the master-servant relationship. It is an elaborate justifying explanation of the emergence of an economic order that is shot through with employer-employee relationships.

I think that this is a very illuminating point even though (or especially because) the only explicit reference to servants that I recall in "Of Property" is Locke's assertion that,

> <Thus the Grass my Horse has bit>; the Turfs my Servant has cut; and the Ore I have digg'd in any place where I have a right to them in common with others, become my *Property*, without the assignment or consent of any body. The *labour* that was mine [including my horse's labor and my servant's labor], removing them out of that common state they were in, hath *fixed my Property* in them.[1]

Still, I think that there is another respect in which "Of Property" is strangely silent given Locke's place as a crucial defender of a private property commercial order. Locke never takes up the question of why freely contracted exchanges give both parties rights *against the world at large* to what those parties receive through such exchanges.

Consider a situation in which *A* has a property right to a particular silver coin and *B* has a property right to a particular wool coat and they voluntarily agree to an exchange of the coin for the coat. It is pretty clear why, in virtue of their agreement, after the exchange *A* has a right *against B* that *B* not grab the wool coat and that *B* has a right *against A* that *A* not grab the coin. Each has the specified right *against the other* in virtue of the binding moral force of contracts. As Locke says, agreements are binding in the state of nature because <"truth and keeping of faith belongs to men, as men…."> [2]

But why does *A* now have a right *against everyone* that they keep their hands off the wool coat and why does *B* now have a right *against everyone* that they keep their hands off the silver coin? One might say – albeit Locke does not try this – that *A* and *B* don't merely exchange the coin and the coat; they also exchange their rights. *A* transfers to *B* his *right against the world to the coin* and *B* transfers to *A* her *right against the world to the wool coat*. But I think saying this at best amounts to saying that *somehow* the agreement between *A* and *B* results in *A* having a right against the world to the coat and *B* having a right against the world to the coin. Yet what is needed is some explanation of how the voluntary exchange has this effect. I think that there are two factors that explain Locke's failure to note the need to provide an explanation for how voluntary transfers of just holdings bring it about that the recipients now have rights against the world to what they have received in trade.

First, I think that Locke is quite appropriately impressed with the moral power of agreement. For this reason he does not notice that, while it is clear that if I agree to transfer my coin to you, I am bound not to grab it back, it is not so clear why everyone else becomes obligated *to you* not to take the coin. Second, along with all other 17th-century theorists, Locke is focused on how property rights initially arise – on how portions of the natural world are justly removed from the commons and converted into property. The task that he sets for himself in "Of Property" is to explain how just *initial* acquisition is possible (in the absence of the world at large agreeing to such acquisition). Locke simply takes it for granted that justice in transfer is possible.

There is another significant silence in and around Locke's chapter "Of Property." I've argued that Locke provides a forceful explanation for why the appearance and increasing articulation of a system

of private property and trade will benefit all (or nearly all) persons. But this is, as Zuckert points out, a bit of "ideal theory" that may not fully address the world as it actually is. One way that Locke's theorizing about how the rise of property *could be* just and mutually beneficial does not connect to the actual non-ideal world is that Locke remains silent about the extent to which the actual holdings – especially the land holdings -- of the world in which he lived were just or unjust and to what extent individuals were worse off than they would be because unjust holdings were in fact upheld. My presumption is that it simply does not occur to Locke to investigate the gap between his philosophical account of just holdings and those actually existing holdings. Perhaps – I think this is a Zuckert-like thought -- he saw the gap but judged that the most he could do was to leave it to others to see the gap as well.

Zuckert is impressed by the extent to which the gains to participants in Lockean commercial society are unequal – more specifically, by the extent to which the gains to those who are propertied are greater than the gains to those who are property-less. As I understand Zuckert, he is saying that, although justice may not condemn this unequal gain, we have to recognize the sense in which Lockean commercial society is a class society. Here I would just want to put forward an alternative picture for consideration. On that picture (i) many of the gains and the losses in Locke's actual world and in ours derived or now derive from the sorts of economic predation that good Lockeans condemn; (ii) many of those illicit gains accrued and now accrue to those who are already powerful and hooked up to concentrated political interests, and many of those unjust losses fell and now fall on those who are already weak and unrepresented in coalitions of concentrated interests; and (iii) the important class division is the too-often unrecognized division between those who gain from predatory measures that Lockeans should condemn and those from whom those gains are extracted.

Endnotes

[1] *Second Treatise*, §28. <http://oll.libertyfund.org/titles/222#Locke_0057_245>..
[2] *Second Treatise*, §14. <http://oll.libertyfund.org/titles/222#Locke_0057_230>.

6. Jan Narveson's Reply to Eric Mack (January 20, 2013)

Libertarians need to address, very seriously, the questions raised between Eric Mack and Peter Vallentyne regarding, broadly speaking, the treatment of those on the "bottom" (that is, the bottom of the honest-dollar scale, but not the robbers and wastrels.)

Locke's opening pitch in the famous chapter on property takes it that nature belongs to mankind in common. Mack's original essay in effect says that Locke virtually undoes that position. In a sense that's true, but it's also true that he is in a position of *having* to undo it. He evidently thinks that there is something very robust about the claim, even if it's only a strong prima facie claim.

Now, Locke also says, in introducing the thought, that <"*God* gave the earth to mankind in common."> This introduces theological notions into the foundational discourse on these matters, and there is decisive, definitive reason for refusing to countenance such notions here -- a fact that Locke isn't sufficiently aware of (hence the, it seems to me, totally inexcusable book by Jeremy Waldron holding that all of Locke's views depend on his religion, and apparently implying that he was even somehow on the right track in this respect.[1] But Waldron is completely wrong about that. In the present context, the point that can easily be made is: How does Locke *know* that God gave the earth to *all* of us equally, as he says, rather than, say, just the Aryans or the Inuits, or whatever, or that he gave

it highly unequally to his buddies? In context, it's obvious that Locke "knows" this because he believes, antecedently, that the earth *does* belong to us all in common, and therefore *of course* that's who God would, in all conscience, have given it to. The circularity is obvious.

But what that means is that some independent argument has to be given for it. And such argument is, to put it mildly, seriously lacking, even though my impression is that somewhere just short of 100 percent of contemporary social philosophers seem to agree with Locke on the substantive point.

But I don't, and I don't see how libertarians in general can. The reason they can't is simple: *If* indeed all we have, at bottom, is the right to *liberty*, then that right must be essentially *negative*. Now, a negative right over the earth has the problem that all rights are rights against *other people*. And a right against those others to a "share" of "the earth" is one that cannot be backed by strictly negative rights. If the earth is available for exploitation by free men, then there is no way to infer that everyone is *entitled* to some, either in the way of an equal share or anything else. If our only duty is to refrain from aggression, then some may starve because others, quite nonaggressively, neglect them.

I don't see how "left libertarianism" can be founded in liberty, and in Peter Vallentyne's account, it's not. On his account, it seems to me, liberty is a surd. But that's not a point of contention between Eric Mack and myself, so I won't pursue it here.

The question that remains is: Do we have any business asserting such positive claims if we are libertarians? If we are it would have to be this: that somehow, in the process of appropriating bits of the earth, those who end up with nothing in pure free-enterprise environments, due to whatever -- say, lack of talent or brainpower, or whatever -- have somehow been *deprived* of something by the rest, the ingenious and industrious. *If* that were so, we of course could infer our duty to help them out.

But it's at least not obviously so. The person born with no brain, or whatever, isn't going to make it regardless of his property rights. The Lockean idea, not to mention the Rawlsian idea, simply can't be based on that. Let's agree that the libertarian insists that we not put people below the relevant baseline. (In response to both Mack and Vallentyne, this baseline is simply where people would be in a state of nature even if it's Lockean rather than Hobbesian.) The answer, unfortunately, is that quite a few of them would be dead. Locke is perfectly right to point out that nature of itself supplies us with *nothing*. Some technology is essential, however minimum. (I include, say, the rudimentary, innate technology by which newborns seek their mothers' breasts. It does not, however, include the know-how necessary to increase product when Mom's breasts, alas, don't work properly or she is too low on sustenance to keep the supply coming.)

Nevertheless, there are three points that seem to me between them necessary and sufficient.

First, in any even moderately decent times (and if that's lacking, see point three), there are lots of caring people around who will be ready and willing to contribute to appropriate helping agencies. We who worry about the down-and-out do not have a problem. We have, of course, a horrendous problem with governments whose policies shore up the unemployment rate, but we do not have a problem that people will starve to death in a libertarian world -- at least, not so long as most of them are pretty much like almost everybody that you and I know. The frequent aspersions on private charity by the friends of the welfare state -- exhortations that we shouldn't throw the very poor on the "tender mercies of arbitrary charity" etc. -- are not just derogatory but completely baseless. It is characteristic of leftists, and a good many knuckle-headed rightists, to say such things, but anyone who knows any appreciable number of real people knows that the cynics simply don't know what they're talking about. (Of course, those who will be charitable if they can may sometimes be unable to be so. See point three below.)

Secondly, let's also agree that modern technological environments make it highly likely that a lot of people who are perfectly competent will nevertheless end up unemployed now and then, and it may be that the skills some of them honed with years of study and practice and that are now redundant may also make it very difficult for those people to switch to other occupations that would get them back on track economically. However, I don't see that these problems of themselves generate the kind of across-the-board, open-ended case for "equal rights to natural resources," with whatever Vallentyne can somehow extract from that in the way of hard cash. What's needed is a return to prudence: saving for the future during good years, etc.

And thirdly, any idea of "guaranteeing" equality, and in particular guaranteeing it in such a way that every individual is kept above some floor level, enough to keep him alive and functioning, has the problem that moral principles can't of themselves actually guarantee anything whatever. If there absolutely isn't enough to go around, then what? It is, again, impossible to see how the libertarian can say anything other than that in such circumstances the smart, the quick, and the lucky will make it and those with the opposite properties will not. But as I've said above, there is absolutely no reason to think that the world we live in either is now or will in the foreseeable future be a world of such niggardliness. All that's true here is that advocates of positive rights for all have to run out of gas on sheer supply problems at some point, so far as pure theory is concerned. The earth will get zapped by a comet, or boil, or freeze, and there may not be a thing we can do to prevent mass starvation or some such. Pure theory is for debaters only: Again, in the real world the efforts of so many ingenious and humane people -- think, e.g., of Norman Borlaug -- have simply solved any real supply problem, and they will continue to do so as long as the earth bears much resemblance to what it has been for the past many millennia. The claim that Borlaug is merely "equal," in libertarian terms, to the most down-and-out incompetent among us when it comes to claims on "shares" of developed resources is so utterly absurd as to make the egalitarian case a nonstarter.

The upshot is that libertarians do not need to follow Locke in his inconsistent insistence on positive rights for the starving. (It is inconsistent: Mack points out that "Locke holds that although uncharitableness is a sin, it is not subject to punishment by the magistrate..." -- and that, after all, is the *only point at issue*.) Some people's rights, of themselves, will not keep them alive; but warmhearted, sympathetic, and industrious people will do so. That's all we need -- as well as all we are theoretically entitled to.

Endnotes

[1] Jeremy Waldron, *God, Locke, and Equality* (Cambridge: Cambridge University Press, 2002).

7. Michael Zuckert's Comment on Eric Mack (Janaury 20, 2013)

Eric's generous opening gesture about my comment bringing out insights "beyond his ken" may be a bit of an overstatement, but it does bring out something of a difference between many of us who approach political philosophy from within political science and those, like Eric, who do so from within the discipline of philosophy. I suppose there are many ways to describe the difference but one way is to note what Eric's comment directly points to—readers like me are more emphatically concerned with the text of the philosophers than readers like Eric. He is directly concerned with the arguments and tends to see them in an acontextual and ahistorical manner. We tend to be concerned more with the text as text and to be attentive to the place of arguments within texts and within history. Thus in my original post I was trying to solve a puzzle about Locke's organization and order of argument. But in

doing so, I believe, some substantive points of interest emerged that do not nullify the excellent interpretation that Eric developed but give some different emphases to Locke's property doctrine. Although the differences between us are slight I think they do mostly revolve around this difference in the way we approach philosophers like Locke.

With that preface let me make some specific responses to Eric's comments.

1. On a relatively fine textual point: Eric observes quite correctly that the only place where Locke refers to the master-servant relation directly in chapter five is the famous <"the turfs my servant has cut"> passage. This was the passage that C.B. Macpherson (*Possessive Individualism*) referred to as merely reflecting emerging market relations in and therefore as evidence for his Marxist way of reading major texts of the 17th century.[1] One of my points was to show that Locke was not merely not taking for granted relations in his society, but that the very point of the chapter was to show how there might rightly be masters and servants. But beyond that, Locke refers once more, though not in these terms, to the master-servant relation when he speaks of the day laborer in a passage Eric too makes much of. Locke has shown us how there come to be day laborers, i.e., men who have no land and no direct access to the fruits of the land and who therefore must sell their labor. To show that they are not harmed in their rights or in their welfare is, one could plausibly say, the main point of the chapter.
2. Eric uses this example of the servant and turf to raise an interesting philosophical question: How does Locke explain the force of exchange and contract in creating rights against all comers, not just vis-à-vis the exchangers. Here Eric makes a move rather like Macpherson—he concludes that Locke is just taking for granted a relation or practice that exists in his society and has not given it any thought. Perhaps, but I wonder if the Lockean line of answer to this question would follow tracks similar to those that lead to rights against all comers for original appropriators. I do not follow that up here, but it would be an interesting argument to pursue.
3. Similarly, Eric says that it does not occur to Locke to investigate the gap between his account and current holdings. I cannot believe that this is correct. Locke's discussion in the immediate context has the purpose of refuting <Filmer's> claim that existing property relations cannot be justified on the basis of the contractarian/state of nature/original commons arguments he means to counter with his patriarchal doctrine. Only if the world is originally owned and then passed on can private ownership rightly exist, as Filmer has it. This point comes out very strongly in Filmer's critique of Grotius on property and the law of nature. So Locke's task is precisely to show the legitimacy of the existing relations and distribution of property—in general if not in every detail. He could not have overlooked the bearing of his argument on property holdings in his society. I actually think Eric and I agree more here than he sees, for he makes much of Locke's poor-law proposal, which is a response to the "gap" between the very general account he gives of property in a money economy with its assumption for this purpose of a full employment economy and the realities of his and all societies.
4. Eric suggests that my claims about the class character of Lockean society is perhaps more a result of economic and political practices and policies of which Locke would not approve and which he would work to overcome. Probably correct to some degree. Nonetheless, I believe the main point still holds. First, as I suggested above, Locke is writing to legitimate the property relations of his society. These are marked by great inequality of holdings. Second, he seems to believe that the dynamic of the money economy leads to great inequality under all conditions. After all, he takes on the burden of trying to show that the situation of the day laborer is just and right. And advantageous for all. The reason I raised the class issue in the first place is that it poses a serious political problem that Locke should need to face, and it is not evident how he meets it. That problem is how to maintain the property regime that benefits all but does so unequally in the face of temptations of the disadvantaged to disrupt those relations. We enter

here issues such as the distribution of political power among the population, special constitutional means to protect property, and so on. The problem Locke points to but does not seem to resolve set the agenda for much of the political thinking and action of the next century, as men like Montesquieu and Madison (and many others) grappled with it.

Endnotes

[1] Macpherson, C.B., *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford University Press, 1964).

8. Eric Mack's Comment on Jan Narveson 2 (January 20, 2013)

Jan Narveson provides a powerful response to my claim (on behalf of natural-rights theory) that one has reasons to be circumspect in one's treatment of others that are not reasons of prudence or benevolence. Jan's response is that there are things that matter to one and things that matter to others and surely this exhausts everything that matters. If one's reasons for action or forbearance derive from what matters, then all one's reasons must be reasons of prudence or reasons of benevolence. Jan's response is powerful because, at least for a moment, it is difficult to say what else matters.

Fortunately, I just watched a great documentary on the left-wing Current channel entitled *Marijuana Outlaws*, about folks growing marijuana in northern California – entirely, of course, for the legal medical marijuana market. These were all more or less counterculture people who have not had the friendliest past relationships with law enforcement. Because they don't know what to expect from the maze of law enforcement agencies – especially since they may be accused of supplying marijuana to nonmedical consumers – they grow their crops in very remote places. Unfortunately, a consequence of this is that their crops can readily be stolen just as they are about to be harvested.

The last segment of the show involved interviews with growers whose crops had just been stolen. What was striking was the nature of their condemnation of what had been done to them. They all clearly believed that they had been wronged precisely because of the labor, effort, attention, and energy that they have devoted to their crops. Of course, they did not like ending up with $70,000 or $80,000 less income than they expected. They were not happy about that financial loss. Still, a great deal of what mattered to them was that they have been treated in a way that in itself was unacceptable. Their view was that human beings don't (i.e., shouldn't) go around taking other people's hard-earned stuff. There is something wrong with people who do treat others in these ways. (One grower said the thieves were "shits"; another said the thieves were creating "bad karma" that would eventually do them in.)

So everything that matters matters to someone. But one sort of thing that matters to people is not being treated in certain ways (above and beyond the consequences of being treated in those ways) and not themselves treating others in those ways. (The growers also talked about how much it mattered to them that their rights over their land be respected and how much it mattered to them that they respect others' land rights.) I think our view that there are certain constraints we ought to abide by in our interaction with others and that they ought to abide by in their conduct toward us is too deep to be a product of any sort of ends-oriented deliberation about what rule-compliance will be advantageous to oneself or to everyone.

Jan is right, of course, that for some people, being circumspect in the treatment of others does not in

fact matter. Nothing I have said in this conversation shows that these people nevertheless have reason to be circumspect – though I think the sort of considerations Locke lines up do combine to provide reasons not to act in ways that interfere with others' pursuing their own ends. In some of my own essays, I have tried to lay out why any reasonable moral code has to contain important deontic restrictions.[1] All of that is a much bigger conversation.

Endnotes

[1] See "Prerogatives, Restrictions, and Rights," *Social Philosophy and Policy*, vol.22 no.1 (Winter 2005) 357-93, and "Individualism and Libertarian Rights," in *Contemporary Debates in Political Philosophy*, edited by John Christman and Thomas Cristiano (Oxford: Blackwell, 2009), 121-36.

9. Jan Narveson's Comments on Eric Mack and Michael Zuckert (January 20, 2013)

It is easy to misstate and to misread the view of us "reductivists" on moral matters, and it may be that Eric and I agree more than he thinks. His marijuana growers are of course right to complain about the thieves who deprive them of the fruits of their labors. The *ground* of their complaint is of the essence: Others intervened to lower their utility level – their quality of life -- relative to a nonaggressive Lockean baseline. But the complaint itself is expressed precisely and correctly in emotivist-approved terms – those thieves are a bunch of "shits." To say this we surely need no further metaphysics, do we? (Of course, government intervention here is nearly at its worst and makes it most unlikely that the growers will be recompensed. In such a situation, use of "deontological" language is sure to flourish!

Eric's response to me interacts with a point of Zuckert's. The baseline of interaction is always the same: Lockean (and Hobbesian) nonaggression. Interactions that worsen no one's condition are permitted; interactions that lower anyone's condition are not. Aggression mucks up social relations, giving victims reason to react defensively, instead of being free to do their best with their natural endowments, such natural resources as may remain, and exchanges with others who have increased their property meanwhile. In the largely hypothetical original state, a person's capital is mostly natural and affords a barely tolerable living; in developed social conditions, it makes even the day-laborer remarkably well off by comparison. But all that changes is the level of typical legitimate possessions of the rest of society. Given the potent combination of normal entrepreneurship plus normal levels of compassion, as time goes by this level gets very high.

None of the above entails anything about how much actual inequality there will be. We should note that as regards any Lockean intention of justifying the specific kinds of inequalities prevailing in his day, the huge problem is simply that the British landed gentry got their land by conquest and not by Locke-approved means. Justifying that on libertarian grounds is, prima facie, impossible. It's a wholly different problem than the "problem" of justifying Bill Gates or Warren Buffet. The latter's holdings are (unless there are things going on that I don't know about) due to beneficial interaction with millions and millions of people who freely spend their legitimately earned money on things they like or can use to advantage. Insofar as that was the case with persons of whatever class in 17th-century England, the moral situation is precisely the same.

Surely the problem of today is government "control" of economic relations. That was a factor in Locke's time too, but not, I would think, nearly as great a one.

10. Peter Vallentyne's Response to Jan Narveson (January 20, 2013)

Jan asks whether left-libertarianism (i.e., with some kind of egalitarian proviso) can be "founded in [negative] liberty." It can be so founded in the weak sense that (1) it is a form of Lockeanism that recognizes self-ownership and a unilateral moral power to appropriate natural resources, and (2) property rights ground negative liberties. It can also be founded in liberty in a stronger sense of being compatible with maximum equal negative liberty. I believe, however, that there is more than one set of rights that are so compatible (e.g., both radical right-libertarianism and radical left-libertarianism are so compatible). All the hard work is in justifying one set of rights rather than another.[1]

Jan writes, "If the earth is available for exploitation by free men, then there is no way to infer that everyone is entitled to some, either in the way of an equal share or anything else." This seems quite false to me. We agree that agents initially have maximal equal liberty-rights, against all others, to use (unappropriated) natural resources. The point of disagreement concerns the conditions under which someone may unilaterally acquire private property in some natural resources, thereby causing others to lose their liberty rights to use those resources. Jan holds that (1) agents have very strong moral powers to acquire such private property (e.g., it's enough to stake a claim or mix one's labor, with no proviso), and (2) agents have a very weak moral immunity to losing their initial liberty-rights to use the natural resources. My left-libertarian view is quite similar, but it holds that the moral powers to acquire private property in natural resources are weaker (e.g., subject to making a payment for the competitive value of private property rights acquired in excess of a fair [e.g., equal] share), and the moral immunities to loss of the liberty-right to use natural resources are stronger. This is not, I claim, a matter of Jan recognizing stronger negative rights than I do. It is a matter of his holding that the initial negative rights to use natural resources are more easily lost than I hold them to be.

Concerning Jan's three final points: (1) I fully agree that we are addressing only the enforceable duties of agents, and that agents frequently help others even when they don't have an enforceable duty to so and even when they have no duty at all to do so. (2) I fully agree that inequality of various sorts is unavoidable and that, even when it is avoidable, justice does not require equality of outcome (e.g., equal wellbeing, or equal wealth). Individuals are, for example, accountable for managing their resources wisely and are owed no duty of justice to undo losses incurred when they fail to do. (3) The issue is simply that of whether the proviso on appropriation requires a payment to others for any excess share appropriated. If it does, then that is a matter of property rights. The others have an enforceable right to acquire the payments owed to them.

To make this last point maximally clear, suppose that: (1) one person unconditionally owns a tract of land and some buildings on it (as Jan might hold), (2) she transfers full ownership of the buildings to her husband, and (3) she transfers full ownership of the land to her husband, except that it is conditional on his making an annual payment to each of the two adult children (while alive) equal to one-third of the competitive rental value of the land. This situation can arise under Jan's version of right-libertarianism. Left-libertarianism merely allows that something like this arises for all natural resources. Jan and others can reasonably reject this substantive view. I don't, however, see how this view is any less compatible with maximum equal negative liberty than Jan's preferred view.

Endnotes

[1] For discussion of this issue, see Shelly Kagan, "The Argument from Liberty," in *In Harm's Way: Essays in honor of Joel Feinberg*, edited by Jules Coleman and Allen Buchanan (Cambridge:

Cambridge University Press, 1994), 16-41; Jan Narveson and James P. Sterba, *Are Liberty and Equality Compatible?* (New York: Cambridge University Press, 2010.); and Peter Vallentyne, "Equal Negative Liberty and Welfare Rights," *International Journal of Applied Philosophy*, 25 (2011): 237-41 (as well as the pieces by Narveson, Sterba, and Gibbard in that issue).

11. Eric Mack's Reply to Peter Vallentyne 2 (January 20, 2013)

Peter Vallentyne's nice brief response to the questions that I have posed has got me thinking about a standard move that "right-Lockeans" such as myself make in conversations with "left-Lockeans" like Peter. This move is to challenge the use of "natural resources" to describe the "raw stuff" (berries growing on bushes, fish swimming this way or that, that ugly sticky stuff that we now call proven reserves) that left-Lockeans say ought to be equally divided among persons or say (as Peter does) everyone should receive the equal blessings of either through equal shares being left for everyone or due compensation being paid to everyone for whom an equal share is not left.

I think this right-Lockeans challenge is based on the idea that, *if* there is some deep, natural, original, equal right with respect the earth, *then* that right must be a right to an equal share of that *raw stuff* or to have an equal share left for one or to be duly compensated if an equal share of the *raw stuff* is not left for one. Ten of us just find ourselves right next to a heap of ten yummy acorns. *If* there is a natural right to the earth, it seems that in this situation it would be a right of each to one of those acorns or to have one acorn left for one or to be duly compensated if one is not left for one.

But the earth is not one big heap of acorns. There are berries, fish, and that ugly sticky stuff. So the question always gets posed: In a world with different types of stuff, what counts as an equal share? And the answer that is always given by left-Lockeans (and that Peter gives) is: An equal share is (something like) a share of equal market price. Right-Lockeans tend to go along with this proposal about what would count as an equal share because they are so happy to hear a *market-oriented* answer.

But it now occurs to me that "right-Lockeans" should resist this move – this interpretation of equal shares. The reason for resisting is, I think, this: That which has market value is no longer merely a raw bit of the earth. That which gives any bit of the earth market value – people having views about how it can be made available for use and consumption, how it may be consumed, how it can be utilized for production, how it can be preserved for future use – makes it into a not-that-natural "resource." Hence, whatever intuition there is on behalf of an equal division of the earth, i.e., of that raw stuff, or on behalf of compensation for those who do not get an equal share of the earth does not carry over to an equal division of "natural resources."

The role of people and their beliefs and actions in determining how much of a natural resource any bit of the earth is (at any given moment of human history) seems to make any claim to an equal share of natural *resources* very different from a claim to an equal share of *raw stuff*. That is why it seems to me that calling for each person receiving a share of equal value or having such a share of equal value left for him or being compensated for not have a share of equal value left for him goes way beyond calling for each to share equally in the blessings of nature – whatever that equality would be.

12. Eric Mack's Comment on Michael Zuckert 2 (January 21, 2013)

Let me begin by saying that I meant what I said about learning things about texts and about philosophical doctrines associated with those texts from readers like Michael that otherwise I would

never see. Indeed, I wasn't disputing Michael's proposal that Locke's chapter "Of Property" be seen as his treatment of the master-servant relationship when I said that the turf passage is the only passage in that chapter that explicitly mentions that relationship. I was trying to work my way over to something else that Locke does not explicitly talk about, viz., how the purchaser acquires a right against the world to the item that he has purchased. In this case, however, I have drawn the conclusion that Locke did not see any need to explain how it comes about that purchaser acquires a right against all comers and not merely against the seller. I offer an exculpating explanation for Locke's not investigating acquisition of rights through transfer, viz., that the problem about private property rights for 17th-century theorists was how to explain the justice of initial acquisition. Filmer's dispute with Grotius and Locke's dispute with Filmer is focused on the possibility of just initial appropriation.

Moving along with my theme of things that Locke does not attend to, I say that Locke does not step back and ask whether the land holdings that actually exist in England in, say, 1689 are just in light of his own theory of just property rights. I think I want to stick by this claim – although there may somewhere be textual evidence against it. Again, I do not take this to be a huge criticism of Locke. I think it is quite natural for very deep thinkers not to raise questions about every facet of the world that they inhabit that might be questioned on the basis of the doctrines they develop. (Think of all the questions that we should be raising but which we do not think of to raise.)

As Michael points out, both he and I think that the sort of aid to the poor that Locke recommends in his <"An Essay on the Poor Law"> is a least partially motivated by his sense that the "enough and as good" proviso is triggered by the actual conditions in late 17th-century England. But I do not think that this is evidence for the proposition that Locke is questioning the property rights of those who will be required to fund that aid. This belief on my part stems from my picture of what the "enough and as good" proviso says and demands. As I see it (and, perhaps, as Locke saw it) the proviso requires that holders of property not depose of their property in ways that add up to any individual being made worse off with respect to (something like) economic opportunity. (See the Mack-Vallentyne dimension of this conversation.) If the proviso is violated, those who do the violating have to provide the victim with compensating economic opportunity. But the property rights of the violators are not nullified – except insofar as some of their holdings will have to be used to provide the required economic opportunities. There is no more general questioning of property rights than there is when I am found in a civil suit to be liable to make some compensation payment.

Lastly, I think that Michael is correct to raise the issue of "how to maintain the property regime that benefits all but does so unequally in the face of the temptations of the disadvantaged [I would have said "the less advantaged"] to disrupt those relations." I now see my remarks as cautions against casting this as a *class* issue. My suggestion was that there is more class conflict in the zero-sum battles about who will be the beneficiaries and who will be the losers of political interventions in the market. My view is that most of those on the lowest rungs of the current economic ladder would be quite a ways further up that ladder were it not for policies that good Lockeans should condemn. Hence, to address the problems that arise because people are currently not very far up that ladder should not be described as addressing a problem attributable to Lockeanism.

13. Jan Narveson's Comment on Peter Vallentyne (January 22, 2013)

I think that the idea that Mankind owns The Earth In Common and Equally is untenable as well as, in the case of Locke, unmotivated. Peter's latest argument here is interesting, but seems to me flawed. He says, "Suppose that: (1) one person unconditionally owns a tract of land and some buildings on it (as

Jan might hold), (2) she transfers full ownership of the buildings to her husband, and (3) she transfers full ownership of the land to her husband, except that it is conditional on his making an annual payment to each of the two adult children (while alive) equal to one third of the competitive rental value of the land. This situation can arise under Jan's version of right-libertarianism. Left-libertarianism merely allows something like this arises for all natural resources. Jan and others can reasonably reject this substantive view. I don't, however, see how this view is any less compatible with maximum equal negative liberty than Jan's preferred view."

Here the problem is that while it is easy to see how some individual who owns something can give it to someone else with liens, and so, as Peter says, such "a situation … can arise" on my version of libertarianism, it simply doesn't follow that libertarianism can even *allow* that this could be the general case. For obviously, at the start, somebody has to be in the position of the initial extender of that qualified right to others, meaning that that person was *not* under the obligation to make an annual payment. But if Peter's idea is right, everybody including that person has to be in that condition – and where could that come from in a regime of pure negative rights? (Of course, you could succumb to the theological infection and suppose that God, who after all made it all, was in that position and … but we have seen through such gambits.)

More generally: Vallentyne's idea that we can solve the otherwise embarrassing problem of attributing a workable value to what "everyone" is supposed to get in the scheme of universal ownership of undeveloped resources seems to me not workable. The value of strictly natural resources qua natural is zero. This remains true no matter how far mankind has come along: unless and until someone is in a position to exchange the resource with someone else, in return for something else, there is no economic value to discuss. But once there is, it arises from the activities of individual people in using bits of nature. The idea that when Jones comes across x in a strictly natural state and "takes it into his possession," he is thereby, as the unjustifiably fashionable phrase has it, *depriving* someone else of the *liberty* of taking it, is entirely mistaken. Everyone's liberty is constrained by everyone else's liberty, which means that nobody gets to aggress against anyone else – to deprive anyone else of the fruits of his or her labor, or inflict wounds, disease, or death on any innocent person. And to claim that Smith is *non*innocent because he has undertaken to use something not previously used by anyone else, is a misuse of the notion of "aggression." It is logically impossible for us all to acquire the same item: Ownership means control, and if your and my desires, interests, willings are different with respect to the use of particular item x, then somebody must necessarily be frustrated. The full possession of any given thing presents a zero-sum game. And there cannot – logically cannot – be a universal solution to such a game.

But libertarianism doesn't have that problem, because it is *essentially* historical: If person A gets there first, then x is no longer in a state of undeveloped, unpossessed nature, and so person B who comes next cannot in his turn make an *initial acquisition* of x. Instead, B will be aggressing against A if B undertakes use of x without A's permission.

Writers on Locke tend to talk about three possible cases of legitimate acquisition: finding, making, and transfer from some previous owner – i.e., initial acquisition, creation, and transfer. But the first two are not generically distinct, for when anyone takes anything into use, that person is creating value: The item now serves a purpose that it didn't before (even if the owner chooses not to alter it, like those who leave their suburban yards wild instead of planting and mowing grass there.) That's why A is *now* in a position to consider exchange, if some B is likewise in possession of something else, y, such that A's and B's situations with respect to those things can be voluntarily reversed – A supplying B with x and B supplying A with y.

That is why Locke is essentially right. All rights are rights to act, to do or not do as we choose, and the ownership of things is just the right to perform actions involving the things in question. When those things are inordinately complex and "artificial," requiring immense technology to produce (such as electron scanning microscopes), the point may be more obvious but the logic is precisely the same.

If we could talk of equal ownership of nature, each person's share would have a value of *zero*, since what is supposed to be shared in that condition has that value. And once we are into sharing things that do have value, that value arises from use, from work, and so the Vallentynian egalitarian would be giving us all a share in *everyone else's labor* – the very thing that his theory says we are not entitled to do with anything insofar as it *does* have human labor "mixed with it."

Thus "left" libertarianism is not a coherent theory. There isn't "left" and "right" libertarianism: there is either libertarianism or not. (Or: There is libertarianism supplemented by one sort of mistake (say, Marxist), or that sort supplemented with another sort (say, Henry George's, as just discussed), and so on. But basically there is just the one fundamental moral idea: that no one is to use force or fraud (which I think can be analyzed into a sort of force) against anyone who has not in his turn used it against others; or in Hobbes's terminology, no one is to make war against any peaceable person; or in Locke's, that <"no one ought to harm another in his life, health, liberty, or possessions.">

14. Peter Vallentyne's Response to Jan Narveson 2 (January 22, 2013)

Jan says: "The value of strictly natural resources *qua* natural is zero." I disagree. Suppose that we each need water for our apple trees. What is the value of the rights to control a water hole? If an auction were held, each of us would bid some positive amount for those rights. Of course, the water may have no value to us without adding some labor (e.g., transporting it to our plants), but that is factored into our bids. Our bids are based on what we can do with the natural resource when combined with our labor, etc.

Related to this, Eric says: "That which has market value is [on the left-libertarian view] no longer merely a raw bit of the earth. That which gives any bit of the earth market value – people having views about how it can be made available for use and consumption, how it may be consumed, how it can be utilized for production, how it can be preserved for future use – makes it into a not-that-natural 'resource.' Hence, whatever intuition there is on behalf of an equal division of the earth, i.e., of that raw stuff, or on behalf of compensation for those who do not get an equal share of the earth does not carry over to an equal division of 'natural resources.'"

I fully agree that what gives natural resources market value is what individuals can and want to do with them. Eric thinks that raw stuff is different, but I don't understand the difference. Natural resources, as I understand them, simply are stuff in the world that does not have any moral standing (e.g., no self-ownership) in its original state prior to modification by agents (so a chair is not a natural resource, but its production ultimately involves the use of natural resources). Natural resources are, it seems to me, just raw stuff. Moreover, even if the two are somehow different, I don't understand why the issue of market value distinguishes the two. Suppose (counterfactually) that raw stuff is homogeneous and we divide it up to give everyone an identical share of each kind of stuff. Each has private property in her bundle. Given that the bundles are tradable, they each have an equal market value, which depends on what individuals can and want to do with it. So, the market value of rights over raw stuff depends on what individuals can and want to do with them.

Jan says: "The idea that when Jones comes across x in a strictly natural state and 'takes it into his

possession,' he is thereby, as the unjustifiably fashionable phrase has it, *depriving* someone else of the *liberty* of taking it, is entirely mistaken." I fully agree, but the issue is not about taking into possession (which is a form of use) but about appropriation (acquiring rights to exclude others from using). Appropriation, by definition, deprives others of their former negative liberty to use the unowned natural resources.

Jan says that libertarianism is "*essentially* historical." I fully agree.

Jan says: "All rights are rights to act, to do or not do as we choose, and the ownership of things is just the right to perform actions involving the things in question." I fully agree.

Jan says: "Thus 'left' libertarianism is not a coherent theory." I, of course, disagree. I think of libertarianism, even right-libertarianism, as a family of theories that disagree on various points (just as utilitarianism is such a family). For example, different libertarian theories can disagree about how strong the enforcement rights are that protect one's property. (Does one have a right to kill someone, who due to an innocent mistake, is about to take one's chocolate bar, when this is the only way of stopping such use? Does one have a right to kill a murderer purely for retributive reasons?). I view the (perhaps empty) proviso on appropriation as a similar issue on which libertarians can disagree. I don't see that much is gained by reserving the libertarian label only for those who endorse an empty proviso.

This will be my last post. So, future silence should not be interpreted as inability to answer any later posts!

15. Eric Mack's Final Comments (January 22, 2013)

I do not think that it is part of my official duties to call an end to our conversation. So, rather than doing that, I simply want to thank again Jan Narveson, Peter Vallentyne, and Michael Zuckert for their spirited and instructive comments and to suggest that our further conversation be carried on in the private recesses of hyper-space (if any such private recesses really still exist).

16. Jan Narveson's Final Comment on Peter Vallentyne (January 22, 2013)

(1) Peter says, "Suppose that we each need water for our apple trees. What is the value of the rights to control a water hole? If an auction were held, each of us would bid some positive amount for those rights. Of course, the water may have no value to us without adding some labor (e.g., transporting it to our plants), but that is factored into our bids. Our bids are based on what we can do with the natural resource when combined with our labor, etc."

This is not relevant. Of course, if there is an auction, then somebody is in a position to distribute these things and has already taken some kind of possession; or a bunch of people have come upon the water hole and have decided to divvy it up; or whatever. So we no longer have value in situ: we have the minimum requirements for exchange and distribution (which itself is a kind of exchange).

If Elmer had stumbled on the water hole before any others came along, he would then be in a position to sell water (= water rights) to second comers. That is to say, their use of it would be an item in an exchange.

Further, the value that a given resource would get at a hypothetical auction is not obviously relevant as a way of ascribing value to natural resources for Peter's purpose. For his idea, as I understand it, is to understand natural resources as such to "belong to" everyone by nature. I do think that this Henry George idea confuses use value with exchange value. Economics is entirely about the latter, though of course exchange value always arises from the interaction of persons who have previously found a use-value for various things that they come to possess. Perhaps Peter is trading on the same confusion? For insofar as what we are trying to do is to enable all to share in the "value" of natural resources, that value in the use-value sense varies hugely as a function of technology (in the broad sense of, any idea of how to put stuff to use); to divvy *that* up is clearly to distribute the "labors" (again, in the broad sense of taking or putting anything to use) of persons. Distributing the "things' independently on their technologically-modulated use makes no sense.

(2) And then, "the issue is not about taking into possession (which is a form of use) but about appropriation (acquiring rights to exclude others from using). Appropriation, by definition, deprives others of their former negative liberty to use the unowned natural resources." However, what libertarianism does, just because that's what it is, is to give everyone rights to whatever they possess which was not acquired by molesting or robbing from others.Taking what some person has previously acquired is aggression, and is disallowed.

Now, the crucial question is broached when Peter says, "Appropriation, by definition, deprives others of their former negative liberty to use the unowned natural resources." My point about this is that it is impossible for more than one person to take into his possession any particular object. So to say that one *deprives* others of a liberty when one gets there first is to say nothing that constitutes a complaint. There has to be some other ground for complaint about A's acquiring x than that in so acquiring it, B "no longer can." As Locke observed, acquisitions by anyone are impossible if they must be compatible with acquisitions of the same thing by someone, let alone everyone, else. A right to *attempt* to use x is all we can have, as well as all we need. Having it means that no one may interfere with my attempts, but also that the previously successful attempts of others are not to be interfered with either. I don't see how left-libertarianism can fail to be guilty of doing just that.

Libertarians can disagree about lots of things, among which estimates of proper enforcement levels is an excellent example. But I don't see that this matter of supposed rights to natural resources is one such. Rights are duty-entailers: for A to have a right against B is for B to be required to act in certain ways toward A. I can't imagine what else property rights can be based on than first possession. Peter agrees that the liberty principle is, as I put it, essentially historical. So it seems to me that when A acquires something not previously acquired by anyone else, the case that taking it from him without his consent is the sort of aggression that liberty forbids is definitive. And redistributing it "equally" to everyone, since it amounts to redistributing the varying labors of a lot of people, is thus, so far as I can see, just such an aggression.

No doubt Peter will have some interesting further comments, but like him, I shall rest with this for now.

But I'll take the opportunity to thank the Liberty Fund for the opportunity to engage in these discussions!

17. Michael Zuckert's Concluding Thoughts (27 January, 2013)

My colleagues seem to have signed off, but many issues remain worth discussing. So here come a few

comments on the exchange as it is now pretty much at its end. Two large issues have dominated: Locke on property—what does he mean, how sound are his arguments?--and broader arguments about property and the nature of rights. I want to say a bit about both by looking first at some of the replies to my earlier comment.

Both Eric (entry 12) and Jan (entry 9) pick up on a theme from my initial reply to Eric. Both maintain, in effect, that property relations in Locke's England cannot satisfy his own criteria for just acquisition and therefore for just current holdings. As Jan says, "The British landed gentry got their land by conquest and not by Locke-approved means." Eric surmises that "Locke does not step back and ask whether the land holdings that actually exist in England in, say, 1689 are just in light of his theory of just property rights." Locke, to be sure, does not address explicitly that question, i.e., he does not say what Eric and Jan say—that the property holdings of his day are unjust. I would add a parallel case where Locke also fails to explicitly address an issue where his doctrine has unsettling implications for political and economic life of his day. According to him, conquest cannot generate legitimate political authority, a doctrine unsettling to all European powers of the day, including Britain. I wish to reiterate my point that Locke's silence on these points cannot be inadvertent, as Eric claims, for the context of his book is the debate with Filmer, in which the legitimacy of the property distribution of the modern world was precisely what was ultimately at stake. It is true, as Eric says, that the debate was explicitly over the means of initial acquisition, but Filmer made clear that the justice of current holdings was at stake in the debate: Only his account of an initial private property could legitimate current private property.

The challenge Locke faced was to develop an alternative theory that could validate the property regime of his own time. That was the very thing Filmer meant to put in play. Cagily, Filmer was counting on the propertied in England to support his argument for absolutism because it would provide stronger support for their property claims than the Whiggish contractarian arguments he was opposed to. Therefore, Locke could not have been unaware of or indifferent to the implications of his doctrine for property relations in his England. Yet it is true that he does not pause to examine whether the current property distribution is just on his own criteria, nor, even more, to denounce those holdings as unjust. In proceeding as he does, we must ask what could Locke be thinking that he does not pause to make the point Nozick makes: that the theory of acquisition may have very disruptive implications for the reigning property regime? (See Loren Lomasky's <"Libertarianism at Twin Harvard.">) [1] Here we must be speculative, for Locke does not explicitly address the issue of his own silences.

So if speculate we must, here goes. My speculation concerns the overall character of Locke's argument. On property—and on quite a few other things—we should see Locke as making a two-stage argument. In the first place he means to show that the two large institutional arrangements of civilized society—private property and the state—are rational and just on the basis of a contractarian/natural rights-based argument that in its nature calls both into question initially. He shows that there is an argument that starts with an initial situation in which property is unowned (I am with those like Eric who argue that Locke means by "the earth belongs to mankind in common" that it is initially unowned, but ownable) and in which there is no political authority, i.e., a state of nature. He then tries to show that one can move form that state to one where private property and the state rightfully exist. That argument takes the form of a "history"—an idealized and fabulous history, as many of its critics have maintained over the years. That history is idealized in the sense that it shows what would happen if the actors understood their moral situation correctly and acted rationally in light of it. That argument is meant to show that the state and private property in general are just and beneficial to all who live in civilized society. Therefore, the argument is meant to show that it is rational for denizens of the civilized world to will these institutions as if they made the contract and underwent the history of property as Locke explained it in chapter five. He shows that the current property regime benefits all

and that it would be irrational for anyone to will its destruction or severe disruption. Locke himself must recognize that the present arrangement, though falling short of strict justice on the basis of his own theory, is both more just and more beneficial to all and to the society as a whole than would be the project of starting all over again and insisting on strict justice according to his criteria of just acquisition. It is not rational for him to propose such a thing, and it is not rational for any of us to will such a thing. So, on the basis of asking the important political and philosophical question, "compared to what," Locke can treat present property relations as just enough.

However, once Locke has brought forward the true criteria of justice in property relations (and political construction) future actions should be governed by this standard, so far as he can win agreement to his criteria. That is to say, knowledge of the true character and justification of property has implications both looking backward and looking forward. In looking backward, Locke approaches Hume in validating a private property regime on the basis of social benefit, but in looking forward he keeps individual rights much more to the fore for reasons both of justice and of social benefit. (However, this last comment must be qualified by his statement at the end of chapter five on the power of the civil authorities to regulate property, but this takes us too far afield).

To my mind the most interesting issue that has arisen in the discussion is the one debated between Eric and Jan about the basis of rights. On the whole I am on Eric's side but I believe that Jan raises an important question and challenge when he asks: "Why are those feature of persons" that Eric appeals to in order to ground rights "morally significant"? Jan goes on to observe that "bad accounts or non-accounts … abound." He has a point—as the many manifestoes on human rights demonstrate. He seeks an alternative, less mushy account, roughly of a Hobbesian sort. That his account does not work is clear from a claim he makes that is, I believe, incorrect. He identifies "the more fundamental question: Why should we think each other to be 'owners' of ourselves in the first place? (Hobbes's answer is clear: because if we don't, we'll be facing an awful state-of-nature situation.)." That is, he agrees with Eric that self-ownership is a crucial piece of the argument but disagrees with Eric's Lockean-Kantian-Nozickian way of speaking in terms of "morally significant features of persons." He thinks he can get the necessary self-ownership claim on the basis of harder-nosed Hobbesian arguments. But contrary to what he says, Hobbes does not arrive at a doctrine of self-ownership and his doctrine of natural right forecloses him from doing so. According to Hobbes, we have a right of nature, which is a right to everything, including <"one another's bodies">. If others have a right to our bodies we are not self-owners, for ownership of self implies immunities that rule out Hobbes's right of nature. So far as we recognize such immunities, they are not natural rights but conventional rights based on the law of nature (not really a law and not really natural as Hobbes tells us) or on the civil law. The absence of a doctrine of self-ownership is what leads Hobbes to deny a natural right of property. We have liberty to take what we need in the state of nature but no property right in the sense that others are obliged to respect our right to what we have taken and perhaps stored. There is no injustice in the state of nature because there is no mine and thine. Locke differs with Hobbes on more than the sovereign—he affirms a natural right that has the character of property and therefore can affirm the possibility of injustice in the state of nature.

As Eric maintains and as I agree, Locke affirms a natural right of property in part on the basis of self-ownership and affirms that on the basis of those morally significant features of persons. Jan is apparently unconvinced by Eric's way of developing this theme, and were there world enough and time I would put forward an alternative account that perhaps he or others would find persuasive. In lieu of that I will mention my attempt to develop a Lockean theory of self-ownership on entirely nontheological grounds in my *Natural Rights and the New Republicanism* (1994), chapter nine. [2] Two comments about the argument I make there. First, I think Locke did have a nontheological argument in addition to the theological arguments he presented in two treatises. How the arguments

relate is a fine question that I try to address in the introduction to Launching Liberalism. Second, the nontheological argument for self-ownership is developed from Locke's treatment of self and person in the Essay on Human Understanding.

I regret that I have not had time to address Peter Vallentyne's comments or many of the other issues raised by the discussion here. There seems to be enough material and disagreement to keep going for another year or two, I am sure. But like my colleagues, I have a few classes to teach and dissertations to read, so I too will sign off. Many thanks to Liberty Fund for pioneering yet another way to keep the discussion of important issues of liberty on the table.

Endnotes

[1] Loren E. Lomasky, "Libertarianism at twin Harvard," *Social Philosophy and Policy* 22 (1):178-199 (2005). Abstract at <http://philpapers.org/rec/LOMLAT>.

[2] Michael P. Zuckert, *Natural Rights and the New Republicanism* (Princeton University Press, 1994). Chapter 9 "Locke and the Reformation of Natural Law of Property."

18. Jan Narveson's Response to Michael Zuckert (January 28, 2013)

As I have been at pains to point out, "self-ownership" is not a basis of libertarianism. It simply is one of the several ways of stating it, and nothing else. Since Hobbes is a libertarian in moral principle -- his First Law of Nature is, precisely, the nonaggression principle, as his deductions from it make clear, tabling, as usual, the strictly political arguments -- he does "arrive at" the self-ownership in question, though he doesn't call it that.

Hobbes's "right of nature," as I have also pointed out, is not and cannot be a right, a term he carefully defines in its proper moral connotation. For each to have a "right" "even to another man's body" is for nobody to have any rights at all. What there is, is the "liberty" of nature, which as Hobbes says gets us into nothing but big trouble. Rational people, therefore, go by -- agree to -- his Laws of Nature: "willing, when others are so too, as far-forth, as for Peace, and defence of himself 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 himself." He calls it a "right" but what it is, in his own account, is and can only be a liberty, and in no way a right. Rights entail duties; liberties, as such, do not.

Hobbes indeed acknowledges, as Michael points out, that the law of nature is "not really a law and not really natural as Hobbes tells us." But Hobbes didn't take Philosophy 100. His Laws of Nature are moral, not civil or legislated, and they are natural in the only important sense, which is that they are based, as Hobbes says, on the nature of man, and so long as that nature remains roughly as it is, they are, as he says, "eternal and immutable." But the aspect of man's nature that they are based on is (practical) rationality, given our various needs and desires and bodily limitations. Seeing our situations and predicaments, we see the need for the Law(s) of Nature.

I am sorry not to have seen Michael's books that he refers to, and will hope to have time to peruse them one day!

ADDITIONAL READING

Online Resources

We have works by the following authors:

- <John Locke (1632-1704)>
  - *Second Treatise of Government* (1689)
    - <Thomas Hollis edition> of 1764 - <Chapter V "Of Property">
    - 1824 edition from *The Works of John Locke*
  - <*First Treatise of Government*> - Hollis ed.
  - <*A Letter Concerning Toleration*> (1689)
  - <"An Essay on the Poor Law"> (1697)
- <Sir Robert Filmer (1588-1653)>
  - <*Patriarcha; of the Natural Power of Kings* >(1680)
- <Thomas Hobbes (1588-1679)>
  - <Leviathan> (1651)

Life & Times of John Locke

- Biography: <Locke: A Life>
- Timeline: <The Life and Work of John Locke>
- Timeline: <The Divine Right of Kings>

Essays & Annotated Reading Lists

- Eric Mack, <Locke on Toleration: Locke's A Letter Concerning Toleratio>n
- Bibliographical Essay: Karen Vaughn, <John Locke's Theory of Property: Problems of Interpretation>
- Literature of Liberty Editorial: <On John Locke's Importance>
- Foreword: Thomas G. West on <Sidney, Filmer and Locke on Monarchical Power>

Other Resources:

- Debates: <The Divine Right of Kings vs. Natural Rights>
- Debates: <Religious Toleration>
- Topics: <Natural Law & Natural Rights>
- Topics: <Property>
- School of Thought: <17thC Natural Rights Theorists>

Recommended Reading on Locke and Property.

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Nozick, Robert. *Anarchy, State and Utopia* (New York: Basic Books, 1974).

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Zuckert, Michael. "Two Paths from Revolution: Jefferson, Paine and the Radicalization of Enlightenment Thought” in Simon Newman and Peter Ounf, eds., *Paine and Jefferson in the Age of Revolutions* (University Press of Virginia, forthcoming, 2013).

John Locke, *The Two Treatises of Civil Government* (1689, 1764)↩

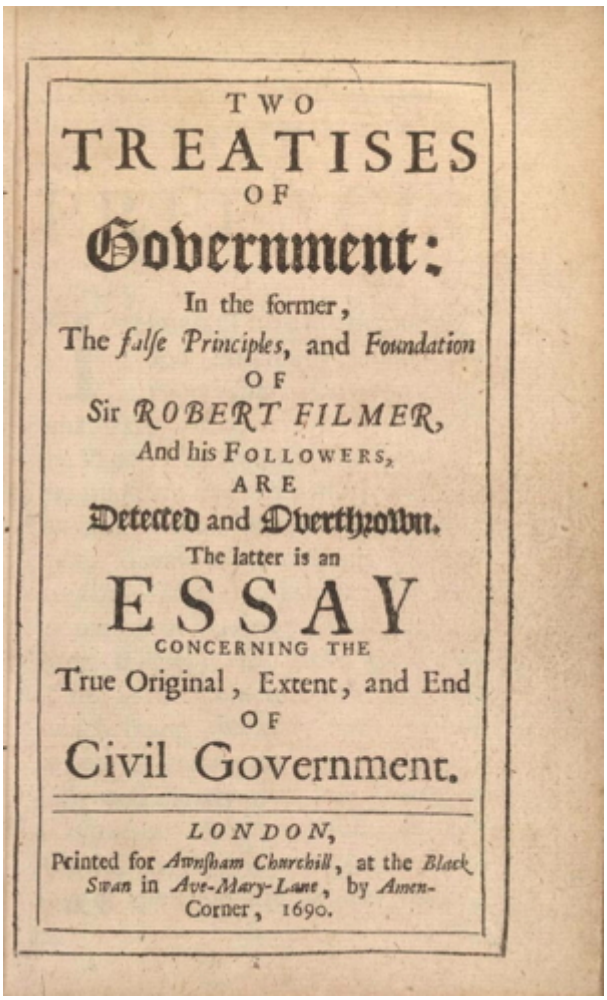
TWO
TREATISES
OF
Government:
In the former,
The *false Principles*, and *Foundation*
OF
Sir ROBERT FILMER,
And his FOLLOWERS,
ARE
Detected and Overthrown.
The latter is an
ESSAY
CONCERNING THE
True Original, Extent, and End
OF
Civil Government.
LONDON,
Printed for *Awnſham Churchill*, at the *Black Swan* in *Ave-Mary-Lane*, by *Amen-Corner*, 1690.

Table of Contents of the *Two Treatises*:

Front Matter

TWO TREATISES OF GOVERNMENT
BY IOHN LOCKE
SALUS POPULI SUPREMA LEX ESTO
LONDON PRINTED MDCLXXXVIIII
REPRINTED, THE SIXTH TIME, BY A. MILLAR, H. WOODFALL, I. WHISTON AND B. WHITE, I. RIVINGTON, L. DAVIS AND C. REYMERS, R. BALDWIN, HAWES CLARKE AND COLLINS; W. IOHNSTON, W. OWEN, I. RICHARDSON, S. CROWDER, T. LONGMAN, B. LAW, C. RIVINGTON, E. DILLY, R. WITHY, C. AND R. WARE, S. BAKER, T. PAYNE, A. SHUCKBURGH, I. HINXMAN
MDCCLXIIII

The present Edition of this Book has not only been collated with the first three Editions, which were published during the Author's Life, but also has the Advantage of his last Corrections and Improvements, from a Copy delivered by him to Mr. Peter Coste, communicated to the Editor, and now lodged in Christ College, Cambridge.

TWO TREATISES OF GOVERNMENT. IN THE FORMER THE FALSE PRINCIPLES AND FOUNDATION OF SIR ROBERT FILMER AND HIS FOLLOWERS ARE DETECTED AND OVERTHROWN.

THE LATTER IS AN ESSAY CONCERNING THE TRUE ORIGINAL EXTENT AND END OF CIVIL GOVERNMENT.

PREFACE.↩

Reader, thou hast here the beginning and end of a discourse concerning government; what fate has otherwise disposed of the papers that should have filled up the middle, and were more than all the rest,

it is not worth while to tell thee. These, which remain, I hope are sufficient to establish the throne of our great restorer, our present King William; to make good his title, in the consent of the people, which being the only one of all lawful governments, he has more fully and clearly, than any prince in Christendom; and to justify to the world the people of England, whose love of their just and natural rights, with their resolution to preserve them, saved the nation when it was on the very brink of slavery and ruin. If these papers have that evidence, I slatter myself is to be found in them, there will be no great miss of those which are lost, and my reader may be satisfied without them: for I imagine, I shall have neither the time, nor inclination to repeat my pains, and fill up the wanting part of my answer, by tracing Sir Robert again, through all the windings and obscurities, which are to be met with in the several branches of his wonderful system. The king, and body of the nation, have since so throughly confuted his Hypothesis, that I suppose no body hereafter will have either the confidence to appear against our common safety, and be again an advocate for slavery; or the weakness to be deceived with contradictions dressed up in a popular stile, and well-turned periods: for if any one will be at the pains, himself, in those parts, which are here untouched, to strip Sir Robert's discourses of the flourish of doubtful expressions, and endeavour to reduce his words to direct, positive, intelligible propositions, and then compare them one with another, he will quickly be satisfied, there was never so much glib nonsense put together in well-sounding English. If he think it not worth while to examine his works all thro', let him make an experiment in that part, where he treats of usurpation; and let him try, whether he can, with all his skill, make Sir Robert intelligible, and consistent with himself, or common sense. I should not speak so plainly of a gentleman, long since past answering, had not the pulpit, of late years, publicly owned his doctrine, and made it the current divinity of the times. It is necessary those men, who taking on them to be teachers, have so dangerously misled others, should be openly shewed of what authority this their Patriarch is, whom they have so blindly followed, that so they may either retract what upon so ill grounds they have vented, and cannot be maintained; or else justify those principles which they preached up for gospel; though they had no better an author than an English courtier: for I should not have writ against Sir Robert, or taken the pains to shew his mistakes, inconsistencies, and want of (what he so much boasts of, and pretends wholly to build on) scripture-proofs, were there not men amongst us, who, by crying up his books, and espousing his doctrine, save me from the reproach of writing against a dead adversary. They have been so zealous in this point, that, if I have done him any wrong, I cannot hope they should spare me. I wish, where they have done the truth and the public wrong, they would be as ready to redress it, and allow its just weight to this reflection, viz. that there cannot be done a greater mischief to prince and people, than the propagating wrong notions concerning government; that so at last all times might not have reason to complain of the Drum Ecclesiastic. If any one, concerned really for truth, undertake the confutation of my Hypothesis, I promise him either to recant my mistake, upon fair conviction; or to answer his difficulties. But he must remember two things.

First, That cavilling here and there, at some expression, or little incident of my discourse, is not an answer to my book.

Secondly, That I shall not take railing for arguments, nor think either of these worth my notice, though I shall always look on myself as bound to give satisfacton to any one, who shall appear to be conscientiously scrupulous in the point, and shall shew any just grounds for his scruples.

I have nothing more, but to advertise the reader, that Observations stands for Observations on Hobbs, Milton, &c. and that a bare quotation of pages always means pages of his Patriarcha, Edition 1680.

OF GOVERNMENT. BOOK I

CONTENTS OF BOOK I

Chap. I.

§. 1.

Slavery is so vile and miserable an estate of man, and so directly opposite to the generous temper and courage of our nation; that it is hardly to be conceived, that an *Englishman,* much less a gentleman, should plead for it. And truly I should have taken Sir *Robert Filmer*'s *Patriarcha,* as any other treatise, which would persuade all men, that they are slaves, and ought to be so, for such another exercise of wit, as was his who writ the encomium of *Nero;* rather than for a serious discourse meant in earnest, had not the gravity of the title and epistle, the picture in the front of the book, and the applause that followed it, required me to believe, that the [2] author and publisher were both in earnest. I therefore took it into my hands with all the expectation, and read it through with all the attention due to a treatise that made such a noise at its coming abroad, and cannot but confess my self mightily surprised, that in a book, which was to provide chains for all mankind, I should find nothing but a rope of sand, useful perhaps to such, whose skill and business it is to raise a dust, and would blind the people, the better to mislead them; but in truth not of any force to draw those into bondage, who have their eyes open, and so much sense about them, as to consider, that chains are but an ill wearing, how much care soever hath been taken to file and polish them.

§. 2.

If any one think I take too much liberty in speaking so freely of a man, who is the great champion of absolute power, and the idol of those who worship it; I beseech him to make this small allowance for once, to one, who, even after the reading of Sir *Robert*'s book, cannot but think himself, as the laws allow him, a freeman: and I know no fault it is to do so, unless any one better skilled in the fate of it, than I, should have it revealed to him, that this treatise, which has lain dormant so long, was, when it appeared in the world, to carry, by strength of its arguments, all liberty out of it; and that [3] from thenceforth our author's short model was to be the pattern in the mount, and the perfect standard of politics for the future. His system lies in a little compass, it is no more but this,

- That all government is absolute monarchy.
- And the ground he builds on, is this,
- That no man is born free.

§. 3.

In this last age a generation of men has sprung up amongst us, that would flatter princes with an opinion, that they have a divine right to absolute power, let the laws by which they are constituted, and are to govern, and the conditions under which they enter upon their authority, be what they will, and their engagements to observe them never so well ratified by solemn oaths and promises. To make way for this doctrine, they have denied mankind a right to natural freedom; whereby they have not only, as much as in them lies, exposed all subjects to the utmost misery of tyranny and oppression, but have also unsettled the titles, and shaken the thrones of princes: (for they too, by these mens system, except only one, are all born slaves, and by divine right are subjects to *Adam*'s right heir;) as if they had designed to make war upon all government, and subvert the very foundations of human society, to serve their present turn.

§. 4.

However we must believe them upon their own bare words, when they tell us, we [4] are all born slaves, and we must continue so, there is no remedy for it; life and thraldom we enter'd into together, and can never be quit of the one, till we part with the other. Scripture or reason I am sure do not any where say so, notwithstanding the noise of divine right, as if divine authority hath subjected us to the unlimited will of another. An admirable state of mankind, and that which they have not had wit enough to find out till this latter age. For, however Sir *Robert Filmer* seems to condemn the novelty of the contrary opinion, *Patr.* p. 3. yet I believe it will be hard for him to find any other age, or country of the world, but this, which has asserted monarchy to be *jure divino*. And he confesses, *Patr.* p. 4. That *Heyward, Blackwood, Barclay, and others, that have bravely vindicated the right of kings in most points,* never thought of this, *but with one consent admitted the natural liberty and equality of mankind*.

§. 5.

By whom this doctrine came at first to be broached, and brought in fashion amongst us, and what sad effects it gave rise to, I leave to historians to relate, or to the memory of those, who were contemporaries with *Sibthorp* and *Manwering,* to recollect. My business at present is only to consider what Sir *Robert Filmer,* who is allowed to have carried this argument farthest, and is supposed to have brought it to perfection, has said in it; [5] for from him every one, who would be as fashionable as *French* was at court, has learned, and runs away with this short system of politics, *viz. Men are not born free, and therefore could never have the liberty to choose either governors, or forms of government*. Princes have their power absolute, and by divine right; for slaves could never have a right to compact or consent. *Adam* was an absolute monarch, and so are all princes ever since.

CHAP. II. Of Paternal and Regal Power.↩

§. 6.

SIR *Robert Filmer*'s great position is, that *men are not naturally free*. This is the foundation on which his absolute monarchy stands, and from which it erects itself to an height, that its power is above every power, *caput inter nubila,* so high above all earthly and human things, that thought can scarce reach it; that promises and oaths, which tye the infinite Deity, cannot confine it. But if this foundation fails, all his fabric falls with it, and governments must be left again to the old way of being made by contrivance, and the consent of men (Ἀνϑρωπίνη κτίσις) making use of their reason to unite together into society. To prove this grand position of his, he tells us, p. 12. *Men* [6] *are born in subjection to their parents,* and therefore cannot be free. And this authority of parents, he calls *royal authority,* p. 12, 14. *Fatherly authority, right of fatherhood,* p. 12, 20. One would have thought he would, in the beginning of such a work as this, on which was to depend the authority of princes, and the obedience of subjects, have told us expresly, what that fatherly authority is, have defined it, though not limited it, because in some other treatises of his he tells us, it is unlimited, and* unlimitable; he should at least have given us such an account of it, that we might have had an entire notion of this *fatherhood,* or *fatherly authority,* whenever it came in our way in his writings: this I expected to have found in the first chapter of his *Patriarcha*. But instead thereof, having, 1. *en passant,* made his obeysance to the *arcana imperii,* p. 5. 2. made his compliment to the *rights and liberties of this, or any other nation,* p. 6. which he is going presently to null and destroy; and, 3. made his leg to those learned men, who did not see so far into the matter as himself, p. 7. he comes to fall on *Bellarmine,* [7] p. 8. and, by a victory over him, establishes his *fatherly authority* beyond any question. *Bellarmine* being routed by his own confession, p. 11. the day is clear got, and there is no more need of any forces: for having done that, I observe not that he states the question, or rallies up any arguments to make good his opinion, but rather tells us the story, as he thinks fit, of this strange kind of domineering phantom, called the *fatherhood,* which whoever could catch, presently got empire, and unlimited absolute power. He assures us how this *fatherhood* began in *Adam,* continued its course, and kept the world in order all the time of the *patriarchs* till the flood, got out of the ark with *Noah* and his sons, made and supported all the kings of the earth till the captivity of the *Israelites* in *Egypt,* and then the poor *fatherhood* was under hatches, till *God, by giving the* Israelites *kings, re-established the ancient and prime right of the lineal succession in paternal government*. This is his business from p. 12. to 19. And then obviating an objection, and clearing a difficulty or two with one half reason, p. 23. *to confirm the natural right of regal power,* he ends the first chapter. I hope it is no injury to call an half quotation an half reason; for God says, *Honour thy father and mother;* but our author contents himself with half, leaves out *thy* [8] *mother* quite, as little serviceable to his purpose. But of that more in another place.

§. 7.

I do not think our author so little skilled in the way of writing discourses of this nature, nor so careless of the point in hand, that he by over-sight commits the fault, that he himself, in his *Anarchy of a mixed Monarchy,* p. 239. objects to Mr. *Hunton* in these words: *Where first I charge the author, that he hath not given us any definition, or description of monarchy in general; for by the rules of method he should have first defined*. And by the like rule of method Sir *Robert* should have told us, what his *fatherhood* or *fatherly authority* is, before he had told us, in whom it was to be found, and talked so much of it. But perhaps Sir *Robert* found, that this *fatherly authority,* this power of fathers, and of kings, for he makes them both the same, p. 24. would make a very odd and frightful figure, and very disagreeing with what either children imagine of their parents, or subjects of their kings, if he should have given us the whole draught together in that gigantic form, he had painted it in his own fancy; and

therefore, like a wary physician, when he would have his patient swallow some harsh or *corrosive liquor,* he mingles it with a large quantity of that which may dilute it; that the scattered parts may go down with less feeling, and cause less aversion.

[9]

§. 8.

Let us then endeavour to find what account he gives us of this fatherly authority, as it lies scattered in the several parts of his writings. And first, as it was vested in Adam, he says, Not only Adam, but the succeeding patriarchs, had, by right of fatherhood, royal authority over their children, p. 12. This lordship which Adam by command had over the whole world, and by right descending from him the patriarchs did enjoy, was as large and ample as the absolute dominion of any monarch, which hath been since the creation, p. 13. Dominion of life and death, making war, and concluding peace, p. 13. Adam and the patriarchs had absolute power of life and death, p. 35. Kings, in the right of parents, succeed to the exercise of supreme jurisdiction, p. 19. As kingly power is by the law of God, so it hath no inferior law to limit it; Adam was lord of all, p. 40. The father of a family governs by no other law, than by his own will, p. 78. The superiority of princes is above laws, p. 79. The unlimited jurisdiction of kings is so amply described by Samuel, p. 80. Kings are above the laws, p. 93. And to this purpose see a great deal more which our author delivers in Bodin's words: It is certain, that all laws, privileges, and grants of princes, have no force, but during their life; if they be not ratified by the express consent, or by sufferance of the prince following, especially privileges, Observations, p. 279. The reason why laws have [10] been also made by kings, was this; when kings were either busied with wars, or distracted with public cares, so that every private man could not have access to their persons, to learn their wills and pleasure, then were laws of necessity invented, that so every particular subject might find his prince's pleasure decyphered unto him in the tables of his laws, p. 92. In a monarchy, the king must by necessity be above the laws, p. 100. A perfect kingdom is that, wherein the king rules all things according to his own will, p. 100. Neither common nor statute laws are, or can be, any diminution of that general power, which kings have over their people by right of fatherhood, p. 115. Adam was the father, king, and lord over his family; a son, a subject, and a servant or slave, were one and the same thing at first. The father had power to dispose or sell his children or servants; whence we find, that the first reckoning up of goods in scripture, the man-servant and the maid-servant, are numbred among the possessions and substance of the owner, as other goods were, Observations, Pref. God also hath given to the father a right or liberty, to alien his power over his children to any other; whence we find the sale and gift of children to have much been in use in the beginning of the world, when men had their servants for a possession and an inheritance, as well as other goods; whereupon we find the power of castrating and making eunuchs much in use in old times, Observations, [11] p. 155. Law is nothing else but the will of him that hath the power of the supreme father, Observations, p. 223. It was God's ordinance that the supremacy should be unlimited in Adam, and as large as all the acts of his will; and as in him so in all others that have supreme power, Observations, p. 245.

§. 9.

I have been fain to trouble my reader with these several quotations in our author's own words, that in them might be seen his own description of his *fatherly authority,* as it lies scattered up and down in his writings, which he supposes was first vested in *Adam,* and by right belongs to all princes ever since. This *fatherly authority* then, or *right of fatherhood,* in our author's sense, is a divine unalterable right of sovereignty, whereby a father or a prince hath an absolute, arbitrary, unlimited, and unlimitable power over the lives, liberties, and estates of his children and subjects; so that he may take or alienate their estates, sell, castrate, or use their persons as he pleases, they being all his slaves, and he lord or

proprietor of every thing, and his unbounded will their law.

§. 10.

Our author having placed such a mighty power in *Adam,* and upon that supposition sounded all government, and all power of princes, it is reasonable to expect, that he should have proved this with arguments clear and evident, suitable to the weightiness of [12] the cause; that since men had nothing else left them, they might in slavery have such undeniable proofs of its necessity, that their consciences might be convinced, and oblige them to submit peaceably to that absolute dominion, which their governors had a right to exercise over them. Without this, what good could our author do, or pretend to do, by erecting such an unlimited power, but flatter the natural vanity and ambition of men, too apt of itself to grow and encrease with the possession of any power? and by persuading those, who, by the consent of their fellowmen, are advanced to great, but limited, degrees of it, that by that part which is given them, they have a right to all, that was not so; and therefore may do what they please, because they have authority to do more than others, and so tempt them to do what is neither for their own, nor the good of those under their care; whereby great mischiefs cannot but follow.

§. 11.

The sovereignty of *Adam,* being that on which, as a sure basis, our author builds his mighty absolute monarchy, I expected, that in his *Patriarcha,* this his main supposition would have been proved, and established with all that evidence of arguments, that such a fundamental tenet required; and that this, on which the great stress of the business depends, would have been made out with reasons sufficient to justify the confidence [13] with which it was assumed. But in all that treatise, I could find very little tending that way; the thing is there so taken for granted, without proof, that I could scarce believe myself, when, upon attentive reading that treatise, I found there so mighty a structure raised upon the bare supposition of this foundation: for it is scarce credible, that in a discourse, where he pretends to confute the *erroneous principle* of man's *natural freedom,* he should do it by a bare supposition of *Adam's authority,* without offering any proof for that authority. Indeed he confidently says, that *Adam had royal authority,* p. 12, and 13. *Absolute lordship and dominion of life and death,* p. 13. *An universal monarchy,* p. 33. *Absolute power of life and death,* p. 35. He is very frequent in such assertions; but, what is strange, in all his whole *Patriarcha* I find not one pretence of a reason to establish this his great foundation of government; not any thing that looks like an argument, but these words: *To confirm this natural right of regal power, we find in the Decalogue, that the law which enjoyns obedience to kings, is delivered in the terms, Honour thy father, as if all power were originally in the father.* And why may I not add as well, that in the *Decalogue,* the law that enjoyns obedience to queens, is delivered in the terms of *Honour thy mother,* as if all power were originally in the mother? The [14] argument, as Sir *Robert* puts it, will hold as well for one as the other: but of this, more in its due place.

§. 12.

All that I take notice of here, is, that this is all our author says in this first, or any of the following chapters, to prove the *absolute power of Adam,* which is his great principle: and yet, as if he had there settled it upon sure demonstration, he begins his second chapter with these words, *By conferring these proofs and reasons, drawn from the authority of the scripture*. Where those proofs and reasons for *Adam*'s sovereignty are, bating that of *Honour thy father,* above mentioned, I confess, I cannot find; unless what he says, p. 11. *In these words we have an evident confession,* viz. *of* Bellarmine, *that creation made man prince of his posterity,* must be taken for proofs and reasons drawn from scripture, or for any sort of proof at all: though from thence by a new way of inference, in the words

immediately following, he concludes, *the royal authority of Adam* sufficiently settled in him.

§. 13.

If he has in that chapter, or any where in the whole treatise, given any other proofs of *Adam's royal authority,* other than by often repeating it, which, among some men, goes for argument, I desire any body for him to shew me the place and page, that I may be convinced of my mistake, and acknowledge my oversight. If no such arguments [15] are to be found, I beseech those men, who have so much cried up this book, to consider, whether they do not give the world cause to suspect, that it is not the force of reason and argument, that makes them for absolute monarchy, but some other by interest, and therefore are resolved to applaud any author, that writes in favour of this doctrine, whether he support it with reason or no. But I hope they do not expect, that rational and indifferent men should be brought over to their opinion, because this their great doctor of it, in a discourse made on purpose, to set up the *absolute monarchical power of Adam,* in opposition to the *natural freedom* of mankind, has said so little to prove it, from whence it is rather naturally to be concluded, that there is little to be said.

§. 14.

But that I might omit no care to inform myself in our author's full sense, I consulted his *Observations on Aristotle, Hobbes, &c*. to see whether in disputing with others he made use of any arguments for this his darling tenet of *Adam's sovereignty;* since in his treatise of the *Natural Power of Kings,* he hath been so sparing of them. In his Observations on Mr. *Hobbes*'s *Leviathan,* I think he has put, in short, all those arguments for it together, which in his writings I find him any where to make use of: his words are these: *If God created only* Adam, *and of a piece of him made the woman, and if by generation* [16] *from them two, as parts of them, all mankind be propagated: if also God gave to* Adam *not only the dominion over the woman and the children that should issue from them, but also over all the earth to subdue it, and over all the creatures on it, so that as long as* Adam *lived, no man could claim or enjoy any thing but by donation, assignation or permission from him, I wonder,* &c. Observations, 165. Here we have the sum of all his arguments, for *Adam's sovereignty* and against *natural freedom,* which I find up and down in his other treatises: and they are these following; *God's creation of Adam,* the *dominion* he gave him *over Eve,* and the *dominion* he had as *father over his children:* all which I shall particularly consider.

CHAP. III. Of Adam's Title to Sovereignty by Creation.

§. 15.

SIR *Robert,* in his preface to his Observations on *Aristotle*'s politics, tells us, *A natural freedom of mankind cannot be supposed without the denial of the creation of* Adam: but how *Adam*'s being created, which was nothing but his receiving a being immediately from omnipotence and the hand of God, gave *Adam* a *sovereignty* over any thing, I cannot see, nor consequently understand, how a *supposition of natural freedom is* [17] *a denial of* Adam'*s creation,* and would be glad any body else (since our author did not vouchsafe us the favour) would make it out for him: for I find no difficulty to suppose the *freedom of mankind,* though I have always believed the *creation of Adam*. He was created, or began to exist, by God's immediate power, without the intervention of parents or the pre-existence of any of the same species to beget him, when it pleased God he should; and so did the lion, the king of beasts, before him, by the same creating power of God: and if bare existence by that power, and in that way, will give dominion, without any more ado, our author, by this argument, will make the lion have as good a title to it, as he, and certainly the antienter. No! for *Adam* had his title *by the appointment of God,* says our author in another place. Then bare *creation* gave him not dominion, and one might have *supposed mankind free* without *the denying the creation of Adam,* since it was God's *appointment* made him monarch.

§. 16.

But let us see, how he puts his *creation* and this *appointment* together. *By the appointment of God,* says Sir *Robert, as soon as* Adam *was created, he was monarch of the world, though he had no subjects; for though there could not be actual government till there were subjects, yet by the right of nature it was due to* Adam *to be governor of his posterity:* [18] *though not in act, yet at least in habit,* Adam *was a king from his creation*. I wish he had told us here, what he meant *by God's appointment:* for whatsoever providence orders, or the law of nature directs, or positive revelation declares, may be said to be *by God's appointment:* but I suppose it cannot be meant here in the first sense, *i. e*. by providence; because that would be to say no more, but that *as soon as* Adam *was created* he was *de facto* monarch, because *by right of nature it was due to* Adam, *to be governor of his posterity*. But he could not *de facto* be by providence constituted the governor of the world, at a time when there was actually no government, no subjects to be governed, which our author here confesses. *Monarch of the world* is also differently used by our author; for sometimes he means by it a proprietor of all the world exclusive of the rest of mankind, and thus he does in the same page of his preface before cited: *Adam,* says he, *being commanded to multiply and people the earth, and to subdue it, and having dominion given him over all creatures, was thereby the monarch of the whole world; none of his posterity had any right to possess any thing but by his grant or permission, or by succession from him*. 2. Let us understand then by *monarch* proprietor *of the world,* and by *appointment* God's actual donation, and revealed positive grant made to *Adam,* i. Gen. 28. as we see Sir [19] *Robert* himself does in this parallel place, and then his argument will stand thus, *by the positive grant of God: as soon as* Adam was *created, he was proprietor of the world, because by the right of nature it was due to* Adam *to be governor of his posterity*. In which way of arguing there are two manifest falsehoods. *First,* It is false, that God made that grant to *Adam,* as soon as he was created, since, tho' it stands in the text immediately after his creation, yet it is plain it could not be spoken to *Adam,* till after *Eve* was made and brought to him: and how then could he be *monarch by appointment as soon as created,* especially since he calls, if I mistake not, that which God says to *Eve,* iii. Gen. 16, *the original grant of government,* which not being till after the fall, when *Adam* was somewhat, at least in time, and very much distant in condition, from his *creation,* I cannot see, how our author can say in this sense, that *by*

God's appointment, as soon as Adam *was created, he was monarch of the world. Secondly,* were it true that God's actual donation *appointed* Adam *monarch of the world as soon as he was created,* yet the reason here given for it would not prove it; but it would always be a false inference, that God, by a positive donation, *appointed* Adam *monarch of the world, because by right of nature it was due to* Adam *to be governor of his posterity:* for having given him the right of government by nature, there was no need of a positive [20] donation; at least it will never be a proof of such a donation.

§. 17.

On the other side the matter will not be much mended, if we understand *by God's appointment* the law of nature, (though it be a pretty harsh expression for it in this place) and *by monarch of the world,* sovereign ruler of mankind: for then the sentence under consideration must run thus: *By the law of nature, as soon as* Adam *was created he was governor of mankind, for by right of nature it was due to* Adam *to be governor of his posterity*; which amounts to this, he was *governor by right of nature,* because he was *governor by right of nature:* but supposing we should grant, that a man is *by nature governor* of his children, *Adam* could not hereby *be monarch as soon as created:* for this right of nature being founded in his being their father, how *Adam* could have a natural right to be governor, before he was a father, when by being a father only he had that *right,* is, methinks, hard to conceive, unless he will have him to be a father before he was a father, and to have a title before he had it.

§. 18.

To this foreseen objection, our author answers very logically, *he was governor in habit, and not in act:* a very pretty way of being a governor without government, a father without children, and a king without subjects. And thus Sir *Robert* was an author before he writ his book; not *in act* it is true, but in *habit;* for when he had once published [21] it, it was due to him *by the right of nature,* to be an author, as much as it was *to Adam to be governor of his children,* when he had begot them: and if to be such a *monarch of the world,* an absolute monarch *in habit, but not in act,* will serve the turn, I should not much envy it to any of Sir *Robert*'s friends, that he thought fit graciously to bestow it upon, though even this of *act* and *habit,* if it signified any thing but our author's skill in distinctions, be not to his purpose in this place. For the question is not here about *Adam*'s actual exercise of government, but actually having a title to be governor. Government, says our author, was *due* to Adam *by the right of nature:* what is this right of nature? A right fathers have over their children by begetting them; *generatione jus acquiritur parentibus in liberos,* says our author out of *Grotius, Observations,* 223. The right then follows the begetting as arising from it; so that, according to this way of reasoning or distinguishing of our author, *Adam,* as soon as he was created, had a title *only in habit, and not in act,* which in plain *English* is, he had actually no title at all.

§. 19.

To speak less learnedly, and more intelligibly, one may say of *Adam,* he was in a possibility of being *governor,* since it was possible he might beget children, and thereby acquire that right of nature, be it what it will, to govern them, that accrues from [22] thence: but what connection has this with *Adam's creation,* to make him say, that *as soon as he was created, he was monarch of the world?* for it may be as well said of *Noah,* that as soon as he was born, he was monarch of the world, since he was in possibility (which in our author's sense is enough to make a monarch, *a monarch in habit,)* to outlive all mankind, but his own posterity. What such necessary connection there is betwixt *Adam*'s *creation* and his *right to government,* so that a *natural freedom of mankind cannot be supposed without the denial of the creation of* Adam, I confess for my part I do not see; nor how those words, *by the appointment, &c.* Observations, 254. how ever explained, can be put together, to make any tolerable

sense, at least to establish this position, with which they end, *viz. Adam was a king from his creation;* a king, says our author, *not in act, but in habit, i. e.* actually no king at all.

§. 20.

I fear I have tired my reader's patience, by dwelling longer on this passage, than the weightiness of any argument in it seems to require: but I have unavoidably been engaged in it by our author's way of writing, who, hudling several suppositions together, and that in doubtful and general terms, makes such a medly and confusion, that it is impossible to shew his mistakes, without examining the several senses wherein [23] his words may be taken, and without seeing how, in any of these various meanings, they will consist together, and have any truth in them: for in this present passage before us, how can any one argue against this position of his, that *Adam was a king from his creation,* unless one examine, whether the words, *from his creation,* be to be taken, as they may, for the time of the commencement of his government, as the foregoing words import, *as soon as he was created he was monarch;* or, for the cause of it, as he says, p. 11. *creation made man prince of his posterity?* how farther can one judge of the truth of his being thus king, till one has examined whether king be to be taken, as the words in the beginning of this passage would persuade, on supposition of his *private dominion,* which was, by God's positive grant, *monarch of the world by appointment;* or *king* on supposition of his *fatherly power* over his off-spring, which was by nature, *due by the right of nature;* whether, I say, king be to be taken in both, or one only of these two senses, or in neither of them, but only this, that creation made him prince, in a way different from both the other? For though this assertion, that *Adam was king from his creation,* be true in no sense, yet it stands here as an evident conclusion drawn from the preceding words, though in truth it be but a bare assertion joined to other assertions of the same kind, which confidently put together [24] in words of undetermined and dubious meaning, look like a sort of arguing, when there is indeed neither proof nor connection: a way very familiar with our author: of which having given the reader a taste here, I shall, as much as the argument will permit me, avoid touching on hereafter; and should not have done it here, were it not to let the world see, how incoherences in matter, and suppositions without proofs put handsomely together in good words and a plausible stile, are apt to pass for strong reason and good sense, till they come to be looked into with attention.

CHAP. IV. Of Adam's Title to Sovereignty by Donation, Gen. i. 28.↩

§. 21.

HAVING at last got through the foregoing passage, where we have been so long detained, not by the force of arguments and opposition, but the intricacy of the words, and the doubtfulness of the meaning; let us go on to his next argument, for *Adam*'s sovereignty. Our author tells us in the words of Mr. *Selden,* that *Adam by donation from God,* Gen. i. 28. *was made the general lord of all things, not without such a private dominion to himself, as without his grant did exclude his children. This determination of Mr.* Selden, says our author, *is* [25] *consonant to the history of the* Bible, *and natural reason,* Observations, 210. And in his Pref. to his Observations on *Aristotle,* he says thus, *The first government in the world was monarchical in the father of all flesh,* Adam *being commanded to multiply and people the earth, and to subdue it, and having dominion given him over all creatures, was thereby the monarch of the whole world: none of his posterity had any right to possess any thing, but by his grant or permission, or by succession from him: The earth, saith the* Psalmist, *hath he given to the children of men, which shew the title comes from fatherhood.*

§. 22.

Before I examine this argument, and the text on which it is founded, it is necessary to desire the reader to observe, that our author, according to his usual method, begins in one sense, and concludes in another; he begins here with *Adam*'s propriety, or *private dominion, by donation;* and his conclusion is, *which shew the title comes from fatherhood.*

§. 23.

But let us see the argument. The words of the text are these; *and God blessed them, and God said unto them, be fruitful and multiply, and replenish the earth and subdue it, and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth,* i. Gen. 28. from whence our author concludes, *that* Adam, *having here dominion given him over all creatures, was thereby the monarch of the* [26] *whole world:* whereby must be meant, that either this grant of God gave *Adam* property, or as our author calls it, *private dominion* over the earth, and all inferior or irrational creatures, and so consequently that he was thereby *monarch;* or 2dly, that it gave him rule and dominion over all earthly creatures whatsoever, and thereby over his children; and so he was *monarch:* for, as Mr. *Selden* has properly worded it, *Adam was made general lord of all things,* one may very clearly understand him, that he means nothing to be granted to *Adam* here but property, and therefore he says not one word of *Adam*'s *monarchy.* But our author says, *Adam was hereby monarch of the world,* which, properly speaking, signifies sovereign ruler of all the men in the world; and so *Adam,* by this grant, must be constituted such a ruler. If our author means otherwise, he might with much clearness have said, that *Adam was hereby proprietor of the whole world.* But he begs your pardon in that point: clear distinct speaking not serving every where to his purpose, you must not expect it in him, as in Mr. *Selden,* or other such writers.

§. 24.

In opposition therefore to our author's doctrine, that *Adam was monarch of the whole world,* founded on this place, I shall shew,

1. That by this grant, i. *Gen*. 28. God gave no immediate power to *Adam* over men, [27] over his children, over those of his own species; and so he was not made ruler, or *monarch,* by this charter.

2. That by this grant God gave him not *private dominion* over the inferior creatures, but right in common with all mankind; so neither was he *monarch,* upon the account of the property here given him.

§. 25.

1. That this donation, i. *Gen*. 28. gave *Adam* no power over men, will appear if we consider the words of it: for since all positive grants convey no more than the express words they are made in will carry, let us see which of them here will comprehend mankind, or *Adam*'s posterity; and those, I imagine, if any, must be these, *every living thing that moveth:* the words in *Hebrew* are, השמרה היה *i. e. Bestiam Reptantem,* of which words the scripture itself is the best interpreter: God having created the fishes and fowls the 5*th* day, the beginning of the 6*th,* he creates the irrational inhabitants of the dry land, which, *v.* 24. are described in these words, *let the earth bring forth the living creature after his kind; cattle and creeping things, and beasts of the earth, after his kind, and,* v. 2. *and God made the beasts of the earth after his kind, and cattle after their kind, and every thing that creepeth on the earth after his kind:* here, in the creation of the brute inhabitants of the earth, he first speaks of them all under one general name, of *living creatures,* [28] and then afterwards divides them into three ranks, 1. *Cattle,* or such creatures as were or might be tame, and so be the private possession of particular men; 2. היח which, *ver.* 24, and 25. in our Bible, is translated beasts, and by the *Septuagint* θηςία, *wild beasts,* and is the same word, that here in our text, *ver.* 28. where we have this great charter to *Adam,* is translated *living thing,* and is also the same word used, *Gen*. ix. 2. where this grant is renewed to *Noah,* and there likewise translated *beast*. 3. The third rank were the creeping animals, which *ver.* 24, and 25. are comprised under the word, השמרח, the same that is used here, *ver.* 28. and is translated *moving,* but in the former verses *creeping,* and by the *Septuagint* in all these places, ἑρπετὰ, or reptils; from whence it appears, that the words which we translate here in God's donation, *ver.*28. *living creatures moving,* are the same, which in the history of the creation, *ver.* 24, 25. signify two ranks of terrestrial creatures, *viz. wild beasts* and *reptils,* and are so understood by the *Septuagint*.

§. 26.

When God had made the irrational animals of the world, divided into three kinds, from the places of their habitation, *viz. fishes of the sea, fowls of the air,* and living creatures of the earth, and these again into *cattle, wild beasts,* and *reptils,* he considers of making man, and the dominion he should have over the terrestrial world, *ver.* 26. and [29] then he reckons up the inhabitants of these three kingdoms, but in the terrestrial leaves out the second rank היח or wild beasts: but here, *ver.* 28. where he actually exercises this design, and gives him this dominion, the text mentions *the fishes of the sea, and fowls of the air,* and the *terrestrial creatures* in the words that signify the *wild beasts* and *reptils,* though translated *living thing that moveth,* leaving out cattle. In both which places, though the word that signifies *wild beasts* be omitted in one, and that which signifies *cattle* in the other, yet, since God certainly executed in one place, what he declares he designed in the other, we cannot but understand the same in both places, and have here only an account, how the terrestrial irrational animals, which were already created and reckoned up at their creation, in three distinct ranks *of cattle, wild beasts,* and *reptils,* were here, *ver.* 28. actually put under the dominion of man, as they were designed, *ver.* 26. nor do these words contain in them the least appearance of any thing that can be wrested to signify God's giving to one man dominion over another, to *Adam* over his posterity.

§. 27.

And this further appears from *Gen*. ix. 2. where God renewing this charter to *Noah* and his sons, he gives them dominion over the *fowls of the air, and the fishes of the sea, and the terrestrial creatures,* expressed by [30] היח and שמרר wild beasts and reptils, the same words that in the text before us, i. *Gen*. 28. are translated *every moving thing, that moveth on the earth,* which by no means can comprehend man, the grant being made to *Noah* and his sons, all the men then living, and not to one part of men over another: which is yet more evident from the very next words, *ver.* 3. where God gives every שמר *every moving thing,* the very words used, *ch*. i. 28. to them for food. By all which it is plain that God's donation to *Adam, ch*. i. 28. and his designation, *ver.* 26. and his grant again to *Noah* and his sons, refer to and contain in them neither more nor less than the works of the creation the 5th day, and the beginning of the 6th, as they are set down from the 20th to 26th *ver.* inclusively of the 1st *ch*. and so comprehend all the species of irrational animals of the *terraqueous globe,* tho' all the words, whereby they are expressed in the history of their creation, are no where used in any of the following grants, but some of them omitted in one, and some in another. From whence I think it is past all doubt, that man cannot be comprehended in this grant, nor any dominion over those of his own species be conveyed to *Adam*. All the terrestrial irrational creatures are enumerated at their creation, *ver.* 25. under the names *beasts of the earth, cattle and creeping things;* but man, [31] being not then created, was not contained under any of those names; and therefore, whether we understand the *Hebrew* words right or no, they cannot be supposed to comprehend man, in the very same history, and the very next verses following, especially since that *Hebrew* word שמר which, if any in this donation to *Adam, ch*. i. 28. must comprehend man, is so plainly used in contradistinction to him, as *Gen*. vi. 20. vii. 14, 21, 23. *Gen*. viii. 17, 19. And if God made all mankind slaves to *Adam* and his heirs by giving *Adam* dominion over *every living thing that moveth on the earth,* ch. i. 28. as our author would have it, methinks Sir *Robert* should have carried his monarchical power one step higher, and satisfied the world, that princes might eat their subjects too, since God gave as full power to *Noah* and his heirs, *ch*. ix. 2. to eat *every living thing that moveth,* as he did to *Adam* to have dominion over them, the *Hebrew* words in both places being the same.

§. 28.

David, who might be supposed to understand the donation of God in this text, and the right of kings too, as well as our author in his comment on this place, as the learned and judicious *Ainsworth* calls it, in the 8th *Psalm,* finds here no such charter of monarchical power, his words are, *Thou hast made him,* i. e. man, the Son of man, *a little lower than the angels; thou madest him to have dominion over the works of thy hands; thou hast put all* [32] *things under his feet, all sheep and oxen, and the beasts of the field, and the fowls of the air, and fish of the sea, and whatsover passeth thro' the paths of the sea*. In which words, if any one can find out, that there is meant any monarchical power of one man over another, but only the dominion of the whole species of mankind, over the inferior species of creatures, he may, for aught I know, deserve to be one of Sir *Robert's monarchs in habit,* for the rareness of the discovery. And by this time, I hope it is evident, that he that gave *dominion over every living thing that moveth on the earth,* gave *Adam* no monarchical power over those of his own species, which will yet appear more fully in the next thing I am to shew.

§. 29.

2. Whatever God gave by the words of this grant, i. *Gen*. 28. it was not to *Adam* in particular, exclusive of all other men: whatever *dominion* he had thereby, it was not a *private dominion,* but a dominion in common with the rest of mankind. That this donation was not made in particular to *Adam,*

appears evidently from the words of the text, it being made to more than one; for it was spoken in the plural number, God blessed *them,* and said unto *them,* Have dominion. God says unto *Adam* and *Eve,* Have dominion; *thereby,* says our author, *Adam was monarch of the world:* but the grant being to them, i. e. spoke to *Eve* also, as many [33] interpreters think with reason, that these words were not spoken till *Adam* had his wife, must not she thereby be lady, as well as he lord of the world? If it be said, that *Eve* was subjected to *Adam,* it seems she was not so subjected to him, as to hinder her *dominion* over the creatures, or *property* in them: for shall we say that God ever made a joint grant to two, and one only was to have the benefit of it?

§. 30.

But perhaps it will be said, *Eve* was not made till afterward: grant it so, what advantage will our author get by it? The text will be only the more directly against him, and shew that God, in this donation, gave the world to mankind in common, and not to *Adam* in particular. The word *them* in the text must include the species of man, for it is certain *them* can by no means signify *Adam* alone. In the 26th verse, where God declares his intention to give this dominion, it is plain he meant, that he would make a species of creatures, that should have dominion over the other species of this terrestrial globe: the words are, *And God said, Let us make man in our image, after our likeness, and let them have dominion over the fish,* &c. *They* then were to have dominion. Who? even those who were to have the *image* of God, the individuals of that species of *man,* that he was going to make; for that *them* should signify *Adam* [34] singly, exclusive of the rest that should be in the world with him, is against both scripture and all reason: and it cannot possibly be made sense, if *man* in the former part of the *verse* do not signify the same with *them* in the latter; only *man* there, as is usual, is taken for the species, and *them* the individuals of that species: and we have a reason in the very text. God makes him *in his own image, after his own likeness;* makes him an intellectual creature, and so capable of *dominion:* for wherein soever else the *image of God* consisted, the intellectual nature was certainly a part of it, and belonged to the whole species, and enabled them to have *dominion* over the inferior creatures; and therefore *David* says in the 8th *Psalm* above cited, *Thou hast made him little lower than the angels, thou hast made him to have dominion*. It is not of *Adam* king *David* speaks here, for *verse* 4. it is plain, it is of *man, and the son of man,* of the species of mankind.

§. 31.

And that this grant spoken to *Adam* was made to him, and the whole species of man, is clear from our author's own proof out of the *Psalmist*. *The earth,* faith the Psalmist, *hath he given to the children of men; which shews the title comes from fatherhood*. These are Sir *Robert*'s words in the preface before cited, and a strange inference it is he makes; *God hath given the earth to the children of men,* ergo *the title comes from fatherhood*. It is [35] pity the propriety of the *Hebrew* tongue had not used *fathers of men,* instead of *children of men,* to express mankind: then indeed our author might have had the countenance of the sound of the words, to have placed the *title* in the *fatherhood*. But to conclude, that the *fatherhood* had the right to the earth, because God gave it *to the children of men,* is a way of arguing peculiar to our author: and a man must have a great mind to go contrary to the sound as well as sense of the words, before he could light on it. But the sense is yet harder, and more remote from our author's purpose: for as it stands in his preface, it is to prove *Adam*'s being monarch, and his reasoning is thus, *God gave the earth to the children of men,* ergo *Adam was monarch of the world*. I defy any man to make a more pleasant conclusion than this, which cannot be excused from the most obvious absurdity, till it can be shewn, that *by children of men,* he who had no father, *Adam* alone is signified; but whatever our author does, the scripture speaks not nonsense.

§. 32.

To maintain this *property and private dominion of* Adam, our author labours in the following page to destroy the community granted to *Noah* and his sons, in that parallel place, ix. *Gen*. 1, 2, 3. and he endeavours to do it two ways.

1. Sir *Robert* would persuade us against the express words of the scripture, that what [36] was here granted to *Noah,* was not granted to his sons in common with him. His words are, *As for the general community between* Noah *and his sons, which Mr.* Selden *will have to be granted to them,* ix. Gen. 2. *the text doth not warrant it*. What *warrant* our author would have, when the plain express words of scripture, not capable of another meaning, will not satisfy him, who pretends to build wholly on scripture, is not easy to imagine. The text says, *God blessed* Noah *and his sons, and said unto them,* i. e. as our author would have it, *unto him: for,* faith he, *although the sons are there mentioned with* Noah *in the blessing, yet it may best be understood, with a subordination or benediction in succession,* Observations, 211. That indeed is *best,* for our author to be understood, which best serves to his purpose; but that truly *may best be understood* by any body else, which best agrees with the plain construction of the words, and arises from the obvious meaning of the place; and then with *subordination* and *in succession,* will not *be best understood,* in a grant of God, where he himself put them not, nor mentions any such limitation. But yet, our author has reasons, why it *may best be understood so*. *The blessing,* says he in the following words, *might truly be fulfilled, if the sons, either under or after their father, enjoyed a private dominion,* Observations, 211. which is to say, that a grant, whose express words give a joint title [37] in present (for the text says, into your hands they are delivered) *may best be understood with a subordination* or in *succession;* because it is possible, that in *subordination,* or in *succession,* it may be enjoyed. Which is all one as to say, that a grant of any thing in present possession *may best be understood* of reversion; because it is possible one may live to enjoy it in reversion. If the grant be indeed to a father and to his sons after him, who is so kind as to let his children enjoy it presently in common with him, one may truly say, as to the event one will be as good as the other; but it can never be true, that what the express words grant in possession, and in common, *may best be understood,* to be in reversion. The sum of all his reasoning amounts to this: God did not give to the sons of *Noah* the world in common with their father, because it was possible they might enjoy it under, or after him. A very good sort of argument against an express text of scripture: but God must not be believed, though he speaks it himself, when he says he does any thing, which will not consist with Sir *Robert*'s hypothesis.

§. 33.

For it is plain, however he would exclude them, that part of this *benediction,* as he would have it in *succession,* must needs be meant to the sons, and not to *Noah* himself at all: *Be fruitful, and multiply, and replenish the earth,* says God, in this blessing. This part of the benediction, as appears by the sequel, concerned [38] not *Noah* himself at all; for we read not of any children he had after the flood; and in the following chapter, where his posterity is reckoned up, there is no mention of any; and so this *benediction in succession* was not to take place till 350 years after: and to save our author's imaginary *monarchy,* the peopling of the world must be deferred 350 years; for this part of the benediction cannot be understood with *subordination,* unless our author will say, that they must ask leave of their father *Noah* to lie with their wives. But in this one point our author is constant to himself in all his discourses, he takes great care there should be monarchs in the world, but very little that there should be people; and indeed his way of government is not the way to people the world: for how much absolute monarchy helps to fulfil this great and primary blessing of God Almighty, *Be fruitful, and multiply, and replenish the earth,* which contains in it the improvement too of arts and sciences, and the conveniences of life, may be seen in those large and rich countries which are happy under the

Turkish government, where are not now to be found one third, nay in many, if not most parts of them one thirtieth, perhaps I might say not one hundredth of the people, that were formerly, as will easily appear to any one, who will compare the accounts we have of it at [39] this time, with antient history. But this by the by.

§. 34.

The other parts of this *benediction,* or *grant,* are so expressed, that they must needs be understood to belong equally to them all; as much to *Noah*'s sons as to *Noah* himself, and not to his sons *with a subordination,* or *in succession. The fear of you, and the dread of you,* says God, *shall be upon every beast,* &c. Will any body but our author say, that the creatures feared and stood in awe of *Noah* only, and not of his sons without his leave, or till after his death? And the following words, *into your hands they are delivered,* are they to be understood as our author says, if your father please, or they shall be delivered into your hands hereafter? If this be to argue from scripture, I know not what may not be proved by it; and I can scarce see how much this differs from that *fiction and fansie,* or how much a surer foundation it will prove, than the opinions of *philosophers and poets,* which our author so much condemns in his preface.

§. 35.

But our author goes on to prove, that *it may best be understood with a subordination, or a benediction in succession; for,* says he, *it is not probable that the private dominion which God gave to* Adam, *and by his donation, assignation, or cession to his children, was abrogated, and a community of all things instituted between* Noah *and his sons*——Noah *was left the sole heir of the world; why should it be thought* [40] *that God would disinberit him of his birth-right, and make him of all men in the world the only tenant in common with his children?* Observations, 211.

§. 36.

The prejudices of our own ill-grounded opinions, however by us called *probable,* cannot authorise us to understand scripture contrary to the direct and plain meaning of the words. I grant, it is not probable, that *Adam*'s *private dominion* was here *abrogated:* because it is more than improbable, (for it will never be proved) that ever *Adam* had any such *private dominion:* and since parallel places of scripture are most probable to make us know how they *may be best understood,* there needs but the comparing this blessing here to *Noah* and his sons after the flood, with that to *Adam* after the creation, i. *Gen.* 28. to assure any one that God gave *Adam* no such *private dominion.* It is *probable,* I confess, that *Noah* should have the same title, the same property and dominion after the flood, that *Adam* had before it: but since *private dominion* cannot consist with the blessing and grant God gave to him and his sons in common, it is a sufficient reason to conclude, that *Adam* had none, especially since in the donation made to him, there are no words that express it, or do in the least favour it; and then let my reader judge whether *it may best be understood,* when in the one place there is not one word for it, not to say what has been above proved, that [41] the text itself proves the contrary; and in the other, the words and sense are directly against it.

§. 37.

But our author says, Noah *was the sole heir of the world; why should it be thought that God would disinherit him of his birth-right? Heir,* indeed, in *England,* signifies the eldest son, who is by the law of *England* to have all his father's land; but where God ever appointed any such *heir of the world,* our author would have done well to have shewed us; and how *God disinherited him of his birth-right,* or

what harm was done him if God gave his sons a right to make use of a part of the earth for the support of themselves and families, when the whole was not only more than *Noah* himself, but infinitely more than they all could make use of, and the possessions of one could not at all prejudice, or, as to any use, streighten that of the other.

§. 38.

Our author probably foreseeing he might not be very successful in persuading people out of their senses, and, say what he could, men would be apt to believe the plain words of scripture, and think, as they saw, that the grant was spoken to *Noah* and his sons jointly; he endeavours to insinuate, as if this grant to *Noah* conveyed no property, no dominion; because, *subduing the earth and dominion over the creatures are therein omitted, nor the earth once named*. And therefore, says he, *there is a considerable* [42] *difference between these two texts; the first blessing gave* Adam *a dominion over the earth and all creatures; the latter allows* Noah *liberty to use the living creatures for food: here is no alteration or diminishing of his title to a property of all things, but an enlargement only of his commons,* Observations, 211. So that in our author's sense, all that was said here to *Noah* and his sons, gave them no dominion, no property, but only *enlarged* the *commons; their commons,* I should say, since God says, *to you are they given,* though our author says *his;* for as for *Noah*'s sons, they, it seems, by Sir *Robert*'s appointment, during their father's life-time, were to keep fasting days.

§. 39.

Any one but our author would be mightily suspected to be blinded with prejudice, that in all this blessing to *Noah* and his sons, could see nothing but *only* an enlargement of commons: for as to *dominion,* which our author thinks omitted, *the fear of you, and the dread of you,* says God, *shall be upon every beast,* which I suppose expresses the *dominion,* or superiority was designed man over the living creatures, as fully as may be; for in that fear and dread seems chiefly to consist what was given to *Adam* over the inferior animals; who, as absolute a monarch as he was, could not make bold with a lark or rabbet to satisfy his hunger, and had the herbs but in common with the beasts, as is plain from i *Gen*. 2, 9, and 30. In the [43] next place, it is manifest that in this blessing to *Noah* and his sons, property is not only given in clear words, but in a larger extent than it was to *Adam*. *Into your hands they are given,* says God to *Noah* and his sons; which words, if they give not property, nay, property in possession, it will be hard to find words that can; since there is not a way to express a man's being possessed of any thing more natural, nor more certain, than to say, *it is delivered into his hands*. And *ver.* 3. to shew, that they had then given them the utmost property man is capable of, which is to have a right to destroy any thing by using it; *Every moving thing that liveth,* saith God, *shall be meat for you;* which was not allowed to *Adam* in his charter. This our author calls, *a liberty of using them for food, and only an enlargement of commons, but no alteration of property,* Observations, 211. What other property man can have in the creatures, but the *liberty of using them,* is hard to be understood: so that if the first blessing, as our author says, gave Adam *dominion over the creatures,* and the blessing to *Noah* and his sons, gave them *such a liberty to use them,* as *Adam* had not; it must needs give them something that *Adam* with all his sovereignty wanted, something that one would be apt to take for a greater property; for certainly he has no absolute dominion over even the brutal part of the creatures; and the property he has in [44] them is very narrow and scanty, who cannot make that use of them, which is permitted to another. Should any one who is absolute lord of a country, have bidden our author *subdue the earth,* and given him dominion over the creatures in it, but not have permitted him to have taken a kid or a lamb out of the flock, to satisfy his hunger, I guess, he would scarce have thought himself lord or proprietor of that land, or the cattle on it; but would have found the difference between *having dominion,* which a shepherd may have, and having full property as an owner. So that, had it been his own *case,* Sir *Robert,* I believe, would have thought here was an *alteration,* nay, an

enlarging of *property;* and that *Noah* and his children had by this grant, not only property given them, but such a property given them in the creatures, as *Adam* had not: For however, in respect of one another, men may be allowed to have propriety in their distinct portions of the creatures; yet in respect of God the maker of heaven and earth, who is sole lord and proprietor of the whole world, man's propriety in the creatures is nothing but that *liberty to use them,* which God has permitted; and so man's property may be altered and enlarged, as we see it was here, after the flood, when other uses of them are allowed, which before were not. From all which I suppose it is clear, that neither *Adam,* nor [45] *Noah,* had any *private dominion,* any property in the creatures, exclusive of his posterity, as they should successively grow up into need of them, and come to be able to make use of them.

§. 40.

Thus we have examined our author's argument for *Adam*'s *monarchy,* founded on the blessing pronounced, i. *Gen*. 28. Wherein I think it is impossible for any sober reader, to find any other but the setting of mankind above the other kinds of creatures, in this habitable earth of ours. It is nothing but the giving to man, the whole species of man, as the chief inhabitant, who is the image of his Maker, the dominion over the other creatures. This lies so obvious in the plain words, that any one, but our author, would have thought it necessary to have shewn, how these words, that seemed to say the quite contrary, gave *Adam monarchical absolute power* over other men, or the *sole property* in all the creatures; and methinks in a business of this moment, and that whereon he builds all that follows, he should have done something more than barely cite words, which apparently make against him; for I confess, I cannot see any thing in them, tending to *Adam's monarchy,* or *private dominion,* but quite the contrary. And I the less deplore the dulness of my apprehension herein, since I find the apostle seems to have as little notion of any such *private dominion of Adam* [46] as I, when he says, God *gives us all things richly to enjoy,* which he could not do, if it were all given away already, to Monarch *Adam,* and the monarchs his heirs and successors. To conclude, this text is so far from proving *Adam* sole proprietor, that, on the contrary, it is a confirmation of the original community of all things amongst the sons of men, which appearing from this donation of God, as well as other places of scripture, the sovereignty of *Adam,* built upon his *private dominion,* must fall, not having any foundation to support it.

§. 41.

But yet, if after all, any one will needs have it so, that by this donation of God, *Adam* was made sole proprietor of the whole earth, what will this be to his sovereignty? and how will it appear, that *propriety* in land gives a man power over the life of another? or how will the possession even of the whole earth, give any one a sovereign arbitrary authority over the persons of men? The most specious thing to be said, is, that he that is proprietor of the whole world, may deny all the rest of mankind food, and so at his pleasure starve them, if they will not acknowledge his sovereignty, and obey his will. If this were true, it would be a good argument to prove, that there never was any such *property,* that God never gave any such *private dominion;* since it is more reasonable to think, that God, who bid mankind [47] increase and multiply, should rather himself give them all a right to make use of the food and raiment, and other conveniences of life, the materials whereof he had so plentifully provided for them; than to make them depend upon the will of a man for their subsistence, who should have power to destroy them all when he pleased, and who, being no better than other men, was in succession likelier, by want and the dependence of a scanty fortune, to tie them to hard service, than by liberal allowance of the conveniences of life to promote the great design of God, *increase* and *multiply:* he that doubts this, let him look into the absolute monarchies of the world, and see what becomes of the conveniences of life, and the multitudes of people.

§. 42.

But we know God hath not left one man so to the mercy of another, that he may starve him if he please: God the Lord and Father of all has given no one of his children such a property in his peculiar portion of the things of this world, but that he has given his needy brother a right to the surplusage of his goods; so that it cannot justly be denied him, when his pressing wants call for it: and therefore no man could ever have a just power over the life of another by right of property in land or possessions; since it would always be a sin, in any man of estate, to let his brother perish for want of affording him relief out of his plenty. As [48] *justice* gives every man a title to the product of his honest industry, and the fair acquisitions of his ancestors descended to him; so *charity* gives every man a title to so much out of another's plenty, as will keep him from extreme want, where he has no means to subsist otherwise: and a man can no more justly make use of another's necessity, to force him to become his vassal, by with-holding that relief, God requires him to afford to the wants of his brother, than he that has more strength can seize upon a weaker, master him to his obedience, and with a dagger at his throat offer him death or slavery.

§. 43.

Should any one make so perverse an use of God's blessings poured on him with a liberal hand; should any one be cruel and uncharitable to that extremity, yet all this would not prove that propriety in land, even in this case, gave any authority over the persons of men, but only that compact might; since the authority of the rich proprietor, and the subjection of the needy beggar, began not from the possession of the Lord, but the confent of the poor man, who preferred being his subject to starving. And the man he thus submits to, can pretend to no more power over him, than he has consented to, upon compact. Upon this ground a man's having his stores filled in a time of scarcity, having money in his pocket, being in a vessel at sea, being able to swim, *&c*. may as well be [49] the foundation of rule and dominion, as being possessor of all the land in the world; any of these being sufficient to enable me to save a man's life, who would perish if such assistance were denied him; and any thing, by this rule, that may be an oocasion of working upon another's necessity, to save his life, or any thing dear to him, at the rate of his freedom, may be made a foundation of sovereignty, as well as property. From all which it is clear, that though God should have given *Adam private dominion,* yet that *private dominion* could give him no *sovereignty;* but we have already sufficiently proved, that God gave him no *private dominion*.

CHAP. V. Of Adam's Title to Sovereignty by the Subjection of Eve.↩

§. 44.

THE next place of scripture we find our author builds his monarchy of *Adam* on, is iii. *Gen*. 26. *And thy desire shall be to thy husband, and he shall rule over thee*. *Here we have* (says he) *the original grant of government,* from whence he concludes, in the following part of the page, *Observations,* 244. *That the supreme power is settled in the fatherhood, and limited to one kind of government, that is, to monarchy*. For let his premises be what they will, this is always the conclusion; let *rule,* in any text, be but once named, and presently *absolute monarchy* [50] is by divine right established. If any one will but carefully read our author's own reasoning from these words, *Observations,* 244. and consider, among other things, *the line and posterity of* Adam, as he there brings them in, he will find some difficulty to make sense of what he says; but we will allow this at present to his peculiar way of writing, and consider the force of the text in hand. The words are the curse of God upon the woman, for having been the first and forwardest in the disobedience; and if we will consider the occasion of what God says here to our first parents, that he was denouncing judgment, and declaring his wrath against them both, for their disobedience, we cannot suppose that this was the time, wherein God was granting *Adam* prerogatives and privileges, investing him with dignity and authority, elevating him to dominion and monarchy: for though, as a helper in the temptation, *Eve* was laid below him, and so he had accidentally a superiority over her, for her greater punishment; yet he too had his share in the fall, as well as the sin, and was laid lower, as may be seen in the following verses; and it would be hard to imagine, that God, in the same breath, should make him universal *monarch* over all mankind, and a day-labourer for his life; turn him out of *paradise to till the ground, ver.* 23. and at the same time advance him to a throne, and all the privileges and ease of absolute power.

[51]

§. 45.

This was not a time, when *Adam* could expect any favours, any grant of privileges, from his offended Maker. If this be *the original grant of government,* as our author tells us, and *Adam* was now made monarch, whatever Sir *Robert* would have him, it is plain, God made him but a very poor monarch, such an one, as our author himself would have counted it no great privilege to be. God sets him to work for his living, and seems rather to give him a spade into his hand, to subdue the earth, than a sceptre to rule over its inhabitants. *In the sweat of thy face thou shalt eat thy bread,* says God to him, *ver.* 19. This was unavoidable, may it perhaps be answered, because he was yet without subjects, and had nobody to work for him; but afterwards, living as he did above 900 years, he might have people enough, whom he might command, to work for him; no, says God, not only whilst thou art without other help, save thy wife, but as long as thou livest, shalt thou live by thy labour, *In the sweat of thy face, shalt thou eat thy bread, till thou return unto the ground, for out of it wast thou taken, for dust thou art, and unto dust shalt thou return, v.* 19. It will perhaps be answered again in favour of our author, that these words are not spoken personally to *Adam,* but in him, as their representative, to all mankind, this being a curse upon mankind, because of the fall.

§. 46.

God, I believe, speaks differently from men, because he speaks with more truth, [52] more certainty: but when he vouchsafes to speak to men, I do not think he speaks differently from them, in crossing

the rules of language in use amongst them: this would not be to condescend to their capacities, when he humbles himself to speak to them, but to lose his design in speaking what, thus spoken, they could not understand. And yet thus must we think of God, if the interpretations of scripture, necessary to maintain our author's doctrine, must be received for good: for by the ordinary rules of language, it will be very hard to understand what God says, if what he speaks here, in the singular number, to *Adam,* must be understood to be spoken to all mankind, and what he says in the plural number, i. *Gen*. 26, and 28. must be understood of *Adam* alone, exclusive of all others, and what he says to *Noah* and his sons jointly, must be understood to be meant to *Noah* alone, *Gen*. ix.

§. 47.

Farther it is to be noted, that these words here of iii. *Gen*. 16. which our author calls *the original grant of government,* were not spoken to *Adam,* neither indeed was there any grant in them made to *Adam,* but a punishment laid upon *Eve:* and if we will take them as they were directed in particular to her, or in her, as their representative, to all other women, they will at most concern the female sex only, and import no more, but that subjection they should ordinarily be [53] in to their husbands: but there is here no more law to oblige a woman to such a subjection, if the circumstances either of her condition, or contract with her husband, should exempt her from it, than there is, that she should bring forth her children in sorrow and pain, if there could be found a remedy for it, which is also a part of the same curse upon her: for the whole verse runs thus, *Unto the woman he said, I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children, and thy desire shall be to thy husband, and he shall rule over thee*. It would, I think, have been a hard matter for any body, but our author, to have found out a grant of *monarchical government to Adam* in these words, which were neither spoke to, nor of him: neither will any one, I suppose, by these words, think the weaker sex, as by a law, so subjected to the curse contained in them, that it is their duty not to endeavour to avoid it. And will any one say, that *Eve,* or any other woman, sinned, if she were brought to bed without those multiplied pains God threatens her here with? or that either of our queens, *Mary* or *Elizabeth,* had they married any of their subjects, had been by this text put into a political subjection to him? or that he thereby should have had *monarchical rule* over her? God, in this text, gives not, that I see, any authority to *Adam* over *Eve,* or to men over their wives, but [54] only foretels what should be the woman's lot, how by his providence he would order it so, that she should be subject to her husband, as we see that generally the laws of mankind and customs of nations have ordered it so; and there is, I grant, a foundation in nature for it.

§. 48.

Thus when God says of *Jacob* and *Esau,* that *the elder should serve the younger,* xxv. *Gen*. 23. no body supposes that God hereby made *Jacob Esau*'s sovereign, but foretold what should *de facto* come to pass.

But if these words here spoke to *Eve* must needs be understood as a law to bind her and all other women to subjection, it can be no other subjection than what every wife owes her husband; and then if this be the *original grant of government* and the *foundation of monarchical power,* there will be as many monarchs as there are husbands: if therefore these words give any power to *Adam,* it can be only a conjugal power, not political; the power that every husband hath to order the things of private concernment in his family, as proprietor of the goods and land there, and to have his will take place before that of his wife in all things of their common concernment; but not a political power of life and death over her, much less over any body else.

§. 49.

This I am sure: if our author will have this text to be a *grant, the original grant* [55] *of government,* political government, he ought to have proved it by some better arguments than by barely saying, that *thy desire shall be unto thy husband,* was a law whereby *Eve,* and *all that should come of her,* were subjected to the absolute monarchical power of *Adam* and his heirs. *Thy desire shall be to thy husband,* is too doubtful an expression, of whose signification interpreters are not agreed, to build so confidently on, and in a matter of such moment, and so great and general concernment: but our author, according to his way of writing, having once named the text, concludes presently without any more ado, that the meaning is as he would have it. Let the words *rule* and *subject* be but found in the text or margent, and it immediately signifies the duty of a subject to his prince; the relation is changed, and though God says *husband,* Sir *Robert* will have it *king; Adam* has presently *absolute monarchical power* over *Eve,* and not only over *Eve,* but *all that should come of her,* though the scripture says not a word of it, nor our author a word to prove it. But *Adam* must for all that be an absolute monarch, and so down to the end of the chapter. And here I leave my reader to consider, whether my bare saying, without offering any reasons to evince it, that this text gave not *Adam* that *absolute monarchical power,* our author supposes, be not as sufficient to destroy that power, as his bare assertion [56] is to establish it, since the text mentions neither *prince* nor *people,* speaks nothing of *absolute* or *monarchical power,* but the subjection of *Eve* to *Adam,* a wife to her husband. And he that would trace our author so all through, would make a short and sufficient answer to the greatest part of the grounds he proceeds on, and abundantly consute them by barely denying; it being a sufficient answer to assertions without proof, to deny them without giving a reason. And therefore should I have said nothing but barely denied, that by this text *the supreme power was settled and founded by God himself, in the fatherhood, limited to monarchy, and that to* Adam'*s person and heirs,* all which our author notably concludes from these words, as may be seen in the same page, *Observations,* 244. it had been a sufficient answer: should I have desired any sober man only to have read the text, and considered to whom, and on what occasion it was spoken, he would no doubt have wondered how our author found out *monarchical absolute power* in it, had he not had an exceeding good faculty to find it himself, where he could not shew it others. And thus we have examined the two places of scripture, all that I remember our author brings to prove *Adam*'s *sovereignty,* that *supremacy,* which he says, *it was God's ordinance should be unlimited in* Adam, *and as large as all the acts of his will,* Observations, [57] 254. viz. i. *Gen.* 28. and iii. *Gen.* 16. one whereof signifies only the subjection of the inferior ranks of creatures to mankind, and the other the subjection that is due from a wife to her husband, both far enough from that which subjects owe the governors of political societies.

CHAP. VI. Of Adam's Title to Sovereignty by Fatherhood.

§. 50.

THERE is one thing more, and then I think I have given you all that our author brings for proof of *Adam*'s sovereignty, and that is a supposition of a natural right of dominion over his children, by being their father: and this title of *fatherhood* he is so pleased with, that you will find it brought in almost in every page; particularly he says, *not only* Adam, *but the succeeding patriarchs had by right of fatherhood royal authority over their children,* p. 12. And in the same page, *this subjection of children being the fountain of all regal authority,* &c. This being, as one would think by his so frequent mentioning it, the main basis of all his frame, we may well expect clear and evident reason for it, since he lays it down as a position necessary to his purpose, that *every man that is born is so far from being free, that by his very birth he becomes a subject of him that* [58] *begets him,* Observations, 156. so that *Adam* being the only man created, and all ever since being begotten, no body has been born free. If we ask how *Adam* comes by this power over his children, he tells us here it is by begetting them: and so again, *Observations,* 223. *this natural dominion of* Adam, says he, *may be proved out of* Grotius *himself, who teacheth, that generatione jus acquiritur parentibus in liberos*. And indeed the act of begetting being that which makes a man a father, his right of a father over his children can naturally arise from nothing else.

§. 51.

Grotius tells us not here how far this *jus in liberos,* this power of parents over their children extends; but our author, always very clear in the point, assures us, it is *supreme power,* and like that of absolute monarchs over their slaves, absolute power of life and death. He that should demand of him, how, or for what reason it is, that begetting a child gives the father such an absolute power over him, will find him answer nothing: we are to take his word for this, as well as several other things; and by that the laws of nature and the constitutions of government must stand or fall. Had he been an absolute monarch, this way of talking might have suited well enough; *proratione voluntas* might have been of force in his mouth; but in the way of proof or argument is very unbecoming, and will little [59] advantage his plea for absolute monarchy. Sir *Robert* has too much lessened a subject's authority to leave himself the hopes of establishing any thing by his bare saying it; one slave's opinion without proof is not of weight enough to dispose of the liberty and fortunes of all mankind. If all men are not, as I think they are, naturally equal, I am sure all slaves are; and then I may without presumption oppose my single opinion to his; and be confident that my saying, *that begetting of children makes them not slaves to their fathers, as certainly* sets all mankind free, as his affirming the contrary makes them all slaves. But that this position, which is the foundation of all their doctrine, who would have monarchy to be *jure divino,* may have all fair play, let us hear what reasons others give for it, since our author offers none.

§. 52.

The argument, I have heard others make use of, to prove that fathers, by begetting them, come by an absolute power over their children, is this; that *fathers have a power over the lives of their children, because they give them life and being,* which is the only proof it is capable of: since there can be no reason, why naturally one man should have any claim or pretence of right over that in another, which was never his, which he bestowed not, but was received from the bounty of another. 1. I answer, that every one who gives another any thing, has not always [60] thereby a right to take it away again. But 2. They who say the *father* gives life to his children, are so dazzled with the thoughts of monarchy,

that they do not, as they ought, remember God, who is *the author and giver of life: it is in him alone we live, move, and have our being*. How can he be thought to give life to another, that knows not wherein his own life consists? Philosophers are at a loss about it after their most diligent enquiries; and anatomists, after their whole lives and studies spent in dissections, and diligent examining the bodies of men, confess their ignorance in the structure and use of many parts of man's body, and in that operation wherein life consists in the whole. And doth the rude plough-man, or the more ignorant voluptuary, frame or fashion such an admirable engine as this is, and then put life and sense into it? Can any man say, he formed the parts that are necessary to the life of his child? or can he suppose himself to give the life, and yet not know what subject is fit to receive it, nor what actions or organs are necessary for its reception or preservation?

§. 53.

To give life to that which has yet no being, is to frame and make a living creature, fashion the parts, and mould and suit them to their uses, and having proportioned and fitted them together, to put into them a living soul. He that could do this, [61] might indeed have some pretence to destroy his own workmanship. But is there any one so bold, that dares thus far arrogate to himself the incomprehensible works of the almighty? Who alone did at first, and continues still to make a living soul, he alone can breathe in the breath of life. If any one thinks himself an artist at this, let him number up the parts of his child's body which he hath made, tell me their uses and operations, and when the living and rational soul began to inhabit this curious structure, when sense began, and how this engine, which he has framed, thinks and reasons: if he made it, let him, when it is out of order, mend it, at least tell wherein the defects lie. *Shall he that made the eye not see?* says the Psalmist, *Psalm* xciv. 9. See these men's vanities! the structure of that one part is sufficient to convince us of an all-wise contriver, and he has so visible a claim to us as his workmanship, that one of the ordinary appellations of God in scripture is, *God our Maker, and the Lord our Maker.* And therefore though our author, for the magnifying his *fatherhood,* be pleased to say, *Observations,* 159. *That even the power which God himself exerciseth over mankind is by right of fatherhood,* yet this fatherhood is such an one as utterly excludes all pretence of title in earthly parents; for he is *king,* because he is indeed maker of us [62] all, which no parents can pretend to be of their children.

§. 54.

But had men skill and power to make their children, it is not so slight a piece of workmanship, that it can be imagined, they could make them without designing it. What father of a thousand, when he begets a child, thinks farther than the satisfying his present appetite? God in his infinite wisdom has put strong defires of copulation into the constitution of men, thereby to continue the race of mankind, which he doth most commonly without the intention, and often against the consent and will of the begetter. And indeed those who desire and design children, are but the occasions of their being, and when they design and wish to beget them, do little more towards their making, than *Deucalion* and his wife in the fable did towards the making of mankind, by throwing pebbles over their heads.

§. 55.

But grant that the parents made their children, gave them life and being, and that hence there followed an absolute power. This would give the *father* but a joint dominion with the mother over them: for no body can deny but that the woman hath an equal share, if not the greater, as nourishing the child a long time in her own body out of her own substance: there it is fashioned, and from her it receives the materials and principles of its constitution: and [63] it is so hard to imagine the rational soul should presently inhabit the yet unformed embrio, as soon as the father has done his part in the act of

generation, that if it must be supposed to derive any thing from the parents, it must certainly owe most to the mother. But be that as it will, the mother cannot be denied an equal share in begetting of the child, and so the absolute authority of the *father* will not arise from hence. Our author indeed is of another mind; for he says, *We know that God at the creation gave the sovereignty to the man over the woman, as being the nobler and principal agent in generation,* Observations, 172. I remember not this in my Bible; and when the place is brought where God at the *creation* gave the sovereignty to man over the woman, and that for this reason, because *he is the nobler and principal agent in generation,* it will be time enough to consider, and answer it. But it is no new thing for our author to tell us his own fancies for certain and divine truths, tho' there be often a great deal of difference between his and divine revelations; for God in the scripture says, *his father and his mother that begot him*.

§. 56.

They who alledge the practice of mankind, for *exposing or selling* their children, as a proof of their power over them, are with Sir *Robert* happy arguers; and cannot but recommend their opinion, by founding [64] it on the most shameful action, and most unnatural murder, human nature is capable of. The dens of lions and nurseries of wolves know no such cruelty as this: these savage inhabitants of the desert obey God and nature in being tender and careful of their off-spring: they will hunt, watch, fight, and almost starve for the preservation of their young; never part with them; never forsake them, till they are able to shift for themselves. And is it the privilege of man alone to act more contrary to nature than the wild and most untamed part of the creation? doth God forbid us under the severest penalty, that of death, to take away the life of any man, a stranger, and upon provocation? and does he permit us to destroy those, he has given us the charge and care of; and by the dictates of nature and reason, as well as his revealed command, requires us to preserve? He has in all the parts of the creation taken a peculiar care to propagate and continue the several species of creatures, and makes the individuals act so strongly to this end, that they sometimes neglect their own private good for it, and seem to forget that general rule, which nature teaches all things, of self-preservation; and the preservation of their young, as the strongest principle in them, over-rules the constitution of their particular natures. Thus we see, when their young stand in need of it, the timorous become valiant, [65] the fierce and savage kind, and the ravenous tender and liberal.

§. 57.

But if the example of what hath been done, be the rule of what ought to be, history would have furnished our author with instances of this *absolute fatherly power* in its height and perfection, and he might have shewed us in *Peru,* people that begot children on purpose to fatten and eat them. The story is so remarkable, that I cannot but set it down in the author's words. "In some provinces, *says he,* they were so liquorish after man's flesh, that they would not have the patience to stay till the breath was out of the body, but would suck the blood as it ran from the wounds of the dying man; they had public shambles of man's flesh, and their madness herein was to that degree, that they spared not their own children, which they had begot on strangers taken in war: for they made their captives their mistresses, and choicely nourished the children they had by them, till about thirteen years old they butchered and eat them; and they served the mothers after the same fashion, when they grew past child bearing, and ceased to bring them any more roasters," *Garcilasso de la Vega hist. des Yncas de Peru,* l. i. c. 12.

§. 58.

Thus far can the busy mind of man carry him to a brutality below the level of beasts, when he quits his reason, which [66] places him almost equal to angels. Nor can it be otherwise in a creature, whose thoughts are more than the sands, and wider than the ocean, where fancy and passion must needs run

him into strange courses, if reason, which is his only star and compass, be not that he steers by. The imagination is always restless, and suggests variety of thoughts, and the will, reason being laid aside, is ready for every extravagant project; and in this state, he that goes farthest out of the way, is thought fittest to lead, and is sure of most followers: and when fashion hath once established what folly or craft began, custom makes it sacred, and it will be thought impudence, or madness, to contradict or question it. He that will impartially survey the nations of the world, will find so much of their religions, governments and manners, brought in and continued amongst them by these means, that he will have but little reverence for the practices which are in use and credit amongst men; and will have reason to think, that the woods and forests, where the irrational untaught inhabitants keep right by following nature, are fitter to give us rules, than cities and palaces, where those that call themselves civil and rational, go out of their way, by the authority of example. If precedents are sufficient to establish a rule in this case, our author might have found in holy writ children sacrificed by their parents, and this [67] amongst the people of God themselves: the *Psalmist* tells us, *Psal*. cvi. 38. *They shed innocent blood, even the blood of their sons and of their daughters, whom they sacrificed unto the idols of Canaan*. But God judged not of this by our author's rule, nor allowed of the authority of practice against his righteous law; but as it follows there, *the land was polluted with blood; therefore was the wrath of the Lord kindled against his people, insomuch that he abborred his own inheritance*. The killing of their children, though it were fashionable, was charged on them as *innocent blood,* and so had in the account of God the guilt of murder, as the offering them to idols had the guilt of idolatry.

§. 59.

Be it then, as Sir *Robert* says, that *anciently* it was usual for men *to sell and castrate their children,* Observations, 155. Let it be, that they exposed them; add to it, if you please, for this is still greater power, that they begat them for their tables, to fat and eat them: if this proves a right to do so, we may, by the same argument, justify adultery, incest and sodomy, for there are examples of these too, both ancient and modern; sins, which I suppose have their principal aggravation from this, that they cross the main intention of nature, which willeth the increase of mankind, and the continuation of the species in the highest perfection, and the distinction of families, with [68] the security of the marriage bed, as necessary thereunto.

§. 60.

In confirmation of this natural authority of the father, our author brings a lame proof from the positive command of God in scripture: his words are, *To confirm the natural right of regal power, we find in the Decalogue, that the law which enjoins obedience to kings, is delivered in the terms, Honour thy father,* p. 23. *Whereas many confess, that government only in the abstract, is the ordinance of God, they are not able to prove any such ordinance in the scripture, but only in the fatherly power; and therefore we find the commandment, that enjoins obedience to superiors, given in the terms, Honour thy father; so that not only the power and right of government, but the form of the power governing, and the person having the power, are all the ordinances of God. The first father had not only simply power, but power monarchical, as he was father immediately from God,* Observations, 254. To the same purpose, the same law is cited by our author in several other places, and just after the same fashion; that is, *and mother,* as apochryphal words, are always left out; a great argument of our author's ingenuity, and the goodness of his cause, which required in its defender zeal to a degree of warmth, able to warp the sacred rule of the word of God, to make it comply with his present occasion; a way of proceeding not unusual [69] to those, who embrace not truths because reason and revelation offer them, but espouse tenets and parties for ends different from truth, and then resolve at any rate to defend them; and so do with the words and sense of authors, they would fit to their purpose, just as *Procrustes* did with his guests, lop or stretch them, as may best fit them to the size of their notions: and they always prove like

those so served, deformed, lame, and useless.

§. 61.

For had our author set down this command without garbling, as God gave it, and joined *mother* to father, every reader would have seen, that it had made directly against him; and that it was so far from establishing the *monarchical power of the father,* that it set up the *mother* equal with him, and enjoined nothing but what was due in common, to both father and mother: for that is the constant tenor of the scripture, *Honour thy father and thy mother,* Exod. xx. *He that smiteth his father or mother, shall surely be put to death,* xxi. 15. *He that curseth his father or mother, shall surely be put to death, ver.* 17. Repeated *Lev.* xx. 9. and by our Saviour, *Matth.* xv. 4. *Ye shall fear every man his mother and his father,* Lev. xix. 3. *If a man have a rebellious son, which will not obey the voice of his father, or the voice of his mother; then shall his father and his mother lay hold on him, and say, This our son is stubborn* [70] *and rebellious, he will not obey our voice,* Deut. xxi. 18, 19, 20, 21. *Cunsed be he that setteth light by his father or his mother,* xxviii. 16. *My son, hear the instructions of thy father, and forsake not the law of thy mother,* are the words of *Solomon,* a king who was not ignorant of what belonged to him as a father or a king; and yet he joins *father* and *mother* together, in all the instructions he gives children quite thro' his book of *Proverbs*. *Woe unto him, that sayeth unto his father, What begettest thou, or to the woman, What hast thou brought forth?* Isa. xi. ver. 10. *In thee have they set light by father or mother,* Ezek. xxviii. 2. *And it shall come to pass, that when any shall yet prophesy, then his father and his mother that begat him, shall say unto him, Thou shalt not live, and his father and his mother that begat him, shall thrust him through when he prophesieth,* Zech. xiii. 3. Here not the father only, but the father and mother jointly, had power in this case of life and death. Thus ran the law of the Old Testament, and in the New they are likewise joined, in the obedience of their children, *Eph.* vi. 1. The rule is, *Children, obey your parents;* and I do not remember, that I any where read, *Children, obey your father,* and no more: the scripture joins *mother* too in that homage, which is due from children; and had there been any text, where the honour or obedience of children had been directed to the *father* alone, [71] it is not likely that our author, who pretends to build all upon scripture, would have omitted it: nay, the scripture makes the authority of *father and mother,* in respect of those they have begot, so equal, that in some places it neglects even the priority of order, which is thought due to the father, and the *mother* is put first, as *Lev.* xix. 3. from which so constantly joining father and mother together, as is found quite through the scripture, we may conclude that the honour they have a title to from their children, is one common right belonging so equally to them both, that neither can claim it wholly, neither can be excluded.

§. 62.

One would wonder then how our author infers from the 5th commandment, that all *power was originally in the father;* how he finds *monarchical power of government settled and fixed by the commandment, Honour thy father and thy mother.* If all the honour due by the commandment, be it what it will, be the only right of the *father,* because he, as our author says, *has the sovereignty over the woman, as being the nobler and principler agent in generation,* why did God afterwards all along join the *mother* with him, to share in his honour? can the father, by this sovereignty of his, discharge the child from paying this honour to his *mother?* The scripture gave no such licence to the *Jews,* and yet there were often breaches wide enough [72] betwixt husband and wife, even to divorce and separation: and, I think, no body will say a child may with-hold honour from his mother, or, as the scripture terms it, *set light by her,* though his father should command him to do so; no more than the mother could dispense with him for neglecting to *honour* his father: whereby it is plain, that this command of God gives the father no sovereignty, no supremacy.

§. 63.

I agree with our author that the title to this *honour* is vested in the parents by nature, and is a right which accrues to them by their having begotten their children, and God by many positive declarations has confirmed it to them: I also allow our author's rule, *that in grants and gifts, that have their original from God and nature, as the power of the father,* (let me add *and mother,* for whom God hath joined together, let no man put asunder) *no inferior power of men can limit, nor make any law of prescription against them,* Observations, 158. so that the mother having, by this law of God, a right to honour from her children, which is not subject to the will of her husband, we see this *absolute monarchical power of the father* can neither be founded on it, nor consist with it; and he has a power very far from *monarchical,* very far from that absoluteness our author contends for, when another has over his subjects the same power he hath, and by the [73] same title: and therefore he cannot forbear saying himself that *he cannot see how any man's children can be free from subjection to their parents,* p. 12. which, in common speech, I think, signifies *mother* as well as *father,* or if *parents* here signifies only *father,* it is the first time I ever yet knew it to do so, and by such an use of words one may say any thing.

§. 64.

By our author's doctrine, the father having absolute jurisdiction over his children, has also the same over their issue; and the consequence is good, were it true, that the father had such a power: and yet I ask our author whether the grandfather, by his sovereignty, could discharge the grandchild from paying to his father the honour due to him by the 5th commandment. If the grandfather hath, by *right of fatherhood,* sole sovereign power in him, and that obedience which is due to the supreme magistrate, be commanded in these words, *Honour thy father,* it is certain the grandfather might dispense with the grandson's honouring his father, which since it is evident in common sense he cannot, it follows from hence, that *Honour thy father and mother,* cannot mean an absolute subjection to a sovereign power, but something else. The right therefore which parents have by nature, and which is confirmed to them by the 5th commandment, cannot be that political dominion, which our [74] author would derive from it: for that being in every civil society supreme somewhere, can discharge any subject from any political obedience to any one of his fellow subjects. But what law of the magistrate can give a child liberty, not to *honour his father and mother?* It is an eternal law, annexed purely to the relation of parents and children, and so contains nothing of the magistrate's power in it, nor is subjected to it.

§. 65.

Our author says, *God hath given to a father a right or liberty to alien his power over his children to any other,* Observations, 155. I doubt whether he can *alien* wholly the right of *honour* that is due from them: but be that as it will, this I am sure, he cannot *alien,* and retain the same power. If therefore the magistrate's sovereignty be, as our author would have it, *nothing but the authority of a supreme father,* p. 23. it is unavoidable, that if the magistrate hath all this paternal right, as he must have if *fatherhood* be the fountain of all authority; then the subjects, though fathers, can have no power over their children, no right to honour from them: for it cannot be all in another's hands, and a part remain with the parents. So that, according to our author's own doctrine, *Honour thy father and mother* cannot possibly be understood of political subjection and obedience; since the laws both in the Old and New Testament, that commanded [75] children to *honour and obey their parents,* were given to such, whose fathers were under civil government, and fellow subjects with them in political societies; and to have bid them *honour and obey their parents,* in our author's sense, had been to bid them be subjects to

those who had no title to it; the right to obedience from subjects, being all vested in another; and instead of teaching obedience, this had been to foment sedition, by setting up powers that were not. If therefore this command, *Honour thy father and mother,* concern political dominion, it directly overthrows our author's monarchy; since it being to be paid by every child to his father, even in society, every father must necessarily have political dominion, and there will be as many sovereigns as there are fathers: besides that the mother too hath her title, which destroys the sovereignty of one supreme monarch. But if *Honour thy father and mother* mean something distinct from political power, as necessarily it must, it is besides our author's business, and serves nothing to his purpose.

§. 66.

The law that enjoins obedience to kings is delivered, says our author, *in the terms, Honour thy father, as if all power were originally in the father,* Observations, 254: and that law is also delivered, say I, in the terms, *Honour thy mother,* as if all power were originally in the mother. I appeal whether [76] the argument be not as good on one side as the other, *father and mother* being joined all along in the Old and New Testament where-ever honour or obedience is injoined children. Again our author tells us, Observations, 254. *that this command, Honour thy father, gives the right to govern, and makes the form of government monarchical*. To which I answer, that if by *Honour thy father* be meant obedience to the political power of the magistrate, it concerns not any duty we owe to our natural fathers, who are subjects; because they, by our author's doctrine, are divested of all that power, it being placed wholly in the prince, and so being equally subjects and slaves with their children, can have no right, by that title, to any such *honour or obedience,* as contains in it political subjection: if *Honour thy father and mother* signifies the duty we owe our natural parents, as by our Saviour's interpretation, *Matth*. xv. 4. and all the other mentioned places, it is plain it does, then it cannot concern political obedience, but a duty that is owing to persons, who have no title to sovereignty, nor any political authority as magistrates over subjects. For the person of a private father, and a title to obedience, due to the supreme magistrate, are things inconsistent; and therefore this command, which must necessarily comprehend the persons of our natural fathers, must mean a duty we owe [77] them distinct from our obedience to the magistrate, and from which the most absolute power of princes cannot absolve us. What this duty is, we shall in its due place examine.

§. 67.

And thus we have at last got thro' all, that in our author looks like an argument for that *absolute unlimited sovereignty* described, sect. 8. which he supposes in *Adam;* so that mankind ever since have been all born *slaves,* without any title to freedom. But if *creation,* which gave nothing but a being, made not *Adam prince of his posterity:* if *Adam, Gen*. i. 28. was not constituted lord of mankind, nor had a *private dominion* given him exclusive of his children, but only a right and power over the earth, and inferiour creatures in common with the children of men; if also *Gen*. iii. 16. God gave not any political power to *Adam* over his wife and children, but only subjected *Eve* to *Adam,* as a punishment, or foretold the subjection of the weaker sex, in the ordering the common concernments of their families, but gave not thereby to *Adam,* as to the husband, power of life and death, which necessarily belongs to the magistrate: if fathers by begetting their children acquire no such power ove them; and if the command, *Honour thy father and mother,* give it not, but only enjoins a duty owing to parents equally, whether subjects or not, and to the *mother* as well as the *father;* if all this be so, as I [78] think, by what has been said, is very evident; then man has a *natural freedom,* notwithstanding all our author confidently says to the contrary; since all that share in the same common nature, faculties and powers, are in nature equal, and ought to partake in the same common rights and privileges, till the manifest appointment of God, who is *Lord over all, blessed for ever,* can be produced to shew any particular person's supremacy; or a man's own consent subjects him to a superiour. This is so plain,

that our author confesses, that Sir *John Hayward, Blackwood* and *Barclay, the great vindicators of the right of kings,* could not deny it, *but admit with one consent the natural liberty and equality of mankind,* for a truth unquestionable. And our author hath been so far from producing any thing, that may make good his great position, *that Adam was absolute monarch,* and so *men are not naturally free,* that even his own proofs make against him; so that to use his own way of arguing, *the first erroneous principle failing, the whole fabric of this vast engine of* absolute power *and* tyranny *drops down of itself,* and there needs no more to be said in answer to all that he builds upon so false and frail a foundation.

§. 68.

But to save others the pains, were there any need, he is not sparing himself to shew, by his own contradictions, the weakness of his own doctrine. *Adam*'s absolute [79] and sole dominion is that, which he is every where full of, and all along builds on, and yet he tells us, p. 12. *that as* Adam *was lard of his children, so his children under him had a command and power over their own children*. The unlimited and undivided sovereignty of *Adam*'s *fatherhood,* by our author's computation, stood but a little while, only during the first generation, but as soon as he had grand-children, Sir *Robert* could give but a very ill account of it. *Adam, as father of his children,* faith he, *hath an absolute, unlimited royal power over them, and by virtue thereof over those that they begot, and so to all generations;* and yet *his children,* viz. *Cain* and *Seth,* have a paternal power over their children at the same time; so that they are at the same time *absolute lords,* and yet *vassals* and *slaves; Adam* has all the authority, as *grand-father of the people,* and they have a part of it as fathers of a part of them: he is absolute over them and their posterity, by having begotten them, and yet they are absolute over their children by the same title. *No,* says our author, *Adam's children under him had power over their own children, but still with subordination to the first parent*. A good distinction that sounds well, and it is pity it signifies nothing, nor can be reconciled with our author's words. I readily grant, that supposing *Adam*'s *absolute power* over his posterity, any of his children might have [80] from him a delegated, and so a *subordinate* power over a part, or all the rest: but that cannot be the power our author speaks of here; it is not a power by grant and commission, but the natural paternal power he supposes a father to have over his children. For 1. he says, *As* Adam *was lord of his children, so his children under him had a power over their own children:* they were then lords over their own children after the same manner, and by the same title, that *Adam* was, *i. e.* by right of generation, by right of *fatherhood*. 2. It is plain he means the natural power of fathers, because he limits it to be only *over their own children;* a delegated power has no such limitation, as only over their own children, it might be over others, as well as their own children. 3. If it were a delegated power, it must appear in scripture; but there is no ground in scripture to affirm, that *Adam*'s children had any other power over theirs, than what they naturally had as fathers.

§. 69.

But that he means here paternal power, and no other, is past doubt, from the inference he makes in these words immediately following, *I see not then how the children of* Adam, *or of any man else, can be free from subjection to their parents*. Whereby it appears that the *power* on one side, and the *subjection* on the other, our author here speaks of, is that *natural power* and *subjection* between [81] parents and children: for that which every man's children owed, could be no other; and that our author always affirms to be absolute and unlimited. This natural *power* of parents over their children, *Adam* had over his posterity, says our author; and this *power* of parents over their children, his children had over theirs in his life-time, says our author also; so that *Adam,* by a natural right of father, had an absolute unlimited power over all his posterity, and at the same time his children had by the same right absolute unlimited power over theirs. Here then are two absolute unlimited powers existing together,

which I would have any body reconcile one to another, or to common sense. For the *salvo* he has put in of *subordination,* makes it more absurd: to have one *absolute, unlimited,* nay *unlimitable power* in subordination to another, is so manifest a contradiction, that nothing can be more. Adam *is absolute prince with the unlimited authority of fatherhood over all his posterity;* all his posterity are then absolutely his subjects; and, as our author says, his slaves, children, and grand-children, are equally in this state of subjection and slavery; and yet, says our author, *the children of* Adam *have paternal,* i. e. *absolute unlimited power over their own children:* Which in plain *English* is, they are slaves and absolute princes at the same time, and in the same government; and one [82] part of the subjects have an absolute unlimited power over the other by the natural right of parentage.

§. 70.

If any one will suppose, in favour of our author, that he here meant, that parents, who are in subjection themselves to the absolute authority of their father, have yet some power over their children; I confess he is something nearer the truth: but he will not at all hereby help our author: for he no where speaking of the paternal power, but as an absolute unlimited authority, cannot be supposed to understand any thing else here, unless he himself had limited it, and shewed how far it reached. And that he means here paternal authority in that large extent, is plain from the immediate following words; *This subjection of children being,* says he, *the foundation of all regal authority,* p. 12. *the subjection* then that in the former line, he says, *every man is in to his parents,* and consequently what *Adam*'s grand-children were in to their parents, was that which was the fountain of all *regal authority,* i. e. according to our author, *absolute unlimitable authority.* And thus *Adam*'s children had *regal authority* over their children, whilst they themselves were subjects to their father, and fellow-subjects with their children. But let him mean as he pleases, it is plain he allows *Adam's children to have paternal power,* p. 12. as also all other fathers to have *paternal power* [83] *over their children,* Observations, 156. From whence one of these two things will necessarily follow, that either *Adam*'s children, even in his life-time, had, and so all other fathers have, as he phrases it, p. 12. *by right of fatherhood, royal authority over their children,* or else, that *Adam, by right of fatherhood, had not royal authority.* For it cannot be but that *paternal power* does, or does not, give *royal authority* to them that have it: if it does not, then *Adam* could not be sovereign by this title, nor any body else; and then there is an end of all our author's politics at once: if it does give *royal authority,* then every one that has *paternal power* has *royal authority;* and then, by our author's patriarchal government, there will be as many kings as there are fathers.

§. 71.

And thus what a monarchy he hath set up, let him and his disciples consider. Princes certainly will have great reason to thank him for these new politics, which set up as many absolute kings in every country as there are fathers of children. And yet who can blame our author for it, it lying unavoidably in the way of one discoursing upon our author's principles? For having placed an *absolute power* in *fathers by right of begetting,* he could not easily resolve how much of this power belonged to a son over the children he had begotten; and so it fell out to be a very hard matter to give all the power, [84] as he does, to *Adam,* and yet allow a part in his life-time to his children, when they were parents, and which he knew not well how to deny them. This makes him so doubtful in his expressions, and so uncertain where to place this absolute natural power, which he calls *fatherhood.* Sometimes *Adam* alone has it all, as p. 13. *Observations,* 244, 245. *& Pref.*

Sometimes *parents* have it, which word scarce signifies the father alone, p. 12, 19.

Sometimes *children* during their fathers life-time, as p. 12.

Sometimes *fathers* of *families,* as p. 78, and 79.

Sometimes *fathers* indefinitely, *Observations,* 155.

Sometimes *the heir to Adam,* Observations, 253.

Sometimes *the posterity of Adam,* 244, 246.

Sometimes *prime fathers, all sons or grand-children of* Noah, *Observations,* 244.

Sometimes the *eldest parents,* p. 12.

Sometimes all *kings,* p. 19.

Sometimes all that have supreme power, *Observations,* 245.

Sometimes *heirs to those first progenitors, who were at first the natural parents of the whole people,* p. 19.

Sometimes an elective king, p. 23.

Sometimes those, whether a few or a multitude, that govern the *common-wealth,* p. 23.

[85]

Sometimes he that can catch it, an *usurper,* p. 23. Observations, 155.

§. 72.

Thus this *new nothing,* that is to carry with it all power, authority, and government; *this fatherhood,* which is to design the person, and establish the throne of monarchs, whom the people are to obey, may, according to Sir *Robert,* come into any hands, any how, and so by his politics give to democracy royal authority, and make an usurper a lawful prince. And if it will do all these fine feats, much good do our author and all his followers with their omnipotent *fatherhood,* which can serve for nothing but to unsettle and destroy all the lawful governments in the world, and to establish in their room disorder, tyranny, and usurpation.

CHAP. VII. Of Fatherhood and Property considered together as Fountains of Sovereignty.↩

§. 73.

In the foregoing chapters we have seen what *Adam*'s monarchy was, in our author's opinion, and upon what titles he founded it. The foundations which he lays the chief stress on, as those from which he thinks he may best derive monarchical power to future princes, are two, *viz. Fatherhood* [86] *and property:* and therefore the way he proposes to *remove the absurdities and inconveniencies of the doctrine of natural freedom,* is, *to maintain the natural and private dominion of* Adam, *Observations,* 222. Conformable hereunto, he tells us, the *grounds and principles of government necessarily depend upon the original of property,* Observations, 108. *The subjection of children to their parents is the fountain of all regal authority,* p. 12. *And all power on earth is either derived or usurped from the fatherly power, there being no other original to be found of any power whatsoever,* Observations, 158. I will not stand here to examine how it can be said without a contradiction, that the *first grounds and principles of government necessarily depend upon the original of property,* and yet, *that there is no other original of any power whatsoever, but that of the father:* it being hard to understand how there can be *no other original* but *fatherhood,* and yet that the *grounds and principles of government depend upon the original of property; property and fatherhood* being as far different as lord of a manor and father of children. Nor do I see how they will either of them agree with what our author says, *Observations,* 244. of God's sentence against *Eve,* Gen. iii. 16. *That it is the original grant of government:* so that if that were the *original,* government had not its *original,* by our author's own confession, either from *property* or *fatherhood;* [87] and this text, which he brings as a proof of *Adam*'s power over *Eve,* necessarily contradicts what he says of the *fatherhood,* that it is the *sole fountain of all power:* for if *Adam* had any such regal power over *Eve,* as our author contends for, it must be by some other title than that of begetting.

§. 74.

But I leave him to reconcile these contradictions, as well as many others, which may plentifully be found in him by any one, who will but read him with a little attention; and shall come now to consider, how these two originals of government, *Adam's natural and private dominion,* will consist, and serve to make out and establish the titles of succeeding monarchs, who, as our author obliges them, must all derive their power from these *fountains*. Let us then suppose *Adam* made, *by God's donation,* lord and sole proprietor of the whole earth, in as large and ample a manner as Sir *Robert* could wish; let us suppose him also, *by right of fatherhood,* absolute ruler over his children with an unlimited supremacy; I ask then, upon *Adam*'s death what becomes of both his *natural* and *private dominion*? and I doubt not it will be answered, that they descended to his next heir, as our author tells us in several places. But this way, it is plain, cannot possibly convey both his *natural* and *private dominion* to the same person: for should we allow, that all the property, all the estate of the father, ought to descend to [88] the eldest son, (which will need some proof to establish it) and so he has by that title all the *private dominion* of the father, yet the father's *natural dominion,* the paternal power cannot descend to him by inheritance: for it being a right that accrues to a man only by begetting, no man can have this natural dominion over any one he does not *beget;* unless it can be supposed, that a man can have a right to any thing, without doing that upon which that right is solely founded: for if a father by *begetting,* and no other title, has *natural dominion* over his children, he that does not beget them cannot have this *natural dominion* over them; and therefore be it true or false, that our author says, *Observations,* 156. That *every man that is born, by his very birth becomes a subject to him that begets him,* this necessarily follows, *viz.* That a man by his birth cannot become a subject to his brother, who

did not beget him; unless it can be supposed that a man by the very same title can come to be under the *natural and absolute dominion* of two different men at once; or it be sense to say, that a man by birth is under the *natural dominion* of his father, only because he begat him, and a man by birth also is under the *natural dominion* of his eldest brother, though he did not beget him.

§. 75.

If then the *private dominion of Adam,* i. e. his property in the creatures, descended at his death all entirely to his eldest son, [89] his heir; (for, if it did not, there is presently an end of all Sir *Robert*'s monarchy) and his *natural dominion,* the dominion a father has over his children by begetting them, belonged immediately, upon *Adam*'s decease, equally to all his sons who had children, by the same title their father had it, the sovereignty founded upon *property,* and the sovereignty founded upon *fatherhood,* come to be divided; since *Cain,* as heir, had that of *property* alone; *Seth,* and the other sons, that of *fatherhood* equally with him. This is the best can be made of our author's doctrine, and of the two titles of sovereignty he sets up in *Adam:* one of them will either signify nothing; or, if they both must stand, they can serve only to confound the rights of princes, and disorder government in his posterity: for by building upon two titles to dominion, which cannot descend together, and which he allows may be separated, (for he yields that *Adam's children had their distinct territories by right of private dominion,* Observations, 210.p.40.) he makes it perpetually a doubt upon his principles where the sovereignty is, or to whom we owe our obedience, since *fatherhood* and *property* are distinct titles, and began presently upon *Adam*'s death to be in distinct persons. And which then was to give way to the other?

§. 76.

Let us take the account of it, as he himself gives it us. He tells us out of *Grotius,* [90] That *Adam's children by donation, assignation, or some kind of cession before he was dead, had their distinct territories by right of private dominion;* Abel *had his flocks and pastures for them:* Cain *had his fields for corn, and the land of* Nod, *where he built him a city,* Observations, 210. Here it is obvious to demand, which of these two after *Adam*'s death was sovereign? *Cain,* says our author, p. 19. By what title? *As heir; for heirs to progenitors, who were natural parents of their people, are not only lords of their own children, but also of their brethren,* says our author, p. 19. What was *Cain* heir to? Not the entire possessions, not all that which *Adam* had *private dominion* in; for our author allows that *Abel,* by a title derived from his father, had *his distinct territory for pasture by right of private dominion.* What then *Abel* had by *private dominion,* was exempt from *Cain*'s dominion: for he could not have *private dominion* over that which was under the *private dominion* of another; and therefore his sovereignty over his brother is gone with this *private dominion,* and so there are presently two sovereigns, and his imaginary title of *fatherhood* is out of doors, and *Cain* is no prince over his brother: or else, if *Cain* retain his sovereignty over *Abel,* notwithstanding his *private dominion,* it will follow, that the *first grounds and principles of government* have nothing to do with *property,* whatever [91] our author says to the contrary. It is true, *Abel* did not outlive his father *Adam;* but that makes nothing to the argument, which will hold good against Sir *Robert* in *Abel*'s issue, or in *Seth,* or any of the posterity of *Adam,* not descended from *Cain.*

§. 77.

The same inconvenience he runs into about *the three sons of Noah,* who, as he says, p. 13. *had the whole world divided amongst them by their father.* I ask then, in which of the three shall we find *the establishment of regal power* after *Noah*'s death? If in all three, as our author there seems to say; then it will follow, that regal power is founded in property of land, and follows *private dominion,* and not in

paternal power, or *natural dominion;* and so there is an end of paternal power as the fountain of regal authority, and the so-much-magnified *fatherhood* quite vanishes. If the regal power descended to *Shem* as eldest, and heir to his father, then *Noah's division of the world by lot to his sons, or his ten years sailing about the Mediterranean to appoint each son his part,* which our author tells of, p. 15. was labour lost; his division of the world to them, was to ill, or to no purpose: for his grant to *Cham* and *Japhet* was little worth, if *Shem,* notwithstanding this grant, as soon as *Noah* was dead, was to be lord over them. Or, if this grant of *private dominion* to them, over their assigned territories, were good, here were set up two distinct sorts of power, not subordinate [92] one to the other, with all those inconveniences which he musters up against the *power of the people,* Observations, 158. which I shall set down in his own words, only changing *property* for *people*. *All power on earth is either derived or usurped from the fatherly power, there being no other original to be found of any power whatsoever: for if there should be granted two sorts of power, without any subordination of one to the other, they would be in perpetual strife which should be supreme, for two supremes cannot agree: if the fatherly power be supreme, then the power grounded on private dominion must be subordinate, and depend on it; and if the power* grounded on property *be supreme, then the fatherly power must submit to it, and cannot be exercised without the licence of the proprietors, which must quite destroy the frame and course of nature*. This is his own arguing against two distinct independent powers, which I have set down in his own words, only putting power rising from property, for *power of the people;* and when he has answered what he himself has urged here against two distinct powers, we shall be better able to see how, with any tolerable sense, he can derive all regal authority *from the natural and private dominion of* Adam, from *fatherhood* and *property* together, which are distinct titles, that do not always meet in the same person; and it is plain, by his own confession, presently separated [93] as soon both as *Adam*'s and *Noah*'s death made way for succession: though our author frequently in his writings jumbles them together, and omits not to make use of either, where he thinks it will sound best to his purpose. But the absurdities of this will more fully appear in the next chapter, where we shall examine the ways of conveyance of the sovereignty of *Adam,* to princes that were to reign after him.

CHAP. VIII. Of the Conveyance of Adam's sovereign Monarchical Power.↩

§. 78.

SIR *Robert,* having not been very happy in any proof he brings for the sovereignty of *Adam,* is not much more fortunate in conveying it to future princes, who, if his politics be true, must all derive their titles from that first monarch. The ways he has assigned, as they lie scattered up and down in his writings, I will set down in his own words: in his preface he tells us, That *Adam being monarch of the whole world, none of his posterity had any right to possess any thing, but by his grant or permission, or by succession from him*. Here he makes two ways of conveyance of any thing *Adam* stood possessed of; and those are *grants* or *succession*. Again he says, *All kings either are, or are to* [94] *be reputed, the next heirs to those first progenitors, who were at first the natural parents of the whole people,* p. 19. *There cannot be any multitude of men whatsoever, but that in it, considered by itself, there is one man amongst them, that in nature hath a right to be the king of all the rest, as being the next heir to* Adam, *Observations,* 253. Here in these places *inheritance* is the only way he allows of conveying monarchical power to princes. In other places he tells us, *Observations,* 155. *All power on earth is either derived or usurped from the fatherly power,* Observations, 158. *All kings that now are, or ever were, are or were either fathers of their people, or heirs of such fathers, or usurpers of the right of such fathers,* Observations, 253. And here he makes *inheritance* or *usurpation* the only ways whereby kings come by this original *power:* but yet he tells us, *This fatherly empire, as it was of itself hereditary, so it was alienable by patent, and seizable by an usurper,* Observations, 190. So then here inheritance, grant, or usurpation, will convey it. And last of all, which is most admirable, he tells us, p. 100. *It skills not which way kings come by their power, whether by election, donation, succession, or by any other means; for it is still the manner of the government by supreme power, that makes them properly kings, and not the means of obtaining their crowns*. Which I think is a full answer to all his whole *hypothesis* [95] and discourse about *Adam*'s royal authority, as the fountain from which all princes were to derive theirs: and he might have spared the trouble of speaking so much as he does, up and down, of heirs and inheritance, if to make any one *properly a king,* needs no more but *governing by supreme power, and it matters not by what means he came by it*.

§. 79.

By this notable way, our author may make *Oliver* as *properly king,* as any one else he could think of: and had he had the happiness to live under *Massanello*'s government, he could not by this his own rule have forborn to have done homage to him, with *O king live for ever,* since the manner of his government by supreme power, made him *properly* king, who was but the day before *properly* a fisherman. And if *Don Quixote* had taught his squire to govern with supreme authority, our author no doubt could have made a most loyal subject in *Sancho Pancha*'s *island;* and he must needs have deserved some preferment in such governments, since I think he is the first politician, who, pretending to settle government upon its true basis, and to establish the thrones of lawful princes, ever told the world, That he was *properly a king, whose manner of government was by supreme power, by what means soever he obtained it;* which in plain *English* is to say, that regal and supreme power is properly and truly his, [96] who can by any means seize upon it; and if this be to be *properly a king,* I wonder how he came to think of, or where he will find, an *usurper.*

§. 80.

This is so strange a doctrine, that the surprise of it hath made me pass by, without their due reflection,

the contradictions he runs into, by making sometimes *inheritance* alone, sometimes only *grant* or *inheritance,* sometimes only *inheritance* or *usurpation,* sometimes all these three, and at last *election,* or *any other means,* added to them, the ways whereby *Adam*'s royal *authority,* that is, his right to supreme rule, could be conveyed down to future kings and governors, so as to give them a title to the obedience and subjection of the people. But these contradictions lie so open, that the very reading of our author's own words will discover them to any ordinary understanding; and though what I have quoted out of him (with abundance more of the same strain and coherence, which might be found in him) might well excuse me from any farther trouble in this argument, yet having proposed to myself, to examine the main parts of his doctrine, I shall a little more particularly consider how *inheritance, grant, usurpation* or *election,* can any way make out government in the world upon his principles; or derive to any one a right of empire, from this regal authority of *Adam,* had it been [97] never so well proved, that he had been absolute monarch, and lord of the whole world.

CHAP. IX. Of Monarchy, by Inheritance from Adam.

§. 81.

Though it be never so plain, that there ought to be government in the world, nay, should all men be of our author's mind, that divine appointment had ordained it to be *monarchical;* yet, since men cannot obey any thing, that cannot command; and ideas of government in the fancy, though never so perfect, though never so right, cannot give laws, nor prescribe rules to the actions of men; it would be of no behoof for the settling of order, and establishment of government in its exercise and use amongst men, unless there were a way also taught how to know the person, to whom it belonged to have this power, and exercise this dominion over others. It is in vain then to talk of subjection and obedience without telling us whom we are to obey: for were I never so fully persuaded that there ought to be magistracy and rule in the world; yet I am never the less at liberty still, till it appears who is the person that hath right to my obedience; since, if there be no marks to know him by, and distinguish him that hath right to rule from [98] other men, it may be myself, as well as any other. And therefore, though submission to government be every one's duty, yet since that signifies nothing but submitting to the direction and laws of such men as have authority to command, it is not enough to make a man a subject, to convince him that there is *regal power* in the world; but there must be ways of designing, and knowing the person to whom this *regal power* of right belongs: and a man can never be obliged in conscience to submit to any power, unless he can be satisfied who is the person who has a right to exercise that power over him. If this were not so, there would be no distinction between pirates and lawful princes; he that has force is without any more ado to be obeyed, and crowns and scepters would become the inheritance only of violence and rapine. Men too might as often and as innocently change their governors, as they do their physicians, if the person cannot be known who has a right to direct me, and whose prescriptions I am bound to follow. To settle therefore men's consciences, under an obligation to obedience, it is necessary that they know not only, that there is a power somewhere in the world, but the person who by right is vested with this power over them.

§. 82.

How successful our author has been in his attempts, to set up a *monarchical absolute power* in *Adam,* the reader may judge [99] by what has been already said; but were that *absolute monarchy* as clear as our author would desire it, as I presume it is the contrary, yet it could be of no use to the government of mankind now in the world, unless he also make out these two things.

First, That this *power of Adam* was not to end with him, but was upon his decease conveyed intire to some other person, and so on to posterity.

Secondly, That the princes and rulers now on earth are possessed of this *power of Adam,* by a right way of conveyance derived to them.

§. 83.

If the first of these fail, the *power of Adam,* were it never so great, never so certain, will signify nothing to the present government and societies in the world; but we must seek out some other original of power for the government of politys than this of *Adam,* or else there will be none at all in the world. If the latter fail, it will destroy the authority of the present governors, and absolve the people from subjection to them, since they, having no better a claim than others to that power, which is alone the fountain of all authority, can have no title to rule over them.

§. 84.

Our author, having fancied an absolute sovereignty in *Adam,* mentions several ways of its conveyance to princes, that were to be his successors; but that which he chiefly [100] insists on, is that of *inheritance,* which occurs so often in his several discourses; and I having in the foregoing chapter quoted several of these passages, I shall not need here again to repeat them. This sovereignty he erects, as has been said, upon a double foundation, *viz*. that of *property,* and that of *fatherhood*. One was the right he was supposed to have in all creatures, a right to possess the earth with the beasts, and other inferior ranks of things in it, for his private use, exclusive of all other men. The other was the right he was supposed to have, to rule and govern men, all the rest of mankind.

§. 85.

In both these rights, there being supposed an exclusion of all other men, it must be upon some reason peculiar to *Adam,* that they must both be founded.

That of his *property* our author supposes to arise from God's immediate *donation, Gen*. i. 28. and that of *fatherhood* from the act of *begetting:* now in all inheritance, if the heir succeed not to the reason upon which his father's right was founded, he cannot succeed to the right which followeth from it. For example, *Adam* had a right of property in the creatures upon the *donation* and *grant* of God almighty, who was lord and proprietor of them all: let this be so as our author tells us, yet upon his death his heir can have no title to them, no such right of property in them, unless the same reason, *viz*. God's [101] *donation,* vested a right in the *heir* too: for if *Adam* could have had no property in, nor use of the creatures, without this positive *donation* from God, and this *donation* were only personally to *Adam,* his *heir* could have no right by it; but upon his death it must revert to God, the lord and owner again; for positive grants give no title farther than the express words convey it, and by which only it is held. And thus, if as our author himself contends, that *donation, Gen*. i. 28. were made only to *Adam* personally, his heir could not succeed to his property in the creatures; and if it were a donation to any but *Adam,* let it be shewn, that it was to his heir in our author's sense, *i. e*. to one of his children, exclusive of all the rest.

§. 86.

But not to follow our author too far out of the way, the plain of the case is this. God having made man, and planted in him, as in all other animals, a strong desire of self-preservation; and furnished the world with things fit for food and raiment, and other necessaries of life, subservient to his design, that man should live and abide for some time upon the face of the earth, and not that so curious and wonderful a piece of workmanship, by his own negligence, or want of necessaries, should perish again, presently after a few moments continuance; God, I say, having made man and the world thus, spoke to him, (that is) directed him [102] by his senses and reason, as he did the inferior animals by their sense and instinct, which were serviceable for his subsistence, and given him as the means of his *preservation*. And therefore I doubt not, but before these words were pronounced, i. *Gen*. 28, 29. (if they must be understood literally to have been spoken) and without any such verbal *donation,* man had a right to an use of the creatures, by the will and grant of God: for the desire, strong desire of preserving his life and being, having been planted in him as a principle of action by God himself, reason, *which was the voice of God in him,* could not but teach him and assure him, that pursuing that natural inclination he had to preserve his being, he followed the will of his maker, and therefore had a right to make use of those creatures, which by his reason or senses he could discover would be serviceable thereunto. And thus man's *property* in the creatures was founded upon the right he had to make use of those things that were necessary or useful to his being.

§. 87.

This being the reason and foundation of *Adam's property,* gave the same title, on the same ground, to all his children, not only after his death, but in his life-time: so that here was no privilege of his *heir* above his other children, which could exclude them from an equal right to the use of the inferior creatures, for the comfortable preservation [103] of their beings, which is all the *property* man hath in them; and so *Adam*'s sovereignty built on *property,* or, as our author calls it, *private dominion,* comes to nothing. Every man had a right to the creatures, by the same title *Adam* had, *viz.* by the right every one had to take care of, and provide for their subsistence: and thus men had a right in common, *Adam*'s children in common with him. But if any one had began, and made himself a property in any particular thing, (which how he, or any one else, could do, shall be shewn in another place) that thing, that possession, if he disposed not otherwise of it by his positive grant, descended naturally to his children, and they had a right to succeed to it, and possess it.

§. 88.

It might reasonably be asked here, how come children by this right of possessing, before any other, the properties of their parents upon their decease? for it being personally the parents, when they die, without actually transferring their right to another, why does it not return again to the common stock of mankind? It will perhaps be answered, that common consent hath disposed of it to their children. Common practice, we see indeed, does so dispose of it; but we cannot say, that it is the common consent of mankind; for that hath never been asked, nor actually given; and if common tacit consent hath established it, it would make [104] but a positive, and not a natural right of children to inherit the goods of their parents: but where the practice is universal, it is reasonable to think the cause is natural. The ground then I think to be this. The first and strongest desire God planted in men, and wrought into the very principles of their nature, being that of self-preservation, that is the foundation of a right to the creatures for the particular support and use of each individual person himself. But, next to this, God planted in men a strong desire also of propagating their kind, and continuing themselves in their posterity; and this gives children a title to share in the *property* of their parents, and a right to inherit their possessions. Men are not proprietors of what they have, meerly for themselves; their children have a title to part of it, and have their kind of right joined with their parents, in the possession which comes to be wholly their's, when death, having put an end to their parents use of it, hath taken them from their possessions; and this we call inheritance: men being by a like obligation bound to preserve what they have begotten, as to preserve themselves, their issue come to have a right in the goods they are possessed of. That children have such a right, is plain from the laws of God; and that men are convinced that children have such a right, is evident from the law of the land; both [105] which laws require parents to provide for their children.

§. 89.

For children being by the course of nature, born weak, and unable to provide for themselves, they have by the appointment of God himself, who hath thus ordered the course of nature, a right to be nourished and maintained by their parents; nay, a right not only to a bare subsistence, but to the conveniencies and comforts of life, as far as the conditions of their parents can afford it. Hence it comes, that when their parents leave the world, and so the care due to their children ceases, the effects of it are to extend as far as possibly they can, and the provisions they have made in their life-time, are understood to be intended, as nature requires they should, for their children, whom, after themselves, they are bound to provide for: though the dying parents, by express words, declare nothing about them, nature appoints the descent of their property to their children, who thus come to have a title, and natural right of

inheritance to their fathers goods, which the rest of mankind cannot pretend to.

§. 90.

Were it not for this right of being nourished and maintained by their parents, which God and nature has given to children, and obliged parents to as a duty, it would be reasonable, that the father should inherit the estate of his son, and be preferred in the [106] inheritance before his grand-child: for to the grand-father there is due a long score of care and expences laid out upon the breeding and education of his son, which one would think in justice ought to be paid. But that having been done in obedience to the same law, whereby he received nourishment and education from his own parents; this score of education, received from a man's father, is paid by taking care, and providing for his own children; is paid, I say, as much as is required of payment by alteration of property, unless present necessity of the parents require a return of goods for their necessary support and subsistence: for we are not now speaking of that reverence, acknowledgment, respect and honour, that is always due from children to their parents; but of possessions and commodities of life valuable by money. But though it be incumbent on parents to bring up and provide for their children, yet this debt to their children does not quite cancel the score due to their parents; but only is made by nature preferable to it: for the debt a man owes his father takes place, and gives the father a right to inherit the son's goods, where, for want of issue, the right of children doth not exclude that title. And therefore a man having a right to be maintained by his children, where he needs it; and to enjoy also the comforts of life from them, when the necessary provision due [107] to them and their children will afford it; if his son die without issue, the father has a right in nature to possess his goods, and inherit his estate, (whatever the municipal laws of some countries may absurdly direct otherwise;) and so again his children and their issue from him; or, for want of such, his father and his issue. But where no such are to be found, *i. e.* no kindred, there we see the possessions of a private man revert to the community, and so in politic societies come into the hands of the public magistrate; but in the state of nature become again perfectly common, no body having a right to inherit them: nor can any one have a property in them, otherwise than in other things common by nature; of which I shall speak in its due place.

§. 91.

I have been the larger, in shewing upon what ground children have a right to succeed to the possession of their fathers properties, not only because by it, it will appear, that if *Adam* had a property (a titular, insignificant, useless property; for it could be no better, for he was bound to nourish and maintain his children and posterity out of it) in the whole earth and its product, yet all his children coming to have, by the law of nature, and right of inheritance, a joint title, and right of property in it after his death, it could convey no right of sovereignty to any one of his posterity over the rest: [108] since every one having a right of inheritance to his portion, they might enjoy their inheritance, or any part of it in common, or share it, or some parts of it, by division, as it best liked them. But no one could pretend to the whole inheritance, or any sovereignty supposed to accompany it; since a right of inheritance gave every one of the rest, as well as any one, a title to share in the goods of his father. Not only upon this account, I say, have I been so particular in examining the reason of children's inheriting the property of their fathers, but also because it will give us farther light in the inheritance of *rule* and *power,* which in countries where their particular municipal laws give the whole possession of land entirely to the first-born, and descent of power has gone so to men by this custom, some have been apt to be deceived into an opinion, that there was a natural or divine right of primogeniture, to both *estate* and *power;* and that the inheritance of both *rule* over men, and *property* in things, sprang from the same original, and were to descend by the same rules.

§. 92.

Property, whose original is from the right a man has to use any of the inferior creatures, for the subsistence and comfort of his life, is for the benefit and sole advantage of the proprietor, so that he may even destroy the thing, that he has property in by his use of it, where need requires: but government [109] being for the preservation of every man's right and property, by preserving him from the violence or injury of others, is for the good of the governed: for the magistrate's sword being for a *terror to evil doers,* and by that terror to inforce men to observe the positive laws of the society, made conformable to the laws of nature, for the public good, *i. e.* the good of every particular member of that society, as far as by common rules it can be provided for; the sword is not given the magistrate for his own good alone.

§. 93.

Children therefore, as has been shewed, by the dependance they have on their parents for subsistence, have a right of inheritance to their fathers property, as that which belongs to them for their proper good and behoof, and therefore are fitly termed goods, wherein the first-born has not a sole or peculiar right by any law of God and nature, the younger children having an equal title with him, founded on that right they all have to maintenance, support, and comfort from their parents, and on nothing else. But government being for the benefit of the governed, and not the sole advantage of the governors, (but only for their's with the rest, as they make a part of that politic body, each of whose parts and members are taken care of, and directed in its peculiar functions for the good of the whole, by the laws of [110] society) cannot be inherited by the same title, that children have to the goods of their father. The right a son has to be maintained and provided with the necessaries and conveniences of life out of his father's stock, gives him a right to succeed to his father's *property* for his own good; but this can give him no right to succeed also to the *rule,* which his father had over other men. All that a child has right to claim from his father is nourishment and education, and the things nature furnishes for the support of life: but he has no right to demand *rule* or *dominion* from him: he can subsist and receive from him the portion of good things, and advantages of education naturally due to him, without *empire* and *dominion*. That (if his father hath any) was vested in him, for the good and behoof of others: and therefore the son cannot claim or inherit it by a title, which is founded wholly on his own private good and advantage.

§. 94.

We must know how the first ruler, from whom any one claims, came by his authority, upon what ground any one has *empire,* what his title is to it, before we can know who has a right to succeed him in it, and inherit it from him: if the agreement and consent of men first gave a scepter into any one's hand, or put a crown on his head, that also must direct its descent and conveyance; for the same authority, that [111] made the first a lawful *ruler,* must make the second too, and so give right of succession: in this case inheritance, or primogeniture, can in its self have no right, no pretence to it, any farther than that consent, which established the form of the government, hath so settled the succession. And thus we see, the succession of crowns, in several countries, places it on different heads, and he comes by right of succession to be a prince in one place, who would be a subject in another.

§. 95.

If God, by his positive grant and revealed declaration, first gave *rule* and *dominion* to any man, he that will claim by that title, must have the same positive grant of God for his succession: for if that has not

directed the course of its descent and conveyance down to others, no body can succeed to this title of the first ruler. Children have no right of inheritance to this; and primogeniture can lay no claim to it, unless God, the author of this constitution, hath so ordained it. Thus we see, the pretensions of *Saul*'s family, who received his crown from the immediate appointment of God, ended with his reign; and *David,* by the same title that *Saul* reigned, *viz*. God's appointment, succeeded in his throne, to the exclusion of *Jonathan,* and all pretensions of paternal inheritance: and if *Solomon* had a right to succeed his father, it must be by some other title, than that of primogeniture. A *cadet,* or sister's son, must [112] have the preference in succession, if he has the same title the first lawful prince had: and in dominion that has its foundation only in the positive appointment of God himself, *Benjamin,* the youngest, must have the inheritance of the crown, if God so direct, as well as one of that tribe had the first possession.

§. 96.

If *paternal right,* the act of *begetting,* give a man *rule* and *dominion,* inheritance or primogeniture can give no title: for he that cannot succeed to his father's title, which was *begetting,* cannot succeed to that power over his brethren, which his father had by paternal right over them. But of this I shall have occasion to say more in another place. This is plain in the mean time, that any government, whether supposed to be at first founded in *paternal right, consent of the people,* or the *positive appointment of God himself,* which can supersede either of the other, and so begin a new government upon a new foundation; I say, any government began upon either of these, can by right of succession come to those only, who have the title of him they succeed to: power founded on *contract* can descend only to him, who has right by that contract: power founded on *begetting,* he only can have that *begets;* and power founded on the positive *grant* or donation of God, he only can have by right of succession, to whom that grant directs it.

[113]

§. 97.

From what I have said, I think this is clear, that a right to the use of the creatures, being founded originally in the right a man has to subsist and enjoy the conveniencies of life; and the natural right children have to inherit the goods of their parents, being founded in the right they have to the same subsistence and commodities of life, out of the stock of their parents, who are therefore taught by natural love and tenderness to provide for them, as a part of themselves; and all this being only for the good of the proprietor, or heir; it can be no reason for children's inheriting of *rule* and *dominion,* which has another original and a different end. Nor can primogeniture have any pretence to a right of solely inheriting either *property* or *power,* as we shall, in its due place, see more fully. It is enough to have shewed here, that *Adam*'s *property,* or *private dominion,* could not convey any sovereignty or rule to his heir, who not having a right to inherit all his father's possessions, could not thereby come to have any sovereignty over his brethren: and therefore, if any sovereignty on account of his *property* had been vested in *Adam,* which in truth there was not, yet it would have died with him.

§. 98.

As *Adam*'s sovereignty, if, by virtue of being proprietor of the world, he had any authority over men, could not have been inherited by any of his children over the rest, because they had the same title to divide the inheritance, and every one had a right to a [114] portion of his father's possessions; so neither could *Adam*'s sovereignty by right of *fatherhood,* if any such he had, descend to any one of his children: for it being, in our author's account, a right acquired by *begetting* to rule over those he had

begotten, it was not a power possible to be inherited, because the right being consequent to, and built on, an act perfectly personal, made that power so too, and impossible to be inherited: for paternal power, being a natural right rising only from the relation of father and son, is as impossible to be inherited as the relation itself; and a man may pretend as well to inherit the conjugal power the husband, whose heir he is, had over his wife, as he can to inherit the paternal power of a father over his children: for the power of the husband being founded on contract, and the power of the father on *begetting,* he may as well inherit the power obtained by the conjugal contract, which was only personal, as he may the power obtained by begetting, which could reach no farther than the person of the begetter, unless begetting can be a title to power in him that does not beget.

§. 99.

Which makes it a reasonable question to ask, whether *Adam,* dying before *Eve,* his heir, (suppose *Cain* or *Seth)* should have by right of inheriting *Adam*'s *fatherhood,* sovereign power over *Eve* his mother: for *Adam*'s *fatherhood* being nothing but a right he had to govern his children, because he begot them, he that [115] inherits *Adam*'s *fatherhood,* inherits nothing, even in our author's sense, but the right *Adam* had to govern his children, because he begot them: so that the monarchy of the heir would not have taken in *Eve;* or if it did, it being nothing but the *fatherhood of Adam* descended by inheritance, the heir must have right to govern *Eve,* because *Adam* begot her; for *fatherhood* is nothing else.

§. 100.

Perhaps it will be said with our author, that a man can alien his power over his child; and what may be transferred by compact, may be possessed by inheritance. I answer, a father cannot alien the power he has over his child: he may perhaps to some degrees forfeit it, but cannot transfer it; and if any other man acquire it, it is not by the father's grant, but by some act of his own. For example, a father, unnaturally careless of his child, sells or gives him to another man; and he again exposes him; a third man finding him, breeds up, cherishes, and provides for him as his own: I think in this case, no body will doubt, but that the greatest part of filial duty and subjection was here owing, and to be paid to this foster-father; and if any thing could be demanded from the child, by either of the other, it could be only due to his natural father, who perhaps might have forfeited his right to much of that duty comprehended in the command, *Honour your parents,* but could transfer none of it to another. He that purchased, and [116] neglected the child, got by his purchase and grant of the father, no title to duty or honour from the child; but only he acquired it, who by his own authority, performing the office and care of a father, to the forlorn and perishing infant, made himself, by paternal care, a title to proportionable degrees of paternal power. This will be more easily admitted upon consideration of the nature of paternal power, for which I refer my reader to the second book.

§. 101.

To return to the argument in hand; this is evident, That paternal power arising only from *begetting,* for in that our author places it alone, can neither be *transferred* nor *inherited:* and he that does not beget, can no more have paternal power, which arises from thence, than he can have a right to any thing, who performs not the condition, to which only it is annexed. If one should ask, by what law has a father power over his children? it will be answered, no doubt, by the law of nature, which gives such a power over them, to him that begets them. If one should ask likewise, by what law does our author's heir come by a right to inherit? I think it would be answered, by the law of nature too: for I find not that our author brings one word of scripture to prove the right of such an heir he speaks of. Why then the law of nature gives fathers paternal power over their children, because they did *beget* them; and [117] the same law of nature gives the same paternal power to the heir over his brethren, who did not beget

them: whence it follows, that either the father has not his paternal power by begetting, or else that the heir has it not at all; for it is hard to understand how the law of nature, which is the law of reason, can give the paternal power to the father over his children, for the only reason of *begetting;* and to the first-born over his brethren without this only reason, *i. e.* for no reason at all: and if the eldest, by the law of nature, can inherit this paternal power, without the only reason that gives a title to it, so may the youngest as well as he, and a stranger as well as either; for where there is no reason for any one, as there is not, but for him that begets, all have an equal title. I am sure our author offers no reason; and when any body does, we shall see whether it will hold or no.

§. 102.

In the mean time it is as good sense to say, that by the law of nature a man has right to inherit the property of another, because he is of kin to him, and is known to be of his blood; and therefore, by the same law of nature, an utter stranger to his blood has right to inherit his estate; as to say that, by the law of nature, he that begets them has paternal power over his children, and therefore, by the law of nature, the heir that begets them not, has this paternal power over them; or supposing the law of the land [118] gave absolute power over their children, to such only who nursed them, and fed their children themselves, could any body pretend, that this law gave any one, who did no such thing, absolute power over those, who were not his children?

§. 103.

When therefore it can be shewed, that conjugal power can belong to him that is not an husband, it will also I believe be proved, that our author's paternal power, acquired by begetting, may be inherited by a son; and that a brother, as heir to his father's power, may have paternal power over his brethren, and by the same rule conjugal power too: but till then, I think we may rest satisfied, that the paternal power of *Adam,* this sovereign authority of *fatherhood,* were there any such, could not descend to, nor be inherited by, his next heir. *Fatherly power,* I easily grant our author, if it will do him any good, can never be lost, because it will be as long in the world as there are fathers: but none of them will have *Adam*'s paternal power, or derive their's from him; but every one will have his own, by the same title *Adam* had his, *viz.* by *begetting,* but not by inheritance, or succession, no more than husbands have their conjugal power by inheritance from *Adam*. And thus we see, as *Adam* had no such *property,* no such *paternal power,* as gave him *sovereign* jurisdiction over mankind; so likewise his sovereignty built upon either of these titles, if he had any such, could not [119] have descended to his heir, but must have ended with him. *Adam* therefore, as has been proved, being neither monarch, nor his imaginary monarchy hereditable, the power which is now in the world, is not that which was *Adam*'s, since all that *Adam* could have upon our author's grounds, either of *property* or *fatherhood,* necessarily died with him, and could not be conveyed to posterity by inheritance. In the next place we will consider, whether *Adam* had any such heir, to inherit his power, as our author talks of.

CHAP. X. Of the Heir to Adam's Monarchical Power.

§. 104.

OUR author tells us, Observations, 253. *That it is a truth undeniable, that there cannot be any multitude of men whatsoever, either great or small, tho' gathered together from the several corners and remotest regions of the world, but that in the same multitude, considered by its self, there is one man amongst them, that in nature hath a right to be king of all the rest, as being the next heir to* Adam, *and all the other subjects to him: every man by nature is a king or a subject*. And again, p. 20. *If* Adam *himself were still living, and now ready to die, it is certain that there is one man, and but one in the world, who is next heir.* Let this *multitude of men* be, if [120] our author pleases, all the princes upon the earth, there will then be, by our author's rule, *one amongst them, that in nature hath a right to be king of all the rest, as being the right heir to* Adam; an excellent way to establish the thrones of princes, and settle the obedience of their subjects, by setting up an hundred, or perhaps a thousand titles (if there be so many princes in the world) against any king now reigning, each as good, upon our author's grounds, as his who wears the crown. If this right of *heir* carry any weight with it, if it be the *ordinance of God,* as our author seems to tells us, *Observations,* 244. must not all be subject to it, from the highest to the lowest? Can those who wear the name of princes, without having the right of being *heirs to* Adam, demand obedience from their subjects by this title, and not be bound to pay it by the same law? Either governments in the world are not to be claimed, and held by this title of *Adam*'s heir; and then the starting of it is to no purpose, the being or not being *Adam*'s heir signifies nothing as to the title of dominion: or if it really be, as our author says, the true title to government and sovereignty, the first thing to be done, is to find out this true heir of *Adam,* seat him in his throne, and then all the kings and princes of the world ought to come and resign up their *crowns* and *scepters* to him, as things that belong no more to them, than to any of their subjects.

[121]

§. 105.

For either this right in nature, of *Adam*'s heir, to be king over all the race of men, (for all together they make one *multitude*) is a right not necessary to the making of a lawful king, and so there may be lawful kings without it, and then kings titles and power depend not on it; or else all the kings in the world but one are not lawful kings, and so have no right to obedience: either this title of heir to *Adam* is that whereby kings hold their crowns, and have a right to subjection from their subjects, and then one only can have it, and the rest being subjects can require no obedience from other men, who are but their fellow subjects; or else it is not the title whereby kings rule, and have a right to obedience from their subjects, and then kings are kings without it, and this dream of the natural sovereignty of *Adam*'s heir is of no use to obedience and government: for if kings have a right to dominion, and the obedience of their subjects, who are not, nor can possibly be, heirs to *Adam,* what use is there of such a title, when we are obliged to obey without it? If kings, who are not heirs to *Adam,* have no right to sovereignty, we are all free, till our author, or any body for him, will shew us *Adam*'s right heir. If there be but one heir of *Adam,* there can be but one lawful king in the world, and no body in conscience can be obliged to obedience till it be resolved [122] who that is; for it may be any one, who is not known to be of a younger house, and all others have equal titles. If there be more than one heir of *Adam,* every one is his heir, and so every one has regal power: for if two sons can be heirs together, then all the sons are equally heirs, and so all are heirs, being all sons, or sons sons of *Adam*. Betwixt these two the right of heir cannot stand; for by it either but one only man, or all men are kings. Take which you please, it dissolves the bonds of government and obedience; since, if all men are heirs, they

can owe obedience to no body; if only one, no body can be obliged to pay obedience to him, till he be known, and his title made out.

CHAP. XI. Who HEIR?↩

§. 106.

THE great question which in all ages has disturbed mankind, and brought on them the greatest part of those mischiefs which have ruined cities, depopulated countries, and disordered the peace of the world, has been, not whether there be power in the world, nor whence it came, but who should have it. The settling of this point being of no smaller moment than the security of princes, and the peace [123] and welfare of their estates and kingdoms, a reformer of politics, one would think, should lay this sure, and be very clear in it: for if this remain disputable, all the rest will be to very little purpose; and the skill used in dressing up power with all the splendor and temptation absoluteness can add to it, without shewing who has a right to have it, will serve only to give a greater edge to man's natural ambition, which of its self is but too keen. What can this do but set men on the more eagerly to scramble, and so lay a sure and lasting foundation of endless contention and disorder, instead of that peace and tranquillity, which is the business of government, and the end of human society?

§. 107.

This designation of the person our author is more than ordinary obliged to take care of, because he, affirming that *the assignment of civil power is by divine institution,* hath made the conveyance as well as the power itself sacred: so that no consideration, no act or art of man, can divert it from that person, to whom, by this divine right, it is assigned; no necessity or contrivance can substitute another person in his room: for if the *assignment of civil power be by divine institution,* and *Adam*'s *heir* be he to whom it is thus assigned, as in the foregoing chapter our author tells us, it would be as much sacrilege for any one to be king, who was not *Adam*'s heir, as it would have been amongst [124] the *Jews,* for any one to have been *priest,* who had not been of *Aaron*'s posterity: for *not only* the priesthood *in general being by divine institution, but the assignment of it* to the sole line and posterity of *Aaron,* made it impossible to be enjoyed or exercised by any one, but those persons who were the off-spring of *Aaron:* whose succession therefore was carefully observed, and by that the persons who had a right to the priesthood certainly known.

§. 108.

Let us see then what care our author has taken, to make us know who is this *heir,* who *by divine institution has a right to be king over all men*. The first account of him we meet with is, p. 12. in these words: *This subjection of children, being the fountain of all regal authority, by the ordination of God himself; it follows, that civil power, not only in general, is by divine institution, but even the assignment of it, specifically to the eldest parents*. Matters of such consequence as this is, should be in plain words, as little liable, as might be, to doubt or equivocation; and I think, if language be capable of expressing any thing distinctly and clearly, that of kindred, and the several degrees of nearness of blood, is one. It were therefore to be wished, that our author had used a little more intelligible expressions here, that we might have better known, who it is, to whom the *assignment of civil power* is made by *divine institution;* or at least would have told us what he meant by [125] *eldest parents:* for I believe, if land had been assigned or granted to him, and the *eldest parents* of his family, he would have thought it had needed an interpreter; and it would scarce have been known to whom next it belonged.

§. 109.

In propriety of speech, (and certainly propriety of speech is necessary in a discourse of this nature) *eldest parents* signifies either the eldest men and women that have had children, or those who have longest had issue; and then our author's assertion will be, that those fathers and mothers, who have been longest in the world, or longest fruitful, have by *divine institution* a right to *civil power.* If there be any absurdity in this, our author must answer for it: and if his meaning be different from my explication, he is to be blamed, that he would not speak it plainly. This I am sure, *parents* cannot signify heirs male, nor *eldest parents* an infant child: who yet may sometimes be the true heir, if there can be but one. And we are hereby still as much at a loss, who *civil power* belongs to, notwithstanding this *assignment by divine institution,* as if there had been no such *assignment* at all, or our author had said nothing of it. This of *eldest parents* leaving us more in the dark, who by *divine institution* has a right to *civil power,* than those who never heard any thing at all of *heir,* or descent, of which our author is so full. And though the [126] chief matter of his writing be to teach obedience to those, who have a right to it, which he tells us is conveyed by descent, yet who those are, to whom this right by descent belongs, he leaves, like the philosophers stone in politics, out of the reach of any one to discover from his writings.

§. 110.

This obscurity cannot be imputed to want of language in so great a master of style as Sir *Robert* is, when he is resolved with himself what he would say: and therefore, I fear, finding how hard it would be to settle rules of descent by divine institution, and how little it would be to his purpose, or conduce to the clearing and establishing the titles of princes, if such rules of descent were settled, he chose rather to content himself with doubtful and general terms, which might make no ill found in mens ears, who were willing to be pleased with them, rather than offer any clear rules of descent of this *fatherhood* of *Adam,* by which men's consciences might be satisfied to whom it descended, and know the persons who had a right to regal power, and with it to their obedience.

§. 111.

How else is it possible, that laying so much stress, as he does, upon *descent,* and *Adam*'s *heir, next heir, true heir,* he should never tell us what *heir* means, nor the way to know who the *next* or *true heir* is? This, I do not remember, he does any where expresly [127] handle; but, where it comes in his way, very warily and doubtfully touches; though it be so necessary, that without it all discourses of government and obedience upon his principles would be to no purpose, and *fatherly power,* never so well made out, will be of no use to any body. Hence he tells us, *Observations,* 244. *That not only the constitution of power in general, but the limitation of it to one kind,* (i. e.) *monarchy, and the determination of it to the individual person and line of* Adam, *are all three ordinances of God; neither* Eve *nor her children could either limit* Adam's *power, or join others with him; and what was given unto* Adam *was given in his person to his posterity.* Here again our author informs us, that the *divine ordinance* hath limited the descent of *Adam*'s monarchical power. To whom? *To* Adam'*s line and posterity,* says our author. A notable *limitation,* a *limitation* to all mankind: for if our author can find any one amongst mankind, that is not of the *line* and *posterity* of *Adam,* he may perhaps tell him, who this next heir of *Adam* is: but for us, I despair how this *limitation* of *Adam*'s empire to his *line* and *posterity* will help us to find out *one heir.* This *limitation* indeed of our author will save those the labour, who would look for him amongst the race of brutes, if any such there were; but will very little contribute to the discovery of *one next heir* amongst men, though it make a short and easy determination of the question [128] about the descent of *Adam*'s regal power, by telling us, that the *line* and *posterity* of *Adam* is to have it, that is, in plain *English,* any one may have it, since there is no person living that hath not the title of being of the *line* and *posterity* of *Adam;* and while it keeps there, it keeps within our author's limitation by God's ordinance. Indeed, p. 19. he tells us, that *such heirs*

are not only lords of their own children, but of their brethren; whereby, and by the words following, which we shall consider anon, he seems to insinuate, that the eldest son is *heir;* but he no where, that I know, says it in direct words, but by the instances of *Cain* and *Jacob,* that there follow, we may allow this to be so far his opinion concerning heirs, that where there are divers children, the eldest son has the right to be *heir.* That primogeniture cannot give any title to paternal power, we have already shewed. That a father may have a natural right to some kind of power over his children, is easily granted; but that an elder brother has so over his brethren, remains to be proved: God or nature has not any where, that I know, placed such jurisdiction in the first-born; nor can reason find any such natural superiority amongst brethren. The law of *Moses* gave a double portion of the goods and possessions to the eldest; but we find not any where that naturally, or by *God*'s *institution,* superiority or dominion belonged to him, and the instances there brought [129] by our author are but slender proofs of a right to civil power and dominion in the first-born, and do rather shew the contrary.

§. 112.

His words are in the forecited place: *And therefore we find God told* Cain *of his brother* Abel; *his desire shall be subject unto thee, and thou shalt rule over him*. To which I answer,

1. These words of God to *Cain,* are by many interpreters, with great reason, understood in a quite different sense than what our author uses them in.

2. Whatever was meant by them, it could not be, that *Cain,* as elder, had a natural dominion over *Abel;* for the words are conditional, *If thou dost well;* and so personal to *Cain:* and whatever was signified by them, did depend on his carriage, and not follow his birth-right; and therefore could by no means be an establishment of dominion in the first-born in general: for before this *Abel* had his *distinct territories by right of private dominion,* as our author himself confesses, *Observations,* 210. which he could not have had to the prejudice of the heirs title, *if by divine institution, Cain* as heir were to inherit all his father's dominion.

3. If this were intended by God as the charter of primogeniture, and the grant of dominion to elder brothers in general as such, by right of inheritance, we might expect it should have included all his brethren: for [130] we may well suppose, *Adam,* from whom the world was to be peopled, had by this time, that these were grown up to be men, more sons than these two: whereas *Abel* himself is not so much as named; and the words in the original can scarce, with any good construction, be applied to him.

4. It is too much to build a doctrine of so mighty consequence upon so doubtful and obscure a place of scripture, which may be well, nay better, understood in a quite different sense, and so can be but an ill proof, being as doubtful as the thing to be proved by it; especially when there is nothing else in scripture or reason to be found, that favours or supports it.

§. 113.

It follows, p. 19. *Accordingly when* Jacob *bought his brother's birth-right,* Isaac *blessed him thus; Be lord over thy brethren, and let the sons of thy mother bow before thee*. Another instance, I take it, brought by our author to evince dominion due to birth-right, and an admirable one it is: for it must be no ordinary way of reasoning in a man, that is pleading for the natural power of kings, and against all compact, to bring for proof of it, an example, where his own account of it founds all the right upon compact, and settles empire in the younger brother, unless buying and selling be no compact; for he tells us, *when* Jacob *bought his brother's birthright*. But passing by that, let us consider [131] the

history itself, with what use our author makes of it, and we shall find these following mistakes about it.

1. That our author reports this, as if *Isaac* had given *Jacob* this blessing, immediately upon his purchasing the *birth-right;* for he says, *when Jacob bought, Isaac blessed him;* which is plainly otherwise in the scripture: for it appears, there was a distance of time between, and if we will take the story in the order it lies, it must be no small distance; all *Isaac*'s sojourning in *Gerar,* and transactions with *Abimelech, Gen*. xxvi. coming between; *Rebecca* being then beautiful, and consequently young; but *Isaac,* when he blessed *Jacob,* was old and decrepit: and *Esau* also complains of *Jacob, Gen*. xxvii. 36. that *two times* he had supplanted him; *He took away my birth-right,* says he, *and behold now he hath taken away my blessing;* words, that I think signify distance of time and difference of action.

2. Another mistake of our author's is, that he supposes *Isaac* gave *Jacob the blessing,* and bid him be *lord over his brethren,* because he had the *birth-right;* for our author brings this example to prove, that he that has the *birth-right,* has thereby a right to *be lord over his brethren*. But it is also manifest by the text, that *Isaac* had no consideration of *Jacob*'s having bought the birth-right; for when he blessed him, he considered him not [132] as *Jacob,* but took him for *Esau*. Nor did *Esau* understand any such connection between *birth-right* and the *blessing;* for he says, *He hath supplanted me these two times, he took away my birth-right, and behold now he hath taken away my blessing:* whereas had the *blessing,* which was to be *lord over his brethren,* belonged to the *birth-right, Esau* could not have complained of this second, as a cheat, *Jacob* having got nothing but what *Esau* had sold him, when he sold him his *birth-right;* so that it is plain, dominion, if these words signify it, was not understood to belong to the *birth-right*.

§. 114.

And that in those days of the patriarchs, dominion was not understood to be the right of the heir, but only a greater portion of goods, is plain from *Gen*. xxi. 10. for *Sarah,* taking *Isaac* to be heir, says, *Cast out this bondwoman and her son, for the son of this bondwoman shall not be heir with my son:* whereby could be meant nothing, but that he should not have a pretence to an equal share of his father's estate after his death, but should have his portion presently, and be gone. Accordingly we read, *Gen*. xxv. 5, 6. That *Abraham gave all that he had unto Isaac, but unto the sons of the concubines which Abraham had, Abraham gave gifts, and sent them away from Isaac his son, while he yet lived*. That is, *Abraham* having given portions to all his other sons, and sent them [133] away, that which he had reserved, being the greatest part of his substance, *Isaac* as heir possessed after his death: but by being heir, he had no right to be *lord over his brethren;* for if he had, why should *Sarah* endeavour to rob him of one of his *subjects,* or lessen the number of his *slaves,* by desiring to have *Ishmael* sent away?

§. 115.

Thus, as under the law, the privilege of *birth-right* was nothing but a double portion: so we see that before *Moses,* in the patriarchs time, from whence our author pretends to take his model, there was no knowledge, no thought, that birth-right gave rule or empire, paternal or kingly authority, to any one over his brethren. If this be not plain enough in the story of *Isaac* and *Ishmael,* he that will look into 1 *Chron*. v. 12. may there read these words: *Reuben was the first-born; but forasmuch as he defiled his father's bed, his birth-right was given unto the sons of Joseph, the son of Israel: and the genealogy is not to be reckoned after the birth-right; for Judah prevailed above his brethren, and of him came the chief ruler; but the birth-right was Joseph*'s. What this birth-right was, *Jacob* blessing *Joseph, Gen*. xlviii. 22. telleth us in these words, *Moreover I have given thee one portion above thy brethren, which I took out of the hand of the Amorite, with my sword and with my bow.* Whereby it is not only plain,

that the birth-right was nothing but a double [134] portion; but the text in *Chronicles* is express against our author's doctrine, and shews that dominion was no part of the birth-right; for it tells us, that *Joseph* had the birth-right, but *Judah* the dominion. One would think our author were very fond of the very name of *birth-right,* when he brings this instance of *Jacob* and *Esau,* to prove that dominion belongs to the heir over his brethren.

§. 116.

1. Because it will be but an ill example to prove, that dominion by God's ordination belonged to the eldest son, because *Jacob* the youngest here had it, let him come by it how he would: for if it prove any thing, it can only prove, against our author, that the *assignment of dominion to the eldest is not by divine institution,* which would then be unalterable: for if by the law of God, or nature, absolute power and empire belongs to the eldest son and his heirs, so that they are supreme monarchs, and all the rest of their brethren slaves, our author gives us reason to doubt whether the eldest son has a power to part with it, to the prejudice of his posterity, since he tells us, *Observations,* 158. That *in grants and gifts that have their original from God or nature, no inferior power of man can limit, or make any law of prescription against them.*

§. 117.

2. Because this place, *Gen.* xxvii. 29. brought by our author, concerns not at all the dominion of one brother over the [135] other, nor the subjection of *Esau* to *Jacob:* for it is plain in the history, that *Esau* was never subject to *Jacob,* but lived apart in mount *Seir,* where he founded a distinct people and government, and was himself prince over them, as much as *Jacob* was in his own family. This text, if considered, can never be understood of *Esau* himself, or the personal dominion of *Jacob* over him: for the words *brethren* and *sons of thy mother,* could not be used literally by *Isaac,* who knew *Jacob* had only one brother; and these words are so far from being true in a literal sense, or establishing any dominion in *Jacob* over *Esau,* that in the story we find the quite contrary, for *Gen.* xxxii. *Jacob* several times calls *Esau* lord, and himself his servant; and *Gen.* xxxiii. *he bowed himself seven times to the ground to* Esau. Whether *Esau* then were a subject and vassal (nay, as our author tells us, all subjects are slaves) to *Jacob,* and *Jacob* his sovereign prince by birth-right, I leave the reader to judge; and to believe if he can, that these words of *Isaac, Be lord over thy brethren, and let thy mother's sons bow down to thee,* confirmed *Jacob* in a sovereignty over *Esau,* upon the account of the *birth-right* he had got from him.

§. 118.

He that reads the story of *Jacob* and *Esau,* will find there was never any jurisdiction or authority, that either of them had over the other after their father's death: they [136] lived with the friendship and equality of brethren, neither *lord,* neither *slave* to his brother; but independent each of other, were both heads of their distinct families, where they received no laws from one another, but lived separately, and were the roots out of which sprang two distinct people under two distinct governments. This blessing then of *Isaac,* whereon our author would build the dominion of the elder brother, signifies no more, but what *Rebecca* had been told from God, *Gen.* xxv. 23. *Two nations are in thy womb, and two manner of people shall be separated from thy bowels, and the one people shall be stronger than the other people, and the elder shall serve the younger;* and so *Jacob* blessed *Judah, Gen.* xlix. and gave him the *scepter* and *dominion,* from whence our author might have argued as well, that jurisdiction and dominion belongs to the third son over his brethren, as well as from this blessing of *Isaac,* that it belonged to *Jacob:* both these places contain only predictions of what should long after happen to their posterities, and not any declaration of the right of inheritance to dominion in either. And thus we

have our author's two great and only arguments to prove, that *heirs are lords over their brethren*.

1. Because God tells *Cain, Gen*. iv. that however sin might set upon him, he ought or might be master of it: for the most learned [137] interpreters understood the words of sin, and not of *Abel,* and give so strong reasons for it, that nothing can convincingly be inferred, from so doubtful a text, to our author's purpose.

2. Because in this of *Gen*. xxvii. *Isaac* foretels that the *Israelites,* the posterity of *Jacob,* should have dominion over the *Edomites,* the posterity of *Esau;* therefore says our author, *heirs are lords of their brethren:* I leave any one to judge of the conclusion.

§. 119.

And now we see how our author has provided for the descending, and conveyance down of *Adam*'s monarchical power, or paternal dominion to posterity, by the inheritance of his *heir,* succeeding to all his father's authority, and becoming upon his death as much lord as his father was, *not only over his own children, but over his brethren,* and all descended from his father, and so *in infinitum*. But yet who this heir is, he does not once tell us; and all the light we have from him in this so fundamental a point, is only, that in his instance of *Jacob,* by using the word *birth-right,* as that which passed from *Esau* to *Jacob,* he leaves us to guess, that by heir, he means the eldest son; though I do not remember he any where mentions expresly the title of the first-born, but all along keeps himself under the shelter of the indefinite term *heir.* But taking it to be his meaning, that the eldest son is heir, [138] (for if the eldest be not, there will be no pretence why the sons should not be all *heirs* alike) and so by right of primogeniture has dominion over his brethren; this is but one step towards the settlement of succession, and the difficulties remain still as much as ever, till he can shew us who is meant by right heir, in all those cases which may happen where the present possessor hath no son. This he silently passes over, and perhaps wisely too: for what can be wiser, after one has affirmed, that *the person having that power, as well as the power and form of government, is the ordinance of God, and by divine institution,* vid. *Observations,* 254. p. 12. than to be careful, not to start any question concerning the person, the resolution whereof will certainly lead him into a confession, that God and nature hath determined nothing about him? And if our author cannot shew who by right of nature, or a clear positive law of God, has the next right to inherit the dominion of this natural monarch he has been at such pains about, when he died without a son, he might have spared his pains in all the rest, it being more necessary for the settling men's consciences, and determining their subjection and allegiance, to shew them who by original right, superior and antecedent to the will, or any act of men, hath a title to this *paternal jurisdiction,* than it is to shew that by nature there was [139] such a *jurisdiction;* it being to no purpose for me to know there is such a *paternal power,* which I ought, and am disposed to obey, unless, where there are many pretenders, I also know the person that is rightfully invested and endowed with it.

§. 120.

For the main matter in question being concerning the duty of my obedience, and the obligation of conscience I am under to pay it to him that is of right my lord and ruler, I must know the person that this right of paternal power resides in, and so impowers him to claim obedience from me: for let it be true what he says, p. 12. That *civil power not only in general is by divine institution, but even the assignment of it specially to the eldest parents;* and *Observations,* 254. *That not only the power or right of government, but the form of the power of governing, and the person having that power, are all the ordinance of God;* yet unless he shew us in all cases who is this person, *ordained* by God, who is this *eldest parent;* all his abstract notions of monarchical power will signify just nothing, when they

are to be reduced to practice, and men are conscientiously to pay their obedience: for *paternal jurisdiction* being not the thing to be obeyed, because it cannot command, but is only that which gives one man a right which another hath not, and if it come by inheritance, another man cannot have, to command and [140] be obeyed; it is ridiculous to say, I pay obedience to the *paternal power,* when I obey him, to whom paternal power gives no right to my obedience: for he can have no divine right to my obedience, who cannot shew his divine right to the power of ruling over me, as well as that by divine right there is such a power in the world.

§. 121.

And hence not being able to make out any prince's title to government, as heir to *Adam,* which therefore is of no use, and had been better let alone, he is fain to resolve all into present possession, and makes civil obedience as due to an *usurper,* as to a lawful king; and thereby the *usurper*'s title as good. His words are, *Observations,* 253. and they deserve to be remembered: *If an usurper dispossess the true heir, the subjects obedience to the fatherly power must go along, and wait upon God's providence*. But I shall leave his title of usurpers to be examined in its due place, and desire my sober reader to consider what thanks princes owe such politics as this, which can suppose *paternal power* (*i. e.*) a right to government in the hands of a *Cade,* or a *Cromwell;* and so all obedience being due to paternal power, the obedience of subjects will be due to them, by the same right, and upon as good grounds, as it is to lawful princes; and yet this, as dangerous a doctrine as it is, must necessarily follow from making all political power to be nothing else, but [141] *Adam*'s paternal power by right and divine *institution,* descending from him without being able to shew to whom it descended, or who is heir to it.

§. 122.

To settle government in the world, and to lay obligations to obedience on any man's conscience, it is as necessary (supposing with our author that all power be nothing but the being possessed of *Adam's fatherhood)* to satisfy him, who has a right to this *power,* this *fatherhood,* when the possessor dies without sons to succeed immediately to it, as it was to tell him, that upon the death of the father, the eldest son had a right to it: for it is still to be remembered, that the great question is, (and that which our author would be thought to contend for, if he did not sometimes forget it) what persons have a right to be obeyed, and not whether there be a power in the world, which is to be called *paternal,* without knowing in whom it resides: for so it be a power, *i. e.* right to govern, it matters not, whether it be termed *paternal* or *regal, natural* or *acquired;* whether you call it *supreme fatherhood,* or *supreme brotherhood,* will be all one, provided we know who has it.

§. 123.

I go on then to ask, whether in the inheriting of this *paternal power,* this *supreme fatherhood,* the grandson by a daughter hath a right before a nephew by a brother? Whether the grandson by the eldest son, being an [142] infant, before the younger son, a man and able? Whether the daughter before the uncle? or any other man, descended by a male line? Whether a grandson by a younger daughter, before a grand-daughter by an elder daughter? Whether the elder son by a concubine, before a younger son by a wife? From whence also will arise many questions of legitimation, and what in nature is the difference betwixt a wife and a concubine? for as to the municipal or positive laws of men, they can signify nothing here. It may farther be asked, Whether the eldest son, being a fool, shall inherit this *paternal power,* before the younger, a wise man? and what degree of folly it must be that shall exclude him? and who shall be judge of it? Whether the son of a fool, excluded for his folly, before the son of his wise brother who reigned? Who has the *paternal power* whilst the widow-queen is with child by

the deceased king, and no body knows whether it will be a son or a daughter? Which shall be heir of the two male-twins, who by the dissection of the mother were laid open to the world? Whether a sister by the half blood, before a brother's daughter by the whole blood?

§. 124.

These, and many more such doubts, might be proposed about the titles of succession, and the right of inheritance; and that not as idle speculations, but such as in [143] history we shall find have concerned the inheritance of crowns and kingdoms; and if our's want them, we need not go farther for famous examples of it, than the other kingdom in this very island, which having been fully related by the ingenious and learned author of *Patriarcha non Monarcha,* I need say no more of. Till our author hath resolved all the doubts that may arise about the next heir, and shewed that they are plainly determined by the law of nature, or the revealed law of God, all his suppositions of a *monarchical, absolute, supreme, paternal power* in *Adam,* and the descent of that power to his heirs, would not be of the least use to establish the authority, or make out the title, of any one prince now on earth; but would rather unsettle and bring all into question: for let our author tell us as long as he pleases, and let all men believe it too, that *Adam* had a *paternal,* and thereby a *monarchical power;* that this (the only *power* in the world) *descended to his heirs;* and that there is no other power in the world but this: let this be all as clear demonstration, as it is manifest error, yet if it be not past doubt, to whom this *paternal power descends,* and whose now it is, no body can be under any obligation of *obedience,* unless any one will say, that I am bound to pay obedience to *paternal power* in a man who has no more *paternal power* than I myself; which is all one as to say, I obey a man, because he has a right to govern; [144] and if I be asked, how I know he has a right to govern, I should answer, it cannot be known, that he has any at all: for that cannot be the reason of my obedience, which I know not to be so; much less can that be a reason of my obedience, which no body at all can know to be so.

§. 125.

And therefore all this ado about *Adam*'s *fatherhood,* the greatness of its power, and the necessity of its supposal, helps nothing to establish the power of those that govern, or to determine the obedience of subjects who are to obey, if they cannot tell whom they are to obey, or it cannot be known who are to govern, and who to obey. In the state the world is now, it is irrecoverably ignorant, who is *Adam*'s heir. This *fatherhood,* this *monarchical power of Adam,* descending to his heirs, would be of no more use to the government of mankind, than it would be to the quieting of mens consciences, or securing their healths, if our author had assured them, that *Adam* had a *power* to forgive sins, or cure diseases, which by divine institution descended to his *heir,* whilst this heir is impossible to be known. And should not he do as rationally, who upon this assurance of our author went and confessed his sins, and expected a good absolution; or took physic with expectation of health, from any one who had taken on himself the name of priest or physician, or thrust himself into those employments, saying, I acquiesce in [145] the absolving power descending from *Adam,* or I shall be cured by the medicinal power descending from *Adam;* as he who says, I submit to and obey the *paternal power* descending from *Adam,* when it is confessed all these powers descend only to his single heir, and that heir is unknown?

§. 126.

It is true, the civil lawyers have pretended to determine some of these cases concerning the succession of princes; but by our author's principles, they have meddled in a matter that belongs not to them: for if all political power be derived only from *Adam,* and be to descend only to his successive heirs, by the *ordinance of God* and *divine institution,* this is a right antecedent and paramount to all government; and therefore the positive laws of men cannot determine that, which is itself the foundation of all law

and government, and is to receive its rule only from the law of God and nature. And that being silent in the case, I am apt to think there is no such right to be conveyed this way: I am sure it would be to no purpose if there were, and men would be more at a loss concerning government, and obedience to governors, than if there were no such right; since by positive laws and compact, which *divine institution* (if there be any) shuts out, all these endless inextricable doubts can be safely provided against: but it can never be understood, how a divine natural right, and that of such moment as is all order and peace in the world, should be conveyed [146] down to posterity, without any plain natural or divine rule concerning it. And there would be an end of all civil government, if the *assignment* of civil power were by *divine institution* to the heir, and yet *by that divine institution* the person of the heir could not be known. This *paternal regal power* being by divine right only his, it leaves no room for human prudence, or consent, to place it any where else; for if only one man hath a divine right to the obedience of mankind, no body can claim that obedience, but he that can shew that right; nor can men's consciences by any other pretence be obliged to it. And thus this doctrine cuts up all government by the roots.

§. 127.

Thus we see how our author, laying it for a sure foundation, that the very *person* that is to rule, is the *ordinance* of God, and by *divine institution,* tells us at large, only that this person is the *heir,* but who this heir is, he leaves us to guess; and so this *divine institution,* which assigns it to a person whom we have no rule to know, is just as good as an assignment to no body at all. But whatever our author does, *divine institution* makes no such ridiculous assignments: nor can God be supposed to make it a sacred law, that one certain person should have a right to something, and yet not give rules to mark out, and know that person by, or give an *heir* a divine right to power, and yet not point out who that *heir* is. It is rather to be thought, that an [147] *heir* had no such right by *divine institution,* than that God should give such a right to the *heir,* but yet leave it doubtful and undeterminable who such heir is.

§. 128.

If God had given the land of *Canaan* to *Abraham,* and in general terms to some body after him, without naming his seed, whereby it might be known who that somebody was, it would have been as good and useful an assignment, to determine the right to the land of *Canaan,* as it would be the determining the right of crowns, to give empire to *Adam* and his successive heirs after him, without telling who his heir is: for the word *heir,* without a rule to know who it is, signifies no more than some body, I know not whom. God making it a *divine institution,* that men should not marry those who were *near of kin,* thinks it not enough to say, *None of you shall approach to any that is near of kin to him, to uncover their nakedness;* but moreover, gives rules to know who are those *near of kin,* forbidden by *divine institution;* or else that law would have been of no use, it being to no purpose to lay restraint, or give privileges to men, in such general terms, as the particular person concerned cannot be known by. But God not having any where said, the next heir shall inherit all his father's estate or dominion, we are not to wonder, that he hath no where appointed who that heir should be; for never having intended any such thing, never designed [148] any heir in that sense, we cannot expect he should any where nominate, or appoint any person to it, as we might, had it been otherwise. And therefore in scripture, though the word *heir* occur, yet there is no such thing as heir in our author's sense, one that was by right of nature to inherit all that his father had, exclusive of his brethren. Hence *Sarah* supposes, that if *Ishmael* staid in the house, to share in *Abraham*'s estate after his death, this son of a bond-woman might be heir with *Isaac;* and therefore, says she, *cast out this bond-woman and her son, for the son of this bond-woman shall not be heir with my son:* but this cannot excuse our author, who telling us there is, in every number of men, one who is right and next *heir* to *Adam,* ought to have told us what the laws of descent are: but he having been so sparing to instruct us by rules, how to know who is *heir,* let

us see in the next place, what his history out of scripture, on which he pretends wholly to build his government, gives us in this necessary and fundamental point.

§. 129.

Our author, to make good the title of his book, p. 13. begins his history of the descent of *Adam*'s regal power, p. 13. in these words: *This lordship which* Adam *by command had over the whole world, and by right descending from him, the patriarchs did enjoy, was a large,* &c. How does he prove that the patriarchs by descent did enjoy it? [149] for *dominion of life and death,* says he, *we find* Judah *the father pronounced sentence of death against* Thamar *his daughter in law for playing the harlot,* p. 13. How does this prove that *Judah* had absolute and sovereign authority? *he pronounced sentence of death*. The pronouncing of sentence of death is not a certain mark of sovereignty, but usually the office of inferior magistrates. The power of making laws of life and death is indeed a mark of sovereignty, but pronouncing the sentence according to those laws may be done by others, and therefore this will but ill prove that he had sovereign authority: as if one should say, *Judge Jefferies* pronounced sentence of death in the late times, therefore *Judge Jefferies* had sovereign authority. But it will be said, *Judah* did it not by commission from another, and therefore did it in his own right. Who knows whether he had any right at all? Heat of passion might carry him to do that which he had no authority to do. *Judah had dominion of life and death:* how does that appear? He exercised it, he *pronounced sentence of death against* Thamar: our author thinks it is very good proof, that because he did it, therefore he had a right to do it: he lay with her also: by the same way of proof, he had a right to do that too. If the consequence be good from doing to a right of doing, *Absalom* too may be reckoned amongst our author's sovereigns, [150] for he pronounced such a sentence of death against his brother *Amnon,* and much upon a like occasion, and had it executed too, if that be sufficient to prove a dominion of life and death.

But allowing this all to be clear demonstration of sovereign power, who was it that had this *lordship by right descending to him from* Adam, *as large and ample as the absolutest dominion of any monarch? Judah,* says our author, *Judah* a younger son of *Jacob,* his father and elder brethren living; so that if our author's own proof be to be taken, a younger brother may, in the life of his father and elder brothers, *by right of descent, enjoy* Adam'*s monarchical power;* and if one so qualified may be monarch by descent, why may not every man? if *Judah,* his father and elder brother living, were one of *Adam*'s heirs, I know not who can be excluded from this inheritance; all men by inheritance may be monarchs as well as *Judah*.

§. 130.

Touching war, we see that Abraham *commanded an army of* 318 *soldiers of his own family, and* Esau *met his brother* Jacob *with* 400 *men at arms: for matter of peace,* Abraham *made a league with* Abimelech, *&c*. p. 13. Is it not possible for a man to have 318 men in his family, without being heir to *Adam?* A planter in the *West Indies* has more, and might, if he pleased, (who doubts?) muster them up and lead them out [151] against the *Indians,* to seek reparation upon any injury received from them; and all this without the *absolute dominion of a monarch, descending to him from* Adam. Would it not be an admirable argument to prove, that all power by God's institution descended from *Adam* by inheritance, and that the very person and power of this planter were the *ordinance of God,* because he had power in his family over servants, born in his house, and bought with his money? For this was just *Abraham*'s case; those who were rich in the *patriarch*'s days, as in the *West Indies* now, bought *men* and *maid servants,* and by their increase, as well as purchasing of new, came to have large and numerous families, which though they made use of in war or peace, can it be thought the power they had over them was an inheritance descended from *Adam,* when it was the purchase of their money? A

man's riding in an expedition against an enemy, his horse bought in a fair would be as good a proof that the owner *enjoyed the lordship which* Adam *by command had over the whole world, by right descending to him,* as *Abraham*'s leading out the servants of his family is, that the *patriarchs* enjoyed this lordship by descent from *Adam:* since the title to the power, the master had in both cases, whether over slaves or horses, was only from his purchase; and the getting a dominion over any thing by bargain and [152] money, is a new way of proving one had it by descent and inheritance.

§. 131.

But making war and peace are marks of sovereignty. Let it be so in politic socities: may not therefore a man in the *West Indies,* who hath with him sons of his own, friends, or companions, soldiers under pay, or slaves bought with money, or perhaps a band made up of all these, make war and peace, if there should be occasion, and *ratify the articles too with an oath,* without being a sovereign, an absolute king over those who went with him? He that says he cannot, must then allow many masters of ships, many private planters, to be absolute monarchs, for as much as this they have done. War and peace cannot be made for politic societies, but by the supreme power of such societies; because war and peace, giving a different motion to the force of such a politic body, none can make war or peace, but that which has the direction of the force of the whole body, and that in politic societies is only the supreme power. In voluntary societies for the time, he that has such a power by consent, may make war and peace, and so may a single man for himself, the state of war not consisting in the number of *partisans,* but the enmity of the parties, where they have no superior to appeal to.

§. 132.

The actual making of war or peace is no proof of any other power, but only [153] of disposing those to exercise or cease acts of enmity for whom he makes it; and this power in many cases any one may have without any politic supremacy: and therefore the making of war or peace will not prove that every one that does so is a politic ruler, much less a king; for then common-wealths must be kings too, for they do as certainly make war and peace as monarchical government.

§. 133.

But granting this a *mark of sovereignty* in *Abraham,* is it a proof of the descent to him of *Adam's sovereignty* over the whole world? If it be, it will surely be as good a proof of the *descent of* Adam'*s lordship* to others too. And then common-wealths, as well as *Abraham,* will be *heirs of Adam,* for they make *war and peace,* as well as he. If you say, that the *lordship of Adam* doth not by right descend to common-wealths, though they make war and peace, the same say I of *Abraham,* and then there is an end of your argument: if you stand to your argument, and say those that do make war and peace, as common-wealths do without doubt, do *inherit* Adam'*s lordship,* there is an end of your monarchy, unless you will say, that commonwealths *by descent enjoying* Adam'*s lordship* are monarchies; and that indeed would be a new way of making all the governments in the world monarchical.

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§. 134.

To give our author the honour of this new invention, for I confess it is not I have first found it out by tracing his principles, and so charged it on him, it is fit my readers know that (as absurd as it may seem) he teaches it himself, p. 23. where he ingenuously says, *In all kingdoms and common-wealths in the world, whether the prince be the supreme father of the people, or but the true heir to such a father,*

or come to the crown by usurpation or election, or whether some few or a multitude govern the common-wealth; yet still the authority that is in any one, or in many, or in all these, is the only right, and natural authority of a supreme father; which right of *fatherhood,* he often tells us, is *regal and royal authority;* as particularly, p. 12. the page immediately preceding this instance of *Abraham*. This regal authority, he says, those that govern common-wealths have; and if it be true, that regal and royal authority be in those that govern common-wealths, it is as true that common-wealths are governed by kings; for if regal authority be in him that governs, he that governs must needs be a king, and so all common-wealths are nothing but down-right monarchies; and then what need any more ado about the matter? The governments of the world are as they should be, there is nothing but monarchy in it. This, without doubt, was the surest way our author could have found, to turn all [155] other governments, but monarchical, out of the world.

§. 135.

But all this scarce proves *Abraham* to have been a king as heir to *Adam*. If by inheritance he had been king, *Lot,* who was of the same family, must needs have been his subject, by that title, before the servants in his family; but we see they lived as friends and equals, and when their herdsmen could not agree, there was no pretence of jurisdiction or superiority between them, but they parted by consent, *Gen*. xiii. hence he is called both by *Abraham,* and by the text, *Abraham's brother,* the name of friendship and equality, and not of jurisdiction and authority, though he were really but his nephew. And if our author knows that *Abraham* was *Adam*'s heir, and a king, it was more, it seems, than *Abraham* himself knew, or his servant whom he sent a wooing for his son; for when he sets out the advantages of the match, xxiv. *Gen*. 35. thereby to prevail with the young woman and her friends, he says, *I am Abraham's servant, and the lord hath blessed my master greatly, and he is become great; and he hath given him flocks and herds, and silver and gold, and men-servants and maid-servants, and camels and asses; and Sarah, my master's wife, bare a son to my master when she was old, and unto him hath he given all he hath*. Can one think that a discreet servant, that was thus particular to set out his master's [156] greatness, would have omitted the crown *Isaac* was to have, if he had known of any such? Can it be imagined he should have neglected to have told them on such an occasion as this, that *Abraham* was a king, a name well known at that time, for he had nine of them his neighbours, if he or his master had thought any such thing, the likeliest matter of all the rest, to make his errand successful?

§. 136.

But this discovery it seems was reserved for our author to make 2 or 3000 years after, and let him enjoy the credit of it; only he should have taken care that some of *Adam*'s land should have descended to this his *heir,* as well as all *Adam*'s lordship: for though this lordship which *Abraham,* (if we may believe our author) as well as the other patriarchs, *by right descending to him, did enjoy, was as large and ample as the absolutest dominion of any monarch which hath been since the creation;* yet his estate, his territories, his dominions were very narrow and scanty, for he had not the possession of a foot of land, till he bought a field and a cave of the sons of *Heth* to bury *Sarah* in.

§. 137.

The instance of *Esau* joined with this of *Abraham,* to prove that the *lordship which* Adam *had over the whole world, by right descending from him, the patriarchs did enjoy,* is yet more pleasant than the former. *Esau met his brother* Jacob *with* 400 *men at arms;* he [157] therefore was a king by right of heir to *Adam*. Four hundred armed men then, however got together, are enough to prove him that leads them, to be a king and *Adam*'s heir. There have been tories in *Ireland,* (whatever there are in other

countries) who would have thanked our author for so honourable an opinion of them, especially if there had been no body near with a better title of 500 armed men, to question their royal authority of 400. It is a shame for men to trifle so, to say no worse of it, in so serious an argument. Here *Esau* is brought as a proof that *Adam*'s lordship, *Adam's absolute dominion, as large as that of any monarch, descended by right to the patriarchs,* and in this very *chap*. p. 19. *Jacob* is brought as an instance of one, that by *birth-right was lord over his brethren*. So we have here two brothers absolute monarchs by the same title, and at the same time heirs to *Adam;* the eldest, heir to *Adam,* because he met his brother with 400 men; and the youngest, heir to *Adam* by *birth-right:* Esau *enjoyed the lordship which* Adam *had over the whole world by right descending to him, in as large and ample manner, as the absolutest dominion of any monarch;* and at the same time, *Jacob lord over him, by the right heirs have to be lords over their brethren. Risum teneatis?* I never, I confess, met with any man of parts so dexterous as Sir *Robert* at this way of arguing: but it was his misfortune to [158] light upon an *hypothesis,* that could not be accommodated to the nature of things, and human affairs; his principles could not be made to agree with that constitution and order, which God had settled in the world, and therefore must needs often clash with common sense and experience.

§. 138.

In the next section, he tells us, *This patriarchal power continued not only till the flood, but after it, as the name patriarch doth in part prove*. The word patriarch doth more than *in part prove,* that *patriarchal power* continued in the world as long as there were patriarchs, for it is necessary that patriarchal power should be whilst there are patriarchs; as it is necessary there should be paternal or conjugal power whilst there are fathers or husbands; but this is but playing with names. That which he would fallaciously insinuate is the thing in question to be proved, *viz*. that the *lordship which* Adam *had over the world,* the supposed absolute universal dominion of *Adam* by *right descending from him, the patriarchs did enjoy*. If he affirms such an absolute monarchy continued to the flood, in the world, I would be glad to know what records he has it from; for I confess I cannot find a word of it in my Bible: if by *patriarchal power* he means any thing else, it is nothing to the matter in hand. And how the name *patriarch* in some part proves, that those, who are called by that [159] name, had absolute monarchical power, I confess, I do not see, and therefore I think needs no answer till the argument from it be made out a little clearer.

§. 139.

The three sons of Noah *had the world, says our author, divided amongst them by their father, for of them was the whole world overspread,* p. 14. The world might be overspread by the offspring of *Noah*'s sons, though he never divided the world amongst them; for the earth might be replenished without being divided: so that all our author's argument here proves no such division. However, I allow it to him, and then ask, the world being divided amongst them, which of the three was *Adam*'s heir? If *Adam's lordship, Adam's monarchy,* by right descended only to the eldest, then the other two could be but his *subjects,* his *slaves:* if by right it descended to all three brothers, by the same right, it will descend to all mankind; and then it will be impossible what he says, p. 19. that *heirs are lords of their brethren,* should be true; but all brothers, and consequently all men, will be equal and independent, all heirs to *Adam*'s monarchy, and consequently all monarchs too, one as much as another. But it will be said, *Noah* their father divided the world amongst them; so that our author will allow more to *Noah,* than he will to God almighty, for *Observations,* 211. he thought it hard, that God himself should give the world to *Noah* and his sons, to the prejudice of *Noah*'s birth-right: [160] his words are, *Noah was left sole heir to the world: why should it be thought that God would disinherit him of his birth-right, and make him, of all men in the world, the only tenant in common with his children?* and yet here he thinks it fit that *Noah* should disinherit *Shem* of his birth-right, and divide

the world betwixt him and his brethren; so that this *birth-right,* when our author pleases, must, and when he pleases must not, be sacred and inviolable.

§. 140.

If *Noah* did divide the world between his sons, and his assignment of dominions to them were good, there is an end of divine institution; all our author's discourse of *Adam*'s heir, with whatsoever he builds on it, is quite out of doors; the natural power of kings falls to the ground; and then *the form of the power governing, and the person having that power, will not be* (as he says they are, *Observations,* 254.) *the ordinance of God,* but they will be *ordinances of man:* for if the right of the heir be the ordinance of God, a divine right, no man, father or not father, can alter it: if it be not a divine right, it is only human, depending on the will of man: and so where human institution gives it not, the first-born has no right at all above his brethren; and men may put government into what hands, and under what form, they please.

§. 141.

He goes on, *Most of the civilest nations of the earth labour to fetch their original* [161] *from some of the sons, or nephews of* Noah, p. 14. How many do most of the civilest nations amount to? and who are they? I fear the *Chineses,* a very great and civil people, as well as several other people of the *East, West, North* and *South,* trouble not themselves much about this matter. All that believe the Bible, which I believe are our author's *most of the civilest nations,* must necessarily derive themselves from *Noah;* but for the rest of the world, they think little of his sons or nephews. But if the heralds and antiquaries of all nations, for it is these men generally that labour to find out the originals of nations, or all the nations themselves, *should labour to fetch their original from some of the sons or nephews of* Noah, what would this be to prove, that the *lordship which* Adam *had over the whole world, by right descended to the patriarchs?* Whoever, nations, or races of men, *labour to fetch their original from,* may be concluded to be thought by them, men of renown, famous to posterity, for the greatness of their virtues and actions; but beyond these they look not, nor consider who they were heirs to, but look on them as such as raised themselves, by their own virtue, to a degree that would give a lustre to those who in future ages could pretend to derive themselves from them. But if it were *Ogyges, Hercules, Brama, Tamberlain, Pharamond;* nay, if *Jupiter* and *Saturn* were the names, [162] from whence divers races of men, both ancient and modern, have laboured to derive their original; will that prove, that those men *enjoyed the lordship of* Adam, *by right descending to them?* If not, this is but a flourish of our author's to mislead his reader, that in itself signifies nothing.

§. 142.

To as much purpose is what he tells us, p. 15. concerning this division of the world, *That some say it was by* Lot, *and others that* Noah *sailed round the* Mediterreanean *in ten years, and divided the world into* Asia, Afric *and* Europe, portions for his three sons. *America* then, it seems, was left to be his that could catch it. Why our author takes such pains to prove the division of the world by *Noah* to his sons, and will not leave out an imagination, though no better than a dream, that he can find any where to favour it, is hard to guess, since such a *division,* if it prove any thing, must necessarily take away the title of *Adam*'s heir; unless three brothers can all together be heirs of *Adam;* and therefore the following words, *Howsoever the manner of this division be uncertain, yet it is most certain the division itself was by families from* Noah *and his children, over which the parents were heads and princes,* p. 15. if allowed him to be true, and of any sorce to prove, that all the power in the world is nothing but the lordship *of* Adam's *descending by right,* they will only prove, that [163] the fathers of the children are all heirs to this lordship of *Adam:* for if in those days *Cham* and *Japhet,* and other

parents, besides the eldest son, were heads and princes over their families, and had a right to divide the earth by families, what hinders younger brothers, being fathers of families, from having the same right? If *Cham* and *Japhet* were princes by right descending to them, notwithstanding any title of heir in their eldest brother, younger brothers by the same right descending to them are princes now; and so all our author's natural power of kings will reach no farther than their own children, and no kingdom, by this natural right, can be bigger than a family: for either this *lordship of* Adam *over the whole world,* by right descends only to the eldest son, and then there can be but one heir, as our author says, p. 19. or else, it by right descends to all the sons equally, and then every father of a family will have it, as well as the three sons of *Noah:* take which you will, it destroys the present governments and kingdoms, that are now in the world, since whoever has this *natural power of a king,* by right descending to him, must have it, either as our author tells us *Cain* had it, and be lord over his brethren, and so be alone king of the whole world; or else, as he tells us here, *Shem, Cham* and *Japhet* had it, three brothers, and so be only prince of his own family, and all [164] families independent one of another: all the world must be only one empire by the right of the next heir, or else every family be a distinct government of itself, by the *lordship of* Adam'*s descending to parents of families*. And to this only tend all the proofs he here gives us of the descent of *Adam*'s lordship: for continuing his story of this descent, he says,

§. 143.

In the dispersion of Babel, *we must certainly find the establishment of royal power, throughout the kingdoms of the world,* p. 14. If you must find it, pray do, and you will help us to a new piece of history: but you must shew it us before we shall be bound to believe, that regal power was established in the world upon your principles: for, that regal power was established *in the kingdoms of the world,* I think no body will dispute; but that there should be kingdoms in the world, whose several kings enjoyed their crowns, *by right descending to them from* Adam, that we think not only *apocryphal,* but also utterly impossible. If our author has no better foundation for his monarchy than a supposition of what was done at the dispersion of *Babel,* the monarchy he erects thereon, whose top is to reach to heaven to unite mankind, will serve only to divide and scatter them as that tower did; and, instead of establishing civil government and order in the world, will produce nothing but confusion.

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§. 144.

For he tells us, the *nations* they were divided into, *were distinct families, which had fathers for rulers over them; whereby it appears, that even in the confusion, God was careful to preserve the fatherly authority, by distributing the diversity of languages according to the diversity of families,* p. 14. It would have been a hard matter for any one but our author to have found out so plainly, in the text he here brings, that all the nations in that dispersion were governed by *fathers,* and that *God was careful to preserve the fatherly authority*. The words of the text are; *These are the sons of Shem after their families, after their tongues in their lands, after their nations;* and the same thing is said of *Cham* and *Japhet,* after an enumeration of their posterities; in all which there is not one word said of their governors, or forms of government; of *fathers,* or *fatherly authority*. But our author, who is very quick sighted to spy out *fatherhood,* where no body else could see any the least glimpses of it, tells us positively their *rulers were fathers, and God was careful to preserve the fatherly authority;* and why? Because those of the same family spoke the same language, and so of necessity in the division kept together. Just as if one should argue thus: *Hanibal* in his army, consisting of divers nations, kept those of the same language together; therefore fathers were captains of each band, and *Hanibal* was careful [166] of the *fatherly authority:* or in peopling of *Carolina,* the *English, French, Scotch* and *Welch* that

are there, plant themselves together, and by them the country is divided *in their lands after their tongues, after their families, after their nations;* therefore care was taken of the *fatherly authority:* or because, in many parts of *America,* every little tribe was a distinct people, with a different language, one should infer, that therefore *God was careful to preserve the fatherly authority,* or that therefore their rulers *enjoyed* Adam'*s lordship by right descending to them,* though we know not who were their governors, nor what their form of government, but only that they were divided into little independent societies, speaking different languages.

§. 145.

The scripture says not a word of their rulers or forms of government, but only gives an account, how mankind came to be divided into distinct languages and nations; and therefore it is not to argue from the authority of scripture, to tell us positively, *fathers* were their *rulers,* when the scripture says no such thing; but to set up fancies of one's own brain, when we confidently aver matter of fact, where records are utterly silent. Upon a like ground, *i. e.* none at all, he says, *That they were not confused multitudes without heads and governors, and at liberty to choose what governors or governments they pleased.*

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§. 146.

For I demand, when mankind were all yet of one language, all congregated in the plain of *Shinar,* were they then all under one monarch, *who enjoyed the lordship of* Adam *by right descending to him?* If they were not, there were then no thoughts, it is plain, of *Adam*'s *heir,* no right to government known then upon that title; no care taken, by God or man, of *Adam*'s *fatherly authority.* If when mankind were but one people, dwelt all together, and were of one language, and were upon building a city together; and when it was plain, they could not but know the right heir, for *Shem* lived till *Isaac*'s time, a long while after the division at *Babel;* if then, I say, they were not under the monarchical government of *Adam*'s fatherhood, by right descending to the heir, it is plain there was no regard had to the *fatherhood,* no monarchy acknowledged due to *Adam*'s *heir,* no empire of *Shem*'s in *Asia,* and consequently no such division of the world by *Noah,* as our author has talked of. As far as we can conclude any thing from scripture in this matter, it seems from this place, that if they had any government, it was rather a common-wealth than an absolute monarchy: for the scripture tells us, *Gen.* xi. *They said:* it was not a prince commanded the building of this city and tower, it was not by the command of one *monarch,* but by the consultation of many, a free people; *let us build* [168] *us a city:* they built it for themselves as free-men, not as slaves for their lord and master: *that we be not scattered abroad;* having a city once built, and fixed habitations to settle our abodes and families. This was the consultation and design of a people, that were at liberty to part asunder, but desired to keep in one body, and could not have been either necessary or likely in men tied together under the government of one monarch, who if they had been, as our author tells us, all *slaves* under the absolute dominion of a monarch, needed not have taken such care to hinder themselves from wandering out of the reach of his dominion. I demand whether this be not plainer in scripture than any thing of *Adam*'s *heir or fatherly authority?*

§. 147.

But if being, as God says, *Gen.* xi. 6. one people, they had one ruler, one king by natural right, absolute and supreme over them, *what care had God to preserve the paternal authority of the supreme fatherhood,* if on a sudden he suffer 72 (for so many our author talks of) *distinct nations* to be erected

out of it, under distinct governors, and at once to withdraw themselves from the obedience of their sovereign? This is to intitle God's care how, and to what we please. Can it be sense to say, that God was careful to preserve the *fatherly authority* in those who had it not? for if these were subjects under a supreme prince, what authority had they? Was it an [169] instance of God's care to preserve the *fatherly authority,* when he took away the true *supreme fatherhood* of the natural monarch? Can it be reason to say, that God, for the preservation of *fatherly authority,* lets several new governments with their governors start up, who could not all have *fatherly authority?* And is it not as much reason to say, that God is careful to destroy *fatherly authority,* when he suffers one, who is in possession of it, to have his government torn in pieces, and shared by several of his subjects? Would it not be an argument just like this, for monarchical government, to say, when any monarchy was shattered to pieces, and divided amongst revolted subjects, that God was careful to preserve monarchical power, by rending a settled empire into a multitude of little governments? If any one will say, that what happens in providence to be preserved, God is careful to preserve as a thing therefore to be esteemed by men as necessary or useful, it is a peculiar propriety of speech, which every one will not think fit to imitate: but this I am sure is impossible to be either proper, or true speaking, that *Shem,* for example, (for he was then alive,) should have *fatherly authority,* or sovereignty by right of *fatherhood,* over that one people at *Babel,* and that the next moment, *Shem* yet living, 72 others should have *fatherly authority,* or sovereignty by right of fatherhood, over the same people, divided [170] into so many distinct governments: either these 72 fathers actually were rulers, just before the confusion, and then they were not one people, but that God himself says they were; or else they were a common-wealth, and then where was monarchy? or else these 72 fathers had *fatherly authority,* but knew it not. Strange! that *fatherly authority* should be the only original of government amongst men, and yet all mankind not know it; and stranger yet, that the confusion of tongues should reveal it to them all of a sudden, that in an instant these 72 should know that they had *fatherly power,* and all others know that they were to obey it in them, and every one know that particular *fatherly authority* to which he was a subject. He that can think this arguing from scripture, may from thence make out what model of an *Eutopia* will best suit with his fancy or interest; and this *fatherhood,* thus disposed of, will justify both a prince who claims an universal monarchy, and his subjects, who, being fathers of families, shall quit all subjection to him, and *canton* his empire into less governments for themselves; for it will always remain a doubt in which of these the fatherly authority resided, till our author resolves us, whether *Shem,* who was then alive, or these 72 new princes, beginning so many new empires in his dominions, and over his subjects, had right to govern, since our author tells us, [171] that both one and the other had *fatherly,* which is supreme authority, and are brought in by him as instances of those who did *enjoy the lordships of* Adam *by right descending to them, which was as large and ample as the absolutest dominion of any monarch*. This at least is unavoidable, that if *God was careful to preserve the fatherly authority, in the 72 new-erected nations,* it necessarily follows, that he was as careful to destroy all pretences of *Adam*'s heir; fince he took care, and therefore did preserve the fatherly authority in so many, at least 71, that could not possibly be *Adam*'s heirs, when the right heir (if God had ever ordained any such inheritance) could not but be known, *Shem* then living, and they being all one people.

§. 148.

Nimrod is his next instance of enjoying this patriarchal power, p. 16. but I know not for what reason our author seems a little unkind to him, and says, that he *against right enlarged his empire, by seizing violently on the rights of other lords of families*. These *lords of families* here were called *fathers of families,* in his account of the dispersion at *Babel:* but it matters not how they were called, so we know who they are; for this fatherly authority must be in them, either as heirs to *Adam,* and so there could not be 72, nor above one at once; or else as natural parents over their children, and so every father will have *paternal authority* over [172] his children by the same right, and in as large extent as those 72

had, and so be independent princes over their own offspring. Taking his *lords of families* in this later sense, (as it is hard to give those words any other sense in this place) he gives us a very pretty account of the original of monarchy, in these following words, p. 16. *And in this sense he may be said to be the author and founder of monarchy,* viz. As against right seizing violently on the rights of fathers over their children; which paternal authority, if it be in them, by right of nature, (for else how could those 72 come by it?) no body can take from them without their own consents; and then I desire our author and his friends to consider, how far this will concern other princes, and whether it will not, according to his conclusion of that paragraph, resolve all regal power of those, whose dominions extend beyond their families, either into tyranny and usurpation, or election and consent of fathers of families, which will differ very little from consent of the people.

§. 149.

All his instances, in the next *section,* p. 17. of the 12 dukes of *Edom,* the nine kings in a little corner of *Asia* in *Abraham*'s days, the 31 kings in *Canaan* destroyed by *Joshua,* and the care he takes to prove that these were all sovereign princes, and that every town in those days had a king, are so many direct proofs against him, that it was [173] not the *lordship of* Adam *by right descending* to them, that made kings: for if they had held their royalties by that title, either there must have been but one sovereign over them all, or else every father of a family had been as good a prince, and had as good a claim to royalty, as these: for if all the sons of *Esau* had each of them, the younger as well as the eldest, the right of *fatherhood,* and so were sovereign princes after their fathers death, the same right had their sons after them, and so on to all posterity; which will limit all the natural power of fatherhood, only to be over the issue of their own bodies, and their descendents; which power of fatherhood dies with the head of each family, and makes way for the like power of fatherhood to take place in each of his sons over their respective posterities: whereby the power of fatherhood will be preserved indeed, and is intelligible, but will not be at all to our author's purpose. None of the instances he brings are proofs of any power they had, as heirs of *Adam*'s paternal authority by the title of his fatherhood descending to them; no, nor of any power they had by virtue of their own: for *Adam*'s *fatherhood* being over all mankind, it could descend but to one at once, and from him to his right heir only, and so there could by that title be but one king in the world at a time: and by right of fatherhood, not descending from *Adam,* it must be only as they themselves [174] were fathers, and so could be over none but their own posterity. So that if those 12 dukes of *Edom;* if *Abraham* and the nine kings his neighbours; if *Jacob* and *Esau,* and the 31 kings in *Canaan,* the 72 kings mutilated by *Adonibeseck,* the 32 kings that came to *Benhadad,* the 70 kings of *Greece* making war at *Troy,* were, as our author contends, all of them sovereign princes; it is evident that kings derived their power from some other original *than fatherhood,* since some of these had power over more than their own posterity; and it is demonstration, they could not be all heirs to *Adam:* for I challenge any man to make any pretence to power by right of *fatherhood,* either intelligible or possible in any one, otherwise, than either as *Adam*'s heir, or as progenitor over his own descendents, naturally sprung from him. And if our author could shew that any one of these princes, of which he gives us here so large a catalogue, had his authority by either of these titles, I think I might yield him the cause; though it is manifest they are all impertinent, and directly contrary to what he brings them to prove, *viz*. That the *lordship which* Adam *had over the world by right descended to the patriarchs*.

§. 150.

Having told us, p. 16, That *the patriarchal government continued in* Abraham, Isaac, *and* Jacob, *until the* Egyptian *bondage,* p. 17. he tells us, *By manifest footsteps we may trace this paternal government unto the* [175] Israelites *coming into* Egypt, *where the exercise of supreme patriarchal government was intermitted, because they were in subjection to a stronger prince*. What these footsteps are of

paternal government, in our author's sense, *i. e.* of absolute monarchical power descending from *Adam,* and exercised by right of *fatherhood,* we have seen, that is for 2290 years no footsteps at all; since in all that time he cannot produce any one example of any person who claimed or exercised regal authority by right of *fatherhood;* or shew any one who being a king was *Adam*'s heir: all that his proofs amount to, is only this, that there were fathers, patriarchs and kings, in that age of the world; but that the fathers and patriarchs had any absolute arbitrary power, or by what titles those kings had their's, and of what extent it was, the scripture is wholly silent; it is manifest by right of *fatherhood* they neither did, nor could claim any title to dominion and empire.

§. 151.

To say, *that the exercise of supreme patriarchal government was intermitted, because they were in subjection to a stronger prince,* proves nothing but what I before suspected, *viz.* That *patriarchal jurisdiction or government* is a fallacious expression, and does not in our author signify (what he would yet insinuate by it) *paternal* and *regal power,* such an absolute sovereignty as he supposes was in *Adam*.

[176]

§. 152.

For how can he say that *patriarchal jurisdiction was intermitted in Egypt,* where there was a king, under whose regal government the *Israelites* were, if *patriarchal* were *absolute monarchical jurisdiction?* And if it were not, but something else, why does he make such ado about a power not in question, and nothing to the purpose? The exercise of *patriarchal* jurisdiction, if *patriarchal* be *regal,* was not intermitted whilst the *Israelites* were in *Egypt*. It is true, the exercise of *regal* power was not then in the hands of any of the promised seed of *Abraham,* nor before neither that I know; but what is that to the intermission of *regal authority, as descending from* Adam, unless our author will have it, that this chosen line of *Abraham* had the right of inheritance to *Adam*'s lordship? and then to what purpose are his instances of the 72 rulers, in whom the fatherly authority was preserved in the confusion at *Babel?* Why does he bring the 12 princes sons of *Ismael;* and the dukes of *Edom,* and join them with *Abraham, Isaac,* and *Jacob,* as examples of the exercise of true *patriarchal government,* if the exercise of *patriarchal jurisdiction* were intermitted in the world, whenever the heirs of *Jacob* had not supreme power? I fear, *supreme patriarchal jurisdiction* was not only *intermitted,* but from the time of the *Egyptian* bondage quite lost in the world, since it will [177] be hard to find, from that time downwards, any one who exercised it as an inheritance descending to him from the patriarchs *Abraham, Isaac,* and *Jacob*. I imagined monarchical government would have served his turn in the hands of *Pharaoh,* or any body. But one cannot easily discover in all places what his discourse tends to, as particularly in this place it is not obvious to guess what he drives at, when he says, *the exercise of supreme patriarchal jurisdiction* in *Egypt,* or how this serves to make out the descent of *Adam*'s lordship to the patriarchs, or any body else.

§. 153.

For I thought he had been giving us out of scripture, proofs and examples of monarchical government, founded on paternal authority, descending from *Adam;* and not an history of the *Jews:* amongst whom yet we find no kings, till many years after they were a people: and when kings were their rulers, there is not the least mention or room for a pretence that they were heirs to *Adam,* or kings by paternal authority. I expected, talking so much as he does of scripture, that he would have produced thence a series of monarchs, whose titles were clear to *Adam's fatherhood,* and who, as heirs to him, owned and

exercised paternal jurisdiction over their subjects, and that this was the true patriarchical government; whereas he neither proves, that the patriarchs were kings; nor that either kings or patriarchs [178] were heirs to *Adam,* or so much as pretended to it: and one may as well prove, that the patriarchs were all absolute monarchs; that the power both of patriarchs and kings was only paternal; and that this power descended to them from *Adam:* I say all these propositions may be as well proved by a confused account of a multitude of little kings in the *West-Indies,* out of *Ferdinando Soto,* or any of our late histories of the *Northern America,* or by our author's 70 kings of *Greece,* out of *Homer,* as by any thing he brings out of scripture, in that multitude of kings he has reckoned up.

§. 154.

And methinks he should have let *Homer* and his wars of *Troy* alone, since his great zeal to truth or monarchy carried him to such a pitch of transport against *philosophers* and *poets,* that he tells us in his preface, that there *are too many in these days, who please themselves in running after the opinions of philosophers and poets, to find out such an original of government, as might promise them some title to liberty, to the great scandal of Christianity, and bringing in of atheism*. And yet these heathens, philosopher *Aristotle,* and poet *Homer,* are not rejected by our zealous Christian politician, whenever they offer any thing that seems to serve his turn; whether *to the great scandal of* Christianity *and bringing in of* atheism, let him look. This I cannot but observe, in authors who it is visible write [179] not for truth, how ready zeal for interest and party is to entitle *Christianity* to their designs, and to charge *atheism* on those who will not without examining submit to their doctrines, and blindly swallow their nonsense.

But to return to his scripture history, our author farther tells us, p. 18. that *after the return of the* Israelites *out of* bondage, *God, out of a special care of them, chose* Moses *and* Joshua *successively to govern as princes in the place and stead of the supreme fathers*. If it be true, that they *returned out of bondage,* it must be into a state of freedom, and must imply, that both before and after this *bondage* they were free, unless our author will say, that changing of masters is returning *out of bondage;* or that a slave *returns out of bondage,* when he is removed from one gally to another. If then they *returned out of bondage,* it is plain that in those days, whatever our author in his preface says to the contrary, there were difference between a *son,* a *subject,* and a *slave;* and that neither the *patriarchs* before, nor their rulers after this *Egyptian bondage, numbered their sons or subjects amongst their possessions,* and disposed of them with as absolute a dominion, as they did *their other goods*.

§. 155.

This is evident in *Jacob,* to whom *Reuben* offered his two sons as pledges; and *Judah* was at last surety for *Benjamin*'s safe [180] return out of *Egypt:* which all had been vain, superfluous, and but a sort of mockery, if *Jacob* had had the same power over every one of his family, as he had over his ox or his ass, as an *owner* over his *substance;* and the offers that *Reuben* or *Judah* made had been such a security for returning of *Benjamin,* as if a man should take two lambs out of his lord's flock, and offer one as security, that he will safely restore the other.

§. 156.

When they were out of this *bondage,* what then? *God out of a special care of them, the* Israelites. It is well that once in his book he will allow God to have any care of the people; for in other places he speaks of mankind, as if God had no care of any part of them, but only of their monarchs, and that the rest of the people, the societies of men, were made as so many herds of cattle, only for the service, use, and pleasure of their princes.

§. 157.

Chose Moses *and* Joshua *successively to govern as princes;* a shrewd argument our author has found out to prove God's care of the fatherly authority, and *Adam*'s heirs, that here, as an expression of his care of his own people, he chooses those for princes over them, that had not the least pretence to either. The persons chosen were, *Moses* of the tribe of *Levi,* and *Joshua* of the tribe of *Ephraim,* neither of which had any title of *fatherhood*. But says our author, they were in the place [181] and stead of the supreme fathers. If God had any where as plainly declared his choice of such *fathers* to be rulers, as he did of *Moses* and *Joshua,* we might believe *Mases* and *Joshua* were in *their place and stead:* but that being the question in debate, till that be better proved, *Moses* being chosen by God to be ruler of his people, will no more prove that government belonged to *Adam's heir,* or to the *fatherhood,* than God's choosing *Aaron* of the tribe of *Levi* to be priest, will prove that the priesthood belonged to *Adam*'s heir, or the *prime fathers;* since God would choose *Aaron* to be priest, and *Moses* ruler in *Israel,* though neither of those offices were settled on *Adam*'s *heir,* or the *fatherhood*.

§. 158.

Our author goes on, *and after them likewise for a time he raised up judges, to defend his people in time of peril,* p. 18. This proves fatherly authority to be the original of government, and that it descended from *Adam* to his heirs, just as well as what went before: only here our author seems to confess, that these judges, who were all the governors they then had, were only men of valour, whom they made their generals to defend them in time of peril; and cannot God raise up such men, unless fatherhood have a title to government?

But says our author, *when God gave the* Israelites *kings, he re-established the ancient and* [182] *prime right of lineal succession to paternal government,* p. 18.

§. 160.

How did God *re-establish* it? by a law, a positive command? We find no such thing. Our author means then, that when God gave them a king, in giving them a king, he *re-established the right, &c*. To re-establish *de facto* the right of lineal succession to paternal government, is to put a man in possession of that government which his fathers did enjoy, and he by lineal succession had a right to: for, first, if it were another government than what his ancestors had, it was not succeeding to an *ancient right,* but beginning a new one: for if a prince should give a man, besides his antient patrimony, which for some ages his family had been disseized of, an additional estate, never before in the possession of his ancestors, he could not be said to *re-establish the right of lineal succession* to any more than what had been formerly enjoyed by his ancestors. If therefore the power the kings of *Israel* had, were any thing more than *Isaac* or *Jacob* had, it was not the *re-establishing* in them the right of succession to a power, but giving them a new power, however you please to call it, *paternal* or not: and whether *Isaac* and *Jacob* had the same power that the kings of *Israel* had, I desire any one, by what has been above said, to consider; and I do not think they [183] will find, that either *Abraham, Isaac,* or *Jacob,* had any regal power at all.

§. 161.

Next, there can be no *re-establishment of the prime and ancient right of lineal succession* to any thing, unless he, that is put in possession of it, has the right to succeed, and be the true and next heir to him he succeeds to. Can that be a re-establishment, which begins in a new family? or that the *re-establishment of an ancient right of lineal succession,* when a crown is given to one, who has no

right of succession to it, and who, if the lineal succession had gone on, had been out of all possibility of pretence to it? *Saul,* the first king God gave the *Israelites,* was of the tribe of *Benjamin*. Was the *ancient and prime right of lineal succession re-established* in him? The next was *David,* the youngest son of *Jesse,* of the posterity of *Judah, Jacob's third son*. Was the *ancient and prime right of lineal succession to paternal government re-established* in him? or in *Solomon,* his younger son and successor in the throne? or in *Jereboam* over the ten tribes? or in *Athaliah,* a woman who reigned six years an utter stranger to the royal blood? *If the ancient and prime right of lineal succession to paternal government* were *re-established* in any of these or their posterity, *the ancient and prime right of lineal succession to paternal government* belongs to younger brothers as well as elder, and may be re-established in any man living; for whatever [184] younger brothers, by *ancient and prime right of lineal succession,* may have as well as the elder, that every man living may have a right to, by lineal succession, and Sir *Robert* as well as any other. And so what a brave right of lineal succession, to his *paternal* or *regal* government, our author has *re-established,* for the securing the rights and inheritance of crowns, where every one may have it, let the world consider.

§. 162.

But says our author however, p. 19. *Whensoever God made choice of any special person to be king, he intended that the issue also should have benefit thereof, as being comprehended sufficiently in the person of the father, altho' the father was only named in the grant*. This yet will not help out succession; for if, as our author says, the benefit of the grant be intended to the *issue* of the grantee, this will not direct the succession; since, if God give any thing to a man and his *issue* in general, the claim cannot be to any one of that *issue* in particular; every one that is of his race will have an equal right. If it be said, our author meant *heir,* I believe our author was as willing as any body to have used that word, if it would have served his turn: but *Solomon,* who succeeded *David* in the throne, being no more his heir than *Jeroboham,* who succeeded him in the government of the ten tribes, was his issue, our author had reason to avoid saying, That God intended it to [185] the *heirs,* when that would not hold in a succession, which our author could not except against; and so he has left his succession as undetermined, as if he had said nothing about it: for if the regal power be given by God to a man and his *issue,* as the land of *Canaan* was to *Abraham* and his seed, must they not all have a title to it, all share in it? And one may as well say, that by God's grant to *Abraham* and his seed, the land of *Canaan* was to belong only to one of his seed exclusive of all others, as by God's grant of dominion to a man and *his issue,* this dominion was to belong in peculiar to one of his *issue* exclusive of all others.

§. 163.

But how will our author prove that whensoever God made choice of any special person to be a king, he intended that *the* (I suppose he means his) *issue also should have benefit thereof?* has he so soon forgot *Moses* and *Joshua,* whom in this very *section,* he says, *God out of a special care chose to govern as princes,* and the judges that God raised up? Had not these princes, having the authority of the *supreme fatherhood,* the same power that the kings had; and being specially chosen by God himself, should not their *issue* have the benefit of that choice, as well as *David*'s or *Solomon*'s? If these had the paternal authority put into their hands immediately by God, why had not their *issue* the benefit of this grant in a succession to [186] this power? or if they had it as *Adam*'s heirs, why did not their heirs enjoy it after them by right descending to them? for they could not be heirs to one another. Was the power the same, and from the same original, in *Moses, Joshua* and the *Judges,* as it was in *David* and the *Kings;* and was it inheritable in one, and not in the other? If it was not *paternal authority,* then God's own people were governed by those that had not *paternal authority,* and those governors did well enough without it: if it were *paternal authority,* and God chose the persons that were to exercise it, our author's rule fails, that *whensoever God makes choice of any person to be*

supreme ruler (for I suppose the name king has no spell in it, it is not the title, but the power makes the difference) *he intends that the issue also should have the benefit of it,* since from their coming out of *Egypt* to *David*'s time, 400 years, the *issue* was never *so sufficiently comprehended in the person of the father,* as that any son, after the death of his father, succeeded to the government amongst all those judges that judged *Israel*. If, to avoid this, it be said, God always chose the person of the successor, and so, transferring the *fatherly authority* to him, excluded his issue from succeeding to it, that is manifestly not so in the story of *Jephtha,* where he articled with the people, and they made him judge over them, as is plain, *Judg*. 11.

[187]

§. 164.

It is in vain then to say, that *whensoever God chooses any special person* to have the exercise of *paternal authority,* (for if that be not to be king, I desire to know the difference between a king and one having the exercise of *paternal authority) he intends the issue also should have the benefit of it,* since we find the authority, the judges had, ended with them, and descended not to their *issue;* and if the judges had not *paternal authority,* I fear it will trouble our author, or any of the friends to his principles, to tell who had then the *paternal authority,* that is, the government and supreme power amongst the *Israelites;* and I suspect they must confess that the chosen people of God continued a people several hundreds of years, without any knowledge or thought of this *paternal authority,* or any appearance of monarchical government at all.

§. 165.

To be satisfied of this, he need but read the story of the *Levite,* and the war thereupon with the *Benjamites,* in the three last *chapters* of *Judges;* and when he finds, that the *Levite* appeals to the people for justice that it was the tribes and the congregation, that debated, resolved, and directed all that was done on that occasion; he must conclude, either that *God* was not *careful to preserve the fatherly authority* amongst his own chosen people; or else that the *fatherly authority* may be preserved, where there is no [188] monarchical government: if the latter, then it will follow, that though *fatherly authority* be never so well proved, yet it will not infer a necessity of monarchical government; if the former, it will seem very strange and improbable, that God should ordain *fatherly authority* to be so sacred amongst the sons of men, that there could be no power, or government without it, and yet that amongst his own people, even whilst he is providing a government for them, and therein prescribes rules to the several states and relations of men, this great and fundamental one, this most material and necessary of all the rest, should be concealed, and lie neglected for 400 years after.

§. 166.

Before I leave this, I must ask how our author knows that *whensoever God makes choice of any special person to be king, he intends that the issue should have the benefit thereof?* Does God by the law of nature or revelation say so? By the same law also he must say, which of his *issue* must enjoy the crown in succession, and so point out the heir, or else leave his *issue* to divide or scramble for the government: both alike absurd, and such as will destroy the benefit of such grant to the *issue*. When any such declaration of God's intention is produced, it will be our duty to believe God intends it so; but till that be done, our author must shew us some better warrant, before we shall be obliged to receive [189] him as the authentic revealer of God's intentions.

§. 167.

The issue, says our author, *is comprehended sufficiently in the person of the father, although the father only was named in the grant:* and yet God, when he gave the land of *Canaan* to *Abraham, Gen.* xiii. 15. thought fit to put *his seed* into the grant too: so the priesthood was given to *Aaron and his seed;* and the crown God gave not only to *David,* but *his seed* also: and however our author assures us that *God intends, that the issue should have the benefit of it, when he chooses any person to be king,* yet we see that the kingdom which he gave to *Saul,* without mentioning his seed after him, never came to any of his *issue:* and why, when God chose a person to be king, he should intend, that his *issue* should have the benefit of it, more than when he chose one to be judge in *Israel,* I would fain know a reason; or why does a grant of *fatherly authority* to a king more comprehend the *issue,* than when a like grant is made to a judge? Is *paternal authority* by right to descend to the *issue* of one, and not of the other? There will need some reason to be shewn of this difference, more than the name, when the thing given is the same *fatherly authority,* and the manner of giving it, God's choice of the person, the same too; for I suppose our author, when he says, *God* [190] *raised up judges,* will by no means allow, they were chosen by the people.

§. 168.

But since our author has so confidently assured us of the care of God to preserve the *fatherhood,* and pretends to build all he says upon the authority of the scripture, we may well expect that that people, whose law, constitution and history is chiefly contained in the scripture, should furnish him with the clearest instances of God's care of preserving the fatherly authority, in that people who it is agreed he had a most peculiar care of. Let us see then what state this *paternal authority* or government was in amongst the *Jews,* from their beginning to be a people. It was omitted, by our author's confession, from their coming into *Egypt,* till their return out of that bondage, above 200 years: from thence till God gave the *Israelites* a king, about 400 years more, our author gives but a very slender account of it; nor indeed all that time are there the least footsteps of paternal or regal government amongst them. But then says our author, *God re-established the ancient and prime right of lineal succession to paternal government.*

§. 169.

What a *lineal succession to paternal government* was then established, we have already seen. I only now consider how long this lasted, and that was to their captivity, about 500 years: from thence to their destruction by the *Romans,* above 650 years [191] after, the *ancient and prime right of lineal succession to paternal government* was again lost, and they continued a people in the promised land without it. So that of 1750 years that they were God's peculiar people, they had hereditary kingly government amongst them not one third of the time; and of that time there is not the least footstep of one moment of *paternal government, nor the re-establishment of the ancient and prime right of lineal succession to it,* whether we suppose it to be derived, as from its fountain, from *David, Saul, Abraham,* or, which upon our author's principles is the only true, from *Adam.*

OF CIVIL-GOVERNMENT. BOOK II

CONTENTS OF BOOK II

Chap. I.↩

§. 1.

It having been shewn in the foregoing discourse,

1. That *Adam* had not, either by natural right of fatherhood, or by positive donation from God, any such authority over his children, or dominion over the world, as is pretended:

2. That if he had, his heirs, yet, had no right to it:

3. That if his heirs had, there being no law of nature nor positive law of God that determines which is the right heir in all cases that may arise, the right of succession, and consequently of bearing rule, could not have been certainly determined:

4. That if even that had been determined, yet the knowledge of which is the eldest line [194] of *Adam*'s posterity, being so long since utterly lost, that in the races of mankind and families of the world, there remains not to one above another, the least pretence to be the eldest house, and to have the right of inheritance:

All these premises having, as I think, been clearly made out, it is impossible that the rulers now on earth should make any benefit, or derive any the least shadow of authority from that, which is held to be the fountain of all power, *Adam's private dominion and paternal jurisdiction;* so that he that will not give just occasion to think that all government in the world is the product only of force and violence, and that men live together by no other rules but that of beasts, where the strongest carries it, and so lay a foundation for perpetual disorder and mischief, tumult, sedition and rebellion, (things that the followers of that hypothesis so loudly cry out against) must of necessity find out another rise of governwent, another original of political power, and another way of designing and knowing the persons that have it, than what Sir *Robert Filmer* hath taught us.

§. 2.

To this purpose, I think it may not be amiss, to set down what I take to be political power; that the power of a *magistrate* over a subject may be distinguished from that of a *father* over his children, a *master* over his servant, a *husband* over his wife, and [195] a *lord* over his slave. All which distinct powers happening sometimes together in the same man, if he be considered under these different relations, it may help us to distinguish these powers one from another, and shew the difference betwixt a ruler of a common-wealth, a father of a family, and a captain of a galley.

§. 3.

Political power, then, I take to be a *right* of making laws with penalties of death, and consequently all less penalties, for the regulating and preserving of property, and of employing the force of the community, in the execution of such laws, and in the defence of the common-wealth from foreign injury; and all this only for the public good.

CHAP. II. Of the State of Nature.

§. 4.

TO understand political power right, and derive it from its original, we must consider, what state all men are naturally in, and that is, a *state of perfect freedom* to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.

A *state* also *of equality,* wherein all the power and jurisdiction is reciprocal, no one [196] having more than another; there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection, unless the lord and master of them all should, by any manifest declaration of his will, set one above another, and confer on him, by an evident and clear appointment, an undoubted right to dominion and sovereignty.

§. 5.

This *equality* of men by nature, the judicious *Hooker* looks upon as so evident in itself, and beyond all question, that he makes it the foundation of that obligation to mutual love amongst men, on which he builds the duties they owe one another, and from whence he derives the great maxims *of justice* and *charity*. His words are,

The like natural inducement hath brought men to know that it is no less their duty, to love others than themselves; for seeing those things which are equal, must needs all have one measure; if I cannot but wish to receive good, even as much at every man's hands, as any man can wish unto his own soul, how should I look to have any part of my desire herein satisfied, unless myself be careful to satisfy the like desire, which is undoubtedly in other men, being of one and the same nature? To have any thing offered them repugnant to this desire, must needs in all [197] respects grieve them as much as me; so that if I do harm, I must look to suffer, there being no reason that others should shew greater measure of love to me, than they have by me shewed unto them: my desire therefore to be loved of my equals in nature, as much as possible may be, imposeth upon me a natural duty of bearing to them-ward fully the like affection; from which relation of equality between ourselves and them that are as ourselves, what several rules and canons natural reason hath drawn, for direction of life, no man is ignorant. Eccl. Pol. Lib. 1.

§. 6.

But though this be *a state of liberty,* yet *it is not a state of licence:* though man in that state have an uncontroulable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The *state of nature* has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all *equal and independent,* no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last [198] during his, not one another's pleasure: and being furnished with like faculties, sharing all in one community of nature, there cannot be supposed any such *subordination* among us, that may authorize us to destroy one another, as if we were made for one another's uses, as

the inferior ranks of creatures are for our's. Every one, as he is *bound to preserve himself,* and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, *to preserve the rest of mankind,* and may not, unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another.

§. 7.

And that all men may be restrained from invading others rights, and from doing hurt to one another, and the law of nature be observed, which willeth the peace and *preservation of all mankind,* the *execution* of the law of nature is, in that state, put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree, as may hinder its violation: for the *law of nature* would, as all other laws that concern men in this world, be in vain, if there were no body that in the state of nature had a *power to execute* that law, and thereby preserve the innocent and restrain offenders. And if any one in the state of nature may punish another for any evil he has [199] done, every one may do so: for in that *state of perfect equality,* where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, every one must needs have a right to do.

§. 8.

And thus, in the state of nature, *one man comes by a power over another;* but yet no absolute or arbitrary power, to use a criminal, when he has got him in his hands, according to the passionate heats, or boundless extravagancy of his own will; but only to retribute to him, so far as calm reason and conscience dictate, what is proportionate to his transgression, which is so much as may serve for *reparation* and *restraint:* for these two are the only reasons, why one man may lawfully do harm to another, which is that we call *punishment*. In transgressing the law of nature, the offender declares himself to live by another rule than that of reason and common equity, which is that measure God has set to the actions of men, for their mutual security; and so he becomes dangerous to mankind, the tye, which is to secure them from injury and violence, being slighted and broken by him. Which being a trespass against the whole species, and the peace and safety of it, provided for by the law of nature, every man upon this score, by the right he hath to preserve mankind in general, may restrain, or where it is necessary, [200] destroy things noxious to them, and so may bring such evil on any one, who hath transgressed that law, as may make him repent the doing of it, and thereby deter him, and by his example others, from doing the like mischief. And in this case, and upon this ground, *every man hath a right to punish the offender, and be executioner of the law of nature*.

§. 9.

I doubt not but this will seem a very strange doctrine to some men: but before they condemn it, I desire them to resolve me, by what right any prince or state can put to death, or *punish an alien,* for any crime he commits in their country. It is certain their laws, by virtue of any sanction they receive from the promulgated will of the legislative, reach not a stranger: they speak not to him, nor, if they did, is he bound to hearken to them. The legislative authority, by which they are in force over the subjects of that common-wealth, hath no power over him. Those who have the supreme power of making laws in *England, France* or *Holland,* are to an *Indian,* but like the rest of the world, men without authority: and therefore, if by the law of nature every man hath not a power to punish offences against it, as he soberly judges the case to require, I see not how the magistrates of any community can *punish an alien* of another country; since, in reference to him, they can have [201] no more power than what every man naturally may have over another.

§. 10.

Besides the crime which consists in violating the law, and varying from the right rule of reason, whereby a man so far becomes degenerate, and declares himself to quit the principles of human nature, and to be a noxious creature, there is commonly *injury* done to some person or other, and some other man receives damage by his transgression: in which case he who hath received any damage, has, besides the right of punishment common to him with other men, a particular right to seek *reparation* from him that has done it: and any other person, who finds it just, may also join with him that is injured, and assist him in recovering from the offender so much as may make satisfaction for the harm he has suffered.

§. 11.

From these *two distinct rights,* the one of *punishing* the crime *for restraint,* and preventing the like offence, which right of punishing is in every body; the other of taking *reparation,* which belongs only to the injured party, comes it to pass that the magistrate, who by being magistrate hath the common right of punishing put into his hands, can often, where the public good demands not the execution of the law, *remit* the punishment of criminal offences by his own authority, but yet cannot *remit* the satisfaction due to any private man for the [202] damage he has received. That, he who has suffered the damage has a right to demand in his own name, and he alone can remit: the damnified person has this power of appropriating to himself the goods or service of the offender, *by right of self-preservation,* as every man has a power to punish the crime, to prevent its being committed again, *by the right he has of preserving all mankind,* and doing all reasonable things he can in order to that end: and thus it is, that every man, in the state of nature, has a power to kill a murderer, both *to deter* others from doing the like injury, which no reparation can compensate, by the example of the punishment that attends it from every body, and also to secure men from the attempts of a criminal, who having renounced reason, the common rule and measure God hath given to mankind, hath, by the unjust violence and slaughter he hath committed upon one, declared war against all mankind, and therefore may be destroyed as a *lion* or a *tyger,* one of those wild savage beasts, with whom men can have no society nor security: and upon this is grounded that great law of nature, *Whoso sheddeth man's blood, by man shall his blood be shed*. And *Cain* was so fully convinced, that every one had a right to destroy such a criminal, that after the murder of his brother, he cries out, *Every one that findeth* [203] *me, shall slay me;* so plain was it writ in the hearts of all mankind.

§. 12.

By the same reason may a man in the state of nature *punish the lesser breaches* of that law. It will perhaps be demanded, with death? I answer, each transgression may be *punished* to that *degree,* and with so much *severity,* as will suffice to make it an ill bargain to the offender, give him cause to repent, and terrify others from doing the like. Every offence, that can be committed in the state of nature, may in the state of nature be also punished equally, and as far forth as it may, in a common-wealth: for though it would be besides my present purpose, to enter here into the particulars of the law of nature, or its *measures of punishment;* yet, it is certain there is such a law, and that too, as intelligible and plain to a rational creature, and a studier of that law, as the positive laws of common-wealths; nay, possibly plainer; as much as reason is easier to be understood, than the fancies and intricate contrivances of men, following contrary and hidden interests put into words; for so truly are a great part of the *municipal laws* of countries, which are only so far right, as they are founded on the law of nature, by which they are to be regulated and interpreted.

§. 13.

To this strange doctrine, *viz*. That *in the state of nature every one has the executive power* of the law of nature, I doubt not but it [204] will be objected, that it is unreasonable for men to be judges in their own cases, that self-love will make men partial to themselves and their friends: and on the other side, that ill nature, passion and revenge will carry them too far in punishing others; and hence nothing but confusion and disorder will follow, and that therefore God hath certainly appointed government to restrain the partiality and violence of men. I easily grant, that *civil government* is the proper remedy for the inconveniencies of the state of nature, which must certainly be great, where men may be judges in their own case, since it is easy to be imagined, that he who was so unjust as to do his brother an injury, will scarce be so just as to condemn himself for it: but I shall desire those who make this objection, to remember, that *absolute monarchs* are but men; and if government is to be the remedy of those evils, which necessarily follow from men's being judges in their own cases, and the state of nature is therefore not to be endured, I desire to know what kind of government that is, and how much better it is than the state of nature, where one man, commanding a multitude, has the liberty to be judge in his own case, and may do to all his subjects whatever he pleases, without the least liberty to any one to question or controul those who execute his pleasure? and in whatsoever he doth, whether led by reason, mistake or passion, must be submitted to? much better [205] it is in the state of nature, wherein men are not bound to submit to the unjust will of another: and if he that judges, judges amiss in his own, or any other case, he is answerable for it to the rest of mankind.

§. 14.

It is often asked as a mighty objection, *where are,* or ever were there any *men in such a state of nature?* To which it may suffice as an answer at present, that since all princes and rulers of *independent* governments all through the world, are in a state of nature, it is plain the world never was, nor ever will be, without numbers of men in that state. I have named all governors of *independent communities,* whether they are, or are not, in league with others: for it is not every compact that puts an end to the state of nature between men, but only this one of agreeing together mutually to enter into one community, and make one body politic; other promises, and compacts, men may make one with another, and yet still be in the state of nature. The promises and bargains for truck, *&c*. between the two men in the desert island, mentioned by *Garcilasso de la Vega,* in his history of *Peru;* or between a *Swiss* and an *Indian,* in the woods of *America,* are binding to them, though they are perfectly in a state of nature, in reference to one another: for truth and keeping of faith belongs to men, as men, and not as members of society.

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§. 15.

To those that say, there were never any men in the state of nature, I will not only oppose the authority of the judicious *Hooker, Eccl. Pol. lib*. i. *sect*. 10. where he says, *The laws which have been hitherto mentioned,* i. e. the laws of nature, *do bind men absolutely, even as they are men, although they have never any settled fellowship, never any solemn agreement amongst themselves what to do, or not to do: but forasmuch as we are not by ourselves sufficient to furnish ourselves with competent store of things, needful for such a life as our nature doth desire, a life fit for the dignity of man; therefore to supply those defects and imperfections which are in us, as living single and solely by ourselves, we are naturally induced to seek communion and fellowship with others: this was the cause of men's uniting themselves at first in politic societies*. But I moreover affirm, that all men are naturally in that state, and remain so, till by their own consents they make themselves members of some politic society; and I

doubt not in the sequel of this discourse, to make it very clear.

CHAP. III. Of the State of War.

§. 16.

THE *state of war* is a state of *enmity* and *destruction:* and therefore declaring by word or action, not [207] a passionate and hasty, but a sedate settled design upon another man's life, *puts him in a state of war* with him against whom he has declared such an intention, and so has exposed his life to the other's power to be taken away by him, or any one that joins with him in his defence, and espouses his quarrel; it being reasonable and just, I should have a right to destroy that which threatens me with destruction: for, *by the fundamental law of nature, man being to be preserved* as much as possible, when all cannot be preserved, the safety of the innocent is to be preferred: and one may destroy a man who makes war upon him, or has discovered an enmity to his being, for the same reason that he may kill a *wolf* or a *lion;* because such men are not under the ties of the common-law of reason, have no other rule, but that of force and violence, and so may be treated as beasts of prey, those dangerous and noxious creatures, that will be sure to destroy him whenever he falls into their power.

§. 17.

And hence it is, that he who attempts to get another man into his absolute power, does thereby *put himself into a state of war* with him; it being to be understood as a declaration of a design upon his life: for I have reason to conclude, that he who would get me into his power without my consent, would use me as he pleased when he had got me there, and destroy me too [208] when he had a fancy to it; for no body can desire to *have me in his absolute power,* unless it be to compel me by force to that which is against the right of my freedom, *i. e.* make me a slave. To be free from such force is the only security of my preservation; and reason bids me look on him, as an enemy to my preservation, who would take away that *freedom* which is the fence to it; so that he who makes an *attempt to enslave* me, thereby puts himself into a state of war with me. He that, in the state of nature, *would take away the freedom* that belongs to any one in that state, must necessarily be supposed to have a design to take away every thing else, that *freedom* being the foundation of all the rest; as he that, in the state of society, would take away the *freedom* belonging to those of that society or common-wealth, must be supposed to design to take away from them every thing else, and so be looked on as *in a state of war.*

§. 18.

This makes it lawful for a man to *kill a thief,* who has not in the least hurt him, nor declared any design upon his life, any farther than, by the use of force, so to get him in his power, as to take away his money, or what he pleases, from him; because using force, where he has no right, to get me into his power, let his pretence be what it will, I have no reason to suppose, that he, who would *take away my liberty,* would [209] not, when he had me in his power, take away every thing else. And therefore it is lawful for me to treat him as one who has *put himself into a state of war* with me, *i. e.* kill him if I can; for to that hazard does he justly expose himself, whoever introduces a state of war, and is aggressor in it.

§. 19.

And here we have the plain *difference between the state of nature and the state of war,* which however some men have confounded, are as far distant, as a state of peace, good will, mutual assistance and preservation, and a state of enmity, malice, violence and mutual destruction, are one from another. Men living together according to reason, without a common superior on earth, with authority to judge

between them, is *properly the state of nature*. But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, *is the state of war:* and it is the want of such an appeal gives a man the right of war even against an *aggressor,* tho' he be in society and a fellow subject. Thus a *thief,* whom I cannot harm, but by appeal to the law, for having stolen all that I am worth, I may kill, when he sets on me to rob me but of my horse or coat; because the law, which was made for my preservation, where it cannot interpose to secure my life from present force, which, if lost, is capable of no reparation, permits me [210] my own defence, and the right of war, a liberty to kill the aggressor, because the aggressor allows not time to appeal to our common judge, nor the decision of the law, for remedy in a case where the mischief may be irreparable. Want of a common judge with authority, puts all men in a state of nature: force without right, upon a man's person, makes a state of war, both where there is, and is not, a common judge.

§. 20.

But when the actual force is over, the *state of war ceases* between those that are in society, and are equally on both sides subjected to the fair determination of the law; because then there lies open the remedy of appeal for the past injury, and to prevent future harm: but where no such appeal is, as in the state of nature, for want of positive laws, and judges with authority to appeal to, the state of war once begun, continues, with a right to the innocent party to destroy the other whenever he can, until the aggressor offers peace, and desires reconciliation on such terms as may repair any wrongs he has already done, and secure the innocent for the future; nay, where an appeal to the law, and constituted judges, lies open, but the remedy is denied by a manifest perverting of justice, and a barefaced wresting of the laws to protect or indemnify the violence or injuries of some men, or party of men, *there* it is hard to imagine any thing but *a state of war:* [211] for where-ever violence is used, and injury done, though by hands appointed to administer justice, it is still violence and injury, however coloured with the name, pretences, or forms of law, the end whereof being to protect and redress the innocent, by an unbiassed application of it, to all who are under it; where-ever that is not *bona fide* done, *war is made* upon the sufferers, who having no appeal on earth to right them, they are left to the only remedy in such cases, an appeal to heaven.

§. 21.

To avoid this *state of war* (wherein there is no appeal but to heaven, and wherein every the least difference is apt to end, where there is no authority to decide between the contenders) is one great reason of men's putting themselves into society, and quitting the state of nature: for where there is an authority, a power on earth, from which relief can be had by *appeal,* there the continuance of the *state of war* is excluded, and the controversy is decided by that power. Had there been any such court, any superior jurisdiction on earth, to determine the right between *Jephtha* and the *Ammonites,* they had never come to a *state of war:* but we see he was forced to appeal to heaven. *The Lord the Judge* (says he) *be judge this day between the children of* Israel *and the children of* Ammon, *Judg*. xi. 27. and then prosecuting, and relying on his *appeal,* he leads out his army to battle: and [212] therefore in such controversies, where the question is put, *who shall be judge?* It cannot be meant, who shall decide the controversy; every one knows what *Jephtha* here tells us, that *the Lord the Judge* shall judge. Where there is no judge on earth, the appeal lies to God in heaven. That question then cannot mean, who shall judge, whether another hath put himself in a *state of war* with me, and whether I may, as *Jephtha* did, *appeal to heaven* in it? of that I myself can only be judge in my own conscience, as I will answer it, at the great day, to the supreme judge of all men.

CHAP. IV. Of SLAVERY.

§. 22.

THE *natural liberty* of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The *liberty of man,* in society, is to be under no other legislative power, but that established, by consent, in the common-wealth; nor under the dominion of any will, or restraint of any law, but what that legislative shall enact, according to the trust put in it. Freedom then is not what Sir *Robert Filmer* tells us, *Observations, A.* 55. *a liberty for every one* [213] *to do what he lists, to live as he pleases, and not to be tied by any laws:* but *freedom of men under government* is, to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man: as *freedom of nature* is, to be under no other restraint but the law of nature.

§. 23.

This *freedom* from absolute, arbitrary power, is so necessary to, and closely joined with a man's preservation, that he cannot part with it, but by what forfeits his preservation and life together: for a man, not having the power of his own life, *cannot,* by compact, or his own consent, *enslave himself* to any one, nor put himself under the absolute, arbitrary power of another, to take away his life, when he pleases. No body can give more power than he has himself; and he that cannot take away his own life, cannot give another power over it. Indeed, having by his fault forfeited his own life, by some act that deserves death; he, to whom he has forfeited it, may (when he has him in his power) delay to take it, and make use of him to his own service, and he does him no injury by it: for, whenever he finds the hardship of his slavery outweigh the value of his life, it is in his power, by resisting the [214] will of his master, to draw on himself the death he desires.

§. 24.

This is the perfect condition of *slavery,* which is nothing else, but *the state of war continued, between a lawful conqueror and a captive:* for, if once *compact* enter between them, and make an agreement for a limited power on the one side, and obedience on the other, the *state of war and slavery* ceases, as long as the compact endures: for, as has been said, no man can, by agreement, pass over to another that which he hath not in himself, a power over his own life.

I confess, we find among the *Jews,* as well as other nations, that men did sell themselves; but, it is plain, this was only to *drudgery, not to slavery:* for, it is evident, the person sold was not under an absolute, arbitrary, despotical power: for the master could not have power to kill him, at any time, whom, at a certain time, he was obliged to let go free out of his service; and the master of such a servant was so far from having an arbitrary power over his life, that he could not, at pleasure, so much as maim him, but the loss of an eye, or tooth, set him free, *Exod.* xxi.

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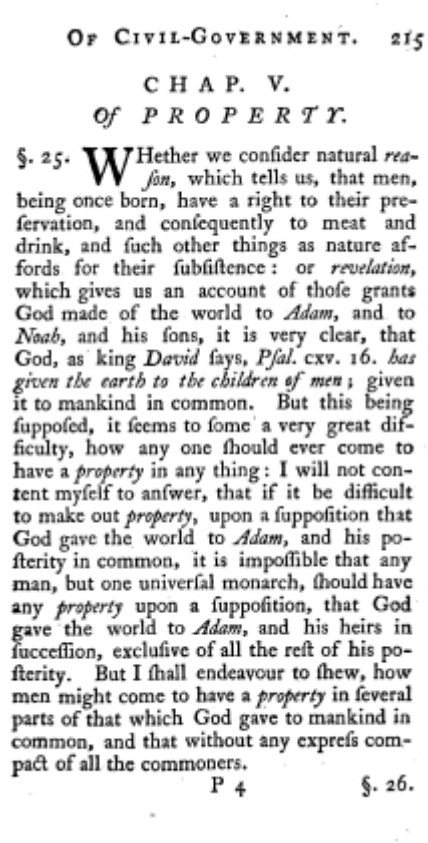
CHAP. V. Of PROPERTY.



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CHAP. V.
Of PROPERTY.

§. 25. WHether we conſider natural *reaſon*, which tells us, that men, being once born, have a right to their preſervation, and conſequently to meat and drink, and ſuch other things as nature affords for their ſubſiſtence: or *revelation*, which gives us an account of thoſe grants God made of the world to *Adam*, and to *Noah*, and his ſons, it is very clear, that God, as king *David* ſays, *Pſal.* cxv. 16. *has given the earth to the children of men*; given it to mankind in common. But this being ſuppoſed, it ſeems to ſome a very great difficulty, how any one ſhould ever come to have a *property* in any thing: I will not content myſelf to anſwer, that if it be difficult to make out *property*, upon a ſuppoſition that God gave the world to *Adam*, and his poſterity in common, it is impoſſible that any man, but one univerſal monarch, ſhould have any *property* upon a ſuppoſition, that God gave the world to *Adam*, and his heirs in ſucceſſion, excluſive of all the reſt of his poſterity. But I ſhall endeavour to ſhew, how men might come to have a *property* in ſeveral parts of that which God gave to mankind in common, and that without any expreſs compact of all the commoners.

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§. 25.

WHether we consider natural *reason,* which tells us, that men, being once born, have a right to their preservation, and consequently to meat and drink, and such other things as nature affords for their subsistence: or *revelation,* which gives us an account of those grants God made of the world to *Adam,* and to *Noah,* and his sons, it is very clear, that God, as king *David* says, *Psal*. CXV. 16. *has given the earth to the children of men;* given it to mankind in common. But this being supposed, it seems to some a very great difficulty, how any one should ever come to have a *property* in any thing: I will not content myself to answer, that if it be difficult to make out *property,* upon a supposition that God gave the world to *Adam,* and his posterity in common, it is impossible that any man, but one universal monarch, should have any *property* upon a supposition, that God gave the world to *Adam,* and his heirs in succession, exclusive of all the rest of his posterity. But I shall endeavour to shew, how men might come to have a *property* in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners.

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§. 26.

God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life, and convenience. The earth, and all that is therein, is given to men for the support and comfort of their being. And tho' all the fruits it naturally produces, and beasts it feeds, belong to mankind in common, as they are produced by the spontaneous hand of nature; and no body

has originally a private dominion, exclusive of the rest of mankind, in any of them, as they are thus in their natural state: yet being given for the use of men, there must of necessity be *a means to appropriate* them some way or other, before they can be of any use, or at all beneficial to any particular man. The fruit, or venison, which nourishes the wild *Indian,* who knows no inclosure, and is still a tenant in common, must be his, and so his, *i. e.* a part of him, that another can no longer have any right to it, before it can do him any good for the support of his life.

§. 27.

Though the earth, and all inferior creatures, be common to all men, yet every man has a *property* in his own *person:* this no body has any right to but himself. The *labour* of his body, and the *work* of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his *labour* with, and joined to it something [217] that is his own, and thereby makes it his *property.* It being by him removed from the common state nature hath placed it in, it hath by this *labour* something annexed to it, that excludes the common right of other men: for this *labour* being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.

§. 28.

He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. No body can deny but the nourishment is his. I ask then, when did they begin to be his? when he digested? or when he eat? or when he boiled? or when he brought them home? or when he picked them up? and it is plain, if the first gathering made them not his, nothing else could. That *labour* put a distinction between them and common: that added something to them more than nature, the common mother of all, had done; and so they became his private right. And will any one say, he had no right to those acorns or apples, he thus appropriated, because he had not the consent of all mankind to make them his? Was it a robbery thus to assume to himself what belonged to all in common? If such a consent as that was necessary, man had starved, notwithstanding the plenty God [218] had given him. We see in *commons,* which remain so by compact, that it is the taking any part of what is common, and removing it out of the state nature leaves it in, which *begins the property;* without which the common is of no use. And the taking of this or that part, does not depend on the express consent of all the commoners. Thus the grass my horse has bit; the turfs my servant has cut; and the ore I have digged in any place, where I have a right to them in common with others, become my *property,* without the assignation or consent of any body. The *labour* that was mine, removing them out of that common state they were in, hath *fixed* my *property* in them.

§. 29.

By making an explicit consent of every commoner, necessary to any one's appropriating to himself any part of what is given in common, children or servants could not cut the meat, which their father or master had provided for them in common, without assigning to every one his peculiar part. Though the water running in the fountain be every one's, yet who can doubt, but that in the pitcher is his only who drew it out? His *labour* hath taken it out of the hands of nature, where it was common, and belonged equally to all her children, and *hath* thereby *appropriated* it to himself.

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§. 30.

Thus this law of reason makes the deer that *Indian*'s who hath killed it; it is allowed to be his goods, who hath bestowed his labour upon it, though before it was the common right of every one. And amongst those who are counted the civilized part of mankind, who have made and multiplied positive laws to determine *property,* this original law of nature, for the *beginning of property,* in what was before common, still takes place; and by virtue thereof, what fish any one catches in the ocean, that great and still remaining common of mankind; or what ambergrise any one takes up here, is by the *labour* that removes it out of that common state nature left it in, *made* his *property,* who takes that pains about it. And even amongst us, the hare that any one is hunting, is thought his who pursues her during the chase: for being a beast that is still looked upon as common, and no man's private possession; whoever has employed so much *labour* about any of that kind, as to find and pursue her, has thereby removed her from the state of nature, wherein she was common, and hath *begun a property.*

§. 31.

It will perhaps be objected to this, that if gathering the acorns, or other fruits of the earth, *&c.* makes a right to them, then any one may *ingross* as much as he will. To which I answer, Not so. The same law of nature, that does by this means give us [220] property, does also *bound* that *property* too. *God has given us all things richly,* 1 Tim. vi. 12. is the voice of reason confirmed by inspiration. But how far has he given it us? *To enjoy.* As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in: whatever is beyond this, is more than his share, and belongs to others. Nothing was made by God for man to spoil or destroy. And thus, considering the plenty of natural provisions there was a long time in the world, and the few spenders; and to how small a part of that provision the industry of one man could extend itself, and ingross it to the prejudice of others; especially keeping within the *bounds,* set by reason, of what might serve for his *use;* there could be then little room for quarrels or contentions about property so established.

§. 32.

But the *chief matter of property* being now not the fruits of the earth, and the beasts that subsist on it, but *the earth itself;* as that which takes in and carries with it all the rest; I think it is plain, that *property* in that too is acquired as the former. *As much land* as a man tills, plants, improves, cultivates, and can use the product of, so much is his *property.* He by his labour does, as it were, inclose it from the common. Nor will it invalidate his right, to say every body else has an equal title to it; and therefore he [221] cannot appropriate, he cannot inclose, without the consent of all his fellow-commoners, all mankind. God, when he gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required it of him. God and his reason commanded him to subdue the earth, *i. e.* improve it for the benefit of life, and therein lay out something upon it that was his own, his labour. He that in obedience to this command of God, subdued, tilled and sowed any part of it, thereby annexed to it something that was his *property,* which another had no title to, nor could without injury take from him.

§. 33.

Nor was this *appropriation* of any parcel of *land,* by improving it, any prejudice to any other man, since there was still enough, and as good left; and more than the yet unprovided could use. So that, in effect, there was never the less left for others because of his inclosure for himself: for he that leaves as much as another can make use of, does as good as take nothing at all. No body could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst: and the case of land and water, where there is enough of both,

is perfectly the same.

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§. 34.

God gave the world to men in common; but since he gave it them for their benefit, and the greatest conveniencies of life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated. He gave it to the use of the industrious and rational, (and *labour* was to be *his title* to it;) not to the fancy or covetousness of the quarrelsome and contentious. He that had as good left for his improvement, as was already taken up, needed not complain, ought not to meddle with what was already improved by another's labour: if he did, it is plain he desired the benefit of another's pains, which he had no right to, and not the ground which God had given him in common with others to labour on, and whereof there was as good left, as that already possessed, and more than he knew what to do with, or his industry could reach to.

§. 35.

It is true, in *land* that is *common* in *England,* or any other country, where there is plenty of people under government, who have money and commerce, no one can inclose or appropriate any part, without the consent of all his fellow-commoners; because this is left common by compact, *i. e.* by the law of the land, which is not to be violated. And though it be common, in respect of some men, it is not so to all mankind; but is the joint property of this country, or this [223] parish. Besides, the remainder, after such inclosure, would not be as good to the rest of the commoners, as the whole was when they could all make use of the whole; whereas in the beginning and first peopling of the great common of the world, it was quite otherwise. The law man was under, was rather for appropriating. God commanded, and his wants forced him to *labour.* That was his *property* which could not be taken from him where-ever he had fixed it. And hence subduing or cultivating the earth, and having dominion, we see are joined together. The one gave title to the other. So that God, by commanding to subdue, gave authority so far to *appropriate:* and the condition of human life, which requires labour and materials to work on, necessarily introduces private possessions.

§. 36.

The *measure of property* nature has well set by the extent of men's *labour and the conveniencies of life:* no man's labour could subdue, or appropriate all; nor could his enjoyment consume more than a small part; so that it was impossible for any man, this way, to intrench upon the right of another, or acquire to himself a property, to the prejudice of his neighbour, who would still have room for as good, and as large a possession (after the other had taken out his) as before it was appropriated. This *measure* did confine every man's *possession* to a very moderate proportion, [224] and such as he might appropriate to himself, without injury to any body, in the first ages of the world, when men were more in danger to be lost, by wandering from their company, in the then vast wilderness of the earth, than to be straitened for want of room to plant in. And the same *measure* may be allowed still without prejudice to any body, as full as the world seems: for supposing a man, or family, in the state they were at first peopling of the world by the children of *Adam,* or *Noah;* let him plant in some in-land, vacant places of *America,* we shall find that the *possessions* he could make himself, upon the *measures* we have given, would not be very large, nor, even to this day, prejudice the rest of mankind, or give them reason to complain, or think themselves injured by this man's incroachment, though the race of men have now spread themselves to all the corners of the world, and do infinitely exceed the small number was at the beginning. Nay, the extent of *ground* is of so little value, *without labour,* that I have

heard it affirmed, that in *Spain* itself a man may be permitted to plough, sow and reap, without being disturbed, upon land he has no other title to, but only his making use of it. But, on the contrary, the inhabitants think themselves beholden to him, who, by his industry on neglected, and consequently waste land, has increased the [225] stock of corn, which they wanted. But be this as it will, which I lay no stress on; this I dare boldly affirm, that the same *rule of propriety,* (*viz.*) that every man should have as much as he could make use of, would hold still in the world, without straitening any body; since there is land enough in the world to suffice double the inhabitants, had not the *invention of money,* and the tacit agreement of men to put a value on it, introduced (by consent) larger possessions, and a right to them; which, how it has done, I shall by and by shew more at large.

§. 37.

This is certain, that in the beginning, before the desire of having more than man needed had altered the intrinsic value of things, which depends only on their usefulness to the life of man; or had *agreed, that a little piece of yellow metal,* which would keep without wasting or decay, should be worth a great piece of flesh, or a whole heap of corn; though men had a right to appropriate, by their labour, each one to himself, as much of the things of nature, as he could use: yet this could not be much, nor to the prejudice of others, where the same plenty was still left to those who would use the same industry. To which let me add, that he who appropriates land to himself by his labour, does not lessen, but increase the common stock of mankind: for the provisions serving to the support of human life, produced [226] by one acre of inclosed and cultivated land, are (to speak much within compass) ten times more than those which are yielded by an acre of land of an equal richness lying waste in common. And therefore he that incloses land, and has a greater plenty of the conveniencies of life from ten acres, than he could have from an hundred left to nature, may truly be said to give ninety acres to mankind: for his labour now supplies him with provisions out of ten acres, which were but the product of an hundred lying in common. I have here rated the improved land very low, in making its product but as ten to one, when it is much nearer an hundred to one: for I ask, whether in the wild woods and uncultivated waste of *America,* left to nature, without any improvement, tillage or husbandry, a thousand acres yield the needy and wretched inhabitants as many conveniencies of life, as ten acres of equally fertile land do in *Devonshire,* where they are well cultivated?

Before the appropriation of land, he who gathered as much of the wild fruit, killed, caught, or tamed, as many of the beasts, as he could; he that so imployed his pains about any of the spontaneous products of nature, as any way to alter them from the state which nature put them in, *by* placing any of his *labour* on them, did thereby *acquire a propriety in them:* but if they perished, [227] in his possession, without their due use; if the fruits rotted, or the venison putrified, before he could spend it, he offended against the common law of nature, and was liable to be punished; he invaded his neighbour's share, for he had *no right, farther than his use* called for any of them, and they might serve to afford him conveniencies of life.

§. 38.

The same *measures* governed the *possession of land* too: whatsoever he tilled and reaped, laid up and made use of, before it spoiled, that was his peculiar right; whatsoever he enclosed, and could feed, and make use of, the cattle and product was also his. But if either the grass of his inclosure rotted on the ground, or the fruit of his planting perished without gathering, and laying up, this part of the earth, notwithstanding his inclosure, was still to be looked on as waste, and might be the possession of any other. Thus, at the beginning, *Cain* might take as much ground as he could till, and make it his own land, and yet leave enough to *Abel*'s sheep to feed on; a few acres would serve for both their possessions. But as families increased, and industry inlarged their stocks, their *possessions inlarged*

with the need of them; but yet it was commonly *without any fixed property in the ground* they made use of, till they incorporated, settled themselves together, and built cities; and then, by consent, they came in time, to set out [228] the *bounds of their distinct territories,* and agree on limits between them and their neighbours; and by laws within themselves, settled the *properties* of those of the same society: for we see, that in that part of the world which was first inhabited, and therefore like to be best peopled, even as low down as *Abraham*'s time, they wandered with their flocks, and their herds, which was their substance, freely up and down; and this *Abraham* did, in a country where he was a stranger. Whence it is plain, that at least a great part of the *land lay in common;* that the inhabitants valued it not, nor claimed property in any more than they made use of. But when there was not room enough in the same place, for their herds to feed together, they by consent, as *Abraham* and *Lot* did, *Gen*. xiii. 5. separated and inlarged their pasture, where it best liked them. And for the same reason *Esau* went from his father, and his brother, and planted in *mount Seir, Gen*. xxxvi. 6.

§. 39.

And thus, without supposing any private dominion, and property in *Adam,* over all the world, exclusive of all other men, which can no way be proved, nor any one's property be made out from it; but supposing the *world* given, as it was, to the children of men *in common,* we see how *labour* could make men distinct titles to several parcels of it, for [229] their private uses; wherein there could be no doubt of right, no room for quarrel.

§. 40.

Nor is it so strange, as perhaps before consideration it may appear, that the *property of labour* should be able to over-balance the community of land: for it is *labour* indeed that *puts the difference of value* on every thing; and let any one consider what the difference is between an acre of land planted with tobacco or sugar, sown with wheat or barley, and an acre of the same land lying in common, without any husbandry upon it, and he will find, that the improvement of *labour makes* the far greater part of the value. I think it will be but a very modest computation to say, that of the *products* of the earth useful to the life of man nine tenths are the *effects of labour:* nay, if we will rightly estimate things as they come to our use, and cast up the several expences about them, what in them is purely owing to *nature,* and what to *labour,* we shall find, that in most of them ninety-nine hundredths are wholly to be put on the account of *labour.*

§. 41.

There cannot be a clearer demonstration of any thing, than several nations of the *Americans* are of this, who are rich in land, and poor in all the comforts of life; whom nature having furnished as liberally as any other people, with the materials of plenty, *i. e*. a fruitful soil, apt to produce in abundance, what might [230] serve for food, raiment, and delight; yet for *want of improving it by labour,* have not one hundredth part of the conveniencies we enjoy: and a king of a large and fruitful territory there, feeds, lodges, and is clad worse than a day-labourer in *England*.

§. 42.

To make this a little clearer, let us but trace some of the ordinary provisions of life, through their several progresses, before they come to our use, and see how much they receive of their *value from human industry*. Bread, wine and cloth, are things of daily use, and great plenty; yet notwithstanding, acorns, water and leaves, or skins, must be our bread, drink and cloathing, did not *labour* furnish us with these more useful commodities: for whatever *bread* is more worth than acorns, wine than water,

and *cloth* or *silk,* than leaves, skins or moss, that is wholly *owing to labour* and *industry;* the one of these being the food and raiment which unassisted nature furnishes us with; the other, provisions which our industry and pains prepare for us, which how much they exceed the other in value, when any one hath computed, he will then see how much *labour makes the far greatest part of the value* of things we enjoy in this world: and the ground which produces the materials, is scarce to be reckoned in, as any, or at most, but a very small part of it; so little, that even amongst us, land that is left wholly to [231] nature, that hath no improvement of pasturage, tillage, or planting, is called, as indeed it is, *waste;* and we shall find the benefit of it amount to little more than nothing.

This shews how much numbers of men are to be preferred to largeness of dominions; and that the increase of lands, and the right employing of them, is the great art of government: and that prince, who shall be so wise and godlike, as by established laws of liberty to secure protection and encouragement to the honest industry of mankind, against the oppression of power and narrowness of party, will quickly be too hard for his neighbours: but this by the by. To return to the argument in hand,

§. 43.

An acre of land, that bears here twenty bushels of wheat, and another in *America,* which, with the same husbandry, would do the like, are, without doubt, of the same natural intrinsic value: but yet the benefit mankind receives from the one in a year, is worth 5 *l.* and from the other possibly not worth a penny, if all the profit an *Indian* received from it were to be valued, and sold here; at least, I may truly say, not one thousandth. It is *labour* then which *puts the greatest part of value upon land,* without which it would scarcely be worth any thing: it is to that we owe the greatest part of all its useful products; for all that the straw, bran, bread, of that acre of wheat, is more [232] worth than the product of an acre of as good land, which lies waste, is all the effect of labour: for it is not barely the plough-man's pains, the reaper's and thresher's toil, and the baker's sweat, is to be counted into the *bread* we eat; the labour of those who broke the oxen, who digged and wrought the iron and stones, who felled and framed the timber employed about the plough, mill, oven, or any other utensils, which are a vast number, requisite to this corn, from its being seed to be sown to its being made bread, must all be *charged on* the account of *labour,* and received as an effect of that: nature and the earth furnished only the almost worthless materials, as in themselves. It would be a strange *catalogue of things, that industry provided and made use of, about every loaf of bread,* before it came to our use, if we could trace them; iron, wood, leather, bark, timber, stone, bricks, coals, lime, cloth, dying drugs, pitch, tar, masts, ropes, and all the materials made use of in the ship, that brought any of the commodities made use of by any of the workmen, to any part of the work; all which it would be almost impossible, at least too long, to reckon up.

§. 44.

From all which it is evident, that though the things of nature are given in common, yet man, by being master of himself, and *proprietor of his own person, and the actions or labour of it, had still in himself the* [233] *great foundation of property;* and that, which made up the great part of what he applied to the support or comfort of his being, when invention and arts had improved the conveniencies of life, was perfectly his own, and did not belong in common to others.

§. 45.

Thus *labour,* in the beginning, *gave a right of property,* wherever any one was pleased to employ it upon what was common, which remained a long while the far greater part, and is yet more than mankind makes use of. Men, at first, for the most part, contented themselves with what unassisted

nature offered to their necessities: and though afterwards, in some parts of the world, (where the increase of people and stock, with the *use of money,* had made land scarce, and so of some value) the several *communities* settled the bounds of their distinct territories, and by laws within themselves regulated the properties of the private men of their society, and so, *by compact* and agreement, *settled the property* which labour and industry began; and the leagues that have been made between several states and kingdoms, either expresly or tacitly disowning all claim and right to the land in the others possession, have, by common consent, given up their pretences to their natural common right, which originally they had to those countries, and so have, by *positive agreement, settled a property* amongst themselves, in distinct parts and parcels of the earth; yet there are still [234] *great tracts of ground* to be found, which (the inhabitants thereof not having joined with the rest of mankind, in the consent of the use of their common money) *lie waste,* and are more than the people who dwell on it do, or can make use of, and so still lie in common; tho' this can scarce happen amongst that part of mankind that have consented to the use of money.

§. 46.

The greatest part of *things really useful* to the life of man, and such as the necessity of subsisting made the first commoners of the world look after, as it doth the *Americans* now, *are* generally things of *short duration;* such as, if they are not consumed by use, will decay and perish of themselves: gold, silver and diamonds, are things that fancy or agreement hath put the value on, more than real use, and the necessary support of life. Now of those good things which nature hath provided in common, every one had a right (as hath been said) to as much as he could use, and *property* in all that he could effect with his labour; all that his *industry* could extend to, to alter from the state nature had put it in, was his. He that *gathered* a hundred bushels of acorns or apples, had thereby a *property* in them, they were his goods as soon as gathered. He was only to look, that he used them before they spoiled, else he took more than his share, and robbed others. And indeed it was a foolish thing, as well as dishonest, to hoard up more [235] than he could make use of. If he gave away a part to any body else, so that it perished not uselesly in his possession, these he also made use of. And if he also bartered away plums, that would have rotted in a week, for nuts that would last good for his eating a whole year, he did no injury; he wasted not the common stock; destroyed no part of the portion of goods that belonged to others, so long as nothing perished uselesly in his hands. Again, if he would give his nuts for a piece of metal, pleased with its colour; or exchange his sheep for shells, or wool for a sparkling pebble or a diamond, and keep those by him all his life, he invaded not the right of others, he might heap up as much of these durable things as he pleased; the *exceeding of the bounds of* his *just property* not lying in the largeness of his possession, but the perishing of any thing uselesly in it.

§. 47.

And thus *came in the use of money,* some lasting thing that men might keep without spoiling, and that by mutual consent men would take in exchange for the truly useful, but perishable supports of life.

§. 48.

And as different degrees of industry were apt to give men possessions in different proportions, so this *invention of money* gave them the opportunity to continue and enlarge them: for supposing an island, separate from all possible commerce with the rest of the world, wherein there were but an hundred families, but there were sheep, horses [236] and cows, with other useful animals, wholsome fruits, and land enough for corn for a hundred thousand times as many, but nothing in the island, either because of its commonness, or perishableness, fit to supply the place of *money;* what reason could any one have there to enlarge his possessions beyond the use of his family, and a plentiful supply to its

consumption, either in what their own industry produced, or they could barter for like perishable, useful commodities, with others? Where there is not some thing, both lasting and scarce, and so valuable to be hoarded up, there men will be apt to enlarge their *possessions of land,* were it never so rich, never so free for them to take: for I ask, what would a man value ten thousand, or an hundred thousand acres of excellent *land,* ready cultivated, and well stocked too with cattle, in the middle of the inland parts of *America,* where he had no hopes of commerce with other parts of the world, to draw *money* to him by the sale of the product? It would not be worth the inclosing, and we should see him give up again to the wild common of nature, whatever was more than would supply the conveniencies of life to be had there for him and his family.

§. 49.

Thus in the beginning all the world was *America,* and more so than that is now; for no such thing as *money* was any where known. Find out something that hath the [237] *use and value of money* amongst his neighbours, you shall see the same man will begin presently to enlarge his possessions.

§. 50.

But since gold and silver, being little useful to the life of man in proportion to food, raiment, and carriage, has its *value* only from the consent of men, whereof *labour* yet *makes,* in great part, *the measure,* it is plain, that men have agreed to a disproportionate and unequal *possession of the earth,* they having, by a tacit and voluntary consent, found out a way how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus gold and silver, which may be hoarded up without injury to any one; these metals not spoiling or decaying in the hands of the possessor. This partage of things in an inequality of private possessions, men have made practicable out of the bounds of society, and without compact, only by putting a value on gold and silver, and tacitly agreeing in the use of money: for in governments, the laws regulate the right of property, and the possession of land is determined by positive constitutions.

§. 51.

And thus, I think, it is very easy to conceive, without any difficulty, *how labour could at first begin a title of property* in the common things of nature, and how the spending it upon our uses bounded it. So that there could then be no reason of quarrelling [238] about title, nor any doubt about the largeness of possession it gave. Right and conveniency went together; for as a man had a right to all he could employ his labour upon, so he had no temptation to labour for more than he could make use of. This left no room for controversy about the title, nor for incroachment on the right of others; what portion a man carved to himself, was easily seen; and it was useless, as well as dishonest, to carve himself too much, or take more than he needed.

CHAP. VI. Of Paternal Power.

§. 52.

IT may perhaps be censured as an impertinent criticism, in a discourse of this nature, to find fault with words and names, that have obtained in the world: and yet possibly it may not be amiss to offer new ones, when the old are apt to lead men into mistakes, as this of *paternal power* probably has done, which seems so to place the power of parents over their children wholly in the *father,* as if the *mother* had no share in it; whereas, if we consult reason or revelation, we shall find, she hath an equal title. This may give one reason to ask, whether this might not be more properly called *parental power?* for whatever obligation nature [239] and the right of generation lays on children, it must certainly bind them equal to both the concurrent causes of it. And accordingly we see the positive law of God every where joins them together, without distinction, when it commands the obedience of children, *Honour thy father and thy mother,* Exod. xx. 12. *Whosoever curseth his father or his mother,* Lev. xx. 9. *Ye shall fear every man his mother and his father,* Lev. xix. 3. *Children, obey your parents,* &c. Eph. vi. 1. is the stile of the Old and New Testament.

§. 53.

Had but this one thing been well considered, without looking any deeper into the matter, it might perhaps have kept men from running into those gross mistakes, they have made, about this power of parents; which, however it might, without any great harshness, bear the name of absolute dominion, and regal authority, when under the title of *paternal power* it seemed appropriated to the father, would yet have sounded but oddly, and in the very name shewn the absurdity, if this supposed absolute power over children had been called *parental;* and thereby have discovered, that it belonged to the *mother* too: for it will but very ill serve the turn of those men, who contend so much for the absolute power and authority of the *fatherhood,* as they call it, that the mother should have any share in it; and it would have but ill supported the *monarchy* they contend for, [240] when by the very name it appeared, that that fundamental authority, from whence they would derive their government of a single person only, was not placed in one, but two persons jointly. But to let this of names pass.

§. 54.

Though I have said above, *Chap.* II. *That all men by nature are equal,* I cannot be supposed to understand all sorts of *equality: age* or *virtue* may give men a just precedency: *excellency of parts* and *merit* may place others above the common level: *birth* may subject some, and *alliance* or *benefits* others, to pay an observance to those to whom nature, gratitude, or other respects, may have made it due: and yet all this consists with the *equality,* which all men are in, in respect of jurisdiction or dominion one over another; which was the *equality* I there spoke of, as proper to the business in hand, being that *equal right,* that every man hath, *to his natural freedom,* without being subjected to the will or authority of any other man.

§. 55.

Children, I confess, are not born in this full state of *equality,* though they are born to it. Their parents have a sort of rule and jurisdiction over them, when they come into the world, and for some time after; but it is but a temporary one. The bonds of this subjection are like the swaddling clothes they art wrapt up in, and supported by, in the weakness of their infancy: age and [241] reason as they grow up, loosen them, till at length they drop quite off, and leave a man at his own free disposal.

§. 56.

Adam was created a perfect man, his body and mind in full possession of their strength and reason, and so was capable, from the first instant of his being to provide for his own support and preservation, and govern his actions according to the dictates of the law of reason which God had implanted in him. From him the world is peopled with his descendants, who are all born infants, weak and helpless, without knowledge or understanding: but to supply the defects of this imperfect state, till the improvement of growth and age hath removed them, *Adam* and *Eve,* and after them all *parents* were, by the law of nature, *under an obligation to preserve, nourish, and educate the children* they had begotten; not as their own workmanship, but the workmanship of their own maker, the Almighty, to whom they were to be accountable for them.

§. 57.

The law, that was to govern *Adam,* was the same that was to govern all his posterity, the *law of reason*. But his offspring having another way of entrance into the world, different from him, by a natural birth, that produced them ignorant and without the use of *reason,* they were not presently *under that law;* for no body can be under a law, which is not promulgated [242] to him; and this law being promulgated or made known by *reason* only, he that is not come to the use of his *reason,* cannot be said to be *under this law;* and *Adam*'s children, being not presently as soon as born *under this law of reason,* were not presently *free:* for *law,* in its true notion, *is* not so much the limitation as *the direction of a free and intelligent agent* to his proper interest, and prescribes no farther than is for the general good of those under that law: could they be happier without it, the *law,* as an useless thing, would of itself vanish; and that ill deserves the name of confinement which hedges us in only from bogs and precipices. So that, however it may be mistaken, *the end of law is* not to abolish or restrain, but *to preserve and enlarge freedom:* for in all the states of created beings capable of laws, *where there is no law, there is no freedom:* for *liberty* is, to be free from restraint and violence from others; which cannot be, where there is no law: but freedom is not, as we are told, *a liberty for every man to do what he lists:* (for who could be free, when every other man's humour might domineer over him?) but a *liberty* to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own.

[243]

§. 58.

The *power,* then, *that parents have* over their children, arises from that duty which is incumbent on them, to take care of their off-spring, during the imperfect state of childhood. To inform the mind, and govern the actions of their yet ignorant non-age, till reason shall take its place, and ease them of that trouble, is what the children want, and the parents are bound to: for God having given man an understanding to direct his actions, has allowed him a freedom of will, and liberty of acting, as properly belonging thereunto, within the bounds of that law he is under. But whilst he is in an estate, wherein he has not *understanding* of his own to direct his *will,* he is not to have any *will* of his own to follow: he that *understands* for him, must *will* for him too; he must prescribe to his will, and regulate his actions; but when he comes to the estate that made his *father a freeman,* the *son is a freeman* too.

§. 59.

This holds in all the laws a man is under, whether natural or civil. Is a man under the law of nature?

What made him free of that law? what gave him a free disposing of his property, according to his own will, within the compass of that law? I answer, a state of maturity wherein he might be supposed capable to know that law, that so he might keep his actions within the bounds of it. When he has acquired that state, he is [244] presumed to know how far that law is to be his guide, and how far he may make use of his *freedom,* and so comes to have it; till then, some body else must guide him, who is presumed to know how far the law allows a liberty. If such a state of reason, such an age of discretion *made him free,* the same shall make his son free too. Is a man under the law of *England? What made him free* of that law? that is, to have the liberty to dispose of his actions and possessions according to his own will, within the permission of that law? A capacity of knowing that law; which is supposed by that law, at the age of one and twenty years, and in some cases sooner. If this *made* the father *free,* it shall *make* the son *free* too. Till then we see the law allows the son to have no will, but he is to be guided by the will of his father or guardian, who is to understand for him. And if the father die, and fail to substitute a deputy in his trust; if he hath not provided a tutor, to govern his son, during his minority, during his want of understanding, the law takes care to do it; some other must govern him, and be a will to him, till he hath *attained to a state of freedom,* and his understanding be fit to take the government of his will. But after that, the father and son are equally *free* as much as tutor and pupil after nonage; equally subjects of the same law together, without any dominion [245] left in the father over the life, liberty, or estate of his son, whether they be only in the state and under the law of nature, or under the positive laws of an established government.

§. 60.

But if, through defects that may happen out of the ordinary course of nature, any one comes not to such a degree of reason, wherein he might be supposed capable of knowing the law, and so living within the rules of it, he is *never capable of being a free man,* he is never let loose to the disposure of his own will (because he knows no bounds to it, has not understanding, its proper guide) but is continued under the tuition and government of others, all the time his own understanding is uncapable of that charge. And so *lunatics* and *ideots* are never set free from the government of their parents; *children, who are not as yet come unto those years whereat they may have; and innocents which are excluded by a natural defect from ever having;* thirdly, *madmen, which for the present cannot possibly have the use of right reason to guide themselves, have for their guide, the reason that guideth other men which are tutors over them, to seek and procure their good for them, says* Hooker, Eccl. Pol. *lib.* i. *sect.* 7. All which seems no more than that duty, which God and nature has laid on man, as well as other creatures, to preserve their offspring, till they can be able to shift for themselves, [246] and will scarce amount to an instance or proof of *parents* regal authority.

§. 61.

Thus we are *born free,* as we are born rational; not that we have actually the exercise of either: age, that brings one, brings with it the other too. And thus we see how *natural freedom and subjection to parents* may consist together, and are both founded on the same principle. A *child* is *free* by his father's title, by his father's understanding, which is to govern him till he hath it of his own. The *freedom of a man at years of discretion,* and the *subjection* of a child *to* his *parents,* whilst yet short of that age, are so consistent, and so distinguishable, that the most blinded contenders for monarchy, *by right of fatherhood,* cannot miss this *difference;* the most obstinate cannot but allow their consistency: for were their doctrine all true, were the right heir of *Adam* now known, and by that title settled a monarch in his throne, invested with all the absolute unlimited power Sir *Robert Filmer* talks of; if he should die as soon as his heir were born, must not the *child,* notwithstanding he were never so free, never so much sovereign, be in subjection to his mother and nurse, to tutors and governors, till age and education brought him reason and ability to govern himself and others? The necessities of his life, the

health of his body, and the information of his mind, would require him to be [247] directed by the will of others, and not his own; and yet will any one think, that this restraint and subjection were inconsistent with, or spoiled him of that liberty or sovereignty he had a right to, or gave away his empire to those who had the government of his nonage? This government over him only prepared him the better and sooner for it. If any body should ask me, when my son is *of age to be free?* I shall answer, just when his monarch is of age to govern. *But at what time,* says the judicious *Hooker,* Eccl. Pol. l. i. sect. 6. *a man may be said to have attained so far forth the use of reason, as sufficeth to make him capable of those laws whereby he is then bound to guide his actions: this is a great deal more easy for sense to discern, than for any one by skill and learning to determine.*

§. 62.

Common-wealths themselves take notice of, and allow, that there is a *time when men* are to *begin to act like free men,* and therefore till that time require not oaths of fealty, or allegiance, or other public owning of, or submission to the government of their countries.

§. 63.

The *freedom* then of man, and liberty of acting according to his own will, is *grounded on* his having *reason,* which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will. To turn him loose to an unrestrained liberty, [248] before he has reason to guide him, is not the allowing him the privilege of his nature to be free; but to thrust him out amongst brutes, and abandon him to a state as wretched, and as much beneath that of a man, as their's. This is that which puts the *authority* into the *parents* hands to govern the *minority* of their children. God hath made it their business to employ this care on their off-spring, and hath placed in them suitable inclinations of tenderness and concern to temper this power, to apply it, as his wisdom designed it, to the children's good, as long as they should need to be under it.

§. 64.

But what reason can hence advance this care of the *parents* due to their off-spring into an *absolute arbitrary dominion* of the father, whose power reaches no farther, than by such a discipline, as he finds most effectual, to give such strength and health to their bodies, such vigour and rectitude to their minds, as may best fit his children to be most useful to themselves and others; and, if it be necessary to his condition, to make them work, when they are able, for their own subsistence. But in this power the *mother* too has her share with the *father.*

§. 65.

Nay, this *power* so little belongs to the *father* by any peculiar right of nature, but only as he is guardian of his children, that when he quits his care of them, he loses his power over them, which goes along with [249] their nourishment and education, to which it is inseparably annexed; and it belongs as much to the *foster-father* of an exposed child, as to the natural father of another. So little power does the bare *act of begetting* give a man over his issue; if all his care ends there, and this be all the title he hath to the name and authority of a father. And what will become of this *paternal power* in that part of the world, where one woman hath more than one husband at a time? or in those parts of *America,* where, when the husband and wife part, which happens frequently, the children are all left to the mother, follow her, and are wholly under her care and provision? If the father die whilst the children are young, do they not naturally every where owe the same obedience to their *mother,* during their minority, as to their father were he alive? and will any one say, that the mother hath a legislative power

over her children? that she can make standing rules, which shall be of perpetual obligation, by which they ought to regulate all the concerns of their property, and bound their liberty all the course of their lives? or can she inforce the observation of them with capital punishments? for this is the proper *power of the magistrate,* of which the father hath not so much as the shadow. His command over his children is but temporary, and reaches not their life or property: it is but a help to the weakness and [250] imperfection of their nonage, a discipline necessary to their education: and though a *father* may dispose of his own possessions as he pleases, when his children are out of danger of perishing for want, yet *his power* extends not to the lives or goods, which either their own industry, or another's bounty has made their's; nor to their liberty neither, when they are once arrived to the infranchisement of the years of discretion. The *father*'s *empire* then ceases, and he can from thence forwards no more dispose of the liberty of his son, than that of any other man: and it must be far from an absolute or perpetual jurisdiction, from which a man may withdraw himself, having licence from divine authority to *leave father and mother, and cleave to his wife*.

§. 66.

But though there be a time when a *child* comes to be as *free* from subjection to the will and command of his father, as the father himself is free from subjection to the will of any body else, and they are each under no other restraint, but that which is common to them both, whether it be the law of nature, or municipal law of their country; yet this freedom exempts not a son from that *honour* which he ought, by the law of God and nature, *to* pay his *parents*. God having made the parents instruments in his great design of continuing the race of mankind, and the occasions of life to their children; [251] as he hath laid on them an obligation to nourish, preserve, and bring up their offspring; so he has laid on the children a perpetual obligation of *honouring their parents,* which containing in it an inward esteem and reverence to be shewn by all outward expressions, ties up the child from any thing that may ever injure or affront, disturb or endanger, the happiness or life of those from whom he received his; and engages him in all actions of defence, relief, assistance and comfort of those, by whose means he entered into being, and has been made capable of any enjoyments of life: from this obligation no state, no freedom can absolve children. But this is very far from giving parents a power of command over their children, or an authority to make laws and disposs as they please of their lives or liberties. It is one thing to owe honour, respect, gratitude and assistance; another to require an absolute obedience and submission. The *honour due to parents,* a monarch in his throne owes his mother; and yet this lessens not his authority, nor subjects him to her government.

§. 67.

The subjection of a minor places in the father a temporary government, which terminates with the minority of the child: and the *honour due from a child,* places in the parents a perpetual right to respect, reverence, support and compliance too, more or less, as the father's care, cost, and kindness [252] in his education, has been more or less. This ends not with minority, but holds in all parts and conditions of a man's life. The want of distinguishing these two powers, *viz*. that which the father hath in the right of *tuition,* during minority, and the right of *honour* all his life, may perhaps have caused a great part of the mistakes about this matter: for to speak properly of them, the first of these is rather the privilege of children, and duty of parents, than any prerogative of paternal power. The nourishment and education of their children is a charge so incumbent on parents for their children's good, that nothing can absolve them from taking care of it: and though the *power of commanding and chastising* them go along with it, yet God hath woven into the principles of human nature such a tenderness for their off-spring, that there is little fear that parents should use their power with too much rigour; the excess is seldom on the severe side, the strong byass of nature drawing the other way. And therefore God almighty when he would express his gentle dealing with the *Israelites,* he tells them, that though

he chastened them, *he chastened them as a man chastens his son,* Deut. viii. 5. *i. e.* with tenderness and affection, and kept them under no severer discipline than what was absolutely best for them, and had been less kindness to have slackened. This is that power to which *children* are commanded *obedience,* [253] that the pains and care of their parents may not be increased, or ill rewarded.

§. 68.

On the other side, *honour* and *support,* all that which gratitude requires to return for the benefits received by and from them, is the indispensible duty of the child, and the proper privilege of the parents. This is intended for the parents advantage, as the other is for the child's; though education, the parents duty, seems to have most power, because the ignorance and infirmities of childhood stand in need of restraint and correction; which is a visible exercise of rule, and a kind of dominion. And that duty which is comprehended in the word *honour,* requires less obedience, though the obligation be stronger on grown, than younger children: for who can think the command, *Children obey your parents,* requires in a man, that has children of his own, the same submission to his father, as it does in his yet young children to him; and that by this precept he were bound to obey all his father's commands, if, out of a conceit of authority, he should have the indiscretion to treat him still as a boy?

§. 69.

The first part then of *paternal power,* or rather duty, which is *education,* belongs so to the father, that it terminates at a certain season; when the business of education is over, it ceases of itself, and is also alienable before: for a man may put the tuition of his son in other hands; and he that has made [254] his son an *apprentice* to another, has discharged him, during that time, of a great part of his obedience both to himself and to his mother. But all the *duty of honour,* the other part, remains never the less entire to them; nothing can cancel that: it is so inseparable from them both, that the father's authority cannot dispossess the mother of this right, nor can any man discharge his son from *honouring* her that bore him. But both these are very far from a power to make laws, and inforcing them with penalties, that may reach estate, liberty, limbs and life. The power of commanding ends with nonage; and though, after that, *honour* and respect, support and defence, and whatsoever gratitude can oblige a man to, for the highest benefits he is naturally capable of, be always due from a son to his parents; yet all this puts no scepter into the father's hand, no sovereign power of commanding. He has no dominion over his son's property, or actions; nor any right, that his will should prescribe to his son's in all things; however it may become his son in many things, not very inconvenient to him and his family, to pay a deference to it.

§. 70.

A man may owe *honour* and respect to an ancient, or wise man; desence to his child or friend; relief and support to the distressed; and gratitude to a benefactor, to such a degree, that all he has, all he can do, [255] cannot sufficiently pay it: but all these give no authority, no right to any one, of making laws over him from whom they are owing. And it is plain, all this is due not only to the bare title of father; not only because, as has been said, it is owing to the mother too; but because these obligations to parents, and the degrees of what is required of children, may be varied by the different care and kindness, trouble and expence, which is often employed upon one child more than another.

§. 71.

This shews the reason how it comes to pass, that *parents in societies,* where they themselves are subjects, retain a *power over their children,* and have as much right to their subjection, as those who

are in the state of nature. Which could not possibly be, if all political power were only paternal, and that in truth they were one and the same thing: for then, all paternal power being in the prince, the subject could naturally have none of it. But these two *powers, political* and *paternal,* are so perfectly distinct and separate; are built upon so different foundations, and given to so different ends, that every subject that is a father, has as much a paternal power over his children, as the prince has over his: and every prince, that has parents, owes them as much filial duty and obedience, as the meanest of his subjects do to their's; and can therefore contain not any [256] part or degree of that kind of dominion, which a prince or magistrate has over his subject.

§. 72.

Though the obligation on the parents to *bring up* their children, and the obligation on children to *honour* their parents, contain all the power on the one hand, and submission on the other, which are proper to this relation, yet there is *another power* ordinarily *in the father,* whereby he has a tie on the obedience of his children; which tho' it be common to him with other men, yet the occasions of shewing it, almost constantly happening to fathers in their private families, and the instances of it elsewhere being rare, and less taken notice of, it passes in the world for a part of *paternal jurisdiction*. And this is the power men generally have to *bestow their estates* on those who please them best; the possession of the father being the expectation and inheritance of the children, ordinarily in certain proportions, according to the law and custom of each country; yet it is commonly in the father's power to bestow it with a more sparing or liberal hand, according as the behaviour of this or that child hath comported with his will and humour.

§. 73.

This is no small tie on the obedience of children: and there being always annexed to the enjoyment of land, a submission to the government of the country, [257] of which that land is a part; it has been commonly supposed, that a *father* could *oblige his posterity to that government,* of which he himself was a subject, and that his compact held them; whereas, it being only a necessary condition annexed to the land, and the inheritance of an estate which is under that government, reaches only those who will take it on that condition, and so is no natural tie or engagement, but a voluntary submission: for *every man's children* being by nature as *free* as himself, or any of his ancestors ever were, may, whilst they are in that freedom, choose what society they will join themselves to, what common-wealth they will put themselves under. But if they will enjoy the *inheritance* of their ancestors, they must take it on the same terms their ancestors had it, and submit to all the conditions annexed to such a possession. By this power indeed fathers oblige their children to obedience to themselves, even when they are past minority, and most commonly too subject them to this or that political power: but neither of these by any peculiar right of *fatherhood,* but by the reward they have in their hands to inforce and recompence such a compliance; and is no more power than what a *French man* has over an *English man,* who by the hopes of an estate he will leave him, will certainly have a strong tie on his obedience: and if, when it is left him, he will enjoy it, [258] he must certainly take it upon the conditions annexed to the *possession of land* in that country where it lies, whether it be *France* or *England*.

§. 74.

To conclude then, tho' the *father's power* of commanding extends no farther than the minority of his children, and to a degree only fit for the discipline and government of that age; and tho' that *honour* and *respect,* and all that which the *Latins* called *piety,* which they indispensibly owe to their parents all their life-time, and in all estates, with all that support and defence is due to them, gives the father no power of governing, *i. e*. making laws and enacting penalties on his children; though by all this he has

no dominion over the property or actions of his son: yet it is obvious to conceive how easy it was, in the first ages of the world, and in places still, where the thinness of people gives families leave to separate into unpossessed quarters, and they have room to remove or plant themselves in yet vacant habitations, for the *father of the family* to become the prince of* it; he had [259] been a ruler from the beginning of the infancy of his children: and since without some government it would be hard for them to live together, it was likeliest it should, by the express or tacit consent of the children when they were grown up, be in the father, where it seemed without any change barely to continue; when indeed nothing more was required to it, than the permitting the *father* to exercise alone, in his family, that executive power of the law of nature, which every free man naturally hath, and by that permission resigning up to him a monarchical power, whilst they remained in it. But that this was not by any *paternal right,* but only by the consent of his children, is evident from hence, that no body doubts, but if a stranger, whom chance or business had brought to his family, had there killed any of his children, or committed any other fact, he might condemn and put him to death, or otherwise have punished him, as well as any of his [260] children; which it was impossible he should do by virtue of any paternal authority over one who was not his child, but by virtue of that executive power of the law of nature, which, as a man, he had a right to: and he alone could punish him in his family, where the respect of his children had laid by the exercise of such a power, to give way to the dignity and authority they were willing should remain in him, above the rest of his family.

§. 75.

Thus it was easy, and almost natural for children, by a tacit, and scarce avoidable consent, to make way for the *father's authority and government*. They had been accustomed in their childhood to follow his direction, and to refer their little differences to him; and when they were men, who fitter to rule them? Their little properties, and less covetousness, seldom afforded greater controversies; and when any should arise, where could they have a fitter umpire than he, by whose care they had every one been sustained and brought up, and who had a tenderness for them all? It is no wonder that they made no distinction betwixt minority and full age; nor looked after one and twenty, or any other age that might make them the free disposers of themselves and fortunes, when they could have no desire to be out of their pupilage: the government they had been under, during it, continued still to be more [261] their protection than restraint; and they could no where find a greater security to their peace, liberties, and fortunes, than in the *rule of a father.*

§. 76.

Thus the natural *fathers of families,* by an insensible change, became the *politic monarchs* of them too: and as they chanced to live long, and leave able and worthy heirs, for several successions, or otherwise; so they laid the foundations of hereditary, or elective kingdoms, under several constitutions and mannors, according as chance, contrivance, or occasions happened to mould them. But if princes have their titles in their fathers right, and it be a sufficient proof of the natural *right of fathers* to political authority, because they commonly were those in whose hands we find, *de facto,* the exercise of government: I say, if this argument be good, it will as strongly prove, that all princes, nay princes only, ought to be priests, since it is as certain, that in the beginning, *the father of the family was priest, as that he was ruler n his own houshold*.

CHAP. VII. Of Political or Civil Society.

§. 77.

GOD having made man such a creature, that in his own judgment, it was not good for him to be alone, [262] put him under strong obligations of necessity, convenience, and inclination to drive him into *society,* as well as fitted him with understanding and language to continue and enjoy it. The *first society* was between man and wife, which gave beginning to that between parents and children; to which, in time, that between master and servant came to be added: and though all these might, and commonly did meet together, and make up but one family, wherein the master or mistress of it had some sort of rule proper to a family; each of these, or all together, came short of *political society,* as we shall see, if we consider the different ends, ties, and bounds of each of these.

§. 78.

Conjugal society is made by a voluntary compact between man and woman; and tho' it consist chiefly in such a communion and right in one another's bodies as is necessary to its chief end, procreation; yet it draws with it mutual support and assistance, and a communion of interests too, as necessary not only to unite their care and affection, but also necessary to their common off-spring, who have a right to be nourished, and maintained by them, till they are able to provide for themselves.

§. 79.

For the end of *conjunction, between male and female,* being not barely procreation, but the continuation of the species; this conjunction betwixt male and female ought to [263] last, even after procreation, so long as is necessary to the nourishment and support of the young ones, who are to be sustained by those that got them, till they are able to shift and provide for themselves. This rule, which the infinite wise maker hath set to the works of his hands, we find the inferior creatures steadily obey. In those viviparous animals which feed on grass, the *conjunction between male and female* lasts no longer than the very act of copulation; because the teat of the dam being sufficient to nourish the young, till it be able to feed on grass, the male only begets, but concerns not himself for the female or young, to whose sustenance he can contribute nothing. But in beasts of prey the *conjunction* lasts longer: because the dam not being able well to subsist herself, and nourish her numerous off-spring by her own prey alone, a more laborious, as well as more dangerous way of living, than by feeding on grass, the assistance of the male is necessary to the maintenance of their common family, which cannot subsist till they are able to prey for themselves, but by the joint care of male and female. The same is to be observed in all birds, (except some domestic ones, where plenty of food excuses the cock from feeding, and taking care of the young brood) whose young needing food in the nest, the cock and hen continue mates, till the young are able [264] to use their wing, and provide for themselves.

§. 80.

And herein I think lies the chief, if not the only reason, *why the male and female in mankind are tied to a longer conjunction* than other creatures, *viz.* because the female is capable of conceiving, and *de facto* is commonly with child again, and brings forth too a new birth, long before the former is out of a dependency for support on his parents help, and able to shift for himself, and has all the assistance is due to him from his parents: whereby the father, who is bound to take care for those he hath begot, is under an obligation to continue in conjugal society with the same woman longer than other creatures, whose young being able to subsist of themselves, before the time of procreation returns again, the

conjugal bond dissolves of itself, and they are at liberty, till *Hymen* at his usual anniversary season summons them again to chuse new mates. Wherein one cannot but admire the wisdom of the great Creator, who having given to man foresight, and an ability to lay up for the future, as well as to supply the present necessity, hath made it necessary, that *society of man and wife should be more lasting,* than of male and female amongst other creatures; that so their industry might be encouraged, and their interest better united, to make provision and lay up goods for their common issue, which [265] uncertain mixture, or easy and frequent solutions of conjugal society would mightily disturb.

§. 81.

But tho' these are ties upon *mankind,* which make the *conjugal bonds* more firm and lasting in man, than the other species of animals; yet it would give one reason to enquire, why this *compact,* where procreation and education are secured, and inheritance taken care for, may not be made determinable, either by consent, or at a certain time, or upon certain conditions, as well as any other voluntary compacts, there being no necessity in the nature of the thing, nor to the ends of it, that it should always be for life; I mean, to such as are under no restraint of any positive law, which ordains all such contracts to be perpetual.

§. 82.

But the husband and wife, though they have but one common concern, yet having different understandings, will unavoidably sometimes have different wills too; it therefore being necessary that the last determination, *i. e.* the rule, should be placed somewhere; it naturally falls to the man's share, as the abler and the stronger. But this reaching but to the things of their common interest and property, leaves the wife in the full and free possession of what by contract is her peculiar right, and gives the husband no more power over her life than she has over his; the *power of the husband* being [266] so far from that of an absolute monarch, that the *wife* has in many cases a liberty to separate from him, where natural right, or their contract allows it; whether that contract be made by themselves in the state of nature, or by the customs or laws of the country they live in; and the children upon such separation fall to the father or mother's lot, as such contract does determine.

§. 83.

For all the ends of *marriage* being to be obtained under politic government, as well as in the state of nature, the civil magistrate doth not abridge the right or power of either naturally necessary to those ends, *viz.* procreation and mutual support and assistance whilst they are together; but only decides any controversy that may arise between man and wife about them. If it were otherwise, and that absolute *sovereignty* and power of life and death naturally belonged to the husband, and were *necessary to the society between man and wife,* there could be no matrimony in any of those countries where the husband is allowed no such absolute authority. But the ends of matrimony requiring no such power in the husband, the condition of *conjugal society* put it not in him, it being not at all necessary to that state. *Conjugal society* could subsist and attain its ends without it; nay, community of goods, and the power over them, mutual assistance and maintenance, and other things belonging to *conjugal society,* [267] might be varied and regulated by that contract which unites man and wife in that society, as far as may consist with procreation and the bringing up of children till they could shift for themselves; nothing being necessary to any society, that is not necessary to the ends for which it is made.

§. 84.

The *society betwixt parents and children,* and the distinct rights and powers belonging respectively to

them, I have treated of so largely, in the foregoing chapter, that I shall not here need to say any thing of it. And I think it is plain, that it is far different from a politic society.

§. 85.

Master and *servant* are names as old as history, but given to those of far different condition; for a freeman makes himself a servant to another, by selling him, for a certain time, the service he undertakes to do, in exchange for wages he is to receive: and though this commonly puts him into the family of his master, and under the ordinary discipline thereof; yet it gives the master but a temporary power over him, and no greater than what is contained in the *contract* between them. But there is another sort of servants, which by a peculiar name we call *slaves,* who being captives taken in a just war, are by the right of nature subjected to the absolute dominion and arbitrary power of their masters. These men having, as I say, forfeited their lives, and with it their [268] liberties, and lost their estates; and being in the *state of slavery,* not capable of any property, cannot in that state be considered as any part of *civil society;* the chief end whereof is the preservation of property.

§. 86.

Let us therefore consider a *master of a family* with all these subordinate relations of *wife, children, servants,* and *slaves,* united under the domestic rule of a family; which, what resemblance soever it may have in its order, offices, and number too, with a little common-wealth, yet is very far from it, both in its constitution, power and end: or if it must be thought a monarchy, and the *paterfamilias* the absolute monarch in it, absolute monarchy will have but a very shattered and short power, when it is plain, by what has been said before, that the *master of the family* has a very distinct and differently limited *power,* both as to time and extent, over those several persons that are in it; for excepting the slave (and the family is as much a family, and his power as *paterfamilias* as great, whether there be any slaves in his family or no) he has no legislative power of life and death over any of them, and none too but what a *mistress of a family* may have as well as he. And he certainly can have no absolute power over the whole *family,* who has but a very limited one over every individual in it. But how a *family,* or any other society of men, differ from that which is properly [269] *political society,* we shall best see, by considering wherein *political society* itself consists.

§. 87.

Man being born, as has been proved, with a title to perfect freedom, and an uncontrouled enjoyment of all the rights and privileges of the law of nature, equally with any other man, or number of men in the world, hath by nature a power, not only to preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men; but to judge of, and punish the breaches of that law in others, as he is persuaded the offence deserves, even with death itself, in crimes where the heinousness of the fact, in his opinion, requires it. But because no *political society* can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto, punish the offences of all those of that society; there, and there only is *political society,* where every one of the members hath quitted this natural power, resigned it up into the hands of the community in all cases that exclude him not from appealing for protection to the law established by it. And thus all private judgment of every particular member being excluded, the community comes to be umpire, by settled standing rules, indifferent, and the same to all parties; and by men having authority from the community, [270] for the execution of those rules, decides all the differences that may happen between any members of that society concerning any matter of right; and punishes those offences which any member hath committed against the society, with such penalties as the law has established: whereby it is easy to discern, who are, and who are not, in *political society* together. Those who are united into one body,

and have a common established law and judicature to appeal to, with authority to decide controversies between them, and punish offenders, are in *civil society* one with another: but those who have no such common people, I mean on earth, are still in the state of nature, each being, where there is no other, judge for himself, and executioner; which is, as I have before shewed it, the perfect *state of nature*.

§. 88.

And thus the common-wealth comes by a power to set down what punishment shall belong to the several transgressions which they think worthy of it, committed amongst the members of that society, (which is the *power of making laws)* as well as it has the power to punish any injury done unto any of its members, by any one that is not of it, (which is the *power of war and peace;*) and all this for the preservation of the property of all the members of that society, as far as is possible. But though every man who has [271] entered into civil society, and is become a member of any common-wealth, has thereby quitted his power to punish offences, against the law of *nature,* in prosecution of his own private judgment, yet with the judgment of offences, which he has given up to the legislative in all cases, where he can appeal to the magistrate, he has given a right to the common-wealth to employ his force, for the execution of the judgments of the common-wealth, whenever he shall be called to it; which indeed are his own judgments, they being made by himself, or his representative. And herein we have the original of the *legislative* and *executive power* of civil society, which is to judge by standing laws, how far offences are to be punished, when committed within the common-wealth; and also to determine, by occasional judgments founded on the present circumstances of the fact, how far injuries from without are to be vindicated; and in both these to employ all the force of all the members, when there shall be need.

§. 89.

Where-ever therefore any number of men are so united into one society, as to quit every one his executive power of the law of nature, and to resign it to the public, there and there only is a *political, or civil society.* And this is done, where-ever any number of men, in the state of nature, enter into society to make one people, one body [272] politic, under one supreme government; or else when any one joins himself to, and incorporates with any government already made: for hereby he authorizes the society, or which is all one, the legislative thereof, to make laws for him, as the public good of the society shall require; to the execution whereof, his own assistance (as to his own decrees) is due. And this *puts men* out of a state of nature *into* that of a *common-wealth,* by setting up a judge on earth, with authority to determine all the controversies, and redress the injuries that may happen to any member of the common-wealth; which judge is the legislative, or magistrates appointed by it. And where-ever there are any number of men, however associated, that have no such decisive power to appeal to, there they are still in *the state of nature*.

§. 90.

Hence it is evident, that *absolute monarchy,* which by some men is counted the only government in the world, is indeed *inconsistent with civil society,* and so can be no form of civil-government at all: for the *end of civil society,* being to avoid, and remedy those inconveniencies of the state of nature, which necessarily follow from every man's being judge in his own case, by setting up a known authority, to which every one of that society may appeal upon any injury received, or controversy that may arise, and [273] which every one of the* society ought to obey; where-ever any persons are, who have not such an authority to appeal to, for the decision of any difference between them, there those persons are still *in the state of nature;* and so is every *absolute prince,* in respect of those who are under his *dominion*.

§. 91.

For he being supposed to have all, both legislative and executive power in himself alone, there is no judge to be found, no appeal lies open to any one, who may fairly, and indifferently, and with authority decide, and from whose decision relief and redress may be expected of any injury or inconviency, that may be suffered from the prince, or by his order: so that such a man, however intitled, *Czar,* or *Grand Seignior,* or how you please, is as much *in the state of nature,* with all under his dominion, as he is with the rest of mankind: for where-ever any two men are, who have no standing rule, and common judge to appeal to on earth, for the determination of controversies of right betwixt them, there they are still *in the state* [274] *of* * *nature,* and under all the inconveniencies of it, with only this woful difference to the subject, or rather slave of an absolute prince: that whereas, in the ordinary state of nature, he has a liberty to judge of his right, and according to the best of his power, to maintain it; now, whenever his property is invaded by the will and order of his monarch, he has not only no appeal, as those in society ought to have, but as if he were degraded from the common state of rational creatures, is denied a liberty to judge of, or to defend his right; and so is exposed to all the misery and inconveniencies, that a man can fear from [275] one, who being in the unrestrained state of nature, is yet corrupted with flattery, and armed with power.

§. 92.

For he that thinks *absolute power purifies men's blood,* and corrects the baseness of human nature, need read but the history of this, or any other age, to be convinced of the contrary. He that would have been insolent and injurious in the woods of *America,* would not probably be much better in a throne; where perhaps learning and religion shall be found out to justify all that he shall do to his subjects, and the sword presently silence all those that dare question it: for what the *protection of absolute monarchy* is, what kind of fathers of their countries it makes princes to be, and to what a degree of happiness and security it carries civil society, where this sort of government is grown to perfection, he that will look into the late relation of *Ceylon,* may easily see.

§. 93.

In *absolute monarchies* indeed, as well as other governments of the world, the subjects have an appeal to the law, and judges to decide any controversies, and restrain any violence that may happen betwixt the subjects themselves, one amongst another. This every one thinks necessary, and believes he deserves to be thought a declared enemy to society and mankind, who should go about to take it away. But whether this be from a true love of mankind and society, and such a charity as [276] we owe all one to another, there is reason to doubt: for this is no more than what every man, who loves his own power, profit, or greatness, may and naturally must do, keep those animals from hurting, or destroying one another, who labour and drudge only for his pleasure and advantage; and so are taken care of, not out of any love the master has for them, but love of himself, and the profit they bring him: for if it be asked, what security, *what fence* is there, in such a state, *against the violence and oppression of this absolute ruler?* the very question can scarce be borne. They are ready to tell you, that it deserves death only to ask after safety. Betwixt subject and subject, they will grant, there must be measures, laws and judges, for their mutual peace and security: but as for the *ruler,* he ought to be *absolute,* and is above all such circumstances; because he has power to do more hurt and wrong, it is right when he does it. To ask how you may be guarded from harm, or injury, on that side where the strongest hand is to do it, is presently the voice of faction and rebellion: as if when men quitting the state of nature entered into society, they agreed that all of them but one, should be under the restraint of laws, but that he should still retain all the liberty of the state of nature, increased with power, and made licentious by impunity.

This is to think, that men are so foolish, that they take care to avoid what mischiefs [277] may be done them by *pole-cats,* or *foxes;* but are content, nay, think it safety, to be devoured by *lions*.

§. 94.

But whatever flatterers may talk to amuse people's understandings, it hinders not men from feeling; and when they perceive, that any man, in what station soever, is out of the bounds of the civil society which they are of, and that they have no appeal on earth against any harm, they may receive from him, they are apt to think themselves in the state of nature, in respect of him whom they find to be so; and to take care, as soon as they can, to have that *safety and security in civil society,* for which it was first instituted, and for which only they entered into it. And therefore, though perhaps at first, (as shall be shewed more at large hereafter in the following part of this discourse) some one good and excellent man having got a pre-eminency amongst the rest, had this deference paid to his goodness and virtue, as to a kind of natural authority, that the chief rule, with arbitration of their differences, by a tacit consent devolved into his hands, without any other caution, but the assurance they had of his uprightness and wisdom; yet when time, giving authority, and (as some men would persuade us) sacredness of customs, which the negligent, and unforeseeing innocence of the first ages began, had brought in successors of another stamp, the people finding their properties not secure under [278] the government, as then it was, (whereas government has no other end but the preservation of* property) could never be safe nor at rest, *nor think themselves in civil society,* till the legislature was placed in collective bodies of men, call them senate, parliament, or what you please. By which means every single person became subject, equally with other the meanest men, to those laws, which he himself, as part of the legislative, had established; nor could any one, by his own authority, avoid the force of the law, when once made; nor by any pretence of superiority plead exemption, thereby to license his own, or the miscarriages of any of his dependents. †*No man in civil society can be exempted from the laws of it:* for if any man may do what he thinks fit, and there be no appeal on earth, for redress or security against any harm he shall do; I ask, whether he be not perfectly still in the [279] state of nature, and so can be *no part or member of that civil society;* unless any one will say, the state of nature and civil society are one and the same thing, which I have never yet found any one so great a patron of anarchy as to affirm.

CHAP. VIII. Of the Beginning of Political Societies.

§. 95.

MEN being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent. The only way whereby any one divests himself of his natural liberty, and puts on the *bonds of civil society,* is by agreeing with other men to join and unite into a community, for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left as they were in the liberty of the state of nature. When any number of men have so *consented to make one community or government,* they are thereby presently incorporated, and make *one body politic,* wherein the *majority* have a right to act and conclude the rest.

[280]

§. 96.

For when any number of men have, by the consent of every individual, made a *community,* they have thereby made that *community* one body, with a power to act as one body, which is only by the will and determination of the *majority:* for that which acts any community, being only the consent of the individuals of it, and it being necessary to that which is one body to move one way; it is necessary the body should move that way whither the greater force carries it, which is the *consent of the majority:* or else it is impossible it should act or continue one body, *one community,* which the consent of every individual that united into it, agreed that it should; and so every one is bound by that consent to be concluded by the *majority.* And therefore we see, that in assemblies, impowered to act by positive laws, where no number is set by that positive law which impowers them, the *act of the majority* passes for the act of the whole, and of course determines, as having, by the law of nature and reason, the power of the whole.

§. 97.

And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation, to every one of that society, to submit to the determination of the *majority,* and to be concluded by it; or else this *original compact,* whereby he with others incorporates into *one society,* would signify nothing, and [281] be no compact, if he be left free, and under no other ties than he was in before in the state of nature. For what appearance would there be of any compact? what new engagement if he were no farther tied by any decrees of the society, than he himself thought fit, and did actually consent to? This would be still as great a liberty, as he himself had before his compact, or any one else in the state of nature hath, who may submit himself, and consent to any acts of it if he thinks fit.

§. 98.

For if *the consent of the majority* shall not, in reason, be received as *the act of the whole,* and conclude every individual; nothing but the consent of every individual can make any thing to be the act of the whole: but such a consent is next to impossible ever to be had, if we consider the infirmities of health, and avocations of business, which in a number, though much less than that of a common-wealth, will necessarily keep many away from the public assembly. To which if we add the variety of opinions, and

contrariety of interests, which unavoidably happen in all collections of men, the coming into society upon such terms would be only like *Cato*'s coming into the theatre, only to go out again. Such a constitution as this would make the mighty *Leviathan* of a shorter duration, than the feeblest creatures, and not let it outlast the day it was born in: which cannot be supposed, till we can think, that rational creatures [282] should desire and constitute societies only to be dissolved: for where the *majority* cannot conclude the rest, there they cannot act as one body, and consequently will be immediately dissolved again.

§. 99.

Whosoever therefore out of a state of nature unite into a *community,* must be understood to give up all the power, necessary to the ends for which they unite into society, to the *majority* of the community, unless they expresly agreed in any number greater than the majority. And this is done by barely agreeing to *unite into one political society,* which is *all the compact* that is, or needs be, between the individuals, that enter into, or make up a *common-wealth*. And thus that, which begins and actually *constitutes any political society,* is nothing but the consent of any number of freemen capable of a majority to unite and incorporate into such a society. And this is that, and that only, which did, or could give beginning to any *lawful government* in the world.

§. 100.

To this I find two objections made.

First, That there are no instances to be found in story, of a company of men independent, and equal one amongst another, that met together, and in this way began and set up a government.

Secondly, It is impossible of right, that men should do so, because all men being born under government, they are to submit to that, and are not at liberty to begin a new one.

[283]

§. 101.

To the first there is this to answer, That it is not at all to be wondered, that *history* gives us but a very little account of *men, that lived together in the state of nature*. The inconveniences of that condition, and the love and want of society, no sooner brought any number of them together, but they presently united and incorporated, if they designed to continue together. And if we may not suppose *men* ever to have been *in the state of nature,* because we hear not much of them in such a state, we may as well suppose the armies of *Salmanasser* or *Xerxes* were never children, because we hear little of them, till they were men, and imbodied in armies. Government is every where antecedent to records, and letters seldom come in amongst a people till a long continuation of civil society has, by other more necessary arts, provided for their safety, ease, and plenty: and then they begin to look after the history of their founders, and search into their *original,* when they have outlived the memory of it: for it is with *common-wealths* as with particular persons, they are commonly *ignorant of their own births and infancies:* and if they know any thing of their *original,* they are beholden for it, to the accidental records that others have kept of it. And those that we have, of the beginning of any polities in the world, excepting that of the *Jews,* where God himself immediately interposed, and which favours [284] not at all paternal dominion, are all either plain instances of such a beginning as I have mentioned, or at least have manifest footsteps of it.

§. 102.

He must shew a strange inclination to deny evident matter of fact, when it agrees not with his hypothesis, who will not allow, that the *beginning* of *Rome* and *Venice* were by the uniting together of several men free and independent one of another, amongst whom there was no natural superiority or subjection. And if *Josephus Acosta*'s word may be taken, he tells us, that in many parts of *America* there was no government at all. *There are great and apparent conjectures,* says he, *that these men,* speaking of those of Peru, *for a long time had neither kings nor common-wealths, but lived in troops, as they do this day in* Florida, *the* Cheriquanas, *those of* Brasil, *and many other nations, which have no certain kings, but as occasion is offered, in peace or war, they choose their captains as they please,* l. i. c. 25. If it be said, that every man there was born subject to his father, or the head of his family; that the subjection due from a child to a father took not away his freedom of uniting into what political society he thought fit, has been already proved. But be that as it will, these men, it is evident, were actually *free;* and whatever superiority some politicians now would place in any of them, they themselves claimed it not, but by [285] consent were all *equal,* till by the same consent they set rulers over themselves. So that their *politic societies* all *began* from a voluntary union, and the mutual agreement of men freely acting in the choice of their governors, and forms of government.

§. 103.

And I hope those who went away from *Sparta* with *Palantus,* mentioned by *Justin,* l. iii. c. 4. will be allowed to have been *freemen independent* one of another, and to have set up a government over themselves, by their own consent. Thus I have given several examples, out of history, of *people free and in the state of nature,* that being met together incorporated and *began a common-wealth*. And if the want of such instances be an argument to prove that *government* were not, nor could not be so *begun,* I suppose the contenders for paternal empire were better let it alone, than urge it against natural liberty: for if they can give so many instances, out of history, of *governments begun* upon paternal right, I think (though at best an argument from what has been, to what should of right be, has no great force) one might, without any great danger, yield them the cause. But if I might advise them in the case, they would do well not to search too much into the *original of governments,* as they have begun *de facto,* lest they should find, at the foundation of most of them, something [286] very little favourable to the design they promote, and such a power as they contend for.

§. 104.

But to conclude, reason being plain on our side, that men are naturally free, and the examples of history shewing, that the *governments* of the world, that were begun in peace, had their beginning laid on that foundation, and were *made by the consent of the people;* there can be little room for doubt, either where the right is, or what has been the opinion, or practice of mankind, about the *first erecting of governments*.

§. 105.

I will not deny, that if we look back as far as history will direct us, towards the *original of common-wealths,* we shall generally find them under the government and administration of one man. And I am also apt to believe, that where a family was numerous enough to subsist by itself, and continued entire together, without mixing with others, as it often happens, where there is much land, and few people, the government commonly began in the father: for the father having, by the law of nature, the same power with every man else to punish, as he thought fit, any offences against that law, might thereby punish his transgressing children, even when they were men, and out of their pupilage; and they were

very likely to submit to his punishment, and all join with him against the offender, in their turns, giving him thereby power to execute [287] his sentence against any transgression, and so in effect make him the law-maker, and governor over all that remained in conjunction with his family. He was fittest to be trusted; paternal affection secured their property and interest under his care; and the custom of obeying him, in their childhood, made it easier to submit to him, rather than to any other. If therefore they must have one to rule them, as government is hardly to be avoided amongst men that live together; who so likely to be the man as he that was their common father; unless negligence, cruelty, or any other defect of mind or body made him unfit for it? But when either the father died, and left his next heir, for want of age, wisdom, courage, or any other qualities, less fit for rule; or where several families met, and consented to continue together; there, it is not to be doubted, but they used their natural freedom, to set up him, whom they judged the ablest, and most likely, to rule well over them. Conformable hereunto we find the people of *America,* who (living out of the reach of the conquering swords, and spreading domination of the two great empires of *Peru* and *Mexico)* enjoyed their own natural freedom, though, *cæteris paribus,* they commonly prefer the heir of their deceased king; yet if they find him any way weak, or uncapable, they pass him [288] by, and set up the stoutest and bravest man for their ruler.

§. 106.

Thus, though looking back as far as records give us any account of peopling the world, and the history of nations, we commonly find the *government* to be in one hand; yet it destroys not that which I affirm, *viz*. that the *beginning of politic society* depends upon the consent of the individuals, to join into, and make one society; who, when they are thus incorporated, might set up what form of government they thought fit. But this having given occasion to men to mistake, and think, that by nature government was monarchical, and belonged to the father, it may not be amiss here to consider, why people in the beginning generally pitched upon this form, which though perhaps the father's pre-eminency might, in the first institution of some common-wealths, give a rise to, and place in the beginning, the power in one hand; yet it is plain that the reason, that continued the form of *government in a single person,* was not any regard, or respect to paternal authority; since all petty *monarchies,* that is, almost all monarchies, near their original, have been commonly, at least upon occasion, *elective*.

§. 107.

First then, in the beginning of things, the father's government of the childhood of those sprung from him, having accustomed them to the *rule of one man,* and [289] taught them that where it was exercised with care and skill, with affection and love to those under it, it was sufficient to procure and preserve to men all the political happiness they sought for in society. It was no wonder that they should pitch upon, and naturally run into that form of government, which from their infancy they had been all accustomed to; and which, by experience, they had found both easy and safe. To which, if we add, that *monarchy* being simple, and most obvious to men, whom neither experience had instructed in forms of government, nor the ambition or insolence of empire had taught to beware of the encroachments of prerogative, or the inconveniencies of absolute power, which monarchy in succession was apt to lay claim to, and bring upon them; it was not at all strange, that they should not much trouble themselves to think of methods of restraining any exorbitances of those to whom they had given the authority over them, and of balancing the power of government, by placing several parts of it in different hands. They had neither felt the oppression of tyrannical dominion, nor did the fashion of the age, nor their possessions, or way of living, (which afforded little matter for covetousness or ambition) give them any reason to apprehend or provide against it; and therefore it is no wonder they put themselves into such a *frame of government,* as was [290] not only, as I said, most obvious and simple, but also best suited to their present state and condition; which stood more in need

of defence against foreign invasions and injuries, than of multiplicity of laws. The equality of a simple poor way of living, confining their desires within the narrow bounds of each man's small property, made few controversies, and so no need of many laws to decide them, or variety of officers to superintend the process, or look after the execution of justice, where there were but few trespasses, and few offenders. Since then those, who liked one another so well as to join into society, cannot but be supposed to have some acquaintance and friendship together, and some trust one in another; they could not but have greater apprehensions of others, than of one another: and therefore their first care and thought cannot but be supposed to be, how to secure themselves against foreign force. It was natural for them to put themselves under a *frame of government* which might best serve to that end, and chuse the wisest and bravest man to conduct them in their wars, and lead them out against their enemies, and in this chiefly be their *ruler.*

§. 108.

Thus we see, that the *kings* of the *Indians* in *America,* which is still a pattern of the first ages in *Asia* and *Europe,* whilst the inhabitants were too few for the country, and want of people and money gave men no [291] temptation to enlarge their possessions of land, or contest for wider extent of ground, are little more than *generals of their armies;* and though they command absolutely in war, yet at home and in time of peace they exercise very little dominion, and have but a very moderate sovereignty, the resolutions of peace and war being ordinarily either in the people, or in a council. Tho' the war itself, which admits not of plurality of governors, naturally devolves the command into the *king's sole authority.*

§. 109.

And thus in *Israel* itself, the *chief business of their judges, and first kings,* seems to have been *to be captains in war,* and leaders of their armies; which (besides what is signified by *going out and in before the people,* which was, to march forth to war, and home again in the heads of their forces) appears plainly in the story of *Jephtha*. The *Ammonites* making war upon *Israel,* the *Gileadites* in fear send to *Jephtha,* a bastard of their family whom they had cast off, and article with him, if he will assist them against the *Ammonites,* to make him their ruler; which they do in these words, *And the people made him head and captain over them,* Judg. xi. 11. which was, as it seems, all one as to be *judge*. *And he judged Israel,* Judg. xii. 7. that is, was their *captain-general six years*. So when *Jotham* upbraids the *Shechemites* with the obligation they had to *Gideon,* who had been [292] their *judge* and ruler, he tells them, *He fought for you, and adventured his life far, and delivered you out of the hands of Midian,* Judg. ix. 17. Nothing mentioned of him, but what he did as a *general:* and indeed that is all is found in his history, or in any of the rest of the judges. And *Abimelech* particularly is called *king,* though at most he was but their *general*. And when, being weary of the ill conduct of *Samuel*'s sons, the children of *Israel* desired a *king, like all the nations to judge them, and to go out before them, and to fight their battles,* 1 Sam. viii. 20. God granting their desire, says to *Samuel, I will send thee a man, and thou shalt anoint him to be captain over my people Israel, that he may save my people out of the hands of the Philistines,* ix. 16. As if the only *business of a king* had been to lead out their armies, and fight in their defence; and accordingly at his inauguration pouring a vial of oil upon him, declares to *Saul,* that *the Lord had anointed him to be captain over his inheritance,* x. 1. And therefore those, who after *Saul*'s being solemnly chosen and saluted *king* by the *tribes* at *Mispah,* were unwilling to have him their king, made no other objection but this, *How shall this man save us?* v. 27. as if they should have said, this man is unfit to be our *king,* not having skill and conduct enough in war, to be able to defend us. And when God resolved to [293] transfer the government to *David,* it is in these words, *But now thy kingdom shall not continue: the Lord hath sought him a man after his own heart, and the Lord hath commanded him to be captain over his people,* xiii. 14. As if the whole *kingly authority* were

nothing else but to be their *general:* and therefore the *tribes* who had stuck to *Saul*'s family, and opposed *David*'s reign, when they came to *Hebron* with terms of submission to him, they tell him, amongst other arguments they had to submit to him as to their king, that he was in effect their *king* in *Saul*'s time, and therefore they had no reason but to receive him as their *king* now. *Also* (say they) *in time past, when Saul was king over us, thou wast he that leddest out and broughtest in Israel, and the Lord said unto thee, Thou shalt feed my people Israel, and thou shalt be a captain over Israel.*

§. 110.

Thus, whether *a family* by degrees *grew up into a common-wealth,* and the fatherly authority being continued on to the elder son, every one in his turn growing up under it, tacitly submitted to it, and the easiness and equality of it not offending any one, every one acquiesced, till time seemed to have confirmed it, and settled a right of succession by prescription: or whether several families, or the descendants of several families, whom chance, neighbourhood, or business brought together, uniting into society, the need of a [294] general, whose conduct might defend them against their enemies in war, and the great confidence the innocence and sincerity of that poor but virtuous age, (such as are almost all those which begin governments, that ever come to last in the world) gave men one of another, made the first beginners of common-wealths generally put the rule into one man's hand, without any other express limitation or restraint, but what the nature of the thing, and the end of government required: which ever of those it was that at first put the rule into the hands of a single person, certain it is no body was intrusted with it but for the public good and safety, and to those ends, in the infancies of common-wealths, those who had it commonly used it. And unless they had done so, young societies could not have subsisted; without such nursing fathers tender and careful of the public weal, all governments would have sunk under the weakness and infirmities of their infancy, and the prince and the people had soon perished together.

§. 111.

But though the *golden age* (before vain ambition, and *amor sceleratus habendi,* evil concupiscence, had corrupted men's minds into a mistake of true power and honour) had more virtue, and consequently better governors, as well as less vicious subjects; and there was then *no stretching prerogative* on the one side, to oppress the people; *nor* consequently on the other, any *dispute about* [295] *privilege,* to lessen or restrain the power of the magistrate, and so no contest betwixt rulers and people about governors or government: yet, when ambition and luxury in future ages* would retain and increase the power, without doing the business for which it was given; and aided by slattery, taught princes to have distinct and separate interests from their people, men found it necessary to examine more carefully *the original* and rights *of government;* and to find out ways to *restrain the exorbitances,* and *prevent the abuses* of that power, which they having intrusted in another's hands only for their own good, they found was made use of to hurt them.

§. 112.

Thus we may see how probable it is, that people that were naturally free, and by their own consent either submitted to the government of their father, or united together out of different families to make a government, should generally put the *rule into one man's hands,* and chuse to be under the conduct [296] of a *single person,* without so much as by express conditions limiting or regulating his power, which they thought safe enough in his honesty and prudence; though they never dreamed of monarchy being *Jure Divino,* which we never heard of among mankind, till it was revealed to us by the divinity of this last age; nor ever allowed paternal power to have a right to dominion, or to be the foundation of all government. And thus much may suffice to shew, that as far as we have any light from history, we

have reason to conclude, that all peaceful beginnings of *government* have been *laid in the consent of the people*. I say *peaceful,* because I shall have occasion in another place to speak of conquest, which some esteem a way of beginning of governments.

The other objection I find urged against the beginning of polities, in the way I have mentioned, is this, viz.

§. 113.

That all men being born under government, some or other, it is impossible any of them should ever be free, and at liberty to unite together, and begin a new one, or ever be able to erect a lawful government.

If this argument be good; I ask, how came so many lawful monarchies into the world? for if any body, upon this supposition, can shew me any one man in any age of the world *free* to begin a lawful monarchy, I will be bound to shew him ten other *free* [297] *men* at liberty, at the same time to unite and begin a new government under a regal, or any other form; it being demonstration, that if any one, *born under the dominion* of another, may be so *free* as to have a right to command others in a new and distinct empire, every one that is *born under the dominion* of another may be so free too, and may become a ruler, or subject, of a distinct separate government. And so by this their own principle, either all men, however *born,* are *free,* or else there is but one lawful prince, one lawful government in the world. And then they have nothing to do, but barely to shew us which that is; which when they have done, I doubt not but all mankind will easily agree to pay obedience to him.

§. 114.

Though it be a sufficient answer to their objection, to shew that it involves them in the same difficulties that it doth those they use it against; yet I shall endeavour to discover the weakness of this argument a little farther.

All men, say they, *are born under government, and therefore they cannot be at liberty to begin a new one. Every one is born a subject to his father, or his prince, and is therefore under the perpetual tie of subjection and allegiance*. It is plain mankind never owned nor considered any such natural *subjection that they were born in,* to one or to the other that tied [298] them, without their own consents, to a subjection to them and their heirs.

§. 115.

For there are no examples so frequent in history, both sacred and profane, as those of men withdrawing themselves, and their obedience, from the jurisdiction they were born under, and the family or community they were bred up in, and *setting up new governments* in other places; from whence sprang all that number of petty commonwealths in the beginning of ages, and which always multiplied, as long as there was room enough, till the stronger, or more fortunate, swallowed the weaker; and those great ones again breaking to pieces, dissolved into lesser dominions. All which are so many testimonies against paternal sovereignty, and plainly prove, that it was not the natural right of the *father* descending to his heirs, that made governments in the beginning, since it was impossible, upon that ground, there should have been so many little kingdoms; all must have been but only one universal monarchy, if men had not been at *liberty to separate* themselves from their families, and the government, be it what it will, that was set up in it, and go and make distinct common-wealths and other governments, as they thought fit.

§. 116.

This has been the practice of the world from its first beginning to this day; nor is it now any more hindrance to the [299] freedom of mankind, that they are *born under constituted and ancient polities,* that have established laws, and set forms of government, than if they were born in the woods, amongst the unconfined inhabitants, that run loose in them: for those, who would persuade us, that *by being born under any government, we are naturally subjects to it,* and have no more any title or pretence to the freedom of the state of nature, have no other reason (bating that of paternal power, which we have already answered) to produce for it, but only, because our fathers or progenitors passed away their natural liberty, and thereby bound up themselves and their posterity to a perpetual subjection to the government, which they themselves submitted to. It is true, that whatever engagements or promises any one has made for himself, he is under the obligation of them, but *cannot,* by any *compact* whatsoever, *bind his children or posterity:* for his son, when a man, being altogether as free as the father, any *act of the father can no more give away the liberty of the son,* than it can of any body else: he may indeed annex such conditions to the land, he enjoyed as a subject of any common-wealth, as may oblige his son to be of that community, if he will enjoy those possessions which were his father's; because that estate being his father's property, he may dispose, or settle it, as he pleases.

[300]

§. 117.

And this has generally given the occasion to mistake in this matter; because common-wealths not permitting any part of their dominions to be dismembered, nor to be enjoyed by any but those of their community, the son cannot ordinarily enjoy the possessions of his father, but under the same terms his father did, by becoming a member of the society; whereby he puts himself presently under the government he finds there established, as much as any other subject of that common-wealth. And thus *the consent of freemen, born under government,* which only *makes them members of it,* being given separately in their turns, as each comes to be of age, and not in a multitude together; people take no notice of it, and thinking it not done at all, or not necessary, conclude they are naturally subjects as they are men.

§. 118.

But, it is plain, *governments* themselves understand it otherwise; they claim *no power over the son, because of that they had over the father;* nor look on children as being their subjects, by their fathers being so. If a subject of *England* have a child, by an *English* woman in *France,* whose subject is he? Not the king of *England*'s; for he must have leave to be admitted to the privileges of it: nor the king of *France*'s; for how then has his father a liberty to bring him away, and breed him as he pleases? and who ever was judged as a *traytor* or *deserter,* if he left, or [301] warred against a country, for being barely born in it of parents that were aliens there? It is plain then, by the practice of governments themselves, as well as by the law of right reason, that *a child is born a subject of no country or government*. He is under his father's tuition and authority, till he comes to age of discretion; and then he is a freeman, at liberty what government he will put himself under, what body politic he will unite himself to: for if an *Englishman*'s son, born in *France,* be at liberty, and may do so, it is evident there is no tie upon him by his father's being a subject of this kingdom; nor is he bound up by any compact of his ancestors. And why then hath not his son, by the same reason, the same liberty, though he be born any where else? Since the power that a father hath naturally over his children, is the same, where-ever they be born, and the ties of natural obligations, are not bounded by the positive limits of kingdoms and common-wealths.

§. 119.

Every man being, as has been shewed, *naturally free,* and nothing being able to put him into subjection to any earthly power, but only his own *consent;* it is to be considered, what shall be understood to be a *sufficient declaration* of a man's *consent, to make him subject* to the laws of any government. There is a common distinction of an express and a tacit consent, which will concern our [302] present case. No body doubts but an express *consent,* of any man entering into any society, makes him a perfect member of that society, a subject of that government. The difficulty is, what ought to be looked upon as a *tacit consent,* and how far it binds, *i. e.* how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all. And to this I say, that every man, that hath any possessions, or enjoyment, of any part of the dominions of any government, doth thereby give his *tacit consent,* and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it; whether this his possession be of land, to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and in effect, it reaches as far as the very being of any one within the territories of that government.

§. 120.

To understand this the better, it is fit to consider, that every man, when he at first incorporates himself into any common-wealth, he, by his uniting himself thereunto, annexed also, and submits to the community, those possessions, which he has, or shall acquire, that do not already belong to any other government: for it would be a direct contradiction, for any one to enter into society with others for the securing and regulating [303] of property; and yet to suppose his land, whose property is to be regulated by the laws of the society, should be exempt from the jurisdiction of that government, to which he himself, the proprietor of the land, is a subject. By the same act therefore, whereby any one unites his person, which was before free, to any common-wealth; by the same he unites his possessions, which were before free, to it also; and they become, both of them, person and possession, subject to the government and dominion of that common-wealth, as long as it hath a being. Whoever therefore, from thenceforth, by inheritance, purchase, permission, or otherways, *enjoys any part of the land,* so annexed to, and under the government *of that common-wealth, must take it with the condition* it is under; that is, *of submitting to the government of the common-wealth,* under whose jurisdiction it is, as far forth as any subject of it.

§. 121.

But since the government has a direct jurisdiction only over the land, and reaches the possessor of it, (before he has actually incorporated himself in the society) only as he dwells upon, and enjoys that; the obligation any one is under, by virtue of such enjoyment, to *submit to the government, begins and ends with the enjoyment;* so that whenever the owner, who has given nothing but such a *tacit consent* to the government, will, by [304] donation, sale, or otherwise, quit the said possession, he is at liberty to go and incorporate himself into any other common-wealth; or to agree with others to begin a new one, *in vacuis locis,* in any part of the world, they can find free and unpossessed: whereas he, that has once, by actual agreement, and any *express* declaration, given his *consent* to be of any common-wealth, is, perpetually and indispensibly obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of nature; unless, by any calamity, the government he was under comes to be dissolved; or else by some public act cuts him off from being any longer a member of it.

§. 122.

But submitting to the laws of any country, living quietly, and enjoying privileges and protection under them, *makes not a man a member of that society:* this is only a local protection and homage due to and from all those, who, not being in a state of war, come within the territories belonging to any government, to all parts whereof the force of its laws extends. But this no more *makes a man a member of that society,* a perpetual subject of that common-wealth, than it would make a man a subject to another, in whose family he found it convenient to abide for some time; though, whilst he continued in it, he were obliged to comply with the laws, and submit to the government he [305] found there. And thus we see, that *foreigners,* by living all their lives under another government, and enjoying the privileges and protection of it, though they are bound, even in conscience, to submit to its administration, as far forth as any denison; yet do not thereby come to be *subjects or members of that common-wealth*. Nothing can make any man so, but his actually entering into it by positive engagement, and express promise and compact. This is that, which I think, concerning the beginning of political societies, and that *consent which makes any one a member* of any common-wealth.

CHAP. IX. Of the Ends of Political Society and Government.

§. 123.

IF man in the state of nature be so free, as has been said; if he be absolute lord of his own person and possessions, equal to the greatest, and subject to no body, why will he part with his freedom? why will he give up this empire, and subject himself to the dominion and controul of any other power? To which it is obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others: for all being kings as [306] much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very unsecure. This makes him willing to quit a condition, which, however free, is full of fears and continual dangers: and it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual *preservation* of their lives, liberties and estates, which I call by the general name, *property*.

§. 124.

The great and *chief end,* therefore, of men's uniting into common-wealths, and putting themselves under government, *is the preservation of their property*. To which in the state of nature there are many things wanting.

First, There wants an *established,* settled, known *law,* received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them: for though the law of nature be plain and intelligible to all rational creatures; yet men being biassed by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.

§. 125.

Secondly, In the state of nature there wants *a known and indifferent judge,* with authority to determine all differences according [307] to the established law: for every one in that state being both judge and executioner of the law of nature, men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat, in their own cases; as well as negligence, and unconcernedness, to make them too remiss in other men's.

§. 126.

Thirdly, In the state of nature there often wants *power* to back and support the sentence when right, and to *give* it due *execution*. They who by any injustice offended, will seldom fail, where they are able, by force to make good their injustice; such resistance many times makes the punishment dangerous, and frequently destructive, to those who attempt it.

§. 127.

Thus mankind, notwithstanding all the privileges of the state of nature, being but in an ill condition, while they remain in it, are quickly driven into society. Hence it comes to pass, that we seldom find any number of men live any time together in this state. The inconveniencies that they are therein exposed to, by the irregular and uncertain exercise of the power every man has of punishing the

transgressions of others, make them take sanctuary under the established laws of government, and therein seek *the preservation of their property.* It is this makes them so willingly give up every one his single power of punishing, to be [308] exercised by such alone, as shall be appointed to it amongst them; and by such rules as the community, or those authorized by them to that purpose, shall agree on. And in this we have the original *right and rise of both the legislative and executive power,* as well as of the governments and societies themselves.

§. 128.

For in the state of nature, to omit the liberty he has of innocent delights, a man has two powers.

The first is to do whatsoever he thinks fit for the preservation of himself, and others within the permission of the *law of nature:* by which law, common to them all, he and all the rest of *mankind are one community,* make up one society, distinct from all other creatures. And were it not for the corruption and vitiousness of degenerate men, there would be no need of any other; no necessity that men should separate from this great and natural community, and by positive agreements combine into smaller and divided associations.

The other power a man has in the state of nature, is the *power to punish the crimes* committed against that law. Both these he gives up, when he joins in a private, if I may so call it, or particular politic society, and incorporates into any common-wealth, separate from the rest of mankind.

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§. 129.

The first *power,* viz. *of doing whatsoever be thought for the preservation of himself,* and the rest of mankind, *he gives up* to be regulated by laws made by the society, so far forth as the preservation of himself, and the rest of that society shall require; which laws of the society in many things confine the liberty he had by the law of nature.

§. 130.

Secondly, The *power of punishing he wholly gives up,* and engages his natural force, (which he might before employ in the execution of the law of nature, by his own single authority, as he thought fit) to assist the executive power of the society, as the law thereof shall require: for being now in a new state, wherein he is to enjoy many conveniencies, from the labour, assistance, and society of others in the same community, as well as protection from its whole strength; he is to part also with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the society shall require; which is not only necessary, but just, since the other members of the society do the like.

§. 131.

But though men, when they enter into society, give up the equality, liberty, and executive power they had in the state of nature, into the hands of the society, to be so far disposed of by the legislative, as the good of the society shall require; yet it being [310] only with an intention in every one the better to preserve himself, his liberty and property; (for no rational creature can be supposed to change his condition with an intention to be worse) the power of the society, or *legislative* constituted by them, can *never be supposed to extend farther, than the common good;* but is obliged to secure every one's property, by providing against those three defects above mentioned, that made the state of nature so

unsafe and uneasy. And so whoever has the legislative or supreme power of any common-wealth, is bound to govern by established *standing laws,* promulgated and known to the people, and not by extemporary decrees; by *indifferent* and upright *judges,* who are to decide controversies by those laws; and to employ the force of the community at home, *only in the execution of such laws,* or abroad to prevent or redress foreign injuries, and secure the community from inroads and invasion. And all this to be directed to no other *end,* but the *peace, safety,* and *public good* of the people.

CHAP. X. Of the Forms of a Common-wealth.

§. 132.

THE majority having, as has been shewed, upon men's first uniting into society, the whole power of the community [311] naturally in them, may employ all that power in making laws for the community from time to time, and executing those laws by officers of their own appointing; and then the *form* of the government is a perfect *democracy:* or else may put the power of making laws into the hands of a few select men, and their heirs or successors; and then it is an *oligarchy:* or else into the hands of one man, and then it is a *monarchy:* if to him and his heirs, it is an *hereditary monarchy:* if to him only for life, but upon his death the power only of nominating a successor to return to them; an *elective monarchy*. And so accordingly of these the community may make compounded and mixed forms of government, as they think good. And if the legislative power be at first given by the majority to one or more persons only for their lives, or any limited time, and then the supreme power to revert to them again; when it is so reverted, the community may dispose of it again anew into what hands they please, and so constitute a new form of government: for the *form of government depending upon the placing the* supreme power, which is *the legislative,* it being impossible to conceive that an inferior power should prescribe to a superior, or any but the supreme make laws, according as the power of making laws is placed, such is the *form of the common-wealth*.

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§. 133.

By *common-wealth,* I must be understood all along to mean, not a democracy, or any form of government, but *any independent community,* which the *Latines* signified by the word *civitas,* to which the word which best answers in our language, is *common-wealth,* and most properly expresses such a society of men, which community or city in *English* does not; for there may be subordinate communities in a government; and city amongst us has a quite different notion from common-wealth: and therefore, to avoid ambiguity, I crave leave to use the word *common-wealth* in that sense, in which I find it used by king *James the first;* and I take it to be its genuine signification; which if any body dislike, I consent with him to change it for a better.

CHAP. XI. Of the Extent of the Legislative Power.

§. 134.

THE great end of men's entering into society, being the enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society; the *first and fundamental positive law* of all common-wealths *is the establishing of the legislative* power; as the *first and fundamental natural* [313] *law,* which is to govern even the legislative itself, *is the preservation of the society,* and (as far as will consist with the public good) of every person in it. This *legislative* is not only *the supreme power* of the common-wealth, but sacred and unalterable in the hands where the community have once placed it; nor can any edict of any body else, in what form soever conceived, or by what power soever backed, have the force and obligation of a *law,* which has not its *sanction from* that *legislative* which the public has chosen and appointed: for without this the law could not have that, which is absolutely necessary to its being a *law,* the consent of the society,* over whom no body can have a power to make laws, but by their own consent, and by authority received [314] from them; and therefore all the *obedience,* which by the most solemn ties any one can be obliged *to* pay, ultimately terminates in this *supreme power,* and is directed by those laws which it enacts: nor can any oaths to any foreign power whatsoever, or any domestic subordinate power, discharge any member of the society from his *obedience to the legislative,* acting pursuant to their trust; nor oblige him to any obedience contrary to the laws so enacted, or farther than they do allow; it being ridiculous to imagine one can be tied ultimately to *obey* any *power* in the society, which is not the *supreme*.

§. 135.

Though the *legislative,* whether placed in one or more, whether it be always in being, or only by intervals, though it be the *supreme* power in every common-wealth; yet,

First, It is *not,* nor can possibly be absolutely *arbitrary* over the lives and fortunes of the people: for it being but the joint power of every member of the society given up to that person, or assembly, which is legislator; it can be no more than those persons had in a state of nature before they entered into society, and gave up to the community: for no body can transfer to another more power than he has in himself; and no body has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another. A man, [315] as has been proved, cannot subject himself to the arbitrary power of another; and having in the state of nature no arbitrary power over the life, liberty, or possession of another, but only so much as the law of nature gave him for the preservation of himself, and the rest of mankind; this is all he doth, or can give up to the common-wealth, and by it to the *legislative power,* so that the legislative can have no more than this. Their power, in the utmost bounds of it, is *limited to the public good* of the society. It is a power, that hath no other end but preservation, and therefore can never* have a right to destroy, enslave, or designedly to impoverish the subjects. The obligations of the law of nature cease not in society, but only in many cases are drawn closer, and have by human laws [316] known penalties annexed to them, to inforce their observation. Thus the law of nature stands as an eternal rule to all men, *legislators* as well as others. The *rules* that they make for other men's actions, must, as well as their own and other men's actions, be conformable to the law of nature, *i. e.* to the will of God, of which that is a declaration, and the *fundamental law of nature being the preservation of mankind,* no human sanction can be good, or valid against it.

§. 136.

*Secondly,** The *legislative,* or supreme authority, cannot assume to its self a power to rule by extemporary arbitrary decrees, but *is bound to dispense justice,* and decide the rights of the subject *by promulgated standing laws, and known authorized judges:* for the law of nature being unwritten, and so no where to be found but in the minds of men, they who through passion or interest shall miscite, or misapply it, cannot so easily be convinced of their mistake where there is no established judge: and so it serves not, as it ought, to determine the rights, and fence the [317] properties of those that live under it, especially where every one is judge, interpreter, and executioner of it too, and that in his own case: and he that has right on his side, having ordinarily but his own single strength, hath not force enough to defend himself from injuries, or to punish delinquents. To avoid these inconveniencies, which disorder men's properties in the state of nature, men unite into societies, that they may have the united strength of the whole society to secure and defend their properties, and may have *standing rules* to bound it, by which every one may know what is his. To this end it is that men give up all their natural power to the society which they enter into, and the community put the legislative power into such hands as they think fit, with this trust, that they shall be governed by *declared laws,* or else their peace, quiet, and property will still be at the same uncertainty, as it was in the state of nature.

§. 137.

Absolute arbitrary power, or governing without *settled standing laws,* can neither of them consist with the ends of society and government, which men would not quit the freedom of the state of nature for, and tie themselves up under, were it not to preserve their lives, liberties and fortunes, and by *stated rules* of right and property to secure their peace and quiet. It cannot be supposed that they should intend, had they a power [318] so to do, to give to any one, or more, an *absolute arbitrary power* over their persons and estates, and put a force into the magistrate's hand to execute his unlimited will arbitrarily upon them. This were to put themselves into a worse condition than the state of nature, wherein they had a liberty to defend their right against the injuries of others, and were upon equal terms of force to maintain it, whether invaded by a single man, or many in combination. Whereas by supposing they have given up themselves to the *absolute arbitrary power* and will of a legislator, they have disarmed themselves, and armed him, to make a prey of them when he pleases; he being in a much worse condition, who is exposed to the arbitrary power of one man, who has the command of 100,000, than he that is exposed to the arbitrary power of 100,000 single men; no body being secure, that his will, who has such a command, is better than that of other men, though his force be 100,000 times stronger. And therefore, whatever form the commonwealth is under, the ruling power ought to govern by *declared* and *received laws,* and nor by extemporary dictates and undetermined resolutions: for then mankind will be in a far worse condition than in the state of nature, if they shall have armed one, or a few men with the joint power of a multitude, to force them to obey at pleasure the exorbitant [319] and unlimited decrees of their sudden thoughts, or unrestrained, and till that moment unknown wills, without having any measures set down which may guide and justify their actions: for all the power the government has, being only for the good of the society, as it ought not to be *arbitrary* and at pleasure, so it ought to be exercised by *established and promulgated laws;* that both the people may know their duty, and be safe and secure within the limits of the law; and the rulers too kept within their bounds, and not be tempted, by the power they have in their hands, to employ it to such purposes, and by such measures, as they would not have known, and own not willingly.

§. 138.

Thirdly, The *supreme power cannot take* from any man any part of his *property* without his own consent: for the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires, that the people should *have property,* without which they must be supposed to lose that, by entering into society, which was the end for which they entered

into it; too gross an absurdity for any man to own. *Men* therefore *in society having property,* they have such a right to the goods, which by the law of the community are their's, that no body hath a right to take their substance or any part of it from them, without their own consent: without [320] this they have no *property* at all; for I have truly no *property* in that, which another can by right take from me, when he pleases, against my consent. Hence it is a mistake to think, that the *supreme or legislative power* of any common-wealth, can do what it will, and dispose of the estates of the subject *arbitrarily,* or take any part of them at pleasure. This is not much to be feared in governments where the *legislative* consists, wholly or in part, in assemblies which are variable, whose members, upon the dissolution of the assembly, are subjects under the common laws of their country, equally with the rest. But in governments, where the *legislative* is in one lasting assembly always in being, or in one man, as in absolute monarchies, there is danger still, that they will think themselves to have a distinct interest from the rest of the community; and so will be apt to increase their own riches and power, by taking what they think fit from the people: for a man's *property* is not at all secure, tho' there be good and equitable laws to set the bounds of it between him and his fellow subjects, if he who commands those subjects have power to take from any private man, what part he pleases of his *property,* and use and dispose of it as he thinks good.

§. 139.

But *government,* into whatsoever hands it is put, being, as I have before shewed, intrusted with this condition, and *for this* [321] *end,* that men might have and secure their *properties;* the prince, or senate, however it may have power to make laws, for the regulating of *property* between the subjects one amongst another, yet can never have a power to take to themselves the whole, or any part of the subjects *property,* without their own consent: for this would be in effect to leave them no *property* at all. And to let us see, that even *absolute power,* where it is necessary, is *not arbitrary* by being absolute, but is still limited by that reason, and confined to those ends, which required it in some cases to be absolute, we need look no farther than the common practice of martial discipline: for the preservation of the army, and in it of the whole common-wealth, requires an *absolute obedience* to the command of every superior officer, and it is justly death to disobey or dispute the most dangerous or unreasonable of them; but yet we see, that neither the serjeant, that could command a soldier to march up to the mouth of a cannon, or stand in a breach, where he is almost sure to perish, can command that soldier to give him one penny of his money; nor the *general,* that can condemn him to death for deserting his post, or for not obeying the most desperate orders, can yet, with all his *absolute power* of life and death, dispose of one farthing of that soldier's estate, or seize one jot of his goods; whom yet he can command any thing, and [322] hang for the least disobedience; because such a blind obedience is necessary to that end, for which the commander has his power, *viz.* the preservation of the rest; but the disposing of his goods has nothing to do with it.

§. 140.

It is true, governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent, *i. e.* the consent of the majority, giving it either by themselves, or their representatives chosen by them: for if any one shall claim a *power to lay* and levy *taxes* on the people, by his own authority, and without such consent of the people, he thereby invades the *fundamental law of property,* and subverts the end of government: for what property have I in that, which another may by right take, when he pleases, to himself?

§. 141.

Fourthly, The *legislative cannot transfer the power of making laws* to any other hands: for it being but a delegated power from the people, they who have it cannot pass it over to others. The people alone can appoint the form of the common-wealth, which is by constituting the legislative, and appointing in whose hands that shall be. And when the people have said, We will submit to rules, and be governed by *laws* made by such men, and in such forms, no body else can [323] say other men shall make *laws* for them; nor can the people be bound by any *laws,* but such as are enacted by those whom they have chosen, and authorized to make *laws* for them. The power of the *legislative,* being derived from the people by a positive voluntary grant and institution, can be no other than what that positive grant conveyed, which being only to make *laws,* and not to make *legislators,* the *legislative* can have no power to transfer their authority of making laws, and place it in other hands.

§. 142.

These are the *bounds* which the trust, that is put in them by the society, and the law of God and nature, have *set to the legislative* power of every common-wealth, in all forms of government.

First, They are to govern by *promulgated established laws,* not to be varied in particular cases, but to have one rule for rich and poor, for the favourite at court, and the country man at plough.

Secondly, These *laws* also ought to be designed *for* no other end ultimately, but *the good of the people*.

Thirdly, They must *not raise taxes* on the *property of the people, without the consent of the people,* given by themselves, or their deputies. And this properly concerns only such governments where the *legislative* is always in being, or at least where the people have not reserved any part of the legislative to [324] deputies, to be from time to time chosen by themselves.

Fourthly, The *legislative* neither must *nor can transfer the power of making laws* to any body else, or place it any where, but where the people have.

CHAP. XII. Of the Legislative, Executive, and Federative Power of the Common-wealth.↩

§. 143.

THE *legislative* power is that, which has a right *to direct how the force of the common-wealth* shall be employed for preserving the community and the members of it. But because those laws which are constantly to be executed, and whose force is always to continue, may be made in a little time; therefore there is no need, that the *legislative* should be always in being, not having always business to do. And because it may be too great a temptation to human frailty, apt to grasp at power, for the same persons, who have the power of making laws, to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they make, and suit the law, both in its making, and execution, to their own private advantage, and thereby come to have a distinct interest from the rest of the community, [325] contrary to the end of society and government: therefore in well-ordered common-wealths, where the good of the whole is so considered, as it ought, the *legislative* power is put into the hands of divers persons, who duly assembled, have by themselves, or jointly with others, a power to make laws, which when they have done, being separated again, they are themselves subject to the laws they have made; which is a new and near tie upon them, to take care, that they make them for the public good.

§. 144.

But because the laws, that are at once, and in a short time made, have a constant and lasting force, and need a *perpetual execution,* or an attendance thereunto; therefore it is necessary there should be a *power always in being,* which should see to the *execution* of the laws that are made, and remain in force. And thus the *legislative* and *executive power* come often to be separated.

§. 145.

There is another *power* in every common-wealth, which one may call *natural,* because it is that which answers to the power every man naturally had before he entered into society: for though in a common-wealth the members of it are distinct persons still in reference to one another, and as such are governed by the laws of the society; yet in reference to the rest of mankind, they make one body, which is, as every member of it before was, still in the state of [326] nature with the rest of mankind. Hence it is, that the controversies that happen between any man of the society with those that are out of it, are managed by the public; and an injury done to a member of their body, engages the whole in the reparation of it. So that under this consideration, the whole community is one body in the state of nature, in respect of all other states or persons out of its community.

§. 146.

This therefore contains the power of war and peace, leagues and alliances, and all the transactions, with all persons and communities without the common-wealth, and may be called *federative,* if any one pleases. So the thing be understood, I am indifferent as to the name.

§. 147.

These two powers, *executive* and *federative,* though they be really distinct in themselves, yet one comprehending the *execution* of the municipal laws of the society *within* its self, upon all that are parts

of it; the other the management of the *security and interest of the public without,* with all those that it may receive benefit or damage from, yet they are always almost united. And though this *federative power* in the well or ill management of it be of great moment to the common-wealth, yet it is much less capable to be directed by antecedent, standing, positive laws, than the *executive;* and so must necessarily be left to the prudence and wisdom [327] of those, whose hands it is in, to be managed for the public good: for the *laws* that concern subjects one amongst another, being to direct their actions, may well enough *precede* them. But what is to be done in reference to *foreigners,* depending much upon their actions, and the variation of designs and interests, must be *left* in great part *to* the *prudence* of those, who have this power committed to them, to be managed by the best of their skill, for the advantage of the common-wealth.

§. 148.

Though, as I said, the *executive* and *federative power* of every community be really distinct in themselves, yet they are hardly to be separated, and placed at the same time, in the hands of distinct persons: for both of them requiring the force of the society for their exercise, it is almost impracticable to place the force of the common-wealth in distinct, and not subordinate hands; or that the *executive* and *federative power* should be *placed* in persons, that might act separately, whereby the force of the public would be under different commands: which would be apt some time or other to cause disorder and ruin.

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CHAP. XIII. Of the Subordination of the Powers of the Common-wealth.↩

§. 149.

THough in a constituted common-wealth, standing upon its own basis, and acting according to its own nature, that is, acting for the preservation of the community, there can be but *one supreme power,* which is *the legislative,* to which all the rest are and must be subordinate, yet the legislative being only a fiduciary power to act for certain ends, there remains still *in the people a supreme power to remove or alter the legislative,* when they find the *legislative* act contrary to the trust reposed in them: for all *power given with trust* for the attaining an *end,* being limited by that end, whenever that *end* is manifestly neglected, or opposed, the *trust* must necessarily be *forfeited,* and the power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security. And thus the *community* perpetually *retains a supreme power* of saving themselves from the attempts and designs of any body, even of their legislators, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the liberties and properties of the subject: for no man or society of men, having a power to deliver up their *preservation,* [329] or consequently the means of it, to the absolute will and arbitrary dominion of another; when ever any one shall go about to bring them into such a slavish condition, they will always have a right to preserve, what they have not a power to part with; and to rid themselves of those, who invade this fundamental, sacred, and unalterable law of *self-preservation,* for which they entered into society. And thus the *community* may be said in this respect to be *always the supreme power,* but not as considered under any form of government, because this power of the people can never take place till the government be dissolved.

§. 150.

In all cases, whilst the government subsists, the *legislative is the supreme power:* for what can give laws to another, must needs be superior to him; and since the legislative is no otherwise legislative of the society, but by the right it has to make laws for all the parts, and for every member of the society, prescribing rules to their actions, and giving power of execution, where they are transgressed, the *legislative* must needs be the *supreme,* and all other powers, in any members or parts of the society, derived from and subordinate to it.

§. 151.

In some common-wealths, where the *legislative* is not always in being, and the *executive* is vested in a single person, who has also a share in the legislative; there that single [330] person in a very tolerable sense may also be called *supreme:* not that he has in himself all the supreme power, which is that of law-making; but because he has in him the *supreme execution,* from whom all inferior magistrates derive all their several subordinate powers, or at least the greatest part of them: having also no legislative superior to him, there being no law to be made without his consent, which cannot be expected should ever subject him to the other part of the legislative, *be* is properly enough in this sense *supreme*. But yet it is to be observed, that tho' *oaths of allegiance* and fealty are taken to him, it is not to him as supreme legislator, but as *supreme executor* of the law, made by a joint power of him with others; *allegiance* being nothing but an *obedience according to law,* which when he violates, he has no right to obedience, nor can claim it otherwise than as the public person vested with the power of the law, and so is to be considered as the image, phantom, or representative of the common-wealth, acted by the will of the society, declared in its laws; and thus he has no will, no power, but that of the law. But when he quits this representation, this public will, and acts by his own private will, he degrades

himself, and is but a single private person without power, and without will, that has any right to *obedience;* the members [331] owing no *obedience* but to the public will of the society.

§. 152.

The *executive power,* placed any where but in a person that has also a share in the legislative, is visibly subordinate and accountable to it, and may be at pleasure changed and displaced; so that it is not the *supreme executive power,* that is exempt from *subordination,* but the *supreme executive power* vested in one, who having a share in the legislative, has no distinct superior legislative to be subordinate and accountable to, farther than he himself shall join and consent; so that he is no more subordinate than he himself shall think fit, which one may certainly conclude will be but very little. Of other *ministerial and subordinate powers* in a common-wealth, we need not speak, they being so multiplied with infinite variety, in the different customs and constitutions of distinct common-wealths, that it is impossible to give a particular account of them all. Only thus much, which is necessary to our present purpose, we may take notice of concerning them, that they have no manner of authority, any of them, beyond what is by positive grant and commission delegated to them, and are all of them accountable to some other power in the common-wealth.

§. 153.

It is not necessary, no, nor so much as convenient, that the *legislative* should be *always in being;* but absolutely necessary that [332] the executive power should, because there is not always need of new laws to be made, but always need of execution of the laws that are made. When the *legislative* hath put the *execution* of the laws, they make, into other hands, they have a power still to resume it out of those hands, when they find cause, and to punish for any mal-administration against the laws. The same holds also in regard of the *federative* power, that and the *executive* being both *ministerial* and *subordinate to the legislative,* which, as has been shewed, in a constituted common-wealth is the supreme. The *legislative* also in this case being supposed to consist of several persons, (for if it be a single person, it cannot but be always in being, and so will, as supreme, naturally have the supreme executive power, together with the legislative) may *assemble, and exercise their legislature,* at the times that either their original constitution, or their own adjournment, appoints, or when they please; if neither of these hath appointed any time, or there be no other way prescribed to convoke them: for the supreme power being placed in them by the people, it is always in them, and they may exercise it when they please, unless by their original constitution they are limited to certain seasons, or by an act of their supreme power they have adjourned to a certain time; and when that time comes, they have a right to *assemble* and act again.

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§. 154.

If the *legislative,* or any part of it, be made up of *representatives* chosen for that time by the people, which afterwards return into the ordinary state of subjects, and have no share in the legislature but upon a new choice, this power of chusing must also be exercised by the people, either at certain appointed seasons, or else when they are summoned to it; and in this latter case, the power of convoking the legislative is ordinarily placed in the executive, and has one of these two limitations in respect of time: that either the original constitution requires their *assembling* and *acting* at certain intervals, and then the executive power does nothing but ministerially issue directions for their electing and assembling, according to due forms; or else it is left to his prudence to call them by new elections, when the occasions or exigencies of the public require the amendment of old, or making of

new laws, or the redress or prevention of any inconveniencies, that lie on, or threaten the people.

§. 155.

It may be demanded here, What if the executive power, being possessed of the force of the commonwealth, shall make use of that force to hinder the *meeting* and *acting of the legislative,* when the original constitution, or the public exigencies require it? I say, using force upon the people without authority, and contrary to the trust put in [334] him that does so, is a state of war with the people, who have a right to *reinstate* their *legislative in the exercise* of their power: for having erected a legislative, with an intent they should exercise the power of making laws, either at certain set times, or when there is need of it, when they are hindered by any force from what is so necessary to the society, and wherein the safety and preservation of the people consists, the people have a right to remove it by force. In all states and conditions, the true remedy of *force* without authority, is to oppose *force* to it. The use of *force* without authority, always puts him that uses it into a *state of war,* as the aggressor, and renders him liable to be treated accordingly.

§. 156.

The *power of assembling and dismissing the legislative,* placed in the executive, gives not the executive a superiority over it, but is a fiduciary trust placed in him, for the safety of the people, in a case where the uncertainty and variableness of human affairs could not bear a steady fixed rule: for it not being possible, that the first framers of the government should, by any foresight, be so much masters of future events, as to be able to prefix so just periods of return and duration to the *assemblies of the legislative,* in all times to come, that might exactly answer all the exigencies of the commonwealth; the best remedy could be found for this defect, [335] was to trust this to the prudence of one who was always to be present, and whose business it was to watch over the public good. Constant *frequent meetings of the legislative,* and long continuations of their assemblies, without necessary occasion, could not but be burdensome to the people, and must necessarily in time produce more dangerous inconveniencies, and yet the quick turn of affairs might be sometimes such as to need their present help: any delay of their *convening* might endanger the public; and sometimes too their business might be so great, that the limited time of their sitting might be too short for their work, and rob the public of that benefit which could be had only from their mature deliberation. What then could be done in this case to prevent the community from being exposed some time or other to eminent hazard, on one side or the other, by fixed intervals and periods, set to the *meeting and acting of the legislative,* but to intrust it to the prudence of some, who being present, and acquainted with the state of public affairs, might make use of this prerogative for the public good? and where else could this be so well placed as in his hands, who was intrusted with the execution of the laws for the same end? Thus supposing the regulation of times for the *assembling and sitting of the legislative,* not settled by the original constitution, it naturally fell into the hands of the [336] executive, not as an arbitrary power depending on his good pleasure, but with this trust always to have it exercised only for the public weal, as the occurrences of times and change of affairs might require. Whether *settled periods of their convening,* or *a liberty* left to the prince for *convoking the legislative,* or perhaps a mixture of both, hath the least inconvenience attending it, it is not my business here to inquire, but only to shew, that though the executive power may have the prerogative of *convoking* and *dissolving* such *conventions of the legislative,* yet it is not thereby superior to it.

§. 157.

Things of this world are in so constant a flux, that nothing remains long in the same state. Thus people, riches, trade, power, change their stations, flourishing mighty cities come to ruin, and prove in times

neglected desolate corners, whilst other unfrequented places grow into populous countries, filled with wealth and inhabitants. But things not always changing equally, and private interest often keeping up customs and privileges, when the reasons of them are ceased, it often comes to pass, that in governments, where part of the legislative consists of *representatives* chosen by the people, that in tract of time this *representation* becomes very *unequal* and disproportionate to the reasons it was at first established upon. To what gross absurdities the following of custom, [337] when reason has left it, may lead, we may be satisfied, when we see the bare name of a town, of which there remains not so much as the ruins, where scarce so much housing as a sheepcote, or more inhabitants than a shepherd is to be found, sends *as many representatives* to the grand assembly of law-makers, as a whole county numerous in people, and powerful in riches. This strangers stand amazed at, and every one must confess needs a remedy; tho' most think it hard to find one, because the constitution of the legislative being the original and supreme act of the society, antecedent to all positive laws in it, and depending wholly on the people, no inferior power can alter it. And therefore the *people,* when the *legislative* is once constituted, *having,* in such a government as we have been speaking of, *no power* to act as long as the government stands; this inconvenience is thought incapable of a remedy.

§. 158.

Salus populi suprema lex, is certainly so just and fundamental a rule, that he, who sincerely follows it, cannot dangerously err. If therefore the executive, who has the power of convoking the legislative, observing rather the true proportion, than fashion of *representation,* regulates, not by old custom, but true reason, the *number of members,* in all places that have a right to be distinctly represented, which no part of the people however [338] incorporated can pretend to, but in proportion to the assistance which it affords to the public, it cannot be judged to have set up a new legislative, but to have restored the old and true one, and to have rectified the disorders which succession of time had insensibly, as well as inevitably introduced: For it being the interest as well as intention of the people, to have a fair and *equal representative;* whoever brings it nearest to that, is an undoubted friend to, and establisher of the government, and cannot miss the consent and approbation of the community; *prerogative* being nothing but a power, in the hands of the prince, to provide for the public good, in such cases, which depending upon unforeseen and uncertain occurrences, certain and unalterable laws could not safely direct; whatsoever shall be done manifestly for the good of the people, and the establishing the government upon its true foundations, is, and always will be, just *prerogative*. The power of erecting new corporations, and therewith *new representatives,* carries with it a supposition, that in time the *measures of representation* might vary, and those places have a just right to be represented which before had none; and by the same reason, those cease to have a right, and be too inconsiderable for such a privilege, which before had it. 'Tis not a change from the present state, which perhaps corruption or decay has introduced, that makes [339] an inroad upon the government, but the tendency of it to injure or oppress the people, and to set up one part or party, with a distinction from, and an unequal subjection of the rest. Whatsoever cannot but be acknowledged to be of advantage to the society, and people in general, upon just and lasting measures, will always, when done, justify itself; and whenever the people shall chuse their *representatives upon* just and undeniably *equal measures,* suitable to the original frame of the government, it cannot be doubted to be the will and act of the society, whoever permitted or caused them so to do.

CHAP. XIV. Of PREROGATIVE.↩

§. 159.

WHERE the legislative and executive power are in distinct hands, (as they are in all moderated monarchies, and well-framed governments) there the good of the society requires, that several things should be left to the discretion of him that has the executive power: for the legislators not being able to foresee, and provide by laws, for all that may be useful to the community, the executor of the laws, having the power in his hands, has by the common law of nature a right to make use of it for the good of the society, in many cases, where the municipal [340] law has given no direction, till the legislative can conveniently be assembled to provide for it. Many things there are, which the law can by no means provide for; and those must necessarily be left to the discretion of him that has the executive power in his hands, to be ordered by him as the public good and advantage shall require: nay, it is fit that the laws themselves should in some cases give way to the executive power, or rather to this fundamental law of nature and government, *viz*. That as much as may be, *all* the members of the society are to be preserved: for since many accidents may happen, wherein a strict and rigid observation of the laws may do harm; (as not to pull down an innocent man's house to stop the fire, when the next to it is burning) and a man may come somtimes within the reach of the law, which makes no distinction of persons, by an action that may deserve reward and pardon; 'tis fit the ruler should have a power, in many cases, to mitigate the severity of the law, and pardon some offenders: for the *end of government* being *the preservation of all,* as much as may be, even the guilty are to be spared, where it can prove no prejudice to the innocent.

§. 160.

This power to act according to discretion, for the public good, without the prescription of the law, and sometimes even against it, *is* that which is called *prerogative:* for since in some governments the lawmaking [341] power is not always in being, and is usually too numerous, and so too slow, for the dispatch requisite to execution; and because also it is impossible to foresee, and so by laws to provide for, all accidents and necessities that may concern the public, or to make such laws as will do no harm, if they are executed with an inflexible rigour, on all occasions, and upon all persons that may come in their way; therefore there is a latitude left to the executive power, to do many things of choice which the laws do not prescribe.

§. 161.

This power, whilst employed for the benefit of the community, and suitably to the trust and ends of the government, *is undoubted prerogative,* and never is questioned: for the people are very seldom or never scrupulous or nice in the point; they are far from examining *prerogative,* whilst it is in any tolerable degree employed for the use it was meant, that is, for the good of the people, and not manifestly against it: but if there comes to be a *question* between the executive power and the people, about a thing claimed as a *prerogative;* the tendency of the exercise of such *prerogative* to the good or hurt of the people, will easily decide that question.

§. 162.

It is easy to conceive, that in the infancy of governments, when commonwealths differed little from families in number of people, they differed from them too but little in number of laws: and the governors, [342] being as the fathers of them, watching over them for their good, the government was

almost all *prerogative*. A few established laws served the turn, and the discretion and care of the ruler supplied the rest. But when mistake or flattery prevailed with weak princes to make use of this power for private ends of their own, and not for the public good, the people were fain by express laws to get prerogative determined in those points wherein they found disadvantage from it: and thus declared *limitations of prerogative* were by the people found necessary in cases which they and their ancestors had left, in the utmost latitude, to the wisdom of those princes who made no other but a right use of it, that is, for the good of their people.

§. 163.

And therefore they have a very wrong notion of government, who say, that the people have *incroached upon the prerogative,* when they have got any part of it to be defined by positive laws: for in so doing they have not pulled from the prince any thing that of right belonged to him, but only declared, that that power which they indefinitely left in his or his ancestors hands, to be exercised for their good, was not a thing which they intended him when he used it otherwise: for the end of government being the good of the community, whatsoever alterations are made in it, tending to that end, cannot be an *incroachment* upon any body, since no body in [343] government can have a right tending to any other end: and those only are *incroachments* which prejudice or hinder the public good. Those who say otherwise, speak as if the prince had a distinct and separate interest from the good of the community, and was not made for it; the root and source from which spring almost all those evils and disorders which happen in kingly governments. And indeed, if that be so, the people under his government are not a society of rational creatures, entered into a community for their mutual good; they are not such as have set rulers over themselves, to guard, and promote that good; but are to be looked on as an herd of inferior creatures under the dominion of a master, who keeps them and works them for his own pleasure or profit. If men were so void of reason, and brutish, as to enter into society upon such terms, *prerogative* might indeed be, what some men would have it, an arbitrary power to do things hurtful to the people.

§. 164.

But since a rational creature cannot be supposed, when free, to put himself into subjection to another, for his own harm; (though, where he finds a good and wise ruler, he may not perhaps think it either necessary or useful to set precise bounds to his power in all things) *prerogative* can be nothing but the people's permitting their rulers to do several things, of their own free choice, where [344] the law was silent, and sometimes too against the direct letter of the law, for the public good; and their acquiescing in it when so done: for as a good prince, who is mindful of the trust put into his hands, and careful of the good of his people, cannot have too much *prerogative,* that is, power to do good; so a weak and ill prince, who would claim that power which his predecessors exercised without the direction of the law, as a prerogative belonging to him by right of his office, which he may exercise at his pleasure, to make or promote an interest distinct from that of the public, gives the people an occasion to claim their right, and limit that power, which, whilst it was exercised for their good, they were content should be tacitly allowed.

§. 165.

And therefore he that will look into the *history of England,* will find, that *prerogative* was always *largest* in the hands of our wisest and best princes; because the people, observing the whole tendency of their actions to be the public good, contested not what was done without law to that end: or, if any human frailty or mistake (for princes are but men, made as others) appeared in some small declinations from that end; yet 'twas visible, the main of their conduct tended to nothing but the care

of the public. The people therefore, finding reason to be satisfied with these princes, whenever they acted without, or contrary to the letter of the law, acquiesced in [345] what they did, and, without the least complaint, let them inlarge their *prerogative* as they pleased, judging rightly, that they did nothing herein to the prejudice of their laws, since they acted conformable to the foundation and end of all laws, the public good.

§. 166.

Such god-like princes indeed had some title to arbitrary power by that argument, that would prove absolute monarchy the best government, as that which God himself governs the universe by; because such kings partake of his wisdom and goodness. Upon this is founded that saying, That the reigns of good princes have been always most dangerous to the liberties of their people: for when their successors, managing the government with different thoughts, would draw the actions of those good rulers into precedent, and make them the standard of their *prerogative,* as if what had been done only for the good of the people was a right in them to do, for the harm of the people, if they so pleased; it has often occasioned contest, and sometimes public disorders, before the people could recover their original right, and get that to be declared not to be *prerogative,* which truly was never so; since it is impossible that any body in the society should ever have a right to do the people harm; though it be very possible, and reasonable, that the people should not go about to set any bounds to the *prerogative* of those kings, [346] or rulers, who themselves transgressed not the bounds of the public good: for *prerogative is nothing but the power of doing public good without a rule*.

§. 167.

The power of *calling parliaments* in *England,* as to precise time, place, and duration, is certainly a *prerogative* of the king, but still with this trust, that it shall be made use of for the good of the nation, as the exigencies of the times, and variety of occasions, shall require: for it being impossible to foresee which should always be the fittest place for them to assemble in, and what the best season; the choice of these was left with the executive power, as might be most subservient to the public good, and best suit the ends of parliaments.

§. 168.

The old question will be asked in this matter of *prerogative,* But *who shall be judge* when this power is made a right use of? I answer: between an executive power in being, with such a prerogative, and a legislative that depends upon his will for their convening, there can be no *judge on earth;* as there can be none between the legislative and the people, should either the executive, or the legislative, when they have got the power in their hands, design, or go about to enslave or destroy them. The people have no other remedy in this, as in all other cases where they have no judge on earth, but to *appeal to heaven:* for the rulers, in such attempts, [347] exercising a power the people never put into their hands, (who can never be supposed to consent that any body should rule over them for their harm) do that which they have not a right to do. And where the body of the people, or any single man, is deprived of their right, or is under the exercise of a power without right, and have no appeal on earth, then they have a liberty to appeal to heaven, whenever they judge the cause of sufficient moment. And therefore, though the *people cannot* be *judge,* so as to have, by the constitution of that society, any superior power, to determine and give effective sentence in the case; yet they have, by a law antecedent and paramount to all positive laws of men, reserved that ultimate determination to themselves which belongs to all mankind, where there lies no appeal on earth, *viz.* to judge, whether they have just cause to make their appeal to heaven. And this judgment they cannot part with, it being out of a man's power so to submit himself to another, as to give him a liberty to destroy him; God and nature never allowing

a man so to abandon himself, as to neglect his own preservation: and since he cannot take away his own life, neither can he give another power to take it. Nor let any one think, this lays a perpetual foundation for disorder; for this operates not, till the inconveniency is so great, that the majority [348] feel it, and are weary of it, and find a necessity to have it amended. But this the executive power, or wise princes, never need come in the danger of: and it is the thing, of all others, they have most need to avoid, as of all others the most perilous.

CHAP. XV. Of Paternal, Political, and Despotical Power, considered together.↩

§. 169.

THOUGH I have had occasion to speak of these separately before, yet the great mistakes of late about government, having, as I suppose, arisen from confounding these distinct powers one with another, it may not, perhaps, be amiss to consider them here together.

§. 170.

First, then, *Paternal* or *parental power* is nothing but that which parents have over their children, to govern them for the children's good, till they come to the use of reason, or a state of knowledge, wherein they may be supposed capable to understand that rule, whether it be the law of nature, or the municipal law of their country, they are to govern themselves by: capable, I say, to know it, as well as several others, who live as freemen under that law. The affection and tenderness which God hath planted in the breast of parents towards their children, [349] makes it evident, that this is not intended to be a severe arbitrary government, but only for the help, instruction, and preservation of their offspring. But happen it as it will, there is, as I have proved, no reason why it should be thought to extend to life and death, at any time, over their children, more than over any body else; neither can there be any pretence why this *parental power* should keep the child, when grown to a man, in subjection to the will of his parents, any farther than having received life and education from his parents, obliges him to respect, honour, gratitude, assistance and support, all his life, to both father and mother. And thus, 'tis true, the *paternal* is a natural *government,* but not at all extending itself to the ends and jurisdictions of that which is political. The *power of the father doth not reach* at all to the *property* of the child, which is only in his own disposing.

§. 171.

Secondly, Political power is that power, which every man having in the state of nature, has given up into the hands of the society, and therein to the governors, whom the society hath set over itself, with this express or tacit trust, that it shall be employed for their good, and the preservation of their property: now this *power,* which every man has *in the state of nature,* and which he parts with to the society in all such cases where the society can secure him, is to use such means, for the preserving of his own property, [350] as he thinks good, and nature allows him; and to punish the breach of the law of nature in others, so as (according to the best of his reason) may most conduce to the preservation of himself, and the rest of mankind. So that the *end and measure of this power,* when in every man's hands in the state of nature, being the preservation of all of his society, that is, all mankind in general, it can have no other *end or measure,* when in the hands of the magistrate, but to preserve the members of that society in their lives, liberties, and possessions; and so cannot be an absolute, arbitrary power over their lives and fortunes, which are as much as possible to be preserved; but a *power to make laws,* and annex such *penalties* to them, as may tend to the preservation of the whole, by cutting off those parts, and those only, which are so corrupt, that they threaten the sound and healthy, without which no severity is lawful. And this *power has its original only from compact* and agreement, and the mutual consent of those who make up the community.

§. 172.

Thirdly, Despotical power is an absolute, arbitrary power one man has over another, to take away his

life, whenever he pleases. This is a power, which neither nature gives, for it has made no such distinction between one man and another; nor compact can convey: for man not having such an arbitrary power over his own life, cannot give another man such a power over it; but it is [351] the *effect only of forfeiture,* which the aggressor makes of his own life, when he puts himself into the state of war with another: for having quitted reason, which God hath given to be the rule betwixt man and man, and the common bond whereby human kind is united into one fellowship and society; and having renounced the way of peace which that teaches, and made use of the force of war, to compass his unjust ends upon another, where he has no right; and so revolting from his own kind to that of beasts, by making force, which is their's, to be his rule of right, he renders himself liable to be destroyed by the injured person, and the rest of mankind, that will join with him in the execution of justice, as any other wild beast, or noxious brute, with whom mankind can have neither society nor security*. And thus *captives,* taken in a just and lawful war, and such only, are *subject to a despotical power,* which, as it arises not from compact, so neither is it capable of any, but is the state of war continued: for what compact can be made with a man that is not master of his own life? what condition can he perform? and if he be once allowed to be master of his own life, the *despotical, arbitrary power* of his master ceases. He that is master of himself, and his own life, has a right too to the means of preserving it; so that *as soon as* [352] *compact enters, slavery ceases,* and he so far quits his absolute power, and puts an end to the state of war, who enters into conditions with his captive.

§. 173.

Nature gives the first of these, *viz. paternal power to parents* for the benefit of their children during their minority, to supply their want of ability, and understanding how to manage their property. (By *property* I must be understood here, as in other places, to mean that property which men have in their persons as well as goods.) *Voluntary agreement gives* the second, *viz. political power to governors* for the benefit of their subjects, to secure them in the possession and use of their properties. And *forfeiture gives* the third *despotical power to lords* for their own benefit, over those who are stripped of all property.

§. 174.

He, that shall consider the distinct rise and extent, and the different ends of these several powers, will plainly see, that *paternal power* comes as far short of that of the *magistrate,* as *despotical* exceeds it; and that *absolute dominion,* however placed, is so far from being one kind of civil society, that it is as inconsistent with it, as slavery is with property. *Paternal power* is only where minority makes the child incapable to manage his property; *political,* where men have property in their own disposal; and *despotical,* over such as have no property at all.

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CHAP. XVI. Of CONQUEST.

§. 175.

THough governments can originally have no other rise than that before mentioned, nor *polities* be *founded on* any thing but *the consent of the people;* yet such have been the disorders ambition has filled the world with, that in the noise of war, which makes so great a part of the history of mankind, *this consent* is little taken notice of: and therefore many have mistaken the force of arms for the consent of the people, and reckon conquest as one of the originals of government. But *conquest* is as far from setting up any government, as demolishing an house is from building a new one in the place. Indeed, it often makes way for a new frame of a common-wealth, by destroying the former; but, without the consent of the people, can never erect a new one.

§. 176.

That the *aggressor,* who puts himself into the state of war with another, and *unjustly invades* another man's right, *can,* by such an unjust war, *never* come to *have a right over the conquered,* will be easily agreed by all men, who will not think, that robbers and pyrates have a right of empire over whomsoever they have force enough to master; or that men are bound by promises, [354] which unlawful force extorts from them. Should a robber break into my house, and with a dagger at my throat make me seal deeds to convey my estate to him, would this give him any title? Just such a title, by his sword, has an *unjust conqueror,* who forces me into submission. The injury and the crime is equal, whether committed by the wearer of a crown, or some petty villain. The title of the offender, and the number of his followers, make no difference in the offence, unless it be to aggravate it. The only difference is, great robbers punish little ones, to keep them in their obedience; but the great ones are rewarded with laurels and triumphs, because they are too big for the weak hands of justice in this world, and have the power in their own possession, which should punish offenders. What is my remedy against a robber, that so broke into my house? *Appeal* to the law for justice. But perhaps justice is denied, or I am crippled and cannot stir, robbed and have not the means to do it. If God has taken away all means of seeking remedy, there is nothing left but patience. But my son, when able, may seek the relief of the law, which I am denied: he or his son may renew his *appeal,* till he recover his right. But the conquered, or their children, have no court, no arbitrator on earth to appeal to. Then they may *appeal,* as *Jephtha* did, *to heaven,* and repeat [355] their *appeal* till they have recovered the native right of their ancestors, which was, to have such a legislative over them, as the majority should approve, and freely acquiesce in. If it be objected, This would cause endless trouble; I answer, no more than justice does, where she lies open to all that appeal to her. He that troubles his neighbour without a cause, is punished for it by the justice of the court he appeals to: and he that *appeals to heaven* must be sure he has right on his side; and a right too that is worth the trouble and cost of the appeal, as he will answer at a tribunal that cannot be deceived, and will be sure to retribute to every one according to the mischiefs he hath created to his fellow subjects; that is, any part of mankind: from whence it is plain, that he that *conquers in an unjust war can thereby have no title to the subjection and obedience of the conquered*.

§. 177.

But supposing victory favours the right side, let us consider a *conqueror in a lawful war,* and see what power he gets, and over whom.

First, It is plain he *gets no power by his conquest over those that conquered with him*. They that

fought on his side cannot suffer by the conquest, but must at least be as much freemen as they were before. And most commonly they serve upon terms, and on condition to share with their leader, and enjoy a part of the spoil, and other advantages [356] that attend the conquering sword; or at least have a part of the subdued country bestowed upon them. And *the conquering people are not, I hope, to be slaves by conquest,* and wear their laurels only to shew they are sacrifices to their leaders triumph. They that found absolute monarchy upon the title of the sword, make their heroes, who are the founders of such monarchies, arrant *Draw-can-sirs,* and forget they had any officers and soldiers that fought on their side in the battles they won, or assisted them in the subduing, or shared in possessing, the countries they mastered. We are told by some, that the *English* monarchy is founded in the *Norman* conquest, and that our princes have thereby a title to absolute dominion: which if it were true, (as by the history it appears otherwise) and that *William* had a right to make war on this island; yet his dominion by conquest could reach no farther than to the *Saxons* and *Britons,* that were then inhabitants of this country. The *Normans* that came with him, and helped to conquer, and all descended from them, are freemen, and no subjects by conquest; let that give what dominion it will. And if I, or any body else, shall claim freedom, as derived from them, it will be very hard to prove the contrary: and it is plain, the law, that has made no distinction between the one and the other, intends not there [357] should be any difference in their freedom or privileges.

§. 178.

But supposing, which seldom happens, that the conquerors and conquered never incorporate into one people, under the same laws and freedom; let us see next *what power a lawful conqueror has over the subdued:* and that I say is purely despotical. He has an absolute power over the lives of those who by an unjust war have forfeited them; but not over the lives or fortunes of those who engaged not in the war, nor over the possessions even of those who were actually engaged in it.

§. 179.

Secondly, I say then the *conqueror* gets no power but only over those who have actually assisted, concurred, or consented to that unjust force that is used against him: for the people having given to their governors no power to do an unjust thing, such as is to make an unjust war, (for they never had such a power in themselves) they ought not to be charged as guilty of the violence and unjustice that is committed in an unjust war, any farther than they actually abet it; no more than they are to be thought guilty of any violence or oppression their governors should use upon the people themselves, or any part of their fellow subjects, they having impowered them no more to the one than to the other. Conquerors, it is true, seldom trouble themselves to make the distinction, [358] but they willingly permit the confusion of war to sweep all together: but yet this alters not the right; for the conquerors power over the lives of the conquered, being only because they have used force to do, or maintain an injustice, he can have that power only over those who have concurred in that force; all the rest are innocent; and he has no more title over the people of that country, who have done him no injury, and so have made no forfeiture of their lives, than he has over any other, who, without any injuries or provocations, have lived upon fair terms with him.

§. 180.

Thirdly, The *power a conqueror gets* over those he overcomes *in a just war, is perfectly despotical:* he has an absolute power over the lives of those, who, by putting themselves in a state of war, have forfeited them; but he has not thereby a right and title to their possessions. This I doubt not, but at first sight will seem a strange doctrine, it being so quite contrary to the practice of the world; there being nothing more familiar in speaking of the dominion of countries, than to say such an one conquered it;

as if conquest, without any more ado, conveyed a right of possession. But when we consider, that the practice of the strong and powerful, how universal soever it may be, is seldom the rule of right, however it be one part of the subjection of the conquered, [359] not to argue against the conditions cut out to them by the conquering sword.

§. 181.

Though in all war there be usually a complication of force and damage, and the aggressor seldom fails to harm the estate, when he uses force against the persons of those he makes war upon; yet it is the use of force only that puts a man into the state of war: for whether by force he begins the injury, or else having quietly, and by fraud, done the injury, he refuses to make reparation, and by force maintains it, (which is the same thing, as at first to have done it by force) it is the unjust use of force that makes the war: for he that breaks open my house, and violently turns me out of doors; or having peaceably got in, by force keeps me out, does in effect the same thing; supposing we are in such a state, that we have no common judge on earth, whom I may appeal to, and to whom we are both obliged to submit: for of such I am now speaking. It is the *unjust use of force* then, that *puts a man into the state of war* with another; and thereby he that is guilty of it makes a forfeiture of his life: for quitting reason, which is the rule given between man and man, and using force, the way of beasts, he becomes liable to be destroyed by him he uses force against, as any savage ravenous beast, that is dangerous to his being.

[360]

§. 182.

But because the miscarriages of the father are no faults of the children, and they may be rational and peaceable, notwithstanding the brutishness and injustice of the father; the father, by his miscarriages and violence, can forfeit but his own life, but involves not his children in his guilt or destruction. His goods, which nature, that willeth the preservation of all mankind as much as is possible, hath made to belong to the children to keep them from perishing, do still continue to belong to his children: for supposing them not to have joined in the war, either thro' infancy, absence, or choice, they have done nothing to forfeit them: *nor has the conqueror any right* to take them away, by the bare title of having subdued him that by force attempted his destruction; though perhaps he may have some right to them, to repair the damages he has sustained by the war, and the defence of his own right; which how far it reaches to the possessions of the conquered, we shall see by and by. So that he that *by conquest has a right over a man's person* to destroy him if he pleases, has *not* thereby a right over *his estate* to possess and enjoy it: for it is the brutal force the aggressor has used, that gives his adversary a right to take away his life, and destroy him if he pleases, as a noxious creature; but it is damage sustained that alone gives him title to another man's goods: for though I [361] may kill a thief that sets on me in the high-way, yet I may not (which seems less) take away his money, and let him go: this would be robbery on my side. His force, and the state of war he put himself in, made him forfeit his life, but gave me no title to his goods. The *right* then of *conquest extends only to the lives* of those who joined in the war, *not to their estates,* but only in order to make reparation for the damages received, and the charges of the war, and that too with reservation of the right of the innocent wife and children.

§. 183.

Let the *conqueror* have as much justice on his side, as could be supposed, he *has* no *right* to seize more than the vanquished could forfeit: his life is at the victor's mercy; and his service and goods he may appropriate, to make himself reparation; but he cannot take the goods of his wife and children; they too had a title to the goods he enjoyed, and their shares in the estate he possessed: for example, I

in the state of nature (and all common-wealths are in the state of nature one with another) have injured another man, and refusing to give satisfaction, it comes to a state of war, wherein my defending by force what I had gotten unjustly, makes me the aggressor. I am conquered: my life, it is true, as forfeit, is at mercy, but not my wife's and children's. They made not the war, nor assisted in it. [362] I could not forfeit their lives; they were not mine to forfeit. My wife had a share in my estate; that neither could I forfeit. And my children also, being born of me, had a right to be maintained out of my labour or substance. Here then is the case: the conqueror has a title to reparation for damages received, and the children have a title to their father's estate for their subsistence: for as to the wife's share, whether her own labour, or compact, gave her a title to it, it is plain, her husband could not forfeit what was her's. What must be done in the case? I answer; the fundamental law of nature being, that all, as much as may be, should be preserved, it follows, that if there be not enough fully to *satisfy* both, *viz*. for the *conqueror's losses,* and children's maintenance, he that hath, and to spare, must remit something of his full satisfaction, and give way to the pressing and preferable title of those who are in danger to perish without it.

§. 184.

But supposing the *charge* and *damages of the war* are to be made up to the conqueror, to the utmost farthing; and that the children of the vanquished, spoiled of all their father's goods, are to be left to starve and perish; yet the satisfying of what shall, on this score, be due to the conqueror, will scarce give him a *title to any country be shall conquer:* for the damages of war can scarce amount to the value of any considerable tract [363] of land, in any part of the world, where all the land is possessed, and none lies waste. And if I have not taken away the conqueror's land, which, being vanquished, it is impossible I should; scarce any other spoil I have done him can amount to the value of mine, supposing it equally cultivated, and of an extent any way coming near what I had over-run of his. The destruction of a year's product or two (for it seldom reaches four or five) is the utmost spoil that usually can be done: for as to money, and such riches and treasure taken away, these are none of nature's goods, they have but a fantastical imaginary value: nature has put no such upon them: they are of no more account by her standard, than the wampompeke of the *Americans* to an *European* prince, or the silver money of *Europe* would have been formerly to an *American*. And five years product is not worth the perpetual inheritance of land, where all is possessed, and none remains waste, to be taken up by him that is disseized: which will be easily granted, if one do but take away the imaginary value of money, the disproportion being more than between five and five hundred; though, at the same time, half a year's product is more worth than the inheritance, where there being more land than the inhabitants possess and make use of, any one has liberty to make use of the waste: but there conquerors take [364] little care to possess themselves of the *lands of the vanquished*. No damage therefore, that men in the state of nature (as all princes and governments are in reference to one another) suffer from one another, can give a conqueror power to dispossess the posterity of the vanquished, and turn them out of that inheritance, which ought to be the possession of them and their descendants to all generations. The conqueror indeed will be apt to think himself master: and it is the very condition of the subdued not to be able to dispute their right. But if that be all, it gives no other title than what bare force gives to the stronger over the weaker: and, by this reason, he that is strongest will have a right to whatever he pleases to seize on.

§. 185.

Over those then that joined with him in the war, and over those of the subdued country that opposed him not, and the posterity even of those that did, the conqueror, even in a just war, hath, by his conquest, no *right of dominion:* they are free from any subjection to him, and if their former government be dissolved, they are at liberty to begin and erect another to themselves.

§. 186.

The conqueror, it is true, usually, by the force he has over them, compels them, with a sword at their breasts, to stoop to his conditions, and submit to such a government as he pleases to afford them; but the enquiry is, what right he has to do so? [365] If it be said, they submit by their own consent, then this allows their own *consent* to be *necessary to give the conqueror a title to rule* over them. It remains only to be considered, whether *promises extorted by force,* without right, can be thought consent, and *how far they bind*. To which I shall say, they *bind not at all;* because whatsoever another gets from me by force, I still retain the right of, and he is obliged presently to restore. He that forces my horse from me, ought presently to restore him, and I have still a right to retake him. By the same reason, he that *forced a promise* from me, ought presently to restore it, *i. e*. quit me of the obligation of it; or I may resume it myself, *i. e*. chuse whether I will perform it: for the law of nature laying an obligation on me only by the rules the prescribes, cannot oblige me by the violation of her rules: such is the extorting any thing from me by force. Nor does it at all alter the case to say, *I gave my promise,* no more than it excuses the force, and passes the right, when I put my hand in my pocket, and deliver my purse myself to a thief, who demands it with a pistol at my breast.

§. 187.

From all which it follows, that the *government of a conqueror,* imposed by force on the subdued, against whom he had no right of war, or who joined not in the war [366] against him, where he had right, *has no obligation* upon them.

§. 188.

But let us suppose, that all the men of that community, being all members of the same body politic, may be taken to have joined in that unjust war wherein they are subdued, and so their lives are at the mercy of the conqueror.

§. 189.

I say, this concerns not their children who are in their minority: for since a father hath not, in himself, a power over the life or liberty of his child, no act of his can possibly forfeit it. So that the children, whatever may have happened to the fathers, are freemen, and the absolute power of the *conqueror* reaches no farther than the persons of the men that were subdued by him, and dies with them: and should he govern them as slaves, subjected to his absolute arbitrary power, he *has* no *such right of dominion over their children*. He can have no power over them but by their own consent, whatever he may drive them to say or do; and he has no lawfull authority, whilst force, and not choice, compels them to submission.

§. 190.

Every man is born with a double right: *first,* a *right of freedom to his person,* which no other man has a power over, but the free disposal of it lies in himself. *Secondly,* a *right,* before any other man, *to inherit* with his brethren his *father's goods*.

[367]

§. 191.

By the first of these, a man is *naturally free* from subjection to any government, tho' he be born in a place under its jurisdiction; but if he disclaim the lawful government of the country he was born in, he must also quit the right that belonged to him by the laws of it, and the possessions there descending to him from his ancestors, if it were a government made by their consent.

§. 192.

By the second, the *inhabitants* of any country, who are descended, and derive a title to their estates from those who are subdued, and had a government forced upon them against their free consents, *retain a right to the possession of their ancestors,* though they consent not freely to the government, whose hard conditions were by force imposed on the possessors of that country: for the first *conqueror never having had a title to the land* of that country, the people who are the descendants of, or claim under those who were forced to submit to the yoke of a government by constraint, have always a right to shake it off, and free themselves from the usurpation or tyranny which the sword hath brought in upon them, till their rulers put them under such a frame of government as they willingly and of choice consent to. Who doubts but the Grecian christians, descendants of the ancient possessors of that country, may justly cast off the Turkish [368] yoke, which they have so long groaned under, whenever they have an opportunity to do it? For no government can have a right to obedience from a people who have not freely consented to it; which they can never be supposed to do, till either they are put in a full state of liberty to chuse their government and governors, or at least till they have such standing laws, to which they have by themselves or their representatives given their free consent, and also till they are allowed their due property, which is so to be proprietors of what they have, that no body can take away any part of it without their own consent, without which, men under any government are not in the state of freemen, but are direct slaves under the force of war.

§. 193.

But granting that the *conqueror* in a just war has a right to the estates, as well as power over the persons, of the conquered; which, it is plain, he *hath* not: nothing of *absolute power* will follow from hence, in the continuance of the government; because the descendants of these being all freemen, if he grants them estates and possessions to inhabit his country, (without which it would be worth nothing) whatsoever he grants them, they have, so far as it is granted, *property* in. The nature whereof is, that *without a man's own consent* it *cannot be taken from him*.

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§. 194.

Their *persons* are *free* by a native right, and their *properties,* be they more or less, are *their own, and at their own dispose,* and not at his; or else it is no *property*. Supposing the conqueror gives to one man a thousand acres, to him and his heirs for ever, to another he lets a thousand acres for his life, under the rent of 50l. or 500l. *per ann*. has not the one of these a right to his thousand acres for ever, and the other, during his life, paying the said rent? and hath not the tenant for life a *property* in all that he gets over and above his rent, by his labour and industry during the said term, supposing it be double the rent? Can any one say, the king, or conqueror, after his grant, may by his power of conqueror take away all, or part of the land from the heirs of one, or from the other during his life, he paying the rent? or can he take away from either the goods or money they have got upon the said land, at his pleasure? If he can, then all free and voluntary *contracts* cease, and are void in the world; there needs nothing to dissolve them at any time, but power enough: and all the *grants* and *promises* of *men in power* are but mockery and collusion: for can there be any thing more ridiculous than to say, I give you and your's

this for ever, and that in the surest and most solemn way of conveyance can be devised; and yet it is to be understood, that I have [370] right, if I please, to take it away from you again to morrow?

§. 195.

I will not dispute now whether princes are exempt from the laws of their country; but this I am sure, they owe subjection to the laws of God and nature, No body, no power, can exempt them from the obligations of that eternal law. Those are so great, and so strong, in the case of *promises,* that omnipotency itself can be tied by them. *Grants, promises,* and *oaths,* are *bonds* that *hold the Almighty:* whatever some flatterers say to princes of the world, who all together, with all their people joined to them, are, in comparison of the great God, but as a drop of the bucket, or a dust on the balance, inconsiderable, nothing!

§. 196.

The short of the *case in conquest* is this: the conqueror, if he have a just cause, has a despotical right over the persons of all, that actually aided, and concurred in the war against him, and a right to make up his damage and cost out of their labour and estates, so he injure not the right of any other. Over the rest of the people, if there were any that consented not to the war, and over the children of the captives themselves, or the possessions of either, he has no power; and so can have, *by virtue of conquest, no lawful title* himself *to dominion* over them, or derive it to his posterity; but is an aggressor, if he attempts upon their properties, and [371] thereby puts himself in a state of war against them, and has no better a right of principality, he, nor any of his successors, than *Hingar,* or *Hubba,* the Danes, had here in *England;* or *Spartacus,* had he conquered *Italy,* would have had; which is to have their yoke cast off, as soon as God shall give those under their subjection courage and opportunity to do it. Thus, notwithstanding whatever title the kings of *Assyria* had over *Judah,* by the sword, God assisted *Hezekiah* to throw off the dominion of that conquering empire. *And the lord was with Hezekiah, and he prospered; wherefore he went forth, and he rebelled against the king of Assyria, and served him not,* 2 Kings xviii. 7. Whence it is plain, that shaking off a power, which force, and not right, hath set over any one, though it hath the name of *rebellion,* yet is no offence before God, but is that which he allows and countenances, though even promises and covenants, when obtained by force, have intervened: for it is very probable, to any one that reads the story of *Ahaz* and *Hezekiah* attentively, that the *Assyrians* subdued *Ahaz,* and deposed him, and made *Hezekiah* king in his father's lifetime; and that *Hezekiah* by agreement had done him homage, and paid him tribute all this time.

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CHAP. XVII. Of USURPATION.

§. 197.

AS conquest may be called a foreign usurpation, so usurpation is a kind of domestic conquest, with this difference, that an usurper can never have right on his side, it being no *usurpation,* but where one is got into the *possession of what another has right to*. This, so far as it is *usurpation,* is a change only of persons, but not of the forms and rules of the government: for if the usurper extend his power beyond what of right belonged to the lawful princes, or governors of the commonwealth, it is *tyranny* added to *usurpation*.

§. 198.

In all lawful governments, the designation of the persons, who are to bear rule, is as natural and necessary a part as the form of the government itself, and is that which had its establishment originally from the people; the anarchy being much alike, to have no form of government at all; or to agree, that it shall be monarchical, but to appoint no way to design the person that shall have the power, and be the monarch. Hence all commonwealths, with the form of government established, have rules also of appointing those who are to have any share in the public authority, and settled methods of conveying the right to them: [373] for the anarchy is much alike, to have no form of government at all; or to agree that it shall be monarchical, but to appoint no way to know or design the person that shall have the power, and be the monarch. Whoever gets into the exercise of any part of the power, by other ways than what the laws of the community have prescribed, hath no right to be obeyed, though the form of the commonwealth be still preserved; since he is not the person the laws have appointed, and consequently not the person the people have consented to. Nor can such an *usurper,* or any deriving from him, ever have a title, till the people are both at liberty to consent, and have actually consented to allow, and confirm in him the power he hath till then usurped.

CHAP. XVIII. Of TYRANNY.

§. 199.

AS usurpation is the exercise of power, which another hath a right to; so *tyranny is the exercise of power beyond right,* which no body can have a right to. And this is making use of the power any one has in his hands, not for the good of those who are under it, but for his own private separate advantage. When the governor, however intitled, makes not the law, but his will, the rule; and his commands [374] and actions are not directed to the preservation of the properties of his people, but the satisfaction of his own ambition, revenge, covetousness, or any other irregular passion.

§. 200.

If one can doubt this to be truth, or reason, because it comes from the obscure hand of a subject, I hope the authority of a king will make it pass with him. King *James* the first, in his speech to the parliament, 1603, tells them thus, *I will ever prefer the weal of the public, and of the whole commonwealth, in making of good laws and constitutions, to any particular and private ends of mine; thinking ever the wealth and weal of the commonwealth to be my greatest weal and worldly felicity; a point wherein a lawful king doth directly differ from a tyrant: for I do acknowledge, that the special and greatest point of difference that is between a rightful king and an usurping tyrant, is this, that whereas the proud and ambitious tyrant doth think his kingdom and people are only ordained for satisfaction of his desires and unreasonable appetites, the righteous and just king doth by the contrary acknowledge himself to be ordained for the procuring of the wealth and property of his people*. And again, in his speech to the parliament, 1609, he hath these words, *The king binds himself by a double oath, to the observation of the fundamental laws of his kingdom; tacitly, as by being a king, and so bound to protect as* [375] *well the people, as the laws of his kingdom; and expresly, by his oath at his coronation; so as every just king, in a settled kingdom, is bound to observe that paction made to his people, by his laws, in framing his government agreeable thereunto, according to that paction which God made with* Noah *after the deluge. Hereafter, seed-time and harvest, and cold and heat, and summer and winter, and day and night, shall not cease while the earth remaineth. And therefore a king governing in a settled kingdom, leaves to be a king, and degenerates into a tyrant, as soon as he leaves off to rule according to his laws*. And a little after, *Therefore all kings that are not tyrants, or perjured, will be glad to bound themselves within the limits of their laws; and they that persuade them the contrary, are vipers, and pests both against them and the commonwealth*. Thus that learned king, who well understood the notion of things, makes the difference betwixt a *king* and a *tyrant* to consist only in this, that one makes the laws the bounds of his power, and the good of the public, the end of his government; the other makes all give way to his own will and appetite.

§. 201.

It is a mistake, to think this fault is proper only to monarchies; other forms of government are liable to it, as well as that: for wherever the power, that is put in any hands for the government of the people, and the preservation of their properties, [376] is applied to other ends, and made use of to impoverish, harass, or subdue them to the arbitrary and irregular commands of those that have it; there it presently becomes *tyranny,* whether those that thus use it are one or many. Thus we read of the thirty tyrants at *Athens,* as well as one at *Syracuse;* and the intolerable dominion of the *Decemviri* at *Rome* was nothing better.

§. 202.

Where-ever law ends, tyranny begins, if the law be transgressed to another's harm; and whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject, which the law allows not, ceases in that to be a magistrate; and, acting without authority, may be opposed, as any other man, who by force invades the right of another. This is acknowledged in subordinate magistrates. He that hath authority to seize my person in the street, may be opposed as a thief and a robber, if he endeavours to break into my house to execute a writ, notwithstanding that I know he has such a warrant, and such a legal authority, as will impower him to arrest me abroad. And why this should not hold in the highest, as well as in the most inferior magistrate, I would gladly be informed. Is it reasonable, that the eldest brother, because he has the greatest part of his father's estate, should thereby [377] have a right to take away any of his younger brothers portions? or that a rich man, who possessed a whole country, should from thence have a right to seize, when he pleased, the cottage and garden of his poor neighbour? The being rightfully possessed of great power and riches, exceedingly beyond the greatest part of the sons of *Adam,* is so far from being an excuse, much less a reason, for rapine and oppression, which the endamaging another without authority is, that it is a great aggravation of it: for the exceeding the bounds of authority is no more a right in a great, than in a petty officer; no more justifiable in a king than a constable; but is so much the worse in him, in that he has more trust put in him, has already a much greater share than the rest of his brethren, and is supposed, from the advantages of his education, employment, and counsellors, to be more knowing in the measures of right and wrong.

§. 203.

May the *commands* then *of a prince be opposed?* may he be resisted as often as any one shall find himself aggrieved, and but imagine he has not right done him? This will unhinge and overturn all polities, and, instead of government and order, leave nothing but anarchy and confusion.

§. 204.

To this I answer, that *force* is to be *opposed* to nothing, but to unjust and unlawful *force;* whoever makes any opposition [378] in any other case, draws on himself a just condemnation both from God and man; and so no such danger or confusion will follow, as is often suggested: for,

§. 205.

First, As, in some countries, the person of the prince by the law is sacred; and so, whatever he commands or does, his person is still free from all question or violence, not liable to force, or any judicial censure or condemnation. But yet opposition may be made to the illegal acts of any inferior officer, or other commissioned by him; unless he will, by actually putting himself into a state of war with his people, dissolve the government, and leave them to that defence which belongs to every one in the state of nature: for of such things who can tell what the end will be? and a neighbour kingdom has shewed the world an odd example. In all other cases the *sacredness* of the *person exempts him from all inconveniencies,* whereby he is secure, whilst the government stands, from all violence and harm whatsoever; than which there cannot be a wiser constitution: for the harm he can do in his own person not being likely to happen often, nor to extend itself far; nor being able by his single strength to subvert the laws, nor oppress the body of the people, should any prince have so much weakness, and ill nature as to be willing to do it, the inconveniency of some particular mischiefs, that may happen sometimes, when [379] a heady prince comes to the throne, are well recompensed by the peace of the public, and security of the government, in the person of the chief magistrate, thus set out of the reach of danger: it being safer for the body, that some few private men should be sometimes in danger to suffer, than that the head of the republic should be easily, and upon slight occasions, exposed.

§. 206.

Secondly, But this privilege, belonging only to the king's person, hinders not, but they may be questioned, opposed, and resisted, who use unjust force, though they pretend a commission from him, which the law authorizes not; as is plain in the case of him that has the king's writ to arrest a man, which is a full commission from the king; and yet he that has it cannot break open a man's house to do it, nor execute this command of the king upon certain days, nor in certain places, though this commission have no such exception in it; but they are the limitations of the law, which if any one transgress, the king's commission excuses him not: for the king's authority being given him only by the law, he cannot impower any one to act against the law, or justify him, by his commission, in so doing; the *commission,* or *command of any magistrate, where he has no authority,* being as *void* and insignificant, as that of any private man; the difference between the one and the other, [380] being that the magistrate has some authority so far, and to such ends, and the private man has none at all: for it is not the *commission,* but the *authority,* that gives the right of acting; and *against the laws there can be no authority*. But, notwithstanding such resistance, the king's person and authority are still both secured, and so *no danger to governor or government*.

§. 207.

Thirdly, Supposing a government wherein the person of the chief magistrate is not thus sacred; yet this *doctrine* of the lawfulness of *resisting* all unlawful exercises of his power, *will not* upon every slight occasion indanger him, or *imbroil the government:* for where the injured party may be relieved, and his damages repaired by appeal to the law, there can be no pretence for force, which is only to be used where a man is intercepted from appealing to the law: for nothing is to be accounted hostile force, but where it leaves not the remedy of such an appeal; and it is such *force* alone, that *puts* him that uses it *into a state of war,* and makes it lawful to resist him. A man with a sword in his hand demands my purse in the high-way, when perhaps I have not twelve pence in my pocket: this man I may lawfully kill. To another I deliver 100 l. to hold only whilst I alight, which he refuses to restore me, when I am got up again, but draws his sword to defend the possession of it [381] by force, if I endeavour to retake it. The mischief this man does me is a hundred, or possibly a thousand times more than the other perhaps intended me (whom I killed before he really did me any); and yet I might lawfully kill the one, and cannot so much as hurt the other lawfully. The reason whereof is plain; because the one using *force,* which threatened my life, I could not have *time to appeal* to the law to secure it: and when it was gone, it was too late to appeal. The law could not restore life to my dead carcass: the loss was irreparable; which to prevent, the law of nature gave me a right to *destroy* him, who had put himself into a state of war with me, and threatened my destruction. But in the other case, my life not being in danger, I may have the *benefit of appealing* to the law, and have reparation for my 100 l. that way.

§. 208.

Fourthly, But if the unlawful acts done by the magistrate be maintained (by the power he has got), and the remedy which is due by law, be by the same power obstructed; yet the *right of resisting,* even in such manifest acts of tyranny, *will not* suddenly, or on slight occasions, *disturb the government:* for if it reach no farther than some private men's cases, though they have a right to defend themselves, and to recover by force what by unlawful force is taken from them; yet the right to do so will not easily engage [382] them in a contest, wherein they are sure to perish; it being as impossible for one, or a few oppressed men to *disturb the government,* where the body of the people do not think themselves concerned in it, as for a raving mad-man, or heady mal-content to overturn a well-settled state; the people being as little apt to follow the one, as the other.

§. 209.

But if either these illegal acts have extended to the majority of the people; or if the mischief and oppression has lighted only on some few, but in such cases, as the precedent, and consequences seem to threaten all; and they are persuaded in their consciences, that their laws, and with them their estates, liberties, and lives are in danger, and perhaps their religion too; how they will be hindered from resisting illegal force, used against them, I cannot tell. This is an *inconvenience,* I confess, *that attends all governments* whatsoever, when the governors have brought it to this pass, to be generally suspected of their people; the most dangerous state which they can possibly put themselves in; wherein they are the less to be pitied, because it is so easy to be avoided; it being as impossible for a governor, if he really means the good of his people, and the preservation of them, and their laws together, not to make them see and feel it, as it is for the father of a family, not to let his children see he loves, and takes care of them.

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§. 210.

But if all the world shall observe pretences of one kind, and actions of another; arts used to elude the law, and the trust of prerogative (which is an arbitrary power in some things left in the prince's hand to do good, not harm to the people) employed contrary to the end for which it was given: if the people shall find the ministers and subordinate magistrates chosen suitable to such ends, and favoured, or laid by, proportionably as they promote or oppose them: if they see several experiments made of arbitrary power, and that religion underhand favoured, (tho' publicly proclaimed against) which is readiest to introduce it; and the operators in it supported, as much as may be; and when that cannot be done, yet approved still, and liked the better: if a *long train of actions shew the councils* all tending that way; how can a man any more hinder himself from being persuaded in his own mind, which way things are going; or from casting about how to save himself, than he could from believing the captain of the ship he was in, was carrying him, and the rest of the company, to *Algiers,* when he found him always steering that course, though cross winds, leaks in his ship, and want of men and provisions did often force him to turn his course another way for some time, which he steadily returned to again, as soon as the wind, weather, and other circumstances would let him?

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CHAP. XIX. Of the Dissolution of Government.↩

§. 211.

HE that will with any clearness speak of the *dissolution of government,* ought in the first place to distinguish between the *dissolution of the society* and the *dissolution of the government*. That which makes the community, and brings men out of the loose state of nature, into *one politic society,* is the agreement which every one has with the rest to incorporate, and act as one body, and so be one distinct common-wealth. The usual, and almost only way whereby *this union is dissolved,* is the inroad of foreign force making a conquest upon them: for in that case, (not being able to maintain and support themselves, as *one intire* and *independent body)* the union belonging to that body which consisted therein, must necessarily cease, and so every one return to the state he was in before, with a liberty to shift for himself, and provide for his own safety, as he thinks fit, in some other society. Whenever the *society is dissolved,* it is certain the government of that society cannot remain. Thus conquerors swords often cut up governments by the roots, and mangle societies to pieces, separating the subdued or scattered multitude from the protection of, and dependence on, that society which ought to [385] have preserved them from violence. The world is too well instructed in, and too forward to allow of, this way of dissolving of governments, to need any more to be said of it; and there wants not much argument to prove, that where the *society is dissolved,* the government cannot remain; that being as impossible, as for the frame of an house to subsist when the materials of it are scattered and dissipated by a whirl-wind, or jumbled into a confused heap by an earthquake.

§. 212.

Besides this over-turning from without, *governments are dissolved from within,*

First, When the *legislative* is *altered*. Civil society being a state of peace, amongst those who are of it, from whom the state of war is excluded by the umpirage, which they have provided in their legislative, for the ending all differences that may arise amongst any of them, it is in their *legislative,* that the members of a common-wealth are united, and combined together into one coherent living body. This *is the soul that gives form, life, and unity,* to the common-wealth: from hence the several members have their mutual influence, sympathy, and connexion: and therefore, when the *legislative* is broken, or *dissolved,* dissolution and death follows: for the *essence and union of the society* consisting in having one will, the legislative, when once established by the majority, has the declaring, and as it were keeping of that will. The [386] *constitution of the legislative* is the first and fundamental act of society, whereby provision is made for the *continuation of their union,* under the direction of persons, and bonds of laws, made by persons authorized thereunto, by the consent and appointment of the people, without which no one man, or number of men, amongst them, can have authority of making laws that shall be binding to the rest. When any one, or more, shall take upon them to make laws, whom the people have not appointed so to do, they make laws without authority, which the people are not therefore bound to obey; by which means they come again to be out of subjection, and may constitute to themselves a *new legislative,* as they think best, being in full liberty to resist the force of those, who without authority would impose any thing upon them. Every one is at the disposure of his own will, when those who had, by the delegation of the society, the declaring of the public will, are excluded from it, and others usurp the place, who have no such authority or delegation.

§. 213.

This being usually brought about by such in the common-wealth who misuse the power they have; it is

hard to consider it aright, and know at whose door to lay it, without knowing the form of government in which it happens. Let us suppose then the legislative placed in the concurrence of three distinct persons.

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1. A single hereditary person, having the constant, supreme, executive power, and with it the power of convoking and dissolving the other two within certain periods of time.

2. An assembly of hereditary nobility.

3. An assembly of representatives chosen, *pro tempore,* by the people. Such a form of government supposed, it is evident,

§. 214.

First, That when such a single person, or prince, sets up his own arbitrary will in place of the laws, which are the will of the society, declared by the legislative, then the *legislative is changed:* for that being in effect the legislative, whose rules and laws are put in execution, and required to be obeyed; when other laws are set up, and other rules pretended, and inforced, than what the legislative, constituted by the society, have enacted, it is plain that the *legislative is changed*. Whoever introduces new laws, not being thereunto authorized by the fundamental appointment of the society, or subverts the old, disowns and overturns the power by which they were made, and so sets up a *new legislative*.

§. 215.

Secondly, When the prince hinders the legislative from assembling in its due time, or from acting freely, pursuant to those ends for which it was constituted, the *legislative is altered:* for it is not a certain number of men, no, nor their meeting, unless they have also freedom of debating, and leisure [388] of perfecting, what is for the good of the society, wherein the legislative consists: when these are taken away or altered, so as to deprive the society of the due exercise of their power, the *legislative* is truly altered; for it is not names that constitute governments, but the use and exercise of those powers that were intended to accompany them; so that he, who takes away the freedom, or hinders the acting of the legislative in its due seasons, in effect takes *away the legislative,* and *puts an end to the government*.

§. 216.

Thirdly, When, by the arbitrary power of the prince, the electors, or ways of election, are altered, without the consent, and contrary to the common interest of the people, there also the *legislative is altered:* for, if others than those whom the society hath authorized thereunto, do chuse, or in another way than what the society hath prescribed, those chosen are not the legislative appointed by the people.

§. 217.

Fourthly, The delivery also of the people into the subjection of a foreign power, either by the prince, or by the legislative, is certainly a *change of the legislative,* and so a *dissolution of the government:* for the end why people entered into society being to be preserved one intire, free, independent society, to be governed by its own laws; this is lost, whenever they are given up into the power of another.

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§. 218.

Why, in such a constitution as this, the *dissolution of the government* in these cases is to be imputed to the prince, is evident; because he, having the force, treasure and offices of the state to employ, and often persuading himself, or being flattered by others, that as supreme magistrate he is uncapable of controul; he alone is in a condition to make great advances toward such changes, under pretence of lawful authority, and has it in his hands to terrify or suppress opposers, as factious, seditious, and enemies to the government: whereas no other part of the legislative, or people, is capable by themselves to attempt any alteration of the legislative, without open and visible rebellion, apt enough to be taken notice of, which, when it prevails, produces effects very little different from foreign conquest. Besides, the prince in such a form of government, having the power of dissolving the other parts of the legislative, and thereby rendering them private persons, they can never in opposition to him, or without his concurrence, alter the legislative by a law, his consent being necessary to give any of their decrees that sanction. But yet, so far as the other parts of the legislative any way contribute to any attempt upon the government, and do either promote, or not, what lies in them, hinder such designs, they are guilty, and partake in this, [390] which is certainly the greatest crime men can be guilty of one towards another.

§. 219.

There is one way more whereby such a government may be dissolved, and that is, when he who has the supreme executive power, neglects and abandons that charge, so that the laws already made can no longer be put in execution. This is demonstratively to reduce all to anarchy, and so effectually *to dissolve the government:* for laws not being made for themselves, but to be, by their execution, the bonds of the society, to keep every part of the body politic in its due place and function; when that totally ceases, the *government* visibly *ceases,* and the people become a confused multitude, without order or connexion. Where there is no longer the administration of justice, for the securing of men's rights, nor any remaining power within the community to direct the force, or provide for the necessities of the public, there certainly is *no government left*. Where the laws cannot be executed, it is all one as if there were no laws; and a government without laws is, I suppose, a mystery in politics, unconceivable to human capacity, and inconsistent with human society.

§. 220.

In these and the like cases, *when the government is dissolved,* the people are at liberty to provide for themselves, by erecting a new legislative, differing from the other, by the change of persons, or form, or both, [391] as they shall find it most for their safety and good: for the *society* can never, by the fault of another, lose the native and original right it has to preserve itself, which can only be done by a settled legislative, and a fair and impartial execution of the laws made by it. But the state of mankind is not so miserable that they are not capable of using this remedy, till it be too late to look for any. To tell *people* they *may provide for themselves,* by erecting a new legislative, when by oppression, artifice, or being delivered over to a foreign power, their old one is gone, is only to tell them, they may expect relief when it is too late, and the evil is past cure. This is in effect no more than to bid them first be slaves, and then to take care of their liberty; and when their chains are on, tell them, they may act like freemen. This, if barely so, is rather mockery than relief; and men can never be secure from tyranny, if there be no means to escape it till they are perfectly under it: and therefore it is, that they have not only a right to get out of it, but to prevent it.

§. 221.

There is therefore, secondly, another way whereby *governments are dissolved,* and that is, when the legislative, or the prince, either of them, act contrary to their trust.

First, The *legislative acts against the trust* reposed in them, when they endeavour to invade the property of the subject, and to [392] make themselves, or any part of the community, masters, or arbitrary disposers of the lives, liberties, or fortunes of the people.

§. 222.

The reason why men enter into society, is the preservation of their property; and the end why they chuse and authorize a legislative, is, that there may be laws made, and rules set, as guards and fences to the properties of all the members of the society, to limit the power, and moderate the dominion, of every part and member of the society: for since it can never be supposed to be the will of the society, that the legislative should have a power to destroy that which every one designs to secure, by entering into society, and for which the people submitted themselves to legislators of their own making; whenever the *legislators endeavour to take away, and destroy the property of the people,* or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any farther obedience, and are left to the common refuge, which God hath provided for all men, against force and violence. Whensoever therefore the *legislative* shall transgress this fundamental rule of society; and either by ambition, fear, folly or corruption, *endeavour to grasp* themselves, *or put into the hands of any other, an absolute power* over the lives, liberties, and estates of the people; by this breach of trust they forfeit [393] *the power* the people had put into their hands for quite contrary ends, and it devolves to the people, who have a right to resume their original liberty, and, by the establishment of a new legislative, (such as they shall think fit) provide for their own safety and security, which is the end for which they are in society. What I have said here, concerning the legislative in general, holds true also concerning the supreme executor, who having a double trust put in him, both to have a part in the legislative, and the supreme execution of the law, acts against both, when he goes about to set up his own arbitrary will as the law of the society. He *acts* also *contrary to his trust,* when he either employs the force, treasure, and offices of the society, to corrupt the *representatives,* and gain them to his purposes; or openly pre-engages the *electors,* and prescribes to their choice, such, whom he has, by sollicitations, threats, promises, or otherwise, won to his designs; and employs them to bring in such, who have promised before-hand what to vote, and what to enact. Thus to regulate candidates and electors, and new-model the ways of election, what is it but to cut up the government by the roots, and poison the very fountain of public security? for the people having reserved to themselves the choice of their *representatives,* as the fence to their properties, could do it for no other end, but [394] that they might always be freely chosen, and so chosen, freely act, and advise, as the necessity of the common-wealth, and the public good should, upon examination, and mature debate, be judged to require. This, those who give their votes before they hear the debate, and have weighed the reasons on all sides, are not capable of doing. To prepare such an assembly as this, and endeavour to set up the declared abettors of his own will, for the true *representatives* of the people, and the law-makers of the society, is certainly as great a *breach of trust,* and as perfect a declaration of a design to subvert the government, as is possible to be met with. To which, if one shall add rewards and punishments visibly employed to the same end, and all the arts of perverted law made use of, to take off and destroy all that stand in the way of such a design, and will not comply and consent to betray the liberties of their country, it will be past doubt what is doing. What power they ought to have in the society, who thus employ it contrary to the trust went along with it in its first institution, is easy to determine; and one cannot but see, that he, who has once attempted any such thing as this, cannot any longer be trusted.

§. 223.

To this perhaps it will be said, that the people being ignorant, and always discontented, to lay the foundation of government [395] in the unsteady opinion and uncertain humour of the people, is to expose it to certain ruin; and *no government will be able long to subsist,* if the people may set up a new legislative, whenever they take offence at the old one. To this I answer, Quite the contrary. People are not so easily got out of their old forms, as some are apt to suggest. They are hardly to be prevailed with to amend the acknowledged faults in the frame they have been accustomed to. And if there be any original defects, or adventitious ones introduced by time, or corruption; it is not an easy thing to get them changed, even when all the world sees there is an opportunity for it. This slowness and aversion in the people to quite their old constitutions, has, in the many revolutions which have been seen in this kingdom, in this and former ages, still kept us to, or, after some interval of fruitless attempts, still brought us back again to our old legislative of king, lords and commons: and whatever provocations have made the crown be taken from some of our princes heads, they never carried the people so far as to place it in another line.

§. 224.

But it will be said, this *hypothesis* lays a *ferment for* frequent *rebellion*. To which I answer,

First, No more than any other *hypothesis:* for when the people are made miserable, and find themselves *exposed to the ill usage of arbitrary* [396] *power,* cry up their governors, as much as you will, for sons of *Jupiter;* let them be sacred and divine, descended, or authorized from heaven; give them out for whom or what you please, the same will happen. *The people generally ill treated,* and contrary to right, will be ready upon any occasion to ease themselves of a burden that sits heavy upon them. They will wish, and seek for the opportunity, which in the change, weakness and accidents of human affairs, seldom delays long to offer itself. He must have lived but a little while in the world, who has not seen examples of this in his time; and he must have read very little, who cannot produce examples of it in all sorts of governments in the world.

§. 225.

Secondly, I answer, such *revolutions happen* not upon every little mismanagement in public affairs. *Great mistakes* in the ruling part, many wrong and inconvenient laws, and all the *slips* of human frailty, will be *born by the people* without mutiny or murmur. But if a long train of abuses, prevarications and artifices, all tending the same way, make the design visible to the people, and they cannot but feel what they lie under, and see whither they are going; it is not to be wondered, that they should then rouze themselves, and endeavour to put the rule into such hands which may secure to them the ends for which government was at first erected; and without which, ancient names, and [397] specious forms, are so far from being better, that they are much worse, than the state of nature, or pure anarchy; the inconveniencies being all as great and as near, but the remedy farther off and more difficult.

§. 226.

Thirdly, I answer, that *this doctrine* of a power in the people of providing for their safety a-new, by a new legislative, when their legislators have acted contrary to their trust, by invading their property, is *the best fence against rebellion,* and the probablest means to hinder it: for *rebellion* being an opposition, not to persons, but authority, which is founded only in the constitutions and laws of the government; those, whoever they be, who by force break through, and by force justify their violation

of them, are truly and properly *rebels:* for when men, by entering into society and civil-government, have excluded force, and introduced laws for the preservation of property, peace, and unity amongst themselves, those who set up force again in opposition to the laws, do *rebellare,* that is, bring back again the state of war, and are properly rebels: which they who are in power, (by the pretence they have to authority, the temptation of force they have in their hands, and the flattery of those about them) being likeliest to do; the properest way to prevent the evil, is to shew them the danger and injustice of it, who are under the greatest temptation to run into it.

[398]

§. 227.

In both the fore-mentioned cases, when either the legislative is changed, or the legislators act contrary to the end for which they were constituted; those who are guilty are *guilty of rebeliion:* for if any one by force takes away the established legislative of any society, and the laws by them made, pursuant to their trust, he thereby takes away the umpirage, which every one had consented to, for a peaceable decision of all their controversies, and a bar to the state of war amongst them. They, who remove, or change the legislative, take away this decisive power, which no body can have, but by the appointment and consent of the people; and so destroying the authority which the people did, and no body else can set up, and introducing a power which the people hath not authorized, they actually *introduce a state of war,* which is that of force without authority: and thus, by removing the legislative established by the society, (in whose decisions the people acquiesced and united, as to that of their own will) they untie the knot, and *expose the people a-new to the state of war.* And if those, who by force take away the legislative, are *rebels,* the *legislators* themselves, as has been shewn, can be no less esteemed so; when they, who were set up for the protection, and preservation of the people, their liberties and properties, shall by force invade and endeavour to take them away; and so they [399] putting themselves into a state of war with those who made them the protectors and guardians of their peace, are properly, and with the greatest aggravation, *rebellantes,* rebels.

§. 228.

But if they, who say *it lays a foundation for rebellion,* mean that it may occasion civil wars, or intestine broils, to tell the people they are absolved from obedience when illegal attempts are made upon their liberties or properties, and may oppose the unlawful violence of those who were their magistrates, when they invade their properties contrary to the trust put in them; and that therefore this doctrine is not to be allowed, being so destructive to the peace of the world: they may as well say, upon the same ground, that honest men may not oppose robbers or pirates, because this may occasion disorder or bloodshed. If any *mischief* come in such cases, it is not to be charged upon him who defends his own right, but *on him that invades* his neighbours. If the innocent honest man must quietly quit all he has, for peace sake, to him who will lay violent hands upon it, I desire it may be considered, what a kind of peace there will be in the world, which consists only in violence and rapine; and which is to be maintained only for the benefit of robbers and oppressors. Who would not think it an admirable peace betwixt the mighty and the mean, when the lamb, [400] without resistance, yielded his throat to be torn by the imperious wolf? *Polyphemus*'s den gives us a perfect pattern of such a peace, and such a government, wherein *Ulysses* and his companions had nothing to do, but quietly to suffer themselves to be devoured. And no doubt *Ulysses,* who was a prudent man, preached up *passive obedience,* and exhorted them to a quiet submission, by representing to them of what concernment peace was to mankind; and by shewing the inconveniences might happen, if they should offer to resist *Polyphemus,* who had now the power over them.

§. 229.

The end of government is the good of mankind; and which is *best for mankind,* that the people should be always exposed to the boundless will of tyranny, or that the rulers should be sometimes liable to be opposed, when they grow exorbitant in the use of their power, and employ it for the destruction, and not the preservation of the properties of their people?

§. 230.

Nor let any one say, that mischief can arise from hence, as often as it shall please a busy head, or turbulent spirit, to desire the alteration of the government. It is true, such men may stir, whenever they please; but it will be only to their own just ruin and perdition: for till the mischief be grown general, and the ill designs of the rulers become visible, or their attempts [401] sensible to the greater part, the people, who are more disposed to suffer than right themselves by resistance, are not apt to stir. The examples of particular injustice, or oppression of here and there an unfortunate man, moves them not. But if they universally have a persuasion, grounded upon manifest evidence, that designs are carrying on against their liberties, and the general course and tendency of things cannot but give them strong suspicions of the evil intention of their governors, who is to be blamed for it? Who can help it, if they, who might avoid it, bring themselves into this suspicion? Are the people to be blamed, if they have the sense of rational creatures, and can think of things no otherwise than as they find and feel them? And is it not rather *their fault,* who put things into such a posture, that they would not have them thought to be as they are? I grant, that the pride, ambition, and turbulency of private men have sometimes caused great disorders in common-wealths, and factions have been fatal to states and kingdoms. But whether *the mischief* hath *oftener* begun *in the peoples wantonness,* and a desire to cast off the lawful authority of their rulers, or *in the rulers insolence,* and endeavours to get and exercise an arbitrary power over their people; whether oppression, or disobedience, gave the first rise to the disorder, I leave it to impartial history to determine. [402] This I am sure, whoever, either ruler or subject, by force goes about to invade the rights of either prince or people, and lays the foundation for *overturning* the constitution and frame of *any just government,* is highly guilty of the greatest crime, I think, a man is capable of, being to answer for all those mischiefs of blood, rapine, and desolation, which the breaking to pieces of governments bring on a country. And he who does it, is justly to be esteemed the common enemy and pest of mankind, and is to be treated accordingly.

§. 231.

That *subjects* or *foreigners,* attempting by force on the properties of any people, may be *resisted* with force, is agreed on all hands. But that *magistrates,* doing the same thing, may be *resisted,* hath of late been denied: as if those who had the greatest privileges and advantages by the law, had thereby a power to break those laws, by which alone they were set in a better place than their brethren: whereas their offence is thereby the greater, both as being ungrateful for the greater share they have by the law, and breaking also that trust, which is put into their hands by their brethren.

§. 232.

Whosoever uses *force without right,* as every one does in society, who does it without law, puts himself into a *state of war* with those against whom he so uses it; and in that state all former ties are cancelled, all [403] other rights cease, and every one has a right to defend himself, and *to resist the aggressor.* This is so evident, that *Barclay* himself, that great assertor of the power and sacredness of kings, is forced to confess, That it is lawful for the people, in some cases, to *resist* their king; and that too in a chapter, wherein he pretends to shew, that the divine law shuts up the people from all manner

of rebellion. Whereby it is evident, even by his own doctrine, that, since they may in some cases *resist,* all resisting of *princes* is not rebellion. His words are these. *Quod siquis dicat, Ergone populus tyrannicæ crudelitati & furori jugulum semper præbehit? Ergone multitudo civitates suas fame, ferro, & flammâ vastari, seque, conjuges, & liberos fortunæ ludibrio & tyranni libidini exponi, inque omnia vitæ pericula omnesque miserias & molestias á rege deduci patientur? Num illis quod omni animantium generi est á naturâ tributum, denegari debet, ut sc. vim vi repellant, seseq; ab injuriâ tueantur? Huic breviter responsum sit, Populo universo negari defensionem, quæ juris naturalis est, neque ultionem quæ præter naturam est adversus regem concedi debere. Quapropter si rex non in singulares tantum personas aliquot privatum odium exerceat, sed corpus etiam reipublicæ, cujus ipse caput est,* i. e. *totum populum, vel insignem aliquam ejus partem immani & intolerandâ seu tyrannide divexet; populo, quidem hoc casu resistendi ac tuendi se ab injuriâ potestas competit, sed tuendi* [404] *se tantum, non enim in principem invadendi: & restituendæ injuriæ illatæ, non recedendi à debitâ reverentiâ propter acceptam injuriam. Præsentem denique impetum propulsandi non vim præteritam ulciscenti jus habet. Horum enim alterum à naturâ est, ut vitam scilicet corpusque tueamur. Alterum vero contra naturam, ut inferior de superiori supplicium sumat. Quod itaque populus malum, antequam factum sit, impedire potest, ne fiat, id postquam factum est, in regem authorem sceleris vindicare non potest: populus igitur hoc ampliùs quam privatus quispiam habet: quod huic, vel ipsis adversariis judicibus, excepto Buchanano, nullum nisi in patientia remedium superest. Cùm ille si intolerabilis tyrannus est (modicum enim ferre omnino debet) resistere cum reverentiâ possit,* Barclay contra Monarchom. l. iii. c. 8.

In *English* thus.

§. 233.

But if any one should ask, Must the people then always lay themselves open to the cruelty and rage of tyranny? Must they see their cities pillaged, and laid in ashes, their wives and children exposed to the tyrant's lust and fury, and themselves and families reduced by their king to ruin, and all the miseries of want and oppression, and yet sit still? Must men alone be debarred the common privilege of opposing force with force, which nature allows so freely to all other creatures for their preservation [405] from injury? I answer: Self-defence is a part of the law of nature; nor can it be denied the community, even against the king himself: but to revenge themselves upon him, must by no means be allowed them: it being not agreeable to that law. Wherefore if the king shall shew an hatred, not only to some particular persons, but sets himself against the body of the common-wealth, whereof he is the head, and shall, with intolerable ill usage, cruelly tyrannize over the whole, or a considerable part of the people, in this case the people have a right to resist and defend themselves from injury: but it must be with this caution, that they only defend themselves, but do not attack their prince: they may repair the damages received, but must not for any provocation exceed the bounds of due reverence and respect. They may repulse the present attempt, but must not revenge past violences: for it is natural for us to defend life and limb, but that an inferior should punish a superior, is against nature. The mischief which is designed them, the people may prevent before it be done; but when it is done, they must not revenge it on the king, though author of the villany. This therefore is the privilege of the people in general, above what any private person hath; that particular men are allowed by our adversaries themselves (Buchanan only excepted) to have no other remedy but patience; but the body of the people may with respect resist [406] intolerable tyranny; for when it is but moderate, they ought to endure it.

§. 234.

Thus far that great advocate of monarchical power allows of *resistance*.

§. 235.

It is true, he has annexed two limitations to it, to no purpose:

First, He says, it must be with reverence.

Secondly, It must be without retribution, or punishment; and the reason he gives is, *because an inferior cannot punish a superior.*

First, How to *resist force without striking again,* or how to *strike with reverence,* will need some skill to make intelligible. He that shall oppose an assault only with a shield to receive the blows, or in any more respectful posture, without a sword in his hand, to abate the confidence and force of the assailant, will quickly be at an end of his *resistance,* and will find such a defence serve only to draw on himself the worse usage. This is as ridiculous a way of *resisting,* as *Juvenal* thought it of fighting; *ubi tu pulsas, ego vapulo tantum*. And the success of the combat will be unavoidably the same he there describes it:

- —Libertas pauperis hæc est:
- Pulsatus rogat, & pugnis concisus, adorat,
- Ut liceat paucis cum dentibus inde reverti.

[407]

This will always be the event of such an imaginary *resistance,* where men may not strike again. He therefore *who may resist, must be allowed to strike*. And then let our author, or any body else, join a knock on the head, or a cut on the face, with as much *reverence* and *respect* as he thinks fit. He that can reconcile blows and reverence, may, for aught I know, desire for his pains, a civil, respectful cudgeling where-ever he can meet with it.

Secondly, As to his second, *An inferior cannot punish a superior;* that is true, generally speaking, whilst he is his superior. But to resist force with force, being *the state of war* that *levels the parties,* cancels all former relation of reverence, respect, and *superiority:* and then the odds that remains, is, that he, who opposes the unjust aggressor, has this *superiority* over him, that he has a right, when he prevails, to punish the offender, both for the breach of the peace, and all the evils that followed upon it. *Barclay* therefore, in another place, more coherently to himself, denies it to be lawful to *resist* a king in any case. But he there assigns two cases, whereby a king may un-king himself. His words are,

Quid ergo, nulline casus incidere possunt quibus populo sese erigere atque in regem impotentius dominantem arma capere & invadere jure suo suâque authoritate liceat? Nulli certe quamdiu [408] rex manet. Semper enim ex divinis id obstat, Regem honorificato; & qui potestati resistit, Dei ordinationi resistit: non aliàs igitur in eum populo potestas est quam si id committat propter quod ipso jure rex esse desinat. Tunc enim se ipse principatu exuit atque in privatis constituit liber: hoc modo populus & superior efficitur, reverso ad eum sc. jure illo quod ante regem inauguratum in interregno habuit. At sunt paucorum generum commissa ejusmodi quæ hunc effectum pariunt. At ego cum plurima animo perlustrem, duo tantum invenio, duos, inquam, casus quibus rex ipso facto ex rege non regem se facit & omni honore & dignitate regali atque in subditos potestate destituit; quorum etiam meminit Winzerus. Horum unus est, Si regnum disperdat, quemadmodum de Nerone fertur, quod is nempe senatum populumque Romanum, atque adeo urbem ipsam ferro flammaque vastare, ac novas sibi sedes quærere decrevisset. Et de Caligula, quod palam denunciarit se neque civem neque principem senatui amplius fore, inque animo habuerit interempto utriusque ordinis electissimo quoque Alexandriam commigrare, ac ut populum uno ictu interimeret, unam ei cervicem optavit. Talia cum

rex aliquis meditatur & molitur serio, omnem regnandi curam & animum ilico abjicit, ac proinde imperium in subditos amittit, ut dominus servi pro derelicto habiti dominium.

§. 236.

Alter casus est, Si rex in alicujus clientelam se contulit; ac regnum quod liberum [409] à majoribus & populo traditum accepit, alienæ ditioni mancipavit. Nam tunc quamvis forte non eâ mente id agit populo plane ut incommodet: tamen quia quod præcipuum est regiæ dignitatis amisit, ut summus scilicet in regno secundum Deum sit, & solo Deo inferior, atque populum etiam totum ignorantem vel invitum, cujus libertatem sartam & tectam conservare debuit, in alterius gentis ditionem & potestatem dedidit; hâc velut quadam regni ab alienatione effecit, ut nec quod ipse in regno imperium habuit retineat, nec in eum cui collatum voluit, juris quicquam transferat; atque ita eo facto liberum jam & suæ potestatis populum relinquit, cujus rei exemplum unum annales Scotici suppeditant. Barclay contra Monarchom. l. iii. c. 16.

Which in *English* runs thus.

§. 237.

What then, can there no case happen wherein the people may of right, and by their own authority, help themselves, take arms, and set upon their king, imperiously domineering over them? None at all, whilst he remains a king. Honour the king, and he that resists the power, resists the ordinance of God; are divine oracles that will never permit it. The people therefore can never come by a power over him, unless he does something that makes him cease to be a king: for then he divests himself of his crown and dignity, and returns to the state of a private man, and the people become free and [410] superior, the power which they had in the interregnum, before they crowned him king, devolving to them again. But there are but few miscarriages which bring the matter to this state. After considering it well on all sides, I can find but two. Two cases there are, I say, whereby a king, ipso facto, becomes no king, and loses all power and regal authority over his people; which are also taken notice of by Winzerus.

The first is, If he endeavour to overturn the government, that is, if he have a purpose and design to ruin the kingdom and common-wealth, as it is recorded of Nero, that he resolved to cut off the senate and people of Rome, lay the city waste with fire and sword, and then remove to some other place. And of Caligula, that he openly declared, that he would be no longer a head to the people or senate, and that he had it in his thoughts to cut off the worthiest men of both ranks, and then retire to Alexandria: and he wisht that the people had but one neck, that he might dispatch them all at a blow. Such designs as these, when any king harbours in his thoughts, and seriously promotes, he immediately gives up all care and thought of the common-wealth; and consequently forfeits the power of governing his subjects, as a master does the dominion over his slaves whom he hath abandoned.

§. 238.

The other case is, When a king makes himself the dependent of another, and subjects his [411] kingdom which his ancestors left him, and the people put free into his hands, to the dominion of another: for however perhaps it may not be his intention to prejudice the people; yet because he has hereby lost the principal part of regal dignity, viz. to be next and immediately under God, supreme in his kingdom; and also because he betrayed or forced his people, whose liberty he ought to have carefully preserved, into the power and dominion of a foreign nation. By this, as it were, alienation of his kingdom, he himself loses the power he had in it before, without transferring any the least right to those on whom he would have bestowed it; and so by this act sets the people free, and leaves them at

their own disposal. One example of this is to be found in the Scotch Annals.

§. 239.

In these cases *Barclay,* the great champion of absolute monarchy, is forced to allow, that a king may be *resisted,* and *ceases to be a king*. That is, in short, not to multiply cases, in whatsoever he has *no authority,* there he is *no king,* and may be *resisted:* for wheresoever the *authority ceases, the king ceases too,* and becomes like other men who have no authority. And these two cases he instances in, differ little from those above mentioned, to be destructive to governments, only that he has omitted the principle from which his doctrine flows; and that is, the breach of trust, in not preserving the form of government agreed on, and in [412] not intending the end of government itself, which is the public good and preservation of property. When a king has dethroned himself, and put himself in a state of war with his people, what shall hinder them from prosecuting him who is no king, as they would any other man, who has put himself into a state of war with them; *Barclay,* and those of his opinion, would do well to tell us. This farther I desire may be taken notice of out of *Barclay,* that he says, *The mischief that is designed them, the people may prevent before it be done:* whereby he allows *resistance* when tyranny is but in design. *Such designs as these* (says he) *when any king harbours in his thoughts and seriously promotes, he immediately gives up all care and thought of the common-wealth;* so that, according to him, the neglect of the public good is to be taken as an evidence of such *design,* or at least for a sufficient cause of *resistance*. And the reason of all, he gives in these words, *Because he betrayed or forced his people, whose liberty he ought carefully to have preserved*. What he adds, *into the power and dominion of a foreign nation,* signifies nothing, the fault and forfeiture lying in the loss of their *liberty,* which he *ought to have preserved,* and not in any distinction of the persons to whose dominion they were subjected. The peoples right is equally invaded, and their liberty lost, whether they are made slaves to any of their [413] own, or a *foreign nation;* and in this lies the injury, and against this only have they the right of defence. And there are instances to be found in all countries, which shew, that it is not the change of nations in the persons of their governors, but the change of government, that gives the offence. *Bilson,* a bishop of our church, and a great stickler for the power and prerogative of princes, does, if I mistake not, in his treatise of *Christian subjection,* acknowledge, that *princes may forfeit their power,* and their title to the obedience of their subjects; and if there needed authority in a case where reason is so plain, I could send my reader to *Bracton, Fortescue,* and the author of *the Mirrour,* and others, writers that cannot be suspected to be ignorant of our government, or enemies to it. But I thought *Hooker* alone might be enough to satisfy those men, who relying on him for their ecclesiastical polity, are by a strange fate carried to deny those principles upon which he builds it. Whether they are herein made the tools of cunninger workmen, to pull down their own fabric, they were best look. This I am sure, their civil policy is so new, so dangerous, and so destructive to both rulers and people, that as former ages never could bear the broaching of it; so it may be hoped, those to come, redeemed from the impositions of these *Egyptian* under-task-masters, will abhor the memory of such servile [414] flatterers, who, whilst it seemed to serve their turn, resolved all government into absolute tyranny, and would have all men born to, what their mean souls fitted them for, slavery.

§. 240.

Here, it is like, the common question will be made, *Who shall be judge,* whether the prince or legislative act contrary to their trust? This, perhaps, ill-affected and factious men may spread amongst the people, when the prince only makes use of his due prerogative. To this I reply, *The people shall be judge;* for who shall be *judge* whether his trustee or deputy acts well, and according to the trust reposed in him, but he who deputes him, and must, by having deputed him, have still a power to discard him, when he fails in his trust? If this be reasonable in particular cases of private men, why

should it be otherwise in that of the greatest moment, where the welfare of millions is concerned, and also where the evil, if not prevented, is greater, and the redress very difficult, dear, and dangerous?

§. 141.

But farther, this question, *(Who shall be judge?)* cannot mean, that there is no judge at all: for where there is no judicature on earth, to decide controversies amongst men, *God* in heaven is *judge*. He alone, it is true, is judge of the right. But *every man* is *judge* for himself, as in all other cases, so in this, whether another hath put [415] himself into a state of war with him, and whether he should appeal to the Supreme Judge, as *Jeptha* did.

§. 242.

If a controversy arise betwixt a prince and some of the people, in a matter where the law is silent, or doubtful, and the thing be of great consequence, I should think the proper *umpire,* in such a case, should be the body of the *people:* for in cases where the prince hath a trust reposed in him, and is dispensed from the common ordinary rules of the law; there, if any men find themselves aggrieved, and think the prince acts contrary to, or beyond that trust, who so proper to *judge* as the body of the *people,* (who, at first, lodged that trust in him) how far they meant it should extend? But if the prince, or whoever they be in the administration, decline that way of determination, the appeal then lies no where but to heaven; force between either persons, who have no known superior on earth, or which permits no appeal to a judge on earth, being properly a state of war, wherein the appeal lies only to heaven; and in that state the *injured party must judge* for himself, when he will think fit to make use of that appeal, and put himself upon it.

§. 243.

To conclude, The *power that every individual gave the society,* when he entered into it, can never revert to the individuals again, as long as the society lasts, but will [416] always remain in the community; because without this there can be no community, no common-wealth, which is contrary to the original agreement: so also when the society hath placed the legislative in any assembly of men, to continue in them and their successors, with direction and authority for providing such successors, *the legislative can never revert to the people* whilst that government lasts; because having provided a legislative with power to continue for ever, they have given up their political power to the legislative, and cannot resume it. But if they have set limits to the duration of their legislative, and made this supreme power in any person, or assembly, only temporary; or else, when by the miscarriages of those in authority, it is forfeited; upon the forfeiture, or at the determination of the time set, *it reverts to the society,* and the people have a right to act as supreme, and continue the legislative in themselves; or erect a new form, or under the old form place it in new hands, as they think good.

FINIS.

Endnotes

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In grants and gifts that have their original from God or nature, as the power of the father hath, no inferior power of man can limit, nor make any law of prescription against them. *Observations,* 158.

The scripture teaches, that supreme power was originally the father, without any limitation. *Observations,* 245.

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It is no improbable opinion therefore, which the archphilosopher was of, that the chief person in every houshold was always, as it were, a king: so when numbers of housholds joined themselves in civil societies together, kings were the first kind of governors amongst them, which is also, as it seemeth, the reason why the name of fathers continued still in them, who, of fathers, were made rulers; as also the ancient custom of governors to do as *Melchizedec,* and being kings, to exercise the office of priests, which fathers did at the first, grew perhaps by the same occasion. Howbeit, this is not the only kind of regiment that has been received in the world. The inconveniences of one kind have caused sundry others to be devised; so that in a word, all public regiment, of what kind soever, seemeth evidently to have risen from the deliberate advice, consultation and composition between men, judging it convenient and behoveful; there being no impossibility in nature considered by itself, but that man might have lived without: any public regiment, *Hooker's Eccl. P. lib.* i. *sect.* 10.

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The public power of all society is above every soul contained in the same society; and the principal use of that power is, to give laws unto all that are under it, which laws in such cases we must obey, unless there be reason shewed which may necessarily inforce, that the law of reason, or of God, doth enjoin the contrary, *Hook. Eccl. Pol. l.* i. *sect.* 16.

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To take away all such mutual grievances, injuries and wrongs, *i. e.* such as attend men in the state of nature, there was no way but only by growing into composition and agreement amongst themselves, by ordaining some kind of government public, and by yielding themselves subject thereunto, that unto whom they granted authority to rule and govern, by them the peace, tranquillity and happy estate of the rest might be procured. Men always knew that where force and injury was offered, they might be defenders of themselves; they knew that however men may seek their own commodity, yet if this were done with injury unto others, it was not to be suffered, but by all men, and all good means to be withstood. Finally, they knew that no man might in reason take upon him to determine his own right, and according to his own determination proceed in maintenance thereof, in as much as every man is towards himself, and them whom he greatly affects, partial; and therefore that strifes and troubles would be endless, except they gave their common consent, all to be ordered by some, whom they should agree upon, without which consent there would be no reason that one man should take upon him to be lord or judge over another, *Hooker*'s *Eccl. Pol. l.* i. *sect.* 10.

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At the first, when some certain kind of regiment was once appointed, it may be that nothing was then farther thought upon for the manner of governing, but all permitted unto their wisdom and discretion,

which were to rule, till by experience they found this for all parts very inconvenient, so as the thing which they had devised for a remedy, did indeed but increase the sore, which it should have cured. They saw, that *to live by one man's will, became the cause of all men's misery*. This constrained them to come unto laws, wherein all men might see their duty beforehand, and know the penalties of transgressing them. *Hooker's Eccl. Pol. l.* i. *sect.* 10.

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Civil law being the act of the whole body politic, doth therefore over-rule each several part of the same body. *Hooker ibid.*

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At first, when some certain kind of regiment was once approved, it may be nothing was then farther thought upon for the manner of governing, but all permitted unto their wisdom and discretion which were to rule, till by experience they found this for all parts very inconvenient, so as the thing which they had devised for a remedy, did indeed but increase the sore which it should have cured. They saw, that to live by one man's will, became the cause of all men's misery. This constrained them to come unto laws wherein all men might see their duty before hand, and know the penalties of transgressing them. *Hooker's Eccl. Pol. l.* i. *sect.* 10.

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The lawful power of making laws to command whole politic societies of men, belonging so properly unto the same intire societies, that for any prince or potentate of what kind soever upon earth, to exercise the same of himself, and not by express commission immediately and personally received from God, or else by authority derived at the first from their consent, upon whose persons they impose laws, it is no better than mere tyranny. Laws they are not therefore which public approbation hath not made so. *Hooker's Eccl. Pol. l.* i. *sect.* 10. Of this point therefore we are to note, that sith men naturally have no full and perfect power to command whole politic multitudes of men, therefore utterly without our consent, we could in such sort be at no man's commandment living. And to be commanded we do consent, when that society, whereof we be a part, hath at any time before consented, without revoking the same after by the like universal agreement.

Laws therefore human, of what kind so ever, are available by consent. *Ibid.*

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Two foundations there are which bear up public societies; the one a natural inclination, whereby all men desire sociable life and fellowship; the other an order, expresly or secretly agreed upon, touching the manner of their union in living together: the latter is that which we call the law of a common-weal, the very soul of a politic body, the parts whereof are by law animated, held together, and set on work in such actions as the common good requireth. Laws politic, ordained for external order and regiment amongst men, are never framed as they should be, unless presuming the will of man to be inwardly obstinate, rebellious, and averse from all obedience to the sacred laws of his nature; in a word, unless presuming man to be, in regard of his depraved mind, little better than a wild beast, they do accordingly provide, notwithstanding, so to frame his outward actions, that they be no hindrance unto the common good, for which societies are instituted. Unless they do this, they are not perfect. *Hooker's Eccl. Pol. l.* i. *sect.* 10.

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Human laws are measures in respect of men whose actions they must direct, howbeit such measures they are as have also their higher rules to be measured by, which rules are two, the law of God, and the law of nature; so that laws human must be made according to the general laws of nature, and without contradiction to any positive law of scripture, otherwise they are ill made. *Hooker's Eccl. Pol. l.* iii. *sect.* 9.

To constrain men to any thing inconvenient doth seem unreasonable. *Ibid. l.* i. *sect.* 10.

[*]

Another copy corrected by Mr. Locke, has it thus, *Noxious brute that is destructive to their being*.