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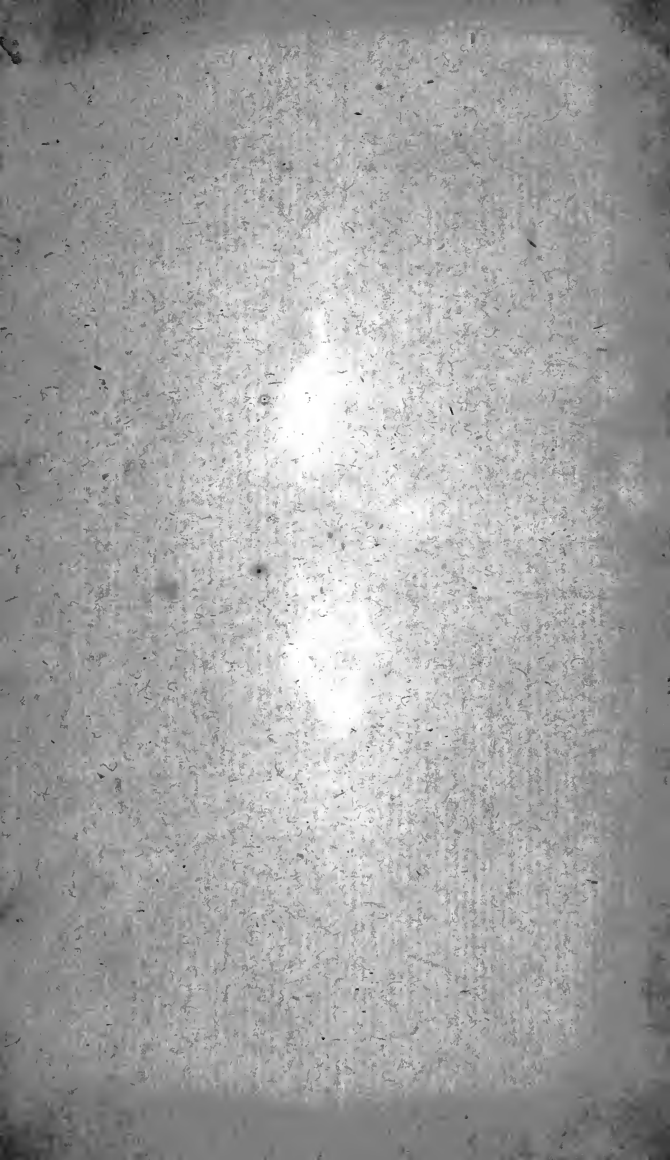
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Vol. 11. 1648

# A Discourse :

Wherein is examined,  
What is particularly *lawfull* during the *Confusions* and *Revolutions* of *GOVERNMENT*.

O R,

How farre a man may lawfully conforme to the Powers and Commands of those who with various successess hold Kingdomes divided by Civill or Forreigne Warres,

Whether it be,

1. In paying Taxes.
2. In Personall service.
3. In taking Oaths.
4. In a mans giving himselfe up to a finall Allegiance, in case the warre end to the advantage of the unjust Power or Party.

Likewise,

Whether the Nature of Warre be inconsistent with the Nature of the Christian Religion?

Three Parts :

By *Ant: Ascham*, Gent.

*Antony Ascham*

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# Preface to the READER.

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IF I might have enjoyed St *Augustines* wish, and have seen Rome in its glory, it should have been only to have heard the great Kings of the world like private persons (*Et sepositis sceptris*) examin'd and plead, *pro & contra*, at the Senate-barre, about the due administration of their Royall functions.

For *there* was a true soveraigne jurisdiction, and to be admired, if the *Senate it selfe* had been free from misgovernments, depopulations, and usurpation. But as the overboyling of their ambition shed it selfe over the whole earth,

the sighs and groanes of East and West met  
and eccho'd perpetually betwixt their wa's :  
And if it had been likewise possible, that all  
of <sup>the</sup> world which by their Commissions was  
brought from the sides of mankinde, could have  
met at Rome, the source was capacious enough  
to have made a River passe before their Senate-  
doore, as big as their Tiber : Thus they com-  
merc't with the people ; but *Cæsar* afterwards  
by a Commission derived from himselfe, made  
the people all the world over, and the Senate  
likewise pay tribute to him ; For which he re-  
paid againe no lesse then his owne life as a tri-  
bute due to them. Here therefore I shall be so  
bold, in the *Peoples* behalfe especially, as to ex-  
amine both *Cæsar* and the Senate; that is, I shall  
lay the *facts* of supremest powers to the rules  
of *right*, and not their facts only, but *our owne*  
also, as we are all moved, or rather hurried by  
their rapid motions. The originall and inhe-  
rent rights of the society of mankinde is that  
which I here search after, not those rights of  
this or that Countrey (of which there is no de-  
termined end, no not betwixt the Lawyers of  
any one dominion) ; that so finding out, and  
afterwards holding to our owne *native Rights*  
*as men*, we may be sure we doe others no wrong  
*as Subjects*, be it either in acting with them, or  
 dissenting from them.

Though

Though I know the story of this age to be  
sad enough for our sence and suffering, yet not  
bad enough for these discourses, nor in any de-  
gree so calamitous as that of our forefath-  
er under the disputes of the Red and white Roses  
There I see true confusions and revolutions in  
Government ; the same men invading one ano-  
ther, now for this party, by and by for the other,  
and after that for a third, and an avowing of  
right in all ; the consciences only of those men  
we cannot see ; but to judge of them aright, I  
shall in these discourses change the Scene, and  
put our selves into their places. This we know  
by Proverbe, that he who is afraid of leaves  
ought not to goe into a Forrest : so ought not  
we into any action, if we scruple at the least  
circumstance : For by *Cæsars* favour (who was  
farre from the complexion of a bogling Ca-  
suisit) *Satius est cavere semper, quam perire semel.*  
I conceive that they who were not the first mo-  
vers of those calamitous confusions, but were  
afterwards by a strict necessity involv'd in  
them, had a larger liberty and right then ordi-  
narily any party would allow them, which ever  
sayes, That in all things we may in conscience  
act only one way. Wherefore I have made it  
my taske to shew in the two first parts, how  
some consciences in those tempestuous times,  
like our Albion rocks, might on every side have  
resiste

resisted the waves they were beaten with, yet have been never the blacker.

41. The Chymists remedies stirring the spirits of a dying body all at once, make a sudden recovery of the patient, yet because they spend themselves without a supply, those remedies dispose the body to as sudden a death: Thus the lamp which is consuming its last drop, burnes brightest, yet goes out suddenly like lightning; Such cures as those what valuable effect doe they produce? In like manner, what advantage is it to have deduc'd out of the former parts, a Morall and Civill Latitude for the defence of our persons and fortunes, if Christianity disarme us totally? This were by vertue of the first parts to seeke to preserve our lives a little, but presently after to dye a worse death by the last, in which it is examined, *Whether the Nature of all Warre be inconsistent with the Nature of the Christian Religion?* as *Erasmus* in his *querela pacis & Schlictingius contra Meisnerum*, and other Socinians, would positively perswade us.

The magnificentest triumphs did certainly by a reflexion represent to some eyes nothing but horror: because they were alwayes proportioned to the extent of desolations brought on those who had the soules and faces of men. But policy hath need of all its stratagems to con-  
found




found the judgement of a souldier, by excessive praises, recompences and triumphs; that so the opinion of wounds and of wooden leggs, might raise in him a greater esteeme of himselfe, if he had an intire body. To allure others, something also must be found out to cover wounds and the afrightments of death handsomely; and without this, a *Cesar* in his Triumph, with all his Garlands and Musick would looke but like a *Victime*. But what sorrow of heart is it to see passionate man, a raye of Divinity, and the joy of Angels, scourg'd thus with his owne scorpions? and so fondly to give himselfe alarums in the midst of his innocent contentments, as they did who were in the midst of their recreations in the Theatre of *Tarentum*. The cholericknesse of war (whereby the lustfull heate of so many hearts is redoubled) stirres up the lees of a Common-wealth, as a tempest doth weeds and slimy sedement from the bottome to the top of the Sea, which afterwards driven to the shore, together with its foame, there covers pearles and precious stones. Wherefore here likewise I shall endeavour to shew how we may weather out such stormes, and in the midst of so many swords find an *in-culpata tutela*, which may with as little contradiction passe through most oppositions, as Clemency may through most punishments. When

*Carthage* was besieged, there was use even of  
mens haire to make ropes for engines : I  
now I doe not contribute much strength to  
these difficulties, neither conceive I my selfe a  
Pilot dexterous enough for such a Sea. All that  
I can hope for in these discourses (Reader) is,  
that my escapes or faults, like those which are  
found in the cuts of Diamonds, will passe the  
easilier undiscerned under the richnesse of their  
subject-matter, or at least under the riches of  
your goodnes.

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The

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OF  
The first Part :

Wherein is generally examined,  
In what things, and how farre a  
man may lawfully conforme to the  
power and Commands of those  
who hold a Kingdome divided  
by Civill Warre.

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of the question.

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2. *The reasons wherefore men determine not easi*

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C H A P.



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The

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# The first Part:

Wherein is examined in what things, and how farre a man may lawfully conform to the power and commands of those who hold a Kingdome divided by Civill Warre.

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## CHAP. I.

The historicall occasion and state of the question.

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1. *The cases of right wherefore hard to resolve.*
2. *The reasons wherefore men determine not easily the cases of Civill warre.*
3. *Of each mans Soveraigne Allegiance to himself.*
4. *No warre can be made without the exercise of an absolute power for the time during.*
5. *Absolutenesse of power wherein it consists.*

**H**ere can be onely three considerations of the state of Warre.

First, In its beginning ; Secondly, In its continuance, which is most properly its state ; And Thirdly, in its end : from these arise three Questions.

First, What may be the Originall and Justifiable causes of a mans forming a party in the beginning of a Warre?

Secondly, How farre a man may lawfully submit to, and obey opposite parties, during the confusions of Warre actually formed and introduced?

Thirdly, What may be lawfull for a man to submit to upon the issue of a Warre, which may end to the advantage of him who by unjust force hath possess'd himselfe of anothers right?

These two latter fall into the compasse of this discourse. The first is a Question apart, to which though much may be said, yet I hold not the knowledge of it so necessary for those who are the *Achivi*, and of the rank of the people to whom I now speak. These are the Anvill on which all sorts of Hammers discharge themselves; they seldome or never begin a Warre, but are all concern'd in it after it is begun: Besides, the difficulties of it are not so great as of these two latter, for the people seldome know the secret causes of the beginning of a Warre, (which if known would quickly take away doubtings) and which is worse they must come into it afterwards, though they would not have any at all. Many things will be proved lawfull for men to doe in the state and winding up of a Warre, introduc'd by others, which would not have been so for them in its beginning: so that though by accident they may begin to put themselves into such a Warre, yet they cannot be said to begin the Warre, or assist to its beginning. Lastly, that Question grows not naturally out of the Histori-call ground and occasion of this Treatise, as presently will appeare.

Our Consciences more then our capacities should  
put

put us upon the search of these two Capitall difficulties, that so if occasion should be we might the steadier stand those streights and blows of fortune to which humane condition lies open, in the Revolution and confusion of Governments.

Our forefathers above one hundred years agoe were above twenty years in examining the second question, and about four years in the third. *Henry* the Sixth being by force of Warre deposed (after solemn Oaths of Allegiance, both of Parliaments and people) to make way for *Edward* the Fourth; who again, after the like Oaths and Allegiance engaged to him, was as solemnly, and by the same fate of the sword deposed for *Henry* the Sixth's right, who after nine years imprisonment was re-crowned, and after six months Raigne was again forcibly deposed for *Edward* the Fourth, and stabb'd by his Brother *Richard* Duke of *Gloucester*, together with Prince *Edward* King *Henry's* Sonne, upon his retarne from *France* for his Fathers reliefe. Those two Kings, like the gods which the *Romanes* took in their Enemies Countries, were sometimes led in triumph, and sometimes adored. But that which was somewhat blacker then all this, was the Duke of *Gloucesters* murthring his two Nephews, the young King and his Brother, *Maius enim rapere imperium quam expectare*. Yet notwithstanding, particular men (according to the calamity of those times) were by Oathes and Allegiance forc't to submit to this Injustice; which after another bloody Warre had its change, and after 24 years confusions and revolutions ended peaceably in the person of *Henry* the Seventh.

Here wee see what those Consciences conform'd unto in point of Fact, which usually

receives its motives from interest or feare, the *naked sword* permitting no nicenesse of obedience.

§. 1. But neither then nor since hath it been declar'd unto us what in such cases is lawfull to doe in matter of right : Every present power, whether established or struggling to be established, having this interest, that they who *de facto* are under their power, should not during that time presume to question their Right ; *It being some kinde of Victory already gained, to have gain'd the repute of the better cause.*

§. 2. Many other questions hang upon these, which are all the difficulter because the subject of them, which is Civill Warre, consists in confusion, in which the minds of men are floting and divided, according to the variety of successes & divisions which Armies make in the places where they and their whole subsistence are fallen into their possession.

§. 3. And let men argue at as much ease as they please, yet it is certaine, that no man is of such a captivated Allegiance, as by reason of it to engage himselfe to a party, believing upon the engagement that he shall be certainly destroyed in it. There is nothing in the skin (as they say) which will not doe its best to save it : And hee must be a rare Example who makes not his last resolution for his owne life, or subsistence, which is equivalent to life ; And therefore the valiantest and most strictly oblig'd Troopes stick not to aske quarter, when they cannot defend themselves any longer, and are justified for it, even by those for whom they swore to die.

Our Saviour speaks of a time when a man will sell all he hath for a sword : And we read of those who a long time ador'd and kist a Goddesse fastned to an Oak in a Grove ; but when that Tree was ready to fall

fall, no one would come within the shadow of her statue. And as it is naturall for particulars thus to consult for themselves, so is it as naturall for those Armies which have the said particulars in their possessions: Wherefore though in those cases wee may lament our owne miseries, yet we ought not to wonder, that all master-powers take such interest in their owne preservations, as to use all means that we recover not a power to betray *them*.

4. This consideration obliges even those ( who perhaps fight to have Laws sweetned ) to exercise for a time that Law which indeed is the sharpest, *viz.* the Martiall; and they who fight to free themselves from an absolute power, are by that obliged for the time to take upon them the absolutest, ( as Dictators did ) which absolutenesse consists in these heads. *In casting off all recognizance of any Superiour or Col-laterall power: In waging Warre: In levying Taxes: In giving Oaths: In making Leagues and in Treating: In permitting no Appeale: In obliging to all sort of Fidelity: And finally in Judging of life and death.*

Here's matter enough to perplex Conscience, especially if it should bee exercised on it by that party which is believed to be the unjust; but yet that is not the worst: For by the chance of Warre the other party may have the power to embroile our Consciences a new with contrary Oathes and Obligations: And after this the other may be re-establisht againe; and then

—— *Quas pœnas non exigit Ajax,*  
*Ut malè defensus? ——*

But the difficultie paramount is this; *Ut innocens sit animus in tam iratâ fortunâ*: and if wee doe no more then that which is lawfull, wee are sure our

Consciences will bee better then the times."

Thus having stated the question, I enter into its terms, and in the first place aske, What that is which wee call lawfull?

## CHAP. II.

What is requisite to make a thing lawfull.

- §. 1. *The variety and contrariety of humane actions, whence.*
2. *The difficultie of finding what is lawfull.*
3. *Humane Laws whence : and wherefore the Laws of Nature are above ours.*
4. *No man naturally more a Iudge then another of Natures Laws.*
5. *Natures Laws are for inward goodnesse and vertue, and state Laws for quiet and repose.*

**P**Lain reason shews us, that Naturall and Mathematicall causes have more certitude then Civill : For Nature is alwayes uniforme, and alike, in its operations. Hence fire alwayes burns and never wets ; a stone in the aire naturally tends downwards, and never stayes in the middle. In Mathematicall causes, ordinarily the formes are such, as have no middle interposed, as betwixt even and od, there is no *medium participationis*, betwixt a right line and a crooked, there



there is no middle sort of line; thus two and two alwayes make foure, &c.

1. But Civill or Humane actions proceeding from a mutable and a various Principle, (the will) cannot alwayes be alike or uniforme: and besides the will within, humane actions without, are subjected to different circumstances, and to infinite encounters: By reason of which their excessive number, they cannot be foreseen while men are making Laws. Hence wee may understand wherefore it's said that *Omnis definitio in jure est periculosa*; and that *Summum jus* may be at some time *Summa injuria*; as to render a man his sword when he is actually madde, &c. And as circumstance hath power to change the matter, so in the forme of the action, it leaves in the middle a latitude and extent, sometimes inclining to one extreme, sometimes to another.

2. For example, betwixt that which by præcept we are commanded ever to doe, and that which we are commanded never to doe, is plac't *That which is lawfull for us now and then to doe, or not to doe, in matters of our owne right, so farre as they seeme expedient or not expedient for us.* Thus Joseph is called a just man, because he thought of divorcing himselfe from *Mary*, though upon circumstance he would not, &c. But that which perplexes all here is, that this *Licium* leans sometimes more to the one hand; sometimes more to the other; sometimes more to that which is absolutely good, sometimes more to that which is absolutely bad; from whence grow scruples, and doubtings, whether in such twilights we really participate more of light then of darknesse, that is, more of good then of bad.

3. Humane Laws grow most out of these middle things,

things, *ex mediis licitis* : And upon right examination we shall finde, that a man hath nothing else to dispose of. For wee (poore subordinate vassals) cannot so much as deliberate *de absolutè debitis & absolutè illicitis*, for they were in force before man, Prince or people were in being ; and God himselfe cannot now alter them, they flowing intrinically either from his Sanctity, Wisdome, and Justice, as he is a Creator and a Governour ; or else they flow from Nature, whose rule (according to Gods making of it by that which is in himselfe) is right reason and honesty : This uprightnesse of Nature, together with the obligation we have to be subject to it, was not a moment after us, and therefore wee could not determine any thing about it ; therefore we have not a legislative power to alter or diminish any of Natures Lawes.

4. Saint *Paul* tels us of those who without any after-knowledge of Gods revealed will or laws to man, were condemnable by those of Nature alone: in punishing the breakers whereof, no man is naturally more a Magistrate then an other : Otherwise what meant *Cain*, when after his murther he cried, Who-soever shall finde me will slay me ?

5. Though humane Lawes remember us of these things, yet it is not as if they gave them their originall and Primary force of obliging : Yea, reason of state is not busied so much about inward piety and vertue, as it is about publique quiet and repose, or those actions which regard another mans receiving right or wrong ; and hence it is that great prodigality is not so severely punisht, as a little robbery ; and that *malus homo potest esse bonus civis* : The reason is, because though hee may do himselfe wrong in his owne

owne rights, yet he may alwayes do other men right in theirs : Neither is there any cleare reason, wherefore these lesser finnes and impieties should bee punished by any but God, who is wisest to know them, justest to weigh the merit of them, and powerfullst to punish them.

This is the state of Gods and of Natures fixt Laws, to which we are all equally obliged ; but our floting and circumstantiated Laws are only to give a rule for an equall and a mutuall community in those things which God and Nature gave us to dispose of as wee would our selves : and now the question is, First, what right or liberty we have naturally in our owne actions, as also how wee were originally invested with lawfull possession of the gifts of Nature. And Secondly, how our wills since disposed both of the one and of the other, or which is equivalent to both Questions, *That as originally we had and did all by the Lawes of Nature, so whether now our state and conditions be such, that we neither have nor can doe any thing lawfully but by permission of humane written Law?* The following Chapters of this first part treat Generally of this, as a ground or introduction to the second, where the particular cases of paying Taxes, serving Personally, Swearing, and finall Allegiance to the usurping party, are more distinctly handled.

## CHAP. III.

Of what things we have a lawfull right to dispose : Or what our originall rights in them may be before we *de facto* doe dispose of them.

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- § 1. *Concerning our naturall shares in the earth, and whence came the Community of things at the beginning.*
2. *Whence the separate enjoyment of rights in present.*
3. *Concerning the right which men had to seize on what they would at the beginning.*
4. *Of Possession and its originall right, and of Planters in Vacancies.*
5. *Of the Conditions of Plantations, and of Vacancies.*
6. *The naturall right of making last Wills and Testaments of what we possesse in our lives.*

§ 1. **A**S Heaven is inhabited by God and divine Spirits of inferiour degrees : so is the earth to be inhabited by man and severall sorts of creatures inferiour to him ; and that in order to his use and dominion. God twice gave us the earth *as a common stocke and patrimony to live on*, after the Creation, and after the deluge, *Acts 17. v. 26*. Men then lived at ease enough,

enough, feeding only on herbes and those things which nature prepared for them, without their labour: And this state of Community might have lasted still, if we had had but two qualities which were proper to those times, *Charity* and *Simplicity*; of which, nakedness, and coverings of beasts skins was, and is still an Argument: Witnesse the inhabitants of the new world, and of the American Isles.

2. But now our luxury and excess is such, that it takes up the imploiment of three parts of five, both of men and time; so small a number are they who till the ground, looke to pasturage, and things necessary to the subsistence of our lives: Nay, 'tis impossible almost for those who are by profession occupied in the necessary imploiments of life, ever to rise to the fortune and honour of those, whose professions consist in, and subsist by luxury and excess; For instance, a Plowman, Miller, Chandler or the like, never rise to the fortune or esteeme of exquisite perfumers, Tavern-keepers, &c.

Out of this we may easily discover the occasion of mens receding from their originall community, both in movable and immovable goods, That when men were no longer content to feed on the superficial bounty of the earth, *aut de sponte natis*, nor to live in caves, nor to weare habits made of rude beasts skins, or of the barke of Trees, but sought a more delicate kinde of life, then there was need of much more industry then before, which particular men apply'd to what they seiz'd on in particular. Another occasion (as *Grotius* hath observed) might be, the distance of their habitations upon the peopling of the earth; which might well hinder their laying up the fruits of the earth for a common stock: As also the defect of justice

Justice and Love, which occasion'd an inequality as well in labour, as in spending the fruits of labour.

3. Wherefore upon these occasions they began to divide : And tho they had no rules given them for the *detaile*, and laying out the parcels of this great Common, the earth; yet the first possessors might without scruple of doing others wrong, place their bodies where they would, yea take what, and where they would to serve their natures : And after their hands had once fastned on any particular thing, no man could take it from them againe, without doing them manifest wrong. Thus an empty stage is common in every particular part or place, till particular bodies have plac't themselves ; and then the maxime holds, *In pari jure melior est conditio possidentis*.

4. Possession therefore is the greatest Title, which is nothing else but *positio pedis*; As if the Ancients had no other *Seale* to confirme their Tenures, but the *prints of their feet*; and good reason too, seeing the minde is not able to take up a place so well as the body : For many mens wils may concur in (wishing & liking) the same thing, but many bodies cannot concur to the possessing it. Besides, the minde cannot set an outward mark on what it likes, that thereby others might be warned to abstaine from it : all which the body properly doth. *Abraham* and *Lot* going to plant, declared no more then this, *That there was roome, or vacancy enough* ; and therefore without further examination or scruple, they knew they might turne to the right hand or to the left, to possesse what they would to themselves.

5. This vacancy is twofold . 1. *Naturall*, 2. *Civill* : The first is in things which may be possesst, but actually are not, neither in property nor use. Such a vacancie which is *nullius in bonis*, might be occupied by *Swit-*

zers, who as *Cæsar* saith, would faine have changed their rough hills for some neater *Campania*. *Civill vacancy* is *ubi nec possessio est plenè in homine, nec homo plenè in possessione*; that is where it is not absolutely incorporated, as among the roving *Arabians*, and many *Africans*, who possesse one place to day, and another to morrow: These by their frequent returns shew that they abandon not the places they remove from, as *derelicta quæ quis in bonis amplius numerare non vult*. We can only say, that their *naturall and voluptuary interest* in them is no way improved. But we must presse this Argument very tenderly, lest by the same reason others conclude, That those Estates which are not competently improved, are derelict and occupyable by others, which would introduce perpetuall confusions; and easily perswade every man that he could husband his neighbours estate better then himselfe. However this is a cleere case for all Planters, that those *wastes, or asperi montes*, which the Natives make no use of, nor can receive any damage by their being possesst by others, may be lawfully impropriated by them: *Rectè facta est concessio, quæ est sine damno alterius*, saith the Law.

6. Thus we see how we originally impropriated to our uses during our living here: but then some may question thus, that when we can have no further use of the things of the world, but are departed it; whether then we have a naturall right to dispose of the parts of it to whom we please? For it seemes unnaturall and contradictory that a man should act any thing after his being ceases; which is reason enough; but then one thing is forgotten, That the dead mans gift is made during his life, tho it have not any effect till death. And good reason why it should not be before;

before; for that would be as the French say, *Se despouiller avant que de s'en aller concher*, which is, for a man to put off all his clothes before he goes to bed.

Thus we see how the Earth by originall right is entail'd; now it will be necessary to examine —

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#### CHAP. IV.

Whether the Property which we have in our Goods swallows up all right.

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- § 1. *He who hath nothing by humane positive Law, may yet seeke his means of subsistence by the Law of Nature.*
2. *Wherfore one man may naturally have more then another.*
3. *Whence it is that there was at the beginning, and is still, a Tacite condition of re-assuming our Originall Rights in case of extreame or naturall necessity for a naturall community.*
4. *Of Christian Community.*
5. *Whether that which is Gods here, lyes under the same exceptions of our necessities, that our Properties doe?*

§ 1. **O**Ur generall rights surely are not yet all lost, though all the world be now trampled over, and impropriated in particular possessions and rights: there yet remains some common right, or naturall



naturall community among all men, even in impropriations ; so that that which is necessary for my naturall subsistence and unnecessary to another belongs justly to me, unlesse I have merited to lose the life which I seek to preserve. There were a defect in Gods creating of our Natures such as they are, if he did not provide meanes to uphold their beings according to the naturall faculties which hee hath given them.

*Pia mater panem inter liberos distribuit ut frustrum veniat singulis.*

Let us judge this case by those rules of Justice, by which we judge other cases. If a Father in his Will passe by a Child, or name him, but upon false causes leaves him nothing ; hee is notwithstanding (by the equity of the Civill Law) admitted to a childs part, *à legitima*, and may forme his action *contra testamentum inofficiosum*. Men are all akin, and as we derive one from another, so we cannot expect but to make room one for another, and to let others settle in our places, who may justly expect as much due to them for their naturall subsistence, as was to those who before went out of the world to make place for them, yea, though they assigne them nothing at their departure.

Man were of all living creatures most miserable, if he might not during this life have that measure which God would not have an Oxe defrauded of. Thus hath every dunghill Flie a right to live, and to remaine infectile, which besides existence hath sence, and may not justly bee deprived of that its chiefest felicity, unlesse it be importunate to a nobler Creature.

2. No man in reason can pretend to share in the sweat

sweat of another mans brows, or that the paines and waisting of an other mans life, should bee for the maintenance of any but his owne. Yet though it be granted, that they who enter'd the world before us, had the means (either by their owne industry, or lawfull donation of the fruits of other mens industries) to be possess'd of something more then we might in reason expect at our entry, notwithstanding all that is not so properly theirs, but if another by extreme necessity be perishing, and they have above what they can consume in a naturall way, then they have no fuller property in that plenty then stewards have, and for this regard they are so called in Scripture. The earth still is the Lords, and the fulnesse of it: It is his, for hee made it out of his *owne matter*, and for the *fashion* of it he us'd not our aide: Yea, 'tis his Sunne still which produces, and his Clouds which drop fatnesse: Wee can onely plead the contribution of a little paines, for that which is our naturall share; so that in plaine reason we may not expect to be otherwise qualified then stewards for all that which is not probably necessary for our owne subsistence, or for theirs, who subsist onely by us. Wherefore if *Lazarus* ready to perish (not by fault but misfortune) had taken *Dives* his crummes contrary to his will, yet he had not sinned; *no more then he who takes something which the Lord hath given him, though the steward contradict it.* But if it so happen that they be *in pari necessitate*, then *melior est conditio possidentis*: Or as *Saint Pauls* words were when he excited the Churches charity and almes, for the reliefe of the distressed members of Christ; *Not (quoth he) that yee should be streightned, and they abound.* 2 Cor. 8. 13.

3. The will of those who first consented mutually

ally to divide the earth into particular possessions, was certainly such as receded as little as might be from naturall equity : For written Laws are even now as neer as may be to be interpreted by that ; and from hence it is, that in extreme and desperate necessity, the ancient right of using of things, as though they had still remain'd in common, is revived. 'Tis necessity which makes Lawes, and by consequence ought to be the interpreter of them after they are made. Hence flowes this legislative rule, *Leges humana obligant uti facta sunt, scilicet, cum sensu humane imbecillitatis*. All Admiralties judge this equall, That if provisions begin to faile in a ship at Sea, every one may be forc't to bring out openly, what hee laid in for his passage in particular, that so all might be spent in common : by which distribution it may happen, That they who laid in ten times more then any one else, shall have but an equall share with the rest. In like manner when the Sea breaks in upon a Country, we may dig in the next grounds to make a bank, without staying for the owners permission. In such cases of necessity, *humane Laws doe not so much permit, as expound their naturall equity* : and that which men give to those who are so innocently distressed, who borrow life onely from the shaddowes of death, *Et pect à se tempestate tuenitur*, is not so properly a charity to them as a duty ; and if he be a Christian who gives, perhaps he doth more charity to himselfe, then to the receiver.

§. 4. The reason of this Christian-charity or communion is as farre above the naturall, as Christ himselfe was above nature ; This requires an equall beating of all pulses, that as fellow members wee have a *homogeniall sence* and palpitation. By the Rivers of

Babylon every one sat downe and wept, and all their pleatant Instruments hung together on the sad Willowes. Every thing mourned alike for *Orpheus* when his torne limbs and his harpe were throwne into the River *Hebre*.

Ovid. ——— *Caput Hebre lyramque*

*Excipis, & medio mirum dum labitur amne  
Flebile nescio quid queritur Lyra, flebile lingua  
Murmurat exanimis, respondent flebile ripae.*

Wee are to divide a cruze of oyle and a few handfulls of meale with one of Christs flock, with an abandon'd creature, to whom *Nequicquam fundo suspirat nummus in imo*. *Persius*. And surely the violation of this *Jus charitatis* is no lesse then theft in thole who being of extended fortunes never defalcate a *Gibeonits* crust perhaps for a wandring Angell. These steale even the shipwrackt mans picture from him, which as his whole inheritance he carried at his back to move to compassion, and by the insatiable Sea of their Avarice and Luxury they wrack him over again at Land.

But this free Primitive communion had and hath its bounds and its *quantum* in Contributions, as well as the Naturall; otherwise it migth be fraudulent and theeving: For they who possesse but a little would contribute it all, on purpose to share equally with those who possesse very much; which would introduce a visible decay and ruine in all; as *Tiberius* rightly observed upon *M. Hortalus* his petitioning the Senate for an almes for *Augustus* *Caesar's* sake: *Incendetur inquit socordia, languescet industria, si nullus ex se meus aut spes, & securi omnes aliena subsidia expectabunt, sibi ignavi & nobis graves.*  
Tacit.

Where-

Wherefore in the midst of that Primitive Communion we finde that the Apostles went *Domatim* from house to house breaking of bread, therefore they even then retain'd their houses in property: which property is suppos'd by the Eighth Commandment, as well as it is by Christian charity: For no man can steale, but by invading the right of another: and as for charity it is necessary hee have something of his owne to be able to fulfill its commands, and to make a dole at his doore: And it is very convenient that he give it rather with his owne hand, then by some publique collectours, For *Charity is heated most with the sence of its owne action*, Mat. 7.11. Moreover under the Law Jews were commanded to love one another as themselves, yet this command took not away property then, therefore it takes it not away now. Notwithstanding we owe the use or *usufruct* of our properties to the distressed, though our selves bee at the same time in distresse; just as we are comanded by the peril of our own lives to endeavor to secure our Neighbours life; which is yet a charity more transcendent then the other, by how much life is above livelihood. Though states punish those who out of meer necessity take something out of anothers plenty, yet that proves not the act to bee a sinne, or repugnant to equity or conscience, but rather repugnant to conveniency of state, lest thereby a gap might be laid open to Libertinisme. Reason of state wee know considers not vertue, so much as publique quiet and conveniency, or that right which is *ad alterum*.

5. Wee will now consider *those things which are Gods*; which yet are not his in such a strict rigorous sence, but that they lie open to the exceptions of our just necessities. Hence that which is devoted as

a sacrifice to him, in case of necessity may be made our dinner; witnesse *Dauids* act: Wherefore the consequence of our Saviours answer was very strong, when hee defended his pulling the eares of corne in anothers field; That if it was lawfull for David in his necessity to eat that bread which was provided for the table of God, then how much more was it lawfull for him and his Apostles in their necessities to take a refreshing out of that which belong'd to man. The Canon Law saith, That if no other means can be found, the *Vessels of the Altar* may be sold to redeem those soules who are intral'd in misery and captivity: and is there not good reason for it? seing they serve but for the soules of men, and therefore the soules of men are preciouser then they: Yea, the sacrifice it selfe to what end is it, but to obtaine a state of piety for us? *Sed nisi vivamus pte vivere non possumus.* Eras.

## C H A P. V.

Concerning the parties (just or unjust) which by the variety of successe in Civill Warre command us and our subsistence, and reduce us to these extreme necessities.

Whether for a justifiable obedience to them, it be necessary for us to assure our selves, that those parties have a justifiable cause of Warre, or right to command us ?

- § 1. *Wherefore difficult for us to assure our consciences in the points of right.*
2. *Whether Prescription make a right ?*
3. *A cause of Warre depending on a matter of fact, not a certaine way of confirming us that we lawfully obey.*
4. *Warre for dominion and for possession.*

**T**Hese things being thus stated concerning our owne persons, the lawfulnessse and transcendent rights which we have both by God and nature in our selves, and that which is ours, yea & in case of extreme misery in others things also, above all those rights,

priviledges and obligations which others may pretend upon us; I may the easilier descend now into the bottome of the question, and speak to the maine parties whether Just or unjust, who by the variety of successe, may one after another command us and our estates, and in both reduce us to the forementioned extreme necessity: In which condition or confusion the question is what is lawfull for us to doe?

I finde that most here seek to satisfie their scruples in searhing, First, *Whether those parties have lawfull power over us or no? That so finding the lawfulnessse of their right, they may be easilier assured of the lawfulnessse of their owne obedience.* Secondly, *In examining the cause of their Warres, whether it be justifiable or no? They supposing, that if the cause bee bad, all effects which have any dependance on it, must needs be so too.* I conceive that these two considerations serve only to adde to the perplexity of a mans conscience, and are not necessary at all for us to be informed of.

§ 1. As for the point of *Right*, it is a thing alwayes doubtfull, and would be ever disputable in all Kingdomes, if those Governours who are in possession should freely permit all men to examine their Titles, and those large pretended rights which they exercise over the people: And though this parties Title may be as good or a little better then that parties, yet a man in conscience may still doubt, whether he have *Limpidum titulum*, a just title or cleare right, especially in those things which are constituted by so various and equivocall a principle as the will of man is.

Besides, most Governours on purpose take away from us the meanes of discovering how they come by



by their rights: Infomuch, that though they may really have that right to which they pretend, yet through the ignorance we are in, of what may be omitted in their history, either through feare, flattery, negligence or ignorance, it is dangerous for us upon probable humane grounds onely, to sweare their infallible right, as is shewed in the following treatise of Oaths. Upon this ground *Tacitus* saith well, *Tiberij Caijque & Claudij ac Neronis res, florentibus ipsis, ob metum falsa ; postquam occiderant recentibus odijs composita sunt.* And if the parties rights be but one as good as anothers, then his is the best who hath possession: which generally is the strongest title that Princes have. A whole Kingdome may be laid waste, before it can be infallibly inform'd concerning the parties true rights which they require men to die for, and to avow by oath.

2. As for prescription of long time, every mans conscience is not satisfied, That that added to possession makes a true right. This we know, that it conduces much to publique quiet; but the Canonists maintaine it against the Civilians, That *prescription upon an unjust beginning & ex titulo inhabili, doth by its continuance of time, increase and not diminish the injustice and faultinesse of the Act*: For the lapse of time cannot change the morality of an Act: It is no plea in Divinity to argue the prescription which sinne hath on us, as an excuse: *A Lie is almost as old as Truth; but there is no prescription against God and Truth.* This concerning the point of Right.

3. As for the point of Fact on which wee would ground *matter of right, or a justifiable cause* (viz. that such or such things have been done, or plotted, or advis'd, therefore the other party may lawfully do

this or that) that we know is without end; and ever is perplext and difficult to have perfect Intelligence of, especially such, as a man may safely venture his owne life; or take away anothers upon it. Wherefore if wee may reasonably doubt of the point of Right (which yet is a more cleare and uniform thing) then wee may be more reasonably perplext in the story of Fact, which depends on so many Accidents, so various circumstances, both in its principle (the will,) in its existence, and in evidence for the infallible knowledge of it.

From hence therefore I conclude, That wee may in this great case ease our selves of this vast perplexity in examining Whether or no the invading party have a just title, or cause, or no? or, Whether he have a juster then he whom he opposes? But here I desire to be rightly understood: For I affirme this, not as if the knowledge of all this were not very convenient, and much to be desired, but that (as it is almost impossible for us to have, so) it is not necessary for us to search after; except in one case (which comes not out of the historicall occasion of this discourse) *viz.* In assisting to the beginning of a Warre. These Negatives shew onely what wee need *not* ground our consciences on, in order to a lawfull obedience; but it must be a positive and a clear principle which we must ground on, if we would be warranted of a just submission to the orders of one who commands us perhaps unjustly. For it is a matter which concernes the misery of others who never did us wrong.

4. There is a Warre for Dominion, and a Warre for Possession. If it be for Dominion, wee may contribute our Money, Armes and Oathes, to the expelling perhaps of an innocent Family: If it be for Possession

Possession (which is the worst) then it is for the slavery of thousands of Innocent Families: And before either can be compass'd, wee may assure our selves, that thousands may bee as innocently kill'd by the meanes of them who contribute to the strengthening of an unjust party. But because I state this question in a Warre already form'd, and actually introduc'd upon the people, therefore in answer to this positive demand, I as positively say; *That for a justifiable obedience, it is best, and enough for us to consider, Whether the invading party have us and the meanes of our subsistence in his possession or no?*

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## CHAP. VI.

To assure our consciences of a Iustificable obedience during the confusions or revolutions of Warre, it is best and enough for us to consider, *Whether the invading party (just or unjust) have us or the meanes of our subsistence in their possession or no.*

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S 1. *Princes themselves, notwithstanding their sworne Leagues one with another, ground their obligations on the tacite condition of their possessing what they had when they swore.*

FOR entry to the prooffe of this Chapter, I shall briefly (as a stating of the question) set downe a pertinent discourse which *Cardinal d'Ossat* (*Henry the*

the Fourth of *France* his great Agent at *Rome*) held with the Pope, upon this following occasion, as himselfe relates it in his letter to the King his Master.

The Duke of *Guise* (as is commonly knowne) form'd a *League or Covenant* against K. *Henry* the Third, which most of the Kingdome of *France* took, and it was to this purpose; That the King was so cold in the Profession of the Romish Faith, that it was in danger to be extinguisht by the increase which he permitted of the reformed Religion; especially seeing *Henry* the Fourth (then King of *Navarre*) was of that Religion, and was to succeed to the Crowne: Wherefore by the mediation of *Philip* the second of *Spaine*, the Pope qualifi'd the Duke of *Guise*, Head of that *Catholique League*, and (which in point of Government was to set him above the King) avow'd him *Protector of the Catholique Faith in the Kingdome of France*. When *Henry* the Fourth succeeded to the Crowne, then this League for security of Religion was most violent; and the *Spaniard* without, hop'd, by nourishing thus the division within, to carry all for himselfe at last. To avoi'd which gin, and to answer all, the King chang'd his Religion, and negotiated by *d'Ossat* to be received by the Pope as a dutifull Sonne of the Church of *Rome*, demanding Absolution for what was past, and making large promises of due obedience for the time to come. The King of *Spaine's* interest was, that hee should not be received, and thereupon he indeavored to perswade the Pope, That *Henry* did but dissemble with him, and that under this disguise hee would easiliest ruine the Romish Religion. Notwithstanding all this, *d'Ossat* obtained his Reception, Absolution and Benediction, through the many protestations, promises and

and presents which he made to his Holinesse. Whereupon the *Spaniard's* designs were in a moment all blowne over from *France*, but fell heavilier upon the united *Provinces*; which were so sorely prest, that they apprehended the losse and ruine of their Country, and thereupon implor'd assistance from King *Henry*, who receiv'd their Ambassadors very graciously, and gave them assurance of reliefe. The King of Spain, who wanted no good intelligence in the Court of *France*, immediatelie remonstrates to the Pope, That his former intimations concerning *Henry's* dissimulation, did now appeare in the face of all the world; and that seeing his Holynesse had been so credulous, he knew not now whether they should be able to save the *Catholique Faith* from being subjected to the *Reformed Religion* or no. For whereas the *Hollanders* had revolted from him, only because he resolv'd to use the true meanes for the establishing the *Romish faith* among them, and that now he was in a faire way of reducing them, (which conduced so much (by his Holynesse his owne opinion) to the establishment of the *Romish Faith*) *Henry* had taken their party against him in that worke; and that at *Paris* he had received their *Embassadors* to that purpose, although he knew they were his lawfull subjects, &c.

This startled the Pope not a little, who immediately charg'd *d' Ossat* for having betray'd him, and put the Church in danger. This argument was as subtile on the *Spaniards* side, as changing Religion was on *Henry's*, and therefore *d' Ossat* was not a little perplext how to answer it to the advantage of his Master; as also coherently to the considerations of his former reception into the Church: but at last he replyed, That his Holynesse needed not wonder how in reason of  
*State*

State those of different Religions might joyne together for *Politicall ends*, without hazard of altering Religion : Thus *David* sought protection of the *Philistines*, and *Abram* redeemed the sinnefull *Sodomites*. That he tooke it to be upon the same ground, that his *Holynesse* himselfe not long before received a *Persian* Embassador, who was so farre from being a heretick, that he never pretended to the name of a Christian. That it was but a plausible argument which the King of Spaine used, in complaining of *Henry's* receiving and avowing their Embassador, especially knowing at the same time that they were Rebels, and could pretend no right nor title separate from his Crowne :  
 “ For Princes (quoth he) when Embassadors are ad-  
 “ drest to them, never informe themselves of the rights  
 “ and titles of those Princes from whom they are sent :  
 “ But whether they have possession of the force and po-  
 “ wer of those places, from whence the Embassadors are  
 “ employed. For it would be an endlesse taske, and re-  
 “ quire an infallible true History of the World (which  
 “ is not to be made by man) if all the Embassadors, be-  
 “ fore their receptions, should be oblig'd first to prove  
 “ clearly to the world the just right by which their  
 “ Masters derive those Titles and jurisdictions which  
 “ they assume to themselves. This reply as it settled the  
 Popes minde, so the reason of it may well settle ours ;  
 And in the first place it may not be amisse to see what  
 the opinion of Princes themselves may be concerning  
 it.

I. It is evident that most Contracts and Oathes made betwixt *Politicall*, or *Publique* persons, are made in this *Politicall* sence, *viz.* with a tacit condition of holding their possessions. And therefore the world wonders not that the King of England having sworne a league

a league with the King of Spaine, expressly also as he was King of Portugall, did notwithstanding since receive two Embassadors from this new King of Portugall; and that without being judged either in England or Spaine to have broken his former Oath and League. But not to ground too much on matter of fact, *Grotius* in his Treatise *de legatis*, judges the point of right; Where, after he hath shewne how they who are partly subjects and partly not, have a right of Embassy for that part by which they are not subjects, he descends to those places which are divided by Civill warre; in which as it is naturall for each party to preserve it selfe by all meanes it can, so usually correspondence abroad by Embassie is one means which is not omitted: and the rule which States have for this case is, That *in regno diviso, gens una pro tempore quasi dua gentes habetur*. The ground and tacite condition wherfore severall States contract one with the other, is (according to that Author) the consideration of the power which each Kingdome hath to afford benefit one to the other: so that the contract is rather with the places, then with the persons. Hence the same Author saith, *Reges qui regnis exuti sunt, cum aliis regni bonis etiam jus legandi perdiderunt*. As this may sound harshly, so it ought to have good reason and authority to countenance it. It is not enough to object, That such tacite conditions are not proper to, nor consistent with the nature of Oaths (which afterwards is refuted) For they who consider those admirable Chapters of the 18<sup>th</sup> of *Jeremie*. v. 7, 8, 9, 10. *Ezech.* 33. v. 13, 14. will find the same in Gods declared will, though positively exprest, which is argument enough for us, as is largelier proved hereafter: *vid. p. 2. c. 3. §. 2.*

Thus we see by what ground of right or defect in

pos-

possession Princes disavow one another, though they be mutually oblig'd by solempne oaths, which is the greatest tye that Princes or just Governours can have upon their subjects. Now I conceive I may aptly speak to subjects obeying an usurping power, after an obligation of Allegiance to another Power.



# The second Part.

Wherein is examined:

*W H E T H E R,*

1. A man may lawfully pay duties or Taxes to an usurping or unjust Party ?
2. Or whether he may lawfully serve such a Party personally ?
3. Or whether he may lawfully swear fidelitic to such a Party during the Warre ?
4. Or whether he may lawfully swear a finall Allegiance and subjection to such a Party after the Warre ?



## C H A P. I.

Whether a man may lawfully and with a good conscience pay Taxes to an usurping or an unjust party during the Warre ?

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1. *What was meant by paying Tribute to Caesar.*
2. *In what case a man at the beginning of a Warre may contribute to it, though he finds not its cause good.*
3. *The manner of a Levie.*
4. *We cannot properly scruple at that which is out of our power.*
5. *Of the condition of those who live upon frontiers.*
6. *What liberty have we, when the right Governour declares, that he will not have us pay any thing to the invading party ; Likewise, whether any Law but that which derives immediately from God doth indispenceably oblige the conscience ?*

**I**N the first part, the ground for all the particular questions in this, is laid and treated Generally, but here we come to closer and more particular proofes : and first, of *Tribute and Taxes.*

There

There are many who not finding this liberty in their consciences, unnecessarily choose rather to give their bodies up to restraint, and to abandon their whole meanes of subsistence in this world, both for themselves and their children, which ought not fondly to be done, unlessse we would be worse then Infidels as Saint paul saith.

*Ob.* They object, that they know not whether the monies they give, may not furnish to the destruction of many Innocents, and perhaps of the just Magistrate himselfe; That though a man may give away his owne as he pleates, yet not in this case, when it is to the prejudice of another, &c.

They who thus scruple are in conscience oblig'd thus to suffer, because they have not faith to doe otherwise; But the question now to be examined, is *Whether these be necessary scruples in themselves, and such as admit of no exception or liberty?* Perhaps upon examination we may finde *these scruples to be like scandals*, whereof some are rather taken then given: And therefore to state the question aright, I shall paraphrase a little upon another question which was propounded to our Saviour; It may possibly appeare to be the same with this, though propounded with more subtiltie and malice.

The Scribes and Phari'es sought two wayes to entrap our Saviour; One was, as if hee had blasphemously taught a new Religion, and a new God (*viz.* himselfe) They hop't the people would be provokt to stone him for this, according to the 13 of *Deut.* The other was to bring his actions into the compasse of Treason, as if hee could not lead great multitudes after him without traiterous designes; but this gin fail'd too, because the multitude which follow'd him

was alwayes ready to defend him : However, when he was at *Jerusalem*, where the Roman Troopes and Prætor were, they thought they had him sure, by propounding this subtilty to him.

§. 1. *Is it lawfull for us to pay tribute to Cesar ?* which was as much as to say ; We who are descended from *Abraham*, and are the peculiar people, to whom God hath given the large privileges of the earth, at home to bathe our selves Rivers of milke and hony; to have full barns & man children; yea that God himselfe will be ador'd in nother place of the world, but at this our *Jerusalem*; and that abroad we should triumph over the barbarous and uncircumcised World, by vertue of that Militia which he never order'd for any but our selves ; How are we then in duty or conscience to submit now to the Ordnances of the uncircumcised Roman ? Or what right can hee have to exercise supreme Jurisdiction over us the privileg'd seed of *Abraham*, by laying Taxes on our Estates and Land ? (which God himselfe laid out for us) by which meanes hee holds his very Temple in slavery, and insults over our Coniences and Religion, by defying our very Sacries with the mixture of impure blood ; which as they are the price of our soules, and a tribute farre above *Cesars* (payable in no other place but this Temple which God himselfe built) so our blood bought not to be too deare to be sacrificed for the liberty of these parts. And though the Roman State could pretend right, yet what can this *Cesar* pretend ? Every man conscience knows, that it was but the other day he usurp't over the Senate, in which resides the true Jurisdiction of *Rome* : And if that were otherwise, y how can hee pretend to a title, unlesse by Pedegree, or violent

lent usurpation a just election; by which hee who is but the greatest theefe in the world, would passe now for the most Soveraign and Legislative Prince? *How then are we in conscience oblig'd to pay Tribute to this Caesar?* Though these Lawyers thought in their consciences, that they were not truly oblig'd to pay it, and that our Saviour likewise as a Jew thought so too, yet they supps'd hee durst not say so much in the crowd, nor yedeny it, by shifting it off in silence, lest the Roman Officers should apprehend him. But when our Saviour shew'd them *Caesars* face upon the Coine, and bad them render to *Caesar* that which was *Caesars*, and to God that which was Gods, his answer ran quite otherw: Not as some would have it; that by a subtilty he answered nothing to the point proposed: for th the sense of the whole text would sound verill in such termes, *viz.* That if there be any thing due to *Caesar*, pay him it; and if any thing be due from you to God, then pay it likewise. This had been a wakening of Gods right, for *Caesars*, and to have left desperate doubting in a necessary Truth. 'Tis beyorall Cavill, that our Saviours opinion was positive paying of Tribute to that very *Caesar*, because *de facto* he did pay it; And the plain reason of it appeares evidently in this his answer: *Caesars* face was upon the Coine; that is to say, *Caesar* by conquest was in possession of that Coine, by possessing the place where he oblig'd them to take it; coining of Money beingne Prerogative of Soveraigne power.

And now to aver more particularly to the fore-mentioned objects at the beginning of the Chapter.

A. In the firstice I distinguish betwixt *Perferre*,

& *inferre bellum*; The one is active and properly at the beginning of a Warre, and in a place where yet no Warre is, and where its cause onely and not its effects can bee consider'd: In this case every thing ought to be very cleare for warrant of a mans conscience, because of the calamities which he helps to introduce, and is in some manner Authour of. The other is *Passive*, and there where War or the power of Warre is actually formed, which is the case of this discourse.

Secondly I distinguish betwixt that which cannot be had, nor the value of it, unlesse I actually give it; and that which may be taken whether I contribute it or no: In the force of this second distinction lies the reason wherefore I have so much examined the nature of *Possession* in the former part. To apply all this to the Objections, I say, That if a man scruple, he may not *inferre bellum* by any act which may be properly his owne; I say, properly his owne.

§ 2. Because though Warre bee not yet actually form'd in a place, yet a scrupling conscience which likes not the cause may be excus'd in contributing to it; in this one case, *viz.* If some number of men able to take what they aske, demand (with an armed power) the payment of a certaine summe to bee employ'd in Warre, then in such a case, the man of whom wee speak may pay it, as a ransome for his life; or give it as a man doth his purse when he is surpriz'd in the high-way: The reason is, *Because to this man it is as much as if the whole Countrey were possess'd by an armed power.*

§ 3. The manner of the Levie is here Principally to be considered. For if the person taxed be not for the time in *the full possession* of him whose cause hee

scruples at, and that he have not a *probable feare* of extreme danger, nor as *probable assurance* that without his helpe, the thing demanded *nor its value* can be taken from him, then there's little excuse remains for the Act, because the said Act (which his conscience dislikes) participates more of *Action* then of *Passion*.

But in the case of this discourse, where a man is *fully possess'd* by an unjust invading power (from whom whole Countries cannot possibly flie, nor make away all their Goods and Estates) there I say a mans *paying of Taxes is no gift*, which if prov'd, takes away the master-scruple. Let us judge of this by that case which we all grant; If a man fall into the hands of many desperate theeves who assault him for his Money; though with his owne hand he put his purse into their hands, yet the Law calls not that a gift, nor excuses the theefe from taking it, but all contrary.

§ 4. By this it's apparent what a groundlesse scruple it is for a man thus taxt, to say, *Hee knows not to what evill they may imploy the money so put into their desperate hands*: For this supposes a gift, and a mans proper voluntary Act; of which indeed he is alwaies to be scrupulous, because it proceeds from that Principle which is totally in his owne power: whereas other mens actions are as farre out of our power as *winds and tempests are*; to which two as wee contribute nothing, so we cannot properly be scrupulous in our consciences concerning their bad effects.

For further prooffe I might aptly reflect on those arguments which were discusst at the beginning of the first part, concerning the transcendent right which wee naturally have in the preservation of our  
selves,

selves, and of those things without which wee cannot be preserved: As also on the high privilege of extreme necessity, nature it selfe being more intent to the preservation of particular then of publike bodies, which are made out of particulars, and as much as may bee for the particular ends and preservation of each singular, no man obliging himselfe to any particular society of this or that Countrey, without the consideration of selfe-preservation, according to the right of the more generall society of mankind. *vid, Par. 1. c. 1. §. 3.*

§ 5. Thus much concerning those who are fully possess'd by the unjust invading power: Now I shall speake to the condition of those who live upon frontiers; whose condition is more ticklish and deplorable, because they are not fully possess'd nor taken into the line of either party. These live as it were in the Suburbs of a Kingdome, and enjoy not the security or priviledges of others. Though they can owe true Allegiance but to one party, yet they may lawfully contribute to both: For though they bee but partly possess'd by one and by the other, in respect of their suddain abandoning them, yet *both parties have the power of destroying them wholly*. Wherefore those former reasons which justifie those fully possess'd, doe also acquit the payments of these; for their condition here is more calamitous, seing they are really but Tenants at will, expos'd to a perpetuall Allarme, and that both parties wound one the other onely through their sides.

6. The last consideration in this Scruple, is of the *wills of them whom* wee acknowledge our *lawfull Governours*, viz.

*Obj.* When they declare to us that they will

not permit us to pay any thing to their Enemies.

*Ans.* To this I answer, That the declared wills of Governours cannot make all those our acts finnes, when wee obey that power which against our wills (as much as against theirs, and it may bee with mote of our misery) hath devested them of the power of their rights, and depriv'd us of the comfort of their Governments.

*Quest.* I would not here willingly dispute whether any Law but that *which derives immediately from God doth indispensably oblige the conscience?* For there is but one Lawgiver who can save and destroy the Soule for the observation or violation of Lawes, and that is God; who therefore hath the sole power of obliging consciences to Laws as the Lord of them, through his creating governing and moving them. *Esa. 33. 22. James 4. 12.* There is one Lawgiver who is able to save and destroy: who art thou that judgest another? Princes cannot by their commands change the nature of humane condition, which is subject naturally to those forementioned changes: This were to pretend to a power of obliging us to morall impossibilities, and repugnances in the reason of government. And though those politicall commands were as Lawes, yet they ought not to be made nor to be obliging, but according to the Legislative rule, which is *cum sensu humana imbecillitatis*. This is that which usually is called the *presumptive will* of a Governour, or the minde of a Law: For in extreme necessity it is to be presum'd, that both their wills recede from the rigour of what they have declared, rather than by holding to that which is their right, introduce all misery and confusion, without receiving any benefit thereby themselves. *Neither are such commands with-*



without their sense and profit though they bee not positively obey'd. For thereby Governours shew to all the world, that they renounce no part of their right, no though it be there where they cannot exercise any part of their just power : Secondly, they may thereby help to retard their subjects from being forward in giving admittance to their Enemies, or in being actively assisting to them, but rather to themselves ; besides which sense there can be no sense. For if they meane by those commands, That they would not have their Enemies strengthened or advantag'd by them, and withall, meane that they would not that their subjects should submit themselves at all to those usurpers, though it were then when they and all their subsistence are absolutely possess'd by them ; I say then that these are commands which dash against themselves, and the one countermands the other. For if they refuse to submit in such a case, then they do that which advantages their Enemies : Because at that time they will take all, whereas in case of submission they aske but a part. In all wars there are alwaies some by whose disaffections Enemies gain more, then by their compliance ; just as Physitians do by distempers. Though by after variety of successes the just Governours should recover that place which so submitted to the power of their Enemies, and for that reason should punish those who were ployable to extreme necessity ; Yet it follows not upon that, That they who so conformed, sinned, or did that which was absolutely unlawfull. For wee know reason of State oft calls for sacrifices, where there is no fault to expiate : Ostro- citime and Jealousie make away with those who are knowne to deserve most : *In republicâ idem est nimium & nihil mereri* : But in right ( which is the terme

of this question) the just Governour ought to looke upon them, as more unfortunate then faulty: And perhaps in equity he ought to consider, that the originall fault of all might possibly be on his part ; God sometimes punishing the people for the Prince, and sometimes the Prince for the people. But of this more shall be said in the following Treatises of New-Allegiance, and of opposite Oaths.

## C H A P. II.

### Whether we may lawfully serve an unjust Party in our Persons or no ?

**T**He answer to this question is very present, and Negative : For here action is required to an end which our consciences allow not. Our estates are separate from us, and therefore may be had without us, or without our wils : But our persons are our selves, and therefore cannot be had nor act without us, and therefore a man hath not the same liberty in the one as in the other.

But yet there are two cases wherein a man may lawfully serve an unjust party in his person.

First, when it is in order to a just and necessary action, which concernes not the opposing of the just party at all, but only our owne necessary preservation : in which case we consider the unjust Governour abstractively, not as a Governour, but as a man. Suppose the case were such, that if the lawfull Governour himselfe were with us, he would probably command us the same thing : and though perhaps he would not

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command it, yet we might lawfully put our selves into that action against his will; as if the Turke, or any other common enemy should invade those Provinces, which the unjust Party hath divested the just of: For such an enemy would deprive one as well as the other; Wherefore betwixt two unjust Parties, it's better to follow him who is in possession, especially if his Government be probably better for the society and Religion of mankind: and as for the just Governour, he must consider that such actions are not so much *contra & prater suam voluntatem*.

The second case relates in some manner to the opposing of our Lawfull Magistrate, but not by a direct intention. For example, when wee see much cruelty exercised upon the continuance of a warre, and probable ruine of those Places where the Armies seeke one another; then if the said Armies fall into our quarters, and we be summon'd to assist the unlawfull Party, we may then arme our selves, not for him, but for our selves, not in any regard of the cause of the warre, but of its effects, which are *Destruction of life, or of livelihood*. In this case Nature helps us to put on our armes, and shews us the way to the place where we may redeeme our lives, and find a remedy, though it be in our very disease.

*Ob.* But is not this to doe evill to advance our own good, to cut the throats of those whose innocency our owne consciences absolvs? Can our feares warrant us to take away other mens rights? *Cato habet potius quàm exeat. Sen.* How then can any of this be lawfull?

*Ans.* Here I confesse lyes the knot of the scruple; but yet by the third Treatise of the *Lawfulnessse of some Warre, Chap. 2.* It is clearly evinc'd, *How Innocents may*  
be

*be innocently kil'd*, and this objection goes no further, nay not so farre as that which is there cleared : For children and babes could never threaten us with the sad effects of warre, yet we see how they may be innocently destroyed by the course of warre. For Nature commends me to my selfe for my owne protection, and preservation, and that, not as if I had not that right of defending my selfe, unlesse they were first faulty who threaten me the danger. For though they fight *bonâ fide* on their side, and ignorantly take me to be another kind of person then I really am (just as men passionately distracted and in dreames use to doe) yet I am not for this reason necessarily oblig'd to desert my selfe, nor to suffer all which they prepare probably to inflict upon me, no more then I am when another mans irrationall beast or dog falls upon me. *Governors of men are like keepers of beasts* ; Every man as he is an Animal, participating halfe with the brute. *Alterum nobis cum Diis, alterum cum bestiis commune est*, saith *Salust*. When an irregular passion breaks out in a state, an irrationall beast hath broke out of his grate or cave, and puts the Keeper to a great deale of trouble, and those whom he meets with in the way in a great deale of danger. If he invade any one he may be kil'd whether the Keeper please or no, although whilst he kept his cave quietly he might not be stirr'd without his permission. It is a knowne case, that if a man unjustly assault another, and be slaine in the act by the other, this other shall not suffer for it.

But in this case we must be certaine of two things : First, that we have try'd all other meanes of saving our selves and our livelihood : Secondly, that we enter not the Army with an offensive minde, but *cum moderamine inculpata tutela* : not with a direct designe to kill,

kill, but rather to fright, weaken, and to drive away the cruell enemy: Before we may strike, we must see our danger imminent, and *in ipso penè puncto*; then it is that we may *occupare facinus*, prevent our owne deaths by the Invadors deaths : For when lives are to be lost, then the possession which we have of our owne, is to be preferr'd by us before our enemies lives.

The *rule of defence* is very difficult, because on every hand it is full of Circumstance: Yet a point in *Morall actions* (even as in *Mechanicall*, not in *Euclidian Geometry*) is not without some breadth. Hence the Law saith, *Potentia proxima actui, pro ipso actu habetur*. The reason wherefore the Law (which justly is so favourable to life) takes that for killing which immediately goes before the blow, is, Because if it should not be favourable to us before the blow or act, it would not be favourable to us at all ; A mans life is that which can be lost but once, and after that, nothing can make it good to us againe, wherefore we are oblig'd to a perpetuall guard of it : if not for our owne sakes, yet at least for theirs whole life it may be as well as ours.

### C H A P. III.

Whether we may lawfully take new Oaths for the interest of the unjust Party, especially after former Oaths of Allegiance to an other Party ?

§ 1. *What an Oath is.*

2. *The matter of the Oaths here mentioned is the same with that of a Promise. Of Assertory and Promissory Oaths. All Contracts and Oathes, though in absolute termes, have some tacite conditions adhering to them, and so are mutable. Whether all Oaths be now unlawfull? Two cases concerning the qualities of the persons giving oaths.*
3. *The cases wherein the matter of a Promise and of our sorts of Oaths doe agree.*
4. *In matters of Vertue and Piety.*
5. *In Possibilities.*
6. *In transferring a right on him who will receive it : Whence dispensations arise.*
7. *In things whereof we have infallible certainty.*
8. *Concerning a mans swearing that such or such opinions are true.*
9. *Of Oaths made to Pyrats and Tyrants.*

**I**N the first question the invading party demands our goods, in the second our bodies, and in this our very soules, so farre as a man can make an other sure of them.

But as they are precioufer then the other two put together, so we ought to be more advised in the laying of them out : *Furor est post omnia perdere naulum*, and to erre in this is to erre in all. And seeing we here contract with God himselfe (who is alwayes the Justest Party) and doe solemnly invoke his justice and vengeance upon the breakers of so high a Contract, we ought therefore to invoke his Grace more earnestly,

neſtly, that by the direction of his holy Spirit, we may not precipitate our ſelves, either through feare, faithleſneſſe, or avarice, into the forfeit of ſuch a religious Act : leſt whiles we runne to ſave our momentary goods, our iumortall ſoules fall from us into Hell-fire : but rather that wee eſteeme it no loſſe with *Elias* to drop a Mantle in the way to Heaven, or for a ſcratch to get a Crowne :

—*Atq; ideo intrepidi quacunq; altaria tangunt, Juv.*

Though in this particular caſe our condition be rendered moſt miſerable by the extravagancies of ambitious aſpirers to Government, yet we ſee nothing new practis'd in it : For all this naturally ſorts with the depraved condition of mankind. And though we can finde little to juſtifie the Uſurpers actions, yet we may finde reaſon enough, why after his engagement he ſhould adviſe of all meanes for ſecuring himſelfe both at home and abroad in the field : of which meanes this of obliging by Oath is a principall one. Through this jealouſie the Roman Lawes permitted not a man to be a Citizen of Rome, and of another Provinciall City together ; for in time of warre and diviſion ſuch a perſon would be open to ſecret attempts and practices. The Chimifts ſay thoſe mettals ſoonest diſſolve, in which the elements are moſt unequally fixt ; *Et inter ſymbola facilis eſt tranſitus* : ſo ſurely muſt thoſe men be moſt volatile, who have not ſome thing faſtened on them to render their indifferencies more determinate. The extremity of this preſent caſe, as of the reſt is, That as a man may ſucceſſively be under oppoſite parties, and ſo for oppoſite ends be taxt in his goods, and ſummon'd to ſerve in perſon, even ſo he may be commanded to ſwear oppoſitely to what he ſwore before. But before I ſpeake to this difficulty, and  
the

the cases depending on it ; I shall set downe what I conceive of the nature of an Oath in generall.

§ 1. An Oath is a religious attestation of God with an imprecation of his wrath when we assert or promise that which is lawfull and in our power ; Some add this to the rest, That it must be of that which cannot be cleared otherwise, *Exod. 22. 10. 2 Cor. 1. 23.*

§ 2. That which distinguisheth it in futures from a Promise, is *the attestation of God and the imprecation* which we make on our souls if we be not faithfull, *Heb. 6. 16.* God is here in the Contract onely *ut testis* ; because he is the only universall true witnessse, who by right of government, hath also a right of punishing alwayes, and every where.

In a vow there cannot be lesse then two, and they are enough, because God is both sufficient witnessse and party. In other *distracts* or *contracts* we think it best to have at least three, the party contracting, hee with whom it is contracted, and a witnessse ; and all under a legall penalty. In the contracts which wee make by oath one with another, God stands as the witnessse, and is to require the forfeit by our owne consents.

All Oaths are best divided *In Assertoria & Promissoria* ; For in order to *the time present, past, or future*, wee religiously assent or promise something to be or not to be ; to have been, or not to have beene ; that it shall be, or shall not be. The Asserting oath is of something past, or present ; the Promising is of something to be done or omitted in the future. *Truth* ought to be in both, but with this difference, that in the former it is but *single*, because it relates onely to the time present, and to the Act of swearing : In the latter it is *double* ;

First,



First, in regard of the time present, or the act of swearing, viz. That then the swearers minde and words go congruously together, with a true intention to observe what he then promises: And because upon the very act of swearing hee hath either sworne true or false in order to his intentions, therefore in that part there lies an immediate obligation on him: The latter truth relates to the effect and the time to come, that is, That the swearer will have his actions go along with his words, and that hee will make them good. But because the matter of this oath (which is a thing to be fulfill'd in the future) is naturally (and whether the swearer will or no) obnoxious to change and uncertainty, therefore the obligation which toucheth this matter, and which the swearer bound himselfe afterward to fulfill, is mutable and separable from his oath. It was in his owne power to make the first truth good, which was, that his minde should be *bonâ fide* like his words; but unlesse he were a controuler of nature, he may faile of making good the second, which was, that his deeds should be like his words. Hee is forsworne who intends not what hee by oath promises, but he is not alwayes so who effects not what he so promises. The right apprehending of this Distinction will much facilitate the difficulties of the following cases.

All positive contracts of futures why mutable.

Because an oath is a tie to the greatest of Contracts, therefore there are three things especially prerequisite to it. 1. *Judgement*, lest we be irreparably insnar'd, as *Josua* and the *Israelites* were in swearing with the *Gibeonites*. 2. *Truth*, lest God be invoked to a lie. 3. *Equity*, lest we make God a countenancer of wickednesse, and of things unlawfull; as *Saul* would

would have done in his sentence given against *Jonathan*, when with the tip of his rod he had tasted honey; And *David* when we swore hastily to lay *Nabals* house waste. Of these three conditions every man is oblig'd to the two latter, *before he swears*

We are oblig'd to the matter of some Oaths before we swear, and of others not till we swear.

*them*, but not so solemnly as afterwards; The first may be in things properly in our owne right of disposing as we please, before we swear, but that obligation comming, we have after-

wards no liberty in them at all: In this, *there is no obligation till we swear*, and when we have done so, then we are bound at all hazards to our selves, to make the Oath good, but not alwayes the other, when we swear contrary to our antecedent obligation to the matter of the Oath. *Quia prior obligatio prajudicat posteriori*, and obliges only to repentance for our rashnesse or ignorance.

*Obj.* But against all Oaths in generall it may be objected, *Mat. 5. 33, &c.* In *Moses* his Law it was sufficient that they were not forsworne; but

Christ saith, we may not swear at all; that our communication must be yea yea, and no no; Two Affirmations, and

two Negations ought now to satisfie as well as an Affirmative or a Negative Oath.

*Ans.* But we answer, that *Moses* permitted voluntary or unnecessary Oaths, and these only were by Christ absolutely forbid; For if otherwise, then we should not have had so many of *Saint Pauls* Oaths recorded by the Holy-Ghost; as *Rom. 1. 9. & 9. 2. 2 Cor. 1. 23. & 11. 31.* In all which places *Saint Paul* used most religious asseverations and attestations of God for amplifying his glory, and therefore when it

may

may reach that end, we may still sweare as warrantably as he did.

The difficulties of all assertory Oaths are not very implicate, because their whole truths are immediately fulfil'd in the act of swearing. *Inst. li. 4. tit. 16. § 6. Conditiones qua ad presens vel prateritum tempus referuntur, aut statim infirmant obligationem, aut omnino non differunt, indeq; obligatio non est in pendent i: Qua enim per rerum naturam sunt certa, non morantur obligationem, licet apud nos incerta sint.* For example, If *Titius* hath been in Spaine, or if *Sempronius* be now alive, I will give you 100 li. This is immediately fulfil'd, because it is concerning the time past and present, which are both really fulfil'd.

The cases of assertory Oaths not difficult.

The acts of Governours relate most to the establishment of the time present and future: wherefore the nature of Promissory Oaths will here most concerne us. In clearing whereof it is most necessary to consider, that the matter and conditions of a Promise are the same with those of this sort of Oath.

The matter of our Oaths, & of a promise the same.

Their matter and conditions therefore are of 3 sorts: First *Necessary*; When the effect hath an infallible cause; as I promise *Titius* 100, if the Sunne rise to morrow.

Secondly *Impossible*, either in *Nature*, as I promise *Titius* 100, if he touch the skie with his finger; or *impossible in equity*; as I promise *Titius* 100, if he murder *Sempronius*: This being repugnant to honesty and piety, obliges not no more then the other, and the third præ-requisite to all Oaths, excepts against it.

Thirdly, *Possible*, in things which may happen or not happen, because depending simply on our owne

or others wils, or *mixtly* of both, or else of chance or fortune, which cannot be determin'd by our wils, *Nam omnis status humanus ex insidiis fortuna dependet, & in perpetuo motu consistit, l. 2. §. sed quia. C. de vet. jur. enucl.* This third branch is that which affords most matter for perplexing of Oaths, and Promises, because it relates not to one uniforme principle, nor to such things as depend on our selves. Wherefore it is to be carefully observ'd, That as there are no contracts, and consequently no Oaths so conditionall in their begin-

nings, but they are suppos'd to end positive and absolute ones; even so there are none so positive and absolute in their beginnings but are suppos'd to have some tacite conditions adhering to them. *In purâ obligatione dies tacitus sive Legalis subintelligitur. l. interdum 73. l. continuus 137. § cum ita. l. cum qui calen. 4 §. quætiens ff. de ver. obli:* All our engagements and actions lye open to the controulement and exceptions which may be made by *Law, equity, the right of a third person, the permission of God,* and the like. For example, King *Solomon* forgave *Adonijah* his usurping the Crowne from him, on condition that wickednesse *1 Kings 1. 52.* should not be afterwards found in him: after this *Bathsheba* came to petition *Solomon* in his behalfe, and he *positively* promis'd her that he would *1 Kings 2. 20, 21, 22.* not say her nay: she upon this, demands *Adonijah* might marry *Abishag*, one of *K. Davids* concubines: *Solomon* instead of making good his absolute promise, swore *Adonijah* should dye. Although there was an evident contradiction betwixt the termes of *Solomons* Promise and his Oath, yet he broke not his Promise; because in his *positive* grant there was included a *tacite condition, which ought to be as valuable*

as any thing exprest, viz. that *Adonijah* should attempt nothing unlawfull according to his former pardon : But it was treason for any man to attempt the Concubines of the deceased King, besides the successour, for feare of occasioning divisions, *2 Sam. 12. 8. 16. 21.*

*David* swore, and with an obligation of a curse on himselfe, That he would destroy *1 Sam. 25. 22.*

*Nabals* house, which Oath as he kept it not, so he did not breake it, because it had never any tye on him, for equity made just exception against it. The same is to be said of those who vow or sweare something but are not any wayes in their owne powers, and consequently possesse nothing for themselves, as the wife or the daughter, whose Oaths are justly reclaim'd by husband or father, *Num. 30. 4, &c.* But above all it is observable, that God himselfe doth oft contrary to what he absolutely declares, yet without infringing either his constancy or his verity ; because in all peremptory comminations there is yet a supposition of his grace and favour. Hence *Abrahams* servant, *Gen. 24. 27.* said, God had not left his Master destitute of his mercy and truth, which usuallly in God goe together.

*Obj.* But out of the words of *Balaam* its objected, that God is not as man, that he *Numb. 23. v. 19.* should lye, nor as the sonne of man, that he should change or repent. Therefore hath the Lord said it, and shall he not doe it ? Hath he spoke it, and shall he not make it good ?

*Ans.* I answer, that God is not as man, that he should lightly change, no nor change at all, if it certainly appeare that his decree be absolute ; but that doth not alwayes so, if we will judge by his words. God declared to *Adam*, that the day he should eat of the forbidden fruit he should surely dye, and yet after

he had eaten of it, God permitted him to live almost 1000 years. But here some reply, That by the words, *Thou shalt surely dye that day*, God understood that *Adam* that day should begin to be mortall, but not actually dye. To which I answer, that this is of no ne-

cessary consequence: For God threatned *Abimelech* and *Ezechiah* in the same manner,

but no wayes in that sence, as being persons as much naturally mortall before Gods threat as they were afterwards. To *Hezekiah* God said, that he

should dye of his present sicknesse, yet God afterwards assured him that he would adde yet fifteen yeares to his life, because he had seen his teares, and heard his prayer, which it seems by the effect was the tacite condition prevailing with God, to alter his positive resolution and threat. The like also is observable

in Gods decree against *Ninivch*, which was not destroyed after forty dayes; For God repented of what he had said, because they repented.

They who wrought in the Vineyard but one houre, received as much as they who wrought all day; for in that unequal distribution, the Lord did no wrong to any other in giving what he would only out of his owne: In like manner, God in remitting a forfeit or a punishment due to himselfe from another, doth not an act of injustice, because he still disposes of his owne. Punishment is not a debt from the party injured to the party injuring, but quite contrary from the injuring to the injured as a satisfaction, in which sence the offender when he is punished, is rightly said, *Dare panas scilicet injuriam passe*. If this were otherwise, then there were no place at all for *Clemency* in *Justice*: *Clementia enim non cogitur, & si necessaria plane est, clementia esse desinit*: And if there were no clemency after

ter we have forfeited our selves, then consequently were there no place for *Prayer in Religion*; and *Moses* had in vain struggled with Exo. 32.10, 14. God, that he would not consume the *Israelites* after he had declared so to doe. *Mercy* therefore is not opposite to justice but a part of it, *1 John* 1.9. God is faithfull and just to forgive, *Psal.* 71. 1, 2. In thee, O Lord, have I put my trust, deliver me in thy righteousness. All which appeares most clearly, *Jer.* 18. 7, 8, 9, 10. *Ezec.* 33. 13, 14. Thus Princes by their prerogatives pardon criminals, and like God here preserve those whom they might justly destroy.

3. Out of all this therefore it follows, That as promises may be absolute or upon supposition (in which the obligation is founded on a condition) so may oathes be.

4. As a promise is not alwayes of those things to w<sup>ch</sup> we were oblig'd before the promise, but of those things onely which may be done without sinne, viz. of things lawfull and in our right of disposing, or of things which hinder not our increase in piety and goodnesse (to which we are in a higher obligation bound to God both body and soule) even so oaths may be of all these, otherwise *scelus esset fides*, as *Herods* was, to kill *John Baptist*.

5. As we cannot effect, so we cannot positively promise nor swear impossibilities; Things which though they may be done, yet not by us; or things which are in a future uncertainty.

6. Hee who fulfils not his promise to him, who will not have it fulfill'd, breaks it not: so in the like case he breaks not his oath. The ground of this is, because we have not a right of making others keep what is their own in property, longer then they will

themselves. This is the foundation of the dispensation of oaths: which the Doctours even of our Universities (as well as others elsewhere) give every yeare to those who receive their degrees. To pay a debt is alwayes a duty in the debtour so long as the creditour will have it a debt; but it is not a duty alwayes in the creditour to receive it from the debtour: For acceptilation is equivalent to payment. As in the others breaking a conditionate promise or league, a man is freed from the obligations on his part; so in the same case a man is freed from his oath.

7. As a man cannot peremptorily promise a future uncertainty, so neither can he assure himselfe of that which past before he was extant in nature; and therefore cannot safely assert or sweare the evidence or certainty of that which was before hee had any knowledge or being. Hence though possibly the Catholique Religion was not long agoe establishd and professd in *England*, yet I cannot sweare it was so, without sinning, because I have onely a morall or probable certainty of it (not an infallible one) *viz.* the Tradition of man. And (to prevent an objection) though none of this age saw Christ or any of his Miracles, yet the certainty of them is not to be doubted of, as of the other; because even at this day we have Gods infallible spirit, which still gives testimony both of him and of his miracles, according as they are set downe in his word.

8. This case shewes us the dangerousnesse of those assertory oaths, which require us to sweare that such or such a thing or opinion is true, which may seem clearly so to the learned contrivers of those oaths, but not to others. The thought of the mind is only reserved to God, who only can be sure of it: It is that which doth  
another



another man neither good nor harm, unlesse it be communicated; wch indeed may be forbid by oath, because in the communication of it there is externall action. 'Twere happy we had as infallible means for our opinions in all divine and civill matters, as we have in our own matters of fact: but if we think not aright in those matters, it is no fault in us; it is a defect of our understandings, which wee cannot possibly help, not an act of our wills.

9. In an oath made to a Pirate or a Tyrant wee contract with God himselfe likewise. And if it bee concerning things in our power and lawfull (that is in things which no man hath so much right to dispose of, as our selves) then we are bound to make the oath good, by reason of our obligation to God. Neither is it difficult for us to comprehend, how there may be an obligation in us to give that to another, which hee may have no strict right to demand, as *in debito gratie*, in doing one good office for another. And if this were otherwise, then the most solemn and religiousst thing in the world, would have no sense nor effect. *Nam ut non tenearis, nisi ipse nolis, non est de natura Juramenti.*

Out of this we may examine and conclude two things concerning the persons who give the oathes.

*Quest. 1.* Whether they bee our lawfull Superiours or no? for some think no oath can be lawfully taken, but from a lawfull power. To this I answer,

*Ans.* That Saint Paul in the forementioned chapters swore, not constrain'd by any legall formall power, just or unjust, but mov'd by the justnesse of the matter which he asserted. If there be a peccancy in the matter contrary to the right of a third person, the Magistrates title and supremacy cannot warrant

it; and if there be no peccancy in the matter, but only in the title of the Magistrate, then necessity which is the *Cesar of Cesars*, and which admits an appeal above them (as hath been largely proved in the first part) is our magistrate, and warrants our oathes as well as such promises.

*Quest. 2.* What if the powers above us swear us to such things as may be good, but which afterwards we cannot actually accomplish?

*Ans.* If the deficiencie proceed from a decay of those powers, and that we contributed nothing to it, then wee are free: *nam qui non est causa causa, non est causa causati.* Secondly, If the good things sworne be of Religion and the promoting of piety, and that by the meanes of the power which swore us, then if that authority faile, wee are freed from so much as concerns our effecting of it that way, and wee are left onely to that obligation which tied us sufficiently to advance piety and Gods worship, *before mee swore.* In this case we owe nothing to the Magistrate for the matter of the oath, but to God who hath here *Jus tertie personae ut partis & testis.* For we are originally bound in all things to serve him with all our hearts and soules to our lives end. *In modo promovendi pietatem,* we are more intensively oblig'd by oath to cooperate with the magistrate, and if hee on his part faile wilfully or negligently, at his owne perill be it, for we are thereby dispenc't from the tie of the oath that condition failing.

## C H A P. I V.

In whose sense is an oath to be taken and kept, either in the givers or takers sense?

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**I**n Answer that is to be taken and made good in the Administrers sense (whose oath I suppose it to be) or as the swearer conceives it understood commonly by others. For it is a Promise or contract of transferring something to another, *viz.* to the first propounder; and therefore in it we do but follow his will or minde as the principle, to which the words relate. Suppose I voluntarily promise a man something absolutely or without delay, and he conceives but upon condition, I am notwithstanding obliged to give it him immediately; Because all the Obligation which is, comes from my mind, of which the declared sense was, to give without delay: So if I promise 20. and he conceives but 10. I am by my owne will, and the faith of a man, obliged to 20. which was the principall and declared sense.

In like manner, if I know the Propounders mind and meaning in his Oath, and swear in those words which properly signifie his mind, I stand bound to his sense; because my sense tells me, that such or such was his sense. It is a mans thought within, more then his words without, which are to be considered:

——— *Dcos qui rogat ille facit.* Mart.

Because internall Acts (such as are the thought and will

will of the mind) are not visible by the eye; Yet something is certainly to be determined, that so the religiousest and strictest Obligation in the world might not be without its effect.

The measure of interpreting, is the Collection of a mans mind by probable signes; which signes are either words, or other probable conjectures. In case there be no signe which might shew us the contrary, then words are to be taken in a plaine common sense, & not too much Grammatically: And therefore the Romans (as others likewise have observed) dealt treacherously with *Antiochus*, to whom when they were to give halfe such a number of Ships, they divided each Ship in two: In which, tho *pars dimidia navium* were true Grammar Latine in that divided sense; yet all the world could not understand it, but of whole Ships.

Thus when we speake of Law, we use the termes of *Mens Legis*, though indeed it have nothing but words; And wee say, *Summum jus* may be *summa injuria*, which is impossible according to its words. All this shews, that it is the meaning of the Principalls mind, and not bare words which specifie the things in question. And seeing all Oaths are composed of words, and that we have found what must be the sence of them; I shall examine what Obligation they have in the Societies of men.

## C H A P. V.

## Of the Obligation of Words.

**H**Heaven and Earth shall passe away sooner then Gods Word; the reason is, because It made both Heaven & Earth, and the cause is always nobler than its effects. All change argues imperfection, and therefore Gods Language is alwaies the same: But man is imperfect both in his understanding and will, and so consequently in the signes of both: His habit, manners, Lawes and Words derive his Pedegree from *Babell* and confusion. However, though all Countries vastly differ in the expressions or signes (which are the significations) of their minds, yet they all agree in the same sence of the same thing: Two and two in all Countries make foure, though two and two signifie foure but in one Country. Wherefore every Country is obliged to communicate in its own words, according as they are popularly, not privately understood by them.

*Quest. But how are they obliged to that?*

*Answ.* I answer by Contract, even as they are to their particular Lawes. For that power which makes a Law, makes a Word, and that which abrogates a Law, takes away a Word: Custome makes a Law, and Custome makes a Word: Yea, Laws themselves are the vaineſt things in the world for Government, if we have not an Obligation one upon another, whereby we are assured of the publique sence of the words, which every one is to practice those Lawes in.

If words change, we are to accompany their change, as we would accompany the Society in which, and by which they are changed: But yet we are alwaies to keepe to the same sence, which is the end of all words: Infomuch that if by old Tenure my Ancestours were obliged to furnish to the Land-Lord so many Oxen yearly, and that by change of time the word Oxe should now signifie perhaps a Fly, yet I am obliged to pay in that which was meant by a Fly at such a time, which was then an Oxe: I put this plaine case, becaule in other Tongues there hath *de facto* been as strange, yea stranger changes of words, witnesse *Lupa & lupanar, &c.*

It were needlesse to speake further concerning the *Legislative power of making Words*, the reason of it is so cleare, and every where in practice: I shall only observe that the Romans, even out of *Italy* obliged the Countries where they had their Legions, to sollicite their affaires, and communicate with them in the Latine Tongue which gave them their Lawes: *For it seemed some kind of subjection for the Governing party to apply it selfe to those whom it Commanded.* Hence *French, Spanish, and English* also, retaine a mixture of Latine words to this very day. Thus the Pope pretending now to the Supream Power and Jurisdiction in Religion, sets those of his Jurisdiction (in severall Countries) the *Language* of their Religion: And were it not, but that I consider *Horace* lived when all this was practised, I should much more have admired his profound determination of this Question in his *Ars Poetica*,

*Quem penes arbitrium est, & jus & norma loquendi.*

The consequence of all this shewes us what an unnatural and unlawfull thing it is for a man to falsifie his

his words, to tell a lye, to use mentall reservations, *ex subrepticia*, or equivocations, *ex Amphibologia*, which makes martyrdome folly, and leagues and contracts of no assurance. This therefore was originally the act of the first Law-breaker, who therefore is called the father of lyes, as God is called, *I am that I am*, the Father of Truth, in all his words.

*Levit. 19. 11. Ye shall not deale falsely, neither lye one to another; for (Eph. 4. 25.) Ye are members one of another. Gal. 2. 11, 12, 13. Peter is severely reprehended by Paul for dissembling, out of a feare of those of the Circumcision. Here he who was at all perils to professe truth, profest lying, for he intended to deceive.*

Ob. It is objected, That he who equivocates tells an untruth, not to deceive another, but to preserve himselfe.

*Ans.* I answer, That he who thinks otherwise than he speaks, deceives, and intends to deceive. For he tells his thought to another, different from what his owne heart tells it him, that so he might beget that opinion in the mind of another, which is to deceive, and to elude: To say he doth it only to preserve himselfe, reaches not the difficulty; for though that be his primary end, yet *his Intermediate end is to do it by deceiving*. Let him allow the same liberty of plea to one who hath robbed him, and he shall presently hear the Theefe say, That his end in that Action was only to preserve himselfe, not to wrong him: Which yet he his Adversary will not take for a justification. No evill therefore is to be done, that any good may come of it. *Rom. 3. 8.* otherwise the Devil would be co-operative with God, and collaterall, not opposite, to him. *Truth and Falshood are parts of Justice and injustice, which have relation*  
to

to our Neighbour *ad extra*; and therefore are not to be estimated according to that which is feigned, retiredly within in the mind, but which flowes from the Tongue in knowne and intelligible words;

— *Post effect animi motus interprete lingua.*

For the mouth of an honest man is in his heart, and the heart of a knave is in his mouth. But it is to be well observed, That he who tels not all the truth tels not a lye; which was *Abrahams* case, *Gen. 20. 2.* when he said no more of *Sara* to *Abimelech* but that she was his Sister. That of *St Paul's* pretending to be a Pharisee, *Act. 23. 6, 7.* after his being an Apostle, is a little more intricate, because in executing an Office, especially such a one as consists in an upright witnessing a Truth, and such a Truth as immediately relates to the Interest of Gods glory, and not of our owne, and which ought to be done in season and out of season, (as *St Paul* himselfe saith) there we ought to be most peremptory and unmaskt, *Exod. 23. 13.* *Elisha* permitted *Naaman* to live in an Idolatrous country, on condition that he testified his dislike. *2 King. 5. 18, 19.* However *St Paul* struck not in with the Pharisees against the Sadduces upon a Contradiction, though in that dangerous Riot he would not declare upon what ground he beleev'd the Resurrection. To passe a dangerous Wood safely, it is sometimes lawfull to put on such skins as the Beasts have which haunt those Woods; but not such as *Apuleius* his Theefe put on to deceive and rob men. Nay, those words which are not in themselves true, are not alwaies lies; For they are directed to a Morall and to a pious end, and therefore by that intention are not contrived to deceive or abuse. Of this sort were our Saviours divine Parables, the Story of *Dives* and *Lazarus* (for  
fingers



fingers are not in Heaven, nor tongues in Hell,) and of the Prodigall Child. Likewise of *Jothams* Trees going to chuse a King, *Judg. 9. 8.* And of the poore mans only Ewe, which the Prophet *Nathan* assured King *David* was forcibly killed by a rich man.

Having therefore thus throughly (as I conceive) examined the nature of Oaths, I shall speake to the particular cases wherein they are or may be practised ; and in the first place, I shall speake of the Leagues and Oaths which passe betwixt *Prince* and *Prince* ; that so we seeing how farre they conceive themselves mutually oblig'd by Oaths, may the easilier guesse at the Nature and obligation of our owne Oaths to them.

## C H A P. VI.

### Concerning those Oaths which passe betwixt Prince and Prince.

**S**ome dispute, Whether as Kings can absolve their subjects from their oaths to them, so whether they can absolve themselves from their owne oaths. The grand subtilty of this is, because the acts of supreme Princes are not contrary to, but above all Law : and they are done in places where they are not subject to any superiour jurisdiction. For if they be acts done at home, then it is cleare they are above their subjects : If abroad by any Proxies, then its clearer that their persons are lesse subject. But because God is in the obligation, and that all persons and places are alike subject unto him, as he is King of Kings ; therefore such  
Princes

Princes are oblig'd as much as others, *in foro interno*, (of which jurisdiction all Oaths are) though not *in foro externo*. The former descriptions of the nature of oaths are sufficient for the further prooffe of this, and therefore it would be needlesse to enlarge upon it.

If oaths be made by Princes to Princes in their Princely capacities, but that those Princes are in their Principalities oblig'd to Lawes, then their Lawes being above them (in regard they stand obliged to them) their persons are only conditions of their oaths, whereby it is manifested, only with whom they contracted, *viz.* with the communities whereof they are the first and supreamest Officers.

If Oaths and Leagues be made betwixt Princes who were above their Lawes, but that the qualities of their persons be afterwards changed, which qualities formerly were as conditions moving to the Oaths and Contracts, then (according to many learned mens opinions) the whole obligation ceases betwixt them. This case is specified above, in the Oaths and Treaties which lately past betwixt our King, the King of Spain, and the now King of Portugall; as if our King stood obliged to the King of Spaine, only for so much as he should be able to hold in his Possession.

Thus much briefly concerning Oaths betwixt Prince and Prince. Now I shall speake concerning Princes Oaths to the People, especially concerning Coronation-oaths: and afterwards I shall speake concerning subjects Oaths to their Princes.

## CHAP. VII.

## Concerning Princes Oaths to the People, and of Coronation-Oaths.

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- § 1. *How Princes thinking to keep those Oaths, may breake them.*
2. *Of State-Oaths.*
3. *The Oaths and State-acts of Communities in Ages past, are the acts of the present Communities, if there were no intervening fundamentall Change.*
4. *How a man may justly change his will.*
5. *In what sence Communities change not.*

**V**Sually in all places Kings at their Coronations sweare, That they will keep, and see kept all the Lawes which they finde at their entrance, and that they will not innovate nor change any thing in them.

1. Though this seeme very candid, yet I say there is nothing which can sooner ruine a State, then Princes rigid keeping, or carelesse breaking such Oaths. If they hold to their naked termes, then there can never be any good reformation: For that usually requires the taking away of some Lawes: And a power of abolishing some old Lawes, is as essentiall to Government, as the making of new. Thus also if they care not for keeping their Lawes at all, then they may take away the good Lawes, as well as the bad; and so there is

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tyranny

tyranny in both. What is then to be done ?

§. 2. I conceive that all such Oathes as they are of matter of State and Government, so  
 " They are to be interpreted according to the Ta-  
 " cite Conditions and foundations of Government,  
 " of which, *The preservation of the community* is the  
 " chiefest. And because the dangers of a State can  
 never be all foreseen by any company of men, by rea-  
 son of the infinite circumstances of humane actions  
 and accidents, therefore they cannot be all caution'd  
 in Positive Lawes ; *Nam optimis rebus sua semper*  
*adstant pericula aut adnascuntur*, which as *Plautus*  
*saith, nobis ancillant quasi scapha*. Those Lawes for  
 this reason, are said to be made *cum sensu humana*  
*imbecillitatis*, and to last no longer then they may bee  
 for the good of the community who gave them their  
 being to no other end. So that we may well say, those  
 Magistrates *who obstinately hold thus to their oaths,*  
*break them*. For thinking to save the Law in its let-  
 ter and words, they may lose and ruine their states  
 and lawes, by not keeping to the originall sense of  
 them, further then which they cannot goe : Where-  
 fore each Community hath a liberty of excepting  
 those future cases from the rigour of their laws, which  
 in all probability they who first made the laws would  
 have excepted, if they could have had certaine know-  
 ledge of them, when they were making the said laws.

*Obj.* But it may be objected, That wee have not  
 such a liberty in others acts as in our owne, nor yet  
 have we liberty in all our own. For an act once past,  
 is in faith to be kept, especially if an oath bee fastned  
 to it, &c.

*Ans.* §3. To this I answer, That it is ill suppo-  
 sed that the Legislative acts of former ages are not  
 ours :

ours: For we are still the same society or body politique, which dies not, no fundamentall change intervening: Though the particular persons of past ages be no more, yet the society is the same; just as the *Rhine* is the same river it was at the beginning, though its waters still runne away, and are every moment buried in the Sea.

When our actions are for our selves ( and not in making over some rights to others ) then wee have alwayes a Naturall liberty to dispose of our actions for our selves, as we shall at any time finde fitting. The body Politique can be considered but as one particular person, and what it acts is usually for it selfe: and so in that consequence hath a liberty of doing or undoing what it shall finde best corresponding with its particular interest.

4. Every particular man hath liberty to change his will in the disposing of what is his owne, so long as hee lives: and hath not a body Politique as large a privilege, which is the fountaine of all privileges? And indeed how is it imaginable that a man hath power to binde or shackle himselfe, or that a Community can force an obligation upon it selfe? seeing it is neither superiour nor inferiour to it selfe. Surely there is a better way for remedying an inconvenience, then for a man to oblige himselfe to continue in it.

5. Neither can a Community be properly said to change: Because it still holds to the same end, *viz.* The preservation of the whole. 'Tis a true maxim, *quæ ad finem ducunt in materiâ morali astimationem habent à fine*; take the case thus: The generall end of a Pilate is to save, not to cast away the ship committed to him: his obligation is to bring it safely into such or such a port: If the sands change the chanel,

then he is oblig'd to quit his old course, and to change it according to the change of the sands; but yet all this is not with the change of the generall end. Thus though he be oblig'd to preserve the goods for the benefit of those who committed the ship to him, yet in a tempest, to save the ship, hee may not throw over his men, but the said goods, notwithstanding his obligation to save them. *Aurum non valet templum*, saith our Saviour, because it serves it: Wherefore the old Priest did very prudently, when hee saw his Temple on fire, to throw all his holy water on it; and when that would not doe, to crie for helpe to this his last remedy, *cum aquâ non possum ruinâ extinguam*. Though in this necessity hee pluckt downe the Temple which hee was bound to preserve, yet by this meanes he sav'd some of the statues of the Gods, for whom the Temple was built

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## C H A P. VIII.

### Concerning subjects Oathes to their Princes:

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1. *Wherefore dangerous to examine supreme rights?*
2. *Of Monarchy, Aristocracy, & Democracy. No sort of Government which can give alwaies a certaine remedy for an inconvenience of State.*
3. *Why some Countries more inclin'd geographically to one particular sort of government then to another.*
4. *Where-*

4. *Wherefore we are abus'd so much in distributive Justice, (Rewards and Punishments) as also in the pleasures of sense, riches and honour, for the enjoyments whereof wee so vainly torment our selves.*
5. *Of the power of dominion, and the right of exercising it specifically in this or those hands.*
5. *Foure cases wherein subjects are freed from former Allegiance.*
7. *How a man may take an oath from an unjust invading party, contrary to those oaths which perhaps he took first from the just party, who possibly brake no conditions with him.*
8. *Some Kingdomes for the Prince alone and his benefit.*
9. *Of the Harmony of Oathes.*
10. *Two wayes of taking opposite oathes.*
11. *Of the presumptive will of the Prince.*
12. *Of the conditions of those oaths whereby wee are sworne to lose our lives for our Prince.*
13. *In what sense may a man swear that hee hath the right, whom hee knows is in the wrong? Of Subscription in the Church of England.*
14. *Why Penalties better securities for Princes Rights then Oaths.*

1. **I**N government it ought to be most prudently cautioned, that a Society or State raffle not out into a disjolute multitude. For in confusion there is a rage which reason cannot reclame, and which must be

left to calme and settle, as waves doe after a tempest, both upon themselves and of themselves.

This confusion arises most out of the reflexion which particular men may make on their particular rights and liberties, which perhaps may lawfully belong to them, but are not alwayes convenient for them to have, no more then knives and daggars are for young children or distracted persons. *Libertas enim singulorum erit servitus omnium.* Besides it takes away all future intelligence, and breaks a Christall glasse, which can never be peec't againe so finely as it was, but ever after will shew broken and angry faces.

2. Wee think our service here very hard, being on every hand expos'd to perpetuall combats, and faine we would meliorate our condition by experimenting whatsoever Presents it selfe first to our pressures, but in vaine: for like men in Feavours we may change the sides of the bed, but not our temper. The

Monarchy. state of Monarchy is of all the rest most excellent, especially when it represents Gods dominion, more in the Justice, then in the singularity of the Governour. But because there is no Prince who is inabled with prudence and goodnesse any way so great and soveraigne as is his power, therefore he cannot but commit great errors; and standing on the peoples shoulders, hee makes them at last complaine of his weight, and of the losse of their liberty which

Aristocracy. is alwayes their desired end. Aristocracy stands like a moderatour betwixt the excesses of Kingly and popular power; but this mixture oftentimes produces moniters. The bloudest commotions that are, happen in this state, though esteem'd most temperate, just as the greatest storms are form'd



in the middle region of the Aire, and in those seasons of the year which are least sharpe. No one part of a State can be strengthened, but by cutting the sinews of another. *Sed spoliatis arma supersunt*; *Juve. and impotency representing at the same time both misery and scorn, takes life even in dispaire*, and if it cannot beholden to the reliefe of an Enemy, will make the publique ruines of a Kingdome its grave. *Take away Armes and Liberty, and every man is without interest and affection for his Country*: Invade his goods, and the fountaine of a treasury is immediatly dried, and hee as soon made a beggar; and after these distresses as *Machiavell saith, Hee will not lament so much the losse of his publique Parent, as of his private Patrimony*. Democracy reduces all to equality, and favours the Liberty of the people in every thing: but withall it obliges every man to hold his neighbours hands, it is very short sighted, permits every one in the ship to pretend to the helme, yea in a tempest; through policy it is oft constrain'd to introduce all those desolations which ought to be feared onely from envy, and at last blindfoldedly gets such falls, that it scarce hath force enough remaining to raise it selfe on its legs againe. It hath swing of Liberty large enough, but such, as is not proper to cure its owne distempers, *seeing it is very dangerous for a man (when he may have other choice) to bee both patient and Physitian to himselfe*.

Finally, If this supreme power fall into the hands of a heady and of an unconstant multitude, it is lodg'd in a great animall, which cannot bee better then in chains. This is the circle which we so painfully move in without satisfying our desires: And no wonder seeing *Nature in every part is sick and distemper'd,*

and therefore can finde rest in no posture. Humane laws grow out of vices, which makes all governments carry with them the causes of their Corruption, and a complication of their Infirmities; and for this reason they are ever destitute of vertue, proportionable to the deviations of our crazie complexions; just as the statues of *Trajan's* gods were disproportion'd to the gate of his Temple, out of which (as *Apolodorus* told him) they would not be able to get, if hee should at any time stand in need of their assistance.

3. Yet in the midst of these our shiftings and changings we are naturally inclin'd to one sort of government more then to another, and it is observable, both out of the Histories of the former Monarchies, and out of the Moderne state of the world, That the Eastern and hot Countries w<sup>ch</sup> lie under the course of the Sun, are most dispos'd to the state of Monarchy, as in the large extents of *Persia, Turkie, Africa, Peru,* and *Mexico*, in which latter quarter of the world, the people who have experimented both, are governed better and more contentedly by the *Spaniard* or *Portuguese*, then by the *Hollander*, who are by fits in the excesses of kindnesse and of cruelty: But in Europe and so neerer the Pole, Countries are dispos'd more to Republicques and popular mixtures, temper'd according to fundamentall laws, and the authority of Diets and Senats. *Nec totam servitutem pati possunt, nec totam libertatem.* Tacit. For this reason some vainly say, that the Northern quarter of the world is alwayes more imbroil'd in Civill Warre then the Eastern. For though such fundamentall parties in their societies, seem to confine as it were on a battable ground, where a gap is open to usurpations, and to snatchings one from another, yet the supremacy and  
ultimate

ultimate result of power in such states is so defin'd and lodg'd, that they provide more effectually for the stifling, then for the growth of ambition and tyranny. Seing therefore this tempest which we live in is likely to be perpetuall, the best way to sleep in it, as our Saviour did in his, is to quiet all within, rather then unnecessarily to dispute any thing without: and to consider that we are now *in face mundi*, that wee can turne to no sort of government which hath not in the very constitution of it a power to wrong us in all the parts of Distributive Justice, Reward, and Punishment.

4. For to be able to punish those who may wrong us, the power of the government (whatsoever it bee) must bee above all other powers, and consequently absolute without redresse or appeale. Magistrates are they of whom it may be rightly said — *Qui nolunt occidere quemquam — Possent volunt.* As for Rewards, though the Governours were all like *Cæsar*, and had his Kingdoms and generous minde, *Gravis unicunque erit alijs ipsa beneficiorum potentia.* Besides all this wee doe but abuse our selves in pretuming of a pleasant condition to be recovered in this life, bee it either in Sense, Riches, or Honour: For really pleasure is here unattainable, not so much through a Civil, as through a Naturall defect, in the disproportions which are betwixt our Appetites, our Senses, and their objects.

Of Punishment.

Inve.  
Of Rewards.

Florus.

Of the pleasure  
of Sense.

As for that which we so pompously stile the ravishment of the Senses, or sensible Pleasure, it is onely a present being out of that paine, which troubled us immediatly before; and when that is over, then another presently

presently begins to enter in the place of it. Besides no man yet ever was in the actuall enjoyment of so high a content, but he could at the same instant have imagined to himselfe something of the same kind a degree higher ; and his missing of this (which in right reason he should not have expected ) indiscreetly breeds his anxiety. The paines of hunger and of Repletion spurre us on to the functions of Life, and Nature accompanying all our painfull actions with some secret promise of joy, under that charme hides from us what she intends we shall afterwards suffer in our senses.

Of Riches. As for Riches, they consist in things without us, and were to be sought after above all things if they brought content, as well as content brings them. If they be for reall uses, then it followes that he who hath not need of so many things as another, is richest of the two : and the fewer things they be which relate to and concerne a man, the lesse trouble afflicts him. Upon the whole we may say of them with *Seneca* ; *accipimus peritura perituri.*

Of Honour. This reason abates much likewise of the price of Honour ; which indeed even in Princes is no better then an abandoning the dominion of their owne persons, to take the care of thousands of others: For the wretchedest children in their Nations expect strength and remedies from them in their unjust sufferings ; just as the weake Infant doth physicke in the milke suckt from the Nurses body, which is weakened thereby :

*Nemo eodem tempore assequi potest magnam famam & magnam quietem : Quintil.*

Meane people lye all at the roots of Trees, and enjoy that quiet there, which they who sit aloft in the bowes cannot.

cannot. This made *Cæsar* feare *Pompey's* fate, when he had got his power and became what *Pompey* was.

*Iam cinis est, & de tam magno restat Achille*

*Nescio quid parvam quod non bene compleat urnam.*

The old Philosophers considering this over-richnesse in our fancies and appetites, yet concluding that God and Nature made no faculties in vaine, rightly sought for felicity and pleasure out of Nature, and beyond the bounds of this jarring world: they were only unhappy in not discerning the right Object, Christ Jesus; he hath shewne us that which will satisfie, because not subject to change, nor any way elementary. They who have faith to embrace it, see the world immediately beneath them, and the considerablest commotions in it ordinarily to be but *as a wind's blowing of leaves up and downe, in which scuffle it matters not which triumphs over the other.* In the examination therefore of Rights, and of the causes how they are forfeited, The familiar canvassing of these supreme Rights appears (by what is proved before) to be the dangerouest. For it unloosens the very pins of Government, and so lets all the Frame fall into confusion, and by that into the extremity of dangers. However, because there may be just cause of *canvassing the forfeiture of those Rights, according to those tacite conditions,* which are the ground of the peoples Oaths, as well as of the Princes, therefore I shall briefly set downe what they, who are for strict obedience to Governours, have declared long agoe upon the case, together with their reasons.

But as a ground to all their following suppositions, it will not be amisse to agree first in the competency of the Tribunall from whence their determinations issue. They who derive neither from Prince nor people, but

but from Jesus Christ, as the immediate dispensers of his mysteries, interpose with greater assurance than any of another Robe. But because they hitherto have in this differ'd among themselves as much as any Profession; 5. Therefore they have caused some to look for another Tribunall to judg of them, and before an intire resignation, to make use of private reasons, to see whether there cannot be a distinction betwixt the *Power of dominion*, and the *right of exercising it specifically by this or those hands.*

The *Powers* which are, derive solely from God, by whom all things live, move, and have their being: And because this is a sacred theame, therefore many Divines (or rather Ministers of the holy Order) thinke the whole question is to be defin'd at their Tribunall by the text of the Bible. But according to Saint *Paul* out of *Aratus* and *Hesiod*, the Scriptures doe not solely discover this power of God, but only the power of the new Creation: If it had been otherwise, Saint *Paul* in stead of appealing to *Cesar*, would have appeal'd to himselfe, or to his owne order. Therefore the Ministry is not the sole Judge even of this first part of the distinction. The Lawyer he only speaks properly to the latter, because it is *in jure ad rem*, and consits in, and is specified by Contract, and in those tacite conditions which are cleared by the rules of naturall Equity. Our *Druids* therefore are not *utriusque fori*; neither are they as the *Levites*, Keepers of those *arcana Judicii & Imperii*, which God solely ordered for the Jewes Common-wealth. The Lawyers therefore best finde out the right, and the Ministry best perswade us to make conscience of it. Thus therefore I enter upon the particular cases.

§ 6. He who hath sworne Allegiance and fidelity to

to his Prince, is absolved, and set at liberty, if his Prince abandon his Kingdome. For upon his own act, he hath and will have no right to it; and so farre as he hath no right, his subject can doe him no wrong. He who throwes away money (*ut in jactu missilium*) is no longer owner of it. But it is to be noted, that he who uses not his owne well, is not to be supposed to have abandon'd it, as is larglier prov'd in the first part, c. 3. § 5.

Secondly, If a Prince give away, or subject his Kingdome to another Crowne, then he may be resisted in it, notwithstanding any oath: Because the alienation of a Kingdome, is not comprehended in the government of it, and it is his government which is the ground of the oath.

Thirdly, If a Prince through mad fury or folly, seeke in a hostile way the destruction of his whole Kingdome, then we owe him nothing by oath. For the will of governing and destroying a Kingdome, is inconsistent with it selfe. *Nero* virtually declared he would not governe Rome, when he was setting it on fire. Thus the Civill Law permits fathers to disinherit their children, and children to disinherit their fathers, (which the Casuists permit though they swore before never to disinherit one the other) if they have attempted to destroy one the other: for thereby they become unnaturall, and consequently cease to be either father or sonne. *San. pra. 7. Sect. 7.*

And this is that which the Law and the Casuists call, *solutio vinculi per cessationem materiae, aut mutationem aliquam notabilem factam circa causam juramenti principalem*: *Sanderfon* in his *Prelec. 7. sec. 7.* saith; That the matter of an oath ceaseth, and is consumed, when the state of things is so chang'd betwixt the time of swearing and fulfilling, that if at the time

of taking the oath, the state and change of things which afterwards follow'd, could have been then foreseen, the oath would not have been taken at all. It should seeme that this is one Tacite Condition, which is afterwards as effectually, as if it had been at first exprest, although the oath at the beginning might have been only in positive termes.

Fourthly, if the Prince have part of the supreme right, & the People the other part, then notwithstanding an oath of Allegiance to him, he may be opposed if he invade the other part of supreme right. And this *Grotius* saith holds though such a Prince have the power and right of Warre alone; for that is to be understood saith he of forraigne Warre onely: Nor can we conceive how that party which shares in the supreme right, can be without the right of defending it, insomuch that if the Prince invade the others right, he may (saith he) lose his right by the law of Warre. Supreme right (as is largelier set downe in the first part) consists in a capacity of making and abolishing laws, in levying generall Taxes, &c.

7. But all these cases onely shew how wee are absolved in our owne consciences from all oath and contract, when one party forfeits his conditions first, in which the difficulties are not very profound, wherfore now I shall endeavour to shew, *How a man may take an oath from an unjust invading party, contrary to those oathes which perhaps he tooke first from the just Party, who possibly brake no conditions with him.* This case I take to be almost the utmost of that which can be put; However I shall see what wee may say for our selves in it.

8. There are some Kingdoms which are considered for the King and his benefit alone: and wee cannot



not properly call such; *Common-Wealths*, because there is no *Communizy*, neither of Law, nor of any other right, betwixt Prince and People : But as the old Roman slaves, so thole subjects *Non habent capita injure* ; or as those who were anciently excommunicated , of whom it was said, That they had Wolves heads, that is, men might kill them as pardonably as they might Wolves : These likewise had no community or participation of right ; Excommunication then being more then a bare putting out of table-commons, Such subjects as those, though they bee gnaw'd to the bones, and that their bookes of Lawes be but books of account for the Princes demanding their whole fortunes, yet they have not the right scarce of a sigh : These must bring their Tributes to their *Cesar*, like the mute fish in the Gospell, and afterwards are as sure as it to pay their lives into the Contribution. For God many times finding some nations grossely peccant and obnoxious to his severest Justice, instead of destroying them, gives them up as a prey to another Crowne : Thus were the seven nations ; And afterwards Israel it selfe was thus in the hands of *Nebuchadnezzar* : for repining at whose rigour they were expressly reprehended by God : which particular case is not a generall Argument or consequence (as some argue it) for the manner of Government, and the duty or latitude of subjection in all Kingdomes. The relation betwixt such subjects and such Princes, comes not properly into the scope of this discourse : for the more immediate entry of which it is to considered by way of objection.

*Obj.* § 9. That as contradictions are not verifiable, so God who is truth it selfe, cannot bee a witness to them, unlesse it be to punish them. But seing in such  
oaths

oathes there is contradiction, How then can we hope to be justified by God in taking them ?

*Ans.* All that which hath beene cleared above, serves mainly to helpe us in this difficultie, and to lead us to a true harmony of oathes ; which some stretch wildly to finde even in the *very termes* of opposite oathes, at least by a secret sense which they say the swearer hath liberty to put on them for himselfe, *Quasi propositio mixta ex mentali & vocali esset legitima* ; which opinion is in some manner perhaps refuted above.

10. I conceive but two wayes of taking such opposite Oathes.

First, When it is in a thing wherein a man may justly presume that *the right party for a time releases him of his former oath or duty to him*. This is meant during the Warre onely, at which time Usurpers never declare their full intencion, because they are not as yet certaine whether they shall finally possesse the power whereby they may be enabled to make good what they pretend ; neither can they foresee what their after necessities may be.

11. Secondly, A man cannot by oath, or any other way be oblig'd further to any power, then to do his utmost in the behalfe thereof : And though the oath for the right magistrate be taken in the strictest terms of undergoing death and danger, yet it is to be understood alwayes conditionally, as most promises are, *viz.* If the action or passion may be for that Powers or Princes advantage. Let us take the case as we see it practiz'd. In an Army each man is or may be oblig'd by oath to lose his life for the Prince whose Army it is, rather then turne back or avoid any danger ; such an oath is call'd *Sacramentum militare* : This Army after

ter having done its utmost, is beaten, and now the Souldiers can do no more for their Prince then die, which indeed is to do nothing at all, but to cease from ever doing any thing, either for him or themselves. In these streights therefore it is not repugnant to their oath to aske quarter or a new life; and having taken it, they are bound in a new, & a just obligation of fidelity to those whom they were bound to kill few hours before: neither can the Prince expect, that by vertue of their former oath to him, they should kill any in the place where their quarter was given them. They who live under the full power of the unjust party, may be said to take quarter, and to be in the same condition with the former: and so have the liberty to oblige themselves to that which the Prince now cannot but expect from them, *viz.* to swear to those under whose power they live, that they will not attempt any thing against them.

All that this amounts to, is, That it is *Præter, non contra prius juramentum*; and as the condition which was the ground of this promissary oath is such, that it is impossible for a man in it to advance his parties cause, so is it impossible for him to be bound to an impossibility.

13. But what if the usurping power should exact an oath in termes more repugnant to a mans conscience? as, That he shall now sweare not only not to doe any thing against him, but to do all he can for him, and besides will have him sweare, That the very right of the cause belongs to him, and not to the other party, as in *Edward the Fourth*, and *Richard the Thirds* cases, &c. In answer to this I first say, That probably the man call'd to sweare here, formerly oblig'd himselfe to the other party by oath, but not as if that party positively

*Quest.*

*Answ.*

G

had

had a cleare right, but that he knew none who had a clearer, and therefore upon the same ground, he may neither sweare action nor positive right to this party ; Though my hand trembles to write further of this case , perhaps as much as his would, who should come to sweare it *tactis Evangeliiis*, yet I find great Doctors who favour oathes in such terms ; Not as if they had a Positive or Grammaticall sense in them, but that they require onely that we should do nothing contrary to the termes of the oaths, or of their sense, which is as much as to say, That though wee know not wherein that parties rights positively consist, yet we take our oathes that we will not do any thing to weaken his pretensions. This is the sense which they say we may sweare, when an oath is given us in terms which we conceive false. As for swearing wee will be active for that party for which our consciences will not let us doe any thing at all ; They say we may sweare it also ; becaule the ground of the oath requires no more, but that we be not active to traverse any of his designs, or actions ; and that though we act not any thing for him in his Armies abroad, yet that wee will not attempt any thing directly or indirectly at home, that might tend to the putting of our selves or others out of his possession, or to the weakening of his security. Though this sense satisfie not the termes of the oath in their rigour, yet thole Doctors say it satisfies the scope of it, beyond which a man is not oblig'd unlesse he will himselfe. For instance ; No man could formerly bee admitted to the Ministry in our Church, unlesse he subscribed first to the Articles, Liturgie, Canons, and Jurisdiction of our Church : And though there were a great contradiction betwixt the Arminian, Episcopall and Calvinists

nists opinions in the matter to be subscribed ; yet they all concurred in this, that they might subscribe in this sense, First, that they meant not to disturbe the peace of the Church for any thing contained either in the Articles, Canons, or Episcopall Government, whatever their positive opinions about them might be. Secondly, That they thought those in a saveable condition who conform'd to the strict sense of them. And this they conceived was all that was meant by subscription ; Witnesse Master *Chillingworth*, who onely writes so much, but the Doctors and Divinity Professors at *Oxford* licensed the Printing of it, and the Arch-Bishop presented it to his Majesty, so that it passed an avowd sense both in Church and State. But as I conceive this one the most perplext case that can possibly be put in oathes, and which hath not yet been examined by any that I know of, so I recommend it to the further disquisition both of the Casuist and of the Lawyer, who yet is not so well fitted for the *Forum internum* as the other. This we know, that our Ancestors, who liv'd in that age, whose confusions gave occasion to these discourses, were *de facto* severall times prest to this sort of oath.

14. And were it not, but that aspiring Princes have so much of the *Cesar* in them, that being once by their usurpations ingaged, they cannot stop till they have acquired all they aimed at (as he did who because *Rubicon* was past, *Et quia jacta erat alea*, could not rest till he had supt in the Capitol ) they would finde it a greater security to put a penalty upon those who should question their rights, then to force their subjects to acknowledge their pretensions by this oath. For such an oath may be broke in the very taking of

Why Penalties  
the best securi-  
ties for Princes  
rights.

it; and he who scruples not to forfeit his oath for feare or interest, will disavow any pretended rights whensoever he shall *stare in Lubrico*.

Thus much concerning the nature and harmony of oathes. Now it remains onely to speake to the last difficulty of this second part, which is—

### C H A P. IX.

Whether upon the issue of a war and the expulsion of a just party a man may lawfully give himself up to the finall Allegiance of the unjust party or no?

1. *The troubles of Warre end not presently with the Warre*
2. *Wherefore a strict government is necessary for those who conquer in a Civill Warre.*
3. *Wherefore Wee cannot swear to obey none but such or such Governours.*
4. *When may a man judge such a party or place to be conquered?*
5. *What conquest or acquisition can never be justified*
6. *Of Ferdinand King of Naples his Cession.*
7. *Of the Society of mankinde.*
8. *The case of places taken on Frontiers.*

**B**Y a reflexion on that which hath been already examined, this last Question may seem to be but a casting

casting up into a summe all that which is gone before. Physicians to adjust their remedies aright, consult the time past, present and future; and so should we in all these cases, if that which is *Civill had but as Uniform Principles as that which is Naturall*. For if a peremptory assent be demanded of us in a matter which hath connexion with the time past, the evidence of that depends onely on the credit of ignorant or disguised Histories, and not on any which we durst peremptorily say cannot misinforme us.

*Segnius irritant animos demissa per aurem  
Quam qua sunt oculis subjecta fidelibus, et qua  
Ipse sibi tradit spectator.* Hor.

The time present is governed by the wils of men, which are mysterious one to another, & are so covert and serpentine, that *they who sit in Council together, rarely penetrate themselves*: As for the future which relates mainly to this Question, that depends solely on his Providence, who never tooke humane reasons into his Counsell, and for the most part produces events contrary to, or beyond our hopes and machinations.

Here therefore we must suppose an unhappy War, as unhappily ended, and according to the variety of humane condition, that the usurping Prince rides now in his Triumph, and that they who follow, if they doe but fight, shall be punished, as if they intended to betray their Countrey; so that now there remains nothing to be done, save that *Jus dandum est sceleri*. All the Usurpers pretensions are to be avow'd, and nothing is conceal'd which the power of the place is able to make good.

i. But though the Warre be ended, yet its troubles and miseries doe not so soone cease with it:

*Bella movet clipeus, aeq; armis arma feruntur.* Ovid.

Waves after a tempest are observ'd to rage, though the wind which raised them be downe, and those refractions do not so quickly unite in a calm peace, as to make the Sea presently become Heavens looking-glasse : *Interfecto Vitellio bellum magis desierat, quam pax ceperat.* Tac.

The Usurpers resolutions towards the winding up of all, are naturally furiousest; and good reason too; for justice here allows him to be severer for peace, then he was for Warre. That his dangers might not be infinite, hee is oblig'd to pull up the seeds of War; otherwise instead of taking it away, hee would but deferre it.

2. Civill Warre is naturally more subject to these rigours, then other Warres : Because they who yesterday were Enemies, would be inhabitants alwaies. The conquerour suspects that these will bee the first infringers of his new Lawes; the violation of which ought at the beginning to be severeliest censured, as of dangeroulest consequence: according to which reason, God himselfe gave sentence of no lesse then death on a gatherer onely of sticks, immediatly after the promulgation of the Sabbath; and *Ananias* and *Saphira's* first hypocrisies and mockings of the Holy-Ghost were rewarded with no lesse then suddain death; though now adayes the like bee ordinarily done without immediate sentence. Wherefore for these reasons though the Usurper thought not of establishing himselfe in an absolute Jurisdiction, yet at last he will finde himselfe oblig'd to secure his conquest by the same means he obtained it. *Qui nolunt occidere quenquam*——*Posse volunt.* And *Dido* gave *Aneas* the true reason of the same case.



*Res dura & regni novitas me talia cogunt  
Moliri, & laeæ fines custode tueri.* Virg.

3. Wee should bee exceeding happy, if in the midt of these imbroylements we could now know Gods decree concerning the Princes and Governours which he would have raigne over us, as certainly as the ancients did by his revelation and Prophets. Yet though we know not so much, this we know assuredly, that the great changes of Government happen not by chance, but by order of the most universall cause, which is the fountaine of Dominion. God's Image in *Adam* by many Divines is understood to have been his Dominion over the Inferiour Creatures of the world, and since him we finde that none are call'd God's but Magistrates; For they like God are most knowne by Commanding. It's observed that *Moyse* in the 1 of *Gen.* names God simply without any attribute, but in the 2 *Ch. pr.* after the Creation was finish'd, alwayes calls him *Dominus Deus*; hereby expressing his right to order, what before hee had produced by his efficacy. From hence wee can well conceive why God sayes *By me Princes raigne; For the governing Powers which are, are of God.* God hath declared that hee will still chastize and change Princes and Governours; and though now wee may doubt of their Families and persons, yet when wee see the changes and chastisements, we may be sure they are by Gods order, yea though the invading or succeeding Governours be like *Jehu*, *Nebuchadnezzar*, or those who by cruelty shew us nothing but Gods wrath. Wherefore it can be no lesse then sinne in us, or Treason against God to sweare we will never obey any but this or that Prince, or State, or any but of such a Family,

*Dan. 4. 32.  
Psal. 75. 7.*

or to think that none other shall raigne over us but such. For this depends on God's Providence and Justice, which sets the bounds to the duration of Governours and Governments.

—*superat quoniam fortuna, sequamur,*

*Quòq; vocat vertamus iter. Virg.*

*Quid quisq; vitet nunquam hominifatis*

*Cantum est in Horas—Sed improvisa*

*Vis rapit rapietq; gentes. Hor.*

Wee are bound to owne Princes so long as it pleases God to give them the power to command us, and when we see others possess of their powers, we may then say, That the King of Kings hath chang'd our Vice-Roys : but then the difficultie will be this.

4. *When may a man rightly judge the invadour to be in a full possession of his conquest?*

This is considerable in regard of the time when we are to give our selves up to a new Allegiance: For an Army in a Countrey doth not still possess it, because in few dayes it may be repuls'd againe. Thus *Hanniball* though he quarter'd about *Rome*, yet the fields wherein he quarter'd were sold in the Towne at as high a price as before.

A place therefore is judg'd to be in full possession,

First, When it's so held that an other power as great as that which holds it, cannot approach it without great danger.

Secondly, When there is no probable hopes of recovering it. Thus of a ship (which is a moveable) the possession of twenty foure houres is a Title in all Admiralties; because of the improbability of recovering a thing so hard to meet with. *Ea desinunt nostra esse qua nostram persecutionem & recuperationem effugiunt, & qua ex seipsis non habent animum rede-*

*redeundi, ff. de acqui. rer. dom. l. 44.* Thus the Jewes were to obey and pay tribute to the Romans when Jerusalem was taken.

Thirdly, when the party overcome doth by some acts acknowledge the Invador for the supreme. Thus the Senate could plead no excuse for *Cæsars* murther, whom themselves acknowledged supreme after the successe of his armes.

5. Yet there is one kind of usurpation, which by no possession or prescription can ever become lawfull, and a Christian can never submit himselfe to it, without wounding his conscience and faith. For it is that which is founded in impiety and blasphemy; and yet would be forc't upon us, as by Gods order, and by title of his true Religion. Such Invaders as these though they may succeed one another yet their succession and possession cannot legitimate any; because no præscription can run against God. As this authority is grounded in the depth of all impiety, it pretending a jurisdiction both in heaven and hell, body and soule, spirituall and temporall rights; so to assist to introduce it into any place, can be no lesse then the height of treason, both against God in heaven, and his Vice-gerents on earth: for thereby it is endeavoured indirectly, and by just consequence to alienate and transferre all Sovereignty to an Idolatrous Priest; and an assisting to the massacring of those who are not of his Idolatry.

Fourthly, a place is fully possess'd from the just Prince or State, when they become private persons, and so, subjected to the power of another Magistracy, which the Civill Law calls, *diminutio capitis*, or a civill death. In this case they who were formerly their subjects, need not now scruple as if they durst not doe this or that, as being ignorant whether their wils dispence them

them of such or such duties in order to their rights. For it is to be presumed, that the expell'd Princes or Senats wils are, That they would not have them hopelessly begin the miseries of a new confusion for them: It is a bad way of remedying an evill, by renewing it without any hope of recovery. When the case is thus, they ought to let the people enjoy, *Tua & presentia*, and forget *vetera & periculosa*. If their subjects were sure of their wils, and as sure, that by their owne powers they could restore them without an universall calamity of their Kingdomes, then their endeavours were more reasonably due to them. We have not now Gods revelation for the particular events of things, wherefore we are excusable if we consider the probabilitie of the meanes: Our Saviour would not have a Prince begin a war with 1000 men against 2000. Besides every thing is more favorable for peace then for warre: And to what purpose is it to take part with those who are as it were dead, against them who are alive? The Law supposes a womans husband to be dead, *quando mortua est spes eum revisendi*, and for that reason she may then *transire ad alia vota*, though he be not then naturally dead. And if possession was really the truest evidence to us of their rights, then it is equitable to follow it still, though it be perhaps in a person of more injustice then they were.

6. As the goodnesse and prudence of *Ferdinand* King of Naples was admirable in this case, so I shall faithfully translate it, as *Guicciardin* lets it downe.

*Charles* the eighth of France invaded Italy upon a pretence to the Crowne of Naples; *Ferdinand* was newly come to the Crowne, but unhappily succeeded two, who by excelle of tyranny utterly disoblighed the people, so that though he was a Prince very debonair of

of himselfe, yet the remembrance the people had of the former mis-governments, together with the cowardise of his Captaines, afforded him no other news, then the daily losse of Armies, Townes, and of whole Provinces, even to the gates of Naples it selfe ; whether *Charles* was now advanc't without having so much as discharg'd a Pistoll. And because *Ferdinand* found Naples, and the Countrey behind it, halfe dead already with feare, and ready to revolt , he resolv'd therefore not to expose them to ruine, by standing out perhaps only a little while for him : Wherefore he summon'd all the Nobility, Gentry, and prime Citizens “ to wait on him at his Pallace; to whom when he had “ bewail'd first his own undeserv'd calamities, and pi- “ tying those of his subjects, who let themselves be “ defeated so easily by their own fears; he then advis'd “ them to send to the French King for the best condi- “ ons they might get for their own preservations. And “ that they might doe it without any stain of honour, “ he absolv'd them freely of all oath and homage: And “ for his own part told them, that he was resolv'd not “ to wrastle with, but to yeeld to his fate, rather then by “ trying to stand out after so many losses and misfor- “ tunes, to be an occasion of the ruine and pillage of his “ Kingdome, which was an effect contrary to that end “ for which he desired to be their King. But if the mis- “ government of the French should make them desire “ his return, that he would endeavor to preserve him- “ selfe in Sicily, whence he would willingly return to “ expose his life for their better condition.

Here was the true duty both of a man and of a King ; yea the Action was more then Kingly : For to lay downe a Crowne is more Majesticall then to weare it. It is only from glittering Thrones, whence the

the descent is not easie: *Reges enim de tanto culmine non descendunt, imò deturbantur.* Though other places in the like or worse condition have not so cleare a Declaration of their Princes and Governors wils, yet *the same is to be presumed from them*, rather then that they should occasion a fruitlesse and a calamitous confusion in their behalfe: For he who spits against the wind, spits in his owne face.

7. We speake sometimes of the society of mankinde, and of a morall continuity, as if all the world were to be considered but as one Common-wealth, as indeed it ought so to be: but our practice in this beyes our reason, especially when we reflect on the distinctions or separations of Kingdomes, and examine by what ground of reason Princes pleasures should oblige those who live on each side of a simple River (which divides two Crownes) to doe no acts of humanitie one for the other. We know there is a consanguinitie betwixt all men, by which we are bound to keep the faith of men even with heathens as well as with others, *moralia enim non tollunt naturalia*: so that it is pittie to see some so much libertines, that they thinke they cannot doe a Turke, Jew, Infidell, or any one of a Nation, against which warre is declared, any wrong: whereas the mettall of the coine is the same, though the inscription differ.

8. But to approach nearer to this particular case: Upon frontiers all men are most strictly oblig'd to the destruction one of another, according to their severall Allegiances: yet it happens daily, that by sieges and other extremities, Townes are reduced to the jurisdiction of those to whom they were sworne not to submit, but to destroy: This is not all; for upon their surrender they must sweare to destroy those whom  
the

the day before they were sworne to preserve. In such cases the Prince to whom they were first obliged, releases them of all imaginable duty to him. For he cannot expect that which is impossible for them to doe, *viz.* acts of former Allegiance to him. If afterwards he take any of them, he looks upon them not as traitors or revolvers, but such as by the Law and necessitie of warre, are of the same condition with the rest of his enemies subjects. The reasons which justify such particular places, justify a more universall; such as are whole Kingdomes, which are made out of such particular places, and are subject to the same fate and necessity of warre, to the same confusions and revolutions of Governments, and so to the same opposite Allegiances.

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The

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# The third Part:

Wherein it is examined :

W H E T H E R

The nature of Warre be inconsistent  
with the nature of the Christian Re-  
ligion ?

OR,

Whether some Warre may not now be  
lawfull in the State of the Gospell ?

## C H A P. I.

- § 1. *The description of Warre.*  
2. *Bellum quare dicitur a belluis.*  
3. *What it is to be unjust, or unlawfull.*  
4. *Society twofold.*



Hilst all the Christian world is imbroyl'd  
in Warre, and that the very state of man-  
kinde is nothing else but *Status belli* ; yet  
not a few perhaps of the best Christians  
finde their Consciencés checkt, as if they had and In-  
terdict



terdict from Heaven restraining them (even in the extreamest necessities) from defending their Persons and temporall Rights by the effusion of humane blood. They conceive such an exactnesse of Christian patience and charity is now required of us in regard of those excellent promises of reigning with Christ in Heaven, that all sort of Warre fights now against him and his Religion. This made an eminent Statesman pleading for Toleration of Religion in *France* say, *Qu'il valoit mieux avoir une paix ou il y avoient deux religions, qu'une guerre ou il n'y en avoit point*; That it was better to have a Peace with two Religions. then a Warre with none at all.

These Christians of whom wee now speak assure themselves, That if they wallow in one anothers blood here, they cannot afterwards tumble together in *Abrahams* bosome; their heavenly Shepherd drives them through a narrow way full of thornes and briars, so that they expect necessarily to lose locks of Wool in their estates, and to feele pricks in their persons. But in the midst of all this they take unexpressable comfort in Christ, knowing well that they who touch them now in this new Creation, touch a new forbidden fruit, even the apples of Gods eyes.

But we are borne to two Worlds, and are made of matter proportionable to both, and therefore cannot but naturally have some kinde of affection for both; Yet such, that seeing two collaterall powers cannot stand together, our affection to the first and worst, oblige us not to any thing which might traverse our happinesse in the other: And seeing without our will or knowledge we are (and all they who come after us are likely to be) borne into a world of miseries,  
the

the greatest of which is perpetuall Warre, I shall therefore esteem it worthy my re-search to see *Whether Warre be one condition exclusive of Salvation?*

1. In the first place I aske *What is Warre?* Too many can answer loud enough to this Question, by its miseries and sad effects: But I finde that *Bellum dicitur à belluis*, from Beasts.

2. In the first peopling of the world, after the deluge, men liv'd scatter'd up and downe, and most in woods: And ambition not having place in a time of such simplicity, they liv'd in a Community free from all Alarms, save of the Beasts of the field: Wherefore their War then was totally against them; and hence we see the heads of Lyons, Bears, Bores, &c. for the ancient markes of our Ancestors honours: And when men came to be more civill by living nearer together in Cities (for Civility is deriv'd *à Civitate*, as *Urbanus ab Urbe* and *Rusticitas à rure*) they still kept those Armes, which now wee hold derived from them.

Warre therefore was first against Beasts, and afterwards against those who were like to Beasts, in bringing the same effects of misery on us which Beasts did; in destroying our subsistence, in devouring us and our children, in chasing us from our habitations, in keeping us in perpetuall frights, and in taking the sweat of our browes from us. They therefore who knew God and nature, permitted them to destroy destroying Beasts, thought they had a larger Commission to destroy such kinde of men; who though they were of their owne kinde, yet they were worse then Beasts, and did that harme which the Beast of the field knew not how to doe: So that the Proverb of this malicious vermin is not impertinent

pertinent, *Homo homini ( non Lupus sed ) Damon*.

3. But to speak nearer to the definition of War, It is not *Jus datum sceleri*; But a publique prosecution of Justice by force, even to the effusion of humane blood. The better to understand it, wee are to conceive, that there where a Court of Justice ends, and is not able to put us in possession of our rights by its paper-power, there the law of Warre begins, and makes every Souldier a Sergeant: and hence it is congruiously said, that *Inter armà necessario silent leges*: For in naturall reason, what can be opposed to force but force? Yet Justice and Equity may be consistent with force: Hence the *Athenians* acknowledged *Mars* the Founder of their famous Senate, and from him call'd it *Areopagus*.

4. What is it to be unjust or unlawfull? That is properly unjust, which hath a repugnancy, a inconvenience, or inconsistency with the nature of humane Society and Communion; as for a man to take from an other to enrich himselfe.

5. But Society is twofold. First, *Equall*, where both are in equall partnership of gain and losse, and as is betwixt Brothers, Friends, Citizens, &c. Secondly, *Unequall*, as betwixt a Father and his Children, Masters and Servants, Magistrates and People, God and man: Betwixt whom there is something mutually due upon supposition of, and the latitude of the relation to, society. The use of this distinction will appear in the following discourses.

## C H A P. II.

Whether all Warre be unlawfull in order to the Lawes of nature ?

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- S. I Vpon what matters lawfull Warre is grounded.*
- 2. What things are equivalent to life.*
  - 3. Three conditions prerequisite to a just Warre.*
  - 4. How Innocents may be innocently slaine.*
  - 5. Wherein Gods Dominion over us consists.*
  - 6. Concerning Gods destroying of Innocents.*
  - 7. Concerning Abrahams Warres.*
  - 8. All cases of Warre not written with the Israelites Militia.*

**T**He Answer to the Question of this Chapter is Negative: Because nature recommends us to an internall honesty and equity; as also to our own preservation, and the acquisition of those things without which we cannot be preserved; Provided they be not unjustly taken away from the due preservation of others.

1. I say in prosecution of that without which we cannot be preserved. For as Warre introduces the greatest of evils, *viz.* the taking away of mens lives, and that which is equivalent to life: so right reason and equity tells us, that it ought not to be undertaken without the greatest cause, which is the keeping

keeping of our lives, and that without which our lives cannot be kept, or if they could bee kept, yet they would not bee of any value to us, seeing there may be a life worse then death. Wherefore as we are forbid to goe to law for a little occasion, so wee are not to goe to Warre but for the greatest.

2. *But what are those things which are equivalent to a mans life?* Those things may be best collected out of the cases wherein God himselfe (in the Law he gave the *Israelites*) pronounc't sentence of death; They are many and different, and I shall only point at a few of them. Gods indisputable Justice therefore inflicted the same punishment on breakers into houses, breakers of marriage fidelity, publishers of a false Religion, and on ragers in unnaturall lusts, together with many others: I say he inflicted the same Capitall punishment on them which hee did on murderers, *Therefore they are cases equivalent to a mans life.*

3. I say moreover, That it must be so, that for our owne preservation we take not unjustly from the due preservation of others. That we might lawfully invade mens persons or goods by Warre, one of these three conditions is requisite. 1. Necessity, according to the tacite contract in the first dividing of goods; as is shew'd in the first part. 2. A debt. 3. A mans ill merit; as when hee doth great wrong, or takes part with those who doe it, as the rest of the *Benjamites* did with those who forc't the Concubine. Many things may be absolutely necessary for our subsistence, which yet we may not take from the right of others, especially if they be in the like calamity: for then the rule holds, that *In pari jure potior est conditio possidentis*. Thus no Admiralty judges it theft, if a di-

stressed ship forceably takes water from an other, which hath more then in humane probability will serve it to another watering. If one would afflict my person, Nature shews me the way how I may defend my selfe, and reason sets the measure. God and naturall equity required eye for eye, and tooth for tooth, but no more: because all paine above, was but satisfaction in opinion, and confer'd no reall advantage to the first sufferer: Wherefore God might justly say Revenge was his, and he would repay it. When a life must be lost *Fav. rabilior est mihi possessio & preservatio anima mea quam aliena.*

*Obj.* It is objected, That in naturall reason and equity, the punishment ought to bee no greater then the offence, nor the payment greater then the debt; *Isdem modis in delicti partem quis venit, quo in damni dati;* For one house pillaged, or a few cattell driven away, a whole Kingdome is not to be laid desert. Though in Civill causes Children ought to pay their Parents reall obligations, yet in Criminall causes they ought not to be charged with their personall engagements; To cut off a few nocent, wee are not to cut off multitudes of Innocents, such as are Weomen and Children (as in sieges, and other depopulations) of whom the one is to be spared for sex, the other for want of age.

*Hector adest secumq; Deos in praelia ducit,  
Quaq; ruit morsest, tantum trahit ille timoris*

But what is there to bee feared from them who know not what Armes are? Gods justice would not that in *Sodom* the just should perish with the unjust; nor those in *Ninevy* who knew not their right haad from their left. A woman with-child condemn'd to die, suffers not till shee bee brought to bed:

Armies

Armies come actually resolv'd, yea oblig'd, to cut off each the other; but the same is not to be apprehended in women and children, though they be never so great a multitude together. Warre is alwayes a Physick too strong, which entring the body with a force greater then the infirmity, must needs increase the distemper, and like thunder purging the bad qualities, corrupt the good. Therefore by all this its evident, that Warre is against equity and nature.

*Ans.* To all this I answer, That innocents are not directly designed to punishment, nor to pay that which they doe not owe. But if the case be such, that they who are innocent must perish, or live a life worse then death by the crueltie of an Enemy, then to protect their innocency, all may bee done by those innocents that extreme necessity permits; and if their guilty Enemy obstinately refusing to do them right in such a case, involve innocents likewise on their side, and in their dangers, then they (their guilty Enemies) are to answer for the effects of their owne acts. And certaine it is, that the right whereby a man may defend his life by killing him who would take it from him, is not alwayes because the invadour is faulty, but by reason of that right which nature hath given every man in preserving himselfe; as is largelier proved in the first part, and by the second, *cap. 2.* They therefore who thus innocently take up armes, are as little guilty of their evill effects, as hee is of the ill smell, which followes his cleansing a channell. Wee know that a Chirurgion in dressing a wound, puts a man oft to greater paine, then the assassinate did who gave it; yea, we know no evill which can bee cur'd, but by another; and thus it is that by perill we escape perill. That *Querie* which serves to guide us in o-

ther cases, will serve as well in this, *viz.* *Quis causam dederit?* And if they who occasion so many evils would present themselves to Justice, then those would be all avoided: But there are few *Jonas'es* now adayes, and too many *Benjamites*, who chuse to see all ruin'd with themselves, rather then give up those to Justice who are guilty.

5. As for God's Justice in Warre, or other punishments of his Enemies, I answer, That though he have more right by a thousand times to kill us, then we have to kill dunghill Flies, in respect of his absolute dominion, yet he never doth the least act of injustice. True it is, that hee made us out of his owne matter, and at his owne cost and paines; *Is autem qui non solam operam prastitit, sed & partem solummodo materiae dedit, speciei dominus est;* so that being of God's intire specification we can claime no right at all in our selves; and having no right he can do us no wrong. Notwithstanding by his free goodnesse hee hath invested us in some right, both by Promise, Oath and Covenant, by which it is impossible, as Saint *Paul* saith, that he should play false with us; so that though he may seem to treat us unjustly here, yet hee can and will recompence it happilier to us in another world, whereas dunghill Flies by his holy will are not capable of another life: But the question is, *Whether God before the Law of the Gospell did not the same thing which is here objected as unjust?*

6. It is evident that God spared not the very Infants of the stubborne Nations: and though hee said he would not punish those who were innocent in *Sodome* together with the nocent, yet he slew the children; and still punishes the parents in their children to the third and fourth generation: Yea, *David* pronoun-



pronounces a blessing on them who shall take the young children of *Babylon*, and dash their braines against the stones. Wherefore out of that which God *de facto* hath done, wee may safely conclude, That though God had slaine those in *Ninevie* who knew not the right hand from the left, yet hee would not have been unjust for that.

7. Arg. § 7. *Abraham* received no expresse Command to fight with the foure Kings: yet God expressly approved of it after the battell, and blest him for it, by *Melchisedec*: It remains then that *Abraham* arm'd himselfe by the Commission of Nature, or by the light of naturall Equity: Therefore all Warre is not repugnant to the Lawes of Nature.

Arg. 8. *Eccle. 3.* *Salomon* saith there is a season fit for every thing. A time to kill, and a time to heale; a time to love, and a time to hate; a time of Warre, and a time of Peace. Therefore Warre is not simply bad, nor contrary to the love which wee naturally owe to our neighbour, no more then a fathers beating his child is alwayes an argument of an alienated affection, or that a man abhorres himselfe because he now and then dismembers himselfe

—————*Ne pars sinceratrahatur.*

9. Arg. § 8. God let the *Israelites* a Militia, yet numbers not up all the occasions and causes which might justly move them to wage Warre. Therefore it remains that in naturall reason the causes may be easily comprehended and found out by our selves. Such as was (according to *Grotius*) *Jepthes* Warre for maintaining his Frontiers against the *Amonites*, and *Dauids* for his Ambassadors being abused. It is not against naturall equity that a man should suffer as much as he made an other suffer: *Cain* out of this sense

sence, gave sentence of death against himselfe, *He who shall find me will slay me.*

Seeing therefore warre was lawfull in Nature, and under the Law, the maine difficulty now will be to know —————

### CHAP. III.

## Whether all Warre be unlawfull by the Law of the Gospell?

- § 1. *The Law of Nature how farre unalterable. Why difficult to find out what the Law of Nature is.*
2. *Capitall Justice still lawfull.*
3. *How the Magistrate carries not the sword in vaine.*
4. *The durance of the judicall Law, in Judæa, till Jerusalem was destroyed.*
5. *The Iudiciall Law not yet totally abolisht.*
6. *Whether they who have committed single theft and without violence ought to suffer death? which most punishable, Adultery, or simple theft?*
7. *Of the foure Monarchies.*
8. *The necessity of Magistracy. Whether Magistracy should have been, though man had not fallen? None so fit to be a Magistrate as a Christian.*

1. I dare not be so hardy as some who say, That the Law of Nature is so intrinsically good, right and reasonable, that it is immutable : so that as if warre were once lawfull by the Law of Nature, for that reason it should of absolute necessitie be still under the Law of the Gospell. For the Law of Nature is unalterable only in what it commands to be omitted or committed, not in what it permitted, that is in *Præceptis & vetitis, non in mediis licitis*. Those *Præcepta & vetita* relate most to the first Table (and to the ninth Commandement against lying) where warre hath not its place. For as there are many things relating to God, which he cannot dispence himselte from, so there are many things relating to himselte, which he cannot dispence us from. Thus we must ever worship God in Spirit and Truth, because he ever is both spirit and truth. But we know not what the Law of Nature is, because we cannot *penetrare rectam rationem*. God at the beginning shed light into the world without a Sunne; but after deriv'd it from the grosse- nesse of that Planet, perhaps to typifie two things to us :

The Law of Nature how far unalterable.

Why difficult to find out what the Law of Nature is.

First, *the Sabbath*, that man should observe the first day and light holily to his Creator abstracted and free from all sensible actions, according to that Light which derives not from Nature.

Secondly, *that Light* might signifie the light of mans understanding, which at first was fill'd with infused knowledge only, and acquired or derived nothing from sence, or from any created thing. For *Adam* by some of his first acts, in the first Sabbath day, christened

stened (as I may so say) all the creatures with proper and significant names, as the true Godfather brought them to him in their infancies : But when the Devils ill breath had sullyed that cleare mirrour, then this supernaturall light was intercepted, and he left for halfe his time in night and darknesse, and to begin his science at sense ; which is so clouded and rounded with *unequall medium's*, that we rarely discover streight things otherwise then in refraction, as Owers in water, according to the distemper *Juvenal* speaks of :

—————*Cum jam vertigine tectum*

*Ambulat, & geminis exsurgit mensa Lucernis.*

Every thing therefore sports with us now, as the Philisthims boyes and girles did with *Sampson* after his eyes were out : And as *Noahs* children had their Maternals wip't out of their mouths, so had we Natures first lessons out of our memories, and losing right reason, we lost the rules of our Actions. Our Lawes define that of Nature thus ; *Jus natura est quod natura omnia animalia docuit* : But this is extreemly faulty ; for it is both too large, and too narrow : It is too large, in respect of the subject, because it takes in irrationall creatures, and too narrow, in respect of the object, because it comprehends only those acts which we have in common with beasts, and not those which we have properly as men. The *modus colendi Deum*, or the severall wayes of doing homage or vassalage to our Lord, is a thing which God held alterable, and so alwayes did Nature : For God and Nature commanded the same things ; the Gentils who had not the

Rom. 2. 14, 15.

Law, doing by Nature the things contained in the Law. So that *Schlichtingius* saith ill, that *Lex Religionis tollit legem natura*. For though our

Re-

Religion hath in it many things above Nature, yet it hath nothing in it properly so contrary to it, as to take it away. What Nature saith concerning the Lawes of the second Table is much altercable; For if they be according to Nature unalterable, and that God and Nature goe together, then we see evident contradiction. God commanding *Abraham* to kill his innocent son,

*Si non ut sentem saltem ut victimam,*

and the Israelites to carry away, not the King of *Aegypts* goods, who had so much wrong'd them (for its likely they were not so familiar as to borrow of him) but the peoples. Thus therefore I prove that some warre is still permitted under the Gospell.

1 *Arg.* § 2. Gods primary interdict of shedding humane bloud, and his requiring it againe, is no more then what was Gen. 9. 5, 6. Capitall Justice still lawfull. expressly enjoyned in the sixth Commandement afterwards; which Commandement after it was given, was no impediment either to capitall punishments, or to warre: But that Commandement is not abrogated, nor capitall Justice now interdicted either by it or any other injunction of charity, as afterwards will more evidently appeare. Therefore some warre is still lawfull, which is nothing else but Capitall Justice; and is not the lesse unlawfull, because others forcibly oppose it, and make it calamitous thereby, But on the contrary.

2 *Arg.* Gods Justice must still have controversies with the unrighteous; and by the same reason that he still continues exterminating Angels, he continues the power of the sword in the hands of Princes and Governours, for the vindication of that which was ever morally binding, and by Gods approbation occasion'd cruell warres even betwixt Jew and Jew. And if any  
Ana-

Analogicall collection be of force, we may coherently inferre, That if God placed fire and sword at the entry of the earthly Paradise, to repulse their entry who would prophane it by adoring a false Deity, why then may not his Church now be defended by the same meanes? Christs hand so accustomed to give blessings and healings, was never arm'd to give stripes but in order to this. Not as if his intent was to force his Religion, or any then to the Altars, but rather to segregate the impure Professour from disturbing the pure; for they all profest the same God. All the swords and whips in the world cannot constrain a man to present God the pure sacrifice of the heart; Its Gods reserved prerogative to move that by his spirit in the new Creation, as well as he did the indisposed masse by it in the old. Freemen were never dragg'd to the Altars, neither were those victims sacrificed, which led unquietly to the Temple.

3 Arg. *Joh. 18. 35, 36.* Pylate answered, thine owne Nation and the chiefe Priests have delivered thee unto me; what hast thou done? Jesus answered, My Kingdome is not of this world: if my Kingdome were of this world, then would my servants fight, that I should not be delivered to the Jewes. Christ whose Lawes symboliz'd not at all with those which relate to the *meum* and *tuum* of this world, would not seeke the protection of them from earthly force. But withall he clearly denotes this to us, That they whose rights and Kingdomes are of this world, may defend themselves by this right of warre.

*Acts 18. 14, 15.*

4 Arg. § 3. Kingly power is still lawfull, for Saint Paul invited Nero and King Agrippa to the Christian faith, without any intimation that they ought thereby to

How the Magist: a c  
canies not the sword  
in vaine.

derelinquish their Crowns; but on the contrary that they carried not the sword in vaine, which yet were in vaine if they might not therewith have punisht capitall offences with death; and if so, then by just consequence prosecute Justice by War, Rom. 13. in which the worst is but death.

*Obj.* To this argument there are two answers: First, that though execution be not done by the Magistrates sword at all, yet it may not be said to be carried in vaine; for it may be carried *ad terrorem*. Secondly, That Saint *Paul* tacitly dissuaded King *Agrippa* from exercising any function of blood in wishing him altogether such as himselfe Act 26. 29. was saving being in his bonds.

*Ans.* To the first I reply, that if all men certainly knew that the Magistrate would not, & durst not make use of his sword, then it would never be *ad terrorem* to any, except to himselfe, because according to this Law any Rogue might take it from him, and execute him therewith most securely. To the Second I answer, that that elegant piece of Saint *Pauls* Rhetorick is to be understood with a temper and according to his scope, which was to perswade King *Agrippa* to embrace the Christian Faith. Otherwise it to be a Christian were to be like Saint *Paul* in all things save his bonds, then it were necessary to be of his Country, his Towne, his Family, not married, and the like.

*Arg. 5.* If Christ or his Apostles by him, would have introduc'd such a strange state of living, as was ever heard of before, undoubtedly he or they would have told us in expresse manner, That it was now no longer lawfull for any governours to judge of other mens lives, and that upon paine of damnation armes were

were no longer to bee borne. If Christ among other Mysteries brought from the bosome of the father, had commission to deliver this, surely he would have spoke boldly of it even to the faces of the Potentates of the earth, and without mincing it, or of leaving it to each mans particular logick to be deduced out of the Analogy of his Religion, especially when there are such strong presumptions against such a deduction. God put the rules of Religion and of Government into *Moyse*s his hand at the same time, and yet wickednesse could not then be restrain'd by force, much lesse can it be now without it. Here *Schlichtingius* replies, That wickednesse is best restrain'd by the Laws of Christ.

I answer, this is very true, but it salves not the doubt. For it is here question'd what may bee done by Governours, when *de facto* wickednesse is neither restrain'd by Christs Lawes, nor by any other conformable to Christs.

*Arg. 6.* *Paul* fought a guard of Souldiers; and *Act. 25. 11.* he saith of himselfe, If I have committed any thing worthy of death, I refuse not to die. Therefore Saint *Paul* thought, even after the Gospell publiht; that there were some crimes which might yet be punisht by the Magistrate with death. And if hee had commission to declare hell to those who should doe capitall Justice according to a law but immediately before lawfull, then he would not have said that which was quite contrary to it, and so have confirmed them in a damnable error, at least by his silence when he was bound openly to speake the contrary.

*Arg. 7. §. 4.* It cannot be shewed by any induction  
out



out of the Scripture, That the Judicial Law of the *Jews* Common-Wealth (which contained capital Punishments and Warre) did actually cease till *Jerusalem* was destroyed: And it was not equall that it should be in force with the *Jews*, after they ceas'd to be a people and (being made a Roman Province) were without hope of freeing themselves from that government. Neither did *Moses*, who wrote those Lawes, prefix a terme of time to the durance or expiring of them; Neither did Christ or his Apostles (whose very office it was to tell us all that would exclude us from salvation) ever speak of the expiring of such a Law; unlesse it were implicitly comprehended in Christs prophesie of the destruction of *Jerusalem*; which was the expiring of the *Jews* Commonwealth onely. But the quite contrary is most apparent: For after Christ was ascended, and the Holy-Ghost was descended, and that the Apostles were sent with sufficient instructions to teach all Nations all that which was sufficient to bring them to Heaven, I say after all this, Saint *Paul* avowed the Judicial Law. For in his plea for his life, he argued, that he had done nothing against the Law of the *Jews*, which was the Judicial. And in another place he said, the High Priest was then to give judgement according to the Law of *Moses*, which still was the Judicial, in the dispensation whereof the High Priest was as a Civill Judge. And Christ came not to take away the Law, but to fulfill it, by filling onely the Rituell shadows with his substance: A miracle which no body but his could doe, to take away and not make a shadow. So that if their Law of government lasted unblame-

The durance of the Judicial Law in Judea till Jerusalem was destroyed.

Act. 25. 8, 9.

Act. 23. 3.

unblameable so long as their Common-Wealth stood, and that the Christian Religion as it was profest by the Apostles, after the descent of the Holy-Ghost was as sufficient to bring men to Heaven as it is now, then *Jewes* converted needed not at that time to have quit their Magistracy, neither ought they to have judged otherwise then according to the Law of *Moyse*, which judg'd of life and death, and of Warre.

*Obj.* But it is objected, that the Judiciall Law was abrogated by Christ, because he forbad that which before was lawfull by it; as in matter of divorce in the number of Wives, in revenge of a tooth for a tooth, in forbidding them to go to Law, &c.

*Ans.* *Grotius* thinks it enough to answer here, That betwixt those Precepts and the Law, there is no contradiction, no not contrariety, but onely a difference. For he that abstaines from divorce and revenge, and the like, doth nothing against the Law, nay hee doth that which the Law chiefly desires, in taking away and reconciling differences: And thus it is that the state of health is not repugnant to the nature of Physick. But if Christ had said, *It is now no longer lawfull to punish a murtherer*, then hee had spoke something contrary to the Law, which saith, the Magistrate is bound to punish a murtherer, otherwise that he is guilty before God.

5. But for a further strengthening this principall Argument I conceive we may go a little farther then this, and say with some other Doctors (whose arguments I shall here inculcate) that *God never yet totally abolisht the Judiciall Law;* but onely in those parts which were proper to the *Jewes* Common-Wealth, as the freeing of Hebrew Servants in the seventh

The Judiciall  
Law not yet  
totally abolished.

Exod. 21.2.

venth

venth year ; The marriage of a Brothers Deut. 25. 6.  
 Widow in case hee died without sonnes ; Numb. 36. 8.  
 And of marriage betwixt those alwayes  
 who were of the same Tribe. But it was not abo-  
 lish't in those things which are immutable and con-  
 cerne all Nations, and by reason of the equity of  
 them, many learned men conceive that the Græcian  
 Lawes were derived from thence, as from them the  
 12 Tables, and thence the Civill Law was deduced.  
 The reason of the former is, Because those things  
 which were peculiar to the *Jewes* cannot bee said  
 common to the Government of all Christian people.  
 The reason of the latter is,

First, Because if all those Judiciall Lawes were  
 abrogated, then there are none left in the word  
 of God; and if so; How then is it true that the word  
 of God contains perfectly the precepts of all Morall  
 vertues? For according to this it would be destitute  
 of distributive Justice, and so be imperfect.

Secondly, if all Judiciall Lawes be abolisht uni-  
 versally, then there will be no certaine rule for pu-  
 nishment, but according as each Magistrate shall  
 judge it just or unjust, so he shall doe and it will bee  
 just; So that if Adultery shall be death in one Coun-  
 try, and not in an other, both will be just.

Thirdly, If they be all universally abolisht; then  
 of these two one must needs bee; That God in the  
 new Testament commanded not the Magistrate to  
 punish wickednesse (which is false *Ro. 13.*) Or if in  
 generall he commanded it and did not prescribe how  
 punishment should be proportioned to wickednesse;  
 he then left it to the arbitray will of the Magistrate.  
 But this is absurde. For the Magistrate as a man may  
 erre, and therefore it is not to be suppos'd that God

left it solely to his will. Besides, when the Magistrate shall punish, he must needs doe it with a conscience doubting whether he hath proportioned his punishment rightly or no. But *Rom. 14:23*. Whatever is done with a fluctuating conscience is ill done.

*Levit. 24. 12.*

*Numb. 15. 34.*

Upon this ground *Moses* twice durst not pronounce sentence on those who were great offenders. God hath prescribed punishments for his Church, and hath he none for States? Is it because he would have that doe justly and these not? or that he hath a care of his Church, and not of Common-wealths, of which he is Author? Some Politicians have thought good to retaine some parts and not others of *Moses* his Judiciall Law, even such as by a common reason relate to all men, and not to Jewes particularly. Murther and Adultery were in that Law equally punisht with death, but simple theft was not. However some States have alter'd these parts of divine and universall Justice so farre, as to make one of these, which was by Gods order Capitall, not to be so; and that which was not Capitall, now to be so. Yet the same States cannot pretend to be so Legislative as to make that no sinne which was and is a sinne, nor to make it a lesse sinne; How then can they justly change the punishments which God ordered them?

Fourthly, It is but congruous to conclude, that if God have such a care of Families, as to make Lawes for the private societies of Husband and Wife, of Parents and Children, of Masters and servants, he hath then provided Lawes for the regiment of publique societies, in the temper of publique lawes and punishments, which otherwise might become the greatest injustice.

*Ob.* It is objected, That *Moses* his Lawes are not fitted

fitted to determine all those cases which may now happen.

*Ans.* I answer, That God thought them sufficient for the accidents and time of the Jewes Commonwealth, which was 1600 yeares; and how can any man prove that the like Deut. 17. 2, 10, 11. cases hapned not then in that long time which happen ordinarily now? A Law is a rule, and if the Author of it be perfectly wise, perfectly just, and perfectly good, then his rule cannot but be likewise perfect. Though it be granted that all cases are not defin'd by *Moses* expressly, yet the perfection of his Lawes requires, that we say no case can now happen which may not be determined by some Analogy with that which is exprest; of things which are alike, the equity and judgement ought to be alike. For example, *Exo. 21. 23, 34.* If a man shall dig a pit, and not cover it, and an Oxe or an Ass shall fall therein, the owner of the pit shall make it good, but the dead beast shall be his. But what if a horse or a sheep (which is not named) should fall therein? From the analogy it is easie to conclude the equity.

*Ob.* It may be againe objected, That the Gospel doth not abolish particular Commonwealths; therefore it permits each State its owne Lawes, and therefore our Magistrates are not oblig'd to Gods Judiciall Lawes.

*Ans.* I answer, That as the Gospel abolishes not the severall states of men, but corrects and reformes them, so doth it not abolish, but correct and reforme States and Magistrates, *Mat. 14. 3, 4.*

For pressing the further consequence of this Argument, I shall propound this question;

Quest. §. 6. *Whether they who have committed simple*

ple theft, and without violence, ought to suffer death?

Gods Judiciall Law permitted it not; but moderne States thinke that that Law now would not be equitable, and therefore ought not to oblige. For it is, say they, an ordinary rule of Justice, *That wickednesse increasing, punishments should likewise be proportionably increased.*

In  *Davids* time the children of Israel had chang'd so much from their former simplicity, that he then dispens't himselfe from the letter of the Judiciall Law: For when the Prophet  *Nathan* told him, that a rich man had taken from a poore his only lambe, he presently gave sentence that the rich man should dye, and restore the lambe fourefold.

*Ans.*  To all this I answer: First, that if God thought it once justice that they who committed simple theft should not dye, then it is against the ordinary rule of equity that they now should dye, only by humane authority:  *Justitia enim semper sequitur partem mitiorem.*

Secondly, If punishments may be so exasperated and heightned, that that which was not capitall before, may justly become capitall now; then no reason can be alledged, why theeves should now suffer death, and fornicators not.

The Commandement which forbids stealing a mans goods, follows that which forbids stealing away his honour: and good reason for it; because he is to leave all goods and relations to maintaine the possession of this.

Thirdly, it is ill suppos'd that the finnes of these times exceed those of the Ancients, both in quantity and quality. Gods punishment on  *Sodom*  and  *Gomorrah,*

morrah, and of the universall deluge, argues the contrary : Moreover our Saviour exaggerating the Iniquities of the last times, saith they shall be like those of *Noah* and *Lot*.

The instance in *Dauids* passionate sentence proves nothing : Hee gave sentence of death against all *Nabals* house, which was not therefore just. Neither was that given against *Mephiboseth* more equitable, whose servant misinformed *Da-* 2 Sam. 19. 29.  
*vid* on purpose to share in his Masters estate.

Besides it was suppos'd to have been, not a simple theft, but a theft with violence and rapine, and therefore *David* might justly give sentence of death upon the theefe. Wherefore the encrease of the same impieties encreases the same punishment according to the same quantitie extensively onely, and not according to the quality or intensively. For it is not the number of offenders, but the quality of the offence which proportions punishments. Out of all this it followes, That Christs Laws took away those of *Moyse*s only in those respects, whereby *Jew* was separated from *Gentile*, that so place might bee made for the extension of a Catholique Church, and for an universall Communion of Saints. Those things therefore which are of intrinsicall Ph'l. 4. 8.  
I Cor. 11. 13, 14. honesty and piety, and which are common to all men in the Judiciall Law, are still in force, and by that consequence so is Capitall Punishment and Warre.

8. *Arg. §. 7.* The foure great Monarchies which ruled in the world were by Gods lawfull appointment ; and according to the Prophet *Daniel*, the last shall stand to the worlds end, and till the Saints of Christ possesse that Kingdome of his which en-

dures for ever and ever, *Dan.* 7. 21, 22. For out of the ten Hornes, ( or Provinces ) which were in the head of the last beast ( or Monarchy ) *v.* 24. another Horne shall arise ( the *Turke* ) and shall make three Hornes or Provinces fall, which are according to interpreters, *Egypt, Asia, and Greece*; Hee shall speak great words against the most high, ( in his Blasphemy against Christ ) and thinke to change times and Lawes, ( by his new Religion ) and because the soles of his feet are of Iron therefore he shall stand till the last, and all the time of his raigne shall maintaine Warre against the Saints, which Warre cannot bee suppos'd but where there is mutuall opposition; and yet during this mutuall opposition the Professours of Christs Religion may continue Saints, *v.* 21. And *Rev.* 17. 16. These Saints shall exercise a bloody Victory over the Whore of *Babylon*. By all which it is evident, that some Warre is still lawfull under the Christian Religion, and shall be so till the worlds end.

9. *Arg.* § 8. Out of the fourth Argument it was prov'd, That the magistrates duty was not to carry the sword in vaine. But because some say

The necessity  
of a Magi-  
strate.

that they who are yet no farther then nature, may perhaps have need of such a Magistrate, and hee consequently have need of such a sword; but they who have renew'd natures, and are above Lawes and Ordinances (as true Christians in their sense are) have no need of any Magistrate, and consequently no need of any sword; Therefore here I shall shew that none is so proper to be a Magistrate as a Christian; and desire those who pretend to be so refined as if they had no bodies (but pretend to be as *Moyse* and *Elias* in the transfiguration) that they would humble themselves  
by



by the 7<sup>th</sup> of the *Romans*, where they shall see Saint *Paul* (not as an *Individuum vagum*, or an unregenerate person) say, *I am Carnall*, not that he was onely heretofore Carnall; and *v. 24.* hee cries out, *Who shall deliver me from the body of this death? v. 22.* hee saith still of himselfe (as regenerated) *I delight in the Law of God after the inward man.*

I shall not here dispute *Whether it be congruous that Magistracy should have been though man had not fall'n*: much may be said in the affirmative; for it's power is grounded on what is natu-

Whether Magistracy should have been though man had not fall'n.

rall and morall. Secondly, man here is to bee consider'd more as a sociable then as a sinfull creature: and a restraining or intimidating power in society, is more commendable in preventing, then in after-correcting sinfull acts. Lastly, there is an impression of this power naturally in the hearts of all men. It is not enough to object here, That man could not have been any way intimidated unlesse he had sinned first; For that seems to call in doubt the force of God's first Law, *The day thou eatest thereof thou shalt surely die*: in which words there was a threat, which would have been without effect, if *Adam* then should have been without a sense or apprehension of it. The morall and standing ground of Magistracy is in the Fifth and Eighth Commendments; Honour thy Father, and Thou shalt not steale.

The Qualification which God under the Law made of a Magistrate was such as lasts still, *Exod. 18. 21.* *Thou shalt provide out of all the people able men, such as feare God, men of truth, hating Covetousnesse, and place such over the people to be Rulers.* But

1 King. 10. 9.

None so fit to be a Magistrate as a Christian.

what is there which so strictly recommends and enjoynes these vertues as the Christian Religion? which by the promises of a better life depresses in us the tumours of ambition & avarice, which are the seeds of all publique troubles, one taking too much, the other giving too little. Our new Law therefore most reasonably perswades our Magistrates, like *Samuel*, when

1 Sam. 12. 3, 4. they are leaving their charges, confidently to aske their subjects, whether they have

oppressed or defrauded any of them of an Oxe or an Ass? For this were a theft worse then sacriledge, as *Guevara* saith, *Antes tomario lo de los templos, que lo de los pueblos; porque lo uno es de los immortales dioses, y lo otro es de los plebeyos pobres;* which is, that he had rather take from the gods then from the poore, because the gods were immortall and unexhaustible.

If any inconveniency in government arise, there was never any thing found out so proper to perswade people to a patient suffering it, as the Christian Religion.

Other States permitted theft (as the *Lacedemonians*) Adulteries, Incests, Murtherings of those who were born with deformities, and of old unserviceable people, which makes me conclude with the

Math. 15. Gospel, that the wise of this world, are the blinde who lead the blinde into the precipice; and that to enjoy a happy government, we should receive our orders from God, who *1 Tim. 2. 2.* hath given us Princes, that for the *bonum animale* we may live quietly, and for the *bonum spirituale* holily, under their protections.

C H A P. I V.  
**Objections and Answers.**

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1. *The Christian Religion why not revealed altogether by our Saviour.*
2. *Of Christs and Moyfes his Lawes in order to the cause and the effect of sinne. Of loving our Enemies.*
3. *Of the Iews Enemies. Of unequall love.*
4. *Of Retaliation, and of an eye for an eye. Publique vindication of some private injuries not unlawfull by the Law of the Gospel.*
5. *Why the private retaliation of some blowes unjust. How clemency and punishment go congruously together.*
6. *What Revenge is.*
7. *Our dispositions to Enmity and Amity. The convenience of our being borne impotent. Why there are more Enmities then Unions. Why Religion proper to make more Unions then Enmities.*
8. *Whether eye for eye be equitable.*
9. *Concerning killing for Religion, and why wee may more peremptorily slay men now for Civill then for Religious causes. Civill rights easily knowne.*
10. *Of the repentance of Malefactors.*

11. Concerning Peters sheathing his sword.

12. The Conclusion, perswading not without extreme necessity to make use of the naked sword.

**T**Hus farre I have endeavoured to make cleare, that if Christs purpose had been to take away Warre and Capitall punishments, hee or his Apostles would have declared it in expresse termes; in regard of the consequence of such a command, and of the newnesse of it: And somuch the rather, because no Jew could imagine, but that *Moses* his Judiciall Lawes in things of common equity should stand in *Judaa*, so long as the Judiciall Common-Wealth should stand.

However *Schlictingius* and the rest of his Tribe object; That though Warre be not expressly, yet it is vertually forbid by our Saviour; as being totally repugnant to the *Analogy of his Religion, and to the Oiconomy of his Crosse*: That our Saviour *Matt. 23. 2, 3.* said, The Scribes and Pharisees sat in *Moses* seat, therefore what so ever they bad those of that time do, he commanded likewise that they should still observe and doe it: For those times (say they) were not yet nervous enough to beare all that which hee brought from the bosome of his Father.

1. As he discovered not himselfe fully till within three yeares of his death, so did hee not his Doctrine till hee ascended and had acquired Regall Authority to make and abrogate Laws. Hee consider'd the capacity of his infant Church, and would not that new Wine should bee put into old Bottels, for feare

The Christian Religion why nor revealed altogether by our Saviour.

feare of breaking them. This made the Apostles themselves even after his Ascension remaine yet a good while halfe Judiciall, and adhere to circumcision and other rights; as if it were right which the Law saith, *Qui lacte nutritur pars viscerum matris adhuc censetur.* *Moyse*s coming directly from God out of the Mount shin'd in the peoples eyes like a second Sunne, and therefore could not presently be lookt on, but through the Eclipse of a Vaile. However (say they) our Saviour in his Sermons upon the Mount (*Mat. chapt. 5, 6, 7.*) said enough to prove the incompatibility of his spirit with the ranke and Carnall spirit of Warre.

*Obj. § 2.* For there we are expressely commanded to love our Enemies, and to pray for those who curse and persecute us. Therefore it not being now lawfull for us to have any Enemies, it is as little lawfull for us to have any Warre.

*Ans.* As I can suppose a defensive Warre, against which charity can make no exception, so I presume that the *Analogy of the Christian Religion* can no more except against it, then against Justice. And because many objections are rais'd out of our Saviours Sermons, *Mat. chapt. 5, 6, 7.* therefore I judge it necessary here to premise, That our Saviour really never intended to take away, but exactly to fulfill, both by his example and precept, that which was morall in the Law of *Moyse*s, *Mat. 7. 17, 18.* It is said, *Jer. 31, 31, 32, 33, 34. Heb. 8. 6, 12. Act. 13. 38, 9.* That the time should come that God would put his Lawes into every mans mind, and write them in every mans heart; and all men should know him; *For hee would be mercifull to their unrighteousnesse, and remember their sinnes no more.* This promise farre exceeded those

those of *Moyſes* in the way of expiating our ſinnes ; for every man now in every place carries about with him his ſacrifice in his owne heart, which being humbled by faith and repentance makes ſufficient expiation; whereas before it could be done only in one Town of the world, *Jeruſalem*, and through many perplex and chargeable ceremonies. *Moyſes* his

Of Chriſts and  
*Moyſes* Lawes  
in order to the  
cauſe and to  
the effect of ſin.

Law diſtinguiſht not ſo exactly of the cauſe and of the effect of ſinne, as Chriſts doth ; The *Cauſe* is the heart, where it is conceived (as well as it is the expiating ſacrifice afterwards through Chriſt) but of that, as of all internall acts, the *Jewes* made leaſt account, and were moſt ſolicitous about the externall and moſt manifeſt effects, as relating to the cognizance of a humane and penall Tribunall. But Chriſt who was to perfect us by a more perfect Law and promiſe tels us, that to God the cauſes are as manifeſt as the effects, and therefore that we have before him committed Adultery if we admit the luſtfull thought, and murder if we nourish anger or malice in our hearts. All theſe and the like *Moyſes* ( whoſe lawes concern'd the ſeverall kindes of our actions) forbad, but not in the ſame degree and puniſhment that our Saviour did.

If the ſubſtance of the Law conſiſted moſt in love, then our Saviour gave an extraordinary augmentation to it in extending it to the Enemies of the *Jewes* ; for the Law was ſtreightned onely in the exerciſe of charity; The enemies which our Saviour here ſpoke of to the *Jewes* were of two ſorts.

First, They who were derived from the *Amorites*, *Hittites*, and *Jebuſites*, whom the Children of *Israel* were at their firſt planting to deſtroy, but utterly did not ; and on whom

Of the *Jewes*  
Enemies.

whom the Kings of *Israel* alwayes levied tribute of bond-service, 1 *King*. 9. 20, 21.

Secondly, They of all parts of the world who were not circumcised. By the renting of the Temple veile these distinctions were taken away; and many of those Cananists, and the others, happily converted to the Faith, were not for their old quarrells, still to be persecuted with hatred by the *Jewes*; for that might probably beget afterwards a greater contempt of themselves as *de facto* it hath since all the Christian world over. Our Saviour therefore justly prest this command ( as all other which concern'd the extent of Charity ) strictly on the *Jewes*; for their Law was most defective in that, and themselves were most tenacious to the worldly esteem, and advantages gathered upon strangers from that defect; and for want of such a diffusive vertue as Charity, Christs doctrine in a humane morall way could not have had so free a propagation.

But though all the world be at this time so near a kin through the bloud of Christ, yet the course of Judicial Law ought no more now to be suppos'd forbid thereby, then it was before betwixt *Jew* and *Jew* who were brethren. For it being granted that love is to be exercised in a larger degree then before, yet it is still to be with some inequality or disproportion, according to the distinctions of societies, *chap. 1.* Beyond all doubt, all men are not to be lov'd alike, we are to bee tender of our Parents then of others; next of those who are of the household of faith; then, that the good of the innocent be preferr'd before the good of the nocent. Out of which unequal sort of love Warre and Capitall Justice is founded. Wee are bound to love

Of unequal  
Love.

Our

our enemies according to Gods example, whose Sun equally shines on the just and unjust, and yet for all that, he punishes the wicked here, and will punish them worse hereafter. Some therefore may still be reputed our lawfull enemies, if the conditions of justice, unequall love, and revenge except not against us.

2 Ob. § 4. *Mat. 5 38.* Ye have heard an eye for an eye, and a tooth for a tooth ; but I say unto you resist not an injury, but to him who strikes one cheeke turne the other : Therefore we are no longer to repell injuries, neither publicly nor privately, and consequently not to goe to warre.

*Ans.* I answer, That though God would not have us given to such an unnaturall thing as revenge, yet he would not have us justifie disorder and cruelty ; such as one wretched Philisthim might with sport act upon a world of *Sampsons* if we were obliged tamely to let him put out all our eyes, or dash out all our teeth: After which we should not be well able either to beg or eat our bread.

*Frangendus misero gingiva panis inermi. Juv.*

The Italians say, *Chi li fa pecora, il lupo la mangia* ; He who makes himselfe a sheep, a Woolfe will presently devoure him. This were a doctrine surely much to the Devils advantage, and therefore we ought to be tender in the consequences of it, lest, because that we are oblig'd to martyrdom in the particular case of our Religion (there where the Magistrate and Kingdome beleeve not the Word of God) we conclude, that innocence and Innocents are in all other occasions and places to be abandon'd ; which is to magnifie Gods clemency to such a height, as to take away his justice : whereas indeed there may be a lenity, which effectually



effectually may be *cruelty*. Wherefore in doubtfull interpretations we are to follow that which drawes the least inconvenience, especially if other Texts favour it afterwards. Upon which ground I conclude,

First, That the person here spoke to by our Saviour, is the *private person* injured, whose sence provokes him to that revenge which the publique Magistrate must needs be void

Publique vindication of some private injuries not unlawfull by the Law of the Gospell.

of. Secondly, he speaks not of every injury, but of a *blow which neither wounds nor dismembers*. It is evident that our Saviour, by those words intended not for ever after to abrogate the course of publique Justice. For at his owne tryall afterwards before *Pylate*, when a stander by smote him (in the manner here mention'd) on the cheeke, he did not silently turne the other, but immediately reprehended the injurer, saying; *If I have spoken evill, beare witnessse of the evill; but if well, why smitest thou me?* Joh. 18. 23. Out of which words it appeares, First, That our Saviour thought not himselfe oblig'd to receive a second blow before he reprehended the striker for the first. Secondly, That he conceiv'd it then lawfull to forme actions before publique Magistrates, in case of doing or speaking evill: For bearing of witnessse, is in order to the Magistrates judgement. As if our Saviour should have said; *Why smitest thou me? seeing we are both before the publique Magistrate, who is to beare and to take witnessse of all the evill which is done or spake*. Wherefore by those words here objected, and which our Saviour spoke in the Mount some yeares before his triall, he did not understand, That we might not by a third publique person calmly resist important injuries:

ries: Neither did Saint *Paul*, long after the Ascension, (when the Christian Religion was perfectly declared) judge it *contra Oiconomiam crucis*. He saith, the Plain-

*1 Cor. 6. 1, 4, 5, 6.* tifs among the faithfull (who might chuse whom they would to be their

Judges) did it, having private controversies with other Christians, to goe to heathenish Consciences and Tribunals. The Israelites were never in so little securitie, as when they were faine to goe to the Philisthims to whet their swords. Wherefore Saint *Paul* only chang'd the Judges, saying; *If ye have any matter against one another in things pertaining to this life (and are not de jure publ.co) rather then to goe to Infidels for private justice, set them to judge who are least esteemed in the Church.* Thus seeing Courts of Justice, impleadings, Magistrates, and unequall Love, are still lawfull; therefore we may publiquely resist injuries still, in such a way as shews we are not poisoned or tainted with revenge.

*Inst.* That which seems most to perplexe the Text (here objected) is the particle *BUT*. For some understand the Text thus: By the Law of *Retaliation*, and by the hand of a Magistrate ye have heard, *a tooth for a tooth*, *BUT* I say unto you, resist not such injuries by the hand of a Magistrate, *BUT* rather privately take injury upon injury: where (say they) the particle *BUT* in both places doth by two degrees in the same kind diminish negatively, that which before was permitted. So that if the *Retaliation* before was understood to have been made by the Magistrate, then the prohibitions of resisting afterwards, were meant in resisting by the Magistrate likewise; therefore say they, we are neither publiquely nor privately now to resist injuries at all.

*Ans.*

*Ans.* §. 5. To this I reply; That the resister here can be no other then the private person injured: because the forbearance of retaliation injoy'd in the Text, respects him and the striker immediately after his first blow, at which instant *Moyse's* Laws (which (as is cleared by the former argument) were most defective in charity) permitted the party injured a present returne of injury, as the Civill Law did, *ad vitandam secundam percussionem, quia in dubio is qui fecit insultum habet animum reperiendi.* But because nature hardly digests the first blow while she is heated with it, and that heat seldome doth Justice, but transports both the one and the other resister farther then they at first perhaps intended

Why the private retaliation of some blowes unjust.

*Iram atq; animos à crimine sumunt.* Juve.

Therefore our Saviour ( who came to make the Law perfect in charity) commands rather that wee would turne the other cheek to receive a second blow, then vindicate the first with private rancour. If we remit our wrongs to the Magistrate he (not having our personall passions) can doe Justice with preservation of charity, because he being oblig'd in all his sentences to incline to that which is most favourable for the delinquent, *his punishments necessarily have a stream of Clemency alwayes running through them:* So that it is not contrary to charity to have recourse to the charitable Magistrate, as our Saviour and Saint *Paul* by their Examples and words allow.

How Clemency and punishment go together.

6. But in all this it is to be well observed, that neither of them countenance any revengefull retaliation. *What therefore is revenge?* Some say revenge is when there is more in the

What Revenge is.

punishment then was in the fault : But this is not unnaturall or unjust, because there is no reason that the innocents and nocents sufferings should be alike, for then, punishments would not bee so effectuall to terrifie others, nor to give future security to innocence.

*Schlichtingius* defines it thus; *Vindicta est pena quae nullam veram injuriam aut damni illati compensationem continet*; revenge is a punishment which contains no reall compensation of an injury or of harme done; as of an eye for an eye, a tooth for a tooth: but this definition is not perfect, and is too negative; *Seneca* comes somewhat clearer to it when hee defines it

Sen. de tran. an  
c. 15.

*Vindicta est voluptas inhumana, quae alienis delectatur malis*, and the Poet likewise, when he saith

*Invidiosa dabit minimus Solatia sanguis. Juve.*

Revenge therefore is properly an insolent delight in the sufferings or paines of another, whom wee judge to have injured us, which paines residing in the person of the sufferer, are not naturally fitted to produce a contrary sense of joy in the person of a stander by, nor to transerre any reall profit to him in the way of compensation; and therefore it is no part of Justice, and consequently is unlawfull. Justice represents a malefactours paines to us, not to excite delight but feare, *Ut pena unius sit metus multorum*. The paines and diseates of others naturally Communicate themselves more then their joyes and healths can: Neither hath any man such a high sense of joy as of paine, from whence, the greatest resentments ought to be of paine.

*Dum spectant laesos oculi, leduntur & ipsi.*

Nay, man is not able to stand his joyes; for sometimes there are such profusions of the heart as kill

immediately ; and a laugh may be so hearty as to draw teares along with it in the eye : which is, because nature coming out of imperfection and nothing, carries alwayes along with it selfe a disposition to ruine, and a *Porta Sabina*, treacherously to let in a thousand Enemies upon us. From the just apprehension of which wee conclude, that if they who take a delight in the pleasing and sensuall finnes of others, offend more then those others who commit them (because they cannot plead such a violence offer'd to their senses as these can) then they who raise a delight out of the paines of others, are more blameable then the former, or then they who upon passion or fury inflict those paines on the sufferers. Wherefore revenge seems to bee even beyond injustice ; for this ordinarily aimes at some positive convenience either in security, profit or honour, though it be by the ruine of another ; but the act of revenge begings when all this is done. and insults like *Tarquins Queen*, who when her father King *S. Tullius* was murdered and throwne into the streets, shee drove her Charriot over his body, at which sight her horses were frighted, but she sat fixt as in a Triumph, *Super cruentum patrem, vecta carpento, consternatos equos egit.* Ho. This was that which made the sweet in *Catalins* banquet, in which he and his complices drank a Round in their owne bloods ; an act said to be very horrid, were it not for the cause which was more horrid.

7. As for Enmities ( which are some steps and conveyances to Revenge )

Our dispositions to Enmity and Amity.

venge) we are dispos'd to them, before wee are borne, and continue them after wee are dead, and all without contradiction : For *Jacob* and *Esau* quarrell'd in their mothers wombe, and as soon as they had received their signatures. The Learned *Cujacius* missing preferment in his owne Towne of *Tholouse*, and the late Duke of *Rohan* receiving many disobligations at Court, concurred both (perhaps accidentally) in this one Epitaph, which they would have their ashes alwayes hold out as a flag of defiance, the one at *Bourges*, the other at *Geneva*.

*Ingrata patria ne ossa quidem habebit.*

Yet *Nature* disposes us powerfully to Amity :

The convenience  
of our being born  
impotent.

for the feebleness and indigence of new-borne Infants hath this good in it, that they are thereby immediately ingaged to love their parents who onely provide for them.—*Ore volat pleno mater jejuna*; and consequently to have a reciprocall care of their Parents feebleness, when old age shall seize on them; besides, Children are by their native impotencies inured to obedience, and thereby fitted for society, and in this union nature leaves them : *Policy* afterwards seeks to strengthen it by the Allyances of marriage, kindreds, arts, commerce, &c. Then comes *Religion* which seeks to cover all the others defects and differences, reducing us to the unity of our beginning and of our end. Yet for all this, Love is not secured nor fortified enough; for those generall causes produce contrary effects when they are applied to the particular conditions of men, as the

Sun

Sunne doth, when it produces Poyson in one place of the earth, and an Antidote in an other: Besides, Policy hath multiplied the objects of our love by the goods of opinion, and reason ordinarily is debauched away by sense, and every part of the body is made of contraries; and without them, would not be able to keep our heat alive, to co-act, or move from place to place; yea, nature hath made us with the same inclinations to the same things, which we cannot all possesse together. From all which we may justly conclude, That *there must needs be more Enmities then Unions in the world,* and that many will draw matter of hatred out of that, which another will take to bee a Principle of Love.

Why there are more Enmities then Unions.

*Sapiens risum ubi stultus iram colligit.* Put.

But as a little winde easily defeats those Armies which are form'd in the aire by the accidentall incounters of Clouds, even so the spirit of grace working in the heart of a Christian, easily dispels all those cruelties which the fumes of our passions may raise in us against our Enemies: A generous dog will not turne against those little ones which alwayes run barking after him, neither should we be alarm'd at every peevish injury. Our Enmities therefore ordinarily come from a mixt principle, in respect of our Naturall and Civill state, and through our different pretensions in the Commerce of the world; But our Amity comes strongest from *Nature*, with which it is very intimately allyed, and therefore ought to be the oyle

Why Religion makes more Unions then Enmities.

to swim at top whensoever any other vapour of choler would rise up to put us into a tempest. Most equall therefore it is that wee should bee ready to love our very Enemies, to turne the other cheek, rather then by private and immediate retaliation hunt after a revenge, and so, readily to give the other coat, which is a covering onely of another covering, *Lex enim non curat de minimis*. Yet this love on one hand must be without imputation of crueltie on the other, and for feare of displeasing the theefe I must not let him securely dispoile the Orphelin of all his subsistence, lest I be worse then an Infidell. Equity therefore looks to Equality both in quantity and quality, and when one scale is defrauded to sway the other, it sets it right and moderates it againe, and this temper is a pious *Peace*.

— *Duas equato examine Lances sustinet. Vir.*

*Obj. §. 8. Schlichtingius* objects that there is no equity or equality in a tooth for a tooth, an eye for an eye, a blow for a blow; for in this restitution, that which is taken from the one, is not restored

Whether eye  
for eye bee  
Equity.

to the other, but both one and the other have lesse then they had before. One mans eye will not fit an other mans head, nor one mans tooth an other mans mouth.

*Ans.* I know not what this concludes, save, that such a kinde of retaliation is intrinsically against Equity and the nature of Compensation; But then it condemnes this Law among Jewes (which is impious) as well as among Christians, and so concludes nothing against the present question,



question, but leaves us in the same Justice which the Jewes had before Christs time; which indeed is *Diodats* and other interpreters opinion upon *Exod. 21. 24.* and that eye for eye, tooth for tooth were onely phrases to signifie in generall, That punishments ought to bee proportioned to offences. They are to be taken literally, no more than Saint *Mathew's* command for pal-  
Math. 5. 29.  
 ling out our own eyes, and cutting off our hands. Of these Laws therefore we shall say as the Civill Law saith of some other, *Valeant eo modo quo valere possunt*, However I distinguish betwixt *Equity* which is generall, & *Compensation* which is more particular; not but that I conceive Equity is where compensation is, but that equity may extend further, and bee there where compensation cannot be applied. Though an eye for an eye bee against compensation in particular, yet if it were inflicted it would not be against Equity in general, because it might preserve other eyes, not yet pnt out, by representing the torture of the malefactors eye. Capitall Justice which was instituted by God, was more for the affrightment of others, then for the amendment of the sufferers, as in *Ananias* and *Saphira*, *Corah* and *Dathan*, &c.

Saint *Paul's* advice and Limitation of this Text is fittest to conclude this Argument, *Rom. 12. 18, 19.* *If it bee possible, and as much as lieth in you, have peace withall men:* as if he should have said, *It is possible you may be constrain'd to break the bond of peace, but let not that necessity come from you, and then you shall be guiltlesse,* and *Ephe. 4. 26.* *Bee angry but sinne not: discountenance injustice and*

impiety, but so, as to be alwayes dispos'd to entertaine peace.

*Idem pacis eris mediusque belli.* Hor.

*Obj. §. 9.* Under the Law *Deut. 13.* They were not so peremptorily commanded to go to war in vindication of their owne rights, as they were to war against those who profest false Religions; and the cases of War were not specified, but the cases of false-worship were, as being superiour to all other interests. But now under the Gospell we are forbid the greater, which is to slay those of false Religions; therefore wee are forbid the lesse, which is to slay in Warre for some private injustice offer'd us.

*A.* To this I answer, That though the Apostles in planting the Gospel had no direct Commission to kill, but to helpe to save Idolaters, yet when they met with notable interruption from those who profest Religion, but were not faithfull to it, they proceeded to high punishments, as in *Ananias, Saphyra,* and *Elymas*, who endeavoured to hinder the Proconsuls conversion, *Act. 13.* By the Law of *Deut. 13.* The *Israelites* might have stoned an *Egyptian*, who at *Jerusalem* should have perswaded any to worship his Country Idols, when perhaps it was not lawfull whilst they liv'd among the *Egyptians*, and the Idols themselves, at which time the *Israelites* were not Magistrates among them. Even so, if any man should allure us to a worship contrary to the light of nature, no question but the Magistrate is still oblig'd to punish and restrain such a perverter.

But

But every difference in Religion, makes not an other Religion. For the Pharisees, Saduces and Essens, though they differ'd in high points which the Law spoke not clearly to, yet they went altogether to the same Altars, and Sacrifices; and for that reason were not thrown out of the Temple. As religions are now commonly differenc't and call'd, we may say, that it is harder now to know which are the false, then was anciently; and a civill error or offence is more certainly knowne then a Theologicall, and so may be more peremptorily punish't by us. Heretofore all Religion was express't in a conformity to *visible* Ceremonies, but now God will be serv'd by that which is written *retiredly* in the heart, *Jer. 31.* and demands that, as an inward sacrifice. Of those who transforme themselves into Angels of light, there is no outward character whereby wee might bee able to distinguish of them, so that no wonder if they may almost deceive the very Elect. Therefore in foure respects it is dangerous rigidly to punish (in person or estate) peaceable dissenters in Religion thus differenc't and understood.

First, In regard of the falliblenesse of judgement, in that which we may judge now Hereticall. For that at one time hath been judged Hereticall, which at an other hath been esteemed Orthodox; and most men living are engag'd to their Religions and Founts when they know nothing at all.

Secondly, In regard of the Heretique or dissenter himselve, how hee is affected within: wee know not who die well, nor who die ill: God (onely) knowes his owne, *2 Tim. 2. 1.*

Thirdly,

Thirdly, in regard of the future event, whether that which is now tares, may not afterwards become wheat; for by hearing, a man may come to change his opinion. *Nolite ante tempus judicare.* 1 Cor. 4. 5.

Fourthly, In regard of others, lest punishment thus inflicted on some, make not others either hypocrits or more obstinate.

But as for humane rights and injuries they are easilier known, and therefore the Civill rights easily known. Magistrate may be more peremptory in punishing them. Hence *Gallio* the Deputy of *Achaia*, *Act.* 18. 12, 13, 14. answered pertinently to the Jewes, when they brought *Paul* before him for teaching a worship contrary to the Law; *If it were a matter of wrong or wicked lewdnesse, O yee Jewes, reason would that I should beare with you:* Likewise the Towne-Clerke of *Ephesus*, *Act.* 19. 38. 39. prudently advertiz'd the people in their uproar about *Paul's* preaching, saying. *If yee have a matter against any man, the Law is open, and there are Deputies, let them implead one another: but if yee enquire any thing about other matters, it shall be determin'd in a lawfull assembly:* Wherefore *Paul* in a Civill cause and as man, rightly appeal'd to *Cesar*, and in a divine as a Christian, to God, who reserves a day of judgement to account for all that which we as his servants have done, or have omitted to doe to others for his sake. Hee who thinks himselfe competent enough to judge of this here, is *Nimis curiosus in aliena republicâ*, and will doe well to remember what Saint *Paul* saith to him, *Rom.* 14. 4. *What art thou that*

that judgest another mans servant? To his owne Master hee standeth or falleth. The evidence of the Christian Religion depends on the evidence of the History of fact; as of Christs being in the world, of his Resurrection, Ascension, &c. but these cannot be clearly evidenc't to us, but by the spirit of God, which he sends not into the heart of every man for reasons secret to himselfe, and for which we cannot safely undertake to afflict or kill any man here.

*Obj. 3.* § 10. *Schlichtingius* objects, That the depriving a malefactor of his life, deprives him of Repentance, and that deprives him of Heaven: whereas Christ came not to take away, but to secure and save the lives of men. Therefore Warre is against the law of the Gospell.

*A.* To this I answer, That we cannot tell when men doe really repent, Of the repentance of malefactor. although they might have time enough: Nay, they will be very few who will say they have time enough, by reason of the terrour and distractions of death. Moreover God himselfe doth not alwayes remit all punishment to those who repent, and seek him in teares, witnesse *Esau* and *David*: and some there are, who are so hardned, that time cannot mend them, wherefore the sooner they cease to do ill, the better. Usually magistrates allow a convenient space of time for the reconciling of a soul to God; and tho they did not give any quantity of time, yet a little time well qualified may be enough for that act; One good moment is enough to convey a soule to Heaven, witnesse the theefe on the Crosse. For as they are  
the

the last and the smallest touches of the pencill, which give life to the picture : even so they are the last, though the shortest compunctions, which restore life to the dying soule.

*Obj.* Wee are to imitate Christ who dyed for the bad as well as for the good.

*A.* I answer, That Christ died, not as having been obliged to it by a Law, but by a voluntary contract with his father. Without doubt God having more right in our lives, then wee have our selves, could have obliged us patiently to be kill'd upon any occasion, rather then to kill, but that wee here deny, and is now the Question.

*Obj.* § 11. Christ bad *Peter* put up the sword, therefore it is not lawfull for Christians to draw it out.

*Ans.* I answer, That it is lawfull for us to pray one for another : but after wee know God's absolute decree against such a thing, we may not pray him to give it us. Our Saviour told *Peter* in the company of others, that Gods decree was, himselfe should suffer at *Jerusalem*, yet *Peter* after the knowledge of this from Christs divine mouth, told him it should not be, whereupon our Saviour justly call'd him *Sathan*, as in Saint *John*. After this, when our Saviour had told his Disciples, that the houre was now come according to Gods determin'd will, *Peter* againe was so vaine as to promise him protection by his sword, which as it was opposite to God's decree, so our Saviour would not make use of it, no nor of Legions of Angels. Wherefore the force of this objection shewes

Concerning *Peters* sheathing of his sword.

shewes onely, that there may be an occasion when a man may not warrantably draw his sword, which is very true, but not to the purpose.

12. But upon what causes a man may draw his sword, or make War, is not the scope of this discourse, which is deduced out of a War already formed; and by which I hope it is now proved, that some

The conclusion, perswading us not without extreme necessity to draw or make use of the naked sword.

Warre may be lawfull both by the Lawes of Nature and of Christ; though I confesse hee may doe best, who doth not alwayes exercise the utmost of that right which is permitted him. The unmarried condition, according to Saint *Paul*, is more commendable then the married, yet it is lawfull to marry: Even so a just vindication of an injury is still permitted, but patience is more commendable, especially, when in Warre wee are for the most part assisted by so deform'd a passion as *Publique impatience*, (which is the ordinary complexion of Warre) and when the injuries complained of, hinder not our particular society with the injurers, nor the generall order of the society it selfe. To kill a Flie upon a mans forehead we are not to knock out his braines; but in the transport of passion wee may easily (as it were) runne away with our selves.

*Fertur equis auriga, nec audit currus habenas.* Vir.

'Tis this and Revenge which poisons Justice, even as *Nero's* debauch and foule body did the sacred fountaine of *Mars*, in which he had the impudence to bathe himselfe immediatly after his rioting. *Videbatur potus sacros & ceremoniam*

*loci*

*loci toto corpore poluisse.* TACIT.

But how much happier are they who trie their strengths by bearing the heaviest burthens, and though spurr'd by the quick sense of their owne Lusts, yet flie not headily out. Something there is in managging of the best offensive War which is pleasing to God, otherwise hee would not have accepted against *Dauids* Zeale for building him a house, onely because he had been a man accustomed to shed bloud; for the battailes which hee fought were said to bee the Lords. Humility and meeknesse of spirit, with our assisting to carry one anothers burthens, to be oft in dust and ashes, will (if it be possible) give us that peace here which wil not traverse our better repose hereafter. Some Physitians doubt not but if the *Diamond* could be powder'd as well as *Alabaster*, it would be as good an Antidote as it, and not operate with such poison? even so if wee could reduce our affections by a sincere mortification and humility, wee should not onely bee void of Venome our selves, but have a preservative or an *Amuletum* against others who would taint us. A small thing oft-times hath the power to redresse a great inconvenience, yea, to take up a cruell feud, as *Virgil* saith of that of Bees when they are actually engaged in battaile.

*Hi motus animorum, atq; hac certamina tanta,  
Pulveris exigui jactu compressa quiescunt.*

Godlinesse with content is great gaine : *Jacob* till hee had built God an house desired no more of him,



him then bread to eat, and rayment to cover nakednesse, *Gen. 28. 20.* By all which wee may see howmuch of our rights wee ought to forgoe, before we come to the naked sword, in which Tragedy as the Italians say, *Ci bisogna essere spettatori dell' altrui morte, O spettacolo della no*  
 we must either be spectators of o-  
 ther mens deaths, or spe-  
 ctacles of our  
 owne.

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*FINIS.*

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THE  
OF  
1847  
BY  
J. W. WALKER  
LONDON  
1847









