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*A Plain, Honest, Easy, and Brief Determination of the late Controversy concerning that Non-resistance of the Higher Powers, which is required by the Apostle in his Epistle to the Romans: Humbly submitted to the Judgment of Both Houses before they rise, (and to the Country, when risen) after this flaming stir about it. By John Humphrey.*

**W**Hereas there were many that could not submit to take the Oath of Fidelity to *K. William*, and join in the Association; and there are some that swear Allegiance to *Anne*, as *Queen de facto*, yet cannot come to an Acknowledgment of *William's* or her Right; and all such Doubts depend upon the sole Question about *King James's* conscionable Exclusion, whether it be justifiable or no, upon the account of that Scripture, *Rom. 13. 1, 2.* It is necessary the Apostle's Words be taken into Consideration, which are these, *Let every Soul be subject unto the higher Powers, for there is no Power but of God: The Powers that be are ordained of God. Whosoever therefore resisteth the Power, resisteth the Ordinance of God, and they that resist, shall receive to themselves Damnation.*

For examining the Case there are two Distinctions here to be known: To offer more, were to confound, not edify. One is, between *Subjection* and *Obedience*. It is *Dr. Feild's* Distinction; and those that are for Non-resistance and Passive Obedience, gainsay it not. We are not always to obey the higher Powers, neither when they command what God forbids, or forbid what he commands; unto which, by the word *Passive*, they assent. But we are always (say they) to be in Subjection, and never rise up to deliver our selves from them. As to this point then of *Subjection* the Case is to be argued. Distinguish we therefore, in the second place, between these two things, which certainly are different, the Powers which *Are*, and the Powers which are *Not*. Understand it right, to wit,

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the Powers that are, and the Powers that are not the Powers that are; or not those which the Apostle means or intends in the Text. This Distinction is certain, clear and plain to the Intelligent, and effectual to our Purpose. The Powers, the higher Powers, in the Text, the *αἰ ἄου ἐξουσία*, are the Powers that Be. This is express, that the Powers that Be, are the Powers in the Text, the Powers that are of God, the Ordinance of God, and they that resist them, shall receive to themselves Damnation. Let this be granted to these devoutly loyal Men; but then must they grant to me again, what can't be deny'd by any, that as for the Powers that are not in the Text, that is, the Powers that are, not the Powers that Be: As they are not in the Text, they are not the Powers which are of God, not the Ordinance of God: And they that resist such (and not the Powers that Be) shall not receive to themselves Damnation:

Now there is one Question to be ask'd, which alone will resolve the whole Case at Stake, and that is this, What is the true Meaning of the *αἰ ἄου ἐξουσία*, what is really and in good earnest (so as the Conscience may rest upon it) that which is meant by the Powers that Be? I answer, the Powers that be, are the Powers according to the present Constitution. There are some higher Powers (or Kings) whose Government is absolute, and so absolute, as that the Subjects have no Liberty of Person, or Property in Goods by their Constitution. But as for others ordinarily, there is to be supposed an Original Contract, which gives the People such Liberty and Rights, and the governing Powers such a Prerogative, as extends so far, and no farther than the Compact allows. And this appears (as I have been shewn in our old chief Law-Books) by consequence, tho' no full preserved Record thereof be of it; for the Law could not maintain the People in any Rights against their Sovereign, by virtue of our Constitution, if that Constitution were not supposed to be made by such an original Agreement with him.

There is therefore two things to be considered, the *Potestas* and *Forma Regiminis*, the Power and the Form in such Governments. In regard to the one, the higher Powers are the Ordinance of God, with Paul; in the other, the Ordinance of Man, with Peter. The Form is of Men. The People between themselves, or with their Governor, agree what the Government shall be, and then the Power flows from God, to rule so, and no otherwise, but according to that Form; which is all one as the Constitution. *Potestas est a Deo*, but *Forma ab hominibus*, says the most learned Bp. Andrews. If then  
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the higher Powers for the Administration rule not by that Form, but designedly and resolutely, and not by a Slip and Inadvertency depart from it, the Power a *Deo*, the *Potestas* fails them, and they do *cadere de Jure*, fall from their Right to our Subjection.

I do remember therefore, that at the time when the Prince of Orange was yet in *Holland*, but preparing for his coming into *England*, I being upon occasion admitted into the Presence of King *James* alone, to speak with him, after some Words about the Danger and sad Effects of War, and my Desire of the Prevention, his Majesty was willing I should speak freely, and I said thus to him, If it please Your Majesty, I would advise you to send presently over to the Prince, to know what he would have, and to tell him, That whatsoever he would have, you will grant it him, if it be reasonable; and that you will call a Parliament immediately, to judge whether it be reasonable or no. We proceeding farther, came to speak about Liberty of Conscience, which he was for, to bring in Popery, and I, in good earnest. I used thereupon, as near as well may be remembered, these very words; If I were your Majesty, I would have Liberty of Conscience, (I would have it) but if you will have that, you must part with your dispensing Power (because we would have had that (I count) by a Law, and not by his dispensing with the Law) for if you will assume a dispensing Power (said I) you take a Power over the Laws, and you change your Government from Regal to Despotical, and they will fight with you; and they fight for the Government, and you against the Government. I spake with the best Elocution I had, and he heard me to the End. And then he stepped one Step backward, and said, *What you have spoken, you have honestly spoken, and conscientiously spoken, but you are out; I am a King, he but a Prince*, therefore he would not send to him. And then going on, he spake of the Prince fairly, as an excellent General, but as much concern'd, (says he) *He comes for my Crown; and no Man is so Despotical as he*; telling me, that he swore against being Statdholder, and yet he was; and falling to speak about Liberty of Conscience again, he express'd himself very fluently, till he dismiss'd me, which he did condescendingly, and took what I said in good part. Having said this therefore to his Person, to have saved him in his Throne, I may say the same as freely in Print. A dispensing Power, indefinitely maintain'd, is a Power over the Laws: A Power over the Laws subverts the Government: A Change of the Government absolves the Subject from his Allegiance. And is this alone my

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Judgment? No, but of our Lawyers. *Rex sub Deo & sub Lege*, says *Bracton*: No, but of our Nation also, as appears by this Vote of their Representatives in the House of Commons, Jan. 28, 1688<sup>2</sup>.

*Resolved*, That King James the Second having endeavoured to subvert the Constitution of the Kingdom, by breaking the Original Compact between King and People, and by Advice of Jesuits, and other wicked Persons, violated the fundamental Laws; and having withdrawn himself, hath abdicated the Government, and thereby the Throne is vacant.

The Government thus forfeited, by his breaking the Original Contract, and by his going then away, abdicated also, according to that Vote, a Convention is called, and the Supreme Power *Personal* ceasing, it descended into that our Politicks call *Real*, that is, it by *Ejſcheat* (to use *Hooker's* Word) fell on the Community or People; Not for them to govern, (I must say) but to set up a Government; which is, in truth, a greater Power than that of *Parliament*: For a *Parliament* makes Laws for the *Administration* only of the Government: But a *Convention* (representing the forty Counties) might make those as they agreed for the *Constitution*. The Constitution of a Government, we are to know, is the Agreement of the People in setting it up, and there are three things go into it. The first thing they must agree in, is what *Kind* of Government it shall be; and this our *Convention* thought fit to be the same as it was, a *Monarchy*, but Mixt, Legal, Parliamentary, so as to be still a *Free State*, not to be violated by the Monarch. The second thing, is, what, or who the Persons shall be that govern; and these were soon determined, King *William* and Queen *Mary*, and after them our present Queen; and so far they went. The third thing they must agree in, is, What Extent their Government shall have, or what Qualifications shall be put on it, which, what they be, are to be read in the Act. And here may some, who love their Country, be ready hereafter to bethink the Opportunity this *Convention* hath slipt, in not declaring more fully the State hereof, and in putting no farther Limitations on it, of the like great Moment as this one is, that no *Papist* shall reign over us. For upon account hereof, the *Hanover* Family being of the Protestant Line, is to succeed, and their Title to the Throne stands good thereupon, but not on equal foot with the Queen's, for Her's is expressly establish'd by the *Constitution* it self, the Act of the *Convention*, so as no Prince can have a Title more manifest and uncontestable upon Earth. But this Constitution now leaving the People at Liberty after her,



to have chose what Government or Governor they pleased, an Act of Parliament is passed under *William*, to confine this Liberty, and settle the Throne in that Family ; which Act is a Law indeed of the *Administration*, not *Constitution*, yet strengthened by a Statute under *Elizabeth*, which makes such an Act to bind the Descent of the Crown ; and more by the Oath for the Succession, which being enjoyn'd by the supreme Authority, does oblige those to take it that yet have not, and leaves no scruple to any, unless this in hand, in reference to the mentioned Text of the *Romans*, and King *James's* Deposition.

Having thought therefore long on the Matter, I have pitcht on this as the fundamental Exposition of the Place, that the *Powers that Be*, are the Government, or Governors, of every Country, according to its Constitution : And consequently that the Subjection or Non-resistance that is required of God, as due to the higher Powers, is a Subjection no other but according to the same. The Scripture, it is certain, does not go about to prescribe to, alter or meddle with the Governments of Nations ; but it supposes a Government in every Country, and commands Subjection and Non-resistance to the Government *that is*. We overturn all, if we preach otherwise than thus. *Evangelium non abolet Politias*.

And now then let us come to the Government of our Nation ; for we know, (and none pretend more than the Loyalist to stand by it) is βασιλεία νομική, a Government regulated by the Laws, and those no other than such as the People themselves yield to the making by their Representatives in Parliament ; that is, *Quas vulgus elegerit* ; which renders it a *Free State*, that is ever to be maintained. It is called a Legal and Regal Monarchy, because it is a Government by the Statutes of the Realm, and not according to the Will of the Lord. And such being the Constitution of our *Great Britain*, the Case, by the Precedent of King *James*, is resolved, that if any King hereafter (for of our Queen we have no fear) shall rule so, as really designing (that if he be not hindered, he will effect it) to change the Government, or *Manner of the Kingdom*, as the Scripture expresses it, from Legal to Arbitrary, from Regal to Despotical, and it shall please God to give the People, who are free Subjects, the happy Means of a Deliverance, they do not resist in this Case, or rise up against the *Powers that be*, the Powers in the Text, the Powers that are of God, the Ordinance of God ; but the Powers not in the Text, the Powers that are not of God, the Powers which

which are not the Ordinance of God, and it being indeed a rising in defence of, or for the Government, and not against the Government, and no resisting the Powers that be, they shall not receive to themselves Damnation. This is the Case of the Revolution.

It is objected by the conscientious Non-juror, that the Church in her Homilies; all her chief Divines and Bishops, in their Books and Sermons, have constantly preached up Non-resistance and Passive Obedience, which is all one with *Subjection to the higher Powers* commanded by the Apostle. And this indefinitely is true, but the *Subjection* must be understood to be to the *Apostles* higher Powers, the Powers that be, the Powers in the Text, the Powers (I have said) according to our Constitution: And as for any Powers that are otherwise, and so not in the Text, neither they nor the Apostle ever required Subjection. This Answer is satisfactory, and I have something to say more, for *Cases may fall out* (says *Bilson*, that most judicious and excellent Prelate) *even in Christian Kingdoms, where People may plead their Right against the Prince, and not be charged with Rebellion. If a Prince shall go about to subject his Kingdom to a Foreign Realm, or change the Form of a Common-wealth from Impery to Tyranny.* This Instance has he, as I before. I will add, that *Barclay* and *Arniseus*, (those chief *French* Authors) who maintain their King's Authority to be inviolable, do themselves admit of such, and these very Exceptions, *Si Regnum alienet, si Rempublicam evertere conetur.* And yet there is no Case for all that, say they, wherein we may take Arms against the King, because in such Cases the King does *Regis Personam exuere*: And what is that, but in such Cases he is not the *higher Powers* in the Text (or the Powers of the Apostle) to whom Non-resistance is required. There are several other Cases *Grotius* reckons up, but this is beyond my Line; and forasmuch as the *End* in a People's setting up a Governour is greater, (that is, of more Importance) than the *Means*, the Argument for the People against the Prince, in such Cases, is irrefragable.

For all this, to maintain Non-resistance, it is pleaded by some, that the Prince of *Orange* came, and was invited to other Ends, and not to depose King *James*; only he went away, abdicated, and left the Government upon our Hands. Very pert, and in some measure true; but had he done nothing, and was nothing done, to make him fear to stay? When the Prince came with Forces, and the Nation join'd with him, to deliver themselves from Popery and Arbitrary

rary Power by his Means ; and a Convention (which represents the whole People) set up another King, and recall'd not him, which is, in Fact and Deed, all that is in Resistance and Deposition ; what an idle thing is it, to maintain it unlawful to resist, or take up Arms, in any Case, against a King (even in such a one as makes him none) and yet slabbber, and justify our Revolution.

There are two Reasons now for speaking of this Point. The one is, because there has been of late a great stir made by a Sermon preach'd on this Subject before the Queen, I suppose as innocently as loyally meant, but brought into Dispute ; and it is meet, that all scrupulous good Persons should be satisfi'd about the Government. The other is, to the end that those whom it pleases God hereafter to put over us, for to govern, may not be tempted by Love of their People, or Liberality of Parliaments, to make such use of their rais'd Strength as our Neighbour Kings have done, to go out of the Circle of our *British* Constitution : Especially knowing that the Spirit of the Nation, and the Conscience of it also, together with the *Form* of Government, is such, as not to bear, that under King *James* we should be *Papists*, and under any Successor, be *Slaves*.

This Paper (or Sheet) is taken from a Book newly come out of the Press, a Shilling Book, entituled, *Free Thoughts upon these Heads, Of Predestination, Redemption, The Salvability of the Heathen, The Judaical Covenant, Justification, The Judge of Faith and the Scripture, Venial Sin, Liturgical and Conceiv'd Prayer, Demonstrative Preaching, The Authority of the Laws of Men, The Power of the Magistrate about Religion, Subjection to our present Queen*. The last whereof is *Verbatim* this Determination.

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**T**Here falling out here a blank Side to spare, I will fill it with some Quotations, which I purposely omitted (to avoid swelling) in the due place. *Barclaius ait amitti Regnum* (says Grotius) *si Rex hostili animo in totius populi exitium feratur: Quod concedo, consistere enim simul non possunt voluntas imperandi, & voluntas perdendi*, De jure Bel. l. 1. c. 4. *Quid ergo? Nulline casus incidere possunt* (says Barclay himself) *quibus populo in Regem arma capere jure suo liceat? Nulli certe quamdiu Rex manet: Duos autem casus invenio, quibus Rex ex rege non Regem facit.* Adversus Monarchomacos, l. 3. c. 16. As for our *Bilson*, he sets himself, *de Industria*, to maintain the Prince's Authority against the Pope, and yet in defending the Protestants in their Stirs in Germany, France, Scotland, I will not (says he) pronounce all that resist to be Rebels. Cases may fall out, as I have cited two of them, and then he further says, *In these and other Cases that might be named, if the Nobles and Commons join together, to defend the ancient and accustomed Liberty, Regiment, and Laws, they may not be accounted Rebels.* In his Book (and excellent Book) of the true Difference between Christian Subjection, and Unchristian Rebellion, p. 520. In fine, the Pope may not depose Princes; but the whole Realm may defend their Rights against them, according to this eminent Bishop's Judgment; *I deny'd* (says he) *that Bishops had Authority to prescribe Conditions to Kings when they crown'd them, but I never deny'd that the People might preserve their Foundation-Freedom, and Form of their Common-wealth, which they fore-prized when they consented to have a King*, p. 521. There being yet a Line or two to fill, I will set down this Saying, because I like it, tho' it be an Overplus, and not to this, but to other good Purpose: *Quæ ex jure naturæ dependent iis Princeps etiam tenetur, quia licet sit dominus aliorum, subditus tamen est Naturæ, & civis Mundanus.* Arnisæus de Jure Majestatis Principum semper inviolabile, l. 1. c. 3.

F I N I S.







