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Patriarcha;
OR THE
Natural Power
OF
KINGS.

By the Learned Sir ROBERT FILMER Baronet.

Lucan. Lib. 3.

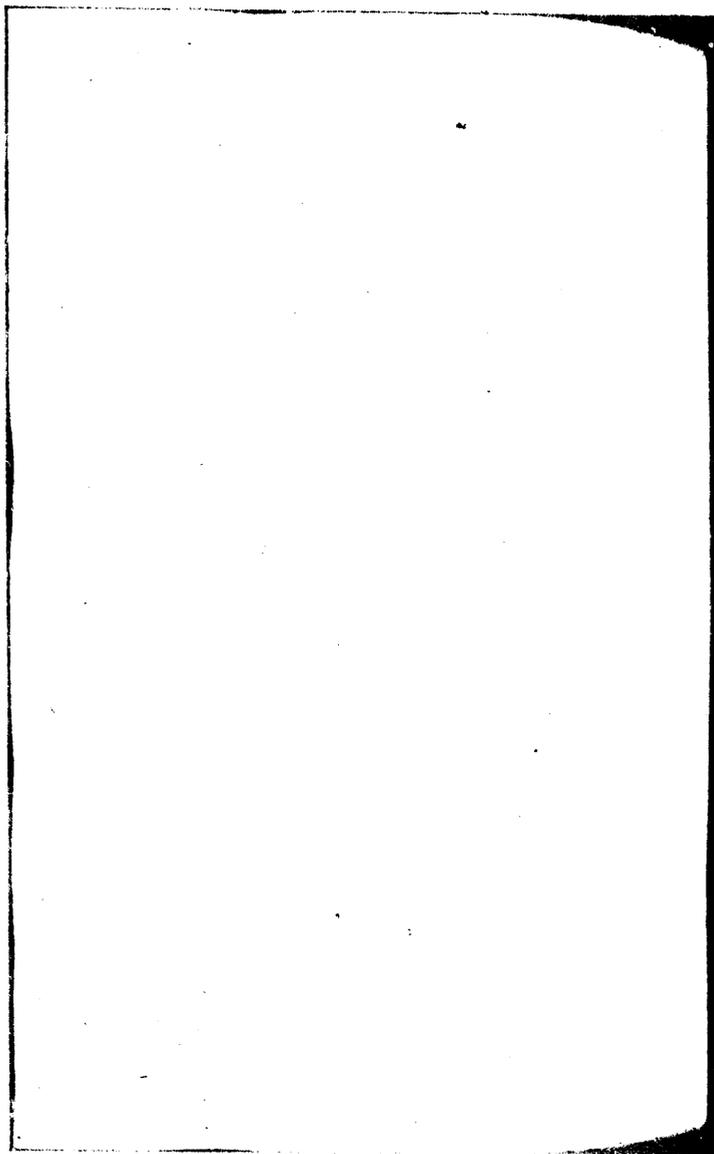
Libertas ——— *Populi, quem regna coercent*
Libertate perit ———

Claudian.

Fallitur egregio quisquis sub Poincipe oredit.
Servitium; nusquam Libertas gratior extat
Quam sub Rege pio ———

L O N D O N,

Printed for Ric. Chiswell in St. Paul's Church-
Yard, Matthew Gillyflower and William Hench-
man in Westminster Hall, 1680.



The COPY
OF A
LETTER

Written by the Late Learned

Dr. *PETER HEYLYN*,
to Sir *Edward Fylmer*, Son
of the Worthy Author,
concerning this Book and
his other Political Dis-
courses.

SIR,

HOW great a Loss I
had in the death of
my most dear and
honoured Friend, your de-
ceased Father, no man is

A 3 able

able to conjecture ; but he
that hath suffered in the like.
So affable was his Conversa-
tion, his Discourse so ratio-
nal, his Judgment so exact
in most parts of Learning ;
and his Affections to the
Church so exemplary in
him, that I never enjoyed a
greater Felicity in the com-
pany of any Man living,
than I did in his : In which
Respects I may affirm both
with Safety and Modesty,
that we did not only take
sweet Counsel together ; but
walked in the House of God
as Friends : I must needs say,
I

I was prepared for that great Blow, by the Loss of my Preferment in the Church of *Westminster*, which gave me the Opportunity of so dear and beloved a Neighbourhood ; so that I lost him partiy before he died, which made the Misery the more supportable, when I was deprived of him for altogether. But I was never more sensible of the Infelicity, than I am at this present, in reference to that Satisfaction, which I am sure he could have given the Gentleman whom I am to deal with:
His

His eminent Abilities in these Political Disputes; exemplified in his Judicious Observations upon *Aristotles* Politiques; as also in some passages on *Grotius*, *Hunton*, *Hobbs*, and other of our late Discourfers about Forms of Government, declare abundantly how fit a Man he might have been to have dealt in this cause, which I would not willingly should be betrayed by unskilful handling: And had he pleased to have suffered his Excellent Discourse called *Patriarcha* to appear in Publick, it would have

have given such satisfaction
to all our great Masters in
the Schools of *Politie*, that
all other Tractates in that
kind, had been found unne-
cessary.

Vide Certamen Epistolare. 386.

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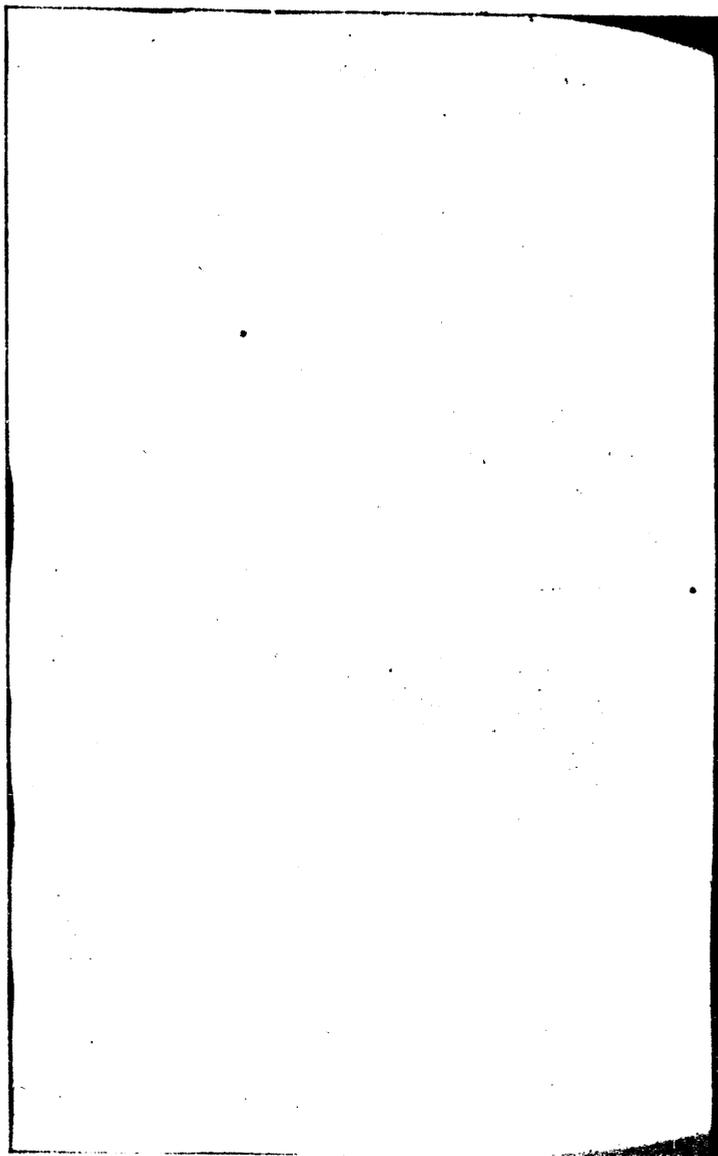
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CHAP I.

That the first Kings were Fathers of Families.

(1) **T**HE Tenent of the Natural Liberty of Mankind, New, Plausible, and Dangerous. (2) The Question stated out of Bellarmine: Some Contradictions of his noted. (3) Bellarmine's Argument answered out of Bellarmine himself. (4) The Royal Authority of the Patriarchs before the Flood. (5) The dispersion of Nations over the World after the Confusion of Babel, was by entire Families, over which the Fathers were Kings. (6) and from them all Kings descended. (7) All Kings are either Fathers of their People, (8) Or Heirs of such Fathers, or Usurpers of the Right of such Fathers. (9) Of the Escheating of Kingdoms. (10) Of Regal

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gal and Paternal Power, and their agreement.

Since the time that School-Divinity began to flourish, there hath been a common Opinion maintained, as well by Divines, as by divers other learned Men, which affirms,

Mankind is naturally endowed and born with Freedom from all Subjection, and at Liberty to chose what Form of Government it please : And that the Power which any one Man hath over others, was at first bestowed according to the discretion of the Multitude.

This Tenent was first hatched in the Schools, and hath been fostered by all succeeding Papists for good Divinity. The Divines also of the Reformed Churches have entertained it, and the Common People every where tenderly embrace it, as being most plausible to Flesh and blood, for that it prodigally distributes a Portion of Liberty to the meanest of the Multitude, who magnifie Liberty, as if the height of Humane Felicity were only to be found in it, never
re-

remembering That the desire of Liberty was the first Cause of the Fall of *Adam*.

But howsoever this Vulgar Opinion hath of late obtained a great Reputation, yet it is not to be found in the Ancient Fathers and Doctors of the Primitive Church: It contradicts the Doctrine and History of the Holy Scriptures, the constant Practice of all Ancient Monarchies, and the very Principles of the Law of Nature. It is hard to say whether it be more erroneous in Divinity, or dangerous in Policy.

Yet upon the ground of this Doctrine both *Jesuites*, and some other zealous favourers of the *Geneva* Discipline, have built a perillous Conclusion, which is, *That the People or Multitude have Power to punish, or deprive the Prince, if he transgress the Laws of the Kingdom; witness Parsons and Buchanan: the first under the name of Dolman, in the Third Chapter of his First Book labours to prove, that Kings have been lawfully chastised by their Commonwealths: The latter in his Book De jure Regni apud*
B 2 Scotos

Scotos, maintains A Liberty of the People to depose their Prince. Cardinal *Bellarmino* and *Calvin*, both look asquint this way.

This desperate Assertion whereby Kings are made subject to the *Censures* and *Deprivations of their Subjects*, follows (as the Authors of it conceive) as a necessary Consequence of that former Position of the supposed *Natural Equality and Freedom of Mankind, and Liberty to choose what form of Government it please*.

And though Sir *John Heywood*, *Adam Blackwood*, *John Barclay*, and some others have Learnedly Confuted both *Buchanan* and *Parsons*, and bravely vindicated the Right of Kings in most Points, yet all of them, when they come to the Argument drawn from the *Natural Liberty and Equality of Mankind*, do with one consent admit it for a Truth unquestionable, not so much as once denying or opposing it; whereas if they did but Confute this first erroneous Principle, the whole Fabrick of this vast Engine of *Popular Sedition* would drop down of it self. The

The Rebellious Consequence which follows this prime Article of the *Natural Freedom of Mankind* may be my Sufficient Warrant for a modest Examination of the original Truth of it ; much hath been said, and by many, for the *Affirmative*; Equity requires that an Ear be reserved a little for the *Negative*.

In this DISCOURSE I shall give my self these Cautions :

First, I have nothing to do to meddle with Mysteries of State, such *Arcana Imperii*, or Cabinet Counsels, the Vulgar may not pry into. An implicate Faith is given to the meanest Artificer in his own Craft, how much more is it then due to a Prince in the profound Secrets of Government, the Causes and Ends of the greatest politique Actions and Motions of State dazle the Eyes, and exceed the Capacities of all men, save only those that are hourly versed in the managing Publique Affairs : yet since the Rule for each man to know in what to obey his Prince, cannot be learnt without a relative Knowledge of those Points wherein a Sovereign may

Command, it is necessary when the Commands and Pleasures of Superiors come abroad and call for an Obedience, that every man himself know how to regulate his Actions or his sufferings ; for according to the Quality of the Thing commanded, an Active or Passive Obedience is to be yielded ; and this is not to limit the Princes Power ; but the extent of the Subjects Obedience, by giving to *Cæsar* the things that are *Cæsar's*, &c.

Secondly, I am not to question, or quarrel at the Rights or Liberties of this or any other Nation, my task is chiefly to enquire from whom these first came, not to dispute what, or how many these are ; but whether they were derived from the Laws of *Natural Liberty*, or from the *Grace and bounty of Princes*. My desire and Hope is, that the people of *England* may and do enjoy as ample Priviledges as any Nation under Heaven ; the greatest Liberty in the World (if it be duly considered) is for a people to live under a *Monarch*. It is the *Magna Charta* of this Kingdom, all other shews or pretexts of Liberty, are but

but several degrees of *Slavery*, and a *Liberty* only to destroy *Liberty*.

If such as Maintain the Natural Liberty of Mankind, take Offence at the Liberty I take to Examine it, they must take heed that they do not deny by Retail, that Liberty which they affirm by Wholesale : For, if the *Thesis* be true, the *Hypothesis* will follow, that all men may Examine their own Charters, Deeds, or Evidences by which they claim and hold the Inheritance or Free-hold of their *Liberties*.

Thirdly, I must not detract from the Worth of all those Learned Men, who are of a contrary Opinion in the Point of *Natural Liberty* : The profoundest Scholar that ever was known hath not been able to search out every Truth that is discoverable ; neither *Aristotle* in Philosophy, nor *Hooker* in Divinity. They are but men, yet I reverence their Judgments in most Points, and confess my self beholding to their Errors too in this ; something that I found amiss in their Opinions, guided me in the discovery of that Truth which (I per-

(swade my self) they missed. A Dwarf sometimes may see that which a Giant looks over ; for whilst one Truth is curiously searched after, another must necessarily be neglected. Late Writers have taken up too much upon Truth from the subtile School-Men, who to be sure to thrust down the King below the Pope, thought it the safest course to advance the People above the King, that so the Papal Power might take place of the Regal. Thus many an Ignorant Subject hath been fooled into this Faith, that a man may become a Martyr for his *Country*, by being a Traytor to his *Prince* ; whereas the New-coyned distinction of Subjects into Royalists and Patriots, is most unnatural, since the relation between King and People is so great, that their well-being is so Reciprocal.

(2) To make evident the Grounds of this Question, about the *Natural Liberty of Mankind*, I will lay down some passages of Cardinal *Bellarmino*, that may best unfold the State of this Controversie. *Secular or Civil Power* (saith he) *is instituted by Men ; It is in*
the

the People, unless they bestow it on a Prince. This Power is immediately in the whole Multitude, as in the Subject of it; for this Power is in the Divine Law, but the Divine Law hath given this Power to no particular Man—— If the Positive Law be taken away, there is left no Reason, why amongst a Multitude (who are Equal) one rather than another should bear Rule over the rest?—— Power is given by the Multitude to one man, or to more by the same Law of Nature; for the Commonwealth cannot exercise this Power, therefore it is bound to bestow it upon some One Man, or some Few—— It depends upon the Consent of the Multitude to ordain over themselves a King, or Consul, or other Magistrates; and if there be a lawful Cause, the Multitude may change the Kingdom into an Aristocracy or Democracy. Thus far Bellarmine; in which passages are comprised the strength of all that ever I have read, or heard produced for the Natural Liberty of the Subject.

Before I examine or refute these Doctrines, I must a little make some Observations upon his Words.

First,

First, He saith, that by the law of God, *Power* is immediately in the People ; hereby he makes God to be the immediate Author of a *Democratical Estate* ; for a *Democrasy*, is nothing else but the Power of the Multitude. If this be true, not only *Aristocracies*, but all *Monarchies* are altogether unlawful, as being ordained (as he thinks) by Men, whenas God himself hath chosen a *Democracy*.

Secondly, He holds, that although a *Democracy* be the Ordinance of God, yet the people have no power to use the Power which God hath given them, but only power to give away their Power ; whereby it followeth, that there can be no *Democratical Government*, because he saith, the people must give their Power to One Man, or to some Few ; which maketh either a *Regal* or *Aristocratical Estate* ; which the Multitude is tyed to do, even by the same *Law of Nature* which Originally gave them the *Power*: And why then doth he say, the *Multitude* may change the *Kingdom* into a *Democracy* ?

Thirdly,

Thirdly, He concludes, that if there be a lawful Cause, the *Multitude* may change the *Kingdom*. Here I would fain know who shall judg of this lawful Cause ? If the *Multitude* (for I see no Body else can) then this is a pestilent and dangerous Conclusion.

(3) I come now to examine that Argument which is used by *Bellarmino*, and is the One and only *Argument* I can find produced by my Author for the proof of the *Natural Liberty of the People*. It is thus framed : *That God hath given or ordained Power, is evident by Scripture ; But God hath given it to no particular Person, because by nature all Men are Equal ; therefore he hath given Power to the People or Multitude.*

To Answer this Reason, drawn from the Equality of Mankind by Nature, I will first use the help of *Bellarmino* himself, whose very words are these : *If many men had been together created out of the Earth, they all ought to have been Princes over their Posterity.* In these words we have an Evident Confession, that Creation made man Prince of his Posterity.

rity. And indeed not only *Adam*, but the succeeding *Patriarchs* had, by Right of Father-hood, Royal Authority over their Children. Nor dares *Bellarmino* deny this also. That the *Patriarchs* (saith he) were endowed with Kingly Power, their Deeds do testify ; for as *Adam* was Lord of his Children, so his Children under him, had a Command and Power over their own Children ; but still with subordination to the First Parent, who is Lord-Paramout over his Childrens Children to all Generations, as being the *Grand-Father* of his People.

(4) I see not then how the Children of *Adam*, or of any man else can be free from subjection to their *Parents*: And this subjection of Children being the Fountain of all *Regal Authority*, by the Ordination of God himself ; It follows, that Civil Power, not only in general is by Divine Institution, but even the Assignment of it Specificaly to the eldest Parents, which quite takes away that New and Common distinction which refers only Power Universal and Absolute to God ; but Power Respective in regard of the Special Form of Government to the Choice of the people.

This

This Lordship which *Adam* by Command had over the whole World, and by Right descending from him the *Patriarchs* did enjoy, was as large and ample as the Absoluteſt Dominion of any *Monarch* which hath been ſince the Creation: For Dominion of Life and Death, we find that *Judah* the Father pronounced Sentence of Death againſt *Thamar* his Daughter-in-law, for playing the Harlot; *Bring her forth* (ſaith he) *that ſhe may be burnt*. Touching War, we ſee that *Abraham* commanded an Army of 318 Souldiers of his own Family. And *Eſau* met his Brother *Jacob* with 400 Men at Arms. For matter of Peace, *Abraham* made a League with *Abimilech*, and ratify'd the Articles with an Oath. Theſe Acts of Judging in *Capital Crimes*, of making *War*, and concluding *Peace*, are the chiefſt Marks of *Sovereignty* that are found in any *Monarch*.

(5) Not only until the *Flood*, but after it, this *Patriarchal Power* did continue, as the very Name *Patriarch* doth in part prove. The three Sons of *Noah* had the whole World divided amongſt them

them by their Father ; for of them was the whole World over-spread, according to the Benediction given to him and his Sons, *Be fruitful and multiply, and replenish the Earth.* Most of the Civilest Nations of the Earth labour to fetch their Original from some One of the Sons or Nephews of *Noah*, which were scatterd abroad after the Confusion of *Babel* : In this Dispersion we must certainly find the Establishment of *Regal Power* throughout the Kingdoms of the World.

It is a common Opinion, that at the Confusion of Tongues there were 72 distinct Nations erected, all which were not Confused Multitudes, without Heads or Governors, and at Liberty to chose what Governors or Government they pleased ; but they were distinct Families, which had Fathers for Rulers over them ; whereby it appears that even in the Confusion God was careful to preserve the Fatherly Authority, by distributing the diversity of Languages according to the diversity of Families ; for so plainly it appears by the Text : First, after the Enumeration of the Sons
of

of *Japhet*, the Conclusion is, *By these were the Isles of the Gentiles divided in their Lands, every one after his Tongue, after their Families, in their Nations ; so it is said : These are the Sons of Ham after their Families, after their Tongues, in their Countreys, and in their Nations. The like we read, These are the Sons of Shem after their Families, after their Tongues, in their Lands, after their Nations. These are the Families of the Sons of Noah after their Generations in their Nations ; and by these were these Nations divided in the Earth, after the Flood.*

In this Division of the World, some are of Opinion that *Noah* used Lots for the distribution of it ; others affirm he sayled about the *Mediterranean Sea* in Ten years, and as he went about, appointed to each Son his part, and so made the Division of the then known World into *Asia*, *Africa*, and *Europe*, (according to the number of his Sons) the Limits of which Three Parts are all found in that Midland Sea.

(6) But howsoever the manner of this Division be uncertain, yet it is most certain

certain the Division it self was by Families from *Noah* and his Children, over which the Parents were Heads and Princes.

Amongst these was *Nimrod*, who no doubt (as *Sir Walter Raleigh* affirms) was by good Right, Lord or King over his Family ; yet against Right did he enlarge his Empire, by seizing violently on the Rights of other Lords of Families : And in this sense he may be said to be the Author and first Founder of *Monarchy*. And all those that do attribute unto him the Original Regal Power, do hold he got it by Tyranny or Usurpation, and not by any due Election of the People or Multitude, or by any Faction with them.

see *Burke*

As this *Patriarchal Power* continued in *Abraham*, *Isaac*, and *Jacob*, even until the *Egyptian Bondage* ; so we find it amongst the Sons of *Ismael* and *Esau*. It is said, *These are the Sons of Ismael, and these are their Names by their Castles and Towns, Twelve Princes of their Tribes and Families. And these are the Names of the Dukes that came of Esau, according to their*

their Families and their Places by their Nations.

(7) Some perhaps may think that these Princes and Dukes of Families were but some petty Lords under some greater Kings, because the number of them are so many, that their particular Territories could be but small, and not worthy the Title of Kingdoms; but they must consider, that at first, Kings had no such large Dominions as they have now adays; we find in the time of *Abraham*, which was about 300 years after the Flood, that in a little corner of *Asia*, 9 Kings at once met in Battail, most of which were but Kings of Cities apiece, with the adjacent Territories, as of *Sodom, Gomorrha, Shinar, &c.* In the same Chapter is mention of *Melchisedeck* King of *Salem*, which was but the City of *Jerusalem*. And in the Catalogue of the Kings of *Edom*, the Names of each King's City is recorded, as the only Mark to distinguish their Dominions. In the Land of *Canaan*, which was but a small circuit, *Jeshua* destroyed thirty one Kings; and about the same time, *Adoni-^{1 King. 20.}bejeck* had 70 Kings whose hands and toes ^{16.} he had cut off, and made them feed under his Table. A few years after this, 32

Kings came to *Benhadad* King of *Syria*, and about 70 Kings of *Greece* went to the Wars of *Troy*. *Cæsar* found more Kings in *France*, than there be now Princes there, and at his sailing over into this Island, he found four Kings in our County of *Kent*. These heaps of Kings in each Nation are an Argument their Territories were but small, and strongly confirms our Assertion, that Erection of Kingdoms came at first only by Distinction of Families.

By manifest Footsteps we may trace this Paternal Government unto the *Israelites* coming into *Egypt*, where the Exercise of Supream Patriarchal Jurisdiction was intermitted, because they were in subjection to a stronger Prince. After the Return of these *Israelites* out of Bondage, God out of a special Care of them, chose *Mosès* and *Joshua* successively to govern as Princes in the place and stead of the Supream Fathers: and after them likewise for a time, he raised up *Judges*, to defend his People in time of Peril. But when God gave the *Israelites* Kings, he reestablished the Antient and Prime Right of Lineal Succession to Paternal Government. And when-

whensoever he made choice of any special Person to be King, he intended that the Issue also should have benefit thereof, as being comprehended sufficiently in the Person of the Father, although the Father only was named in the Graunt.

(8.) It may seem absurd to maintain, that Kings now are the Fathers of their People, since Experience shews the contrary. It is true, all Kings be not the Natural Parents of their Subjects, yet they all either are, or are to be reputed the next Heirs to those first Progenitors, who were at first the Natural Parents of the whole People, and in their Right succeed to the Exercise of *Supreme Jurisdiction*; and such Heirs are not only Lords of their own Children, but also of their Brethren, and all others that were subject to their Fathers: And therefore we find, that God told *Cain* of his Brother *Abel*, *His Desires shall be subject unto thee, and thou shalt rule over him.* Accordingly, when *Jacob* bought his Brother's Birth-right, *Isaac* blessed him thus, *Be Lord over thy Brethren, and let the Sons of thy Mother bow before thee.* Gen. 27. 29.

As long as the first Fathers of Families lived, the name of *Patriarchs* did aptly belong unto them; but after a few Descents, when the true Fatherhood it self was extinct, and only the Right of the Father descends to the true Heir, then the Title of *Prince* or *King* was more *significant*, to express the Power of him who succeeds only to the Right of that Fatherhood which his Ancestors did *Naturally* enjoy; by this means it comes to pass, that many a Child, by succeeding a King, hath the Right of a Father over many a Gray-headed Multitude, and hath the Title of *Pater Patrie*.

(9.) It may be demanded what becomes of the Right of *Fatherhood*, in Case the Crown does escheat for want of an Heir? Whether doth it not then Divolve to the People? The Answer is, It is but the Negligence or Ignorance of the People to lose the Knowledge of the true Heir: For an Heir there always is. If *Adam* himself were still living, and now ready to die, it is certain that there is One Man, and but One in the World who is next Heir,
al-

although the Knowledge who should be that One Man be quite lost.

2. This Ignorance of the People being admitted, it doth not by any means follow ; that for want of Heirs the Supreme Power is devolved to the Multitude, and that they have Power to Rule, and Chose what Rulers they please. No, the Kingly Power escheats in such cases to the Princes and independent Heads of Families : for every Kingdom is resolved into those parts whereof at first it was made. By the Uniting of great Families or petty Kingdoms, we find the greater *Monarchies* were at the first erected ; and into such again, as into their first Matter many times they return again. And because the dependencie of ancient Families is oft obscure or worn out of Knowledge ; therefore the wisdom of All or Most Princes have thought fit to adopt many times those for Heads of Families, and Princes of Provinces, whose Merits, Abilities, or Fortunes, have enobled them, or made them fit and capable of such Regal Favours. All such prime Heads and Fathers have power to consent in the

uniting or conferring of their Fatherly Right of Sovereign Authority on whom they please: And he that is so Elected, claims not his Power as a *Donative* from the People; but as being substituted properly by God, from whom he receives his *Royal Charter* of an *Universal* Father, though testified by the Ministry of the Heads of the People.

If it please God, for the Correction of the Prince, or punishment of the People, to suffer Princes to be removed, and others to be placed in their rooms, either by the Factions of the Nobility, or Rebellion of the People; in all such cases, the Judgment of God, who hath Power to give and to take away Kingdoms, is most just: Yet the Ministry of Men who Execute Gods Judgments without Commission, is sinful and damnable. God doth but use and turn mens *Unrighteous Acts* to the performance of his *Righteous Decrees*.

(10) In all Kingdoms or Commonwealths in the World, whether the Prince be the Supream Father of the People, or but the true Heir of such a
Father,

Father, or whether he come to the Crown by Usurpation, or by Election of the Nobles, or of the People, or by any other way whatsoever; or whether some Few or a Multitude Govern the Commonwealth: Yet still the Authority that is in any one, or in many, or in all these, is the only Right and natural Authority of a Supreme Father. There is, and always shall be continued to the end of the World, a Natural Right of a Supreme Father over every Multitude, although by the secret Will of God, many at first do most unjustly obtain the Exercise of it.

To confirm this Natural Right of *Regal Power*, we find in the *Decalogue*, That the Law which enjoyns Obedience to Kings, is delivered in the terms of *Honour thy Father*, as if all power were originally in the Father. If Obedience to Parents be immediately due by a *Natural Law*, and Subjection to Princes, but by the Mediation of an *Humane Ordinance*; what reason is there that the Laws of *Nature* should give place to the Laws of Men? as we see the power of the Father over his Child,

gives place, and is subordinate to the power of the Magistrate.

If we compare the Natural Rights of a Father with those of a King, we find them all one, without any difference at all but only in the Latitude or Extent of them : as the Father over one Family, so the King as Father over many Families extends his care to preserve, feed, cloth, instruct and defend the whole Commonwealth. His War, his Peace, his Courts of Justice, and all his Acts of Sovereignty tend only to preserve and distribute to every subordinate and inferiour Father, and to their Children, their Rights and Privileges ; so that all the Duties of a King are summed up in an Universal Fatherly Care of his People.

CHAP.

CHAP. II.

*It is unnatural for the People
to Govern, or Chose Go-
vernours.*

- (1.) **A**ristotle examined about the Freedom of the People and justified. (2.) Suarez disputing against the Regality of Adam. (3.) Families diversly defined by Aristotle, Bodin and others. (4.) Suarez contradicting Bellarmine. (5.) Of Election of Kings. (6.) By the Major part of the People. (7.) By Proxy, and by silent Acceptation. (8.) No Example in Scripture of the Peoples choosing their King. Mr. Hooker's Judgment therein. (9.) God governed always by Monarchy. (10.) Bellarmine and Aristotle's Judgment of Monarchy. (11.) Imperfections of the Roman Democratic. (12.) Rome began

began her Empire under Kings, and perfected under Emperours. In danger, the People of Rome always fled to Monarchy. (13.) Whether Democracies were invented to bridle Tyrants, or rather that they came in by Stealth, (14.) Democracies vilified by their own Historians. (15.) Popular Government more bloody than Tyranny. (16.) Of a mixed Government of the King and People. (17.) The People may not judge or correct their King (18.) No Tyrants in England since the Conquest.

(1.) **B**Y conferring these Proofs and Reasons drawn from the Authority of the Scripture, it appears little less than a Paradox which *Bellarmino* and others affirm of the Freedom of the *Multitude*, to chuse what Rulers they please.

Had the *Patriarchs* their Power given them by their own Children? *Bellarmino* does not say it, but the Contrary: If then the Fatherhood enjoyed this Authority for so many Ages by the Law of Nature, when was it lost,
or

or when forfeited, or how is it devolved to the Liberty of the *Multitude*?

Because the Scripture is not favourable to the Liberty of the People; therefore many fly to Natural Reason, and to the Authority of *Aristotle*. I must crave Liberty to examine or explain the Opinion of this great Philosopher; but briefly, I find this Sentence in the Third of his *Politiques*. *Cap. 16.* δοκεῖ δέ τις ἂν ἐ μὲν φύσιν εἶναι τὸ κύριον ἕνα πάντων εἶναι τῶν πολιτῶν, ὅπερ συνέστηκεν ἐξ ὁμοίων ἢ πόλις. It seems to some not to be natural for one man to be Lord of all the Citizens, since a City consists of Equals. *D. Lambine* in his *Latine* Interpretation of this Text, hath omitted the Translation of this word [*τις*] by this means he maketh that to be the Opinion of *Aristotle*, which *Aristotle* alleadgeth to be the Opinion but of some. This Negligence, or Wilful Escape of *Lambine*, in not translating a word so Material, hath been an occasion to deceive many, who looking no farther than this *Latine* Translation, have concluded, and made the World now of late believe, that *Aristotle* here maintains a
Natural

Natural Equality of Men; and not only our *English* Translator of *Aristotle's Politiques* is in this place misled by following *Lambine*; but even the Learned *Monsieur Duvall* in his *Synopsis* bears them company: and yet this Version of *Lambine's* is esteemed the best, and Printed at *Paris* with *Causabon's* corrected *Greek* Copy, though in the rendering of this place, the Elder Translations have been more faithful; and he that shall compare the *Greek* Text with the *Latine*, shall find that *Causabon* had just cause in his Preface to *Aristotle's* Works, to complain that the best Translations of *Aristotle* did need Correction: To prove that in these words which seem to favour the Equality of Mankind, *Aristotle* doth not speak according to his own Judgment, but recites only the Opinion of others; we find him clearly deliver his own Opinion, that the Power of Government did originally arise from the Right of Fatherhood, which cannot possibly consist with that *Natural Equality* which Men dream of: for in the First of his *Politiques* he agrees exactly with the Scripture, and lays this Foundation of Government,

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The first *Society* (saith he) made of Many Houses is a Village, which seems most naturally to be a Colony of Families or foster-Brethren of Children and Childrens Children. And therefore at the beginning, Cities were under the Government of Kings, for the eldest in every house is King: And so for Kindred-sake it is in Colonies. And in the fourth of his Politiques, *cap. 2.* He gives the Title of the first and Divinest sort of Government to the Institution of Kings, by Defining *Tyranny* to be a Digression from the First and *Divinest*.

Whosoever weighs advisedly these passages, will find little hope of *Natural Reason* in *Aristotle* to prove the *Natural Liberty* of the *Multitude*. Also before him the Divine *Plato* concludes a Commonwealth to be nothing else but a large Family. I know for this Position *Aristotle* quarrels with his Master, but most unjustly; for therein he contradicts his own Principles for they both agree to fetch the Original of Civil Government from the prime Government. No doubt but *Moses's* History of the Creation guided these two Philosophers in finding

finding out of this *Lineal Subjection* deduced from the *Laws* of the *First Parents*, according to that Rule of *St. Chryſtoſtom*, *God made all Mankind of One Man, that he might teach the World to be Governed by a King, and not by a Multitude.*

The Ignorance of the Creation, occasioned ſeveral Errors amongſt the *Heathen Philoſophers*. *Polybius*, though otherwiſe a moſt profound Philoſopher, and Judicious Hiſtorian, yet here he ſtumbles; for in ſearching out the Original of Civil Societies, he conceited, *That Multitudes of Men after a Deluge, a Famine, or a Peſtilence, met together like Herds of Cattel without any Dependency, until the ſtrongeſt Bodies and bold-eſt Minds got the Maſtery of their Fellows; even as it is (ſaith he) among Bulls, Bears and Cocks.*

And *Ariſtotle* himſelf, forgetting his firſt Doctrin, tells us, the firſt *Heroical Kings* were choſen by the People for their deſerving well of the Multitude; either by teaching them ſome New Arts, or by Warring for them, or by Gather-
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ing them together, or by Dividing Land amongst them; also *Aristotle* had another Fancy, that those Men who prove wise of Mind, were by Nature intended to be Lords, and Govern; and those which were Strong of Body were ordained to obey, and to be Servants. But this is a dangerous and uncertain Rule, and not without some Folly; for if a Man prove both *Wise* and *Strong*, what will *Aristotle* have done with him? as he was *Wise*, he could be no Servant, and as he had *Strength*, he could not be a Master; besides, to speak like a Philosopher, *Nature* intends all things to be perfect both in Wit and Strength. The Folly or Imbecillity proceeds from some Errour in Generation or Education; for Nature aims at *Perfection* in all her Works.

(2.) *Suarez* the Jesuite riseth up against the Royal Authority of *Adam*, in defence of the Freedom and Liberty of the people; and thus argues. By Right of Creation (saith he) *Adam* had only *Oeconomical* power, but not *Political*; he had a power over his Wife, and a Fatherly power over his Sons, whilst

whilst they were not made Free : he might also in process of Time have Servants and a Compleat Family; and in that Family he might have compleat *Oeconomical Power*. But after that Families began to be multiplied, and Men to be separated, and become the Heads of several Families; they had the same power over their Families. But *Political Power* did not begin, until Families began to be gathered together into one perfect Community; wherefore as the Community did not begin by the Creation of *Adam*, nor by his will alone, but of all them which did agree in this Community : So we cannot say that *Adam Naturally* had Political Primacy in that Community; for that cannot be gathered by any Natural Principles, because by the Force of the Law of Nature alone, it is not due unto any Progenitor, to be also King of his Posterity. And if this be not gathered out of the Principles of Nature, we cannot say, God by a special Gift or Providence gave him this Power; For there is no Revelation of this, nor Testimony of Scripture. Hitherto *Suarez*.

Whereas

Whereas he makes *Adam* to have a Fatherly power over his Sons, and yet shuts up this power within one Family, he seems either to imagine, that all *Adam's* Children lived within one House, and under one Roof with their Father; or else, as soon as any of his Children lived out of his House, they ceased to be Subject, and did thereby become Free. For my part, I cannot believe that *Adam* (although he were sole Monarch of the World) had any such spacious Palace, as might contain any such Considerable part of his Children. It is likelier, that some mean Cottage or Tent did serve him to keep his Court in. It were hard he should lose part of his Authority, because his Children lay not within the Walls of his House. But if *Suarez* will allow all *Adam's* Children to be of his Family, howsoever they were separate in Dwellings; if their Habitations were either Contiguous, or at such Distance, as might easily receive his Fatherly Commands. And that all that were under his Commands, were of his Family, although they had many Children or Servants married, having themselves also Children. Then I see

no reason, but that we may call *Adam's* Family a Commonwealth, except we will wrangle about Words: For *Adam* living 930 years, and seeing 7 or 8 Descents from himself, he might live to command of his Children and their Posterity a Multitude far bigger, than many Commonwealths and Kingdoms.

(3.) I know the *Politicians* and *Civil Lawyers* do not agree well about the Definition of a Family, and *Bodin* doth seem in one place to confine it to a House; yet in his Definition, he doth enlarge his meaning to all *Persons* under the *Obedience* of One and the same Head of the Family; and he approves better of the propriety of the *Hebrew* Word for a Family, which is derived from a Word that signifies a Head, a Prince, or Lord, than the *Greek* Word for a Family, which is derived from *οἶκος*, which signifies a House. Now doth *Aristotle* confine a Family to One House; but esteems it to be made of those that daily converse together; whereas before him, *Charondas* called a Family *Homospioi*, those that feed together out of one common Pannier. And
Epimeni

Wife and a Servant are by Nature distinguished, because Nature does not work like the *Cutlers of Delphos*, for she makes but one thing for one Use. If we allow this Argument to be sound, nothing doth follow but only this, That Conjugal and Despotical Communities do differ. But it is no consequence, That therefore, *Oeconomical* and *Political* Societies do the like: for though it prove a Family to consist of two distinct Communities, yet it follows not, that a Family and a Commonwealth are distinct; because, as well in the Commonwealth, as in the Families, both these Communities are found.

And as this Argument comes not home to our Point, so it is not able to prove that Title which it shews for; for if it should be granted (which yet is false) that *Generation* and *Preservation* differ about the *Individuum*, yet they agree in the General, and serve both for the Conservation of Mankind; Even as several Servants differ in the particular Ends or Offices; as one to Brew, and another to Bake; yet they agree in the general Preservation of the Family.

Family. Besides, *Aristotle* confesses, that amongst the *Barbarians* (as he calls all them that are not *Grecians*) a Wife and a Servant are the same, because by Nature, no *Barbarian* is fit to Govern; It is fit the *Grecians* should rule over the *Barbarians*; for by Nature a Servant and a *Barbarian* is all one: their Family consists only of an Ox for a Man-Servant, and a Wife for a Maid; so they are fit only to rule their Wives and their Beasts. Lastly, *Aristotle* (if it had pleased him) might have remembered, That Nature doth not always make one Thing but for one Use: he knows, the Tongue serves both to Speak, and to Taste.

(4.) But to leave *Aristotle*, and return to *Suarez*; he saith that *Adam* had Fatherly Power over his Sons, whilst they were not made Free. Here I could wish that the Jesuite had taught us, how and when Sons become Free: I know no means by the Law of Nature. It is the Favour I think of the Parents only, who when their Children are of Age and Discretion to ease their Parents of part of their Fatherly Care,

are then content to remit some part of their Fatherly authority ; therefore the Custom of some Countreys doth in some Cafes Enfranchife the Children of inferior Parents, but many Nations have no such Custome, but on the contrary have strict Laws for the Obedience of Children : the Judicial Law of *Moses* giveth full power to the Father to stone his disobedient Son, so it be done in presence of a Magistrate : And yet it did not belong to the Magistrate to enquire and examine the justness of the Cause ; But it was so decreed, lest the Father should in his Anger, suddenly, or secretly kill his Son.

Also by the Laws of the *Persians*, and of the People of the Upper *Asia*, and of the *Gaules*, and by the Laws of the *West-Indies*, the Parents have power of Life and Death over their Children.

The *Romans*, even in their most Popular Estate, had this Law in force, and this Power of Parents was ratified and amplified by the Laws of the Twelve Tables, to the enabling of Parents to sell their Children two or three times
over

over. By the help of the Fatherly Power, *Rome* long flourished, and oftentimes was freed from great Dangers. The Fathers have drawn out of the very *Assemblies* their own Sons; when being *Tribunes*, they have published Laws tending to Sedition.

Memorable is the Example of *Cassius*, who threw his Son headlong out of the Consistory, publishing the Law *Agraria*, for the Division of Lands, in the behoof of the People; and afterwards, by his own private Judgment put him to Death, by throwing him down from the *Tarpeian* Rock; the Magistrates and People standing thereat amazed, and not daring to resist his Fatherly Authority, although they would with all their Hearts, have had that Law for the Division of Land: by which it appears, it was lawful for the Father to dispose of the Life of his Child, contrary to the Will of the Magistrates or People. The *Romans* also had a Law, that what the Children got, was not their own, but their Fathers; although *Solon* made a Law, which acquitted the Son from Nourishing of his Father, if his Father had taught him

no Trade, whereby to get his Living.

Suarez proceeds, and tells us, That in Process of Time, *Adam* had compleat *Oeconomical* Power. I know not what this compleat *Oeconomical* Power is, nor how, or what it doth really and essentially differ from Political: If *Adam* did, or might exercise the same Jurisdiction, which a King doth now in a Commonwealth, then the Kinds of Power are not distinct; and though they may receive an Accidental Difference by the Amplitude, or Extent of the Bounds of the One beyond the Other; yet since the like Difference is also found in *Political* Estates, It follows that *Oeconomical* and *Political* Power, differ no otherwise, than a Little Commonwealth differs from a Great One. Next, saith *Suarez*, *Community did not begin at the Creation of Adam*. It is true, because he had no body to Communicate with; yet *Community* did presently follow his Creation, and that by his Will alone: for it was in his power only (who was Lord of All) to appoint what his Sons should have in *Proper*, and what in *Common*; so that *Propriety* and *Community* of Goods did follow Originally from him; and

and it is the Duty of a Father, to provide as well for the Common Good of his Children, as the Particular.

Lastly, *Suarez* Concludes, That by the Law of Nature alone, it is not due unto any Progenitor, to be also *King* of his *Posterity*. This Assertion is confuted point-blank by *Bellarmino*, who expressly affirmeth; That the first Parents ought to have been Princes of their *Posterity*. And until *Suarez* bring some Reason for what he saith, I shall trust more to *Bellarmino's* Proofs, than to his Denials.

(5.) But let us Condescend a while to the Opinion of *Bellarmino* and *Suarez*, and all those, who place Supreme power in the Whole People; and ask them if their meaning be, That there is but one and the same power in all the people of the World; so that no power can be granted, except all the Men upon the Earth meet and agree, to choose a Governour.

An Answer is here given by *Suarez*, That it is scarce possible, nor yet expedient,

dent, that All Men in the World should be gathered together into One Community : It is likelier, that either never, or for a very short time, that this power was in this manner, in the whole Multitude of Men collected ; but a little after the Creation, men began to be divided into several Commonwealths ; and this distinct power was in each of them.

This Answer of *Scarce possible*, nor yet *Expedient* : —It is likelier begets a new doubt, how this distinct power comes to each particular Community, when God gave it to the whole Multitude only, and not to any particular Assembly of Men. Can they shew, or prove, that ever the whole Multitude met, and divided this power which God gave them in Gross, by breaking into parcels, and by appointing a distinct power to each several Commonwealth? Without such a Compact I cannot see (according to their own Principles) how there can be any Election of a Magistrate by any Commonwealth, but by a meer Usurpation upon the privilege of the whole World. If any think that

that particular Multitudes at their own Discretion, had power to divide themselves into several Commonwealths; those that think so, have neither Reason nor Proof for so thinking; and thereby a Gap is opened for every petty Factious Multitude, to raise a New Commonwealth, and to make more Commonwealths than there be Families in the World. But let this also be yielded them, That in each particular Commonwealth, there is a Distinct Power in the Multitude. Was a General Meeting of a Whole Kingdom ever known for the Election of a Prince? Is there any Example of it ever found in the Whole World? To conceit such a thing, is to imagine little less than an Impossibility. And so by Consequence, no one Form of Government, or King, was ever established according to this supposed Law of Nature.

(6.) It may be answered by some, That if either the Greatest part of a Kingdom, or if a smaller part only by Themselves, and all the Rest by *Proxy*; or if the part not concurring in Election, do after, by a *Tacit Assent* ratifie

tifie the Act of Others, That in all these Cases, it may be said to be the Work of the whole Multitude.

As to the Acts of the Major part of a Multitude, it is true, that by Politick Humane Constitutions, it is oft ordained, that the Voices of the most shall over-rule the Rest; and such Ordinances bind, because, where Men are Assembled by an humane Power; that power that doth Assemble them, can also Limit and Direct the manner of the Execution of that Power, and by such *Derivative Power*, made known by Law or Custom, either the greater part, or two Thirds, or Three parts of Five, or the like, have power to oversway the Liberty of their Opposites. But in Assemblies that take their Authority from the Law of Nature, it cannot be so: for what Freedom or Liberty is due to any Man by the Law of Nature, no Inferiour Power can alter, limit or diminish; no One Man, nor a Multitude, can give away the Natural Right of another. The Law of Nature is unchangeable, and howsoever One Man may hinder Another in the Use or Exercise of
his

his Natural Right, yet thereby No Man loseth the Right of it self; for the Right and the Use of the Right may be distinguished, as Right and Possession are oft distinct. Therefore, unless it can be proved by the Law of Nature, that the *Major*, or some other part, have Power to over-rule the Rest of the Multitude; It must follow, that the Acts of *Multitudes* not Entire, are not Binding to All, but only to such as Consent unto them.

(7.) As to the point of *Proxy*; it cannot be shewed or proved, That all those that have been Absent from Popular Elections, did ever give their Votes to some of their Fellows. I ask but one Example out of the History of the whole World, Let the *Commonweal* be but named, wherever the Multitude, or so much as the Greatest part of it consented, either by Voice or by Procuration, to the Election of a Prince. The Ambition sometimes of One Man, sometimes of Many, or the Faction of a City or Citizens, or the Mutiny of an Army, hath set up or put down Princes; but they have never tarried for this pretended Order by proceeding of the whole *Multitude*.

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Lastly, if the silent Acceptation of a Governour by part of the People, be an Argument of their Concurring in the Election of him; by the same Reason, the Tacit Assent of the whole Commonwealth may be maintained: From whence it follows, that every Prince that comes to a Crown, either by *Succession*, *Conquest*, or *Usurpation*, may be said to be Elected by the People; which Inference is too ridiculous; for in such Cases, the People are so far from the Liberty of *Specification*, that they want even that of *Contradiction*.

(8.) But it is in vain to argue against the Liberty of the People in the Election of Kings, as long as men are persuaded, that Examples of it are to be found in Scripture. It is fit therefore, to discover the Grounds of this Error: It is plain by an Evident Text, that it is one thing to choose a King, and another thing to set up a King over the People; this latter power the Children of *Israel* had, but not the former. This distinction is found most evident in *Deut. 17. 15.* where the Law of God saith,

saith, *Him shalt thou set King over thee, whom the Lord shall choose*; to God must *Eligere*, and the People only do *Constituere*. Mr. Hooker in his Eight Book of *Ecclesiastical Policy*, clearly expounds this Distinction; the words are worthy the citing: *Heaps of Scripture* (saith he) *are alledged, concerning the Solemn Coronation or Inauguration of Saul, David, Solomon and others, by Nobles, Ancients, and the people of the Commonwealth of Israel*; as if these Solemnities were a kind of Deed, whereby the Right of Dominion is given; which strange, untrue, and unnatural conceits, are set abroad by Seed-men of Rebellion, only to animate unquiet Spirits, and to feed them with possibilities of Aspiring unto the Thrones, if they can win the Hearts of the People; whatsoever Hereditary Title any other before them may have. I say these unjust and insolent Positions, I would not mention, were it not thereby to make the Countenance of Truth more Orient. For unless we will openly proclaim Defiance unto all Law, Equity and Reason, we must (for there is no other Remedy) acknowledg, that in Kingdoms Hereditary, Birth-right giveth

giveth Right unto Sovereign Dominion, and the Death of the Predecessor, putteth the Successor by Blood in Seisin. Those publick Solemnities before-mentioned, do either serve for an open Testification of the Inheritor's Right, or belong to the Form of inducing of him into possession of that thing he hath Right unto. This is Mr. *Hooker's* Judgment of the *Israelites* Power to set a King over themselves. No doubt but if the people of *Israel* had had power to choose their King, they would never have made choice of *Joas*, a Child but of seven years old, nor of *Manasses* a Boy of Twelve; since (as *Solomon* saith) *Wo to the Land whose King is a Child*: Nor is it probable they would have elected *Josias*, but a very Child, and a Son to so wicked and Idolatrous a Father, as that his own Servants murdered him; and yet all the people set up this young *Josias*, and slew the Conspirators of the Death of *Amnon* his Father; which Justice of the People, God rewarded, by making this *Josias* the most Religious King, that ever that Nation enjoyed.

(9.) Because it is affirmed, that the People have Power to choose, as well what Form of Government, as what Governours they please ; of which mind is *Bellarmino*, in those Places we cited at first. Therefore it is necessary to Examine the Strength of what is said in Defence of popular Common-weals, against this Natural Form of Kingdoms, which I maintain'd. Here I must first put the Cardinal in mind of what he affirms, in cold Blood, in other Places ; where he saith, *God when he made all Mankind of one Man, did seem openly to signifie, that he rather approved the Government of one Man, than of many.* Again, God shewed his Opinion, when he endued not only Men, but all Creatures with a Natural Propensity to *Monarchy* ; neither can it be doubted, but a Natural Propensity is to be referred to God, who is Author of Nature. And again ; in a Third Place, What Form of Government God confirmed by his Authority, may be gathered by that Common-weal, which he instituted amongst the

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Hebrews, which was not *Aristocratical*, (as *Calvin* saith) but plainly *Monarchical*.

(10.) Now if God, (as *Bellarmino* saith) hath taught us by Natural Instinct, signified to us by the Creation, and confirmed by his own Example, the Excellency of Monarchy, why should *Bellarmino* or We doubt, but that it is Natural ? Do we not find, that in every Family, the Government of One Alone is most Natural ? God did always Govern his own People by Monarchy only. The *Patriarchs*, *Dukes*, *Judges*, and *Kings* were all Monarchs. There is not in all the Scripture, Mention or Approbation of any other Form of Government. At the time when Scripture saith, *There was no King in Israel, but that every Man did that which was Right in his Own Eyes* ; Even then, the *Israelites* were under the Kingly Government of the Fathers of particular Families : For in the *Consultation*, after the *Benjamitical* War, for providing Wives for the *Benjamites*, we find, the Elders of the Congregation bare only Sway.

Judges

Judges 21. 16. To them also were Complaints to be made, as appears by Verse 22. And though mention be made of all the Children of *Israel*, all the *Congregation*, and all the *People*; yet by the Term of *All*, the Scripture means only all the Fathers, and not all the whole Multitude, as the Text plainly expounds it self in *2 Chron.* 1. 2. where *Solomon* speaks unto all *Israel*, to the *Captains*, the *Judges*, and to every Governour, the Chief of the Fathers; so the Elders of *Israel* are expounded to be the Chief of the Fathers of the Children of *Israel*, *1 Kings* 8. 12. *2 Chron.* 5. 2.

At that time also, when the People of *Israel* begg'd a King of *Samuel*, they were Governed by Kingly Power. God out of a special Love and Care to the House of *Israel*, did choose to be their King himself, and did govern them at that time by his *Viceroy Samuel*, and his Sons; and therefore God tells *Samuel*, *They have not rejected Thee, but Me, that I should not Reign over them.* It seems they did not like a King by Deputati-

on, but desired one by Succession, like all the Nations. All Nations belike had Kings then, and those by Inheritance, not by Election : for we do not find the *Israelites* prayed, that they themselves might choose their Own King ; they dream of no such Liberty, and yet they were the Elders of *Israel* gathered together. If other Nations had Elected their own Kings, no doubt but they would have been as desirous to have imitated Other Nations as well in the *Electing*, as in the Having of a King.

Aristotle, in his Book of *Politicks*, when he comes to compare the several Kinds of Government, he is very reserved in discoursing what Form he thinks Best : he disputes subtilely to and fro of many Points, and Judiciously of many Errours, but concludes nothing himself. In all those Books, I find little Commendation of Monarchy. It was his Hap to live in those Times when the *Græcians* abound-
ed with several Common-wealths, who had then Learning enough to make
them

them seditious. Yet in his *Ethicks*, he hath so much good Manners, as to confess in right down words, *That Monarchy is the best Form of Government, and a Popular Estate the worst.* And though he be not so free in his *Politics*, yet the Necessity of Truth hath here and there extorted from him, that which amounts no less to the Dignity of Monarchy; he confesseth it to be First, the Natural, and the Divine Form of Government; and that the Gods themselves did live under a Monarchy. What can a Heathen say more?

Indeed, the World for a long time knew no other sort of Government, but only Monarchy. The Best Order, the Greatest Strength, the Most Stability, and easiest Government, are to be found all in Monarchy, and in no other Form of Government. The New Platforms of Commonweals were first hatched in a Corner of the World, amongst a few Cities of *Greece*, which have been imitated by very few other places. Those very Cities

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were first, for many Years, governed by Kings, untill *Wantonness*, *Ambition*, or *Faction* of the People, made them attempt new kinds of Regiment; all which Mutations proved most Bloody and Miserable to the Authors of them; happy in nothing, but that they continued but a small time.

(II.) A little to manifest the Imperfection of Popular Government, let us but examine the most Flourishing Democracy that the World hath ever known; I mean that of *Rome*. First, for the *Durability*; at the most, it lasted but 480 Years (for so long it was from the Expulsion of *Tarquin*, to *Julius Caesar*.) Whereas both the *Assyrian* Monarchy lasted, without Interruption, at the least twelve hundred Years, and the Empire of the *East* continued 1495 Years.

2. For the Order of it, during these 480 Years, there was not any One settled Form of Government in *Rome*: for after they had once lost the Natural Power of Kings, they could not find

Places, the Temples, and the Capitol it self, with Blood of the Citizens ; the *Social War* was plainly Civil ; the Wars of the Slaves, and the other of the Fencers ; the Civil Wars of *Marius* and *Sylla*, of *Cataline*, of *Cesar* and *Pompey* the *Triumvirate*, of *Augustus*, *Lepidus* and *Antonius* : All these shed an Ocean of Blood within *Italy* and the Streets of *Rome*.

Thirdly, for their Government, let it be allowed, that for some part of this time it was *Popular*, yet it was Popular as to the City of *Rome* only, and not as to the Dominions, or whole Empire of *Rome* ; for no *Democratie* can extend further than to One City. It is impossible to Govern a Kingdom, much less many Kingdoms by the whole People, or by the Greatest Part of them.

(12.) But you will say, yet the *Roman* Empire grew all up under this kind of Popular Government, and the City became Mistress of the World. It is not so ; for *Rome* began her Empire under *Kings*, and did perfect it under

under Emperours ; it did only encrease under that Popularity : Her greatest Exaltation was under *Trajan*, as her longest Peace had been under *Augustus*. Even at those times, when the *Roman* Victories abroad did amaze the World, then the Tragical Slaughter of Citizens at home, deserved Commiseration from their vanquished Enemies. What though in that Age of her Popularity, she bred many admired Captains and Commanders (each of which was able to lead an Army, though many of them were but ill requited by the People?) yet all of them were not able to support her in times of Danger ; but she was forced in her greatest Troubles to create a *Dictator* (who was a King for a time) thereby giving this Honourable Testimony of *Monarchy*, that the last Refuge in Perils of States, is to fly to *Regal Authority*. And though *Romes* Popular Estate for a while was miraculously upheld in Glory by a greater Prudence than her own ; yet in a short time, after manifold Alterations, she was ruined by her Own Hands. *Suis & ipsa*

ipsa Roma viribus ruit : For the Arms she had prepared to conquer other Nations, were turned upon her Self, and Civil Contentions at last settled the Government again into a Monarchy.

(13.) The Vulgar Opinion is, that the first Cause why the *Democratical* Government was brought in, was to curb the Tyranny of Monarchies. But the Falshood of this doth best appear by the first Flourishing Popular Estate of *Athens*, which was founded, not because of the Vices of their last King, but that his Vertuous Deserts were such as the People thought no Man Worthy enough to succeed him ; a pretty wanton Quarrel to Monarchy ! For when their King *Codrus* understood by the Oracle, that his Country could not be saved, unless the King were slain in the Battel : He in Disguise entered his Enemies Camp, and provoked a Common Souldier to make him a Sacrifice for his own Kingdom, and with his Death ended the Royal Government ; for after him was never any more

more Kings of *Athens*. As *Athens* thus for Love of her *Codrus*, changed the Government, so *Rome* on the contrary, out of Hatred to her *Tarquin*, did the like. And though these two famous Commonwealths did for contrary Causes abolish Monarchy, yet they both agreed in this, that neither of them thought it fit to change their State into a *Democracy*: but the one chose *Archontes*, and the other *Consuls* to be their Governours; both which did most resemble Kings, and continued, untill the People, by lessening the Authority of these their Magistrates, did by degrees and stealth bring in their Popular Government. And I verily believe, never any Democratical State shewed it self at first fairly to the World by any Elective Entrance, but they all secretly crept in by the Back-door of Sedition and Faction.

(14.) If we will listen to the Judgment of those who should best know the Nature of Popular Government, we shall find no reason for good men to desire or choose it. *Xenophon*, that brave
brave

brave Scholar and Souldier disallow-
 ed the *Athenian* Common-weal, for
 that they followed that Form of Go-
 vernment wherein the Wicked are al-
 ways in greatest Credit, and Vertuous
 men kept under. They expelled *A-
 ristides* the Just; *Themistocles* died in
 Banishment; *Meliades* in Prison;
Phocion, the most virtuous and just
 man of his Age, though he had been
 chosen forty five times to be their Ge-
 neral, yet he was put to Death with
 all his Friends, Kindred and Servants,
 by the Fury of the People, without
 Sentence, Accusation, or any Cause at
 All. Nor were the People of *Rome*
 much more favourable to their Wor-
 thies; they banished *Rutilius*, *Metellus*,
Coriolanus, the Two *Scipio's* and *Tully*:
 the worst men sped best; for as *Xe-
 nophon* saith of *Athens*, so *Rome* was a
 Sanctuary for all Turbulent, Discon-
 tented and Seditious Spirits. The
 Impunity of Wicked men was such,
 that upon pain of Death, it was for-
 bidden all Magistrates to Condemn
 to Death, or Banish any Citizen, or
 to deprive him of his Liberty, or so
 much

much as to whip him for what Offence soever he had committed, either against the Gods or Men.

The *Athenians* sold Justice as they did other Merchandise; which made *Plato* call a Popular Estate a Fair, where every thing is to be sold. The Officers when they entered upon their Charge, would brag, they went to a *Golden Harvest*. The Corruption of *Rome* was such, that *Marius* and *Pompey* durst carry Bushels of Silver into the Assemblies, to purchase the Voices of the People. Many Citizens under their Grave Gowns, came Armed into their Publick Meetings, as if they went to War. Often contrary Factions fell to Blows, sometimes with Stones, and sometimes with Swords; the Blood hath been suckt up in the Market Places with Sponges; the River *Tiber* hath been filled with the Dead Bodies of the Citizens, and the common Privies stuffed full with them.

If any man think these Disorders in Popular States were but Casual, or such as might happen under any kind of Government, he must know,
that

that such Mischiefs are unavoidable, and of necessity do follow all *Democratical* Regiments ; and the Reason is given, because the Nature of all People is, to desire Liberty without Restraint, which cannot be but where the Wicked bear Rule ; and if the People should be so indiscreet, as to advance Vertuous Men, they lose their Power : for that, Good Men would favour none but the Good, which are always the fewer in Number ; and the Wicked and Vicious (which is still the Greatest Part of the People) should be excluded from all Preferment, and in the end, by little and little, Wise Men should seize upon the State, and take it from the People.

I know not how to give a better Character of the People, than can be gathered from such Authors as lived amongst or near the Popular States ; *Thucydides, Xenophon, Livy, Tacitus, Cicero, and Salust*, have set them out in their Colours. I will borrow some of their Sentences.

“ There

“ There is nothing more uncertain
“ than the People ; their Opinions are
“ as variable and sudden as Tem-
“ pests ; there is neither Truth nor
“ Judgment in them ; they are not led
“ by Wisdom to judg of any thing,
“ but by Violence and Rashness ; nor
“ put they any Difference between
“ things True and False. After the
“ manner of Cattel, they follow the
“ Herd that goes before ; they have a
“ Custom always to favour the Worst
“ and Weakest ; they are most prone
“ to Suspitions, and use to Condemn
“ men for Guilty upon any false Sug-
“ gestion ; they are apt to believe all
“ News, especially if it be sorrowful ;
“ and like Fame, they make it more
“ in the Believing ; when there is no
“ Author, they fear those Evils which
“ themselves have feigned ; they are
“ most desirous of New Stirrs and
“ Changes, and are Enemies to Qui-
“ et and Rest ; Whatsoever is Giddy
“ or Head-strong, they account Man-
“ like and Courageous ; but whatsoe-
“ ver is Modest or Provident, seems
“ sluggish ; each Man hath a Care of
“ his

" his Particular, and thinks basely of
 " the Common Good ; they look up-
 " on Approaching Mischiefs as they
 " do upon Thunder, only every Man
 " wisheth it may not touch his own
 " Person ; it is the Nature of them,
 " they must Serve basely, or Domi-
 " neer proudly ; for they know no
 " Mean. Thus do they paint to the
 Life this Beast with many Heads.
 Let me give you the Cypher of
 their Form of Government ; As it is
 begot by Sedition, so it is nourished
 by Arms : It can never stand without
 Wars, either with an Enemy abroad,
 or with Friends at Home. The only
 Means to preserve it, is, to have some
 powerful Enemies near, who may
 serve instead of a King to Govern
 it, that so, though they have not a
 King amongst them, yet they may have
 as good as a King Over them : For
 the Common Danger of an Enemy
 keeps them in better Unity, than the
 Laws they make themselves.

(15.) Many

vil Tragedy which was acted in that one Sedition between *Marius* and *Sylla*, nay, even by *Sylla's* part alone (not to mention the Acts of *Marius*) were four-score and ten Senators put to Death, fifteen Consuls, two thousand and six hundred Gentlemen, and a hundred thousand others.

This was the Heighth of the *Roman* Liberty ; Any Man might be killed that would. A Favour not fit to be granted under a Royal Government. The Miseries of those Licentious Times are briefly touched by *Plutarch* in these Words. *Sylla* (saith he) fell to shedding of Blood, and filled all *Rome* with infinite and unspeakable Murthers----This was not only done in *Rome*, but in all the Cities of *Italy* throughout, there was no Temple of any God whatsoever, no Altar in any Bodies House, no Liberty of Hospital, no Fathers House, which was not embrued with Blood, and horrible Murthers, the Husbands were slain in the Wives Arms, and the Children in the Mothers Laps ; and yet they that were slain for private Malice, were nothing in respect of those that were Mur-

Murdered only for their Goods-----
 He openly sold their Goods by the Cryer, sitting so proudly in his Chair of State, that it grieved the People more to see their Goods packt up by them to whom he gave, or disposed them, than to see them taken away. Sometimes he would give a whole Country, or the whole Revenues of certain Cities, unto Women for their Beauties, or to pleasant Jesters, Minstrels, or wicked Slaves made free. And to some he would give other Mens Wives by force, and make them be Married against their Wills. Now let *Tacitus* and *Suetonius* be searched, and see if all their cruel Emperours can match this Popular Villany, in such an Universal Slaughter of Citizens, or Civil Butchery. God only was able to match him, and over-matched him, by fitting him with a most remarkable Death, just answerable to his Life; for as he had been the Death of many thousands of his Country-men, so as many thousands of his own Kindred in the Flesh were the Death of him, for he died of an Impostume, which corrupted his Flesh in such sort, that it turned all to Lice; he had many about him to

shift him continually Night and Day ; yet the Lice they wiped from him were nothing to them that multiplied upon him, there was neither Apparel, Linnen, Baths, Washings, nor Meat it self, but was presently filled with Swarms of this vile Vermine. I cite not this to extenuate the Bloody Acts of any Tyrannical Princes, nor will I plead in Defence of their Cruelties; only in the Comparative, I maintain the Mischiefs to a State to be less Universal under a Tyrant King ; for the Cruelty of such Tyrants extends ordinarily no further than to some particular Men that offend him, and not to the whole Kingdom: It is truly said by his late Majesty King *James*, A King can never be so notoriously Vicious, but he will generally favour Justice, and maintain some Order; except in the Particulars wherein his inordinate Lust carries him away. Even cruel *Domitian*, *Dionysius* the Tyrant, and many others, are commended by Historians for great Observers of Justice : A natural Reason is to be rendered for it; It is the Multitude of People, and the abundance of their Riches, which are the only Strength and Glory of every Prince:

Prince : The Bodies of his Subjects do him Service in War, and their Goods supply his present Wants, therefore, if not out of Affection to his People, yet out of Natural Love to Himself, every Tyrant desires to preserve the Lives, and protect the Goods of his Subjects, which cannot be done but by Justice, and if it be not done, the Prince's Loss is the greatest; on the contrary, in a Popular State, every man knows the Publick good doth not depend wholly on his Care, but the Common-wealth may well enough be governed by others though he tend only his Private Benefit, he never takes the Publick to be his Own Business; thus, as in a Family, where one Office is to be done by many Servants, one looks upon another, and every own leaves the Business for his Fellow, until it is quite neglected by all; nor are they much to be blamed for their Negligence, since it is an even Wager, their Ignorance is as great: For Magistrates among the People, being for the most part Annual, do always lay down their Office before they understand it; so that a Prince of a Duller Understanding, by Use and

Experience must needs excell them; again, there is no Tyrant so barbarously Wicked, but his own reason and sense will tell him, that though he be a God, yet he must dye like a Man; and that there is not the Meanest of his Subjects but may find a means to revenge himself of the Injustice that is offered him; hence it is that great Tyrants live continually in base fears, as did *Dionysius* the Elder; *Tiberius*, *Caligula*, and *Nero* are noted by *Suetonius* to have been frightened with Panick fears. But it is not so where wrong is done to any Particular Person by a Multitude, he knows not who hurt him, or who to complain of, or to whom to address himself for reparation. Any man may boldly exercise his Malice and Cruelty in all Popular Assemblies. There is no Tyranny to be compared to the Tyranny of a Multitude.

(16.) What though the Government of the People be a thing not to be endured, much less defended, yet many men please themselves with an Opinion, that though the People may not Govern; yet they may partake and
joyn

joyn with a King in the Government, and so make a State mixed of Popular and Regal Power, which they take to be the best tempered and equallest Form of Government. But the Vanity of this Fancy is too evident, it is a meer Impossibility or Contradiction, for if a King but once admit the People to be his Companions, he leaves to be a King, and the State becomes a Democracy; at least, he is but a Titular and no Real King, that hath not the Sovereignty to Himself; for the having of this alone, and nothing but this makes a King to be a King. As for that Shew of Popularity which is found in such Kingdoms as have General Assemblies for Consultation about making Publick Laws: It must be remembred that such Meetings do not share or divide the Sovereignty with the Prince: but do only deliberate and advise their Supreme Head, who still reserves the Absolute Power in himself; for if in such Assemblies, the King, the Nobility, and People have equal Shares in the Sovereignty, then the King hath but one Voice, the Nobility likewise one, and the People one, and then any two of these Voices should

have Power to over-rule the third ; thus the Nobility and Commons together should have Power to make a Law to bind the King, which was never yet seen in any Kingdom, but if it could, the State must needs be Popular and not Regal.

(17.) If it be Unnatural for the Multitude to chuse their Governours, or to Govern, or to partake in the Government, what can be thought of that damnable Conclusion which is made by too many, that the Multitude may Correct, or Depose their Prince, if need be? Surely the Unnaturalness, and Injustice of this Position cannot sufficiently be expressed : For admit that a King make a Contract or Paction with his People, either Originally in his Ancestors, or personally at his Coronation (for both these Pactions some dream of, but cannot offer any proof for either) yet by no Law of any Nation can a Contract be thought broken, except that first a Lawful Tryal be had by the Ordinary Judge of the Breakers thereof, or else every Man may be both Party and Judge in his own case, which is absur'd once to be thought,

thought, for then it will lye in the hands of the headless Multitude when they please to cast off the Yoke of Government (that God hath laid upon them) to judge and punish him, by whom they should be judged and punished themselves. *Aristotle* can tell us, what Judges the Multitude are in their own case, οἱ πλειστοὶ φαῦλοι χριταὶ περὶ τῶν ἀλλείων, The Judgment of the Multitude in Disposing of the Sovereignty may be seen in the *Roman* History, where we may find many good Emperours Murdered by the People, and many bad Elected by them : *Nero, Heliogabalus, Ottho, Vitellius*, and such other Monsters of Nature, were the Minions of the Multitude, and set up by them, *Pertinax, Alexander, Severus, Gordianus, Gallus, Emilianus, Quintilius, Aurelianus, Tacitus, Probus*, and *Numerianus* ; all of them good Emperours in the Judgment of all Historians, yet Murdered by the Multitude.

(18.) Whereas many out of an imaginary Fear pretend the Power of the People to be necessary for the repressing of the

the Insolencies of Tyrants; wherein they propound a Remedy far worse than the Disease, neither is the Disease indeed so frequent as they would have us think. Let us be judged by the History even of our own Nation : We have enjoyed a Succession of Kings from the Conquest now for above 600 years (a time far longer than ever yet any Popular State could continue) we reckon to the Number of twenty six of these Princes since the *Norman Race*, and yet not one of these is taxed by our Historians for Tyrannical Government. It is true, two of these Kings have been Deposed by the People, and barbarously Murthered, but neither of them for Tyranny : For as a learned Historian of our Age saith, *Edward* the Second and *Richard* the Second were not insupportable either in their Nature or Rule, and yet the People, more upon Wantonness than for any want, did take an unbridled Course against them. *Edward* the Second, by many of our Historians is reported to be of a Good and Vertuous Nature, and not Unlearned : they impute his defects rather to Fortune than either to Council or Carriage of his Affairs, the Deposition

on of him was a violent Fury, led by a Wife both Cruel and unchaft, and can with no better Countenance of Rightbe justified, than may his lamentable both Indignities and Death it self. Likewise the Deposition of King *Richard II*, was a tempestuous Rage, neither Led or Restrained by any Rules of Reason or of State ———— Examine his Actions without a distempered Judgment, and you will not Condemn him to be exceeding either Insufficient or Evil; weigh the Imputations that were objected against him, and you shall find nothing either of any Truth or of great moment; *Hollingshed* writeth, That he was most Unthankfully used by his Subjects; for although, through the frailty of his Youth, he demeaned himself more dissolutely than was agreeable to the Royalty of his Estate, yet in no Kings Days were the Commons in greater Wealth, the Nobility more honoured, and the Clergy less wronged; who notwithstanding, in the Evil-guided Strength of their will, took head against him, to their own headlong destruction afterwards; partly during the Reign of *Henry*, his next Succeslor, whose greatest
Atchieve-

Atchievements were against his own People, in Executing those who Conspired with him against King *Richard*: But more especially in succeeding times, when, upon occasion of this Disorder, more *English* Blood was spent, than was in all the Foreign Wars together which have been since the Conquest.

Twice hath this Kingdom been miserably wasted with Civil War, but neither of them occasioned by the Tyranny of any Prince. The Cause of the Barons Wars is by good Historians attributed to the stubbornness of the Nobility, as the Bloody variance of the Houses of *York* and *Lancaster*, and the late Rebellion, sprung from the Wantonness of the People. These three Unnatural Wars have dishonoured our Nation amongst Strangers, so that in the Censures of Kingdoms, the King of *Spain* is said to be the King of Men, because of his Subjects willing Obedience; the King of *France* King of Asses, because of their infinite Taxes and Impositions; but the King of *England* is said to be the King of *Devils*, because of his Subjects often Insurrections against, and Depositions of their Princes.

CHAP.

CHAP. III.

Positive Laws do not infringe
the Natural and Fatherly
Power of Kings.

- (1.) **R**egal Authority not subject to the Positive Laws, Kings before Laws; the King of Judah and Israel not tyed to Laws. (2.) Of Samuel's description of a King, 1 Sam. 8. (3.) The Power ascribed unto Kings in the New Testament. (4.) Whether Laws were invented to bridle Tyrants. (5.) The Benefit of Laws. (6.) Kings keep the Laws, though not bound by the Laws. (7.) Of the Oaths of Kings. (8.) Of the Benefit of the King's Prerogative over Laws. (9.) the King the Author, the Interpreter, and Corrector, of the Common Laws. (10.) The King, Judge in all Causes both before the Conquest and since. (11.) The King and his Council have anciently determined Causes in the Star-Chamber. (12.) Of Parliaments.

ments. (13.) When the People were first called to Parliament. (14.) The Liberty of Parliaments, not from Nature, but from Grace of the Princes. (15.) The King alone makes Laws in Parliament. (16.) Governs both Houses as Head by himself. (17.) By his Council. (18.) By his Judges.

(1.) **H**itherto I have endeavoured to shew the Natural Institution of Regal Authority, and to free it from Subjection to an Arbitrary Election of the People: It is necessary also to enquire whether Humane Laws have a Superiority over Princes ; because those that maintain the Acquisition of Royal Jurisdiction from the People, do subject the Exercise of it to Positive Laws. But in this also they err ; for as Kingly Power is by the Law of God, so it hath no inferiour Law to limit it.

The Father of a Family governs by no other Law than by his own Will ; not by the Laws and Wills of his Sons or Servants. There is no Nation that allows Children any Action or Remedy
for

for being unjustly Governed; and yet for all this, every Father is bound by the Law of Nature to do his best for the preservation of his Family; but much more is a King always tyed by the same Law of Nature to keep this general Ground, That the safety of the Kingdom be his Chief Law: He must remember, That the Profit of every Man in particular, and of all together in general, is not always one and the same; and that the Publick is to be preferred before the Private; And that the force of Laws must not be so great as natural Equity it self, which cannot fully be comprised in any Laws whatsoever, but is to be left to the Religious Atchievement of those who know how to manage the Affairs of State, and wisely to Ballance the particular Profit with the Counterpoize of the Publick, according to the infinite variety of Times, Places, Persons; a Proof unanswerable, for the superiority of Princes above Laws, is this, That there were Kings long before there were any Laws: For a long time the Word of a King was the only Law; and if Practice (as saith Sir *Walter Raleigh*) declare the Greatness of Authority, even the best
Kings

Kings of *Judah* and *Israel* were not tied to any Law; but they did whatsoever they pleased in the greatest Matters.

(2.) The Unlimited Jurisdiction of Kings is so amply described by *Samuel*, that it hath given Occasion to some to imagine, that it was, but either a Plot or Trick of *Samuel* to keep the Government himself and Family, by frightening the *Israelites* with the Mischiefs in Monarchy, or else a propheticall Description only of the future ill Government of *Saul*: But the Vanity of these Conjectures are judiciously discovered in that Majestical Discourse of the true Law of free Monarchy; wherein it is evidently shewed, that the Scope of *Samuel* was to teach the People a dutiful Obedience to their King, even in those things which themselves did esteem Mischievous and Inconvenient: for by telling them what a King would do, he indeed instructs them what a Subject must suffer; yet not so that it is Right for Kings to do Injury, but it is Right for them to go Unpunished by the People if they do it: So that in this Point it is all one, whether *Samuel* describe a King, or a Tyrant,
for

for Patient Obedience is due to both ;
 no Remedy in the Text against Tyrants,
 but in crying and praying unto God in
 that Day. But howsoever in a Rigorous
 Construction *Samuel's* description be ap-
 plied to a Tyrant ; yet the Words by
 a Benigne Interpretation may agree
 with the manners of a Just King ; and
 the Scope and Coherence of the Text
 doth best imply the more Moderate, or
 Qualified Sense of the Words ; for as
 Sir *W. Raleigh* confesses, all those Incon-
 veniences and Miseries which are reckon-
 ed by *Samuel* as belonging to Kingly Go-
 vernment, were not Intollerable, but
 such as have been born, and are still
 born, by free Consent of Subjects to-
 wards their Princes ; Nay at this day,
 and in this Land, many Tenants by their
 Tenures and Services are tyed to the
 same Subjection, even to Subordinate and
 Inferiour Lords : To serve the King in his
 Wars, and to till his Ground, is not on-
 ly agreeable to the Nature of Subjects,
 but much desired by them ; according
 to their severall Births, and Conditions :
 The like may be said for the Offices of
 Women-Servants, Confectioners, Cooks,
 and Bakers, for we cannot think that the
 G King

King would use their Labours without giving them Wages, since the Text it self mentions a Liberal Reward of his Servants,

As for the taking of the Tenth of their Seed, of their Vines, and of their Sheep, it might be a Necessary Provision for their Kings Household, and so belong to the Right of Tribute: For whereas is mentioned the taking of the Tenth ; it cannot agree well to a Tyrant, who observes no Proportion in fleecing his People.

Lastly, The taking of their Fields, Vineyards, and Olive-trees, if it be by Force or Fraud, or without just Recompence, to the Dammage of Private Persons only, it is not to be defended ; but if it be upon the publick Charge and General Consent, it might be justified, as necessary at the first Erection of a Kingdom ; For those who will have a King, are bound to allow him Royal maintenance, by providing Revenues for the CROWN, Since it is both for the Honour, Profit, and Safety too of the People, to have their King
Glo-

Glorious, Powerful, and abounding in Riches, besides, we all know the Lands and Goods of many Subjects may be oft-times Legally taken by the King, either by Forfeitures, Escheat, Attainder, Outlawry, Confiscation, or the like. Thus we see *Samuel's* Character of a King may literally well bear a mild Sense, for greater probability there is that *Samuel* so meant, and the *Israelites* so understood it; to which this may be added, that *Samuel* tells the *Israelites*, this will be the manner of the King that shall Reign over you: And Ye shall cry because of your King which Ye shall have chosen you; that is to say: Thus shall be the common Custom or Fashion, or Proceeding of *Saul* your King; Or, as the Vulgar Latine renders it, this shall be the Right or Law of your King: not Meaning, as some expound it, the Casual Event, or Act of some *individuum vagum*, or indefinite King, that might happen one day to Tyrannize over them. So that *Saul*, and the constant Practice of *Saul*, doth best agree with the Literal Sense of the Text. Now that *Saul* was no Tyrant, we may note that the People asked a King, as All Nations had.

God answers, and bids *Samuel* to hear the Voice of the People, in all things which they spake, and appoint them a King. They did not ask a Tyrant, and to give them a Tyrant, when they asked a King, had not been to hear their Voice in all things, But rather when they asked an Egge, to have given them a Scorpion: Unless we will say, that all Nations had Tyrants. Besides, we do not find in all Scripture that *Saul* was Punished, or so much as Blamed, for committing any of those Acts which *Samuel* describes: and if *Samuel's* drift had been only to terrifie the People, he would not have forgotten to foretell *Saul's* bloody Cruelty, in Murthering 85 innocent Priests, and smiting with the Edge of the Sword the City of *Nob*, both Man, Woman, and Child. Again, the *Israelites* never shrank at these Conditions proposed by *Samuel*, but accepted of them, as such as all other Nations were bound unto. For their Conclusion is, *Nay, but we will have a King over Us, that We also may be like all the Nations, and that Our King may Judge us, and go out before us to fight our Battels.* Meaning he should earn his Privileges, by doing the work for them,

them, by Judging them, and Fighting for them. Lastly, Whereas the mention of the Peoples crying unto the Lord, argues they should be under some Tyrannical Oppression; we may remember, that the Peoples Complaints and Cries are not always an Argument of their living under a Tyrant. No Man can say King *Solomon* was a Tyrant, yet all the Congregation of *Israel* complain'd that *Solomon* made their Yoke grievous, and therefore their Prayer to *Rehoboam* is, *Make thou the grievous Service of thy Father Solomon, and his heavy Yoke which he put upon us, lighter, and we will serve thee.* To conclude, it is true, *Saul* lost his Kingdom, but not for being too Cruel or Tyrannical to his Subjects, but by being too Merciful to his Enemies; his sparing *Agag* when he should have slain him, was the Cause why the Kingdom was torn from him.

(3.) If any desire the direction of the New Testament, he may find our Saviour limiting and distinguishing Royal Power, *By giving to Cæsar those things that were Cæsar's, and to God those things*

that were God's. *Obediendum est in quibus mandatum Dei non impeditur.* We must obey where the Commandment of God is not hindered; there is no other Law but God's Law to hinder our Obedience. It was the Answer of a Christian to the Emperour, *We only worship God, in other things we gladly serve you.* And it seems *Tertullian* thought whatsoever was not God's was the Emperours, when he saith, *Bene opposuit Cæsari pecuniam, te ipsum Deo, alioqui quid erit Dei, si omnia Cæsaris.* Our Saviour hath well apportioned our Money for *Cæsar*, and our selves for God, for otherwise, what shall God's share be, if all be *Cæsars*. The Fathers mention no Reservation of any Power to the Laws of the Land, or to the People. *S. Ambrose*, in his Apology for *David*, expressly saith, He was a King, and therefore bound to no Laws, because Kings are free from the Bonds of any Fault. *S. Augustine* also resolves, *Imperator non est subiectus Legibus, qui habet in potestate alias Leges ferre.* The Emperour is not subject to Laws, who hath Power to make other Laws. For indeed, it is the Rule of *Solomon*, that *We must keep the King's Commandment,* and

and not to say, *What dost Thou?* because *Where the Word of a King is there is Power*, and all that he pleaseth he will do.

If any mislike this Divinity in *England*, let him but hearken to *Bracton*, Chief Justice in *Henry* the Third's days, which was since the Institution of *Parliaments*, his Words are, speaking of the King, *Omnes sub Eo, & Ipse sub nullo, nisi tantum sub Deo*, &c. All are under him, and he under none, but God only: If he offend, since no Writ can go against him, their Remedy is by petitioning him to amend his Fault; which if he shall not do, it will be Punishment sufficient for him to expect God as a Revenger: let none presume to search into his Deeds, much less to oppose them.

When the *Jews* asked our Blessed Saviour, whether they should pay Tribute, he did not first demand what the Law of the Land was, or whether there was any Statute *against it*, nor enquired whether the Tribute were given by Consent of the People, nor advised them to stay their Payment till they

they should grant it; he did no more but look upon the Superſcription, and concluded, *This Image you ſay is Cæſar's, therefore give it to Cæſar.* Nor muſt it here be ſaid, that *Chriſt* taught this Leſſon only to the conquered *Jews*, for in this he gave Direction for all Nations, who are bound as much in Obedience to their Lawful Kings, as to any *Conquerour* or *Uſurper* whatſoever.

Whereas being *ſubject* to the *Higher Powers*, ſome have ſtrained theſe Words to ſignifie the Laws of the Land, or elſe to mean the Higheſt Power, as well *Ariſtocratical* and *Democratical*, as *Regal*: It ſeems *St. Paul* looked for ſuch Interpretation, and therefore thought fit to be his own Expoſitor, and to let it be known, that by *Power* he underſtood a Monarch that carried a Sword: *Wilt thou not be afraid of the Power?* that is, the Ruler that carrieth the Sword, for *he is the Miniſter of God to thee* ----- for *he beareth not the Sword in vain.* It is not the Law that is the Miniſter of God, or that carries the Sword, but the Ruler or Magiſtrate; ſo they that ſay the Law governs the Kingdom, may as well ſay

the Wisdom of God saith, *By me Kings Reign* : But his meaning must be, that the Laws of Kings are humane Ordinances. Next, the *Governours that are sent by him* ; that is by the King, not by God, as some corruptly would wrest the Text, to justifie Popular Governours as authorized by God ; whereas in Grammatical Construction [Him] the Relative must be referred to the next Antecedent, which is King ; besides, the Antithesis between Supreme and Sent, proves plainly that the Governours were sent by Kings ; for if the Governours were sent by God, and the King be an Humane Ordinance, then it follows, that the Governours were Supreme, and not the King ; Or if it be said, that both King and Governours are sent by God, then they are both equal, and so neither of them Supreme. Therefore *St. Peter's* Meaning is in short, Obey the Laws of the King, or of his Ministers. By which it is evident, that neither *St. Peter*, nor *St. Paul*, intended other Form of Government than only Monarchical, much less any Subjection of Princes to humane Laws.

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That familiar Distinction of the School-men, whereby they subject Kings to the Directive, but not to the Coactive Power of Laws, is a Confession, that Kings are not bound by the positive Laws of any Nation, since the compulsory Power of Laws is that which properly makes Laws to be Laws by binding Men by Rewards or Punishment to Obedience; whereas the Direction of the Law is but like the Advice and Direction which the Kings Council gives the King, which no Man says is a Law to the King.

(4.) There want not those who Believe, that the first Invention of Laws was to bridle and moderate the over-great Power of Kings; but the truth is, the Original of Laws was for the keeping of the Multitude in order: Popular Estates could not subsist at all without Laws, whereas Kingdoms were Govern'd many Ages without them. The People of *Athens*, as soon as they gave over Kings, were forced to give Power to *Draco* first, then to *Solon*, to make them
Laws,

Laws, not to bridle Kings, but themselves; and tho many of their Laws were very severe and bloody, yet for the Reverence they bare to their Law-makers, they willingly submitted to them. Nor did the People give any Limited Power to *Solon*, but an Absolute Jurisdiction, at his Pleasure to Abrogate and Confirm what he thought fit, the People never challenging any such Power to themselves: so the People of *Rome* gave to the *Ten Men*, who were to chuse and correct their Laws for the *Twelve Tables*, an Absolute Power, without any Appeal to the People.

(5.) The reason why Laws have been also made by Kings, was this; when Kings were either busied with Wars, or distracted with publick Cares, so that every private Man could not have Access to their Persons, to learn their Wills and Pleasure; then of necessity were Laws invented, that so every particular Subject might find his *Prince's Pleasure* decyphered to him in the Tables of his Laws, that so there might be no need to resort unto the King; but either for the Interpretation or Mitigation of Obscure

seure or Rigorous Laws, or else in new Cases, for a Supplement where the Law was Defective. By this means both King and People were in many things eased: First, The King by giving Laws doth free himself of great and intolerable Troubles, as *Moses* did himself by chusing *Elders*. Secondly, The People have the Law as a Familiar Admonisher and Interpreter of the King's Pleasure, which being published throughout the Kingdom, doth represent the Presence and Majesty of the King: Also the Judges and Magistrates, (whose help in giving Judgment in many Causes Kings have need to use) are restrained by the Common Rules of the Law from using their own Liberty to the Injury of others, since they are to judge according to the Laws, and not follow their own Opinions.

(6.) Now albeit Kings, who make the Laws, be (as King *James* teacheth us) above the Laws; yet will they Rule their Subjects by the Law; and a King, governing in a settled Kingdom, leaves to be a King, and degenerates into a Tyrant, so soon as he seems to Rule according to his

his Laws ; yet where he sees the Laws Rigorous or Doubtful , he may mitigate and interpret. General Laws made in Parliament, may, upon known Respects to the King, by his Authority be Mitigated or Suspended, upon Causes only known to him. And although a King do frame all his Actions to be according to the Laws, yet he is not bound thereto, but at his good Will, and for good Example : Or so far forth as the General Law of the Safety of the Common-weal doth naturally bind him ; for in such sort only Positive Laws may be said to bind the King, not by being Positive, but as they are naturally the Best or Only Means for the Preservation of the Common-Wealth. By this means are all Kings, even Tyrants and Conquerours, bound to preserve the Lands, Goods, Liberties, and Lives of all their Subjects, not by any Municipal Law of the Land, so much as the Natural Law of a Father, which binds them to ratifie the Acts of their Fore-Fathers and Predecessors, in things necessary for the Publick Good of their Subjects,

(7.) Others there be that affirm, that although Laws of themselves do not bind Kings, yet the Oaths of Kings at their Coronations tye them to keep all the Laws of their Kingdoms. How far this is true, let us but examine the Oath of the Kings of *England* at their Coronation; the words whereof are these, *Art thou pleased to cause to be administred in all thy Judgments indifferent and upright Justice, and to use Discretion with Mercy and Verity? Art thou pleased that our upright Laws and Customs be observed, and dost thou promise that those shall be protected and maintained by thee?* These two are the Articles of the King's Oath, which concern the Laity or Subjects in General; to which the King answers affirmatively. Being first demanded by the Arch-Bishop of *Canterbury*, Pleaseth it you to confirm and observe the Laws and Customs of Ancient Times, granted from God, by just and devout Kings, unto the English Nation, by Oath unto the said People. Especially the Laws, Liberties, and Customs granted unto the Clergy and Laity by the famous King *Edward*. We may observe, in these Words of the Articles
of

of the Oath, that the King is required to observe not all the Laws, but only the Upright, and that with Discretion and Mercy. The Word Upright cannot mean all Laws, because in the Oath of *Richard* the Second, I find Evil and Unjust Laws mentioned, which the King swears to abolish; and in the *Old Abridgment of Statutes*, set forth in *Henry* the Eighth's days, the King is to swear wholly to put out Evil Laws; which he cannot do, if he be bound to all Laws. Now what Laws are Upright and what Evil, who shall Judge but the King, since he swears to administer Upright Justice with Discretion and Mercy (or as *Bracton* hath it) *equitatem præcipiat, & misericordiam*. So that in effect, the King doth swear to keep no Laws, but such as in *His Judgment* are Upright, and those not literally always, but according to Equity of his Conscience, joynd with Mercy, which is properly the Office of a Chancellour rather than of a Judge; and if a King did strictly swear to observe all the Laws, he could not without Perjury give his Consent to the Repealing or Abrogating of any Statute by A[&] of Parliament, which would

would be very mischievous to the State.

But let it be supposed for Truth, that Kings do swear to observe all the Laws of their Kingdom; yet no man can think it reason that Kings should be more bound by their Voluntary Oaths than Common Persons are by theirs. Now if a private person make a Contract; either with Oath or without Oath, he is no further bound than the Equity and Justice of the Contract ties him; for a Man may have Relief against an unreasonable and unjust Promise, if either Deceit, or Error, or Force, or Fear induced him thereunto: Or if it be hurtful or grievous in the performance. Since the Laws in many Cases give the King a Prerogative above common Persons, I see no Reason why he should be denied the Priviledg which the meanest of his Subjects doth enjoy.

Here is a fit place to examine a Question which some have moved, Whether it be a Sin for a Subject to disobey the King, if he Command any thing contrary to his Laws? For satisfaction in this point

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point, we must resolve that not only in Humane Laws, but even in Divine, a thing may be commanded contrary to Law, and yet Obedience to such a Command is necessary. The sanctifying of the Sabbath is a Divine Law ; yet if a Master command his Servant not to go to Church upon a Sabbath-Day, the best Divines teach us, That the Servant must obey this Command, though it may be Sinful and Unlawfull in the Master ; because the Servant hath no Authority or Liberty to examine and judge whether his Master sin or no in so commanding : For there may be a just Cause for a Master to keep his Servant from Church, as appears *Luke 14. 5.* yet it is not fit to tie the Master to acquaint his Servant with his secret Counsels, or present Necessity : And in such Cases, the Servant's not going to Church, becomes the Sin of the Master, and not of the Servant. The like may be said of the King's commanding a Manto serve him in the Wars, he may not examine whether the War be Just or Unjust, but must Obey, since he hath no Commission to Judge of the Titles of Kingdoms, or Causes of War ; nor hath any Subject Power

to Master

Power to Condemn his King for breach
of his own Laws.

(8.) Many will be ready to say, It is a Slavish and Dangerous Condition to be subject to the Will of any One Man, who is not subject to the Laws. But such Men consider not, 1. That the Prerogative of a King is to be above all Laws, for the good only of them that are under the Laws, and to defend the Peoples Liberties, as His Majesty graciously affirmed in His *Speech* after His last Answer to the Petition of *Right*: Howsoever some are afraid of the Name of *Prerogative*, yet they may assure themselves the Case of Subjects would be desperately miserable without it. The Court of *Chancery* it self is but a Branch of the King's Prerogative, to Relieve men against the inexorable rigour of the Law, which without it is no better than a Tyrant, since *Summum Jus, is Summa Injuria*. General Pardons, at the Coronation and in Parliaments, are but the Bounty of the Prerogative. 2. There can be no Laws without a Supreme Power to command or make them. In all *Aristocracies* the Nobles are above the Laws, and in all *Democracies*

cracies the People. By the like Reason, in a Monarchy the King must of necessity be above the Laws; there can be no Sovereign Majesty in him that is under them; that which giveth the very Being to a King, is the Power to give Laws; without this Power he is but an Equivocal King. It skills not which way Kings come by their Power, whether by *Election, Donation, Succession*, or by any other means; for it is still the manner of the Government by Supreme Power that makes them properly Kings, and not the means of obtaining their Crowns. Neither doth the Diversity of Laws, nor contrary Customs, whereby each Kingdom differs from another, make the Forms of Common-Weal different, unless the Power of making Laws be in several Subjects.

For the Confirmation of this point, *Aristotle* saith, That a perfect Kingdom is that wherein the King rules all things according to his Own Will; for he that is called a King according to the Law, makes no kind of Kingdom at all. This it seems also the *Romans* well understood to be most necessary in a Monarchy; for
though

though they were a People most greedy of Liberty, yet the Senate did free *Augustus* from all Necessity of Laws, that he might be free of his own Authority, and of absolute Power over himself and over the Laws, to do what he pleased, and leave undone what he list, and this Decree was made while *Augustus* was yet absent. Accordingly we find, that *Ulpian* the great Lawyer delivers it for a Rule of the Civil Law; *Princeps, Legis solutus est*, The Prince is not bound by the Laws.

(9.) If the Nature of Laws be advisedly weighed, the Necessity of the Princes being above them may more manifest it self; we all know that a Law in General is the command of a Superior Power. Laws are divided (as *Bellarmino* divides the Word of God) into written and unwritten, not for that it is not written at all, but because it was not written by the first Devisers or Makers of it. The Common Law (as the Lord Chancellor *Egerton* teacheth us) is the Common Custom of the Realm. Now concerning Customs, this must be considered, that for every Custom there was a time when it was no Custom; and the first

President we now have, had no President when it began; when every Custom began, there was something else than Custom that made it lawful, or else the beginning of all Customs were unlawful. Customs at first became Lawful only by some Superiour, which did either Command or Consent unto their beginning. And the first Power which we find (as it is confessed by all men) is the Kingly Power, which was both in this and in all other Nations of the World, long before any Laws, or any other kind of Government was thought of; from whence we must necessarily infer, that the Common Law it self, or Common Customs of this Land, were Originally the Laws and Commands of Kings at first unwritten.

Nor must we think the Common Customs (which are the Principles of the Common Law, and are but few) to be such, or so many, as are able to give special Rules to determine every particular Cause. Diversity of Cases are infinite, and impossible to be regulated by any Law; and therefore we find, even in the Divine Laws which are delivered
by

by *Moses*, there be only certain Principal Laws, which did not determine, but only direct the High-priest or Magistrate, whose Judgment in special Cases did determine, what the General Law intended. It is so with the Common Law, for when there is no perfect Rule, Judges do resort to those Principles, or Common Law Axiomes, whereupon former Judgments, in Cases somewhat like, have been delivered by former Judges, who all receive Authority from the King, in his Right and Name to give Sentence according to the Rules and Presidents of Antient Times: And where Presidents have failed, the Judges have resorted to the General Law of Reason, and accordingly given Judgment, without any Common Law to direct them. Nay, many times, where there have been Presidents to direct, they, upon better Reason only, have changed the Law, both in Causes Criminal and Civil, and have not insisted so much on the Examples of former Judges, as examined and corrected their Reasons; thence it is that some Laws are now obsolete and out of use, and the Practice quite contrary to what it was in

Former Times, as the Lord Chancellor *Egerton* proves, by several Instances.

Nor is this spoken to derogate from the Common Law, for the Case standeth so with the Laws of all Nations, although some of them have their Laws and Principles written and established: for witness to this, we have *Aristotle* his Testimony in his *Ethiques*, and in several places in his *Politiques*; I will cite some of them: *Every Law*, saith he, *is in the General, but of some things there can be no General Law* — when therefore the Law speaks in General, and something falls out after besides the General Rule: Then it is fit that what the Law-maker hath omitted, or where he hath erred by speaking generally, it should be corrected or supplied, as if the Law-maker himself were present to Ordain it. The Governour, whether he be one Man, or more, ought to be Lord over all those things whereof it was impossible the Law should exactly speak, because it is not easie to comprehend all things under General Rules — what soever the Law cannot determine, it leaves to the Governours to give Judgment therein, and permit

mits them to rectify whatsoever upon Tryal they find to be better than the Written Laws.

Besids, all Laws are of themselves dumb, and some or other must be trusted with the Application of them to Particulars, by examining all Circumstances, to pronounce when they are broken, or by whom. This work of right Application of Laws is not a thing easie or obvious for ordinary capacities; but requires profound Abilities of Nature, for the beating out of the Truth, witness the Diversity, and sometimes the contrariety of Opinions of the learned Judges, in some difficult Points.

(10) Since this is the common Condition of Laws, it is also most reasonable that the Law-maker should be trusted with the Application or Interpretation of the Laws; and for this cause anciently the Kings of this Land have sitten personally in Courts of Judicature, and are still representatively present in all Courts; the Judges are but substituted, and called the King's Justices, and their Power ceaseth when the King is in place. To this purpose *Bracton*, that learned Chief Justice, in the
Reign

Reign of Henry the Third, saith in express terms ; In doubtful and obscure points the Interpretation and Will of our Lord the King is to be expected ; since it is his part to interpret, who made the Law ; for, as he saith in another place, *Rex, & non Alius debet Judicare, si Solus ad id sufficere possit, &c.* The King, and no body else, ought to give Judgment, if he were able, since by virtue of his Oath he is bound to it ; therefore the King ought to exercise Power as the Vicar or Minister of God : But if our Lord the King be not able to determine every Cause, to ease part of his Pains, by distributing the Burthen to more Persons, he ought to chuse Wise-Men fearing God, &c. and make Justices of them. Much to the same purpose are the words of Edward the First, in the beginning of his Book of Laws, written by his appointment by John Briton, Bishop of Hereford : We will, saith he, that Our own Jurisdiction be above all the Jurisdictions of our Realm, so as in all manner of Felonies, Trespases, Contradts, and in all other Actions personal or real, We have Power to yield such Judgements as do appertain without other Process, wheresoever we know the Right Truth as Judges.

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Neither may this be taken to be meant of an imaginary Presence of the King's Person in His Courts, because he doth immediately after in the same place severally set forth by themselves the Jurisdictions of his Ordinary Courts; but must necessarily be understood of a Jurisdiction remaining in the King's Royal Person. And that this then was no New-made Law, or first brought in by the *Northern* Conquests, appears by a *Saxon Law* made by King *Edgar*, in these words, as I find them in *Mr. Lambert*. *Nemo in lite Regem appellato, nisi quidem domi Jussum consequi, aut impetrare non poterit, sin summo jure domi urgeatur, ad Regem, ut & Omnis aliqua ex parte Allevet, provocato.* Let no man in Suit appeal to the King, unless he may not get Right at home; but if the Right be too heavy for him, then let him go to the King to have it eased.

As the Judicial Power of Kings was exercised before the Conquest, so in those settled times after the Conquest, where in Parliaments were much in use, there was a High-Court following the King, which was the place of Sovereign Justice

Justice, both for matter of Law and Conscience, as may appear by a Parliament in *Edward the First's* time, taking Order, *That the Chancellour and the Justices of the Bench should follow the King, to the end that he might have always at hand Able Men for his Direction in Suits that came before Him.* And this was after the time that the Court of Common-Pleas was made stationary, which is an Evidence that the King reserved a Sovereign Power, by which he did supply the Want, or correct the Rigour of the Common Law; because the *Positive Law*, being grounded upon that which happens for the most part, cannot foresee every particular which Time and Experience brings forth.

(12.) Therefore though the Common Law be generally Good and Just, yet in some special Case it may need Correction, by reason of some considerable Circumstance falling out, which at the time of the Law-making was not thought of. Also sundry things do fall out, both in War and Peace, that require extraordinary help, and cannot wait for the Usual Care of Common Law, the which is
not

not performed, but altogether after one sort, and that not without delay of help and expence of time ; so that although all Causes are, and ought to be referred to the Ordinary Process of common Law, yet rare matters from time to time do grow up meet, for just Reasons, to be referred to the aid of the absolute Authority of the Prince ; and the Statute of *Magna Charta* hath been understood of the Institution then made of the ordinary Jurisdiction in *Common Causes*, and not for restraint of the Absolute Authority, serving only in a few rare and singular Cases: for though the Subjects were put to great damage by *False Accusations* and *Malicious Suggestions* made to the King and His Council, especially during the time of King *Edward* the Third, whilst he was absent in the Wars in *France*, in-
 somuch as in His Reign divers Statutes were made, That provided a one should be put to answer before the King and His Council without due Process ; yet it is apparent the necessity of such Proceedings was so great, that both before *Edward* the Third's days, and in his time, and after his Death, several Statutes were made, to help and order the Proceedings
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of the King and his Council. As the Parliament in 28. Edw. 1. Cap. 5; did provide, *That the Chancelour and Justices of the King's Bench should follow the King; that so he might have near unto him some that be learned in the Laws, which be able to order all such matters as shall come unto the Court, at all times when need shall require.* By the Statute of 37. Edw. 3. Cap. 18. *Taliation* was ordained, in case the *Suggestion to the King* proved untrue. Then 38. Edw. 3. Cap. 9. takes away *Taliation*, and appoints Imprisonment till the King and Party grieved be satisfied. In the Statutes of 17. Ric. 2. Cap. 6. and 15. Hen. 6. Cap. 4. Damages and Expenses are awarded in such Cases. In all these Statutes it is necessarily implied, that Complaints upon just Causes might be moved before the King and His Council.

At a Parliament at Gloucester, 2. Ric. 2. when the Commons made Petition, *That none might be forced by Writ out of Chancery, or by Privy Seal, to appear before the King and His Council, to answer touching Free-bold.* The King's answer was *He thought it not reasonable that He should*

be constrained to send for his Leiges upon
 Cases reasonable: And albeit He did not
 purpose that such as were sent for should an-
 swer [Finalment] peremptorily touching
 their Free-hold, but should be remanded
 for tryal thereof, as Law required: Pro-
 vided always, (saith he) that at the Suit
 of the Party, where the King and His
 Council shall be credibly informed, that be-
 cause of Maintenance, Oppression, or other
 Outrages, the Common Law cannot have
 duly her Course, in such case the Counsel for
 the Party.

Also in the 13th Year of his Reign
 when the Commons did pray, that upon
 pain of Forfeiture, the Chancellour or
 Council of the King, should not after the
 end of the Parliament make any Ordi-
 nance against the Common Law; the
 King answered, Let it be used as it hath
 been used before this time, so as the Rega-
 lity of the King be saved, for the King
 will save His Regalities as His Progeni-
 tors have done.

Again, in the 4th year of Henry the
 Fourth, when the Commons complained
 against Subpœna's, & other Writs, ground-
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ed upon false Suggestions; the King answered, *That he would give in Charge to His Officers, that they should abstain more than before time they had, to send for His Subjects in that manner. But yet (saith He) it is not Our Intention, that Our Officers shall so abstain, that they may not send for Our Subjects in Matters and Causes necessary, as it hath been used in the time our good Progenitors.*

Likewise when for the same Cause Complaint was made by the Commons, *Anno 3. Hen. 5.* the King's Answer was, *Le Roy s'advifera, The King will be advised;* which amounts to a Denial for the present, by a Phrase peculiar for the King's denying to pass any Bill that hath passed the Lords and Commons.

These Complaints of the Commons, and the Answers of the King, discover, That such moderation should be used, that the course of the common Law be ordinarily maintained, lest Subjects be convened before the King and his Council without just cause, that the Proceedings of the Council-Table be not upon every slight Suggestion, nor
to

to determine finally concerning Freehold of Inheritance. And yet that upon cause reasonable, upon credible Information, in matters of weight, the King's Regality or Prerogative, in sending to His Subjects, be maintain'd, as of *Right* it ought, and in former times hath been constantly used.

King *Edward* the First, finding that *Bogo de Clare* was discharged of an Accusation brought against him in *Parliament*, for that some formal Imperfections were found in the *Complaint*, commanded him nevertheless to appear before *Him* and *His Council*, *ad faciendum, & recipiendum quod per Regem & ejus Concilium fuerit faciendum*; and so proceeded to an Examination of the whole *Cause*. 8. *Edw.* 1.

Edward the Third, In the *Star-Chamber* (which was the *Ancient Council-Chamber* at *Westminster*) upon the *Complaint* of *Elizabeth Audley*, commanded *James Audley* to appear before *Him* and *His Council*, and determin'd a *Controversy* between them, touching Lands contain'd in the *Covenants* of her *Joynture*. *Rot. Claus. de an. 41. Ed. 3.*

Henry the Fifth, in a Suit before *Him* and *His Council* for the Titles of the Mannors of *Seere* and *S. Laurence*, in the Isle of *Thenet* in *Kent*, took order for Sequestering the Profits till the *Right* were tryed, as well for avoiding the breach of the Peace, as for prevention of waste and spoil. *Rot. Patin. Anno 6. Hen. 5.*

Henry the Sixth commanded the Justices of the Bench to stay the Arraignment of one *Verney* of *London*, till they had other commandment from *Him* and *His Council*, because *Verney*, being indebted to the King and others, practised to be Indicted of Felony, wherein he might have his *Clergy*, and make his Purgation, of intent to defraud his *Creditors*. 34. *Hen. 6 Rot. 37. in Banco Regis.*

Edward the Fourth and *His Council* in the *Star-Chamber*, heard the Cause of the Master and Poor Brethren of *S. Leonards* in *York*, complaining, that *Sir Huge Hastings*, and others, withdrew from them a great part of their Living, which consisted chiefly upon the having of a
Thrave

Thrave of Corn of every Plough-Land within the Counties of York, Westmerland, Cumberland, and Lancashire. *Ret. Paten. de Anno 8 Ed. 4. Part 3. Memb. 14.*

Henry the Seventh and His Council, in the Star-Chamber, decreed, That Margery and Florence Becket should sue no further in their Cause against Alice Radley, Widow, for Lands in Wolwich and Plumstead in Kent; for as much as the Matter had been heard first before the Council of King Edw. 4. after that before the President of the Requests of that King, Hen. 7. and then lastly, before the Council of the said King. 1 Hen. 7.

What is hitherto affirmed of the Dependency and Subjection of the Common Law to the Sovereign Prince, the same may be said as well of all Statute Laws; for the King is the sole immediate Author, Corrector, and Moderator of them also; so that neither of these two kinds of Laws are or can be any Diminution of that Natural Power, which Kings have over their People, by right of Father-hood, but rather are an Argument to strengthen the truth of

it ; for Evidence whereof, we may in some points consider the nature of Parliaments, because in them only all Statutes are made.

(12.) Though the Name of *Parliament* (as Mr. *Gambden* saith) be of no great Antiquity, but brought in out of *France*, yet our Ancestors, the *English Saxons*, had a Meeting, which they called, *The Assembly of the Wise* ; termed in *Latine*, *Conventum Magnatum*, or, *Presentia Regis, Procerumq; Prelaterumq; collectorum*. The Meeting of the Nobility, or the Presence of the King, Prelates, and Peers Assembled ; or in General, *Magnum Concilium*, or *Commune Concilium* ; and many of our Kings in elder times made use of such great Assemblies for to consult of important Affairs of State ; all which Meetings, in a General Sense, may be termed Parliaments.

Great are the Advantages which both the King and People may receive by a well-ordered Parliament ; there is nothing more expresseth the Majesty and Supream Power of a King, than such an Assembly, wherein all his People acknowledge

knowledg him for Sovereign Lord, and make all their Addresses to him by humble Petition and Supplication ; and by their Consent and Approbation do strengthen all the Laws, which the King, at their Request and by their Advice and Ministry, shall ordain. Thus they facilitate the Government of the King, by making the Laws unquestionable, either to the Subordinate Magistrates, or refractory Multitude. The benefit which accrues to the Subject by Parliaments, is, That by their Prayers and Petitions Kings are drawn many times to redress their just Grievances, and are overcome by their Importunity to grant many things which otherwise they would not yield unto ; for the Voice of a Multitude is easilier heard. Many Vexations of the People are without the knowledg of the King ; who in Parliament seeth and heareth his People himself ; whereas at other times he commonly useth the Eyes and Ears of other Men.

Against the Antiquity of Parliaments we need not dispute, since the more ancient they be, the more they make for the Honour of Monarchy ; yet there be

certain Circumstances touching the Forms of Parliaments, which are fit to be considered.

First, We are to remember, that until about the time of the Conquest, there could be no Parliaments assembled of the General States of the whole Kingdom of *England*, because till those days we cannot learn it was entirely united into one Kingdom; but it was either divided into several Kingdoms, or governed by several Laws. When *Julius Cæsar* landed, he found 4 Kings in *Kent*; and the *British* Names of *Dammonii*, *Durotriges*, *Belge*, *Attrebatii*, *Trinobantes*, *Iceni*, *Silures*, and the rest, are plentiful Testimonies of the several Kingdoms of *Britains*, when the *Romans* left us. The *Saxons* divided us into 7 Kingdoms: when these *Saxons* were united all into a Monarchy, they had always the *Danes* their Companions, or their Masters in the Empire, till *Edward* the *Confessors* Days, since whose time the Kingdom of *England* hath continued United, as now it doth: But for a thousand Years before we cannot find it was entirely settled, during the time of any one King's Reign. As under the *Mercian*

Mercian Law : The *West Saxons* were confined to the *Saxon Laws*; *Essex*, *Norfolk*, *Suffolk*, and some other Places, were vexed with *Danish Laws*; The *Northumbrians* also had their Laws apart. And until *Edward the Confessor's* Reign, who was next but one before the Conqueror, the Laws of the Kingdom were so several and uncertain, that he was forced to cull a few of the most indifferent and best of them, which were from him called *St. Edward's Laws*: Yet some say that *Edgar* made those Laws, and that the *Confessor* did but restore and mend them. *Alfred* also gathered out of *Malmutius* Laws, such as he translated into the *Saxon Tongue*. Thus during the time of the *Saxons*, the Laws were so variable, that there is little or no likelihood to find any constant Form of Parliaments of the whole Kingdom.

(13) A second Point considerable is, Whether in such Parliaments, as was in the *Saxon's* times, the Nobility and Clergy only were of those Assemblies, or whether the Commons were also called ? Some are of Opinion, that though none of the *Saxon* Laws do

mention the Commons, yet it may be gathered by the word *Wisemen*, the Commons are intended to be of those Assemblies, and they bring (as they conceive) probable arguments to prove it, from the Antiquity of some Burroughs that do yet send Burgeses, and from the Proscription of those in *Ancient Demesne*, not to send Burgeses to Parliament. If it be true, that the *West-Saxons* had a Custom to assemble Burgeses out of some of their Towns, yet it may be doubted, whether other Kingdoms had the same usage; but sure it is, that during the Heptarchy, the People could not Elect any Knights of the Shire, because *England* was not then divided into Shires.

On the contrary, there be of our Historians who do affirm, that *Henry* the First caused the Commons first to be Assembled by Knights and Burgeses of their own Appointment, for before his Time only certain of the Nobility and Prelates of the Realm were called to Consultation about the most Important Affairs of State. If this Assertion be true, it seems a meer matter of Grace of this King,

King, and proves not any Natural Right of the People, Originally to be admitted to chuse their Knights and Burgeses of Parliament; though it had been more for the Honour of Parliaments, if a King, whose Title to the Crown had been better, had been Author of the Form of it; because he made use of it for his unjust Ends. For thereby he secured himself against his Competitor and Elder Brother, by taking the Oaths of the Nobility in Parliament: and getting the Crown to be settled upon his Children. And as the King made use of the People, so they, by Colour of Parliament, served their own turns; for after the Establishment of Parliaments by strong hand, and by the Sword, they drew from him the *Great Charter*, which he granted the rather to flatter the Nobility and People, as *Sir Walter Raleigh* in his *Dialogue of Parliaments* doth affirm, in these words: *The great Charter was not Originally granted Legally and Freely; for Henry the First did but Usurp the Kingdom, and therefore, the better to assure himself against Robert his Elder Brother, he flattered the Nobility and People with their Charters; yea, King John, that Confirmed them*

them, had the like respect, for Arthur Duke of Britain was the undoubted Heir of the Crown, upon whom King John Usurped, and so to conclude, these Charters had their Original from Kings de facto, but not de jure——the Great Charter had first an obscure Birth by Usurpation, and was secondly fostered and shewed to the World by Rebellion.

(15.) A third consideration must be, that in the former Parliaments, instituted and continued since King *Henry the First's* time, is not to be found the Usage of any natural Liberty of the People; for all those Liberties that are claimed in Parliament are the Liberties of Grace from the King, and not the Liberties of Nature to the People; for if the Liberty were natural, it would give Power to the Multitude to assemble themselves *When* and *Where* they please, to bestow Sovereignty, and by Pactions to limit and direct the Exercise of it. Whereas, the Liberties of Favour and Grace, which are claimed in Parliaments, are restrained both for Time, Place Persons, and other Circumstances, to the Sole Pleasure of the King. The People cannot

not assemble themselves, but the King, by his Writs, calls them to what place he pleases; and then again scatters them with his Breath at an instant, without any other Cause shewed than his Will. Neither is the whole summoned, but only so many as the King's Writs appoint. The prudent King *Edward* the First, summoned always those Barons of ancient Families, that were most wise to his Parliament, but omitted their Sons after their Death, if they were not answerable to their Parents in Understanding. Nor have the whole People Voices in the Election of Knights of the Shire or Burgesses, but only Freeholders in the Counties, and Freemen in the Cities and Burroughs; yet in the City of *Westminster* all the House-holders, though they be neither Freemen nor Free-holders, have Voices in their Election of Burgesses. Also during the time of Parliament, those Privileges of the House of *Commons*, of freedom of Speech, power to punish their own Members, to examine the Proceedings and Demeanour of Courts of Justice and Officers, to have access to the King's Person, and the like, are not due by any

any Natural Right, but are derived from the Bounty or Indulgence of the King, as appears by a solemn Recognition of the House: for at the opening of the Parliament, when the Speaker is presented to the King, he, in the behalf and name of the whole House of Commons, humbly craves of His Majesty, That He would be pleased to grant them their Accustomed Liberties of freedom of Speech, of access to his Person, and the rest. These Privileges are granted with a Condition implied, That they keep themselves within the Bounds and Limits of Loyalty and Obedience; for else why do the House of *Commons* inflict Punishment themselves upon their own Members for transgressing in some of these points; and the King, as Head, hath many times punished the Members for the like Offences. The Power which the King giveth, in all his Courts, to his Judges or others to punish, doth not exclude Him from doing the like, by way of Prevention, Concurrence, or Excoication, even in the same point which he hath given in charge by a delegated Power; for they who give Authority by Commission, do always retain more than they

they grant: Neither of the two Houses claim an *Infallibility* of not *Erring*, no more than a General Council can. It is not impossible but that the greatest may be in Fault, or at least interested or engaged in the *Delinquency* of one particular Member. In such Cases it is most proper for the Head to correct, and not to expect the *Consent* of the *Members*, or for the Parties peccant to be their own Judges. Nor is it needful to confine the King, in such Cases, within the Circle of any one Court of Justice, who is Supreme Judg in all Courts. And in rare and new Cases, rare and new Remedies must be sought out; for it is a *Rule* of the *Common Law*, *In novo Casu, novum Remedium est apponendum*: and the *Statute* of *Westminst.* 2. cap. 24. giveth *Power*, even to the *Clarks* of the *Chancery*, to make *New Forms* of *Writs* in *New Cases*, lest any Man that came to the *King's Court* of *Chancery* for help, should be sent away without *Remedy*: A *President* cannot be found in every *Case*; and of things that happen seldom, and are not common, there cannot be a *Common Custom*. Though *Crimes Exorbitant* do pose the *King* and *Council* in finding

ing a *President* for a *Condigne Punishment*, yet they must not therefore pass unpunished.

I have not heard that the People, by whose Voices the Knights and Burgeses are chosen, did ever call to an account those whom they had Elected; they neither give them Instructions or Directions what to say, or what to do in Parliament, therefore they cannot punish them when they come home for doing amiss: If the People had any such Power over their Burgeses, then we might call it, The Natural Liberty of the People, with a mischief. But they are so far from punishing, that they may be punished themselves for intermeddling with Parliamentary Business; they must only chuse, and trust those whom they chuse to do what they list; and that is as much liberty as many of us deserve, for our irregular Elections of Burgeses.

(15) A fourth point to be consider'd, is, That in Parliament all Statutes or Laws are made properly by the King alone, at the Rogation of the People, as His Majesty King *James*, of happy Memory,

mory, affirms in his true Law of free Monarchy; and as *Hooker* teacheth us, *That Laws do not take their constraining force from the Quality of such as devise them, but from the Power that doth give them the Strength of Laws: Le Roy le Veult*, the King will have it so, is the Interpretive Phrase pronounced at the King's passing of every Act of Parliament: And it was the ancient Custom for a long time, till the days of *Henry* the Fifth, that the Kings, when any Bill was brought unto them that had passed both Houses, to take and pick out what they liked not, and so much as they chose, was enacted for a Law: but the Custom of the later Kings hath been so gracious, as to allow always of the entire Bill as it hath passed both Houses.

(16.) The *Parliament* is the King's Court, for so all the oldest Statutes call it, the King in *His Parliament*: But neither of the two Houses are that Supreme Court, nor yet both of them together; they are only Members, and a part of the Body, whereof the King is the Head and Ruler. The King's Governing of this Body of the *Parliament*

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we may find most significantly proved both by the Statutes themselves, as also by such *Presidents* as expressly shew us, how the King, sometimes by himself, sometimes by his Council, and other-times by his Judges, hath over-ruled and directed the Judgments of the Houses of *Parliament*: for the King, we find that *Magna Charta*, and the *Charter of Forrests*, and many other Statutes about those times, had only the Form of the Kings Letters-Patents, or Grants under the Great Seal, testifying those *Great Liberties* to be the sole Act and Bounty of the King: The words of *Magna Charta* begin thus; *Henry, by the Grace of God, &c. To all our Arch-Bishops, &c. and Our Faithful Subjects Greeting: Know ye, that We, of Our meer free-Will, have granted to all Free-men these Liberties.* In the same style goeth the *Charter of Forrests*, and other Statutes. *Statutum Hibernie*, made at *Westminster, 9. Februarii 14. Hen. 3.* is but a Letter of the King to *Gerrard, Son of Maurice, Justice of Ireland.* The Statute *de anno Bissextili* begins thus, *The King to His Justices of the Bench, Greeting, &c. Explanaciones Statuti Glocestria,*
made

made by *the King and his Justices only*, were received always as Statutes, and are still Printed amongst them.

The Statute made for Correction of the 12th Chapter of the Statute of *Glocester*, was Signed under the Great Seal, and sent to the Justices of the Bench, after the manner of a Writ Patent, with a certain Writ closed, dated by the King's Hand at *Westminster*, requiring that *they should do, and execute all and every thing contained in it, although the same do not accord with the Statute of Glocester in all things.*

The Statute of *Rutland*, is the King's Letters to his *Treasurer and Barons* of his *Exchequer*, and to his *Chamberlain*.

The Statute of *Circumspecte Agis* runs, *The King to his Judges sendeth Greeting.*

There are many other Statutes of the same Form, and some of them which run only in the Majestick Terms of, *The King Commands*, or, *The King Wills*, or, *Our Lord the King hath Established*,
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or, *Our Lord the King hath ordained: or, His Especial Grace hath granted:* Without mention of Consent of the Commons or People; insomuch that some Statutes rather resemble Proclamations, than Acts of Parliament: And indeed some of them were no other than mere Proclamations; as the *Provisions of Merton*, made by the King at an Assembly of the Prelates and Nobility, for the Coronation of the King and his Queen *Eleanor*, which begins, *Provisum est in Curia Domini Regis apud Merton*. Also a Provision was made 19. Hen. 3. de *Affisa ultime Presentationis*, which was continued and allowed for Law, until *Tit. West. 2. an. 13. Ed. 1. cap. 5.* which provides the contrary in express words: This Provision begins, *Provisum fuit coram Dom. Rege, Archiepiscopis, Episcopis, & Baronibus, quod, &c.* It seems Originally the difference was not great between a Proclamation and a Statute; this latter the King made by *Command* of the Council of the Kingdom. In the former he had but the advice only of his great Council of the *Privy*, or of his *Privy Council* only. For that the King had a great Council, besides his Parliament, appears by a Record of 15. Hen. 4. about

an Exchange between the *King* and the *Earl of Northumberland*: Whereby the *King* promiseth to deliver to the *Earl* Lands to the value, by the Advice of Parliament, or otherwise by the Advice of his Grand Council, and other Estates of the Realm, which the *KING* will assemble, in case the Parliament do not meet.

We may find what Judgment in later times Parliaments have had of Proclamations, by the Statute of 31. of *Hen. cap. 8.* in these words: *Forasmuch as the King, by the Advice of his Council, hath set forth Proclamations, which obstinate Persons have contemned; not considering what a King by his Royal Power may do: Considering that sudden Causes and Occasions fortune many times, which do require speedy Remedies, and that by abiding for a Parliament, in the mean time might happen great Prejudice to ensue to the Realm: And weighing also, that his Majesty, which by the Kingly and Regal Power given him by God, may do many things in such Cases, should not be driven to extend the Liberties, and Supremity of his Regal Power and Dignity, by*

willfulness of froward Subjēts : It is therefore thought fit, that the King with the Advice of his Honourable Council should set forth Proclamations for the good of the People, and defence of his Royal Dignity, as necessity shall require.

This Opinion of a House of Parliament was confirmed afterwards by a second Parliament, and the Statute made *Proclamations* of as great Validity, as if they had been made in *Parliament*. This Law continued until the Government of the State came to be under a Protector, during the Minority of *Edward* the Sixth, and in his first Year it was Repealed.

I find also, that a *Parliament* in the 11th Year of *Henry* the Seventh, did fo great Reverence to the Actions, or Ordinances of the King, that by Statute they provided a Remedy or Means to levy a *Benevolence* granted to the King, although by a Statute made not long before all *Benevolences* were Damned and Annulled for ever.

Mr. *Fuller*, in his Arguments against
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the proceedings of the High-Comission Court, affirms, that the Statute of 2 H. 4. cap. 15. which giveth Power to Ordinaries to Imprison and set Fines on Subjects, was made without the Assent of the Commons, because they are not mentioned in the Act. If this Argument be good, we shall find very many Statutes of the same kind, for the Assent of the Commons was seldom mentioned in the Elder Parliaments. The most usual Title of Parliaments in Edward the 3d, Rich. 2. the three Henries 4, 5, 6. in Edw. 4. and Rich. 3. days, was: *The King and his Parliament, with the Assent of the Prelates, Earls and Barons, and at the Petition, or at the special Instance of the Commons, doth Ordain.*

The same Mr. Fuller saith, that the Statute made against *Lollards*, was without the Assent of the Commons, as appears by their Petition in these Words, *The Commons beseech, that whereas a Statute was made in the last Parliament, &c. which was never Assented nor Granted by the Commons, but that which was done therein, was done without their Assent.*

(17.) How far the King's Council hath directed and swayed in Parliament, hath in part appeared by what hath been already produced. For further Evidence, we may add the Statute of *Westminster*: The first which saith, *These be the Acts of King Edw. 1. made at his first Parliament General, by his Council, and by the Assent of Bishops, Abbots, Priors, Earls, Barons, and all the Commonalty of the Realm, &c.* The Statute of *Bygamy* saith, *In presence of certain Reverend Fathers, Bishops of England, and others of the King's Council, forasmuch as all the King's Council, as well Justices as others, did agree that they should be put in writing, and observed.* The Statute of *Acton Burnel* saith, *The King, for Himself, and by His Council, hath Ordaind and Establisht,*

In Articuli super Chartas; when the Great Charter was confirmed, at the Request of his Prelates, Earls and Barons, we find these Passages. 1. *Nevertheless the King and his Council do not intend by reason of this Statute to diminish the King's Right, &c.* 2. *And notwithstanding all these things before-mentioned, or any part*
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of them; both the King and his Council, and all they that were present at the making of this Ordinance, will and intend that the Right and Prerogative of his Crown shall be saved to him in all things. Here we may see in the same Parliament the Charter of the Liberties of the Subjects confirmed, and a saving of the King's Prerogative: Those times neither stumbled at the Name, nor conceived any such Antipathy between the Terms, as should make them incompatible.

The Statute of Escheators hath this Title, *At the Parliament of our Sovereign Lord the King, by his Council it was agreed, and also by the King himself commanded.* And the Ordinance of Inquest goeth thus, *It is agreed and ordained by the King himself, and all his Council.*

The Statute made at York 9. Edw. 3. saith, *Whereas the Knights, Citizens, and Burgeses desired our Sovereign Lord the King in his Parliament, by their Petition, that for his Profit, and the Commodity of his Prelates, Earls, Barons, and Commons, it may please him to provide remedy; our Sovereign Lord the King desiring*

the profit of his People by the assent of his Prelates, Earls, Barons, and other Nobles of his Council being there, hath ordained.

In the Parliament *primo Edwardi* the Third, where *Magna Charta* was confirmed, I find this Preamble, *At the Request of the Commonalty by their Petition made before the King and His Council in Parliament, by the assent of the Prelates, Earls, Barons, and other Great Men assembled, it was Granted.*

The *Commons* presenting a Petition unto the King, which the King's Council did dislike, were content thereupon to mend and explain their Petition; the Form of which Petition is in these words, *To their most redoubted Sovereign Lord the King, praying the said Commons, That whereas they have pray'd Him to be discharged all manner of Articles of the Eyre, &c. Which Petition seemeth to His Council to be prejudicial unto Him, and in Disinberison of His Crown, if it were so generally granted. His said Commons not willing nor desiring to demand things of Him, which should fall in Disinberison of Him*

Him or His Crown perpetually, as of Escheators, &c. but of Trespasses, Misprisions, Negligences, and Ignorances, &c.

In the time of *Henry the Third*, an *Order or Provision* was made by the King's Council, and it was pleaded at the *Common Law* in Bar to a *Writ of Dower*. The *Plantiffs Attorney* could not deny it, and thereupon the *Judgment* was *ideo sine die*. It seems in those days an *Order* of the Council-Board was either parcel of the *Common-Law*, or above it.

The Reverend Judges have had regard in their *Proceedings*, that before they would resolve or give *Judgment* in new Cases, they consulted with the King's *Privy-Council*. In the Case of *Adam Brabson*, who was assaulted by *R. W.* in the presence of the *Justices of Assize* at *Westminster*, the Judges would have the *Advice* of the *King's Council*: For in a like Case, because *R. C.* did strike a Juror at *Westminster* which passed in an *Inquest* against one of his Friends, *It was adjudged* by all the Council that his right hand should be cut off, and his *Lands and Goods* forfeited to the King.

Green

Green and *Thorp* were sent by Judges of the Bench to the King's Council, to demand of them whether by the *Statute* of 14. Ed. 3. cap. 16. a *Word* may be amended in a *Writ*; and it was answered, that a *Word* may well be amended, although the *Statute* speak but of a *Letter* or *Syllable*.

In the Case of Sir *Tho. Oghtred*, Knight, who brought a *Formedon* against a poor Man and his Wife; they came and yielded to the *Demandant*, which seemed suspicious to the Court, whereupon Judgment was stayed; and *Thorp* said, That in the like Case of *Giles Blacket*, it was spoken of in Parliament, and we were commanded, that when any like Case should come, we should not go to Judgment without good advice: therefore the Judges Conclusion was, *Sues au Conseil, & comment ils voillent que nous devons faire, nous volume faire, & antement nient en cest case. Sue to the Council, and as they will have us to do, we will; and otherwise not in this case.*

(18.) In the last place, we may consider how much hath been attributed to the Opinions of the *Kings Judges* by Parliaments, and so find, that the *King's Council* hath guided and ruled the *Judges*, and the *Judges* guided the Parliament.

In the *Parliament of 28 Hen. 6.* The Commons made Suit, *That William de la Poole, D. of Suffolk, should be committed to Prison, for many Treasons and other Crimes. The Lords of the Higher House were doubtful what Answer to give, the Opinion of the Judges was demanded. Their Opinion was, that he ought not to be committed, for that the Commons did not charge him with any particular Offence, but with General Reports and Slanders.* This Opinion was allowed.

In another Parliament, *31. Hen. 6.* (which was prorogued) in the Vacation the *Speaker of the House of Commons* was condemned in a thousand pound damages, in an Action of Trespass, and was committed to Prison in Execution for the same. When the Parliament was re-assembled, the *Commons* made suit to the *King and Lords* to have their *Speaker* delivered: the *Lords* demanded the
Opinion

Opinion of the Judges, whether he might be delivered out of Prison by Privilege of Parliament? upon the Judges Answer it was concluded, *That the Speaker should still remain in Prison, according to the Law, notwithstanding the Privilege of Parliament, and that he was the Speaker.* Which Resolution was declared to the Commons by *Moyle*, the King's Serjeant at Law; and the Commons were commanded in the King's Name, by the Bishop of *Lincoln*, (in the absence of the Arch-bishop of *Canterbury*, then Chancellor) to chuse another Speaker.

In septimo of Hen. 8. a question was moved in Parliament, *Whether Spiritual Persons might be convented before Temporal Judges for Criminal Cases.* There Sir *John Fineux*, and the other Judges, delivered their Opinion, *That they might and ought to be: and their Opinion was allowed and maintained by the King and Lords, and Dr. Standish, who before had holden it; the same Opinion was delivered from the Bishops.*

If a Writ of Errour be sued in *Parliament* upon a Judgment given in the *Kings Bench,*

Bench, the Lords of the higher House alone, (without the Commons) are to examine the Errours ; the Lords are to proceed according to Law, and for their Judgment therein they are to be informed by the Advice and Counsel of the Judges, who are to inform them what the *Law* is, and so to direct them in their Judgment ; for the Lords are not to follow their own Opinions or Discretions otherwise. So it was in a Writ of Errour brought in *Parliament* by the *Dean* and *Chapter* of *Lichfield*, against the *Prior* and *Covent* of *Newton-Panel*, as appeareth by Record. See *Flower Dew's Case*, P. 1. H. 7. fol. 19.

F I N I S.
