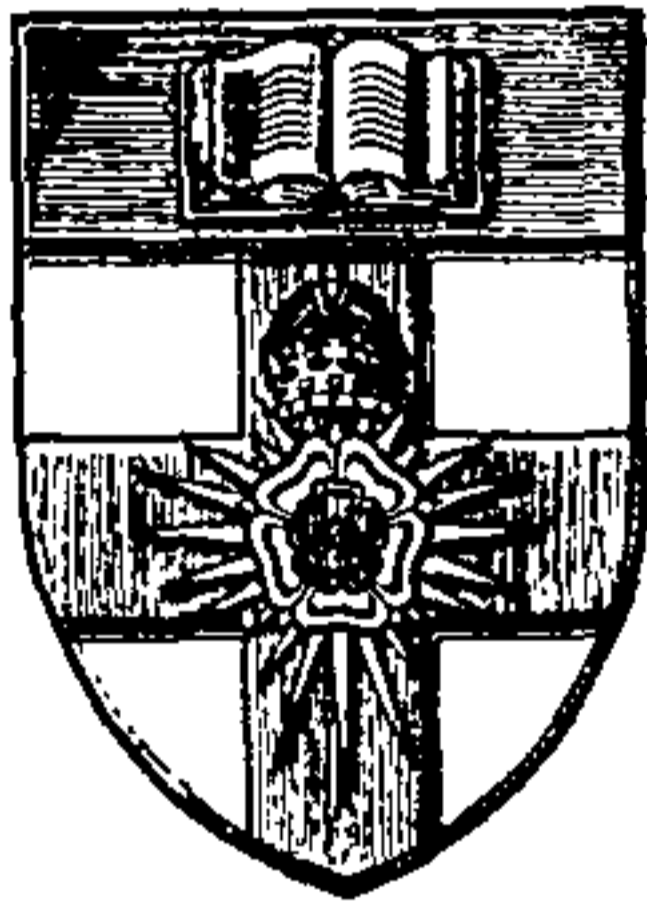


1649.

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A.

Seasonable Discourse,

Wherein is Examined

What is Lawful during the *Confusions* and *Revolutions* of Government ; Especially in the Case of a King deserting his Kingdoms : And how far a Man may lawfully conform to the Powers and Commands of those, who with Various Successes hold Kingdoms.

Whether it be Lawful,

I. In Paying *Taxes*.

II. In Personal *Service*.

III. In Taking *Oaths*.

IV. In giving himself up to a final *Allegiance*.

AS ALSO,

Whether the Nature of War be Inconsistent with the Nature of the Christian Religion.



LONDON, printed, and are to be sold by Rich. Janeway, in Queens-Head Court in Pater-Noster Row. 1689.

The First PART:

Wherein is examined in what things, and how far a Man may lawfully conform to the Power and Commands of those who hold a Kingdom divided by Civil War.

CHAP. I.

The Historical occasion and state of the Question.

1. *The Cases of Right wherefore hard to resolve.*
2. *The Reasons wherefore Men determine not easily the Cases of Civil War.*
3. *Of each Man's Sovereign Allegiance to himself.*
4. *No War can be made without the exercise of Absolute Power for the time during.*
5. *Absoluteness of Power wherein it consists.*

THere can be only three Considerations of the State of War. First, In its beginning: Secondly, In its Continuance, which is most properly its State: And, Thirdly, in its end: From these arise three Questions.

First; What may be the original and justifiable Causes of a Man's forming a Party in the beginning of a War?

Secondly, How far a Man may lawfully submit to, and obey opposite Parties, during the Confusions of War, actually formed and introduced?

Thirdly, What may be lawful for a Man to submit to upon the issue of a War, which may end to the advantage of him who by unjust force hath possess himself of another's Right?

These two latter fall into the compass of this Discourse. The first is a Question apart, to which tho much may be said, yet I hold not the knowledg of it so necessary for those who are the *Achivi*, and of the Rank of the People to whom I now speak. These are Anvils on which all sorts of Hammers discharge themselves; they seldom or never begin a War, but are all concern'd in it after it is begun. Besides, the Difficulties of it are not so great as of these two latter; for the People seldom know the secret Causes of the beginning of a War (which, if known, would quickly take away doubrings) and which is worse, they must come into it afterwards, tho they would not have any at all. Many things will be proved lawful for Men to do in the state and winding up of a War, introduc'd by others, which would not have been so for them in its beginning: so that tho by accident they may begin to put themselves into such a War; yet they cannot

be said to begin the War, or assist to its beginning. Lastly, that Question grows not naturally out of the Historical Ground and Occasion of this Treatise, as presently will appear.

Our Consciences more than our Capacities should put us upon the search of these two Capital Difficulties, that so if occasion should be we might the steadilier stand those Straights and blows of Fortune, to which human Condition lies open, in the Revolution and Confusion of Governments.

Our Fore-Fathers, above one hundred Years ago, were above twenty Years in examining the second Question, and about four Years in the third. *Henry* the Sixth being by force of War deposed (after solemn Oath of Allegiance, both of Parliaments and People) to make way for *Edward* the Fourth; who again, after the like Oaths and Allegiance engaged to him, was as solemnly, and by the same fate of the Sword deposed for *Henry* the Sixth's Right, who after nine Years Imprisonment was re-crowned, and after six Months Reign was again forcibly deposed for *Edward* the Fourth, and stabb'd by his Brother *Richard* Duke of *Glocester*, together with Prince *Edward* King *Henry*'s Son, upon his return from *France* for his Father's Relief. Those two Kings, like the Gods which the *Romans* took in their Enemies Countries, were sometimes led in triumph, and sometimes adored. But that which was somewhat blacker than all this, was the Duke of *Glocester*'s murdering his two Nephews, the young King and his Brother, *Maius e-anim vapere imperium quam expectare*. Yet notwithstanding, particular Men (according to the Calamity of those Times) were by Oaths and Allegiance forc'd to submit to this Injustice; which after another bloody War had its Change, and after 24 Years Confusions and Revolutions, ended peaceably in the Person of *Henry* the Seventh.

Here we see what those Consciences conform'd unto in point of Fact, which usually receives its Motives from Interest or Fear, the *naked Sword* permitting no niceness of Obedience.

§. 1. But neither then nor since hath it been declar'd unto us what in such Cases is lawful to do in matter of Right: Every present Power, whether establish'd or struggling to be establish'd, having this Interest, that they who, *de facto*, are under their Power, should not, during that time, presume to question their Right; *It being some kind of Victory already gained, to have gain'd the repute of the better Cause*.

§. 2. Many other Questions hang upon these, which are all the difficulter, because the subject of them, which is Civil War, consists in Confusion, in which the Minds of Men are floting and divided, according to the variety of Successes and Divisions which Armies make in the places where they and their whole Subsistence are fallen into their Possessions.

§. 3. And let Men argue at as much ease as they please, yet it is certain, that no Man is of such a captivated Allegiance, as by reason of it to engage himself to a Party, believing upon the engagement that he shall be certainly destroyed in it. There is nothing in the Skin (as they say) which will not do its best to save it: And he must be a rare Example who makes not his last Resolution for his own Life, or Subsistence, which is equivalent to Life; and therefore the valiantest and most strictly oblig'd Troops stick not to ask Quarter, when they cannot defend them-

themselves any longer, and are justified for it, even by those for whom they swore to die.

Our Saviour speaks of a time when a Man will sell all he hath for a Sword: And we read of those who a long time ador'd and kiss'd a Goddess fastened to an Oak in a Grove; but when that Tree was ready to fall, no one would come within the shadow of her Statue. And as it is natural for Particulars thus to consult for themselves, so is it as natural for those Armies which have the said Particulars in their Possessions: Wherefore, tho in those cases we may lament our own Miseries, yet we ought not to wonder, that all Master-Powers take such interest in their own Preservations, as to use all means that we recover not a Power to betray them.

§. 4. This consideration obliges even those (who perhaps fight to have Laws sweetned) to exercise for a time that Law which indeed is the sharpest, *viz.* the Martial; and they who fight to free themselves from an absolute Power, are by that obliged for the time to take upon them the absolute (as Dictators did) which Absoluteness consists in these Heads. *In casting off all Recognizance of any Superior or Collateral Power: In waging War; in levying Taxes; in giving Oaths; in making Leagues, and in Treating; in permitting no Appeal; in obliging to all sort of Fidelity; and finally in judging of Life and Death.*

Here's matter enough to perplex Conscience, especially if it should be exercised on it by that Party which is believed to be the unjust; but yet that is not the worst: For by the chance of War the other Party may have the power to embroil our Consciences anew with contrary Oaths and Obligations: And after this the other may be re-establish'd again; and then

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

But the Difficulty paramount is this; *Ut innocens sit animus in tam iratâ fortunâ:* and if we do no more then that which is lawful, we are sure our Consciences will be better than the times.

Thus having stated the Question, I enter into its Terms, and in the first place ask, What that is which we call lawful?

CHAP. II.

What is requisite to make a thing lawful.

- §. 1. *The variety and contrariety of Human Actions, whence.*
2. *The difficulty of finding what is lawful.*
3. *Human Laws whence; and wherefore the Laws of Nature are above ours.*
4. *No Man naturally more a Judge than another of Natures Laws.*
5. *Natures Laws are for inward Goodness and Vertue, and State-Laws for Quiet and Repose.*

PLAIN Reason shews us, that Natural and Mathematical Causes have more Certitude than Civil: For Nature is always uniform and alike in its operations. Hence Fire always burns and never wets; a Stone in the Air naturally

tends downwards, and never stays in the middle. In Mathematical Causes, ordinarily the Forms are such, as have no middle interposed, as betwixt even and odd, there is no *mediūm participationis*, betwixt a right Line and a crooked, there is no middle sort of Line; thus two and two always make four, &c.

1. But Civil or Human Actions proceeding from a mutable and various Principle (the Will) cannot always be alike or uniform; and besides the Will within, human Actions without, are subjected to different Circumstances, and to infinite Encounters: By reason of which their excessive Number, they cannot be foreseen while Men are making Laws. Hence we may understand wherefore it's said. that *Omnis definitio in jure est periculosa*; and that *Summum jus* may be at some time *summa injuria*; as to render a Man his Sword when he is actually mad, &c. And as Circumstance hath Power to change the matter, so in the form of the Action, it leaves in the middle a Latitude and Extent; sometimes inclining to one Extream, sometimes to another.

2. For Example, betwixt that which by Precept we are commanded ever to do, and that which we are commanded never to do, is plac'd *that which is lawful for us now and then to do, or not to do, in matters of our own Right, so far as they seem expedient or not expedient for us*. Thus Joseph is called a just Man, because he thought of divorcing himself from Mary, tho on some Circumstances he would not, &c. But that which perplexes all here is, that this *Licium* leans sometimes more to the one hand, sometimes more to the other; sometimes more to that which is absolutely good, sometimes more to that which is absolutely bad; from whence grow Scruples and Doubtings, whether in such Twilights we really participate more of Light than Darkness, that is, more of Good than of Bad.

3. Human Laws grow most out of these middle things, *ex mediis licitis*: And upon right Examination we shall find, that a Man hath nothing else to dispose of. For we (poor subordinate Vassals) cannot so much as deliberate *de absolutè debitis* & *absolutè illicitis*, for they were in force before Man, Prince or People were in being; and God himself cannot now alter them, they flowing intrinsically either from his Sanctity, Wisdom, & Justice, as he is a Creator and a Governour; or else they flow from Nature, whose Rule (according to God's making of it by that which is in himself) is right Reason and Honesty: This uprightness of Nature, together with the Obligation we have to be subject to it, was not a moment after us, and therefore we could not determine any thing about it; therefore we have not a Legislative Power to alter or diminish any of Nature's Laws.

4. St. Paul tells us of those, who without any after-knowledg. of God's revealed Will or Laws to Man, were condemnable by those of Nature alone; in punishing the Breakers whereof, no Man is naturally more a Magistrate than another: Otherwise what meant Cain, when after his Murder he cried, Whosoever shall find me will slay me?

5. Though humane Laws remember us of these Things, yet it is not as if they gave them their Original and Primary Force of obliging: Yea, Reason of State is not busied so much about inward Piety and Vertue, as it is about publick Quiet and Repose, or those Actions which regard another Man's receiving right or wrong; and hence it is that great prodigality is not so severely punished, as a little Robbery; and that *malus homo potest esse bonus civis*: The Reason

is, because tho he may do himself wrong in his own Rights, yet he may always do other Men right in theirs: Neither is there any clear Reason, wherefore those lesser Sins and Impieties should be punish'd by any but God, who is wisest to know them, justest to weigh the Merit of them, and powerfulest to punish them.

This is the State of God's and of Nature's fixed Laws, to which we are all equally obliged; but our floating and circumstantiated Laws, are only to give a Rule for an equal and a mutual community in those things which God and Nature gave us to dispose of as we would our selves. And now the Question is; First, What Right or Liberty we have naturally in our own Actions? as also, how we were originally invested with lawful possession of the Gifts of Nature? And, Secondly, How our Wills since disposed both of the one and the other? or which is equivalent to both Questions, *That as originally we had and did all by the Laws of Nature, so whether now our State and Condition be such, that we neither have nor can do any thing lawfully, but by permission of humane written Laws?* The following Chapters of this first Part, treat generally of this, as a Ground or Introduction to the Second, where the particular Cases of paying Taxes, serving Personally, Swearing, and final Allegiance to the usurping Party, are more distinctly handled.

C H A P. III.

Of what Things we have a lawful Right to dispose: Or what our Original Rights in them may be before we de facto do dispose of them.

- §. 1. *Concerning our natural Shares in the Earth, and whence came the Community of Things at the beginning.*
2. *Whence the separate enjoiment of Rights in present.*
3. *Concerning the Right which Men had to seize on what they would at the beginning.*
4. *Of Possession and its Original Right, and of Planters in Vacancies.*
5. *Of the Conditions of Plantations, and of Vacancies.*
6. *The natural Right of making last Wills and Testaments of what we possess in our Lives.*

§. 1. **A**S Heaven is inhabited by God and Divine Spirits of inferior Degrees: so is the Earth to be inhabited by Man, and several sorts of Creatures inferiour to him, and that in order to his Use and Dominion. God twice gave us the Earth as a common Stock and Patrimony to live on, after the Creation, and after the Deluge; *Acts 17. v. 26.* Men then lived at ease enough, feeding only on Herbs, and those Things which Nature prepared for them, without their labour. And this state of Community might have lasted still, if we had had but two Qualities which were proper to those Times, *Charity and Simplicity*; of which naked-

ness, and coverings of Beasts-Skins was, and is still an Argument; witness the Inhabitants of the New World, and of the American Isles.

2. But now our Luxury and Excess is such, that it takes up the imploiment of three parts of five, both of Men and Time; so small a number are they who Till the Ground, look to Pasturage, and things necessary to the subsistence of our Lives: Nay, 'tis impossible almost for those who are by Profession occupied in the necessary Imploiments of Life, ever to rise to the Fortune and Honour of those, whose Professions consist in, and subsist by Luxury and Excess: For instance, a Plowman, Miller, Chandler, or the like, never rise to the Fortune and Esteem of exquisite Perfumers, Tavern-keepers, &c.

Out of this we may easily discover the occasion of Mens receding from their original Community, both in moveable and immoveable Goods, That when Men were no longer content to feed on the superficial bounty of the Earth, *aut de sponte natis*, nor to live in Caves, nor to wear Habits made of rude Beasts-Skins, or of the Bark of Trees, but sought a more delicate kind of Life, then there was need of much more Industry than before, which particular Men apply'd to what they seiz'd on in particular. Another Occasion (as *Grotius* hath observed) might be, the distance of their Habitations upon the Peopling of the Earth; which might well hinder their laying up the Fruits of the Earth for a common Stock: As also the defect of Justice and Love, which occasion'd an inequality, as well in labour, as in spending the Fruits of Labour.

3. Wherefore upon these Occasions they began to divide: And tho they had no Rules given them for the *detaile*, and laying out the Parcels of this great Common, the Earth; yet the first Possessors might, without scruple of doing others wrong, place their Bodies where they would, yea, take what, and where they would to serve their Natures: And after their hands had once fastned on any particular thing, no Man could take it from them again, without doing them manifest wrong. Thus an empty Stage is common in every particular Part or Place, till particular Bodies have plac'd themselves; and then the Maxim holds, *In pari jure melior est conditio possidentis*.

4. Possession therefore is the greatest title, which is nothing else but *positio pedis*; as if the Ancients had no other Seal to confirm their Tenures, but the *prints of their Feet*; and good reason too, seeing the Mind is not able to take up a place so well as the Body: For many Mens Wills may concur in (wishing & liking) the same thing, but many Bodies cannot concur to the possessing it. Besides, the Mind cannot set an outward Mark on what it likes, that thereby others might be warned to abstain from it; all which the Body properly doth. *Abraham* and *Lot* going to plant, declared no more than this, *That there was room, or vacancy enough*; and therefore, without further examination or scruple, they knew they might turn to the right-hand or to the left, to possess what they would to themselves.

5. This Vacancy is two-fold. 1. *Natural*. 2. *Civil*. The first is in things which may be possess'd, but actually are not, neither in Property nor Use. Such a Vacancy which is *nullius in bonis*, might be occupied by *Switzers*, who, as *Cesar* saith, would fain have changed their rough Hills for some neater *Campania*. *Civil Vacancy* is, *nbi nec possessio est plenè in homine, nec homo plenè in possessione*; that is, where it is not abso-

absolutely incorporated, as among the roving *Arabians*, and many *Africans*, who possess one place to day, and another to morrow: These, by their frequent Returns, shew that they abandon not the places they remove from, as *derelicta quæ quis in bonis amplius numerare non vult*. We can only say, that their *natural and voluptuary interest* in them, is no way improved. But we may press this Argument very tenderly, lest by the same Reason others conclude, That those Estates which are not competently improved, are derelict and occupiable by others, which would introduce perpetual Confusions; and easily persuade every Man that he could husband his Neighbour's Estate better than himself. However, this is a clear Case for all Planters, that those *Wastes*, or *asperæ montes*, which the Natives make no use of, nor can receive any damage by their being possess'd by others, may be lawfully impropriated by them: *Rectè facta est concessio, quæ est sine damno alterius*, saith the Law.

6. Thus we see how we originally impropriated to our Uses during our living here: But then some may question thus, that when we can have no further use of the things of the World, but are departed it; whether then we have a natural Right to dispose of the Parts of it to whom we please? For it seems unnatural and contradictory, that a Man should act any thing after his Being ceases; which is Reason enough: But then one thing is forgotten, That the dead Man's Gift is made during his Life, tho it have not any effect till Death. And good Reason why it should not be before; for that would be as the French say, *Se despoiller avant que de s'en aller coucher*; which is, for a Man to put off all his Cloaths before he goes to Bed.

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

C H A P. IV.

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

- §. 1. *He who hath nothing by humane positive Law, may yet seek his means of subsistence by the Law of Nature.*
2. *Wherefore one Man may naturally have more than another.*
3. *Whence it is that there was at the beginning, and is still, a tacite Condition of re-assuming our Original Rights in case of extreme or natural necessity for a natural Community.*
4. *Of Christian Community.*
5. *Whether that which is God's here, lies under the same Exceptions of our Necessities, that our Properties do?*

§. 1. **O**ur general Rights surely are not yet all lost, tho all the World be now trampled over, and impropriated in particular Possessions and Rights: there yet remains some common Right, or natural Community among all Men, even in Impropriations; so that that which is necessary for my natural Subsistence

ence and unnecessary to another, belongs justly to me, unless I have merited to lose the Life which I seek to preserve. There were a defect in God's creating of our Natures such as they are, if he did not provide Means to uphold their Beings according to the natural Faculties which he hath given them.

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

Let us judg this Case by those Rules of Justice by which we judg other Cases. If a Father in his Will pass by a Child, or name him, but upon false Causes leaves him nothing; he is notwithstanding (by the equity of the Civil Law) admitted to a Child's part, *à legitima*, and may form his Action *contra testamentum inofficiosum*. Men are all akin, and as we derive one from another, so we cannot expect but to make room one for another, and to let others settle in our places, who may justly expect as much due to them for their natural Subsistence, as was to those who before went out of the World to make place for them, yea, tho they assign them nothing at their departure.

Man were of all living Creatures most miserable, if he might not, during this Life, have that Measure which God would not have an Ox defrauded of. Thus hath every dunghil Fly a right to live, and to remain infectile; which besides Existence, hath Sense, and may not justly be deprived of that its chiefest Felicity, unless it be importunate to a nobler Creature.

2. No Man in Reason can pretend to share in the sweat of another Man's Brows, or that the pains and wasting of another Man's Life, should be for the maintenance of any but his own. Yet tho it be granted, that they who enter'd the World before us, had the means (either by their own industry, or lawful donation of the Fruits of other Mens Industries) to be possess'd of something more than we might in reason expect at our entry, notwithstanding all that is not so properly theirs, but if another by extreme necessity be perishing, and they have above what they can consume in a natural way, then they have no fuller Property in that Plenty than Stewards have, and for this regard they are so called in Scripture; *The Earth is still the Lord's, and the fulness of it*: It is his, for he made it out of his own Matter, and for the fashion of it he us'd not our Aid: Yea, 'tis his Sun still which produces, and his Clouds which drop Fatness: We can only plead the contribution of a little Pains, for that which is our natural share; so that in plain reason we may not expect to be otherwise qualified than a Steward for all that which is not probably necessary for our own subsistence, or for theirs who subsist only by us. Wherefore if *Lazarus*, ready to perish (not by Fault but Misfortune) had taken *Dives* his Crumbs, contrary to his Will, yet he had not sinned, *no more than he who takes something which the Lord hath given him, tho the Steward contradicts it*. But if it so happen, that they be *in pari necessitate*, then *melior est conditio possidentis*: or, as St. Paul's words were when he excited the Churches Charity and Alms, for the Relief of the distressed Members of Christ; *Not* (quoth he) *that ye should be streightned, and they abound*, 2 Cor. 8. 13.

3. The Will of those who first consented mutually to divide the Earth into particular Possessions, was certainly such as receded as little as might be from natural Equity: for written Laws are even now as near as may be to be interpreted

puted by that ; and from hence it is, that in extream and desperate necessity, the ancient Right of using of things, as tho they had still remain'd in common, is revived. 'Tis Necessity which makes Laws, and by consequence ought to be the Interpreter of them after they are made. Hence flows this Legislative Rule, *Leges humana obligant uti factæ sunt, scilicet, cum sensu humana imbecillitatis.* All Admiralties judg this equal, That if Provisions begin to fail in a Ship at Sea, every one may be forc'd to bring out openly, what he laid in for his Passage in particular, that so all might be spent in common : by which distribution it may happen, That they who laid in ten times more than any one else, shall have but an equal share with the rest. In like manner when the Sea breaks in upon a Country, we may dig in the next Grounds to make a Bank, without staying for the owners Permission. In such cases of necessity, *humane Laws do not so much permit, as expound their natural equity* : and that which Men give to those who are so innocently distressed, who borrow Life only from the shadows of Death, *Et pietâ se tempestate tuentur,* is not so properly a Charity to them as a Duty ; and if he be a Christian who gives, perhaps he doth more Charity to himself, than to the Receiver.

4. The Reason of this Christian-charity or Communion, is as far above the natural, as Christ himself was above Nature : This requires an equal beating of all pulses, that as Fellow-members we have a *homogenial sense* and palpitation. By the Rivers of *Babylon*, every one sat down and wept, and all their pleasant Instruments hung together on the sad Willows. Every thing mourned alike for *Ophers*, when his torn Limbs and his Harp were thrown into the River *Hebre*.

Ovid. ——— *Caput Hebre lyræque*

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

We are to divide a cruze of Oyl, and a few handfulls of Meal, with one of Christ's Flock, with an abandon'd Creature, to whom *Nequicquam fundo suspirat nummum in imo.* Perlius. And surely the violation of this *Jus Charitatis*, is no less than theft in those, who being of extended Fortunes never defalcate a *Gibconit's Crust* perhaps for a wandring Angel: These steal even the ship-wrack'd Man's picture from him, which as his whole Inheritance he carried at his Back to move to compassion, and by the insatiable Sea of their Avarice and Luxury, they wrack him over again at Land.

But this free Primitive Communion had, and hath its Bounds and its *quantum* in Contributions, as well as the Natural ; otherwise it might be fraudulent and theiving : For they who possess but a little, would contribute it all, on purpose to share equally with those who possess very much ; which would introduce a visible decay and Ruin in all ; as *Tiberius* rightly observed upon *M. Hortalius* his petitioning the Senate for an Alms for *Augustus Cesar's* sake : *Intendetur inquit sordida, languescet industria, si nullus ex se metus aut spes, & secum omnes aliena subsidia expectabunt, sibi ignavi & nobis graves.* Tacit.

Wherefore in the midst of that Primitive Communion, we find that the Apostles went *Domatim*, from House to House, breaking of Bread, therefore they even then retain'd their Houses in Property: which Property is supposed by the Eighth Commandment, as well as it is by Christian Charity: For no Man can steal, but by invading the right of another: and as for Charity, it is necessary he have something of his own to be able to fulfil its Commands, and to make a dole at his Door: And it is very convenient that he give it rather with his own hand, than by some publique Collectors; For *Charity is heated most with the sense of its own Action*, Mat. 7. 11. Moreover, under the Law the Jews were commanded to love one another as themselves; yet this Command took not away Property then, therefore it takes it not away now. Notwithstanding we owe the use or *usufruct* of our Properties to the distressed, though our selves be at the same time in distress; just as we are commanded by the peril of our own Lives to endeavour to secure our Neighbour's Life; which is yet a charity more transcendent than the other, by how much Life is above livelihood. Though States punish those who out of meer necessity take something out of another's Plenty, yet that proves not the act to be a Sin, or repugnant to Equity or Conscience, but rather repugnant to conveniency of State, lest thereby a Gap might be laid open to Libertinism. Reason of State we know considers not Vertue, so much as publique Quiet and Conveniency, or that Right which is *ad alterum*.

§. We will now consider *those things which are God's*; which yet are not his in such a strict rigorous sence, but that they lie open to the Exceptions of our just Necessities. Hence that which is devoted as a Sacrifice to him, in case of Necessity may be made our Dinner; witness *David's Act*: Wherefore the Consequence of our Saviour's Answer was very strong, when he defended his pulling the Ears of Corn in another's Field; *That if it was lawful for David in his Necessity to eat that Bread which was provided for the Table of God; then how much more was it lawful for him and his Apostles in their Necessities to take a refreshing out of that which belong'd to Man?* The Canon Law saith, That if no other means can be found, the *Vessels of the Altar* may be sold to redeem those Souls who are intral'd in Misery and Captivity: and is there not good reason for it? seeing they serve but for the Souls of Men, and therefore the Souls of Men are precioufer then they: Yea, the Sacrifice it self, to what end is it, but to obtain a State of Piety for us? *Sed. nisi vivamus pie vivere non possumus.* Eras.

C H A P. V.

Concerning the Parties (just or unjust) which by the variety of Success in Civil War, command us and our Subsistence, and reduce us to these extreme Necessities.

Whether for a justifiable Obedience to them, it be necessary for us to assure our selves, that those Parties have a justifiable Cause of War, or Right to command us?

§. 1. *Wherefore difficult for us to assure our Consciences in the Points of Right.*

2. *Whether Prescription make a Right?*

3. *A Cause of War depending on a Matter of Fact, not a certain way of confirming us that we lawfully obey.*

4. *War for Dominion, and for Possession.*

THESE Things being thus stated concerning our own Persons, the lawfulness and transcendent Rights which we have, both by God and Nature, in our selves, and that which is ours; yea, and in case of extreme Misery in others things also, above all those Rights, Priviledges and Obligations which others may pretend upon us; I may the easilier descend now into the bottom of the Question, and speak to the main Parties, whether Just or Unjust, who by the variety of Success, may, one after another, command us and our Estates, and in both reduce us to forementioned extreme Necessity: In which Condition, or Confusion, the Question is, What is lawful for us to do?

I find, that most here seek to satisfy their Scruples in searching; First, *Whether those Parties have lawful Power over us or no?* That so finding the lawfulness of their Right, they may be easilier assured of the lawfulness of their own Obedience. Secondly, *In examining the Cause of their Wars*, whether it be justifiable or no? They supposing, that if the Cause be bad, all Effects which have any dependance on it, must needs be so too. I conceive that these two Considerations serve only to add to the Perplexity of a Mans Conscience, and are not necessary at all for us to be informed of.

§. 1. As for the Point of *Right*, it is a thing always doubtful, and would be ever disputable in all Kingdoms, if those Governours who are in Possession should freely permit all Men to examine their Titles, and those large pretended Rights which they exercise over the People: And though this Party's Title may be as good, or a little better than that Party's, yet a Man in Conscience may still doubt, whether he have *Limpidum titulum*, a just Title or clear Right, especially in those Things which are constituted by so various and equivocal a Principle as the Will of Man is.

Besides, most Governours on purpose take away from us the Means of discovering how they come by their Rights: Insomuch, that though they may really have that Right to which they pretend, yet through the Ignorance we are in, of what may be omitted in their History, either through Fear, Flattery, Negligence,

gence, or Ignorance, it is dangerous for us, upon probable humane Grounds only, to swear their Infallible Right, as is shewed in the following Treatise of Oaths. upon this Ground *Tacitus* saith well, *Tiberii Caji que & Claudii ac Neronis res, florentibus ipsis, ob metum false; postquam occiderant recentibus odiis compositæ sunt.* And if the Party's Rights be but one as good as another's, then his is the best who hath Possession: which generally is the strongest Title that Princes have. A whole Kingdom may be laid waste, before it can be infallibly inform'd concerning the Party's true Rights which they require Men to die for, and to avow by Oath.

2. As for prescription of long time, every Man's Conscience is not satisfied, That that added to Possession makes a true Right. This we know, that it conduces much to Publick Quiet; but the Canonists maintain it against the Civilians, That *Prescription upon an unjust beginning, & ex titulo inhabili, doth, by its continuance of Time, increase, and not diminish the Injustice and Faultiness of the Act*; for the Lapse of Time cannot change the Morality of an Act: It is no Plea in Divinity to argue the Prescription which Sin hath on us as an Excuse: *A Lie is almost as old as Truth; but there is no Prescription against God and Truth.* This concerning the Point of Right.

3. As for the *Point of Fact*, on which we would ground *Matter of Right, or a justifiable Cause*, (*viz.* that such or such Things have been done, or plotted, or advis'd, therefore the other Party may lawfully do this or that) that we know is without end; and ever is perplex'd and difficult to have perfect Intelligence of, especially such as a Man may safely venture his own Life, or take away another's upon it. Wherefore if we may reasonably doubt of the Point of Right, (which yet is a more clear and uniform Thing) then we may be more reasonably perplex'd in the Story of Fact, which depends on so many Accidents, so various Circumstances, both in its Principle (the Will) in its Existence, and in Evidence for the infallible knowledg of it.

From hence therefore I conclude, That we may in this great Case ease ourselves of this vast perplexity in examining, Whether or no the invading Party have a just Title, or Cause, or no? or, Whether he have a juster than he whom he opposes? But here I desire to be rightly understood: For I affirm this, not as if the knowledg of all this were not very convenient, and much to be desired, but that (as it is almost impossible for us to have, in) it is not necessary for us to search after, except in one Case (which comes not out of the historical Occasion of this Discourse) *viz.* in assisting to the beginning of a War. These Negatives shew only what we need *not* ground our Consciences on, in order to a lawful Obedience; but it must be a positive and a clear Principle which we must ground on, if we would be warranted of a just submission to the Orders of one who commands us, perhaps unjustly. For it is a Matter which concerns the Misery of others who never did us wrong.

4. There is a War for Dominion, and a War for Possession. If it be for Dominion, we may contribute our Money, Arms, and Oaths, to the expelling, perhaps, of an Innocent Family: If it be for Possession (which is the worst) then it is for the slavery of thousands of Innocent Families: And before
either.

either can be compass'd, we may assure our selves, that thousands may be as innocently kill'd by the means of them who contribute to the strengthening of an unjust Party. But because I state this Question in a War already form'd, and actually introduc'd upon the People, therefore in answer to this positive Demand, I as positively say, *That for a justifiable Obedience, it is best, and enough for us to consider, Whether the invading Party have us and the means of our Subsistence in his Possession or no.*

CHAP. VI.

To assure our Consciences of a justifiable Obedience during the Confusions or Revolutions of War, it is best and enough for us to consider, Whether the invading Party (just or unjust) have us, or the means of our Subsistence, in their Possessions or no.

§. 1. *Princes themselves, notwithstanding their sworn Leagues one with another, ground their Obligations on the tacit condition of their possessing what they had when they swore.*

FOR entry to the proof of this Chapter, I shall briefly (as a stating of the Question) set down a pertinent Discourse which *Cardinal d'Offat* (*Henry the Fourth of France* his great Agent at *Rome*) held with the Pope, upon this following occasion as himself relates it in his Letter to the King his Master.

The Duke of *Guise* (as is commonly known) form'd a *League or Covenant* against *K. Henry the Third*, which most of the Kingdom of *France* took, and it was to this purpose; That the King was so cold in the Profession of the Romish Faith, that it was in danger to be extinguish'd by the increase which he permitted of the Reformed Religion; especially seeing *Henry the Fourth* (then King of *Navarre*) was of that Religion, and was to succeed to the Crown: Wherefore by the Mediation of *Philip the second of Spain*, the Pope qualify'd the Duke of *Guise*, Head of that *Catholick League*, and (which in point of Government was to set him above the King) avow'd him *Protector of the Catholick Faith in the Kingdom of France*. When *Henry the Fourth* succeeded to the Crown, then this League for security of Religion was most violent; and the *Spaniard* without, hop'd, by nourishing thus the Division within, to carry all for himself at last. To avoid which *Gin*, and to answer all, the King chang'd his Religion, and negotiated by *d'Offat* to be received by the Pope as a dutiful Son of the Church of *Rome*, demanding Absolution for what was past, and making large Promises of due Obedience for the time to come. The King of *Spain's* Interest was, that he should not be received, and thereupon he endeavoured to perswade the Pope, that *Henry* did but dissemble with him, and that under this Disguise he would easily ruin the Romish Religion. Notwithstanding all this, *d'Offat* obtained his Reception, Absolution and Bene-

diction, through the many Protestations, Promises and Presents which he made to his Holiness. Whereupon the *Spaniard's* Designs were in a moment all blown over from *France*, but fell heavier upon the United Provinces; which were so sorely prest, that they apprehended the loss and ruine of their Country, and thereupon implor'd Assistance from King *Henry*, who receiv'd their Ambassadors very graciously, and gave them assurance of Relief. The King of *Spain*, who wanted no good Intelligence in the Court of *France*, immediately remonstrates to the Pope, That his former Intimations concerning *Henry's* dissimulation, did now appear in the face of all the World; and that seeing his Holiness had been so credulous, he knew not now whether they should be able to save the Catholick Faith from being subjected to the Reformed Religion or no. For whereas the *Hollanders* had revolted from him, only because he resolv'd to use the true means for the establishing the Romish Faith among them, and that now he was in a fair way of reducing them [which conduced so much (by his Holiness his own opinion) to the Establishment of the Romish Faith] *Henry* had taken their Party against him in that Work; and that at Paris he had received their Ambassadors to that purpose, altho he knew they were his lawful Subjects, &c.

This startled the Pope not a little, who immediately charged *d'Ossat* for having betrayed him, and put the Church in danger. This Argument was as subtil on the *Spaniard's* side, as changing Religion was on *Henry's*, and therefore *d'Ossat* was not a little perplex'd how to answer it to the advantage of his Master; as also coherently to the Considerations of his former Reception into the Church: but at last he replied, That his Holiness need not wonder how in reason of State those of different Religions might joyn together for Political Ends, without hazard of altering Religion: Thus *David* sought Protection of the *Philistines*, and *Abram* redeemed the sinful *Sodomites*. That he took it to be upon the same ground, that his Holiness himself not long before received a *Persian* Ambassador, who was so far from being a Heretick, that he never pretended to the Name of a Christian. That it was but a plausible Argument which the King of *Spain* used, in complaining of *Henry's* receiving and avowing their Ambassador, especially knowing at the same time that they were Rebels, and could pretend no Right nor Title separate from his Crown: "For Princes (quoth he) when Embassadors are address'd to them, never inform themselves of the Rights and Titles of those Princes from whom they are sent: But whether they have Possession of the force and power of those places, from whence the Embassadors are employed. For it would be an endless Task, and require an infallible true History of the World (which is not to be made by Man) if all the Embassadors before their Receptions, should be oblig'd first to prove clearly to the World the just Right by which their Masters derive those Titles and Jurisdictions which they assume to themselves. This Reply as it settled the Pope's Mind, so the reason of it may well settle ours; and in the first place it may not be amiss to see what the Opinion of Princes themselves may be concerning it.

1. It is evident that most Contracts and Oaths made betwixt Political or Publick Persons, are made in this Political Sense, viz. with a tacit condition of holding their Possessions. And therefore the World wonders not that the King
of

of *England* having sworn a League with the King of *Spain*, expressly also as he was King of *Portugal*, did notwithstanding since receive the Embassadors from this new King of *Portugal*; and that without being joined either in *England* or *Spain* to have broken his former Oath and League. The ground too much on matter of Fact, *Grotius* in his Treatise *de Legationibus* judges the Point of Right; where, after he hath shewn how they, who are partly Subjects, and partly not, have a Right of Embassy for that part by which they are Subjects, he descends to those places which are divided by Civil War; in which case it is natural for each party to preserve it self by all means it can, so usually. Correspondence abroad by Embassy is one means which is not omitted: and the Rule which States have for this case is, *That in regno diviso, gens una pro tempore quæ sua gentes habetur.* The ground and tacit condition wherefore several States contract one with the other, is (according to that Author) the consideration of the Power which each Kingdom hath to afford benefit one to the other: so that the Contract is rather with the places, than with the Persons. Hence the same Author saith, *Reges qui regnis exuti sunt, cum aliis Regni bonis etiam jus legandi perdididerunt.* As this may sound harshly, so it ought to have good Reason and Authority to countenance it. It is not enough to object, That such tacit Conditions are not proper to, nor consistent with the nature of Oaths (which afterwards is refuted.) For they who consider those admirable Chapters of the 18th of *Jeremy*, ver. 7, 8, 9, 10. *Ezek.* 33. v. 13, 14. will find the same in God's declared Will, tho' positively express, which is Argument enough for us, as is largelier proved hereafter: *Vid. p. 2. c. 3. §. 2.*

Thus we see by what ground of Right, or defect in Possession Princes disavow one another, though they be mutually oblig'd by solemn Oaths, which is the greatest tie that Princes or just Governours can have upon their Subjects. Now I conceive I may aptly speak to Subjects obeying an usurping Power, after an Obligation of Allegiance to another Power.

The Second P A R T.

Wherein is examined;

1. Whether a Man may lawfully pay Duties or Taxes to an usurping, or unjust Party?
2. Or whether he may lawfully serve such a Party personally?
3. Or whether he may lawfully swear Fidelity to such a Party during the War.
4. Or whether he may lawfully swear a final Allegiance and Subjection to such a Party after the War.

C H A P. I.

Whether a Man may lawfully, and with a good Conscience, pay Taxes to an Usurping or unjust Party during the War?

1. What was meant by paying Tribute to Cæsar.
2. In what case a Man at the beginning of a War may contribute to it, though he finds not its Cause good.
3. The manner of a Levy.
4. We cannot properly scruple at that which is out of our Power.
5. Of the condition of those who live upon Frontiers.
6. What Liberty have we when the right Governor declares, that he will not have us pay any thing to the invading Party: Likewise, whether any Law but that which derives immediately from God, doth indispensably oblige the Conscience?

IN the first Part the ground for all the particular Questions in this is laid and treated generally, but here we come to closer and more particular Proofs: and first, of *Tribute and Taxes*.

There are many, who not finding this Liberty in their Consciences unnecessarily choose rather to give their Bodies up to restraint, and to abandon their whole Means of subsistence in this World, both for themselves and their Children, which ought not fondly to be done, unless we would be worse than Infidels, as *Saint Paul* saith.

Ob. They Object, that they know not whether the Monies they give, may not furnish to the destruction of many Innocents, and perhaps of the just Magistrate himself; That though a Man may give away his own as he pleases, yet not in this case, when it is to the prejudice of another, &c.

They who thus scruple, are in Conscience oblig'd thus to suffer, because they have not Faith to do otherwise. But the Question now to be examined, is, *Whether these be necessary Scruples in themselves, and such as admit of no Exception or Liberty?* Perhaps upon examination we may find these Scruples to be like Scandals, whereof some are rather taken than given: And therefore to state the Question aright, I shall paraphrase a little upon another Question which was propounded to our Saviour; It may possibly appear to be the same with this, though propounded with more subtilty and malice.

The *Scribes and Pharisees* sought two ways to entrap our Saviour; one was, as if he had blasphemously taught a new Religion, and a new God, (*viz.* himself.) They hop'd the People would be provok'd to stone him for this, according to *Deut. 13*. The other was to bring his Actions into the compass of Treason, as if he could not lead great Multitudes after him without Traiterous Designs. But this Gin fail'd too, because the Multitude which followed him

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

Q. 1 *Is it lawful for us to pay Tribute to Cæsar?* which was as much as to say; We who are descended from *Abraham*, and are the peculiar People, to whom God hath given the large Priviledges of the Earth, at home to bathe our selves in Rivers of Milk and Honey, to have full Barns and many Children; yea, that God himself will be ador'd in no other place of the World, but at this our *Jerusalem*; and that abroad we should triumph over the barbarous and uncircumcised World, by virtue of that Militia which he never order'd for any but our selves: How are we then in Duty or Conscience to submit now to the Ordinances of the uncircumcised *Roman*? Or what right can he have to exercise supreme Jurisdiction over us the priviledg'd Seed of *Abraham*, by levying Taxes on our Estates and Land? (which God himself laid out for us) by which means he holds this very Temple in slavery, and insults over our Consciences and Religion, by defiling our very Sacrifices with the mixture of impure Blood, which as they are the price of our Souls, and a Tribute far above *Cæsars* (payable in no other place but this Temple which God himself built) so our Blood ought not to seem too dear to be sacrificed for the liberty of these Altars. And tho' the *Roman* State could pretend right, yet what can this *Cæsar* pretend? Every mans Conscience knows, that it was but the other day he usurp'd over the Senate, in which resides the true Jurisdiction of *Rome*: And if that were otherwise, yet how can he pretend to a title, unless Poison be a Pedegree, or violent Usurpation a just Election; by which he who is the greatest Thief in the world, would pass now for the most Sovereign and Legislative Prince? *How then are we in Conscience oblig'd to pay Tribute to this Cæsar?* Though these Lawyers thought in their Consciences, that they were not truly oblig'd to pay it, and that our Saviour likewise as a Jew, thought so too, yet they supposed he durst not say so much in the crowd, nor yet deny it, by shifting it off in silence, lest the *Roman* Officers should apprehend him. But when our Saviour shew'd them *Cæsar's* face upon the Coin, and bad them render to *Cæsar* that which was *Cæsars*, and to God that which was Gods, his answer ran quite otherwise: Not as some would have it, that by a subtilty he answerd nothing to the point propos'd; for then the sense of the whole Text would sound very ill in such terms, *viz.* That if there be any thing due to *Cæsar*, pay him it; and if any thing be due from you to God, then pay it likewise. This had been a weakning of God's right, for *Cæsars*, and to have left a desperate doubting in a necessary Truth. 'Tis beyond all Cavil, that our Saviour's Opinion was positive for paying of Tribute to that very *Cæsar*, because *de facto* he did pay it; and the plain reason of it appears evidently in this his Answer: *Cæsar's* face was upon the Coin, that is to say, *Cæsar* by Conquest was in possession of that Coin, by possessing the place where he oblig'd them to take it; coining of Money being one Prerogative of Sovereign Power.

And now to answer more particularly to the forementioned objections at the beginning of the Chapter.

A. In the first place I distinguish betwixt *Perferre & inferre bellum*: The one is active, and properly at the beginning of a War, and in a place where yet no War is, and where its cause only, and not its Effects can be consider'd: In this case every thing ought to be very clear for warrant of a man's Conscience, because of the Calamities which he helps to introduce, and is in some manner Author of. The other is *Passive*, and there where War, or the power of War is actually formed, which is the case of this Discourse.

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

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

§. 3. The manner of the Levy is here principally to be considered. For if the person taxed be not for the time in *the full possession* of him whose cause he scruples at, and that he have not a *probable fear* of extreme danger, nor as *probable assurance* that without his help, the thing demanded, *nor its value* can be taken from him, then there's little excuse remains for the Act, because the said Act, (which his Conscience dislikes) participates more of *Action* than of *Passion*.

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

§. 4. By this its apparent what a groundless scruple it is for a man thus tax'd, to say, *He knows not to what evil they may employ the Money so put into their desperate hands*: For this supposes a gift, and a man's proper voluntary Act; of which indeed he is always to be scrupulous, because it proceeds from that Principle which is totally in his own power: whereas other men's actions are as far out of our power as *Winds and Tempests* are; to which two as we contribute nothing, so we cannot properly be scrupulous in our Consciences concerning their bad Effects.

For further proof, I might aptly reflect on those Arguments which were discuss'd at the beginning of the first part, concerning the transcendent Right
which

which we naturally have in the preservation of our selves, and of those things without which we cannot be preserved: As also on the high privilege of extreme necessity, nature it self being more intent to the preservation of particular than of publick bodies, which are made out of particulars, and as much as may be for the particular ends and preservation of each singular, no man obliging himself to any particular Society to this or that Country, without the consideration of Self-preservation, according to the right of the more general Society of mankind. *Vid. Par. 1. c. 1. §. 3.*

§. 5. Thus much concerning those who are fully possess'd by the unjust invading power: Now I shall speak to the condition of those who live upon Frontiers, whose condition is more ticklish and deplorable, because they are not fully possess'd; nor taken into the line of either party. These live as it were in the Suburbs of a Kingdom, and enjoy not the security or privileges of others. Though they can owe true Allegiance but to one party, yet they may lawfully contribute to both: For though they be but partly possess'd by one and by the other, in respect of their sudden abandoning them, yet *both Parties have the Power of destroying them wholly.* Wherefore those former reasons which justify those fully possess'd, do also acquit the payments of these; for their Condition here is more calamitous, seeing they are really but Tenants at will, expos'd to a perpetual Alarm, and that both Parties wound one the other only through their sides.

6. The last Consideration in this Scruple, is of the *Wills of them whom we acknowledge our lawful Governours, viz.*

Obj. When they declare to us that they will not permit us to pay any thing to their Enemies.

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

Quest. I would not here willingly dispute whether any Law but that *which derives immediately from God, doth indispensibly oblige the Conscience?* For there is but one Law-giver who can save and destroy the Soul for the observation or violation of Laws, and that is God, who therefore hath the sole power of obliging consciences to Laws as the Lord of them, through his creating, governing and moving them, *Isa 43. 22. James 4. 12.* There is one Lawgiver who is able to save and destroy: Who art thou that judgest another? Princes cannot by their commands change the nature of human condition, which is subject naturally to those forementioned changes; this were to pretend to a power of obliging us to moral impossibilities and repugnances in the reason of Government. And though those political Commands were as Laws, yet they ought not to be made, nor to be obliging, but according to the Legislative Rule, which is *cum sensu humane imbecillitatis.* This is that which usually is called the *Presumptive Will* of a Governour, or the mind of a Law: For in extreme necessity it is to be presumed, that both their Wills recede from the rigour of what they have declared, rather than by holding to that which is their Right, and introduce all misery and confusion, without receiving any benefit

thereby themselves. Neither are such Commands without their sense and profit; tho' they be not positively obey'd. For thereby Governours shew to all the World, that they renounce no part of their right, no though it be there where they cannot exercise any part of their just power. Secondly, they may thereby help to retard their Subjects from being forward in giving admittance to their Enemies, or in being actively assisting to them, but rather to themselves; besides which sense, there can be no sense. For if they mean by those Commands, That they would not have their Enemies strengthened or advantag'd by them, and withal, mean that they would not that their Subjects should submit themselves at all to those Usurpers, though it were then when they and all their subsistence are absolutely possess'd by them; I say then, that these are Commands which dash against themselves, and the one countermands the other. For if they refuse to submit in such a case, then they do that which advantages their Enemies: Because at that time they will take all, whereas in case of submission they ask but a part. In all Wars there are always some by whose disaffections Enemies gain more, than by their compliance, just as Physicians do by distempers. Though by after-variety of successes the just Governours should recover that place which so submitted to the power of their Enemies, and for that reason should punish those who were ployable to extreme necessity; yet it follows not upon that, That they who so conformed, sinned, or did that which was absolutely unlawful. For we know Reason of State oft calls for Sacrifices where there is no fault to expiate: Ostrocism and Jealousie make away with those who are known to deserve most: *In republicâ idem est nimium & nihil mereri*: But in right (which is the term of this question) the just Governour ought to look upon them as more unfortunate than faulty: And perhaps in equity he ought to consider, that the original fault of all might possibly be on his part, God sometimes punishing the People for the Prince, and sometimes the Prince for the people: But of this more shall be said in the following Treatises of New-Allegiance, and of opposite Oaths.

CHAP. II.

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

THe answer to this question is very present, and Negative; for here action is required to an end which our Consciences allow not. Our Estates are separate from us, and therefore may be had without us, or without our wills; but our Persons are our selves, and therefore cannot be had, nor act without us, and therefore a man hath not the same liberty in the one as in the other.

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

First, when it is in order to a just and necessary action, which concerns not the opposing of the just party at all, but only our own necessary preservation: in which case we consider the unjust Governour abstractively,
not

not as a Governour, but as a man. Suppose the case were such, that if the lawful Governour himself were with us, he would probably command us the same thing: and though perhaps he would not command it, yet we might lawfully put our selves into that action against his will; as if the *Turk*, or any other common Enemy should invade those Provinces, which the unjust Party hath divested the just of: For such an Enemy would deprive one as well as the other: Wherefore betwixt two unjust Parties, it's better to follow him who is in possession, especially if his Government be probably better for the Society and Religion of mankind: and as for the just Governour, he must consider that such actions are not so much *contra & præter suam voluntatem*.

The second case relates in some manner to the opposing of our Lawful Magistrate, but not by a direct intention. For example, when we see much cruelty exercised upon the continuance of a War, and probable ruine of those Places where the Armies seek one another; then if the said Armies fall into our Quarters, and we be summon'd to assist the unlawful Party, we may then Arm our selves, not for him, but for our selves; not in any regard of the cause of the War, but of its effects, which are *Destruction of life, or of livelihood*. In this case Nature helps us to put on our Arms, and shews us the way to the place where we may redeem our lives, and find a Remedy, though it be in our very Disease.

Ob. But is not this to do evil to advance our own good, to cut the Throats of those whose Innocency our own Consciences absolves? Can our fears warrant us to take away other mens rights? *Cato habet potius quàm creat. Sen.* How then can any of this be lawful?

Ans. Here I confess lies the knot of the scruple; but yet by the third Treatise of the *Lawfulness of some War*, Chap. 2. it is clearly evinc'd, *How Innocents may be innocently kill'd*, and this Objection goes no further, nay, not so far as that which is there cleared: For Children and Babes could never threaten us with the sad effects of War, yet we see how they may be innocently destroyed by the course of War. For Nature commends me to my self for my own protection and preservation, and that, not as if I had not that right of defending my self, unless they were first faulty who threaten me the danger. For though they fight *bonâ fide* on their side, and ignorantly take me to be another kind of person than I really am (just as men passionately distracted and in dreams use to do) yet I am not for this reason necessarily oblig'd to desert my self, nor to suffer all which they prepare probably to inflict upon me, no more than I am when another mans irrational beast or dog falls upon me. *Governors of men are like keepers of beasts*; Every man as he is an Animal, participating half with the brute. *Alterum nobis cum Diis, alterum cum bestiis commune est, saith Salust.* When an irregular passion breaks out in a State, an irrational Beast hath broke out of his Grate or Cave, and puts the Keeper to a great deal of trouble, and those whom he meets with in the way in a great deal of danger. If he invade any one, he may be kill'd whether the Keeper please or no, although whilst he kept his Cave quietly he might not be stirr'd without his permission. It is a known case, that if a man unjustly assault another, and be slain in the act by the other, this other shall not suffer for it.

But in this case we must be certain of two things: First, that we have try'd all
other

other means of saving our selves and our livelihood : Secondly, that we enter not the Army with an offensive mind, but *cum moderamine inculpatæ tutelæ* : not with a direct design to kill, but rather to fright, weaken, and to drive away the cruel Enemy. Before we may strike, we must see our danger imminent, and *in ipso pene puncto* ; then it is that we may *occupare facinus*, prevent our own deaths by the Invadors deaths : For when lives are to be lost, then the possession which we have of our own, is to be preferr'd by us before our Enemies lives.

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

CHAP. III.

Whether we may lawfully take new Oaths for the Interest of the unjust Party, especially after former Oaths of Allegiance to another Party ?

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

IN the first Question the Invading Party demands our Goods, in the second our Bodies, and in this our very Souls, so far as a man can make another sure of them.

But as they are preciouser than the other two put together, so we ought to be more advised in the laying of them out : *Furor est post omnia perdere navium*, and to err in this is to err in all. And seeing we here contract with God himself (who is always the justest Party) and do solemnly invoke his Justice and Vengeance upon the breakers of so high a Contract, we ought therefore to invoke his Grace more earnestly, that by the direction of his holy Spirit, we may not precipitate our selves, either through fear, faithfulness, or avarice, into the
forfeit

forfeit of such a religious Act: lest whiles we run to save our momentary Goods, our immortal souls fall from us into Hell-fire: but rather that we esteem it no loss with *Elias* to drop a Mantle in the way to Heaven, or for a scratch to get a Crown:

— *Atque ideo intrepidi quaecunque altaria tangunt.* Juv.

Though in this particular case our condition be rendred most miserable by the extravagancies of ambitious aspirers to Government, yet we see nothing new practis'd in it: For all this naturally sorts with the depraved condition of mankind. And though we can find little to justify the Usurpers actions, yet we may find reason enough, why after his engagement he should advise of all means for securing himself both at home and abroad in the Field: of which means this of obliging by Oath is a principal one. Through this jealousy the *Roman* Laws permitted not a man to be a Citizen of *Rome*, and of another Provincial City together; for in time of War and Division such a Person would be open to secret attempts and practices. The Chymists say, those Metals soonest dissolve, in which the Elements are most unequally fixt; *Et inter symbola facilis est transitus*: so surely must those men be most volatile, who have not something fastened on them to render their indifferencies more determinate. The extremity of this present case, as of the rest is, That as a man may successively be under opposite parties, and so for opposite ends be taxt in his Goods, and summon'd to serve in Person, even so he may be commanded to swear oppositely to what he swore before. But before I speak to this difficulty, and the cases depending on it; I shall set down what I conceive of the nature of an Oath in general.

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

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

In a Vow there cannot be less than two, and they are enough, because God is both sufficient witness and party. In other *distracts* or *contracts* we think it best to have at least three, the party contracting, he with whom it is contracted, and a witness; and all under a legal penalty. In the contracts which we make by Oath one with another, God stands as the Witness, and is to require the forfeit by our own consents.

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

First, in regard of the time present, or the act of swearing, *viz.* That then the swearers mind and words go congruously together, with a true intention to observe what he then promises: And because upon the very act of swearing he hath either sworn true or false in order to his intentions, therefore in that part there lies an immediate obligation on him: The latter truth relates to the *off. &* and the time to come, that is, That the swearer will have his actions go along with his words, and that he will make them good. But because the matter of this oath (which is a thing to be fulfil'd in the future) is naturally (and whether the swearer will or no) obnoxious to change and uncertainty, therefore the obligation which toucheth this matter, and which the swearer bound himself

All positive contracts of futures why mutable.

afterward to fulfil, is mutable and separable from his oath. It was in his own power to make the first truth good, which was, that his mind should be *bonæ fide* like his words; but unless he were a controuler of nature, he may fail of making good the second, which was, that his deeds should be like his words. He is forsworn who intends not what he by oath promises, but he is not always so who effects not what he so promises. The right apprehending of this Distinction will much facilitate the difficulties of the following cases.

Because an oath is a tie to the greatest of Contracts, therefore there are three things especially præ-requisite to it. 1. *Judgment*, lest we be irreparably insnar'd, as *Joshua* and the *Israelites* were in swearing with the *Gibeonites*. 2. *Truth*, lest God be invoked to a lie. 3. *Equity*, lest we make God a countenancer of wickedness, and of things unlawful; as *Saul* would have done in his sentence given against *Jonathan*, when with the tip of his rod he had tasted Honey; And *David* when he swore hastily to lay *Nabals* House waste.

Of these three conditions every man is oblig'd to the two latter, before he swears them, but not so solemnly as afterwards; The first may be in things properly in our own right of disposing as we please before we swear, but that obligation coming, we have afterwards no liberty in them at all: In this, there is no obligation till we swear, and when we have done so, then we are bound at all hazards to our selves, to make the Oath good; but not always the other, when we swear to the contrary to our antecedent obligation to the matter of the Oath, *Quia prior obligatio præjudicat posteriori*, and obliges only to repentance for our rashness or ignorance.

Object. But against all Oaths in general it may be objected, *Mat.* 5. 33, &c. *Levit.* 19. 12. In *Moses* his Law it was sufficient that they were not forsworn; Some Oaths law- but Christ saith, we may not swear at all; that our Communi- full under the cation must be Yea yea, and No no; Two Affirmations, and two Gospel. Negations ought now to satisfy as well as an Affirmative or a Negative Oath.

Answer. But we answer, that *Moses* permitted voluntary or unnecessary Oaths, and these only were by Christ absolutely forbid; For if otherwise, then we should not have had so many of *Saint Pauls* Oaths recorded by the Holy-Ghost; as *Rom.* 1. 9. and 9. 2. *2 Cor.* 1. 23. and 11. 31. In all which places *Saint Paul* used

used most Religious Affeuerations and Atteitations of God for amplifying his glory, and therefore when it may reach that end, we may still swear as warrantably as he did.

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

The cases of assertory Oaths not difficult.

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

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

Their matter and conditions therefore are of three sorts:

First *Necessary*; When the effect hath an infallible cause; as I promise *Titius* 100, if the Sun rise to Morrow.

Secondly *Impossible* either in *Nature*, as I promise *Titius* 100, if he touch the Skie with his Finger; or *impossible in Equity*, as I promise *Titius* 100, if he Murther *Sempronius*: This being repugnant to honesty and Piety, obliges not more than the other, and the third præ-requisite to all Oaths, excepts against it.

Thirdly, *Possible*, in things which may happen or not happen, because depending simply on our own or others wills, or *mixtly* of both, or else of Chance or Fortune, which cannot be determin'd by our wills, *Nam omnis status humanus ex insidiis fortunæ dependet, & in perpetuo motu consistit, l. 2. §. sed quia. C. de vet. jur. enucl.* This third branch is that which affords most matter for perplexing

of Oaths and Promises, because it relates not to one Uniform principle, nor to such things as depend on our selves. Wherefore it is to be carefully observ'd,

That as there are no contracts, and consequently no Oaths so conditional in their beginnings, but they are suppos'd to end positive and absolute ones; even so there are none so positive and absolute in their beginnings but are suppos'd to have some Tacite conditions adhering to them.

In purâ obligatione dies Tacitus sive Legalis subintelligitur. l. interdum 73. l. continuus 137. §. cum ita. l. cum qui calen. 4. §. quotiens ff. de ver. obli: All our engagements and actions lie open to the controulment and exceptions which may be made by Law, equity, the right of a third person, the permission of God, and the like. For example, King *Solomon* forgave *Adonijah* his usurping the Crown from him, on condition that wickedness should

not be afterwards found in him: after this *Bathsheba* came to Petition *Solomon* in his behalf, and he positively promis'd her that he would

not say her nay: She upon this, demands *Adonijah* might Marry

Abishag, one of King *David's* Concubines: *Solomon* instead of making good his absolute promise, Swore *Adonijah* should die. Although there was an evident

contradiction. *1 Kings 1. 52. 1 Kings 2. 20, 21, 22.*

Although there was an evident

contradiction.

contradiction betwixt the terms of *Solomons* Promise and his Oath, yet he broke not his Promise; because in his *positive* grant there was included a *tacite condition*, which ought to be as valuable as any thing exprest, viz. that *Adonijah* should attempt nothing unlawful, according to his former pardon: But it was Treason for any Man to attempt the Concubines of the deceased King, besides the Successour, for fear of occasioning divisions, *2 Sam. 12.8, 16, 21.* *David* Swore, and *1 Sam. 25:22.* with an obligation of a curse on himself, that he would destroy *Nabals* House, which Oath as he kept it not, so he did not break it, because it had never any tie on him, for equity made just exception against it. The same is to be said of those who vow or Swear something, but are not any ways in their own powers, and consequently possess nothing for themselves, as the Wife or the Daughter, whose Oaths are justly reclaim'd by Husband or Father, *Num. 30.4, &c.* But above all, it is observable, that God himself doth oft contrary to what he absolutely declares, yet without infringing either his constancy or his verity; because in all peremptory Comminations there is yet a supposition of his grace and favour. Hence *Abrahams* Servant, *Gen. 24. 27.* said, God had not left his Master destitute of his mercy and truth, which usually in God go together.

Obj. But out of the words of *Balaam* it's Objected, that God is not as Man, that he should lie, nor as the Son of Man, that he should change or repent. Therefore hath the Lord said it, and shall he not do it? Hath he spoke it, and shall he not make it good?

Ans. I answer, that God is not as Man, that he should lightly change, no nor change at all, if it certainly appear that his decree be absolute; but that doth not always so, if we will judge by his words. God declared to *Adam*, that the day he should eat of the forbidden fruit he should surely die, and yet after he had eaten of it, God permitted him to live almost 1000 years. But here some reply, That by the words, *Thou shalt surely die that day*, God understood that *Adam* that day should begin to be Mortal, but not actually die. To which I answer, that this is of no necessary consequence: For God threatned *Abimelech* and *Ezechiah* in the same manner, but no ways in that sence, as being persons as much naturally Mortal before Gods threat as they were afterwards. To *Hezekiah* God said, that he should die of this present sickness, yet God afterwards assured him that he would add yet fifteen years to his life, because he had seen his Tears, and heard his Prayer, which it seems by the effect was the Tacite condition prevailing with God, to alter his positive resolution and threat. The like also is observable in Gods decree against *Nimveh*, which was not destroyed after forty days; for God repented of what he had said, because they repented.

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

& *si necessaria planè est, clementia esse desinit*: And if there were no clemency after we have forfeited our selves, then consequently were there no place for Prayer in Religion; and Moses had in vain struggled with Exod. 32. 10, God that he would not consume the *Israelites* after he had declared ¹⁴ so to do. Mercy therefore is not opposite to Justice, but a part of it, 1 *John* 1. 9. God is faithful and just to forgive, *Psal.* 71. 1, 2. *In thee, O Lord, have I put my trust, deliver me in thy righteousness.* All which appears most clearly, *Jer.* 18. 7, 8, 9, 10. *Ezek.* 33. 13, 14. Thus Princes by their Prerogatives pardon Criminals, and like God here preserve those whom they might justly destroy.

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

4. As a Promise is not always of those things to which we were oblig'd before the Promise, but of those things only which may be done without sin, *viz.* of things lawful and in our right of disposing, or of things which hinder not our encrease in Piety and Goodness (to which we are in a higher obligation bound to God both Body and Soul) even so Oaths may be of all these, otherwise *scelus esset fides*, as *Herod's* was, to kill *John Baptist*.

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

6. He who fulfils not his promise to him who will not have it fulfill'd, breaks it not: so in the like case he breaks not his Oath. The ground of this is, because we have not a right of making others keep what is their own in property, longer than they will themselves. This is the foundation of the dispensation of oaths, which the Doctors even of our Universities (as well as others elsewhere) give every year to those who receive their Degrees. To pay a debt is always a duty in the debtor so long as the creditor will have it a debt; but it is not a duty always in the creditor to receive it from the debtor; for acceptilation is equivalent to payment. As in the others breaking a conditionate promise or league, a man is freed from the obligations on his part; so in the same case a man is freed from his oath.

7. As a man cannot peremptorily promise a future uncertainty, so neither can he assure himself of that which past before he was extant in nature; and therefore cannot safely assert or swear the evidence or certainty of that which was before he had any Knowledge or Being. Hence though possibly the *Catholik Religion* was not long ago establish'd and profess'd in *England*, yet I cannot swear it was so, without sinning, because I have only a moral or probable certainty of it (not an infallible one) *viz.* the Tradition of man. *Obj. 2.* And (to prevent an Objection) though none of this Age saw Christ, or *Ans.* any of his Miracles, yet the certainty of them is not to be doubted of, as of the other; because even at this day we have God's infallible Spirit, which still gives testimony both of him, and of his Miracles, according as they are set down in his Word.

8. This case shews us the dangerousness of those assertory oaths, which require

us to swear that such or such a thing or opinion is true, which may seem clearly so to the learned Contrivers of those Oaths, but not to others. The thought of the mind is only reserved to God, who only can be sure of it: It is that which doth another man neither good nor harm, unless it be communicated, which indeed may be forbid by oath, because in the communication of it there is external action. 'Twere happy we had an infallible means for our opinions in all divine and civil matters, as we have in our own matters of fact; but if we think not aright in those matters, it is no fault in us, it is a defect of our understandings, which we cannot possibly help, not an act of our wills.

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

Out of this we may examine and conclude two things concerning the Persons who give the oaths.

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

Ans. That St. Paul in the forementioned Chapter swore, not constrain'd by any legal formal power, just or unjust, but mov'd by the justness of the matter which he asserted. If there be a peccancy in the matter contrary to the right of a third person, the Magistrate's Title and Supremacy cannot warrant it; and if there be no peccancy in the matter, but only in the Title of the Magistrate, then necessity which is the *Cesar of Cesars*, and which admits an Appeal above them (as hath been largely proved in the first part) is our Magistrate, and warrants our oaths as well as such promises.

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

Ans. If the deficiency proceed from a decay of those Powers, and that we contributed nothing to it, then we are free: *nam qui non est causa cause, non est causa causati.* Secondly, if the good things sworn be of Religion, and the promoting of Piety, and that by the means of the Power which swore us, then if that Authority fail, we are freed from so much as concerns our effecting of it that way, and we are left only to that obligation which tied us sufficiently to advance Piety and God's Worship, *before we swore.* In this case we owe nothing to the Magistrate for the matter of the oath, but to God who hath here *Jus tertie personae ut partis & testis.* For we are originally bound in all things to serve him with all our Hearts and Souls to our lives end. *In modo promovendi pietatem,* we are more intensively obliged by oath to co-operate with the Magistrate, and if he on his part fail wilfully or negligently, at his own peril be it, for we are thereby dispenc'd from the tie of the oath, that Condition failing.

CHAP. IV.

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

In answer, that is to be taken and made good in the Administrers sense (whose oath I suppose it to be) or as the Swearer conceives it understood commonly by others. For it is a Promise or Contract of transferring something to another, viz. to the first propounder; and therefore in it we do but follow his Will or Mind as the Principle to which the words relate. Suppose I voluntarily promise a man something absolutely, or without delay, and he conceives but upon condition, I am notwithstanding obliged to give it him immediately; because all the obligation which is, comes from my mind, of which the declared sense was, to give without delay: So if I promise 20. and he conceives but 10. I am by my own Will, and the Faith of a man, obliged to 20. which was the principal and declared Sense.

In like manner, if I know the Propounder's mind and meaning in his oath, and swear in those words which properly signify his mind, I stand bound to his Sense; because my Sense tells me, that such or such was his Sense. It is a man's thought within, more than his words without, which are to be considered:

—*Deos qui rogat ille facit.* Mart.

Because internal Acts (such as are the Thought and Will of the mind) are not visible by the Eye; yet something is certainly to be determined, that so the religiousst and strictest obligation in the World might not be without its effect

The measure of interpreting, is the Collection of a man's mind by probable signs, which signs are either words, or other probable Conjectures. In case there be no sign which might shew us the contrary, then words are to be taken in a plain common sense, and not too much Grammatically: And therefore the Romans (as others have likewise observed) dealt treacherously with *Antiochus*, to whom when they were to give half such a number of Ships, they divided each Ship in two: In which, tho' *pars dimidia navium* were true Grammar Latin in that divided sense, yet all the World could not understand it but of whole Ships.

Thus when we speak of Law, we use the terms of *Mens Legis*, tho' indeed it have nothing but words: And we say, *Summum Jus* may be *summa injuria*, which is impossible according to its words. All this shews, that it is the meaning of the Principals mind, and not bare words which specify the things in question. And seeing all Oaths are composed of words, and that we have found what must be the sense of them, I shall examine what Obligation they have in the Societies of men.

C H A P. V.
Of the Obligation of Words.

Heaven and Earth shall pass away sooner than Gods Word; the reason is, because it made both Heaven and Earth, and the cause is always nobler than its effects. All change argues imperfection, and therefore Gods Language is always the same: But Man is imperfect both in his understanding and will, and so consequently in the signs of both: His habit, manners, Laws and Words derive his Pedegree from *Babel* and confusion. However, though all Countries vastly differ in the expressions or signs (which are the significations) of their minds, yet they all agree in the same sense of the same thing: Two and two in all Countries make four, though two and two signifie four but in one Country. Wherefore every Country is obliged to Communicate in it's own words, according as they are popularly, not privately understood by them.

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

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

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

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

Quem penes arbitrium est, & jus & norma loquendi.

The consequence of all this shews us what an unnatural and unlawful thing it

it is for a Man to falsifie his words, to tell a lie, to use mental reservations, *ex subterfugiâ*, or equivocations, *ex Amphibologiâ*, which makes Martyrdom folly, and Leagues and Contracts of no assurance. This therefore was originally the act of the first Law breaker, who therefore is called the Father of Lies, as God is called, *I am that I am*, the Father of Truth, in all his words.

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

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

Ans. I answer, That he who thinks otherwise than he speaks, deceives, and intends to deceive. For he tells his thought to another, different from what his own heart tells it him, that so he might beget that Of Equivocation: opinion in the mind of another, which is to deceive, and to elude: To say he doth it only to preserve himself, reaches not the difficulty; for though that be his primary end, yet *his intermediate end is to do so by deceiving*: Let him allow the same liberty of Plea to one who hath robbed him, and he shall presently hear the Thief say, That his end in that Action was only to preserve himself; not to wrong him; which yet he his Adversary will not take for a justification. No evil therefore is to be done, that any good may come of it, *Rom. 3. 8.* otherwise the Devil would be co operative with God, and collateral, not opposite, to him. *Truth and Falshood are parts of Justice and Injustice*, which have relation to our Neighbour *ad extra*; and therefore are not to be estimated according to that which is feigned, retiredly within in the mind, but which flows from the Tongue in known and intelligible words;

—*Post effect animi motus interprete lingua.*

For the mouth of an honest man is in his heart, and the heart of a knave is in his mouth. But it is to be well observed, That he who tells not all the truth, tells not a lie; which was *Abraham's* case, *Gen. 20. 2.* when he said no more of *Sara* to *Abimelech*, but that she was his Sister. That of *St. Paul's* pretending to be a Pharisee, *Act. 23. 6, 7.* after his being an Apostle, is a little more intricate, because in executing an Office, especially such a one as consists in an upright witnessing a Truth, and such a Truth as immediately relates to the Interest of God's glory, and not of our own, and *which ought to be done in season, and out of season*; (as *St. Paul* himself saith) there we ought to be most peremptory and unmaskt. *Exod. 23. 13.* *Elisha* permitted *Naaman* to live in an Idolatrous Country, on condition that he testified his dislike, *2 Kings 5. 18, 19.* However *St. Paul* struck not in with the Pharisees against the Sadduces upon a Contradiction, though in that dangerous Riot he would not declare upon what ground he believed the Resurrection. To pass a dangerous Wood safely, it is sometimes lawful to put on such skins as the Beasts have which haunt those Woods; but not such as *Apulcius* his Thief put on to deceive and rob men. Nay, those words which are not in themselves true, are not always lies; For they are directed to a Moral and

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to a pious end, and therefore by that intention are not contrived to deceive or abuse. Of this sort were our Saviours divine Parables, the story of *Dives* and *Lazarus* (for fingers are not in Heaven, nor tongues in Hell) and of the prodigal Child. Likewise of *Jothams* Trees going to chuse a King, *Judg.* 9. 8. And of the poor mans only Ewe, which the Prophet *Nathan* assured King *David* was forcibly killed by a rich man.

Having therefore thus throughly (as I conceive) examined the nature of Oaths, I shall speak to the particular cases wherein they are, or may be practised: and in the first place, I shall speak of the Leagues and Oaths which pass betwixt *Prince* and *Prince*; that so we seeing how far they conceive themselves mutually oblig'd by Oaths, may the easierly guess at the nature and obligation of our own Oaths to them.

CHAP. VI.

Concerning those Oaths which pass betwixt Prince and Prince.

SOME dispute, Whether as Kings can absolve their Subjects from their Oaths to them, so whether they can absolve themselves from their own Oaths. The grand subtilty of this is, because the acts of supreme Princes are not contrary to, but above all Law; and they are done in places where they are not subject to any superior Jurisdiction. For if they be acts done at home, then it is clear they are above their Subjects; if abroad by any Proxies, then it is clear that their persons are less subject. But because God is in the obligation, and that all persons and places are alike subject unto him, as he is King of Kings; therefore such Princes are oblig'd as much as others, *in foro interno*, (of which jurisdiction all oaths are) tho' not *in foro externo*. The former descriptions of the nature of oaths, are sufficient for the further proof of this, and therefore it would be needless to enlarge upon it:

If oaths be made by Princes to Princes in their princely capacities, but that those Princes are in their Principalities oblig'd to Laws, then their Laws being above them (in regard they stand oblig'd to them, their persons are only Conditions of their oaths, whereby it is manifested, only with whom they contracted, *viz.* with the Communities whereof they are the first and supremest Officers.

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

Thus much briefly concerning Oaths betwixt Prince and Prince. Now I shall speak concerning Princes Oaths to the People, especially concerning Coronation Oaths; and afterwards I shall speak concerning Subjects Oaths to their Princes.

C H A P. V I I.

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

Sect. 1. *How Princes thinking to keep those Oaths, may break them.*

2. *Of State-Oaths.*

3. *The Oaths and State-acts of Communities in Ages past, are the Acts of the present Communities, if there were no intervening fundamental Change.*

4. *How a man may justly change his Will.*

5. *In what sence Communities change not.*

USually in all places Kings at their Coronations swear, That they will keep, and see kept all the Laws which they find at their entrance, and that they will not innovate nor change any thing in them.

1. Though this seem very candid, yet I say there is nothing which can sooner ruine a State, than Princes rigid keeping, or careless breaking such Oaths. If they hold to their naked terms, then there can never be any good Reformation: For that usually requires the taking away of some Laws: And a power of abolishing some old Laws, is as essential to Government, as the making of new. Thus also if they care not for keeping their Laws at all, then they may take away the good Laws, as well as the bad; and so there is Tyranny in both. What is then to be done?

Sect. 2. I conceive that all such Oaths as they are of matter of State and Government, so "They are to be interpreted according to the Tacite Conditions" and Foundations of Government, of which, *The preservation of the Community* "is the chiefest. And because the dangers of a State can never be all fore-seen by any Company of Men, by reason of the infinite Circumstances of humane Actions and Accidents, therefore they cannot be all caution'd in Positive Laws; *Nam optimis rebus sua semper adstant pericula aut adnascuntur*, which as *Plautus* saith, *nobis ancillant quasi scapha*. Those Laws for this reason, are said to be made *cum sensu humanae imbecillitatis*, and to last no longer than they may be for the good of the Community who gave them their being to no other end. So that we may well say, those Magistrates who obstinately hold ti us to their Oaths, break them. For thinking to save the Law in its Letter and Words, they may lose and ruine their States and Laws, by not keeping to the original sense of them, further than which they cannot go: Wherefore each Community hath a Liberty of excepting those future Cases from the rigour of their Laws, which in all probability, they who first made the Laws, would have excepted, if they

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could have had certain knowledge of them, when they were making the said Laws.

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

Ans. Sect. 3. To this I answer, That it is ill supposed that the Legislative Acts of former ages are not ours: For we are still the same society or body politick, which dies not, no fundamental change intervening: Though the particular persons of past ages be no more, yet the society is the same; just as the *Rhine* is the same River it was at the beginning, though its Waters still run away, and are every moment buried in the Sea.

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

4. Every particular man hath liberty to change his will in the disposing of what is his own, so long as he lives: And hath not a body politick as large a privilege, which is the fountain of all privileges? And indeed how is it imaginable that a man hath power to bind or shackle himself, or that a Community can force an obligation upon it self, seeing it is neither superiour nor inferiour to its self? Surely there is a better way for remedying an inconvenience, than for a man to oblige himself to continue in it.

5. Neither can a Community be properly said to change; because it still holds to the same end, *viz.* The preservation of the whole. 'Tis a true Maxim, *quæ ad finem ducunt in materia morali æstimationem habent a fine*; take the case thus: The general end of a Pilot is to save, not to cast away the Ship committed to him: his obligation is to bring it safely into such or such a Port: If the sands change the Channel, then he is oblig'd to quit his old course, and to change it according to the change of the sands; but yet all this is not with the change of the general end. Thus though he be oblig'd to preserve the Goods for the benefit of those who committed the Ship to him, yet in a Tempest, to save the Ship, he may not throw over his Men, but the said Goods, notwithstanding his obligation to save them. *Aurum non valet Templum*, saith our Saviour, because it serves it: Wherefore the old Priest did very prudently, when he saw his Temple on fire, to throw all his Holy Water on it; and when that would not do, to cry for help to this his last Remedy, *cum aqua non possum ruina extinguam*. Though in this necessity he pluckt down the Temple which he was bound to preserve, yet by this means he sav'd some of the Statues of the Gods, for whom the Temple was built.

C H A P. VIII.

Concerning Subjects Oaths to their Princes.

1. *Wherefore dangerous to examine supream Rights.*
2. *Of Monarchy, Aristocracy, and Democracy. No sort of Government which can give always a certain Remedy for an inconvenience of State.*
3. *Why some Countries more inclin'd Geographically to one particular sort of Government than to another.*
4. *Wherefore we are abus'd so much in distributive Justice, (Rewards and Punishments) as also in the pleasures of sense, riches and honour, for the enjoyments whereof we so vainly torment our selves.*
5. *Of the power of dominion, and the right of exercising it specifically in this or those hands.*
6. *Four Cases whercin Subjects are freed from former Allegiance.*
7. *How a man may take an Oath from an unjust invading Party, contrary to those Oaths which perhaps he took first from the just Party, who possibly brake no Conditions with him.*
8. *Some Kingdoms for the Prince alone and his benefit.*
9. *Of the Harmony of Oaths.*
10. *Two ways of taking opposite Oaths.*
11. *Of the presumptive will of the Prince.*
12. *Of the conditions of those Oaths whereby we are sworn to lose our Lives for our Prince.*
13. *In what sense may a man swear that he hath the right, whom he knows is in the wrong. Of subscription in the Church of England.*
14. *Why Penalties better securities for Princes Rights than Oaths.*

1. **I**N Government it ought to be most prudently cautioned, that a Society or State ravel not out into a dissolute multitude. For in confusion there is a rage which reason cannot reclaim, and which must be left to calm and settle, as waves do after a tempest, both upon themselves and of themselves.

This confusion arises most out of the reflexion which particular men may make on their particular Rights and Liberties, which perhaps may lawfully belong to them, but are not always convenient for them to have, no more than knives and daggers are for young Children, or distracted Persons. *Libertas enim singulorum est servitus omnium.* Besides, it takes away all future intelligence, and breaks a Chrystal Glass, which can never be piec'd again so finely as it was, but ever after will shew broken and angry Faces.

2. We think our Service here very hard, being on every hand expos'd to perpetual Combats, and fain we would meliorate our Condition by experimenting whatsoever presents its self first to our pressures, but in vain; for like men

Monarchy. in Fevers we may change the sides of the Bed, but not our temper. The State of Monarchy is of all the rest most excellent, especially when it represents Gods Dominion; more in the Justice, than in the singularity of the Governour. But because there is no Prince who is inabled with prudence and goodnes any way so Great and Sovereign as is his Power, therefore he cannot but commit great errors; and standing on the Peoples shoulders, he makes them

Aristocracy. at last complain of his weight, and of the loss of their liberty which is always their desired end. Aristocracy stands like a moderatour betwixt the excesses of Kingly and Popular Power; but this mixture oftentimes produces Monsters. The bloodiest commotions that are, happen in this State, though esteemed most temperate, just as the greatest storms are formed in the middle region of the Air, and in those seasons of the year which are least sharp. No one part of a State can be strengthened, but by cutting the sinews of another.

Sed spoliatis armis supersunt; Juv. and impotency representing at the same time both misery and scorn, takes life even in despair, and if it cannot be beholden to the relief of an Enemy, will make the publick ruins of a Kingdom its grave. Take away Arms and Liberty, and every man is without interest and affection for his Country: Invade his goods, and the fountain of a treasury is immediatly dried, and he as soon made a beggar; and after these distresses as Machiavell saith, He will not lament so much the loss of his publick Parent, as of his private Patrimony.

Democracy. Democracy reduces all to equality, and favours the Liberty of the people in every thing: But withal it obliges every man to hold his neighbours hands, it is very short sighted, permits every one in the ship to pretend to the helm, yea in a tempest; through policy it is oft constrain'd to introduce all those desolations which ought to be feared only from envy, and at last blind-foldedly gets such falls, that it scarce hath force enough remaining to raise it self on its legs again. It hath swing of Liberty large enough, but such as is not proper to cure its own distempers, *seeing it is very dangerous for a man (when he may have other choice) to be both Patient and Physician to himself.*

Finally, if this Supream Power fall into the hands of a heady and of an unconstant multitude, it is lodg'd in a great *Animal, which cannot be better than in Chains.* This is the Circle which we so painfully move in, without satisfying our desires: And no wonder seeing *Nature in every part is sick and distempered, and therefore can find rest in no posture.* Human Laws grow out of vices, which makes all Governments carry with them the causes of their Corruption, and a complication of their Infirmities; and for this reason they are ever destitute of Virtue, proportionable to the deviations of our crazy Complexions; just as the Statues of *Trajan's* gods were disproportioned to the Gate of his Temple, out of which (as *Apollodorus* told him) they would not be able to get, if he should at any time stand in need of their assistance.

3. Yet in the midst of these our shiftings and changings we are naturally inclined to one sort of Government more than to another, and it is observable, both out of the Histories of the former Monarchies, and out of the modern State of the World, That the Eastern and hot Countries which lie under the course of the Sun, are most dispos'd to the State of Monarchy, as in the large extents of *Persia,*
Turki,

Turky, Africa, Peru, and Mexico, in which latter quarter of the World, the People who have experimented both, are Governed better and more contentedly by the Spaniard or Portuguese, than by the Hollander, who are by fits in the excesses of kindness and of cruelty: But in Europe, and so nearer the Pole, Countries are dispos'd more to Republicques and Popular mixtures, tempered according to fundamental Laws, and the Authority of Diets and Senates. *Nec totam servitudinem pati possunt, nec totam Libertatem*, Tac. For this reason some vainly say, that the Northern quarter of the World is always more imbroil'd in Civil War, than the Eastern. For though such fundamental parties in their Societies seem to confine as it were on a battable ground, where a gap is open to Usurpations, and to Snatchings one from another, yet the Supremacy and ultimate Result of Power in such States is so defin'd and lodg'd, that they provide more effectually for the stiling, than for the growth of ambition and tyranny. Seeing therefore this tempest which we live in, is likely to be perpetual, the best way to sleep in it, as our Saviour did in his, is to quiet all within, rather than unnecessarily to dispute any thing without; and to consider that we are now *in face Mundi*, that we can turn to no sort of Government which hath not in the very constitution of it a power to wrong us in all the parts of distributive Justice, Reward, and Punishment.

4. For to be able to punish those who may wrong us, the Power Of Punishment of the Government (whatsoever it be) must be above all other Powers, and consequently absolute without redress or appeal. Magistrates are they of whom it may be rightly said ——— *Qui nolunt occidere quemquam ——— Posse volunt.* Fur.
Of Rewards. As for Rewards, though the Governours were all like *Cæsar*, and had his Kingdoms and generous Mind, *Gravis utcumque erit aliis ipsa beneficiorum potentia.* Florus. Besides all this, we do but abuse our selves in presuming of a pleasant condition to be recovered in this Life, be it either in Sense, Riches, or Honour: For really Pleasure is here unattainable, not so much Of the Plea-
sure of Sense. through a Civil, as through a Natural defect, in the disproportions which are betwixt our Appetites, our Senses, and their Objects.

As for that which we so pompously stile the ravishment of the Senses, or sensible Pleasure, it is only a present being out of that pain, which troubled us immediately before; and when that is over, then another presently begins to enter in the place of it. Besides, no man yet ever was in the actual enjoyment of so high a content, but he could at the same instant have imagined to himself something of the same kind a degree higher; and his missing of this (which in right reason he should not have expected) indiscreetly breeds his anxiety. The pains of Hunger and of Repletion spur us on to the functions of Life, and Nature accompanying all our painful actions with some secret promise of Joy, under that charm hides from us what she intends we shall afterwards suffer in our Senses.

As for Riches, they consist in things without us, and were to be Of Riches. sought after above all things if they brought content, as well as content brings them. If they be for real uses, then it follows that he who hath not need of so many things as another, is richest of the two; and the fewer things

things they be which relate to and concern a man, the less trouble afflicts him. Upon the whole we may say of them with *Seneca*; *accipimus peritura perituri.*

Of Honour. This reason abates much likewise of the price of Honour; which indeed even in Princes is no better than an abandoning the dominion of their own persons, to take the care of thousands of others: For the wretchedest Children in their Nations expect strength and remedies from them in their unjust sufferings; just as the weak Infant doth Physick in the Milk suckt from the Nurses Body, which is weakened thereby:

Nemo eodem tempore assequi potest magnam famam & magnam quietem, Quintil.

Mean People all lie at the roots of Trees, and enjoy that quiet there, which they who sit aloft in the boughs cannot. This made *Cesar* fear *Pompey's* fate, when he had got his Power, and became what *Pompey* was.

Jam cinis est, & de tam magno restat Achille

Nescio quid parvam quod non bene compleat urnam.

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

But as a ground to all their following suppositions, it will not be amiss to agree first in the competency of the Tribunal from whence their determinations issue. They who derive neither from Prince nor People, but from Jesus Christ, as the immediate dispensers of his mysteries, interpose with greater assurance than any of another Robe. But because they hitherto have in this differ'd among themselves as much as any Profession;

5. Therefore they have caused some to look for another Tribunal to judge of them, and before an intire resignation, to make use of private reasons, to see whether there cannot be a distinction betwixt the Power of Dominion, and the right of Exercising it specifically by this or those Hands.

The Powers which are, derive solely from God, by whom all things live, move, and have their being: And because this is a Sacred Theme, therefore many Divines (or rather Ministers of the Holy Order) think the whole question is to be decid'd at their Tribunal by the text of the Bible.

Act. 17. 28.

But

But according to Saint Paul out of *Aratus* and *Hesiod*, the Scriptures do not solely discover this Power of God, but only the Power of the new Creation: If it had been otherwise, Saint Paul, instead of appealing to *Cesar*, would have appeal'd to himself, or to his own order. Therefore the Ministry is not the sole Judge even of this first part of the distinction. The Lawyer he only speaks properly to the latter, because it is in *jure ad rem*, & consists in, and is specified by Contract, and in those *tacite* conditions which are cleared by the rules of natural Equity. Our *Druids* therefore are not *utrinque fori*; neither are they, as the *Levites*, keepers of those *Arcaica Judicii & Imperii*, which God solely ordered for the Jews Commonwealth. The Lawyers therefore best find out the right, and the Ministry best persuade us to make Conscience of it. Thus therefore I enter upon the particular cases.

Seet. 6. He who hath sworn Allegiance and Fidelity to his Prince, is absolved and set at liberty, if his Prince abandon his Kingdom. For upon his own act he hath and will have no Right to it; and so far as he hath no Right, his Subject can do him no wrong. He who throws away Money, (*ut in jactu missilium*) is no longer owner of it. But it is to be noted, that he who uses not his own well, is not to be supposed to have abandon'd it; as is largelier prov'd in the First Part, C. 3. Seet. 5.

Secondly, If a Prince give away, or subject his Kingdom to another Crown, then he may be resisted in it, notwithstanding any Oath, because the alienation of a Kingdom is not comprehended in the Government of it, and it is his Government which is the ground of the oath.

Thirdly, If a Prince, through mad fury or folly, seek in a hostile way the destruction of his whole Kingdom, then we owe him nothing by oath. For the will of governing and destroying a Kingdom is inconsistent with it self. *Nero* virtually declared he would not govern *Rome*, when he was setting it on fire. Thus the Civil Law permits Fathers to disinherit their Children, and Children to disinherit their Fathers, (which the Casuists permit, though they swore before never to disinherit one the other) if they have attempted to destroy one the other; for thereby they become unnatural, and consequently cease to be either Father or Son. *San. pra. 7. Seet. 7.*

And this is that which the Law and the Casuists call, *Solutio vinculi per cessationem materiae, aut mutationem aliquam notabilem factam circa causam juramenti principalem*: *Sanderfon* in his *Prælec. 7. seet. 7.* saith, That the matter of an oath ceaseth, and is consumed, when the state of things is so chang'd betwixt the time of swearing and fulfilling, that if at the time of taking the oath, the state and change of things which afterwards follow'd, could have been then foreseen, the oath would not have been taken at all. It should seem that this is one *tacite* Condition, which is afterwards as effectual, as if it had been at first exprest, although the oath at the beginning might have been only in positive terms.

Fourthly, if the Prince have part of the supream right, and the People the other part, then notwithstanding an oath of Allegiance to him, he may be opposed if he invade the other part of supream right. And this *Grotius* saith holds, though such a Prince have the power and right of War alone; for that is to be understood (saith he) of foreign War only: Nor can we conceive

how that party which shares in the supream right can be without the right of defending it, insomuch that if the Prince invade the others right, he may (saith he) lose his right by the law of War. Supream-right (as is largelier set down in the first part) consists in a capacity of making and abolishing laws, in levying general Taxes, &c.

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

8. There are some Kingdoms which are considered for the King and his benefit alone: and we cannot properly call such, *Common-Wealths*, because there is no *Community*, neither of Law, nor of any other right, betwixt Prince and People: But as the old Roman slaves, so those subjects *Non habent capita in jure*; or as those who were anciently excommunicated, of whom it was said, That they had Wolves heads, that is, men might kill them as pardonably as they might Wolves: These likewise had no community or participation of right; Excommunication then being more than a bare putting out of table-commons. Such subjects as those, though they be gnaw'd to the bones, and that their books of Laws be but books of account for the Princes demanding their whole fortunes, yet they have not the right scarce of a sigh: These must bring their Tributes to their *Cæsar*, like the mute fish in the Gospel, and afterwards are as sure as it to pay their lives in to the Contribution. For God many times finding some Nations grossly peccant and obnoxious to his severest Justice, instead of destroying them, gives them up as a Prey to another Crown: Thus were the seven Nations; and afterwards *Israel* it self was thus in the hands of *Nebuchadnezzar*: for repining at whose rigour they were expressly reprehended by God. Which particular case is not a general argument or consequence (as some argue it) for the manner of Government, and the duty or latitude of subjection in all Kingdoms. The relation betwixt such Subjects and such Princes, comes not properly into the scope of this Discourse: For the more immediate entry of which, it is to be considered by way of objection.

Obj. Sect. 9. That as contradictions are not verifiable, so God, who is truth it self, cannot be a witness to them, unless it be to punish them. But seeing in such Oaths there is contradiction, How then can we hope to be justified by God in taking them?

Ans. All that which hath been cleared above, serves mainly to help us in this difficulty, and to lead us to a true harmony of oaths; which some stretch wildly to find even in the very terms of opposite oaths, at least by a secret sense which they say the Swearer hath liberty to put on them for himself, *Quasi propositio mixta ex mentali & vocali esset legitima*; which opinion is in some manner perhaps refuted above.

10. I conceive but two waies of taking such opposite Oaths.

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

11. Secondly, A man cannot by Oath, or any other way, be obliged further to any power, than to do his utmost in the behalf thereof: and though the oath for the right magistrate be taken in the strictest terms of undergoing death and danger, yet it is to be understood alwaies conditionally, as most promises are, *viz.* If the action or passion may be for that Powers or Princes advantage. Let us take the Case as we see it practis'd. In an Army each man is, or may be, oblig'd by oath to lose his life for the Prince whose Army it is, rather than turn back or avoid any danger; such an Oath is call'd, *Sacramentum militare*: This Army, after having done its utmost, is beaten, and now the Souldiers can do no more for their Prince than die, which indeed is to do nothing at all, but to cease from ever doing any thing, either for him or themselves. In these streights therefore it is not repugnant to their Oath to ask quarter or a new life; and having taken it, they are bound in a new and a just obligation of fidelity to those whom they were bound to kill few hours before: Neither can the Prince expect, that by virtue of their former Oath to him, they should kill any in the place where their quarter was given them. They who live under the full power of the unjust party, may be said to take quarter, and to be in the same condition with the former, and so have the liberty to oblige themselves to that which the Prince now cannot but expect from them, *viz.* to swear to those under whose power they live, that they will not attempt any thing against them.

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

13. But what if the usurping power should exact an Oath in terms more repugnant to a man's Conscience? as, That he shall now swear not only not to do any thing against him, but to do all he can for him, and besides will have him swear, That the very Right of the Cause belongs to him, and not to the other Party; as in *Edward the Fourth*, and *Richard the Third's Cases*, &c. In answer to this, I first say, That probably the man call'd to swear here, formerly oblig'd himself to the other Party by Oath, but not as if that Party positively had a clear Right, but that he knew none who had a clearer, and therefore upon the same ground he may neither swear action nor positive Right to this party: I hough my Hand trembles to write further of this case, perhaps as much as his would, who should come to swear it, *tactis Evangelis*, yet I find great Doctors who favour Oaths in such terms: Not as if they had a positive or Grammatical sense in them, but that they require only, that we should do nothing contrary to the terms of the oaths, or of their sense; which is as much as to say, That though we know not wherein that Parties Rights positively consist. yet we

take our oaths that we will not do any thing to weaken his pretensions. This is the sense which they say we may swear, when an oath is given us in terms which we conceive false. As for swearing we will be active for that Party for which our Consciences will not let us do any thing at all; they say we may swear it also; because the ground of the Oath requires no more, but that we be not active to traverse any of his designs or actions; and that though we act not any thing for him in his Armies abroad, yet that we will not attempt any thing directly or indirectly at home, that might tend to the putting of our selves or others out of his possession, or to the weakening of his security. Though this sense satisfy not the terms of the oath in their rigour, yet those Doctors say it satisfies the scope of it, beyond which a man is not oblig'd unless he will himself. For instance; No man could formerly be admitted to the Ministry in our Church, unless he subscribed first to the Articles, Liturgy, Canons, and Jurisdiction of our Church: And though there were a great contradiction betwixt the *Arminian, Episcopal,* and *Calvinists* opinions in the matters to be subscribed, yet they all concurred in this, that they might subscribe in this sense; First, that they meant not to disturb the peace of the Church for any thing contained either in the Articles, Canons, or Episcopal Government, whatever their positive opinions about them might be. Secondly, That they thought those in a saveable condition who conform'd to the strict sense of them. And this they conceived was all that was meant by Subscription; Witness Mr. *Chillingworth*, who only writes so much, but the Doctors and Divinity-Professors at *Oxford*, licensed the Printing of it, and the Arch-Bishop presented it to his Majesty, so that it passed an avowed sense both in Church and State. But as I conceive this is one the most perplext Case that can possibly be put in oaths, and which hath not yet been examined by any that I know of, so I recommend it to the further disquisition both of the Casuist and of the Lawyer, who yet is not so well fitted for the *Forum internum* as the other. This we know, that our Ancestors, who liv'd in that age, whose confusions gave occasion to these discourses, were *de facto*, several times prest to this sort of oath.

14. And were it not, but that aspiring Princes have so much of the *Caesar* in them, that being once by their Usurpations engaged, they cannot stop till they have acquired all they aimed at (as he did, who because *Rubicon* was past, *Et quia jacta erat alea*, could not rest till he had supp'd in the Capitol) they would find it a greater security to put a penalty upon those who should question their Rights, than to force their Subjects to acknowledge their pretensions by this oath. For such an oath may be broke in the very taking of it; and he who scruples not to forfeit his oath for fear or interest, will disavow any pretended Rights whensoever he shall *stare in rubrico*.

Thus much concerning the nature and harmony of oaths. Now it remains only to speak to the last difficulty of this Second part, which is _____

C H A P. I X.

Whether upon the Issue of a War, and the Expulsion of a Just Party, a Man may Lawfully give himself up to the final Allegiance of the Unjust Party, or no ?

- Sect. 1. *The Troubles of War end not presently with the War.*
 2. *Wherefore a strict Government is necessary for those who conquer in a Civil War.*
 3. *Wherefore we cannot swear to obey none but such or such Governours.*
 4. *When may a man judge such a party or place to be conquered ?*
 5. *What Conquest or Acquisition can never be justified ?*
 6. *Of Ferdinand King of Naples his Cession.*
 7. *Of the Society of Mankind.*
 8. *The Case of places taken on Frontiers.*

BY a reflexion on that which hath been already examined, this last question may seem to be but a casting up into a summ all that which is gone before. Physicians, to adjust their Remedies aright, consult the time past, present, and future ; and so should we in all these cases, if that which is *Civil had but as Uniform Principles as that which is Natural.* For if a peremptory assent be demanded of us in a matter which hath connexion with the time past, the evidence of that depends only on the credit of ignorant or disguised Histories, and not on any which we durst peremptorily say cannot mis-inform us.

*Segnius irritant animos dimissa per aurem,
 Quam quæ sunt oculis subjecta fidelibus, & quæ
 Ipse sibi tradit spectator.* Hor.

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

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

1. But though the War be ended, yet its troubles and miſeries do not ſo ſoon ceaſe with it : *Bella movet clipeus, deq; armis arma ſeruntur.* Ovid.

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

The Uſurpers reſolutions towards the winding up of all, are naturally furious; and good reaſon too; for Juſtice here allows him to be ſeverer for Peace, than he was for War. That his dangers might not be infinite, he is oblig'd to pull up the ſeeds of War; otherwiſe inſtead of taking it away, he would but defer it.

2. Civil War is naturally more ſubject to theſe rigours, than other Wars; becauſe they who yeſterday were Enemies, would be Inhabitants alwaies. The Conqueror ſuſpects that theſe will be the firſt infringers of his new Laws; the violation of which ought at the beginning to be ſeverely cenſured, as of dangerous conſequence: according to which reaſon, God himſelf gave ſentence of no leſs than Death on a gatherer only of Sticks, immediately after the promulgation of the Sabbath; and *Ananias* and *Saphira's* firſt Hypocriſies and Mockings of the Holy Ghoſt were rewarded with no leſs than ſudden death; though now-a-days the like be ordinarily done without immediate ſentence. Wherefore for theſe Reaſons, though the Uſurper thought not of eſtabliſhing himſelf in an abſolute Jurisdiction, yet at laſt he will find himſelf oblig'd to ſecure his Conqueſt by the ſame means he obtained it. *Qui volunt occidere quemquam — Poſſe volunt.* And *Dido* gave *Aeneas* the true reaſon of the ſame caſe.

Res, vita & regni novitas me talia cogunt.

Moliri, & late fines cuſtode tueri. Virg.

3. We ſhould be exceeding happy, if in the miſt of theſe embroilments we could now know God's Decree concerning the Princes and Governours which He would have Reign over us, as certainly as the Ancients did by His Revelation and Prophets. Yet though we know not ſo much, this we know aſſuredly, that the great changes of Government happen not by chance, but by order of the moſt univerſal cauſe, which is the Fountain of Dominion. God's Image in *Adam* by many Divines is underſtood to have been his Dominion over the Inferiour Creatures of the World, and ſince him we find that none are call'd God's but Magiſtrates; for they (like God) are moſt known by Commanding. It's obſerv'd that *Mofes* in the 1 of *Gen.* names God ſimply without any attribute, but in the 2 *Chapt.* after the Creation was finiſht, alwaies calls him *Dominus Deus*; hereby expreſſing his Right to order, what before he had produced by his efficacy. From hence we can well conceive why God ſays, *By me Princes Reign; For the governing powers which are, are of God.* God hath declared that he will ſtill chaſtiſe and

Dan. 4. 31.

Pſal 75. 7.

change Princes and Governours; and though now we may doubt of their Families and Perſons, yet when we ſee the changes and chaſtiſements, we may be ſure they are by God's order; yea, though the invading or ſucceeding Governours be like, *Jehu*, *Nebuchadnezzar*, or thoſe who by cruelty ſhew us nothing but God's wrath. Wherefore it can be no leſs than

Sin in us, or Treason against God to swear we will never obey any but this or that Prince or State, or any but of such a Family, or to think that none other shall reign over us, but such. For this depends on God's Providence and Justice, which sets the bounds to the duration of Governours and Governments.

—*super at quoniam fortuna, sequamur,*

Quoq; vocat veritamus iter. Virg.

Quid quisq; vitet nunquam homini satis

Cantum est in Horas—Sed improvisa

Vis rapuit rapsetq; gentes. Hor.

We are bound to own Princes so long as it pleases God to give them the Power to command us, and when we see others possess of their Powers, we may then say, That the King of Kings hath chang'd our Vice-Roys; but then the difficulty will be this.

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

This is considerable in regard of the time when we are to give our selves up to a new Allegiance: For an Army in a Country doth not still possess it, because in few days it may be repulsed again. Thus *Hannibal* though he quartered about *Rome*, yet the fields wherein he quartered were sold in the Town at as high a price as before.

A place therefore is judged to be in full possession;

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

Secondly, When there is no probable hopes of recovering it. Thus of a Ship (which is a moveable) the possession of twenty four hours is a Title in all Admiralties; because of the improbability of recovering a thing so hard to meet with.

Ea desinunt nostra esse quæ nostram persecutionem & recuperationem effugiunt, & quæ ex seipsis non habent animum redeundi, ff. de acqui. rer. dom. l. 44. Thus the Jews were to obey and pay Tribute to the Romans when *Jerusalem* was taken.

Thirdly, when the party overcome doth by some acts acknowledge the Invader for the Supream. Thus the Senate could plead no excuse for *Cæsar's* murder, whom themselves acknowledged Supream after the success of his Arms.

5. Yet there is one kind of usurpation, which by no possession or prescription can ever become lawful, and a Christian can never submit himself to it, without wounding his conscience and faith. For it is that which is founded in impiety and blasphemy; and yet would be forc'd upon us, as by God's Order, and by title of his true Religion. Such Invaders as these though they may succeed one another, yet their succession and possession cannot legitimate any; because no prescription can run against God. As this authority is grounded in the depth of all impiety, it pretending a jurisdiction both in Heaven and Hell, Body and Soul, Spiritual and Temporal Rights; so to assist to introduce it into any place, can be no less than the height of Treason, both against God in Heaven, and his Vice-gerents on Earth: For thereby it is endeavoured indirectly, and by just consequence to alienate and transfer all Sovereignty to an Idolatrous Priest; and an assisting to the Massacring of those who are not of his Idolatry.

Fourthly,

Fourthly, a place is fully possess'd from the just Prince or State, when they become private persons, and so, subjected to the Power of another Magistracy, which the Civil Law calls, *Diminutio Capitis*, or a Civil Death. In this case they who were formerly their Subjects, need not now scruple as if they durst not do this or that, as being ignorant whether their wills dispense them of such or such Duties in order to their Rights. For it is to be presumed, that the expell'd Princes or Senates wills are, That they would not have them hopelessly begin the miseries of a new confusion for them: It is a bad way of remedying an evil, by renewing it without any hope of recovery. When the case is thus, they ought to let the People enjoy, *Tuta & Presentia*, and forget *Vetera & Periculosa*. If their Subjects were sure of their wills, and as sure, that by their own Powers they would restore them without an universal calamity of their Kingdoms, then their endeavours were more reasonably due to them. We have not now Gods revelation for the particular events of things, wherefore we are excusable if we consider the probability of the means: Our Saviour would not have a Prince begin a War with 10000 Men, against 20000. Besides every thing is more favourable for Peace than for War: And to what purpose is it to take part with those who are as it were dead, against them who are alive? The Law supposes a Womans Husband to be dead, *quando mortua est spes eum revisendi*, and for that reason she may then *transire ad alta vota*, though he be not then naturally dead. And if possession was really the truest evidence to us of their rights, then it is equitable to follow it still, though it be perhaps in a person of more injustice than they were.

6. As the goodness and prudence of *Ferdinand* King of *Naples* was admirable in this case, so I shall faithfully translate it, as *Gucciardin* sets it down.

Charles the eighth of *France* invaded *Italy* upon a pretence to the Crown of *Naples*; *Ferdinand* was newly come to the Crown, but unhappily succeeded two, who by excess of tyranny utterly disobliged the People, so that though he was a Prince very debonair of himself, yet the remembrance the People had of the former mis-governments, together with the cowardice of his Captains, afforded him no other news, than the daily loss of Armies, Towns, and of whole Provinces, even to the Gates of *Naples* it self; whither *Charles* was now advanc'd without having so much as discharg'd a Pistol. And because *Ferdinand* found *Naples*, and the Country behind it, half dead already with fear, and ready to revolt, he resolv'd therefore not to expose them to ruin, by standing out perhaps only a little while for him: "Wherefore he summon'd all the Nobility, Gentry, and Prime Citizens to wait on him at his Palace; to whom when he had bewail'd first his own undeserv'd calamities, and pitying those of his Subjects, who let themselves be defeated so easily by their own fears; he then advis'd them to send to the *French* King for the best conditions they might get for their own preservation. And that they might do it without any stain of Honour, he absolv'd them freely of all Oath and Homage: And for his own part told them, that he was resolv'd not to wrastle with, but to yield to his Fate, rather than by trying to stand out after so many losses and misfortunes, to be an occasion of the ruin and pillage of his Kingdom; which was an effect contrary to that end for which he desired to be their King. But if the misgovernment of the *French* should make

" them

“them desire his return, that he would endeavour to preserve himself in *Sicily*,
“whence he would willingly return to expose his Life for their better con-
“dition.

Here was the true Duty both of a Man and of a King; yea the Action was more than Kingly: For to lay down a Crown is more Majestical than to wear it. It is only from glittering Thrones, whence the descent is not easy: *Reges enim de tanto culmine non descendunt, imo deturbantur*. Though other places in the like or worse condition have not so clear a Declaration of their Princes and Governors wills, yet *the same is to be presumed from them*, rather than that they should occasion a fruitless and calamitous confusion in their behalfs: For he who spits against the Wind, spits in his own Face.

7. We speak sometimes of the society of mankind, and of a moral continuity, as if all the World were to be considered but as one Common-wealth, as indeed it ought so to be: But our practice in this belyes our reason, especially when we reflect on the distinctions or separations of Kingdoms, and examine by what ground of reason Princes pleasures should oblige those who live on each side of a simple River (which divides two Crowns) to do no acts of humanity one for the other. We know there is a consanguinity betwixt all men, by which we are bound to keep the faith of men even with heathens as well as with others, *moralia enim non tollunt naturalia*: so that it is pity to see some so much Libertines, that they think they cannot do a *Turk, Jew, Infidel*, or any one of a Nation, against which War is declared, any wrong; whereas the metal of the Coin is the same, though the inscription differ.

8. But to approach nearer to this particular case: Upon frontiers all men are most strictly oblig'd to the destruction one of another, according to their several Allegiances: yet it happens daily, that by sieges and other extremities, Towns are reduced to the jurisdiction of those to whom they were sworn not to submit, but to destroy: This is not all, for upon their surrender they must swear to destroy those whom the day before they were sworn to preserve. In such cases the Prince to whom they were first obliged, releases them of all imaginable Duty to him. For he cannot expect that which is impossible for them to do, *viz.* Acts of former Allegiance to him. If afterwards he take any of them, he looks upon them not as Traitors or Revolters, but such as by the Law and necessity of War, are of the same condition with the rest of his enemies subjects. The reasons which justify such particular places, justify a more universal; such as are whole Kingdoms, which are made out of such particular places, and are subject to the same fate and necessity of War, to the same confusions and revolutions of Governments, and so to the same opposite Allegiances.

THE THIRD PART:

Wherein it is Examined,

W H E T H E R

The Nature of War be inconsistent with the Nature of the
Christian Religion.

O R,

Whether some War may not now be lawful in the State of the Gospel.

C H A P. I.

SECT. 1. *The description of War.*

2. *Bellum quare dicitur a belluis.*

3. *What it is to be unjust, or unlawful.*

4. *Society twofold.*

WHilst all the Christian World is imbroil'd in War, and that the very state of Mankind is nothing else but *Status Belli*; yet not a few perhaps of the best Christians find their Consciences checkt, as if they had an interdict from Heaven restraining them (even in the extreamest necessities) from defending their Persons and temporal Rights by the effusion of human Blood. They conceive such an exactness of Christian Patience and Charity is now required of us in regard of those excellent promises of reigning with Christ in Heaven, that all sort of War fights now against him and his Religion. This made an eminent States-man, pleading for Toleration of Religion in *France*, say *Qu'il valoit mieux avoir une paix qu'il n'avoient deux Religions, qu'une guerre on' il n' en avoit point*; That it was better to have a Peace with two Religions than a War with none at all.

These Christians of whom we now speak, assure themselves, That if they wallow in one anothers blood here, they cannot afterwards tumble together in *Abraham's Bosom*; their Heavenly Shepherd drives them through a narrow way full of Thorns and Briars, so that they expect necessarily to lose Locks of Wool in their Estates, and to feel pricks in their Persons. But in the midst of all this they take unexpressible Comfort in Christ, knowing well that they who touch them now in this new Creation, touch a new forbidden Fruit, even the Apples of God's Eyes.

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

the

the greatest of which is perpetual War: I shall therefore esteem it worthy my re-search to see *Whether War be one Condition exclusive of Salvation?*

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

2. In the first Peopling of the World, after the Deluge, Men liv'd scatter'd up and down, and most in Woods. And Ambition not having place in a time of such Simplicity, they liv'd in a Community free from all Alarms, save of the Beasts of the Field: Wherefore their War then was totally against them; and hence we see the Heads of Lions, Bears, Boars, &c. for the ancient Marks of our Ancestors Honours: And when Men came to be more civil by living nearer together in Cities (for Civility is deriv'd à *Civitate*, as *Urbanus ab Urbe* and *Rusticus à rure*) they still kept those Arms, which now we hold derived from them.

War therefore was first against Beasts, and afterwards against those who were like to Beasts, in bringing the same effects of Misery on us which Beasts did; in destroying our Subsistence, in devouring us and our Children, in chasing us from our Habitations, in keeping us in perpetual Frights, and in taking the Sweat of our Brows from us. They therefore who knew God and Nature permitted them to destroy destroying Beasts, thought they had a larger Commission to destroy such kind of Men; who though they were of their own kind, yet they were worse than Beasts, and did that harm which the Beast of the Field knew not how to do: So that the Proverb of this malicious Vermin is not impertinent, *Homo homini (non Lupus sed) Dæmon.*

3. But to speak nearer to the Definition of War. It is not *Jus datum sceleri*; But a publick Prosecution of Justice by Force, even to the effusion of humane Blood. The better to understand it, we are to conceive, that there where a Court of Justice ends, and is not able to put us in Possession of our Rights by its Paper-power, there the Law of War begins, and makes every Souldier a Sergeant. And hence it is congruously said, that *Inter arma necessario silent leges*: For in natural Reason, what can be oppos'd to Force but Force? Yet Justice and Equity may be consistent with Force: Hence the *Athenians* acknowledged *Mars* the Founder of their famous Senate, and from him call'd it *Areopagus*.

4. What is it to be unjust or unlawful? That is, properly unjust, which hath a Repugnancy, a Disconvenience, or Inconsistency with the Nature of humane Society and Communion; as for a Man to take from another to enrich himself.

5. But Society is two-fold. First, *Equal*, where both are in equal Partnership of Gain and Loss; and as is betwixt Brothers, Friends, Citizens, &c. Secondly, *Unequal*, as betwixt a Father and his Children, Masters and Servants, Magistrates and People, God and Man: Betwixt whom there is something mutually due upon Supposition of, and the latitude of the Relation to Society. The use of this Distinction will appear in the following Discourses.

C H A P. II.

Whether all War be unlawful, in Order to the Laws of Nature?

- Sect. 1. *Upon what Matters lawful War is grounded.*
 2. *What things are equivalent to Life.*
 3. *Three Conditions prerequisite to a just War.*
 4. *How Innocents may be innocently slain.*
 5. *Wherein God's Dominion over us consists.*
 6. *Concerning God's destroying of Innocents.*
 7. *Concerning Abraham's Wars.*
 8. *All Cases of War not written with the Israelites Militia.*

THE Answer to the Question of this Chapter is Negative: Because Nature recommends us to an internal Honesty and Equity; as also to our own Preservation, and the acquisition of those things without which we cannot be preserved; provided they be not unjustly taken away from the due Preservation of others.

1. I say in Prosecution of that without which we cannot be preserved. For as War introduces the greatest of Evils, *viz.* the taking away of Men's Lives, and that which is equivalent to Life: So right Reason and Equity tells us, that it ought not to be undertaken without the greatest Cause, which is the keeping of our Lives, and that without which our Lives cannot be kept; or if they could be kept, yet they would not be of any value to us, seeing there may be a life worse than Death. Wherefore as we are forbid to go to Law for a little Occasion; so we are not to go to War but for the greatest.

2. *But what are those things which are equivalent to a Man's Life?* Those things may be best collected out of the Cases, wherein God himself (in the Law he gave the *Israelites*) pronounc'd Sentence of Death; They are many and different, and I shall only point at a few of them. God's indisputable Justice therefore inflicted the same Punishment on Breakers into Houses, Breakers of Marriage-Fidelity, Publishers of a false Religion, and on Ragers in unnatural Lusts, together with many others: I say, he inflicted the same Capital Punishment on them which he did on Murtherers, *Therefore they are Cases equivalent to a Man's Life.*

3. I say moreover, That it must be so, that for our own Preservation, we take not unjustly from the due Preservation of others. That we might lawfully invade Men's Persons or Goods by War, one of these three conditions is requisite.

1. Necessity, according to the tacite Contract in the first dividing of Goods, as is shew'd in the first part. 2. A Debt. 3. A Man's ill Merit; as when he doth great wrong, or takes part with those who do it, as the rest of the *Benjamites* did with those who forc'd the Concubine. Many things may be absolutely necessary for our subsistence, which yet we may not take from the right of others, especially if they be in the like calamity: For then the Rule holds, that in *pa. i jure*

porior est conditio possidentis. Thus no Admiralty judges it Theft, if a distressed Ship forceably takes Water from another, which hath more than in humane Probability will serve it to another watering. If one would afflict my Person, Nature shews me the way how I may defend my self, and Reason sets the measure. God and natural Equity required Eye for Eye, and Tooth for Tooth, but no more: Because all Pain above, was but satisfaction in Opinion, and conferr'd no real Advantage to the first Sufferer: Wherefore God might justly say Revenge was his, and he would repay it. When a Life must be lost *Favorabilior est mihi possessio & preservatio anima mea quam aliena.*

Obj. It is objected, That in natural Reason and Equity, the Punishment ought to be no greater than the Offence, nor the Payment greater than the Debt; *Isdem modis in delicti partem quis venit, qui in damni dati;* For one House pillaged, or a few Cattel driven away, a whole Kingdom is not to be laid desert. Though in civil Causes, Children ought to pay their Parents real Obligations, yet in criminal Causes they ought not to be charged with their personal Engagements; To cut off a few nocent, we are not to cut off Multitudes of Innocents, such as are Women and Children, (as in Sieges, and other Depopulations) of whom the one is to be spared for Sex, the other for want of Age.

*Hector adest secumq; Deos in praelia ducit,
Quiq; ruit mors est, tantum trahit ille timoris.*

But what is there to be feared from them who know not what Arms are? God's Justice would not that in *Sodom* the Just should perish with the Unjust; nor those in *Nineveh* who knew not their right Hand from their left. A Woman with Child condemn'd to die, suffers not till she be brought to Bed: Armies come actually resolv'd, yea oblig'd, to cut off each the other; but the same is not to be apprehended in Women and Children, though they be never so great a Multitude together. War is always a Physick too strong, which entering the Body with a Force greater than the Infirmary, must needs increase the Distemper, and like Thunder purging the bad Qualities, corrupt the good. Therefore by all this 'tis evident, that War is against Equity and Nature.

Ans. To all this I answer, That Innocents are not directly designed to Punishment, nor to pay that which they do not owe. But if the Case be such, that they who are innocent must perish, or live a Life worse than Death by the Cruelty of an Enemy, then to protect their Innocency, all may be done by those Innocents that extreme Necessity permits; and if their guilty Enemy obstinately refusing to do them Right in such a Case, involve Innocents likewise on their side, and in their Dangers, then they (their guilty Enemies) are to answer for the effects of their own Acts. And certain it is, that the Right whereby a Man may defend his Life by killing who would take it from him, is not always because the Invader is faulty, but by Reason of that Right which Nature hath given every Man in preserving himself; as is larglier proved in the first part, and by the second, *cap. 2.* They therefore who thus innocently take up Arms, are as little guilty of their evil effects, as he is of the ill Smell, which follows his cleansing a Channel. We know that a Chirurgion in dressing a Wound, puts a Man oft to greater Pain, than the Assassinate did who gave it: Yea, we know no Evil

which can be cur'd, but by another; and thus it is that by Peril we escape Pèril. That Query which serves to guide us in other Cases, will serve as well in this, *viz. Quis causam dederit?* And if they who occasion so many Evils would present themselves to Justice, then those would be all avoided: But there are few *Jonas's* now adays, and too many *Benjamites*, who chuse to see all ruin'd with themselves, rather than give up those to Justice who are guilty.

5. As for God's Justice in War, or other Punishments of his Enemies, I answer, That though he have more right by a thousand times to kill us, than we have to kill Dunghil-Flies, in respect of his absolute Dominion, yet he never doth the least Act of Injustice. True it is, that he made us out of his own Matter, and at his own Cost and Pains; *Is autem qui non solum operam prestitit, sed & partem solummodo materiae dedit, speciei dominus est;* so that being of God's intire Specification we can claim no right at all in our selves; and having no right he can do us no wrong. Notwithstanding by his free Goodness he hath invested us in some Right, both by Promise, Oath and Covenant, by which it is impossible, as Saint *Paul* saith, that he should play false with us, so that though he may seem to treat us unjustly here, yet he can and will recompense us happier in another World, whereas Dunghil Flies by his holy Will are not capable of another Life: But the Question is, *Whether God before the Law of the Gossel did not the same thing which is here objected as unjust?*

6. It is evident that God spared not the very Infants of the stubborn Nations: And though he said he would not punish those who were innocent in *Sodom* together with the nocent, yet he slew the Children; and still punishes the Parents in their Children to the third and fourth Generation: Yea, *David* pronounces a Blessing on them who shall take the young Children of *Babylon*, and dash their Brains against the Stones. Wherefore out of that which God *de facto* hath done; we may safely conclude, That though God had slain those in *Nineveh*, who knew not the right Hand from the left, yet he would not have been unjust for that.

Arg. 7. §. 7. Abraham received no expresse Command to fight with the four Kings: Yet God expressely approved of it after the Battel, and bless'd him for it, by *Melchisedeck*: It remains then that *Abraham* arm'd himself by the Commission of Nature, or by the Light of natural Equity: Therefore all War is not repugnant to the Laws of Nature.

Arg. 8. Eccl. 3. Solomon saith there is a Season fit for every thing. *A time to kill, and a time to heal; a time to love, and a time to hate; a time of War, and a time of Peace.* Therefore War is not simply bad, nor contrary to the Love which we naturally owe to our Neighbour, no more than a Father's beating his Child is always an Argument of an alienated Affection, or that a Man abhors himself because he now and then dismembers himself.

— — — *Ne pars sincera trahatur.*

Arg. 9. §. 8. God set the *Israelites* a Militia, yet numbers not up all the Occasions and Causes which might justly move them to wage War. Therefore it remains that in natural Reason the Causes may be easily comprehended and found out by our selves. Such as was (according to *Grotius*) *Jephtah's* War for maintaining his Frontiers against the *Amonites*; and *David's*, for his Ambassadors being

being abused. It is not against natural Equity, that a Man should suffer as much as he made another suffer: *Cain*, out of this Sense, gave Sentence of Death against himself; *He who shall find me, will slay me.*

Seeing therefore War was lawful in Nature, and under the Law, the main Difficulty now will be, to know——

CHAP. III.

Whether all War be unlawful by the Law of the Gospel?

- SECT. 1. *The Law of Nature, how far unalterable. Why difficult to find-out what the Law of Nature is.*
2. *Capital Justice still lawful.*
 3. *How the Magistrate carries not the Sword in vain.*
 4. *The Durance of the Judicial Law in Judea, till Jerusalem was destroyed.*
 5. *The Judicial Law not yet totally abolished.*
 6. *Whether they who have committed single Theft, and without Violence, ought to suffer Death? Which most punishable; Adultery, or simple Theft?*
 7. *Of the four Monarchies.*
 8. *The Necessity of Magistracy. Whether Magistracy should have been, though Man had not fallen? None so fit to be a Magistrate, as a Christian.*

1. I Dare not be so hardy as some, who say, That the Law of Nature is so intrinsically good, right and reasonable, that it is immutable: So that, as if War were once lawful by the Law of Nature, for that reason it should, of absolute necessity, be still under the Law of the Gospel; for the Law of Nature is unalterable only in what it commands to be omitted, or committed; not in what it permitted; that is, *In Præceptis & Veritis, non in Mediis Licitis.* Those *Præcepta & Verita* relate most to the first Table and to the Ninth Commandment, against Lying) where War hath not its place: For, as there are many things relating to God, which he cannot dispense himself from; so there are many things relating to himself, which he cannot dispense us from. Thus we must ever worship God in Spirit and Truth, because he ever is both Spirit and Truth: But we know not what the Law of Nature is, because we cannot *perire a rectam Rationem.* God, at the Beginning, did shed Light into the World, without a Sun; but after, derived it from the grossness of that Planet; perhaps to typifie two things to us.

The Law of Nature, how far unalterable.

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

1. *The Sabbath*, That Man should observe the first Day and Light holily to his Creator, abstracted, and free from all sensible Actions, according to that Light which derives not from Nature.

2. *That Light* might signifie the Light of Man's Understanding; which, at first, was fill'd with infused Knowledge only, and acquired or derived nothing from Sense, or from any created thing. For *Adam*, by some of his first Acts, in the first.

first Sabbath-day, christned (as I may so say) all the Creatures with proper and significant Names, as the true God-father brought them to him in their Infancies: But when the Devil's ill Breath had sullied that clear Mirror, then this supernatural Light was intercepted, and he left, for half his time, in Night and Darkness, and to begin his Science at Sense; which is so clouded, and rounded with unequal *Mediums*, that we rarely discover streight things, otherwise than in Refraction, as Oars in Water; according to the Distemper *Juvenal* speaks of:

— Cum jam vertigine rectum

Ambulat, & geminis exsurgit mensa lucernis.

Every thing therefore sports with us now, as the *Philistins* Boys and Girls did with *Sampson*, after his Eyes were out: And as *Noah's* Children had their Maternals wip'd out of their Mouths, so had we Nature's first Lessons out of our Memories; and losing right Reason, we lost the Rules of our Actions. Our Laws define that of Nature thus, *Jus natura est quod natura omnia animalia docuit*: But this is extremely faulty; for it is both too large, and too narrow: It is too large, in respect of the Subject, because it takes in irrational Creatures; and too narrow, in respect of the Object, because it comprehends only those Acts which we have in common with Beasts, and not those which we have properly as Men. The *Modus colendi Deum*; or, the several ways of doing Homage or Vassallage to our Lord, is a thing which God held alterable, and so always did Nature; for God and Na-

ture commanded the same things; *The Gentiles, who had not the Law, doing by Nature the things contained in the Law.* So that *Schlichtingius* saith ill; that *Lex religionis tollit legem natura*: For though our Religion hath in it many things above Nature, yet it hath nothing in it properly so contrary to it, as to take it away. What Nature saith concerning the Laws of the second Table, is much altercable; for if they be, according to Nature, unalterable, and that God and Nature go together, then we see evident Contradiction; God commanding *Abraham* to kill his innocent Son,

Si non ut fontem saltem ut victimam,

and the *Israelites* to carry away, not the King of *Egypt's* Goods, who had so much wrong'd them (for 'tis likely they were not so familiar as to borrow of him) but the People's. Thus therefore I prove, that some War is still permitted under the Gospel.

Gen. 9. 5, 6. *Capital Justice still lawful.* *Arg. 1. §. 2.* God's Primary Interdict of shedding Humane Blood, and his requiring it again, is no more than what was expressly enjoined in the sixth Commandment afterwards; which Commandment, after it was given, was no Impediment, either to capital Punishments, or to War: But that Commandment is not abrogated, nor capital Justice now interdicted, either by it, or any other Injunction of Charity; as afterwards will more evidently appear. Therefore some War is still lawful, which is nothing else but Capital Justice; and is not the less unlawful, because others forcibly oppose it, and make it calamitous thereby: But on the contrary,

Arg. 2. God's Justice must still have Controversies with the Unrighteous; and by the same Reason that he still continues exterminating Angels, he continues the Power of the Sword in the hands of Princes and Governours, for the Vindication of

of that which was ever morally binding, and by God's Approbation occasioned cruel Wars, even betwixt Jew and Jew. And if any Analogical Collection be of force, we may coherently infer, That if God placed Fire and Sword at the entry of the earthly Paradise, to repulse their entry who would prophane it by adoring a false Deity; why then may not his Church now be defended by the same means? Christ's Hand so accustomed to give Blessings and Healings, was never arm'd to give stripes, but in order to this: Not as if his intent was to force his Religion, or any then to the Altars, but rather to segregate the impure Professor from disturbing the pure; for they all profess'd the same God. All the Swords and Whips in the World, cannot constrain a Man to present God the pure Sacrifice of the Heart; it's God's reserved Prerogative to move that by his Spirit in the new Creation, as well as he did the indisposed Mass by it in the old. Free Men were never dragg'd to the Altars, neither were those Victims sacrificed, which led unquietly to the Temple.

Arg. 3. John 18. 35, 36. Pilate answered, *Thine own Nation, and the Chief Priests, have delivered thee unto me; what hast thou done?* Jesus answered, *My Kingdom is not of this World: If my Kingdom were of this World, then would my Servants fight, that I should not be delivered to the Jews.* Christ, whose Laws symboliz'd not at all with those which relate to the *Menum* and *Tuum* of this World, would not seek the protection of them from earthly force: But withal, he clearly denotes this to us, That they whose Rights and Kingdoms are of this World, may defend themselves by this right of War. Acts 18. 14, 15.

Arg. 4. § 3. Kingly Power is still lawful; for St. Paul invited Nero and King Agrippa to the Christian Faith, without any intimation that they ought thereby to derelinquish their Crowns; but on the contrary, that they carried not the Sword in vain; which yet were in vain, if they might not therewith have punish'd capital Offences with death; and if so, then by just consequence prosecute Justice by War, in which the worst is but death. How the Magistrate carries not the Sword in vain.
Rom. 13.

Obj. To this Argument, there are two Answers: First, That though execution be not done by the Magistrate's Sword at all, yet it may not be said to be carried in vain; for it may be carried *ad terrorem*. Secondly, That St. Paul tacitly dissuaded King Agrippa from exercising any function of Blood, in wishing him altogether such as himself was, saving being in his bonds. Acts 26. 29.

Ans. To the first, I reply, That if all Men certainly knew that the Magistrate would not, and durst not make use of his Sword, then it would never be *ad terrorem* to any, except to himself; because according to this Law, any Rogue might take it from him, and execute him therewith most securely. To the second, I answer, That that elegant piece of Saint Paul's Rhetorick, is to be understood with a temper according to his scope, which was to perswade King Agrippa to embrace the Christian Faith. Otherwise, if to be a Christian, were to be like St. Paul in all things save his Bonds, then it were necessary to be of his Country, his Town, his Family, not married, and the like.

Arg. 5. If Christ, or his Apostles by him, would have introduced such a strange state of living, as was never heard of before; undoubtedly he or they would have told

told us in exprefs manner, *That it was now no longer lawful for any Governours to judge of other Mens Lives, and that upon pain of damnation, Arms were no longer to be born.* If Christ among other Mysteries brought from the Bosom of the Father, had Commission to deliver this, surely he would have spoke boldly of it, even to the faces of the Potentates of the Earth, and without mincing it, or of leaving it to each Man's peculiar Logick, to be deduced out of the Analogy of his Religion, especially when there are such strong Presumptions against such a Deduction. God put the Rules of Religion and of Government into *Moses* his Hand at the same time; and yet Wickedness could not then be restrain'd by force, much less can it be now without it. Here *Schlichtingius* replies, That Wickedness is best restrain'd by the Laws of Christ.

I answer, This is very true; but it salves not the doubt: For it is here questioned what may be done by Governours, when *de facto* Wickedness is neither restrained by Christ's Laws, nor by any other conformable to Christ's.

Arg. 6. *Paul* fought a Guard of Souldiers; and *Acts 25. 11.* he saith of himself, *If I have committed anything worthy of death, I refuse not to die.* Therefore *St. Paul* thought, even after the Gospel publish'd, that there were some Crimes which might yet be punish'd by the Magistrate with death. And if he had Commission to declare Hell to those who should do capital Justice, according to a Law but immediately before lawful, then he would not have said that which was quite contrary to it, and so have confirmed them in a damnable error, at least by his silence when he was bound openly to speak the contrary.

Arg. 7. §. 4. It cannot be shewed by any induction out of the Scripture, That the Judicial Law of the *Jews* Commonwealth (which contained capital Punishments and War) did actually cease till *Jerusalem* was destroyed: And it was not equal that it should be in force with the *Jews*, after they ceased to be a People, and (being made a *Roman* Province) were without hope of freeing themselves from that Government: Neither did *Moses*, who wrote those Laws, prefix a term of time to the durance or expiring of them; neither did Christ or his Apostles (whose very Office it was to tell us all that would exclude us from Salvation) ever speak of the expiring of such a Law, unless it were implicitly comprehended in Christ's Prophecy of the Destruction of *Jerusalem*; which was the expiring of the *Jews* Commonwealth only. But the quite contrary is most apparent; for after Christ was ascended, and the Holy Ghost was descended, and that the Apostles were sent with sufficient Instructions to teach all Nations all that which was sufficient to bring them to Heaven;

I say, after all this, *St. Paul* avowed the Judicial Law: For in his Plea for his Life, he argued, That he had done nothing against the Law of the *Jews*, which was the Judicial. And in another place he said, The High Priest was then to give Judgment according to the Law of *Moses*, which still was the Judicial; in the Dispensation whereof, the High Priest was as a Civil Judge. And Christ came not to take away the Law, but to fulfil it, by filling only the Ritual Shadows with his Substance, a Miracle which no body but his could do, to take away and not make a shadow. So that if their Law of Government lasted unblamable so long as their Commonwealth stood, and that

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The durance of the
Judicial Law in
Judea till *Jerusa-*
lem was destroy'd.

Acts 25. 8, 9.
Acts 23. 4.

the Christian Religion as it was profess'd by the Apostles, after the descent of the Holy Ghost, was as sufficient to bring Men to Heaven, as it is now, then Jews converted needed not at that time to have quit their Magistracy, neither ought they to have judged otherwise than according to the Law of *Moses*, which judged of Life and Death, and of War.

Obj. But it is objected, That the Judicial Law was abrogated by Christ, because he forbad that which before was lawful by it; as in matter of Divorce in the number of Wives, in revenge of a Tooth for a Tooth, in forbidding them to go to Law, &c.

Ans. *Grotius* thinks it enough to answer here, That betwixt those Precepts and the Law, there is no Contradiction, no not contrariety, but only a Difference. For he that abstains from Divorce and Revenge, and the like doth nothing against the Law, nay he doth that which the Law chiefly desires, in taking away and reconciling Differences: And thus it is that the state of Health is not repugnant to the Nature of Physick. But if Christ had said, *It is now no longer lawful to punish a murderer*, then he had spoke something contrary to the Law, which saith, the Magistrate is bound to punish a Murderer, otherwise that he is guilty before God.

5. But for a further strengthening this principal argument, I conceive we may go a little farther than this, and say with some other Doctors (whose Arguments I shall here inculcate) that *God never yet totally abolish'd the judicial Law*; but only in those parts which were proper to the *Jews* Commonwealth, as the freeing of Hebrew Servants in the seventh Year; The Marriage of a Brothers Widow in case he died without Sons: And of Marriage betwixt those always who were of the same Tribe. But it was not abolished in those things which are immutable and concern all Nations, and by reason of the Equity of them, many learned Men conceive that the *Græcian* Laws were derived from thence, as from them the 12 Tables, and thence the Civil Law was deduced. The Reason of the former is, Because those things which were peculiar to the *Jews* cannot be said common to the Government of all Christian People. The Reason of the latter is,

The Judicial Law
not yet totally a-
bolish'd.
Exod. 21. 2.
Deut. 25. 6.
Numb. 36. 8.

First, Because if all those Judicial Laws were abrogated, then there are none left in the Word of God; and if so, How then is it true that the Word of God contains perfectly the Precepts of all Moral Vertues? For according to this, it would be destitute of distributive Justice, and so be imperfect.

Secondly, If all Judicial Laws be abolish'd universally, then there will be no certain Rule for Punishment, but according as each Magistrate shall judge it just or unjust, so he shall do, and it will be just: So that if Adultery shall be Death in one Country, and not in another, both will be just.

Thirdly, If they be all universally abolish'd, then of these two, one must needs be: That God in the New Testament commanded not the Magistrate to punish Wickedness (which is false *Rom.* 13.) Or if in general he commanded it, and did not prescribe how Punishment should be proportioned to Wickedness, he then left it to the arbitrary Will of the Magistrate: But this is absurd; for the Magistrate as a Man, may err; and therefore it is not to be suppos'd that God left it solely to his Will. Besides, when the Magistrate shall punish, he must needs

do it with a Conscience doubting whether he hath proportioned his Punishment rightly or no. But, *Rom. 14. 23.* Whatever is done with a fluctuating Conscience, is ill done. Upon this ground *Moses* twice durst not pronounce Sentence on those who were great Offenders. God hath prescribed Punishments for his Church, And hath he none for States? Is it because he would have that do justly, and these not? Or that he hath a Care of his Church, and not of Commonwealths, of which he is Author? Some Politicians have thought good to retain some parts, and not others of *Moses* his Judicial Law, even such as by a common Reason relate to all Men, and not to *Jews* particularly. Murder and Adultery were in that Law equally punish'd with Death; but simple Theft was not. However, some States have altered these parts of Divine and Universal Justice so far, as to make one of these, which was by God's Order capital, not to be so; and that which was not capital now to be so. Yet the same States cannot pretend to be so Legislative, as to make that no sin, which was and is a sin, nor to make it a less sin: How then can they justly change the Punishments which God ordered them?

Fourthly, It is but congruous to conclude, That if God have such a Care of Families, as to make Laws for the private Societies of Husband and Wife, of Parents and Children, of Masters and Servants, he hath then provided Laws for the Regiment of publick Societies, in the temper of publick Laws and Punishments, which otherwise might become the greatest Injustice.

Obj. It is objected, That *Moses* his Laws are not fitted to determine all those Cases which may now happen.

Ans. I answer, That God thought them sufficient for the accidents and time of the *Jews* Commonwealth, which was 1600 years; and how can any Man prove that the like Cases hapned not then in that long time, which happen ordinarily now? A Law is a Rule; and if the Author of it be perfectly Wise, perfectly Just, and perfectly Good, then his Rule cannot but be likewise perfect. Though it be granted, That all Cases are not defin'd by *Moses* expressly, yet the perfection of his Laws requires, That we say no Case can now happen, which may not be determined by some Analogy with that which is express'd: Of things which are alike, the Equity and Judgment ought to be alike. For example, *Exod. 21. 33, 34.* If a man shall dig a pit, and not cover it, and an Ox or an Ass shall fall therein; the Owner of the pit shall make it good, but the dead beast shall be his. But what if a Horse or a Sheep (which is not named) should fall therein? From the Analogy, it is easie to conclude the Equity.

Obj. It may be again objected, That the Gospel doth not abolish particular Commonwealths; therefore it permits each State its own Laws, and therefore our Magistrates are not obliged to God's Judicial Laws.

Ans. I answer, That as the Gospel abolishes not the several States of Men, but corrects and reforms them; so doth it not abolish, but correct and reform States and Magistrates, *Mat. 14. 3, 4.*

For pressing the further consequence of this Argument, I shall propound this Question:

Quest.

Quest. §. 6. Whether they who have committed simple Theft, and without Violence, ought to suffer Death?

God's judicial Law permitted it not; but modern States think that that Law now would not be equitable, and therefore ought not to oblige. For it is, say they, an ordinary Rule of Justice, That wickedness encreasing, punishments should likewise be proportionably increased.

In David's Time, the Children of Israel had chang'd so much from their former Simplicity, that he then dispens'd himself from the Letter of the judicial Law: For when the Prophet *Nathan* told him, that a rich Man had taken from a Poor his only Lamb, he presently gave Sentence that the rich Man should die, and restore the Lamb four-fold.

Ans. To all this I answer: First, that if God thought it once Justice, that they who committed simple Theft should not die; then it is against the ordinary Rule of Equity that they now should die, only by humane Authority: *Justitia enim semper sequitur partem mitiorem.*

Secondly, if Punishments may be so exasperated and heightned, that that which was not Capital before, may justly become Capital now; then no Reason can be alledged, why Thieves should now suffer Death, and Fornicators not. Which most punishable, Adultery or simple Theft.

The Commandment which forbids stealing a Man's Goods, follows that which forbids stealing away his Honour: And good Reason for it, because he is to leave all Goods and Relations to maintain the Possession of this.

Thirdly; it is ill suppos'd that the Sins of these times exceed those of the Ancients, both in quantity and quality. God's Punishment on *Sodom* and *Gomorrah*, and of the universal Deluge, argues the contrary: Moreover, our Saviour exaggerating the Iniquities of the last times, saith, they shall be like those of *Noah* and *Lot*.

The instance in *David's* passionate Sentence proves nothing: He gave Sentence of Death against all *Nabal's* House, which was not therefore just. Neither was that given against *Mephibosheth* more equitable, whose Servant misinformed *David* on Purpose to share in his Master's Estate. 2 Sam. 19. 29.

Besides, it was suppos'd to have been, not a simple Theft, but a Theft with Violence and Rapine; and therefore *David* might justly give Sentence of Death upon the Thief. Wherefore the encrease of the same Impieties encreases the same Punishment according to the same quantity extensively only, and not according to the quality or intensively. For it is not the Number of Offenders, but the quality of the Offence which proportions Punishments. Out of all this it follows, That Christ's Laws took away those of *Moses* only in those respects, whereby Jew was separated from Gentile, that so Place might be made for the Extension of a Catholick Church, and for an universal Communion of Saints. Those things therefore which are of intrinsecal Honesty and Piety, and which are common to all Men in the judicial Law, are still in Force, and by that consequence so is Capital Punishment and War. Phil. 4. 8. 1 Cor. 11. 15, 14.

§. 7. *Arg. 8.* The four great Monarchies which ruled in the World, were by God's lawful Appointment; and, according to the Prophet *Daniel*, the last shall stand to the World's end, and till the Saints of Christ possess that Kingdom of his which endures for ever and ever, *Dan. 7. 21, 22.* For out of the ten Horns (or Provinces) which were in the Head of the last Beast (or Monarchy) *v. 24.* another Horn shall arise (the *Turk*) and shall make three Horns or Provinces fall; which are, according to Interpreters, *Egypt, Asia and Greece:* He shall speak great Words against the Most High (in his Blasphemy against Christ,) and think to change Times and Laws (by his new Religion;) and because the Soles of his Feet are of Iron, therefore he shall stand till the last, and all the time of his Reign shall maintain War against the Saints; which War cannot be supposed, but where there is mutual Opposition; and yet, during this Mutual Opposition, the Professors of Christ's Religion may continue Saints, *v. 21.* And, *Rev. 17. 16.* these Saints shall exercise a bloody Victory over the Whore of *Babylon.* By all which it is evident, that some War is still lawful under the Christian Religion, and shall be so till the World's end.

Arg. 9. § 8. Out of the fourth Argument it was proved, That the Magistrate's Duty was, not to carry the Sword in vain. But because some say, that they who are yet no farther than Nature, may, perhaps, have need of such a Magistrate; and he, consequently, have need of such a Sword; but they who have renewed Natures, and are above Laws and Ordinances (as true Christians, in their Sense, are) have no need of any Magistrate, and consequently, no need of any Sword: Therefore here I shall shew, that none is so proper to be a Magistrate, as a Christian; and desire those who pretend to be so refined, as if they had no Bodies (but pretend to be as *Moses* and *Elias* in the Transfiguration) that they would humble themselves by the *7th* of the *Romans*, where they shall see *St. Paul* (not as an *Individuum vagum*, or an unregenerate Person) say, *I am carnal;* not that he was only heretofore carnal: And, *v. 24.* he cries out, *Who shall deliver me from the Body of this Death?* *V. 22.* he saith still of himself (as regenerated) *I delight in the Law of God, after the inward Man.*

I shall not here dispute, whether it be congruous, that Magistracy should have been though *Man had not fallen:* Much may be said in the Affirmative, for its Power is grounded on what is natural and moral. Secondly, Man here is to be considered more as a sociable, than as a sinful Creature: And a restraining or intimidating Power in Society, is more commendable in preventing, than in after-correcting sinful Acts. Lastly, There is an Impression of this Power naturally in the Hearts of all Men. It is not enough to object here, That Man could not have been any way intimidated, unless he had sinned first; for that seems to call in doubt the force of God's first Law, *The Day thou eatest thereof thou shalt surely die:* In which Words there was a Threat, which would have been without Effect, if *Adam* then should have been without a Sense, or Apprehension of it. The moral and standing Ground of Magistracy is in the Fifth and Eighth Commandments; *Honour thy Father,* and *Thou shalt not steal.*

The Qualification which God, under the Law, made of a Magistrate, was such as lasts still; *Exod. 18. 21.* *Thou shalt provide out of all*

The Necessity of a Magistrate.

Whether Magistracy should have been, though Man had not fallen.

1 King. 19. 9.

all the People, able Men, such as fear God, Men of Truth, having Conscience, and place such over the People to be Rulers. But what is there which so strictly recommends and enjoins these Vertues, as the Christian Religion? Which, by the Promises of a better Life, depresseth in us the Tumours of Ambition and Avarice, which are the Seeds of all publick Troubles; one taking too much, the other giving too little. Our new Law therefore most reasonably perswades our Magistrates, like *Samuel*, when they are leaving their Charges, confidently to ask their Subjects, whether they have oppressed or defrauded any of them of an Ox, or an Ass? For this were a Theft worse than Sacrilege; as *Guevara* saith, *Antes tomaria lo de los templos, que no lo de los pueblos; porque lo uno es de los inmortales, dioses, y lo otro es de los plebeyos pobres*: Which is, That he had rather take from the Gods, than from the Poor, because the Gods were immortal and unexhaustible. If any Inconveniency in Government arise, there was never any thing found out so proper to perswade People to a patient suffering it, as the Christian Religion. Other States permitted Theft (as the *Lacedemonians*) Adulteries, Incest, Murtherings of those who were born with Deformities, and of old unserviceable People: Which makes me conclude with the Gospel, That the Wile of this World, are the Blind, who lead the Blind into the Precipice; and that to enjoy an happy Government, we should receive our Orders from God, who, *1 Tim. 2. 2.* hath given us Princes, that for the *Bonum animale*, we may live quietly; and for the *Bonum spirituale*, holily, under their Protections.

More so fit to be a Magistrate as a Christian.

1 Sam. 12: 3, 4.

Matth. 15.

CHAP. IV.

Objections and Answers.

- SECT. 1. *The Christian Religion, why not revealed altogether by our Saviour.*
 2. *Of Christ's and Moses's Laws, in order to the Cause, and the Effect of Sin. Of Loving our Enemies.*
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10. Of

10. *Of the Repentance of Malefactors.*

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12. *The Conclusion, perswading, not without extrem Necessity, to make use of the naked Sword.*

Thus far I have endeavoured to make clear, that if Christ's Purpose had been to take away War, and capital Punishments, he, or his Apostles would have declared it in express Terms, in regard of the Consequence of such a Command, and of the newness of it: And so much the rather, because no Jew could imagine, but that *Moses* his Judicial Laws in things of common Equity should stand in *Judea*, so long as the Judicial Commonwealth should stand.

However *Schliſtingius*, and the rest of his Tribe object, That though War be not expressly, yet it is virtually forbid by our Saviour, as being totally repugnant to the *Analogy of his Religion, and to the Oeconomy of his Cross*: That our Saviour, *Matth. 23. 2, 3.* said, The Scribes and Pharises sat in *Moses* his Seat, therefore whatsoever they bade those of that Time do, he commanded likewise that they should observe and do it: For those Times (say they) were not yet nervous enough to bear all that which he brought from the Bosom of his Father.

1. As he discovered not himself fully, till within three Years of his Death, so did he not his Doctrine, till he ascended, and had acquired Regal Authority to make and abrogate Laws. He considered the Capacity of his Infant Church, and would not, that *new Wine should be put into old Bottles*, for fear of breaking them. This made the Apostles themselves, even after his Ascension, remain yet a good while half judicial, and adhere to Circumcision and other Rights; as if it were right which the Law saith, *Qui lacte nutritur pars viscerum matris adhuc censetur.* *Moses* coming directly from God, out of the Mount, shined in the People's Eyes, like a second Sun; and therefore could not presently be looked on, but through the Eclipse of the Veil. However (say they) our Saviour, in his Sermons upon the Mount (*Matth. chap. 5, 6, 7.*) said enough to prove the Incompatibility of his Spirit with a rank and carnal Spirit of War.

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

Ans. As I can suppose a defensive War, against which Charity can make no Exception, so I presume that the *Analogy of the Christian Religion* can no more except against it, than against Justice. And because many Objections are raised out of our Saviour's Sermons, *Matth. chap. 5, 6, 7.* therefore I judge it necessary here to premise, That our Saviour never really never intended to take away, but exactly to fulfil, both by his Example and Precept, that which was moral in the Law of *Moses*, *Matth. 7. 17, 18.* It is said, *Jer. 31. 31, 32, 33, 34. Heb. 8. 6, 12. Acts 13. 38, 39.* that the time should come, that God would put his Laws into every Man's Mind, and write them in every Man's Heart; and all Men should know

know him; For he would be merciful to their Unrighteousness, and remember their Sins no more. This Promise far exceeded those of *Moses* in the way of expiating our Sins; for every Man now in every place carries about with him his Sacrifice in his own Heart; which being humbled by Faith and Repentance, makes sufficient expiation; whereas before it could be done only in one Town of the World, *Jerusalem*, and through many perplex'd and chargeable Ceremonies.

Moses his Law distinguish'd not so exactly of the Cause and of the Effect of Sin, as *Christ* doth. The Cause is the Heart, where it is conceived (as well as it is the expiating Sacrifice afterwards through *Christ*) but of that, as of all internal Acts. The *Jews* made least

Of *Christ's* and *Moses* Laws in order to the cause, and to the effect of Sin.

Account and were most solicitous about the external and most manifest Effects, as relating to the cognizance of a humane and penal Tribunal. But *Christ* who was to perfect us by a more perfect Law and Promise tells us, that to God the Causes are as manifest as the effects; and therefore, that we have before him committed Adultery, if we admit the lascivious thought; and Murther, if we nourish Anger or Malice in our Hearts. All these, and the like, *Moses* (whose Laws concern'd the several kinds of our Actions) forb'd, but not in the same Degree and Punishment that our Saviour did.

If the Substance of the Law consisted most in Love, then our Saviour gave an extraordinary Augmentation to it, in extending it to the Enemies of the *Jews*; for the Law was streightned only in the Exercise of Charity; The Enemies which our Saviour here spoke of to the *Jews* were of two sorts.

First, They who were derived from the *Amorites*, *Hittites* and *Jebusites*, whom the Children of *Israel* were at their first planting to destroy, but utterly did not; and on whom the King of *Israel* always levied Tribute of Bond-service, 1 *King*. 9. 20, 21.

Of the *Jew's* Enemies.

Secondly, They of all parts of the World who were not circumcised, By the renting of the Temple-Veil these distinctions were taken away, and many of those *Cananists*, and the others, happily converted to the Faith, were not for their old Quarrels, still to be persecuted with Hatred by the *Jews*; for that might probably beget afterwards a greater Contempt of themselves as *de facto* it hath since all the Christian World over. Our Saviour therefore justly press'd this Command (as all other which concern'd the extent of Charity) strictly on the *Jews*; for their Law was most defective in that, and themselves were most tenacious to the worldly Esteem, and Advantages gathered upon Strangers from that defect; and for want of such a diffusive Vertue as Charity, *Christ's* Doctrine in a humane moral way could not have had so free a Propagation.

But though all the World be at this time so near a-kin through the Blood of *Christ*, yet the Course of judicial Law ought no more now to be suppos'd forbid thereby, than it was before, betwixt *Jew* and *Jew* who were Brethren. For it being granted that Love is to be exercised in a larger Degree than before, yet it is still to be with some Inequality or Disproportion, according to the Distinctions of Societies, chap. 1. Beyond all doubt, all Men are not to be lov'd alike; we are to be tenderer of our Parents than of others; next of those who are of the Household of Faith; then, that the Good of the In-

Of unequal Love.

nocent

nocent be preferr'd before the Good of the Nocent. Out of which unequal sort of Love, War and Capital Justice is founded. We are bound to love our Enemies according to God's Example, whose Sun equally shines on the just and unjust; and yet for all that, he punishes the Wicked here, and will punish them worse hereafter. Some therefore may still be reputed our lawful Enemies, if the Conditions of Justice, unequal Love, and Revenge except not against us.

2 Ob. §. 4. *Mat. 5. 38.* Ye have heard an Eye for an Eye, and a Tooth for a Tooth; but I say unto you resist not an injury, but to him who strikes one Cheek, turn the other: Therefore, we are no longer to repel injuries, neither publicly nor privately, and consequently not to go to War.

Ans. I answer, That though God would not have us given to such an unnatural thing as Revenge; yet he would not have us justify Disorder and Cruelty; such as one wretched *Philistin* might with sport act upon a World of *Samsons*, if we were obliged tamely to let him put out all our Eyes, or dash out all our Teeth: After which, we should not be well able either to beg or eat our Bread.

Frangendus misero gingiva panis incermi. Juv.

The *Italians* say, *Chi li fa peccar il lupo la mangia*; He who makes himself a Sheep, a Wolf will presently devour him. This were a Doctrine surely much to the Devil's Advantage; and therefore, we ought to be tender in the Consequences of it; lest, because that we are oblig'd to Martyrdom in the particular Case of our Religion, (there where the Magistrate and Kingdom believe not the Word of God) we conclude, that Innocence and Innocents are in all other Occasions and Places to be abandon'd; which is to magnifie God's *Clemency* to such a height, as to take away his *Justice*: Whereas indeed there may be a *Lenity*, which effectually may be *Cruelty*. Wherefore in doubtful Interpretations, we are to follow that which draws the least Inconvenience, especially if other Texts favour it afterwards: Upon which Ground I conclude,

First, That the Person here spoke to by our Saviour, is the *private Person* injured, whose Sense provokes him to that Revenge which the publick Magistrate must needs be void of. Secondly, he speaks not of every Injury, but of *a blow which neither wounds nor dismembers*. It is evident that our Saviour, by those Words intended not for ever after to abrogate the Course of publick Justice. For at his own Trial afterwards before *Pilate*, when a stander by smote him (in the manner here mention'd) on the Cheek, he did not silently turn the other; but immediately reprehended the Injurer, saying, *If I have spoken evil, bear witness of the Evil; but if well, why smitest thou me?* Joh. 18. 23. Out of which Words it appears, First, That our Saviour thought not himself oblig'd to receive a second blow before he reprehended the striker for the first. Secondly, That he conceiv'd it then lawful to form Actions before publick Magistrates, in case of doing or speaking Evil: For bearing of Witness, is in order to the Magistrates Judgment. As if our Saviour should have said; *Why smitest thou me? Seeing we are both before the publick Magistrate, who is to hear and to take Witness of all the Evil which is done or spoke.* Wherefore by those Words here objected, and which our Saviour spoke in the Mount some years before his Trial, he did not understand,

Publick Vindication of some private Injuries not unlawful by the Law of the Gospel.

That

That we might not by a third Publick Person calmly resist important injuries: Neither did St. Paul, long after the Ascension, (when the Christian Religion was perfectly declared) judge it, *contra Oeconomiam crucis*. He saith, the Plaintiffs among the Faithful (who might chuse whom they would to be their Judges) did ill, having private controversies with other Christians, to go to heathenish Consciences and Tribunals. The *Israe'lites* were never in so little security, as when they were fain to go to the *Philistins* to whet their Swords. Wherefore St. Paul only changed the Judges, saying; *If ye have any matter against one another in things pertaining to this Life* (and are not *de jure publico*) rather than to go to Infidels for private Justice, set them to judge who are least esteemed in the Church. Thus seeing Courts of Justice, impleadings, Magistrates, and unequal Love, are still lawful, therefore we may publickly resist injuries still, in such a way as shews we are not poisoned or tainted with revenge.

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

Ans. §. 5. To this I reply, That the resister here can be no other than the private Person injured: Because the forbearance of retaliation enjoined in the Text, respects him and the striker immediately after his first blow, at which instant *Moses* Laws (which (as is cleared by the former argument) were most defective in Charity) permitted the party injured a present return of injury, as the Civil Law did, *ad vitandam secundam percussione, quia in dubio is qui fecit insultum habet animum repercutiendi*. But because Nature hardly digests the first blow while she is heated with it, and that heat seldom doth Justice, but transports both the one and the other Resister farther than they at first perhaps intended

Why the private retaliation of some blows unjust.

Iram atq; animos à crimine sumunt. Juv.

Therefore our Saviour (who came to make the Law perfect in Charity) Commands rather that we would turn the other Cheek to receive a second blow, than vindicate the first with private rancour. If we remit our wrongs to the Magistrate, he (not having our personal Passions) can do Justice with preservation of Charity, because he being obliged in all his sentences to incline to that which is most favourable for the delinquent, His punishments necessarily have a stream of Clemency always running through them: So that it is not contrary to Charity to have recourse to the charitable Magistrate, as our Saviour and St. Paul by their Examples and Words allow.

How Clemency and punishment go together.

6. But in all this it is to be well observed, that neither of them countenance any revengeful retaliation. *What therefore is revenge?* Some say, *What Revenge is.* revenge is when there is more in the punishment, than was in the fault: But this is not unnatural or unjust, because there is no reason that the innocents and nocents sufferings should be alike, for then, punishments would not be so effectual to terrifie others, nor to give future security to innocence.

Schlichtingius defines it thus; *Vindicta est pena qua nullam veram injuriam aut damnum illati compensationem continet: Revenge is a punishment which contains no real compensation of an injury or of harm done, as of an eye for an eye, a tooth for a tooth: But this definition is not perfect, and is too Negative; Seneca comes somewhat clearlier to it when he defines it, Vindicta est voluptas inhumana, quae* *Sen. de tran. iii. c. 15.* *alienis delectatur malis, and the Poet likewise, when he saith*

Invidiosa dabit minimus Solatia sanguis. Juv.

Revenge therefore is properly an insolent *delight* in the sufferings or pains of another, whom we judge to have injured us, which pains residing in the Person of the sufferer, are not naturally fitted to produce a contrary sense of joy in the Person of a stander by, nor to transferr any real profit to him in the way of compensation; and therefore it is no part of Justice, and consequently is unlawful. Justice represents a Malefactor's pains to us, not to excite delight but fear, *Ut* *pena unius sit metus multorum.* The pains and diseases of others naturally Communicate themselves more than their Joys and Healths can: Neither hath any Man such a high sense of joy, as of pain, from whence, the greatest resentments ought to be of pain.

Disi spectant laesos oculi, leduntur & ipsi.

Nay, Man is not able to stand his joys; for sometimes there are such profusions of the Heart as kill immediately; and a laugh may be so hearty as to draw tears along with it in the Eye: Which is, because Nature coming out of imperfection and nothing, carries always along with it self a disposition to ruine, and a *Porta Sabina*, treacherously to let in a thousand Enemies upon us. From the just apprehension of which, we conclude, that if they who take a delight in the pleasing and sensual Sins of others, offend more then those others who commit them (because they cannot plead such a violence offered to their Senses as these can) then they who raise a delight out of the *pains* of others, are more blameable than the former, or than they who upon passion or fury inflict those pains on the sufferers. Wherefore revenge seems to be even beyond injustice; for this ordinarily aims at some positive convenience either in security, profit, or honour, though it be by the ruine of another; but the act of revenge begins when all this is done, and insults like *Tarquin's Queen*, who when her Father King *S. Tullius* was murdered and thrown into the streets, she drove her Charriot over his Body, at which sight her Horses were frighted, but she fate fixt as in a Triumph, *Super cruentum patrem, vecta carpento, consternatos equos egit. Flo.*

This was that which made the Sweet in *Catalin's* Banquet, in which he and his Complices drank a Round in their own Bloods; an Act said to be very horrid, there it not for the Cause, which was more horrid.

7. As for Enmities (which are some Steps and conveyances to Revenge) we are dispos'd to them before we are born, and continue them after we are dead, and all without Contradiction: Our Dispositions to Enmity and Amity. For *Jacob* and *Eſau* quarrell'd in their Mother's Womb, and as soon as they had received their Signatures. The learned *Cujacius* missing Preferment in his own Town of *Tholouſe*; and the late Duke of *Rohan* receiving many Difobligations at Court, concurred both (perhaps accidentally) in this one Epitaph, which they would have their Ashes always hold out as a Flag of Deſiance; the one at *Bourges*, the other at *Geneva*.

Ingrata patria ne offa quidem habebit.

Yet *Nature* disposes us powerfully to Amity: For the Feebleness and Indigence of new-born Infants hath this good in it, that they are thereby immediately engaged to love their Parents who only provide for them. — *Ore volat pleno mater jejuna*; and consequently, to have a reciprocal Care of their Parents Feebleness, when old Age shall seize on them; besides, Children are by their native Impotencies inured to Obedience, and thereby fitted for Society; and in this Union, *Nature* leaves them: *Policy* afterwards seeks to strengthen it by the Alliances of Marriage, Kindred, Arts, Commerce, &c. Then comes *Religion*, which seeks to cover all the other Defects and Differences, reducing us to the Unity of our Beginning, and of our End. Yet for all this, Love is not secured nor fortified enough; for those general Causes produce contrary Effects when they are applied to the particular Conditions of Men, as the Sun doth, when it produces Poison in one Place of the Earth, and an Antidote in another: Besides, *Policy* hath multiplied the Objects of our Love by the goods of Opinion, and Reason ordinarily is debauch'd away by Sense, and every Part of the Body is made of Contraries; and without them, would not be able to keep our heat alive, to co act, or move from Place to Place; yea, *Nature* hath made us with the same Inclinations to the same things, which we cannot all possess together. From all which, we may justly conclude, That there must needs be more Enmities than Unions in the World, and that many will draw matter of Hatred out of that, which another will take to be a Principle of Love. The Convenience of our being born impotent. Why there are more Enmities than Unions.

Sapientis risum ubi stultus iram colligit. Put.

But as a little Wind easily defeats those Armies which are form'd in the Air by the accidental Incounters of Clouds; even so the Spirit of Grace working in the Heart of a Christian, easily dispels all those Cruelties, which the fumes of our Passions may raise in us against our Enemies: A generous Dog will not turn against those little ones which always run barking after him; neither should we be alarm'd at every peevish Injury. Our Enmities therefore ordinarily come from a mix'd Principle, in respect of our natural and civil State, and through our different Pretensions in the Commerce of the World; But our Amity comes strongest from *Nature*, with which it is very intimately,

and therefore ought to be the Oil to swim at top whensoever any other Vapour of Choler would rise up to put us into a Tempest. Most equall therefore it is, that we should be ready to love our very Enemies, to turn the other Cheek, rather than by private and immediate Retaliation hunt after a Revenge; and so, readily to give the other Coat, which is a covering only of another covering, *Lex enim non curat de minimis*. Yet this Love on one hand must be without Imputation of Cruelty on the other; and for fear of displeasing the Thief, I must not let him securely dispoil the Orphelin of all his Subsistence, lest I be worse than an Infidel. Equity therefore looks to Equality both in quantity and quality, and when one scale is defrauded to sway the other, it sets it right and moderates it again, and this temper is a pious Peace.

— *Duas aequo examine Lances sustinet. Vir.*

Obj. S. S. Schlichtingius objects, that there is no equity or equality in a Tooth for a Tooth, an Eye for an Eye, a Blow for a Blow; for in this restitution, that which is taken from the one, is not restored to the other, but both one and the other have less than they had before. One Man's Eye will not fit another Man's Head, nor one Man's Tooth another Man's Mouth.

Ans. I know not what this concludes, save, that such a kind of retaliation is intrinsically against Equity and the Nature of Compensation; But then it condemns this Law among Jews (which is impious) as well as among Christians; and so concludes nothing against the present Question, but leaves us in the same Justice which the Jews had before Christ's time; which indeed is *Diodor's*, and other Interpreters Opinion upon *Exod. 21. 24.* and that Eye for Eye, Tooth for Tooth, were only Phrases to signifie in general, That Punishments ought to be proportioned to Offences. They are to be taken literally, no more than St. *Matthew's* Command for pulling out our own Eyes, and cutting off our Hands. Of these Laws therefore we shall say as the civil Law saith of some other, *Valeant ego modo quo valere possunt*, However I distinguish betwixt *Equity which is general, and Compensation which is more particular*; not, but that I conceive Equity is where Compensation is; but that Equity may extend further, and be there where Compensation cannot be applied. Though an Eye for an Eye be against Compensation in particular; yet if it were inflicted, it would not be against Equity in general; because it might preserve other Eyes not yet put out, by representing the Torture of the Malefactors Eye. Capital Justice which was instituted by God, was more for the affrightment of others, than for the amendment of the Sufferers, as in *Ananias and Saphyra, Korah and Dathan, &c.*

St. *Paul's* Advice and Limitation of this Text is fittest to conclude this Argument, *Rom. 12. 18, 19.* *If it be possible, and as much as lieth in you, have Peace with all Men;* as if he should have said, *It is possible you may be constrain'd to break the Bond of Peace; but let not that Necessity come from you, and then you shall be guiltless,* and *Ephes. 4. 26.* Be angry but sin not: Discoun-
tenance

tenance Injustice, and Impiety; but so, as to be always disposed to entertain Peace.

Idem pacis eris mediisque belli. Hor.

Obj. §. 9. Under the Law, *Deut.* 13. they were not so peremptorily commanded to go to War in Vindication of their own Rights, as they were to War against those who professed false Religions; and the Cases of War were not specified, but the Cases of False-worship were, as being superior to all other Interests: But now, under the Gospel, we are forbid the greater; which is, to slay those of false Religions; therefore we are forbid the less, which is, to slay in War for some private Injustice offer'd us.

Ans. To this I answer, That though the Apostles, in planting the Gospel, had no direct Commission to kill, but to help to save Idolaters; yet, when they met with notable Interruption from those who professed Religion, but were not faithful to it, they proceeded to high Punishments; as in *Ananias* and *Saphira*, and *Elymas*, who endeavoured to hinder the Proconsul's Conversion, *Act.* 13. By the Law of *Deut.* 13. the *Israelites* might have stoned an *Egyptian*, who, at *Jerusalem*, should have perswaded any to worship his Country-Idols; when, perhaps, it was not lawful whilest they lived among the *Egyptians*, and the Idols themselves; at which time the *Israelites* were not Magistrates among them. Even so, if any Man should allure us to a Worship contrary to the Light of Nature, no question but the Magistrate is still obliged to punish and restrain such a Perverter.

Concerning Killing for Religion, and why we may more peremptorily slay Men now for Civil, than for Ecclesiastick Causes.

But every Difference in Religion, makes not another Religion: For the *Pharisees*, *Sadducees* and *Essians*, though they differed in high Points, which the Law spake not clearly to, yet they went altogether to the same Altars and Sacrifices; and for that Reason were not thrown out of the Temple. As Religions are now commonly differenced, and called, we may say, that it is harder now to know which are the false, than was anciently; and a Civil Error or Offence is more certainly known than a Theological, and so may be more peremptorily punished by us. Heretofore all Religion was exprested in a Conformity to *visible* Ceremonies, but now God will be served by that which is written *retiredly* in the Heart, *Jer.* 31. and demands that, as an Inward Sacrifice. Of those who transform themselves into Angels of Light, there is no outward Character whereby we might be able to distinguish of them; so that no wonder if they may almost deceive the very Elect. Therefore, in four Respects it is dangerous, rigidly to punish (in Person or Estate) peaceable Dissenters in Religion thus differenced and understood.

1. In regard of the Fallibleness of Judgment in that which we may judge now Heretical; for that at one time hath been judged Heretical, which at another hath been esteemed Orthodox; and most Men living are engaged to their Religions and Fonts, when they know nothing at all.

2. In regard of the Heretick, or Dissenter himself, how he is affected within: We know not who die well, nor who die ill; God (only) knows his own,
2 *Tim.* 2. 1.

3. In regard of the future Event, whether that which is now Tares, may not afterwards become Wheat; for by Hearing, a Man may come to change his Opinion: *Nolite ante tempus judicare*, 1 Cor. 4. 5.

4. In regard of others, lest Punishment thus inflicted on some, make not others either Hypocrites, or obstinate.

But as for Humane Rights and Injuries, they are easier known, and therefore the Magistrate may be more peremptory in punishing them. Hence *Gallio*, the Deputy of *Achaia*, *Act.* 18. 12, 13, 14. answered pertinently to the Jews, when they brought *Paul* before him, for teaching a Worship contrary to the Law; *If it were a Matter of Wrong, or perfect Lewdness, O ye Jews, Reason would that I should bear with you.* Likewise the Town-Clerk of *Ephesus*, *Act.* 19. 38, 39. prudently advertized the People, in their Uproar about *St. Paul's* Preaching; saying, *If ye have a Matter against any Man, the Law is open, and there are Deputies; let them implead one another: But if ye enquire any thing about other Matters, it shall be determined in a lawful Assembly.* Wherefore *Paul*, in a Civil Cause, and as a Man, rightly appealed to *Cesar*; and in a Divine, as a Christian, to God, who reserves a Day of Judgment, to account for all that which we, as his Servants, have done, or have omitted to do to others for his sake. He who thinks himself competent enough to judge of this here, is *Nimis curiosus in alienâ republicâ*; and will do well to remember what *St. Paul* saith to him, *Rom.* 14. 4. *What art thou that judgest another Man's Servant? To his own Master he standeth or falleth.* The Evidence of the Christian Religion depends on the Evidence of the History of Fact; as of *Christ's* being in the World, of his Resurrection, Ascension, &c. But these cannot be clearly evidenced to us, but by the Spirit of God, which he sends not into the Heart of every Man, for Reasons secret to himself, and for which we cannot safely undertake to afflict or kill any Man here.

Obj. 3 §. 10. *Schlichtingius* objects, That the depriving a Malefactor of his Life, deprives him of Repentance, and that deprives him of Heaven; whereas *Christ* came not to take away, but to secure and save the Lives of Men. Therefore War is against the Law of the Gospel.

Ans. To this I answer, That we cannot tell when Men do really repent, although they might have time enough: Nay, they will be very few who will say they have time enough, by reason of the terror and distractions of Death. Moreover, God himself doth not always remit all Punishment to those who repent, and seek him in Tears; witness *Esau*, and *David*: And some there are, who are so hardened, that Time cannot mend them; wherefore the sooner they cease to do ill, the better. Usually Magistrates allow a convenient space of time, for the reconciling of a Soul to God; and though they did not give any quantity of Time, yet a little time, well qualified, may be enough for that Act: One good Moment is enough to convey a Soul to Heaven, witness the Thief on the Cross; for as they are the last, and the smallest touches of the Pencil, which give life to the Picture; even so they are last, though the shortest Compunctions, which restore Life to the dying Soul.

Obj. We are to imitate Christ who died for the bad, as well as for the good.

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

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

Ans. I answer, That it is lawful for us to pray one for another; but after we know God's absolute Decree against such a thing, we may not pray him to give it us. Our Saviour told *Peter* in the company of others, that God's Decree was, himself should suffer at *Jerusalem*, yet *Peter* after the knowledge of this from Christ's divine Mouth, told him it should not be; whereupon our Saviour justly call'd him Satan, as in *St. John*. After this, when our Saviour had told his Disciples, That the hour was now come, according to God's determin'd Will. *Peter* again was so vain, as to promise him protection by his Sword, which as it was opposite to God's Decree, so our Saviour would not make use of it; no, nor of Legions of Angels. Wherefore the force of this Objection shews only, that there may be an occasion when a Man may not warrantably draw his Sword, which is very true, but not to the purpose.

Concerning *Peter's* sheathing of his Sword.

12. But upon what causes a Man may draw his Sword, or make War, is not the scope of this Discourse, which is deduced out of a War already formed; and by which I hope it is now proved, that some War may be lawful, both by the Laws of Nature, and of Christ; though I confess, he may do best, who doth not always exercise the utmost of that right which is permitted him. The unmarried condition, according to *St. Paul*, is more commendable than the married; yet it is lawful to marry: Even so a just Vindication of an Injury, is still permitted; but Patience is more commendable, especially when in War we are for the most part assisted by so deformed a passion as publick Impatience (which is the ordinary complexion of War;) and when the Injuries complained of, hinder not our particular Society with the Injurers, nor the general order of the Society it self. To kill a Flie upon a Man's forehead, we are not to knock out his brains; but in the transport of passion, we may easily (as it were) runaway with our selves.

The condition, perswading us not without extrem necessity to draw or in keuse of the naked Sword.

Fertur equis auriga nec audit currus habenas. Virg.

Tis this and Revenge which poisons Justice, even as *Nero's* debauch'd and foul Body did the sacred fountain of *Mars*, in which he had the Impudence to bathe himself, immediately after his rioting. *Videbatur potius sacros & caeremoniam loci toto corpore poluisse. Tacit.*

But how much happier are they who try their strength by bearing the heaviest burthens; and though spurr'd by the quick sense of their own Lusts, yet flie not headily out. Something there is in the managing of the best Offensive War which is displeasing to God, otherwise he would not have excepted against *David's* Zeal

for:

for building him a House, only because he had been a Man accustomed to shed Blood; for the Battels which he fought, were said to be the Lord's. Humility and Meekness of Spirit, with our assisting to carry one anothers Burthens to be oft-in dust and ashes, will (if it be possible) give us that peace here, which will not traverse our better repose hereafter. Some Physicians doubt not, but if the Diamond could be powder'd as well as Alabaster, it would be as good an Antidote as it, and not operate with such Poison: Even so if we could reduce our Affections, by a sincere mortification and humility, we should not only be void of Venome our selves, but have a Preservative, or an *Amuletum* against others who would taint us. A small thing oft-times hath the power to redress a great inconvenience; yea, to take up a cruel feud, as *Virgil* saith of that of Bees, when they are actually engaged in Battle.

*Hi motus animorum, atque hæc certamina tanta,
Pulveris exigui jactu compressa quiescunt.*

Godliness with Content, is great gain: *Jacob*, till he had built God an House, desired no more of him, than Bread to eat, and Rayment to cover nakedness, *Gen.* 28. 20. By all which we may see how much of our Rights we ought to forego, before we come to the naked Sword; in which Tragedy, as the *Italians* say, *Ci bisogna essere spettatori dell' altrui morte, O spettacolo della nostra*: We must either be Spectators of other Mens deaths, or Spectacles of our own.

F I N I S.

