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BISHOP SANDERSON'S LECTURES ON  
CONSCIENCE AND HUMAN LAW, //

DELIVERED IN

*THE DIVINITY SCHOOL AT OXFORD.*

EDITED, IN AN ENGLISH TRANSLATION,

*With a Preface*

BY

CHR. WORDSWORTH, D.D.  
BISHOP OF LINCOLN.

**Lincoln**: JAMES WILLIAMSON.  
RIVINGTONS,  
WATERLOO PLACE, LONDON,  
Oxford, and Cambridge.

1877. /



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## PREFACE.

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"I TAKE my ears," said King Charles the First, as we are told by Izaak Walton,<sup>1</sup> "to other preachers; but I take my Conscience to Mr. Sanderson." The royal estimate of him as a logician and casuist has been confirmed by the verdict of more than two centuries. Sanderson<sup>2</sup> had prepared himself for the work of dealing with the Human Conscience, by the discipline of Logic, on which he delivered lectures at Oxford, and on which he published a celebrated treatise,<sup>3</sup> which was for a long time the manual and text-book of students of dialectics; and when he was appointed Regius Professor

<sup>1</sup> Life of Sanderson in Bishop Jacobson's edition of Sanderson's Works, vi. 296.

<sup>2</sup> Bishop Sanderson was born at Rotherham, in Yorkshire, on September, 19, 1587. He was matriculated at Lincoln College, Oxford, July 1, 1603, chosen Fellow of Lincoln College, May 3, 1606. Resigned his fellowship, May 6, 1619, made Prebendary of Southwell, Notts, and Rector of Wyberton, Lincolnshire, in 1618, whence he was removed to Boothby Pagnell, near Grantham, in the same county, September 7, 1619; made Prebendary of the stall of Farindon-cum-Balderton in the Cathedral Church of Lincoln, September 3, 1629, and was Proctor in all the Convocations in the reign of Charles I.

<sup>3</sup> Printed in 1615.

of Divinity at Oxford, in the year 1642, he had exercised himself as a divine and a metaphysician in dealing with the principal questions of theology, both in doctrine and discipline, and of ethics and politics, which exercised the minds of men in that learned and restless age.

As Regius Professor of Divinity at Oxford, he delivered in the Divinity School seven lectures "On the Obligation of Oaths," in Michaelmas Term in the year 1646.<sup>4</sup>

He also delivered from the same chair ten lectures "On Conscience and Human Law" in the year 1647.

These lectures were written in Latin; and it tells much to the credit of the Professor, and for the intelligence of his audience, and of the age in which they lived, that lectures on such difficult subjects, and composed in that language, should have been so attractive and acceptable to his contemporaries as Sanderson's lectures were. It may be feared that in the nineteenth century we have degenerated in this respect, as in some others.

His biographer, Izaak Walton, thus speaks of these lectures on Conscience:—"How much the learned world stands obliged to him for these lectures I shall not attempt to declare, being very sensible that the best pens must needs fall short in the commendation of them, so that I shall only add that they continue to this day, and will do for ever, as a resolution of the most material doubts in casuistical divinity."<sup>5</sup>

<sup>4</sup> These lectures on the Obligation of Oaths were translated into English by King Charles I., when a prisoner at Newport, in the Isle of Wight. See *Life of Sanderson* by Izaak Walton, Zouch's edition, p. 393, and Bishop Jacobson's edition of Sanderson's Works, vi. 305.

<sup>5</sup> Additional evidence of Sanderson's consummate skill in solving intricate questions of ethics, religion, and politics, may be seen in

These words were written in 1678; and in our own times the late Dr. Whewell (whose name it is enough to mention), Master of Trinity College, Cambridge, and Professor of Moral Philosophy in that University, thus expressed<sup>6</sup> his own opinion of the author of the lectures and of his work:—"Bishop Sanderson is generally considered, and with great justice, as one of the ablest and soundest of our theological moralists. His lectures *De Obligatione Conscientiæ* were formerly much read, and even now it would be difficult to mention any better example of the ethical school, which preceded the influence" (so much deplored by wise and good men) "of Hobbes and Descartes." "This work," he adds, "may be considered as an excellent and striking example of a certain period of our ethical literature . . . and it would be difficult to discuss most of the moral questions which form the latter part of the work, in a more satisfactory manner than is there done."

Indeed, if Sanderson's work had not been produced, England could scarcely be said to have any sound philosophical treatise on casuistical theology. Jeremy Taylor's '*Ductor dubitantium*' seems to have been derived from it.

It will be remembered that at the eventful crisis of the history of the Church and Realm of England and of the Universities, when Dr. Sanderson was Regius Professor of Divinity at Oxford, he was employed (in the year 1647) by the University to set forth Reasons against the

his "Cases of Conscience," London, 1678, and in Bishop Jacobson's edition of Sanderson's Works, vol. v. pp. 5—127.

<sup>6</sup> See Dr. Whewell's Preface to his edition of Sanderson's "*Prælectiones de Obligatione Conscientiæ*," Cambridge, 1857.

“Solemn League and Covenant” then enforced by a Presbyterian Parliament,<sup>7</sup> and also against “the Negative Oath,” by which the Parliament required English subjects to pledge themselves not to fight for the King.

But Sanderson did more than this; he proved his sincerity in the sight of God and man, and he showed his regard for his own Conscience, by suffering pains and penalties at the hands of those who had risen up in rebellion against the Crown and Church of England. He was enabled by God’s grace to bear testimony to the truth; and was ejected by the Parliamentary visitors of the University, for Conscience’ sake, from his Regius Professorship of Divinity, and from his Canonry at Christ Church<sup>8</sup>—seven months before the Martyrdom of his beloved King and Master, Charles the First.

From that time to the Restoration he lived in obscurity and danger at Boothby Pagnell, in the County of Lincoln, and his benefice there was sequestered; and while there, before the king’s death, but after 1644, he had been wounded, plundered, and carried a prisoner, as a royalist and a Churchman, by the Parliamentary army, from his Parsonage to Lincoln gaol. He was, however, exchanged for a presbyterian minister, of Alington, in the same neighbourhood, who was a prisoner of the royal forces at Newark-on-Trent; and it was agreed, that after that time, as a consequence of that exchange, both of them should remain unmolested in

<sup>7</sup> See Sanderson’s Works, edited by Bishop Jacobson, vol. i. p. xvii, and vol. iv. p. 362.

<sup>8</sup> The Parliamentary order for his expulsion may be seen in Zouch’s edition of Izaak Walton’s Life of Sanderson, p. 395, York, 1807.

their parishes.<sup>9</sup> He continued at Boothby Pagnell till the Restoration.

At the Restoration he was engaged, with other eminent divines, in the Savoy Conference; and the esteem in which Dr. Sanderson was held by the Church was publicly declared by the Convocation which appointed him to write the Preface prefixed to the English Book of Common Prayer at the last revision of the Liturgy.

He was consecrated Bishop of Lincoln in Henry VIIIth's Chapel in Westminster Abbey, on October 28th, 1660; and departed this life, after an episcopate of self-sacrificing activity of two years and three months, at his episcopal palace at Buckden, between nine and ten in the evening of January 29, 1662, in the seventy-sixth year of his age.

The following words were written by him a short time before his death:—

“I, Robert Sanderson, Doctor of Divinity, an unworthy minister of Jesus Christ, and by the Providence of God Bishop of Lincoln, being by the long continuance of an habitual distemper brought to a great bodily weakness and faintness of spirits, but by the great mercy of God without any bodily pain otherwise, or decay of understanding, do make this my Will and testament, written all with my own hand, revoking all former wills by me heretofore made, if any such shall be found.

“First, I commend my soul into the hands of Almighty God *as of a faithful Creator*, which I humbly beseech

<sup>9</sup> Walton's Life of Sanderson, ed. Jacobson, vi. p. 319.

Him mercifully to accept, looking upon it not as it is in itself, infinitely polluted with sin, but as it is redeemed and purged with the precious blood of His only beloved Son, and my most sweet Saviour Jesus Christ, in confidence of Whose merits and mediation alone it is that I cast myself upon the mercy of God, for the pardon of my sins, and for the hopes of eternal life.

“ And here I do profess, that as I have lived, so I desire and, by the grace of God, resolve to die, in the communion of the Catholic Church of Christ, and a true son of the Church of England ; which, as it stands by law established, to be both in doctrine and worship agreeable to the Word of God, and in the most and most material points of both, conformable to the faith and practice of the godly churches of Christ in the primitive and purer times I do firmly believe ; led so to do not so much from the force of custom and education, to which the greatest part of mankind owe their particular different persuasions in point of religion, as upon the clear evidence of truth and reason, after a serious and impartial examination of the grounds as well of Popery as Puritanism, according on that measure of understanding and those opportunities which God hath afforded me. And herein I am abundantly satisfied, that the schism which the Papists on the one hand, and the superstition which the Puritans on the other hand, lay to our charge, are very justly chargeable to themselves respectively. Wherefore I humbly beseech Almighty God, the *Father of Mercies*, to preserve this Church by His power and providence in truth, peace, and godliness evermore unto the world’s end. Which doubtless He will do, if the wickedness and security of a sinful people, and particularly those sins

that are so rife, and seem daily to increase among us, of unthankfulness, riot, and sacrilege, do not tempt His patience to the contrary."

A few words concerning the present publication may now be added.

Nearly nine years ago, on my promotion to the See of Lincoln, I specified among the books selected by me as subjects for Examination of Candidates for Holy Orders in this Diocese, "Bishop Sanderson's Lectures on Conscience." But I found, to my regret, that copies of them were not easy to be procured, and that the Latin language, in which they were written, operated as a hindrance to the study of them. Dr. Whewell's edition of the original, accompanied with an abridged English version, in some respects diminished the difficulty, but not so fully as could be wished.

In the meantime, the condition of the Church of England, with the various important and difficult questions on the relations of Church and State, and "on the adequate rule of Conscience," and on the subject-matter, and the efficient cause, the obligation, and final cause, of Human Laws, both Civil and Ecclesiastical, which are now occupying men's minds, and are exercising a powerful influence on the destinies of the Church and Realm of England, have renewed and stimulated my desire to see an edition of Bishop Sanderson's Lectures in an English dress, and in such a form as to be easily accessible, not only to Students of Theology, and Candidates for Holy Orders, but to all classes of society. It would not be easy to mention any work of like compass better adapted to settle men's minds, with regard to the



questions which I have specified, than these Lectures of Bishop Sanderson. Hence the present publication.

Let me premise that, on account of the scholastic terminology of the *first* Lecture, some persons may perhaps be deterred from the study of this work. It may be suggested that it would be well to *omit* that Lecture, in the first perusal, and to return to it when the reader has become more familiar with the general scope and contents of the whole.

The English translation here offered to the reader is partly a reproduction of one published by Mr. Lewis, at London, in 1722; the style of which, though somewhat antiquated, seemed even on that account to be a better representation of a writer of the seventeenth century than an entirely new version would be. This translation of Mr. Lewis has been revised, and (may I not hope?) corrected in very many places, in the present publication. Some critics may think that the work of emendation (which has been much more laborious than I had anticipated) might have been carried farther.

Let me be allowed here to adopt the words of the learned Editor of Bishop Sanderson's Works—one of his successors in the Divinity Chair at Oxford, and of Bishop Pearson in his Episcopal see—Bishop Jacobson:<sup>1</sup>—

“The times in which Sanderson's lot was cast gave him the opportunity of seeing the Church of England in humiliation as well as in prosperity. He was no hireling, to abate at all his love and devotion in the *evil day*.”

<sup>1</sup> Sanderson's Works, vol. i. p. xxii, ed. Oxford, 1854. Let me here acknowledge my great obligations to Bishop Jacobson in the notes to the present volume.

To him a season of depression and distress was indeed blessed ; and he has an eminent place among the *acceptable men* whom the fire of affliction has *tried and purified*. . . . After making due allowance for all peculiarities, personal and political, we shall ever have in him the example of one, beyond whom few, if any, have at any time been permitted to advance, in a thorough understanding and hearty appreciation of the position, privileges, and duties of his Church and ours ; one of the many whom we may be thankful to follow, as, under the training of that Church, they followed Christ."

" Being dead he yet speaketh." <sup>2</sup> May Bishop Sander-son's voice be heard by many willing ears and loving hearts in the present age ; which, in many respects, especially in its controversies and conflicts, and in its consequent trials and dangers, nearly resembles that in which he lived.

C. L.

<sup>2</sup> Heb. xi. 4.

*Whitsuntide, 1877.*



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THE  
NATURE AND DEFINITION  
OF  
CONSCIENCE.

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THE FIRST PRELECTION,  
WHICH LAYS DOWN AND EXPLAINS THE DEFINITION  
OF CONSCIENCE.

*What man knoweth the Things of a Man, save the Spirit  
of a Man which is in him ?—I COR. ii. 11.*

1. THAT the Force of Conscience is very great (either to compose or distract the mind) has been observed long ago by wise men, and is abundantly confirmed by the nearer conviction of every one's experience; the more therefore it is to be lamented, that mankind should engage so eagerly in the pursuit of less important knowledge, and yet remain perfectly in the dark and ignorant as to the concerns of their own Consciences, especially since they can never find a more faithful Adviser, a more active Accuser, a severer Witness, a more impartial Judge, a sweeter Comforter, or a more inexorable Enemy. In order therefore to instruct such as come here to be improved, by recommending that common maxim of the ancients Γνωθι σεαυτόν, *Know thyself*, and in some measure draw them off from prosecuting empty studies by inviting



them to a proper care and regard of their Conscience, I thought it worth my pains to inquire strictly, what the Conscience is, both as to its Nature and Use ; and in this place, as my duty obliges me, to communicate to you, my hearers, what I may find deserving of observation upon this subject. I propose therefore in this Prelection to define the Nature of Conscience, and in the next, by the permission of God, to explain its Use and Duties ; both as it comes within the Law by which it is to be governed, and as it is absolute, and presides, without control, over human actions.

2. But since the rules of defining will allow me either by a particular inquiry into the parts to come at last to a complete definition, or else to propose a perfect definition at first, and then to examine and lay open the several branches of it ; though the former method may perhaps seem more suited to the order of Nature, yet I have made choice of the latter, as being in my opinion more instructive and easy to be understood.

Conscience therefore I define in short to be, *a Faculty or Habit of the Practical Understanding, which enables the Mind of Man, by the use of Reason and Argument, to apply the light which it has to particular Moral Actions.* In this definition, it is necessary to consider, first the *Name* of the thing defined, which is the *Conscience* ; and then to examine the *Genus*, the *Subject*, the *Object*, and the *proper Act of it* ; which are the particular branches of which our definition consists.

3. As to the word *Conscience*, it has been observed by learned men, that there is no *Hebrew* term in the Old Testament that precisely and properly takes in its full signification ; but after the custom of the *Jews*, when the Holy Writers had occasion to mention the *Conscience*, they commonly made use of one of these two words to express it, לב, or לבב, and רוח ; the first properly signifies the *Heart*, the other the *Spirit* : and thus *Solomon*

speaks, *Keep thy Heart with all Diligence*;<sup>1</sup> as if he had said, *Let every one have a particular regard to his Conscience*; and in *Ecclesiastes*, where the old Latin Version renders it, *Thy Conscience knoweth that thou thyself likewise hast cursed others*;<sup>2</sup> and *Tremellius* expresses it, *Thy Mind is conscious*, the *Hebrew* text has it לֵבךָ יָדַע, that is, *Thy Heart knoweth*. In the New Testament likewise, especially in the writings of *St. John* (who frequently made use of Hebraisms), the *Heart* is often put for the Conscience; *If our Heart condemn us not*,<sup>3</sup> that is, our *Conscience*, whose proper office it is to condemn or acquit us before the Tribunal of Justice. And from hence, no doubt, is derived that jingle of *St. Bernard*<sup>4</sup> and others, *Conscience is, as it were, the Science of the Heart* (*Conscientia quasi cordis scientia*). Among the sacred Writers also, both *Hebrew* and *Greek*, we often find that the word *Spirit* is used to signify the *Conscience*. In the Old Testament *Solomon* says, that *The Spirit of a Man will sustain his Infirmity; but a wounded Spirit who can bear?*<sup>5</sup> As if he had said, A man of an upright and steady *Conscience* will bear the calamities incident to human life, with a peculiar fortitude and resolution; but a broken and afflicted *Conscience* is a burden insupportable. In the New Testament we may also remark the passage in *St. Paul* which forms the subject of this Prelection, *What Man knoweth the Things of a Man, save the Spirit of a Man which is in him?* that is, *his own Conscience*.

4. The *Conscientia* of the *Latins*, and the *Συνείδησις* of the *Greeks*, which in all respects answers to it, plainly derive their acceptation from *scientia* (or Knowledge): yet the preposition annexed to both seems to imply somewhat more in the *compounds* than the *simple* can come up to;

<sup>1</sup> Prov. iv. 23.      <sup>2</sup> Eccl. vii. 22.      <sup>3</sup> 1 John iii. 21.

<sup>4</sup> S. Bernard. (?) Tract. de Interiore Domo, cap. xi.

<sup>5</sup> Prov. x. 8. 14.

and what that is, is variously resolved by authors. But not to insist upon the explications produced by some, that *Conscience* is the *Consciousness of the Heart*, and a *concluding of science* (allusions that may be allowed of, did we look no farther than the Nature of the Thing itself, but which when brought to the test of a nice and accurate inquiry must appear trifling and not worth our notice), it is certain in the first place, that the terms *Συνείδησις*, and *Conscientia*, do (beyond the bare notion of *science*) intimate a sort of relation or tendency of that *science* to something else. For it is generally allowed that the particles *σύν* and *con*, when used in composition, imply a kind of conjunction or union of many things together; so that *Conscience* may not improperly be taken for a *Conjunction of Knowledge*; which may be applied either to signify the knowledge that many persons may equally have of the same thing, or, as many things as may fall within the knowledge of one person; which way soever you understand it, I am satisfied that (with respect to the thing itself, or the manner of speaking by approved authors) we may come to a notion of the word *Conscience*, not altogether foreign or incongruous.

5. For first, when many men are equally acquainted with the same thing, they may properly be said to be *conscious* of it; so we find that those whom *Catiline* had seduced and made partners in his design and conspiracy, are said to be *conscious* of *Catiline's* conspiracy; and a minister of state, who is privy to the councils of his prince, is justly said to be *conscious* of them. In the history of *Tacitus*,<sup>6</sup> we read, *Ascitus in Conscientiam facinoris*, Admitted into Consciousness of the Villany. And *Martial* has this wish in one of his Epigrams, *O si Conscius esset hic Avitus!*<sup>7</sup> Oh that *Avitus*, conscious, were here! *Conscia*

<sup>6</sup> Hist. i. 25.

<sup>7</sup> Martial. xii. 24.

*Matri Virgo fuit*,<sup>8</sup> says Juvenal, *the Daughter was Conscientious to what the Mother did.* And *Cicero*,<sup>9</sup> in one of his orations, *Meorum omnium Consiliorum, Periculorumque Testis Conscius et Adjutor, A Witness Conscientious of all my Councils and Difficulties, and a Friend to me under them.* Infinite are the examples of this kind that might be produced from authors of the first rank, but these are sufficient, unless, perhaps, you require me to rake among the rubbish of the *Grammarians* for their opinion; and this I shall submit to, not that I pay much deference to the judgment of these men, but because they arrogate to themselves a sort of sovereignty in the determination of such Controversies. *Nonius* tells us, that to be *Scious* and *Conscientious*, differ in this, the one solely belongs to a man's *self*, the other partakes of the same knowledge with *another*: and from this original of the word, those who make the Notion of Conscience to consist in a Participation of Knowledge, have no other reason to offer for their opinion, but that a man himself has not the sole knowledge of his actions, because God is likewise *Conscientious* of them, who searches the Heart and the Reins, and is a Conscientious Witness and Observer of his most secret thoughts, and of all his actions. A most certain truth, and beyond dispute;—*Behold my Witness is in Heaven*, says Job, *and my Record (one Conscientious of me) is on high*.<sup>1</sup> And the blessed *St. Paul*, when he had called upon Christ, as a Witness of the Truth he was about to speak, immediately adds, *My Conscience also bearing me witness*;<sup>2</sup> as if he had said, Christ knows, and I myself am *Conscientious*, and know with Him; Christ testifies, and my Conscience agrees with Him in the Testimony. Let this therefore be the first notion

<sup>8</sup> Juv. Sat. xiv. 28.

<sup>9</sup> Orat. pro Fonteio, § 6, cp. pro Flacco, § 1.

<sup>1</sup> Job xvi. 19.

<sup>2</sup> Rom. ix. 1.

of the word Conscience, as it expresses that *share* which the Wisdom of God lays claim to in the knowledge of human actions.

6. There is another acceptation wherein the Conscience may properly be called a *Conjunction of Knowledge*, as when a Man knows many things at once, or (which comes to the same) when he unites the Knowledge of many things different in themselves, and joins them by a mutual Application together. And from hence arises a second notion of the word, that was highly approved by *Aquinas* and most of the Schoolmen, and is in my opinion to be preferred to the first, just mentioned, because it serves to discover and illustrate the Force and the Nature of Conscience, making it the conjunction of knowledge to knowledge, and as it adds the general Knowledge of what is *Right* to a particular knowledge of what is *Fact*, and applies the one to the other.

I shall explain my Meaning by an instance or two. In the History of *David*<sup>3</sup> we read, that his Heart smote him, after he had cut off the skirt of *Saul's* garment in the cave; or, in other words, his Conscience pricked him. Upon this Occasion, we may suppose David thus reflecting with himself: "I well know that no force should be offered against the Sacred Person of a King; and I am sensible likewise that what I lately did will seem very little different from the use of Force, which makes me fear I have contracted a stain upon my Integrity: However, I adore the Goodness of God, who laid a restraint upon me, and kept me back from an actual violation of it."

We may likewise imagine the Conscience of the traitor *Judas* reasoning with him thus: "Thou knewest that thy Master ought not to have been betrayed, and yet thou knowest thou didst most basely betray him." Thus by taking a particular Knowledge of a Fact actually, or

<sup>3</sup> 1 Sam. xxiv. 5.

designed to be, committed, and applying and comparing it with the general knowledge of the justice and legality of the action, we come to a perfect notion of all that is intended when we speak of the *Conscience*: and this derivation of the word is abundantly justified by a reciprocal form of expression frequently used in the writings of the ancients; *However you may conceal yourself from others, you will still be Conscious to yourself, says Isocrates.*<sup>4</sup> *To be Conscious of no crime in yourself, let this be a brazen wall to you,*<sup>5</sup> was the advice of *Horace*; *a mind Conscious of its own integrity,*<sup>6</sup> says *Virgil*; and, to cite no more authorities, *St. Paul* declares that he is *Conscious to himself of nothing.*<sup>7</sup>

7. By this time I believe it sufficiently appears from whence the word *Conscience* is derived; and I leave it to your choice to prefer the one or the other sense, or to receive them both with equal approbation. As for other notions which are produced by the Schoolmen as their fancies lead them, I pass them over as too trifling to stop the course of my design; especially since many things of greater moment remain yet to be considered. I go on therefore to explain the *ambiguous* meaning of the word, which has occasioned such difference of opinion among Authors about the Definition of *Conscience*, that they cannot fix upon the very first Term, the *genus* of the Definition. But to remove this difficulty we are to observe in the first place that there is so strict a relation between the several endowments of the Mind, (the Powers, Habits, and Acts) and they are so closely united in their several uses and operations, that not only their very names, but their real offices and proprieties

<sup>4</sup> Ἄν τὸὺς ἄλλους λήσῃς, σαυτῷ συνειδῆσαι. Isoc. ad Demon. § 16.

<sup>5</sup> "Hic murus aheneus esto, nil conscire sibi." Hor. i. Ep. i. 60.

<sup>6</sup> "Mens sibi conscia recti." Virg. Æneid. i. 604.

<sup>7</sup> I Cor. iv. 4.

are often promiscuously and without distinction applied to one another; and that, not only in the rhetorical language of poets and orators, and other Professors of Literature, who claim a peculiar licence to themselves, but even in the dogmatical maxims of Philosophers and Schoolmen, who write in a lower strain, and under stricter limitations. However, though it be no easy matter to define the boundaries of things that have been long blended together both by nature and custom, yet it will be a great assistance to us in finding out the reason of the word *Conscience*, if we search more carefully into the nature of *Science*, that so from the various uses of the *Simple*, the ambiguity of the *Compound* may be fully and perfectly understood.

8. In the first place, therefore, we may take the distinction of Divines, which they apply to *Faith*, and make use of it for our present purpose. They tell us that one sort of Faith is that *whereby* we believe, which is the habit of Faith existing in the Mind; and another is the Object of our Faith, or the thing *believed*, which is something foreign and extrinsic to the first; and so we may distinguish of *Science*, and consequently of *Conscience* itself; for each of them may be understood either as the Habit of the Mind, *by which* we know, or are *Conscious* of any thing, or as the Object or thing *known*; in which latter sense, though it be improper, Conscience may be said to be the Law originally imprinted upon the Soul as a Principle and Rule of Life. And thus we are to understand that maxim of *Damascene*,<sup>8</sup> so often repeated in the schools, that *Conscience is the Law of the Mind*; though Conscience itself is not properly and formally the Law of the Mind; but rather the *Object* (either adequate or partial) of *Conscience* is the *Law* of the Mind.

9. Secondly, since *Powers*, *Habits*, and *Acts*, are three

<sup>8</sup> De Fide Orthodoxa, iv. 22.

distinct and co-ordinate energies of the Soul (the *Powers* being the soul's natural virtues, the *Habits*, dispositions perfecting and influencing the *powers*, making their operations easy and pleasant ; and the *Acts* being the use and exercise of both) the name of *Science* or *Conscience* may be extended to them all. For as a workman may be said to cut with a tool as an instrument, or with the edge of it as the form or disposition, or by the act of cutting as the use and accomplishment of both, so the Mind of Man may be said to know, either instrumentally by the *Power* of knowing, or by the *Habit*, as the perfection and disposition of the *Power*, or by the *Act* of considering, as the use and operation of the other two. *Science* therefore may be taken either for the Subject or *Power* wherein it resides, and which (after the manner of other forms) it disposes to a greater perfection ; as when we say the mysteries of Faith are above our knowledge, we mean that they exceed the capacities of our *knowing* faculty ; or we may speak of it (which is the usual signification of the word) as the very *Habit* of Knowing, whether innate or acquired ; and in this sense we are said to know principles that are self-evident, and conclusions rationally deduced from them ; and in general, whatever we have any certainty of either by the mediation of our senses, or by Reason ; or lastly, Knowledge may be taken for the *actual* consideration of a thing that was known before ; in which sense alone (by the way) the words of St. Paul,<sup>9</sup> (that have so racked the Commentators) are certainly to be understood ; *I wist not, Brethren* (says he), *that he was the High-Priest* : that is, *I thought not*, or I did not sufficiently consider it. As if he had said, " Pardon, I pray, my Brethren, this just resentment of mine ; if in my heat and passion I have been transported to too great freedom of speech, without duly remembering his

<sup>9</sup> Acts xxiii. 5.



person and my own duty ; I confess my mistake, I ought not to revile the High-Priest, however unworthily of his own dignity he may have acted ; passion blinded me so that I did not sufficiently consider it." A sense perfectly easy and agreeable.

10. But to go on ; as *Science* may be understood in these three several acceptations, so *Conscience* likewise may be taken either for the *practical power* of the understanding, as when we say the Law of Nature is written in the Heart or the Conscience ; or else for the *habit that influences* or informs that power ; as when we speak of a Man notoriously wicked, we say that he is a man of no Conscience ; or lastly for the *actual exercise* and operation of the habit, as when a man says he is *Conscious* of such a fact, in which sense that expression of St. Peter seems to be understood ; *If a man for Conscience toward God endure grief, suffering wrongfully.*<sup>1</sup>

11. Again ; since Science is a syllogistical knowledge, and therefore those who have attempted to illustrate the Nature of Conscience have always thought fit to explain it by a practical syllogism, it must be observed that in this respect also *Science* may be taken in four senses. Either for the precise knowledge of the conclusion, which is the proper acceptation of it, and the sense wherein *Aristotle*, in his *Analytics*, and in other places, generally understands it ; or for the knowledge of the principles from whence conclusions are demonstrated ; as if a man should say that he knows the whole to be greater than any particular part ; or otherwise, for the knowledge of the whole syllogism ; for when the premises and the conclusion are fully known, a man properly understands the whole course of the argument ; or, lastly, we may take the Notion of *Science* for the complex knowledge of many conclusions or demonstrations that

<sup>1</sup> 1 Pet. ii. 19.

belong to the same subjects. And thus we say we have the knowledge of natural philosophy, of geometry, physics, &c. And these distinctions we may likewise justly apply to the Conscience. But since, as we observed before, Conscience always supposes a conjunction with the subject or person knowing, in order to discover the whole extent of the word, it will be easiest (in my judgment at least) to frame an idea of it from two syllogisms, where the conclusion of the first shall be admitted as the major proposition of the second : for instance,—

*Whatever is unjust ought to be avoided.*

*All theft is unjust.*

Therefore *all theft is to be avoided.*

Let this be the first syllogism ; the *Major* is evident by the Light of Nature, the *Minor* by the Conviction of Reason, and *Conscience* draws the Conclusion, which she immediately takes for the *Major* of the following syllogism, and by applying it to some particular fact proposed to the Choice of the Will, thus argues :—

*All theft is to be avoided.*

*This Act which is proposed to me is theft, therefore it is to be avoided.*

The same method (*mutatis mutandis*) is followed by the Conscience, when she judges of any past action.

12. These things being stated, I affirm that Conscience likewise will admit of four several acceptations ; we may understand it for the last conclusion in both syllogisms, wherein the last judgment of the practical understanding is contained, and this is the most proper sense of it ; as if a man should say, *My Conscience tells me that this theft ought not to be committed* ; or tells me that that theft ought not to have been committed. And the knowledge of this conclusion is properly the *Synecidesis*, or the *Conscience*, as it is distinguished from the *Syn-*

*teresis* ; (or, watchful observation.) Or Conscience may be taken for the knowledge of the first universal principles known by the Light of Nature or Revelation, and on which hangs the whole thread of reasoning, e. g. *My Conscience tells me that nothing Unjust ought to be done.* And in this sense the word is often made use of, but very improperly ; for after this way of speaking Conscience is no more than the *Synteresis* ; when in propriety there is a wide difference between them : for the *Synteresis* bears the same relation to Conscience as the intuition does to Science in the proper sense of it ; both of which we learn from the fifth book of *Aristotle's Ethics* to be habits of the Mind specifically distinct. As therefore, in theory, the intuition is a Habit of first principles about Truth and Falsehood from whence Conclusions are deduced, which makes a *Science*, so in practice, the *Synteresis* is a Habit of first principles about Good and Evil, from whence we draw Conclusions ; and this is what produces the *Conscience*. A third notion of the word is, when we understand by *Conscience* the whole practical Reasoning of the Mind, from the first premiss to the last conclusion, as it is expressed in the syllogisms above ; and in this sense both the *Syneidesis* and the *Synteresis* are wholly included ; for a man's Conscience may easily inform him that no unjust action ought to be committed, that Theft is an unjust action, and that what he has actually committed, or opportunity invites him to the commission of, is Theft. In the last place, we may take the Conscience for the aggregative knowledge of many particular acts which take in the whole compass of our conversation and practice. In this sense we are to understand the words of the Apostle, <sup>2</sup> *Men and Brethren, I have lived in all good Conscience before God until this day.* <sup>3</sup> *We trust we have a good Conscience, in all things*

<sup>2</sup> Acts xxiii. 1.

<sup>3</sup> Heb. xiii. 18.

*willing to live honestly.* And what St. Peter, in his first Epistle, calls a *good Conscience* <sup>4</sup>, he expresses in the very same verse by a *good conversation*; for when we approve or condemn a man for an upright or a depraved Conscience, we seldom have regard to any particular act that he has committed, but take a general survey of his morals and the constant tenor of his conversation: and thus it appears that Conscience may be also understood in this acceptation.

13. I confess I have insisted much longer upon the explaining of these points than I proposed at first, and perhaps than you, my hearers, expected I should; but I am persuaded, your candour will excuse me, if it appears that this tedious prolixity to which I have been forced in laying open the Nature of Conscience, the thing defined, will sensibly contract what I have to say upon the several branches of the Definition I am now going to explain. However, I must put you in mind, that the Definition I gave of Conscience, is to be applied to it in the most proper sense, as it signifies the knowledge of the last *Conclusion* in a *practical syllogism*; yet, I own, that by a due change of some of the terms, it may (as we observe in many words, that by analogy are of equivocal signification) be applied to illustrate the other senses above-mentioned. The Definition I proposed, and which necessity now forces me to repeat, was this: *Conscience is a Faculty or Habit of the practical Understanding, by which the Mind of Man, by the use of Reason and Argument, applies the Light, which it has, to particular moral Actions*; wherein I shall consider the several Branches of the Definition, the *Genus*, the *Subject*, the *Object*, and the *Act* that *properly* belongs to it.

14. Many and sharp have been the disputes of the Schoolmen about the *Genus* of Conscience; and though

<sup>4</sup> 1 Pet. iii. 16.

they agree in general that Conscience has its residence in the mind of man,<sup>5</sup> yet they widely differ in deciding whether it belongs to it as a *Power*, a *Habit*, or an *Act*.<sup>6</sup> *Aquinas*, who has a long train to follow him in the Schools, resolves it to be an *Act*, whose opinion is received not only by Scholastic Writers (who are biassed, I am persuaded, more by the authority of so great a man, than by the force of his arguments) but by the Divines of the Reformed Churches, who out of an aversion to that contentious tribe, had rather acquiesce in the opinions generally received (as far as they are free from impiety or superstition) than make too curious a search into the obscure subtilties of those men, and their sophistical way of Reasoning. But, if I may speak freely, this most common opinion is altogether to be disapproved; and to overthrow it there needs no other argument than this, that Conscience in itself has several *Acts*; it informs, impels, terrifies, attests, accuses, excuses, comforts, stings. Now nothing can properly be said to be the act of an *act*; but acts belong to *Forms*, *Powers*, or *Habits*; one of these therefore it may be, but an *Act* it cannot be. As to the argument produced by the Schoolmen, that Conscience is the application of Science, or of the light which is in the *Synteresis*, and that application is an *Act*; I reply, that Conscience may (as we observed before) be taken, though improperly, for an *Act* of its own, as Science is sometimes used for an actual Consideration; but in propriety of speaking, neither the one nor the other is Science or Conscience, but their several *Acts* or operations; from whence it appears that Conscience cannot be an *Act*.

15. It remains, therefore, that it must be either a *Power*, or a *Habit*; for that it is not a *Form* (or the Soul itself, but somewhat belonging to it) is universally

<sup>5</sup> "Æstimare conscientiam Mentis suæ." Cic. pro Cluent., § 58.

<sup>6</sup> Aquin. 1. qu. 79. 13.

allowed. Many of the Moderns deny it to be a *Habit*, and strive to prove it to be a *Power*, by these reasons. First, they would have it to be a sort of reminiscence or Memory, because the understanding, when it reflects upon things practicable, or to be done, has the same relation to the Conscience, as it has to the Memory with regard to matters that are purely speculative; and Memory is confessed by all to be a *Power*. Secondly, A *Power*, say they, is that by which the agent is principally disposed to *act*: now by the Conscience, the Mind of Man is first informed what actions ought to be done, and to approve or disapprove the commission of them: for admit or take away the Conscience, the Mind becomes capable or incapable of these actions. Thirdly, because the Mind<sup>7</sup> and the Conscience are contra-distinguished and used as Species opposite to each other; the Mind therefore being a *Power* (by the rule of contrary species) they must both be placed under the same *Genus*, and consequently the *Conscience* must be a *Power* likewise. And they attempt to demonstrate over and above that *Conscience* cannot be a *Habit*; as well because she seems to be as natural to man as the Will and Affections, as that she plainly, by a sort of natural instinct, discovers herself in children and infants, who are absolutely incapable of the acquisition of habits.

16. However, *Scotus*, *Durandus*, and many of the more subtle Schoolmen, are of a contrary opinion, which they defend by reasons not very contemptible. And first, the Conscience is a *Habit*, because it is a sort of Science, and we find the very same *Acts* applied to it, to know and to be ignorant; *Thine own Heart* (or Conscience) knoweth.<sup>8</sup> <sup>9</sup> *We cannot tell* (or we know not) *who put our Money in our Sacks*, where the vulgar *Latin* renders it,<sup>1</sup> *It is not in our Consciences. I know nothing*

<sup>7</sup> Tit. i. 15.

<sup>8</sup> Eccl. vii. 22.

<sup>9</sup> Gen. xliii. 22.

<sup>1</sup> "Non est in Conscientiâ nostrâ."

( 2 ) *by myself*, says St. Paul<sup>2</sup> (i. e. I have nothing upon my Conscience); but Science is confessed to be a *Habit*, and therefore Conscience is so too. Secondly, by a right institution and new illumination of the Conscience, a man is made capable of performing an *Act* which before he was not, but by the access of this light or information, it is certain there is no new *Power* produced in the Soul, but rather a *Habit*; from whence we conclude properly that Conscience cannot be a *Power*. ( 3 ) Thirdly, from a *Habit* only, and not from a mere *Power*, a man may properly be said to be morally good or evil, or receive praise or dispraise; but men are said to be good or evil, and are the objects of esteem or reproach, from the disposition' of their Consciences, which proves ( 4 ) that Conscience must be a *Habit*. In the last place, it is not the property of *Powers*, to be acquired, assumed, or laid down; which qualities are generally applied to the Conscience; from whence it follows that Conscience is a *Habit*, and not a *Power*.

17. I lay it down, therefore, that Conscience properly, and in a direct predication, is a *Habit*; yet I own that it may, by an impropriety, be said to be a *Power*; not only because a *Power* is the subject in which it resides, but likewise by relation, as it is an innate *Habit*. Now an innate *Habit*, being placed as it were in the midst between a *Habit* that is acquired and a pure *Power*, it may take its denomination from either, as the medium partakes equally of both extremes; and in this sense Conscience may improperly be said to be a *Power*. And by this distinction it is that we say Conscience discovers itself in children, who are not capable of *acquired habits*. Nor is it at all necessary that the Mind and the Conscience, as was mentioned before, should be contradistinguished as bare *Powers*; for both seem rather to

<sup>2</sup> 1 Cor. iv. 4.

be taken synecdochically, the first for the speculative, the latter for the practical *intellect*, with all the faculties, habits, and acts that severally belong to them.

18. I made use of the word *Faculty* in the Definition of Conscience ; which in my opinion may be applied either to *Powers* or *Habits*, especially to such as are innate. But it may be urged, perhaps, that a Habit is always *acquired* by repeated acts ; and indeed this seems to be essential to it, so that therein alone consists the specific difference between habits and powers, the one being *acquired*, the other natural ; and, therefore, unless we admit of contradictions, it is impossible to say that Conscience is an *innate Habit*.

Here I confess that all manner of habits, even such as seem to be most natural, may really and properly fall under the denomination of *acquired*, and for this reason, because the Soul wants the assistance of the senses and other previous dispositions to convey to the imagination the ideas of sensible objects, in respect of which it is as it were a *tabula rasa*.

Yet, notwithstanding, there are some *habits* which, in the strictest propriety, may be said to be *innate* ; as when the Mind, by an innate or inbred Light of her own, gives an absolute assent to a matter proposed, without any manner of hesitation ; upon supposition, I mean, that she perfectly understands the terms ; and in this case the judgment she gives is so voluntary and free that she neither has recourse to inward study nor outward advice to influence her assent. For instance, the intelligent Habit of this maxim, "*The Whole is greater than any Part thereof*," is an *innate* Habit ; inasmuch as the truth of it immediately occurs to the Mind by virtue of its own Light, from the sole apprehension of the terms, without the least assistance of thought or instruction. Yet it is an *acquired* Habit likewise, because the ministration of the senses is necessary, that we may by



*repeated* acts about sensible objects, attain to the knowledge of the terms, and understand what is meant when we say *the Whole*, and what is intended by a *Part*.

19. If it be objected in this place, that Conscience cannot be an *innate* Habit, because whatever is innate is not capable of error or defect, but is entirely the same in all subjects, and yet we perceive that the Conscience may be vicious and depraved, neither is it of the same Nature in all Men ; I answer, that this proves no more than that the Conscience is not a Habit *purely innate* (which no man in his senses would assert, because habits can never be *simply* natural) but only (as was observed before) partly *innate* and partly *acquired*. The truth is that the Soul of man brings with it into the world some seeds of the Knowledge of Good and Evil, which by study and application are improved and perfected, as the natural agility of the body is improved by exercise, and natural logic by artificial. Conscience, therefore, in respect to those Moral Acts, which are the primary objects, and the first informations of Nature (as the Schoolmen generally speak) is a natural or *innate* Habit, is the same in all mankind, is always upright without the least vice or depravation ; but with regard to such acts as are acquired, either by inward meditation or outward learning, and come nearest to those self-evident principles, the Conscience is an *acquired* Habit, and is capable of error and defect.

20. We have said enough, if not too much, of the *Genus*, but we shall be more concise in what follows. The second Branch of the Definition, is the *Subject* of the Conscience, which we conclude to be MAN, or, to speak more properly, a *creature endued with Reason*. Not but that the Angels likewise have a Conscience of their Apostasy, and of the punishments incurred by it : for they are *Conscious* that they will be tormented ;<sup>3</sup> they *believe*

<sup>3</sup> Matt. viii. 29.

*the revealed Word of God, and tremble;*<sup>4</sup> they know that they will be *judged*<sup>5</sup> at the Coming of the Lord, and give an account of their actions. Yet because it does not concern us so much to inquire into the nature and virtues of Angels, and the all-wise God has been pleased to be very sparing in His Revelations concerning them, it may properly be said that *Man* alone is the *Subject* of the Conscience; for though in Brute animals there may appear some shadow of Conscience as well as Reason, by several acts which discover a resemblance of equity and prudence (as the relations we have of the sagacity of elephants, of bees, and dogs, and other creatures, are really admirable) yet they are all but the effects of fancy, and not of Reason, and proceed from Instinct of Nature, and not from Conscience. Man, therefore, is the proper Subject as well of Reason as of Conscience;—yes, *every* man, not excluding the *Heathen*, the *Wicked*, and even *Infants* themselves. The *Heathen*, by the testimony of St. Paul,<sup>6</sup> *show the Work of the Law written in their Hearts, their Conscience also bearing Witness.* And the same Apostle tells us, that the most *impious* persons still retain a sort of Conscience, though it be impure and *defiled*;<sup>7</sup> for no man is naturally without a Conscience, but by the commission of Sin Conscience becomes vicious and depraved: and when a person is *regenerate* and *new-born*, we are not to suppose that he has a *new* Conscience infused into him; but that which was before stained and polluted with Sin, being washed in the Blood of Christ, is made pure by Faith, and is accepted with God. In young children likewise this spark of Reason shines out of the ashes of the old Fire; and (that the Name of God may receive praise from babes and sucklings) a faint glimmering of it discovers itself in very early indications of Conscience; insomuch

<sup>4</sup> James ii. 19.

<sup>6</sup> Rom. ii. 15.

<sup>5</sup> 1 Cor. vi. 3.

<sup>7</sup> Tit. i. 15.

that if a child has committed a fault, it seeks to escape notice, and to conceal it.

21. The *Subject*, or the *Power* of the Soul, in which the Conscience resides, is the *Practical Understanding*. Many are the disputes of the Schoolmen, whether Conscience belongs to the Understanding, or to the Will, or to both. For my part I shall not engage in this controversy, for you have had enough of the perplexed subtilties of these men; but I will briefly despatch what belongs to my purpose. *Aristotle* (in his third Book on the Soul) reckons up three distinct *Powers* of the intellective part of the Soul; two that are *Cognitive*, that is, the *Speculative* and the *Practical* Intellect, and the third, the *Appetitive*, that is, the *Will*. Of these three, the *Speculative* Intellect, which converses about *Truth*, merely as such, and acquiesces in that, without any regard to practice, and the *Will*, which has nothing *Speculative* in it, but tends immediately to *action*, are the *Extremes*. The *Practical* Intellect, therefore, is seated in the middle between these two extremes; and, as all mediums naturally do, agrees with, or differs in some measure from, each of them. It agrees with the *Speculative*, as it has regard to Truth, and with the *Will*, as it tends to practice. Now we may be assured in the first place, that Conscience does not belong to the *Speculative Intellect*, because she directs all her science to action; nor does she properly belong to the *Will*, because if she did, it must be either as a *Power*, and so would be what we call *Free-will*, or as a *Habit*, and consequently would be admitted into the number of *Moral Virtues*; neither of which was ever yet granted by any Divine or Philosopher. Conscience, therefore, must of necessity belong to the *Cognitive Practical Power*, that is the *Practical Understanding*. And thus *Aristotle*,<sup>8</sup> though he had placed the

<sup>8</sup> Lib. v. Ethic. (Quære vi. 4, 5).

moral virtues in the *Appetitive* Power, yet he fixed the habits of art and prudence (which are wholly ordained to practice) in the *Cognitive*.

This opinion is further confirmed by observing that Conscience is a kind of Science, and all Science is seated in the Understanding. Conscience likewise is capable of error, and error we know is a disorder of the Understanding; and lastly, we say properly, in our common way of speaking, that a person who is acquainted with the secrets of his Prince, whether he approves of them or not, is *Conscious* of them. From whence it follows that the proper seat and subject of the Conscience in the Soul of Man, is the Practical *Cognitive Power*; that is, the *Practical* Understanding.

22. We have now found out the *Genus* and the *Subject*; the next thing to be considered is the *Object*, or that about which the Conscience is directly conversant; which we define to be all *Particular* and *Proper Moral Actions*. By *Actions*, in this place, I understand whatever is in the Power of a Man to do, as he is a rational creature, with regard either to the time past, present, or future. The Conscience is full of eyes, she looks every way, and searches into all things; she sees clearly what is to come; and if you are rushing into Sin she gives you fair warning, and advises you against it. She beholds you in the very Act of Sinning, and then she murmurs, and plucks you back; she gnaws, pricks, and belabours you, in order to keep you back; she reflects upon what is past, and when the Guilt of Sin is upon you she reproveth, stings, accuses, condemns, and torments you. On the contrary, she incites you to good and laudable actions; in the execution of them, she persuades, soothes, and encourages you, and afterwards she applauds and protects you, and fills your breast with serenity and peace.

When I say that all *Particular* Acts are the *Object* of

the Conscience, I have no design to speak as if there were some acts that were not *particular*, but I speak only in opposition to that *Science* which the Conscience supposes and *applies*; which Science, though it be universal, is yet extended to *particular* Acts; and the reason why these acts are called *Proper*, is to exclude that wide acceptance of Conscience, which includes the actions of *other men*; as when we say a man is Conscientious of the secrets of his Prince, or of *Catiline's* conspiracy. This notion is wholly foreign to our purpose, which is to treat of Conscience in the strictest sense, as she converses about acts which *she herself* has really performed, or intends to perform.

I have said that all *Moral Acts* are objects of the Conscience; where I desire to remark that some events are brought about *by necessity*, as the rising of the sun, the eclipse of the moon, &c. We have a knowledge of these by reason of their certainty, but they have nothing to do with the Conscience or Free-will. Others there are that *casually* come to pass, and these are either such as are out of our power, as the flight of birds, or the sudden rise of storms, which, as they are uncertain, cannot fall within the reach of Science, and being out of our power may as well be out of our care; the Will having no business to choose, or the Conscience to determine concerning them. Or they are things perfectly within our power, and these are some of them morally neutral and indifferent, which neither in their own nature, nor by reason of any fixed circumstance contain any Moral Good or Evil; as to go to market, to write a letter, &c. These indeed may belong to Free-will, as they may be a matter of our choice (provided they are worth our notice), but they have no *necessary* relation to the Conscience: I say *necessary*, for they may have an *Accidental* relation to it, by reason of scandal (or offence we might give to others by acting so or so), or some other

circumstance, of which the Conscience may justly take cognizance. Other acts that are within our power, are such as are *Morally Good* or *Evil*; as to serve God, to honour parents, to restore a pledge, to oppress the poor, to plunder, to keep or break our word, and whatever the philosophers call *ἐπαινετὰ* or *ψεκτὰ*, worthy of *Praise* or *Blame*, and Schoolmen call *Meritorious* or *Demeritorious*. With these Conscience has properly to do.

23. The *Object* therefore of a *Man's* Conscience is a *Moral Act*; that is, something actually done, or to be done, or actually omitted, or to be left undone. Yet it must be observed, that a *Man*, as he is a *Christian*, has a stricter obligation upon him, and the *Object* of his Conscience is of a larger extent; in that he is not only obliged to discharge his duty as he is a *Man*, but he is likewise bound to believe the *Mysteries of Faith* revealed to him in the Gospel, as he is a *Christian*: for Infidelity defiles<sup>9</sup> the Conscience, which is cleansed and made pure by *Faith*,<sup>1</sup> and the Conscience is as great a torment to that man who despises the *Articles of Faith*, which in Baptism he engaged to *believe*, as to him who violates the *Moral Commands* of Religion, which he promised to *observe*. And, perhaps, it may not improperly be said, that even *Evangelical Faith* itself is a *Moral Act*; for the express words of our Saviour are, <sup>2</sup> *This is the Work of God, that ye believe on His Son*; and of the Apostle St. *John*, to the same purpose, <sup>3</sup> *This is His Commandment, that we should believe on the Name of His Son Jesus Christ, and love one another, as He gave us Commandment*.

24. The last Branch of the Definition remains yet to be explained; which is, to consider the *Proper Act* of the Conscience, or the *Application of the Light* which is

<sup>9</sup> Tit. i. 15.

<sup>2</sup> John vi. 29.

<sup>1</sup> Acts xv. 9.

<sup>3</sup> 1 John iii. 23.

*in the Mind, by the use of Argument and Reason, to particular Acts.* 'Tis a common axiom of the Schools, that *One Habit has but one Act*; one, that is the Principal, which directly includes all the rest. And, therefore, though it appears that the Conscience has several distinct acts, yet our business is to find out one common and universal Act, under which all others may regularly be contained: for into the Definition of any Habit we ought only to insert one primary Act, which is most adequate to it, and to which all the rest may properly be reduced. There have been some, who observing that many acts of the Conscience may partly be referred to the *Act of Judging* (for the Conscience gives *judgment* upon the past, the present, and the future), have imagined, that the *Act of Judging* is the *Proper Act* of the Conscience: but this cannot be allowed, because there are some acts of the Conscience that are foreign to this, and cannot without difficulty be reduced to it; as that Act (for instance) by which the Conscience *testifies* concerning a matter done or omitted; and we know how improper it is for a *Judge* to offer himself as a *Witness*, or for a *Witness* to take upon him to pass *judgment*. Besides, the *Act of Judging* necessarily presupposes the *Act of Applying* going before it; for it is impossible but that the Conscience must first *apply* the *fact*, of which it is to judge, to the Light of the Mind, before it can deliver a judgment upon it. And this Act of *Applying* is perfectly agreeable to that notion of Conscience before laid down, when I observed, that Conscience is so called, because it is an *application* of one *science* to another.

25. And this is the *Application* of the *Light* which is in the Mind, i. e. of that *Light* which presents itself at the instant the application is made; whether it be the Light of Nature, I mean, the common notions impressed upon the Soul by the dictates of Nature, and reserved in the *Synteresis*, as a brand snatched from the

common fire, and the reliques of the Divine Image after the Fall; or whether it be the Extraordinary Light of Revelation by visions, dreams, and Prophecies; or consisting in the ordinary methods made use of by God in revealing Himself to Mankind, in the Scriptures of the Old and New Testament; or lastly, whether it be the Light of Reason, that is, whatever may be so evidently deduced from the Law of Nature or Divine Revelation, that no man, who allows the one, can possibly dispute the other.

26. The medium by which this Application is to be made, is *the use of Reason*; for the *Light* that is to be applied being something *Universal*, and that to which it is applied being *Particular* Acts, it is impossible such an application can be made but by the mediation of *Reason* or discourse; which alone is able to unite Universals to Singulars. And this is properly the business of Reason, by such a *Syllogism*, or by such *Practical Syllogisms*, as I have laid down. Besides, as it often happens (to speak proverbially, and experience proves it to be true) that we are apt to stumble by going downwards,<sup>4</sup> it cannot be but our argument or discourse may some way or other be inconclusive; and therefore, though we are not easily deceived<sup>5</sup> about *Universal* Principles, which carry with them a fuller evidence, yet in the application of those principles, and deducing conclusions from them, our logic fails us, and we frequently commit mistakes. Upon which account our diligence and care should be the greater (lest we impose upon ourselves) to consider exactly whatever belongs to this *use of Reason* and Discourse, that our argument may proceed regularly, and the conclusions from our principles be just.

<sup>4</sup> Οἱ τὸ καθόλου θεωροῦντες πολλάκις ἐνία τῶν καθ' ἕκαστον οὐκ ἴσασι δι' ἀνεπισκεψίαν. Arist. Analyt. Poster. i. 13. 8.

<sup>5</sup> Τίς ἂν θύρας ἀμάρτοι; Arist. ii. Metaph. Minora, i. 1, 2.



27. I observe lastly, that the Conscience applies to *Particular Acts* the *Light* that offers itself; and this application is made either by testifying, that an Act is already done or omitted, as when a rhetorician asks, as a question of fact, Orestes, *hast thou killed thy Mother?* The Conscience replies, *I have killed her*; or by passing judgment, whether the commission or the omission of an Act be just or unjust, as in the question of the right and legality of an action, where the fact is evident; Milo, *didst thou kill Clodius?* The answer is, *I killed him. You therefore plead Guilty? No. I killed him lawfully.* In the first application, the Conscience proceeds as a Witness, and gives testimony; in the second, as a Judge, to reprove, to accuse, to excuse, or to absolve: and from hence arise many different agitations in the human Soul. A reproving, accusing, and condemning Conscience is the cause of sadness, and distraction of mind, remorse, terrors, and torments; but a Conscience that excuses, defends, and absolves, produces an extraordinary peace and serenity, joy and comfort ineffable, a Hope erect, intrepid Assurance, and unshaken Constancy. The last application of the Conscience regards an Act *in futuro*, or to be done; and in this case she proceeds as a Lawgiver, a Preceptor, an Adviser, or a Counsellor; and her offices are to dictate, to oblige, to incite, and to deter. These are the *Principal Acts* of the Conscience, and a man that strictly attends to her wholesome motions will have no reason to be afraid of her as a *Witness*, or to tremble before her as a *Judge*.

28. Thus have I finished what I thought fit to deliver upon the Nature of Conscience; more at large I am afraid (I am sure more obscurely) than I would, or ought to have done, could I possibly have avoided it; or than I propose, God willing, in the following Prelections, when the *Use* of Conscience comes to be considered. But it has been ever the complaint of learned men, that all

inquiries into the Faculties and Powers of the *Intellective Soul* are intricate and perplex; as well because they lie more remote from matter and sensible motion (and the nearer things approach to our sense, the source of most of our knowledge, the easier they are discovered by us), as that they are mutually connected, and bear a strict relation to one another. But perhaps it may be said, that I have not only not illustrated the Nature of Conscience (a thing in so common use, and which we are always talking of, whose motion and influence are so universally perceived), but have made it more obscure by my Definition. I have nothing here to offer in my defence, but to lament the emptiness of all our thoughts, and the insufficiency of all human industry and application. The very things we see and tread upon, that are obvious to our senses and understanding, that are within the knowledge of the most ignorant mechanic, which the most uneducated person thinks he apprehends, and, *in his way*, certainly does, are yet far out of the reach of the most acute philosophers,<sup>6</sup> and the most penetrating intellects have been puzzled in the disquisition of them. *Time, place, motion*, what man is there, how illiterate soever, who does not think he fully conceives the Nature of these things? and yet we know that the "*Profound, the Subtle, the Angelic, the Seraphic Doctors,*" for many Ages past have entered the lists, and are yet fatiguing themselves upon these very subjects; and after so much toil and dust, the Nature of them remains still unexplained and undetermined. <sup>7</sup> "*I live in Time, and write about it, and yet I know not what Time is,*" says St. Austin. And therefore I cannot enough adore the infinite Wisdom of

<sup>6</sup> "Odi ego, inquit, definire—facilius est mihi videre in alterius definitione quid non probem, quam quicquam bene definiendo explicare." August. ii. de Ord. ii. 2.

<sup>7</sup> "In tempore sum, et de tempore loquor, et tamen nescio quid sit tempus." August. init. lib. de Tempore, Confess. xi. 14. 17; xl. 25. 32.

Almighty God, Who by this means repels the pride of human nature, and represents to Mankind, as in a glass, the Vanity of that opinionative Knowledge, upon account of which men would be thought <sup>8</sup> *to be something, when they are nothing*, miserably deceiving their own Hearts ; and Who would have poor Mortals learn <sup>9</sup> *to measure themselves by their own Rule*, and not <sup>1</sup> *to think of themselves more highly than they ought to think, but to think soberly*, and confess their own ignorance ; that to God alone may be ascribed the Glory of His own Wisdom.

<sup>8</sup> Gal. vi. 3.

<sup>9</sup> "Metiri se modulo ac pede suo." Hor. 1 Ep. vii. 98.

<sup>1</sup> Rom. xii. 3.

## THE SECOND PRELECTION ;

WHICH SHOWS, THAT THE PRETENCE OF A GOOD INTENTION IS NOT FOUNDATION SUFFICIENT, TO SECURE TO A MAN THE INWARD PEACE OF HIS OWN CONSCIENCE.

*And not, as we be slanderously reported of, and as some affirm that we say, Let us do Evil, that Good may come, whose Damnation is just.*—ROM. iii. 8.

I. THAT the Mind of Man is of a Divine Original, has been delivered down to us by the universal consent and wisdom of the Ancients ; who not only speak of it as <sup>1</sup> *a particle of the Divine air, a branch of the Divine stock, a gleam of Divine glory* ; <sup>2</sup> but some have risen higher, and boldly pronounced it to be a *Deity*, and presumed to erect temples in veneration to it.<sup>3</sup> *Our Mind is a God to us*, says *Menander* in *Plutarch* ; and *Ovid*, *The Mind has a Deity within it* ; and *Seneca*, *What else would you call the Mind, but a God lodging in a Human Body* ?<sup>4</sup> These authors, though they agree in bestowing so great encomiums upon the Human Mind, yet consider it in a quite diffe-

1 "Divinæ particulam auræ." Hor. 2 Sat. ii. 79.

2 Θεοῦ ἀποσπασμάτιον καὶ ἀπαύγασμα. Epict. Dissert. i. xiv. 6.

3 "Menti ædes in Capitolio." Vid. Cic. ii. de Nat. Deorum, ii. 23 ; iii. 14. 'Ο νοῦς γὰρ ἡμῶν ὁ Θεός. Plut. in Quæst. Platon. 990 E. "Mens quoque Numen habet." Ovid. Fast. vi. 241.

4 "Quid aliud voces animum, quàm Deum in humano corpore hospitantem ?" Senec. Epist. 31. Ψυχὴ ἐκδοσίου δαίμων. Xenocrat. apud Arist. ii. Top. ii. 6. Liv. Hist. xxiii. 21 ; xxii. 10.

rent respect; for as some of them regard only the *Essence* of the Soul, and speak of it as a Being not depressed with a load of matter, free from corruption and mortality, endued with Intelligence and Free-will, and coming nearer to the Nature of the Immortal Gods than physical bodies can possibly do; so others intend principally to describe that active Force and *Energy* of the Soul which we call *Conscience*:<sup>5</sup> and therefore, *Menander* could justly say, that *Every Man's Conscience is a God to him.*<sup>6</sup> And in this sense *Moses* was appointed as a God to Pharaoh,<sup>7</sup> to reveal the Divine Will to him, to invite him to act in conformity to it, and to punish him with repeated plagues for his disobedience: and almost with the same propriety it may be said, that every particular man has a *Conscience* given him to be a *God* to him; which, as Deputy of the Almighty, and a Preacher of His eternal Law, dictates what he ought to do, and to avoid; persuades him to Morality and Virtue; calls him to a severe scrutiny for whatever he has done, whether Good or Evil; extorts a confession of the Divine Justice from the most profane and impious; and as a most just Judge, dispenses Rewards and Punishments according to the merit of men's actions. This is the state of a *Natural Conscience*, which is placed in the middle between God and Man, as a *handmaid* to obey the One, and as a *mistress* to command the other.

2. And hence it is, that the Conscience is to be taken in a *double* capacity; for whatever is placed in a *middle* state must relate to the *superior* that is above it, and to the *inferior* likewise that is disposed under it: and thus a centurion *obeys* his tribune,<sup>8</sup> and *commands* the common

<sup>5</sup> "Meminerit Deum se adhibere testem, id est ut arbitror Mentem suam." Cic. Offic. iii. 44.

<sup>6</sup> Ἐποιοῖς ἄνασιν ἢ συνελθῆναι θεός.

<sup>7</sup> Exod. vii. 1.

<sup>8</sup> "I am a man under authority, having soldiers under me." Matt. viii. 9.

soldier. And in the Predicamental Order, those terms that stand between the highest *Genus*, and the lowest *Species*, are both the *Genera* of those *Species* of which they are predicated, and the *Species* of every *Genus* that is set above them. In the same manner, the Conscience has a different Office according to the relation she bears to the Extremes between which she is placed. With respect to God, and the Divine Law, she moves in a state of subjection; but she governs Man, who is placed below her, and she is the rule and standard of all his actions. And therefore, since I proposed to illustrate the Use of the Conscience (of which I gave you the definition in my last Prelection), especially so far as our conduct and the improvement of our life and manners are concerned; the course of my design requires that I should explain the *Passive* obligation of the Conscience, as she is a subject bound to conform to the Divine Will; and also the *Active*, as all human actions are obliged to conform to her, who directs and presides over them. These two several Obligations, therefore, shall be the subject of my Discourse: I shall first treat of the Subjection, or the *Passive* Obligation, and next of the *Active* Obligation, or the absolute Power and Authority of the Conscience.

3. But to proceed regularly about the first of these, it must be premised, that (since the rectitude of anything consists in the conformity it bears to the next and immediate rule, and so on to the first standard by which it is directed, and since the immediate *Rule of Conscience* is *Right Reason*, which yet is subject to the Superior Law that God has set over it) our Conscience may then properly be said to be Upright, when it conforms to the dictates of Right Reason, according to that Law which God the Supreme Lawgiver has prescribed to it, with regard to the Quality of the Action, whatsoever it be with which it has to deal.

The Conscience, we must observe, ultimately resolves itself into that fixed *Law*, which is imposed by God upon a rational Creature, as He is the Lord of the Conscience, and the Supreme Lawgiver, Who first infused it into the Soul of Man, and is the Witness of all her actions, and the Judge of them, and Who alone has power *to save and to destroy*, according as she has obeyed or violated His commands. *There is one Lawgiver*, says St. James, *who is able to save and to destroy.*<sup>1</sup> A truth proclaimed by the common voice of mankind, and so generally confessed, that there is scarce a man who does not in theory assent to it. But so unaccountably depraved is Human Nature, that, when men come to practice, there are many (even of such who in their own opinion, and to all outward appearance, retain some concern for the peace of their Consciences) who (from a violent propensity to gratify their passions) not only avoid bringing their actions to the test of that Supreme Law, which alone can procure ease to the Conscience, but conceive that the pretence of a *good intention*, or the *example of some holy man*, or the *authority of some eminent Divine*, are sufficient to justify and give a sanction to all their actions. And inasmuch as this delusion of the heart has prevailed too much in all ages, and especially in these later times, I have thought it seasonable for the temper of the age we live in, to try and uproot these three *popular fallacies*, which so dangerously deceive the Conscience, and lull it into fatal security.

I shall, therefore, before I attempt to explain the proper and adequate Rule of Conscience, make it appear, that the Pretence of a *Good Intention*, the *Example of a Pious Man*, or the *Judgment of the Learned*, are *very insufficient Foundations* to establish the Peace and Tranquillity of the Conscience. On the last two pleas I design (by God's

<sup>1</sup> James iv. 12.

Will) to treat hereafter ; the first only I propose as the subject of the present Prelection.

4. The conclusion therefore I shall lay down is this, That *the Goodness of Intention is not sufficient to constitute an Action morally Good* ; that is, a Good Intention cannot alone, and of itself, procure that any Human Act should be morally Good ; or which is the same, in the words of the Apostle, *Evil ought not to be done, that Good may come.*<sup>2</sup> When I say an *Act*, I understand both the inward act which is in the Will, and all the outward acts in the executive faculties, which flow from it ; my meaning is, that from a *Good Intention alone* it does not follow, that either the Will itself, which is the first principle of acting, or any outward act that proceeds from it, *can be said to be Good* ; and because the Intention may be understood either as the *Act of Intending* (that is for the Motion of the Will, tending by certain Mediums to a certain End) ; or as the *Thing itself intended*, that is, for the *End intended* by the Will, I include both these meanings in the conclusion I have laid down ; for the *Act of Intending*, and the *End Intended*, equally affect the Goodness and the Depravity of an action, if we respect the *Quality* of the act ; but with regard to the *Quantity* of that Goodness and Depravity, the case is not altogether the same. For suppose an Act in its own Nature, and with respect to its Object, to be really Good or Bad, and ordained to a Good or Bad End ; the stronger tendency the Will bears towards that Act, the better or the worse respectively will that action be. For instance, a man communicates in the Lord's Supper, in order to commemorate the Death of Christ ; the *more intensely* therefore the Will is fixed upon the Remembrance of Christ's Passion, the more worthy Communicant certainly the man is. Or if a person wilfully defames his neighbour,

<sup>2</sup> Rom. iii. 8.



with a design to ruin him, the more violently he is bent upon it, the Act of Slandering will be the worse. The *Quantity* therefore of a Good or an Evil Action corresponds and proportions itself to the Quantity of the Goodness or Depravity of the *Intention*, and is commensurate with it; provided you mean by the Intention the *Act of Intending*, and *not the End intended*; yet which way soever you understand it, it is impossible that the Intention alone can be sufficient to make an Action, in its own Nature Evil, to become really Good.

5. In order to prove this, I may adduce incontrovertible arguments; the first is the text in the Epistle to the *Romans*,<sup>3</sup> wherein the Apostle St. *Paul* resents with indignation that unjust calumny with which he was assailed by some who affirmed that he said, *Let us do Evil that Good may come*. In order to understand the full scope and design of this passage, we are to observe, that, of all the Apostles of our Lord, St. *Paul* asserts everywhere in the most copious manner the *free Mercy* and compassion of God in entering into a Covenant of Grace with Sinners, and fulfilling faithfully the Promises of the Gospel, notwithstanding the Wickedness and Infidelity of Mankind, whose hearts were corrupted, and who in their daily practice betrayed their impiety and want of Faith; and yet so far was the Sinner from making the Promises of God of none effect, that his very Sins contributed to God's Glory, and made His Truth and Grace still more illustrious; for *where Sin abounded, Grace did much more abound*.<sup>4</sup>

From this Doctrine of the Apostle St. *Paul*, not only sophisters and false teachers took occasion to disparage and undermine his authority, but the hypocrites and libertines of the age made use of it to countenance their vices, and to give themselves security in them. And no wonder;

<sup>3</sup> Rom. iii. 8.

<sup>4</sup> Rom. v. 20.

for, said they, if the Preaching of the Apostle were true, that the Sins of Men redound to the Glory of God, the Divine Justice could not reasonably exert itself in the punishment of Sinners; there would be no encouragement for virtue or Religion; nay, men were obliged to sin more abundantly, that God might receive the more abundant Glory; and it would be their duty, upon all occasions, *to do Evil that Good may come.*

Other aspersions that were cast on the Apostle by his enemies he confuted by proper arguments; but *this* he thought unworthy of an answer; he only expostulates with indignation, and resents it as a manifest slander, bordering on blasphemy, and threatens the bold revilers with the vengeance of God upon their heads, unless they repented. For such a scandalous *sophism* was like those fallacies in *Aristotle*,<sup>6</sup> which the Philosopher thought it more proper to chastise than to solve. From hence it appears evidently (and all interpreters agree in this) that the Apostle did most strenuously deny that *Evil ought to be done, be the Intention ever so good.* \* *It is of great importance* (says St. Austin) *to consider for what Cause, for what End or Intention a Thing be done; but an Act that is manifestly Evil ought not to be done under any pretence of a good Cause, a good End, or a good Intention.*

6. The second argument I have to offer is taken from the *Nature of Evil*, which is neither eligible in itself nor capable of being made the means to a *good End*, nor fit by its nature to produce any *real Good*. Evil cannot be an object of the *Will*,<sup>7</sup> because, if it were, it would

<sup>6</sup> Topic. i. xi. 4.

<sup>6</sup> "Interest quidem plurimum, quâ causâ, quo fine, quâ intentione quid fiat, sed ea, quæ constat esse peccata, nullo bonæ causæ obtentu, nullo quasi bono fine, nullâ velut bonâ intentione facienda sunt." Contra Mendacium, cap. 7.

<sup>7</sup> Τὸ αἰσχρὸν οὐκ ἔν ποτε διὰ περιστάσει ἀρετῶν γένοιτο. Hierocl. p. 78, ix. 11, 12.

be the object of our *Desire*, which is impossible ; for whatever we desire we apprehend to be a substantial *Good*.

7. Neither is Evil in its own Nature capable of promoting a *Good End* ; if it were, it would likewise be *desired* by us ; for the Appetite does not only incline towards the End proposed by the agent, but to the *Means*, which appear to conduce towards the Attainment of it.

If you object that God so disposes the Sins of Men as to promote a good End *of His own*, and therefore it is not contrary to the Nature of Evil to promote a Good End, I answer, in the first place, that the Ways of an Almighty God, Who is the Lord of Nature, and can, as He pleases, produce Good out of Evil, are far different from ours, who have no claim to the same right or the same authority ; nor is it becoming in us to search too curiously, or to pronounce too magisterially, concerning the Use that He makes of the Sins of Men.

Secondly, it is certain that, as God can, and very often does, serve the Ends of His own Glory, Grace, and Providence, by the Evils we commit, so may we likewise, after His Example, upon all opportunities, make use of the Sins of *other* Men, and apply them to our own Spiritual or Temporal advantage. But then, as God, though He produces Good out of the Evil of others, *never does Evil* Himself, *in order to produce that Good* ; so neither is it lawful for us *to do Evil that Good may come* ; for it is one thing to produce Good out of the Evil of others, and another to do Evil ourselves, with a design of producing Good.

Thirdly, a Thing may be said to promote an End either *improperly*, as when an agent makes use of the voluntary act of another, and without his Will or Intention, applies it, by his superior Wisdom and Power, to bring about an End of his own ; or, in a more *exact* sense, when a Thing is antecedently made choice of by the

agent, as a proper means to attain the End he had proposed. In the first acceptance it may be said that God disposes of Evil to a good End; that is, His Infinite Power and Wisdom is able to educe *Good* from *Evil*, or turn *Evil* into *Good*; but it were blasphemy to assert,<sup>8</sup> in the latter sense, that God did *antecedently* approve or make choice of any Evil, as a *medium* suitable in its own nature, to promote a good End, or any way assist towards the production of it.

8. Besides, it is as utterly inconsistent with the Nature of Evil to produce of itself any good Effect, as it is impossible for *an Evil Tree to bring forth good Fruit*,<sup>9</sup> or for Light to create Darkness; but the same Great and Glorious God, Who by an Act of Omnipotence *made the Light to shine out of Darkness*,<sup>1</sup> is likewise able so to apply the Sins of Men as to illustrate His own Infinite Wisdom, Justice, and Goodness. But these are the Effects of a *Divine Power*, as of a Cause working *properly*, and of itself, without the least concurrence or co-operation of Evil, which, as to those effects, is purely *Contingent* and *Accidental*. That confession therefore of *David*,<sup>2</sup> which *St. Paul* introduced in his Epistle to the *Romans*, *Against Thee only have I sinned*,<sup>3</sup> that Thou mightest be justified *when Thou speakest*, is not to be understood, as if *David* thought it was his duty to commit murder and adultery, in order that *God might be justified in His Words*; for the participle *ὅπως* (like others<sup>4</sup> of the same nature in many places of Scripture) is designed to signify (as *St. Chrysostom* justly observes) the *Effect* only, and not the *Cause*.

As therefore a disputant who knows the legitimate rules of arguing, can infer a true conclusion from false

<sup>8</sup> " — Non convenire bono viro vitii uti." Quint. 6. Instit. vi. 1.

<sup>9</sup> Matt. vii. 8.

<sup>1</sup> 2 Cor. iv. 6.

<sup>2</sup> Psalm li. 4.

<sup>3</sup> Ὅπως ἂν δικαιωθῆς.

<sup>4</sup> Ἴνα, ὥστε.

premises which were allowed by his opponent, and yet would show himself ridiculous if he made use of false assumptions to prove a true conclusion (for Truth has no need of Falsehood to support it); so God does (and *we* may in some measure) apply the Sins of others to a good End; but it is inconsistent with the Justice and Goodness of the Divine Nature, and utterly unlawful for us, to *make choice of Evil, that Good may come.*

(3) 9. I shall deduce a third argument from the Nature of a *Good Act*; and here we are to observe, that no Act can properly be said to be Good, without the concurrence of every necessary circumstance; if *one only* be *absent*, it receives a blemish, and becomes Evil. It is a memorable saying, that *Good proceeds from a perfect Cause, but Evil from the least defect*; and we know by experience, that more is required to the production of anything than to its dissolution. Indeed, the defect of a *Good Intention* is reason enough to make an Act to be *Evil* (for where the End of an Act is Evil, the Action must be so too), but a good End or a good Intention is *not sufficient*, without the concurrence of other *proper conditions*, to make an Act to be morally Good.

The Goodness of every Act, whether of the Will, or of the energizing Faculties, depends principally upon the Goodness of the *Object*; though the Quality of the *End* and of the *Circumstances* must be considered likewise. It is the *Object*, or the matter about which we act, that distinguishes our Actions indefinitely into Good and Evil (and thus we say that *Theft* and *Adultery* are absolutely *Evil*, and the *Giving of Alms* and the *Act of Prayer* are in their Nature *Good*) but with this difference, that whatever is simply Evil in itself, is so Evil, that neither the Goodness of the *End*, nor the best *Circumstances*, can ever change it into Good; but *that* which is *Good* in its own nature may be so depraved by

the *End*, or by vicious *Circumstances*, that it ceases to be Good, and becomes *morally Evil*.

Upon supposition, therefore, that the *Object* be depraved, we are immediately to abstain from an Act, as Theft or Adultery, as simply Evil in itself; but supposing the *Object* be Good, it is not safe instantly to proceed to Action, before the *End* and the *Circumstances* be thoroughly weighed and considered; and, therefore, when we say that *the Goodness of the Act depends upon the End, and the End distinguishes our Actions*, we suppose that the *Object* or the matter of the Act is Good, or at least Indifferent, but not Evil; for the Goodness of the *Object* being supposed, then it is that an Act receives its Goodness or Depravity from the *End*.

For instance, the Act of Almsgiving, though it be good in respect of the *Object* who stands in need of relief, yet if it proceeds from a motive of vain-glory, it becomes morally Evil, because it conduces to a bad *End*. The same Act of Charity, designed purely to assist a neighbour in distress, is an Act so far Good, as the Goodness of the *Object* and the *End* can make it; yet it cannot be said to be *simply Good* without a proper disposition of *Circumstances*; for to make an Act simply Good (beside the Goodness of the *Object* and of the *End*), the *Circumstances* also must be right; and therefore we say that *the Goodness of any Action depends upon the Circumstances*; not principally, but (assuming the Goodness of the *Object* and the *End*) they crown the Action, and make it completely Good.

Since therefore no Action can justly be said to be morally Good, unless the *Matter* be lawful, the *Intention* right, and the *Circumstances* proper, it is evident, that a *Good Intention* alone is insufficient; and consequently no Act can be done with a safe Conscience, whatsoever the Intention be, that is either unlawful in the *Object*, or defective in the *Circumstances*.

10. But perhaps an objection to this conclusion may be drawn from the Words of our Saviour, *“If thine Eye be single, thy whole Body shall be full of Light; but if thine Eye be Evil, thy whole Body shall be full of Darkness.* Where, if by the *Eye* we understand the *Intention* (as most Interpreters allow), it seems as if the Goodness of an Act did wholly *depend* upon the Goodness of the *Intention*; so that whatsoever force an Evil Intention has to deprave an Act otherwise Good, the same a Good Intention has to rectify an Act otherwise Evil; for a *single Eye* has the same capacity to enlighten the whole Body, as an *Evil Eye* has to introduce Darkness. This objection receives an additional force from the testimony of some Fathers and other Divines, according to the gloss, *“As much Good as you intend, so much Good you do;”*<sup>6</sup> not to forget the trite verse,

*Quicquid agunt homines, Intentio judicat illos.  
It is the Intention judges true  
Of whatsoever Things we do.*

11. But with regard to the passage in St. Matthew, I am sensible, that Men of Learning, in the last Age, have given a construction to these Words of our Saviour, far different from that of the Ancient Fathers, and quite foreign to that we have now before us. But in deference to the authority of those venerable Expositors, supposing that the *Text* had a proper Relation to the *Intentions* of Men, I observe, that the *Intention* (as it is a Motion of the Will tending by suitable *Mediums* to a certain End) may be understood either for the Intention of that Good, into which the Will is finally carried, and precisely *without ever considering of the Means*; (as when a man says in general, that he intends the Glory of God, or his own profit or pleasure;) or otherwise for the *whole Progress or*

<sup>6</sup> Matt. vi. 22.

<sup>6</sup> “Quantum bonum intendis, tantum facis.”

*Course of Action* from the beginning to the end, including all the *Mediums* that are proper to it ; as if a man should say, he intends the Glory of God by building a church, or killing an idolater, or proposes his own interest in heaping up riches by his honest industry, or by theft or oppression. Just as a man, who in general, intends a journey to *Rome*, without considering *the way* he is to go, or the business he is to execute, may as really design to go, as another who has actually fixed upon the road, and determined what he is to do when he comes thither. It is of this *general Intention* that I desire to be understood ; namely, of *that Intention*, which *altogether* respects the *End*, without considering the *Means*, and which is so received in common discourse.

But those Expressions of the Fathers, and other Divines, which, from these Words of our Saviour, seem to intimate that the Quality of the *Intention* is the proper standard to judge of the *Goodness* or *Depravity* of Men's Actions, construe the Intention in the *latter* sense, and include the *Means*, together with the *End*. St. Bernard<sup>7</sup> observes shrewdly, *In order that the Eye be single, two Conditions are necessary, Truth in the Choice, and Charity in the Intention* ; that is, it is impossible the Intention can be upright without these two qualifications ; and then a man must of necessity propose an End that is suitable to the Love of God, and of his neighbour, and make choice of *means* that are consistent with honesty and justice. In every act, therefore, it is not sufficient that we propose a good end ; but we must be careful likewise, that the Means we make use of are proper and adequate for the attainment of it. For since the choice of the Means depends chiefly upon the Intention of the End, and is inseparably united as a Circumstance absolutely necessary and essential to it, the <sup>8</sup> Schoolmen, almost all of

<sup>7</sup> Tract. de Præcepto et Dispensatione, cap. 14.

<sup>8</sup> "Animum laudo, consilium reprehendo." Cic. ad Attic. ix. 11.



them conclude, that an intention otherwise Good becomes vicious and depraved by an evil choice, in the same manner that evil Circumstances communicate a stain to the actions which they follow and to which they belong.

(4) 12. A fourth Argument is taken from the Perfection and Obligation of the *Divine Law*. Almighty God has certainly given to us a Law, a most perfect Law, which commands what we are to do, and forbids what we are to avoid, *⁹ He hath showed thee, O man, what is Good, and what the Lord requires of thee.* This is that Law which we are bound in duty to obey; by this Law we are commanded (as the Scriptures everywhere declare) to do good, and to eschew evil. But if we, in defiance of this Divine Law, make an estimate of good and evil after our own fancies or Interests, and act accordingly, either by omitting the Good it commands, through fear of suffering or affliction, or by prosecuting the evil it forbids, in prospect of safety and advantage, what is this, but flying in the face of our Almighty Lawgiver, and preferring the vain wisdom of the flesh to the authority of the All-wise Spirit? The holy *David* acted upon a totally different principle, when he declared, *¹ Through Thy precepts I get understanding; therefore I hate every false way.* As if he had said, "This Law, which is fixed in my inmost Heart, is constantly in my mouth, and before my eyes, gives me plainly to understand what I have to do and to avoid; wherefore I not only decline every way (how specious and strait soever it may seem) that leads me contrary to Thy commands, but I hate and abhor it."

Since therefore Evil in general is expressly opposite to the Divine Law, which makes no exception in respect of the end or *intention*; and since we ought not to distinguish or make exceptions where the Law of God is

⁹ Micah vi. 8.

¹ Psalm c. ix. 104.

positive or silent, it follows, that a man, who, from any cause or intention whatsoever, sins wilfully and with deliberation, becomes a criminal in the eye of God, and directly violates the Divine Law.

13. The *examples* of such as disobeyed the express commands of God under covert of a *good intention*, and suffered Divine vengeance for their presumption, supply a fifth Argument to show how insufficient the *intention* is to secure the peace and satisfaction of the Conscience. When the prophet *Samuel* was sent by God to *Saul*, King of the *Hebrews*, who had spared the cattle of the *Amalekites*, which he was commanded utterly to destroy, with a design (at least as he pretended) of offering a pompous sacrifice to the Lord, he represented to him the enormity of his sin, and foretold that he would be punished with the loss of his kingdom for his disobedience.

If this example should be thought improper in the present case, because it does not appear that *Saul* had any Intention to do sacrifice before the *Prophet* met him; but, with a view to his own advantage, proposed to save the spoils of his enemies, and therefore, as is usual with hypocrites, he had recourse to this specious plaster<sup>2</sup> for his disobedience, which *Samuel* had so sharply laid to his charge: I observe, in answer to this objection, that hypocrisy joined to disobedience is so far from extenuating a sin, that it aggravates and doubles the guilt of it. *Saul*, without question, was guilty both of disobedience and hypocrisy; not to mention a sin, which was the foundation of the other two, a sordid view of interest to himself. Besides, dissimulation and disobedience are distinct and independent sins, without relation to each other, either in nature or time; for a man may play the hypocrite without disobeying; and *Saul*, in the present case, was guilty of disobedience, sometime

<sup>2</sup> Σοφὸν φάρμακον.

before he had an opportunity to dissemble, or plead an excuse. And this appears evidently enough from the very words of Samuel, who severely and smartly reprov'd him for his disobedience, without so much as mentioning his hypocrisy.<sup>3</sup> *To obey* (says he) *is better than sacrifice*: as if he had said, "Why do you talk to me of your sacrifices? it makes no difference as to your obedience, whether you designed them or not; your business was to obey the commands of God, and to execute His orders absolutely without scruple or dispute."

But whatever we are to conclude from this action of *Saul*, it is most certain that *Uzzah*,<sup>4</sup> whose history is recorded in the Second Book of *Samuel*, did, without the least deceit, but with the *most sincere and pious Intention*, put forth his hand to support the *Ark of God* (a most solemn symbol of the Divine Presence under the *Jewish* economy) when the cart shook, and the Ark was in danger of falling to the ground. This small (as some would suppose) but unseasonable inadvertency, notwithstanding the innocence of his *intention*, brought down upon his head the Divine vengeance, which struck him with present death in the sight of the whole assembly of the people for his presumption; and with good reason, for God had before declared that the Ark should not be laid upon a *cart*, but should be carried upon the <sup>5</sup> *shoulders* of the Priests; and that whoever that was not of the *Levitical* line, and of the Family of the *Kohathites*, presumed to offer his service or even to lay a finger upon that <sup>6</sup> *Holy Thing*, he must expect death, and to be cut off from his people. And, therefore, by this severe stroke upon the first violator of that Law God did impress a dread and reverence upon the hearts of men, and gave a sanction and authority to His revealed Will and Com-

<sup>3</sup> 1 Sam. xv. 22.

<sup>5</sup> Num. vii. 9.

<sup>4</sup> 2 Sam. vi.

<sup>6</sup> Num. iv. 15.

mands, that no man should attempt, upon any pretence whatsoever, to act in open defiance to His Laws, or audaciously to dispense with what He had established. *' And the Anger of the Lord was kindled against Uzzah ; and God smote him there for his Error ; and there he died by the Ark of God.*

14. My last Argument upon this occasion will be deduced from the Inconveniences that must of necessity follow the contrary opinion ; and though many are the disadvantages flowing from it, I shall instance but one, which was long ago observed by *St. Austin*, and will be evidence sufficient in the present case ; which is, that when the fences of the Laws are broken down, the course of things will run instantly into confusion and disorder ; as the sea, when its shores are overflowed, will bear no opposition, but spread its waters wildly without restraint. *A Man that has once exceeded the limits of Modesty, will soon arrive at the height of Impudence, says Cicero.<sup>8</sup> And St. Austin asks, 'What Crime so wicked, what outrage so abominable, what Sacrilege is there so impious (would not you believe that he is prophesying of the manners of the age we live in ?), but would acquire the character of justice and honesty, were men allowed to judge of their sins by no other rule, than by the reasons for which they committed them ? from whence it would soon follow, that the greatest Evils, under pretence of being acted for a Good Cause, would become Virtues, and cease to be sinful.* And

<sup>7</sup> 2 Sam. vi. 7.

<sup>8</sup> "Qui semel fines verecundiæ transierit, gnaviter hunc impudentem esse oportet." Cicero, Epist. ad Famil. v. 12.

<sup>9</sup> "Quod sceleratissimum facinus, quod turpissimum flagitium, quod impiissimum sacrilegium non dicatur fieri posse rectè atque justè, si semel concesserimus in omnibus malis operibus hominum idè non quid fiat, sed quare fiat, quærendum, ut quæcunque propter bonas causas facta reperiuntur nec ipsa mala esse judicentur ?" Augustin. contra Mendacium, c. 7.

(6)

again, <sup>1</sup>*If once you grant that a less Evil may be committed to avoid a greater, every man will be forward to judge of that Evil, not by the rule of Truth, but by his own fancy and practice ; and would think that to be worse which more crosses his own temper or desires, not what is more sinful, and ought justly to be abhorred as such.*

The force of the Argument lies thus. If Evil is to be done, that Good may come (since it is most certain, that every Evil is not to be done for every Good), there must either be a rule fixed for a man to know what kind of Evil may justly be done, that Good may come, and what not ; and for what kind of Good some Evils may, and others may not, be done. Or it must be left to every man's humour to judge for himself, and direct his Actions by his own fancy. And what will be the consequence of this, but a final overthrow of whatever is good or sacred among men? Everything will be exposed to Violence, Perjuries, and Deceit ; to Rapine, Slaughter, and Bloodshed. No kingdoms, or societies of men can possibly subsist upon Earth, when *Religion, Justice, Equity, Faith, and Peace* (without which they cannot stand) will of necessity be banished from the world.

15. As, it may be hoped, I have now confirmed the Conclusion I undertook to prove, it cannot be improper, and I hope not unacceptable (and certainly not unprofitable), to deduce some *corollaries*, that will be of great service to direct us in our lives and practice.

In the first place, therefore, it follows from what has been said, that every good man should be careful, lest a heat of *zeal* for the *Glory of God* transport and carry him

<sup>1</sup> "Cum concesseris admittendum esse aliquod malum, ne aliquod gravius admittatur, non ex regulâ veritatis, sed ex suâ quisque cupiditate aut consuetudine metietur malum, et id putabit gravius quod ipse amplius exhorrescit, non quod amplius revera fugiendum est." Augustin. contra Mendacium, cap. 7.

into unlawful actions. No true Christian will deny that the *Glory of God* should be the supreme and ultimate *End* of whatever we do;<sup>2</sup> but the history of the *Jewish zealots* will convince us what violence and desolation are the immediate effects of a rash and preposterous *zeal* for the divine *Glory*; and we have writers of the best authority, who could not possibly be ignorant of the transactions of their own times, that have transmitted to us a narrative of the same frantick delusion among the *German Anabaptists*, in the memory of our fathers; a narrative of such horrid and inhuman wickedness, as would surpass the belief of posterity, did we not see the same tragedies being now daily acted in these kingdoms by their unhappy offspring.

16. Lest, therefore, any of you should make use of this specious pretence to deceive others, or to impose upon yourselves, you are to consider, that the seducers of mankind (the agents and disciples of *Satan*, who often <sup>3</sup> *transforms himself into an Angel of Light*) have applied no artifice with better success, to impose on the credulity of the people of Christendom, and more effectually to disturb the peace of Churches and Kingdoms, than a pretext of zeal for the *Glory of God*, the *Reformation of Religion*, the *Propagation of the Gospel*, the *suppressing the growth of Popery*, and *advancing the Kingdom of Jesus Christ*. The most eminent Protestant Divines in the preceding age, such as *Calvin*, *Bucer*, *Zuinglius*, and others, in their writings greatly deplored this; among whom *Zanchius*, a man of exemplary learning, modesty, and goodness, could not forbear declaring, that he <sup>4</sup> *could not understand the theology of those new Reformers*

<sup>2</sup> "Whether ye eat or drink, or whatsoever ye do, do all to the glory of God." 1 Cor. x. 31.

<sup>3</sup> 2 Cor. xi. 14.

<sup>4</sup> "Non intelligo istam Mundi Reformatorem Theologiam." Epistola Nuncupatoria ad opera sua, tom. vii.

of *Mankind*. And I could wish that the experience of what daily takes place among ourselves did not too much contribute to verify the common saying, that <sup>5</sup>every wickedness begins with this preamble,—“*In nomine Domini.*”

You are to consider, further, how preposterously this Pretence of the *Glory of God* has been introduced to justify the fiercest wars, seditions, tumults, and unprofitable disputes, so directly opposite to the practice of the *Apostles*, who never so much as mentioned it (and we find them frequently speaking of it) but with a design to promote peace and brotherly love, and (which is the greatest ornament of a Christian) a sweet condescension to others in things indifferent; that no one might use the *liberty* which we enjoy by the mercy of Christ, to the scandal or *offence* of others.

You are to observe, again, that a man who designs the *Glory of God* to be the *End*, must propose likewise the *Law of God* to be the *rule*, of his actions. <sup>6</sup> *To the Law, and to the Testimony*, must be his maxim; so that let the *Glory of God* be, as it ever should, the final *End* of everything you do, yet the *rule* that you go by, and the formal reason of your actions is not the *Glory of God*, but His *revealed Will*. In every action of our lives, the *Glory of God* is to be kept in view, as the *goal* to which we run, but we must have the *rule* also in our eye, lest we mistake the way that leads to it, and lest we justly fall under the reproach of the common proverb, <sup>7</sup> *You run well, but you run out of the way.*

Lastly, observe, the *Glory of God*, with respect to particular *Acts*, is in the nature of a *Transcendental End*; but no individual thing is immediately subject to that which is *transcendent*, just as no individual being is subject

<sup>5</sup> “*In nomine Domini incipit omne malum.*”

<sup>6</sup> *Isaiah* viii. 20.

<sup>7</sup> “*Bene curritis, sed extra viam.*”

to another being so far as it is a being; and therefore, as a *Transcendental Being* is realized in every Universal or Singular *Being* contained in any one of the ten *Predicaments*; so the *Glory* of God is the end of all the several duties that belong either expressly or virtually to any precept of the *Decalogue*. God is to be worshipped, parents to be honoured, neighbours to be loved, promises to be kept, justice, truth, and chastity to be observed, and the other duties of piety and charity are to be performed, and for the *Glory* of God. But as there is no *Being* that is truly such, which may not properly be reduced to some *Species of Beings* in one of the ten *Predicaments*; so no particular action, let men say what they will to promote their own designs, can ever strictly be referred to the *Glory* of God, as to its *direct end*, that may not be reduced to some duty of piety or charity, founded in one of the Ten Commandments of the *Divine Law*. It is but trifling, therefore, for any one to make a loud profession of zeal for the *Glory* of God, and yet not be able to justify what he pretends to do for God's *Glory*, by any one precept in the *Decalogue*.

17. A second inference from the Conclusion above is, that *to commit a less sin to avoid a greater*, is a very dangerous mistake; and yet this error has had many arguments offered in its defence, particularly that common saying in every one's mouth, <sup>8</sup> *The least of Evils is to be chosen*. And to give it authority, the words of *Aristotle* are introduced, who says, that a <sup>9</sup> *less Evil* in comparison of a greater is a real *Good*; which opinion we find supported by *Gregory the Great*, who asserts, that <sup>1</sup> *When the Mind is perplexed between less Sins, and those*

<sup>8</sup> Τὰ ἐλάχιστα ληπτέον τῶν κακῶν. Arist. Ethic. ii. 9.

<sup>9</sup> Ἐν ἀγαθοῦ λόγῳ γίνεται τὸ ἐλαττον κακόν. Id. Ethic. v. 3, 15.

<sup>1</sup> "Dum mens inter minora et maxima peccata constringitur, si nullus omnino sine peccato evadendi aditus pateat, minora semper eligantur." Greg. Moral. on Job, lib. xxxii. 39.



*of the greatest magnitude, if there be no possibility of escaping without Sin, the less Sins are always to be chosen.*

There have been examples likewise of good men, which seem to justify this maxim; and particularly that remarkable instance of *Lot*,<sup>2</sup> who suggested to the impure inhabitants of *Sodom* an act of incontinency with his own daughters, to divert them from more abominable lusts. It would be tedious to multiply instances, and, therefore, I observe, first, that when we say, *Of Evils the least is to be chosen*, we mean properly, that of all *temporal* evils and *calamities* of human life, we are to choose the least, in the same manner as *David*<sup>3</sup> did; when the three evils of war, of famine, and of pestilence were offered to him, he made choice of the least.

I observe, secondly, that the word *Evil* has yet a larger acceptation, and may be understood either of a *Sin* or a *Punishment*. When two Evils, therefore, are proposed to the Will, the one a Sin and the other a Punishment, if neither of them can possibly be avoided, the Evil of *Punishment* is to be made choice of; it being the less Evil of the two to *suffer Evil* than to *commit* it. And therefore it is our duty rather to choose the loss of our Estates than to renounce our Faith, and to suffer Banishment than to be guilty of Perjury. And hence it was that the holy *Martyrs* of old were inspired with so much strength of courage as to suffer gladly Pillage and Tortures, and loss of Life, rather than burn Incense to Idols, or consent to anything that was base or unworthy of the Christian Name. I observe, thirdly, that if two Sins are proposed to a person's choice, and he is persuaded in his Conscience that both of them are really Sins, he ought to *make choice of neither*, but to *avoid both*. But if you should state the Case,

<sup>2</sup> Gen. xix.

<sup>3</sup> 2 Sam. xxiv. 14. Τῶν τριῶν κακῶν ἕν. Vid. Suid. Τῶν τρ.

that one of them must of necessity be committed, as the words of *Gregory* suppose, what can a man do under such a dilemma? I answer, that such a Case *cannot possibly be supposed*; for, since *all Sins are voluntary*, otherwise they could not be called Sins, as *St. Austin*<sup>4</sup> justly distinguishes, it cannot be that a man should be brought into such straits as to be under a necessity of sinning; and, therefore, for any one to say that he was driven by pure necessity to commit such a Sin is a downright Contradiction, since it is impossible for a man to sin against his Will, which is so free that it can never be forced. And in this sense are the words of *Gregory* to be understood, though they seem to bear another construction (this part of them particularly, *If there be no possibility of escaping without Sin*), for he does not speak there of two Evils proposed to the Will, which are both *sinful* (which is the present Case), but of a man who has two Evils before him, the one a *real Sin*, and the other what a *Mistake* of his Conscience, or some inconsiderable Scruple would persuade him to be sinful, when it is not; which quite alters the state of the Question.

18. If you desire to know whether it be lawful for one man, *Caius*, to commit a *less Sin* in order to prevent the commission of a *greater* by another man, *Titius*; for instance, to be guilty of petty larceny to save the other from the guilt of murder, I answer with *St. Austin*,<sup>5</sup> it is *unlawful*. His words are these: *If a man inquires of me which of the two Sins he is to avoid, when one Sin must be committed and the other may be prevented, I tell him he is to avoid Sin in himself, before he prevents a Sin*

<sup>4</sup> De vera Religione, xiv. 27.

<sup>5</sup> Οὐδενία ἀνάγκη τὰ μωχθηρὰ πράττειν. Arist. Ethic. Eudem. ii. 11. "Nulla est necessitas delinquendi, quibus una est necessitas non delinquendi." Tertullian. de Cor. Milit. cap. 11.

<sup>6</sup> De Mendacio, cap. ix.

*in another; he must shun the smaller Sin of his own, rather than hinder the greater in another man.*<sup>7</sup> And why? because it is in my own choice whether I sin, but it is not in my choice whether another man sins. <sup>8</sup> *For (says he) I would, if possible, have neither of the two Evils committed; but I could only be cautious in this, not to be guilty of the Sin which depended upon my own Will. But (you may say) Murder is a greater Crime than Theft. St. Austin confesses it, and replies that, notwithstanding, it is a worse Sin to commit Theft than to permit Murder. And he speaks to the same purpose in another place,*<sup>9</sup> *Whatever disproportion there may be between the Sins, yet the one will justly be imputed as a Sin of your own; but you have not to answer for the Guilt of another; but he must bear the burthen of it himself.* This is so clear a Case that I have no occasion to insist longer upon it.

19. If you would be satisfied farther, whether it be safe to persuade a man to commit a *less Sin*, who seems resolved to commit a *greater*; as, for instance, if a man is going to assassinate his enemy, whether you may persuade him to spare his life, and only to give him a slight wound? The speech of *Lot* to his fellow-citizens is pertinent here, though that act of his is very differently understood by the Fathers of the Church. I am not surprised to find *St. Chrysostom*<sup>2</sup> making an

<sup>7</sup> "Si quæretur quid duorum potius debet evitare, qui utrumque non potuit, sed alterutrum potuit; respondeo, suum peccatum potius quam alienum, et levius potius quod suum quam gravius quod alienum."

<sup>8</sup> "Ego utrumque malum fieri nollem, sed id tantum cavere potui ne fieret quod erat in meâ potestate. At gravius est homicidium quam furtum. Pejus est tamen facere furtum, quam pati homicidium."

<sup>9</sup> *Contra Mendacium, cap. ix.*

<sup>1</sup> "Quantumlibet distat inter tuum et alienum, hoc tamen erit tuum, illud alienum."

<sup>2</sup> *Hom. 43 in Gen.*

apology for it; it was perfectly suitable to his genius to do so; for in the same manner he excuses all the failings of the *Patriarchs*. St. *Ambrose*, and many more,<sup>3</sup> especially of the ancients, are of the same opinion.<sup>4</sup> But St. *Austin*<sup>5</sup> censures it as a sinful Act, and his judgment has been approved by most that followed him; and it is indisputable, that the Patriarch, from a feeling of tenderness and hospitality to his *guests*, was resolved, if possible, to prevent any injury that should be offered them; and therefore the proposal that he made proceeded from his agitation of mind, and cannot easily be justified.

But to leave this act of *Lot*, and return to the Question before us. It is my opinion, that a man may persuade another to a less Evil, if he can by that means prevent the commission of a greater. If you should object to this, that a Sin, though it be ever so small, is still a Sin, and therefore whoever persuades another to Sin, does by that act become a sharer in the guilt of *another man's Sin*, I answer, that it is one thing to persuade a man *absolutely* to a Sin, and another very different to persuade him to a less Evil, *upon supposition* that he could not otherwise be induced to avoid the commission of a greater. A person in such a case cannot be said by his advice to *persuade* another to a *less Sin*, but properly speaking, he saves him from a more heinous crime he was just going to commit; for he does not advise him to a Sin considered *simply* as such, but as it is an Evil of a *less Guilt*, and prevents a greater. If you object again, that if it be lawful for me to persuade another to choose a less Sin, why is it not lawful for the man to make choice of that sin himself

<sup>3</sup> S. Bernard. de Præcepto, c. 7.

<sup>4</sup> De Abraham. i. vi. 52. De Off. Minist. ii. 23.

<sup>5</sup> Contra Mendacium, c. ix.

without my advice? or why may not I *do* that lawfully *myself*, which I may safely *recommend* to *another*; that is, of two Evils proposed, make choice of the less? and how comes it to pass, that of the three cases we have stated, the first only appears to be lawful, when there seems to be the same reason for the other two? I answer confidently, that the circumstances are far from being the same; nay, they are widely different; for the reason why another may not of his own Will, neither may I of mine, make choice of a less Evil to avoid a greater, is, because it is in *our own power*, respectively, to avoid the commission of both; and therefore it is our duty to make choice of neither; but I may lawfully persuade another to a less Sin, to prevent a greater because it is not in the power of me the *persuader* (as I have already supposed) to hinder the commission of one; it is indeed my duty to endeavour, as far as my persuasions will go, to prevent the execution of both; but when I find it impossible to do what I most earnestly desire to do, I do what I am able and ought to do, by persuading to a less Sin, in order to stop the commission of a greater.

20. From what has been said, it is easy to understand the true meaning of the common maxim, *Of Evils the least is to be chosen*; and to what uses it may properly be applied, in human life, whether the Evils that are proposed, be Evils of Sin, or of Suffering. The proverb universally holds, and in both kind of Evils (as St. *Austin* justly states the question) as often as it is in our power to avoid one of the two, but not both. Indeed every Evil, considered as such, ought in prudence and piety to be avoided as much as possible; and therefore, when two Evils are proposed, of what nature soever, a man ought to avoid both, if he can; if not, his duty is to choose the least. But yet it does not follow that a man may make choice of the less of *two Sins*, because

(as I have already proved) it is in his power to avoid both.

21. It follows, in the third place, from the general Conclusion, that it is no less, if not a greater, mistake to conceive, as some do, that *one Sin may be applied to drive out another*: for instance, that superstition may be expelled by sacrilege, and tyranny by sedition. This is the doctrine of some men, who imagine themselves to be most wise when they strive to avoid one extreme; and so, without care or foresight, fall headlong into another; like gardeners who try to straighten a crooked twig by bending it violently the other way. It has been observed long ago by the Latin poet,<sup>6</sup> that fools, while shunning one Evil, run into the contrary; and though it be an aphorism in physic (which, however, is not approved by all medical practitioners) that contraries are to be cured by contraries, and one extreme by another, and it may sometimes hold good in distempers of the Body, yet in correcting men's manners, and reforming the corruptions of Church or State, instead of remedying Evils, it commonly inflames them. It is a wise observation of *Sophocles*, cited by *Stobæus*,<sup>7</sup> *All Human Affairs are disordered, whensoever men attempt to cure one Evil by another*. And he has the same remark in his *Ajax*,<sup>8</sup> *Do not, by giving one evil as a remedy for another, aggravate the suffering of the malady*.

22. But suppose that no remedy can be contrived for

<sup>6</sup> "Stulti dum vitant vitia, in contraria currunt." Hor. 1 Sat. ii 24.

<sup>7</sup> Ἐνταῦθα μέντοι πάντα τ' ἀνθρώπων νοσεῖ,  
Κακοῖς ὅταν θέλωσιν ἰᾶσθαι κακά.

Soph. ap. Stob. iv. 27; Frag. 98 Dindorf.

<sup>8</sup> Μὴ κακὸν κακῷ διδοῦς

Ἄκος, πλεον τὸ πῆμα τῆς ἄτης τίθει.

Soph. Ajax 362.

public Evils, unless some *pious frauds* are admitted, and the Laws obliged to give way, were it not better for the community, that these breaches in the Constitution should be suffered, than to hazard the ruin of the State? We find in the records of Holy Scripture, that *Caiaphas*, the high-priest of *Jerusalem*, was long ago of this opinion, who in a full senate of the nation, without regard to justice, but because he thought it *expedient*, condemned our Blessed Lord to be put to death,<sup>9</sup> Who by his own confession was guilty of no crime. And I remember to have read of a *Pope of Rome*,<sup>1</sup> who, at a debate in a conclave of Cardinals, when one of them objected against what was proposed, because it did not appear to him to be just, made answer, "*Though it ought not to be done on the ground of Justice, yet it may by the way of Expediency.*" Yes, this is what is there termed wisdom. This is the theology of men called politicians, derived from the shop of the Jesuits, "*You are to judge of everything by the interest of our Holy Mother the Church;*" the Word of God Himself is to be perverted like a *Nose of Wax*,<sup>2</sup> and to be tortured into any sense that makes for their advantage; and as that *Lacedæmonian* said formerly, *Everything is honest, that is for the Good of Sparta;*<sup>3</sup> so whatever promotes their favourite cause, is to be attempted, and becomes instantly honourable and meritorious. Away with this insane Theology from our schools, our pulpits, and our hearts! The holy Apostles of our Saviour have given us other rules to go by, who would never consider the *expediency* of an action, before they were first convinced that it was *lawful*; and

<sup>9</sup> John xi. 50.

<sup>1</sup> Clement V., in suppressing the order of Templars.

<sup>2</sup> Albert Pighius, a theologian honoured by the Church of Rome. On this and similar expressions of Romish divines concerning Holy Scripture, see Letter IV. of the "Sequel of my Letters to M. Gondon." Lond. 1848.

<sup>3</sup> See Prælect. vi. 10.

the more sober heathens were of the same opinion, who, whenever honesty and interest seemed to clash, always decided that nothing could be truly *profitable*, but what was perfectly *honest*.

23. But not to go far for arguments; St. *Paul* in the text before us denies absolutely, that *Evil is to be done, that Good may come*, a proof of our Conclusion as clear and cogent as words can make it. And yet, not long since I heard with my own ears in a certain company, when this assertion of the Apostle was alleged, some who had no other way of defending their side of the question, made use of this distinction; that St. *Paul* intended no more than that a *private person* had not the privilege *to do Evil* at his own pleasure, *that Good might come*; but yet by the common vote of a Nation, they who are entrusted with the care of the public are under no such restraint, if the necessity of the State, and the safety of the People require it. What allowance may be justly made in favour of the *people's safety*, I shall examine (God willing) in its proper place: in the meantime we are to observe, that this is a mere gratuitous assumption, and contrary to the design of the Apostle, who, through the whole course of his reasoning, does not give any countenance at all to this distinction. Besides, if we regard the scope of St. *Paul's* argument in this case, we shall find, that there is no pretence for the restrictions and idle fancies of these Sophisters; inasmuch as the purpose of the Apostle was to destroy the doctrine of promoting the *Glory of God* by the *Sins of Men*, and he denies absolutely that Evil is to be done, though it be to render the *Glory of God* more illustrious; and hence it follows *a fortiori*, that it must be unlawful to commit Evil for any End that is *inferior* to God's *Glory*; for since the *Glory of God* is to be preferred to any Human Good, whether public or private, and since Evil is not to be done even for the advancement of the Divine *Glory*, it



s certainly unlawful for a *private* person, or for a whole community, with a view to the redress of any private or public grievance, to do Evil themselves, or to recommend it to others.

24. Let us, therefore, my hearers, reflect seriously upon what has been said ; and the worse the age is wherein we live, and the more violent the temptations are to which we are exposed, the greater circumspection and the more exact care are to be used in the conduct of our lives ; that neither the delusions of Satan, nor the allurements of the World, nor of the Flesh, may seduce us from the straight and narrow way of God's commands : remembering that those who commit evil, and sin with deliberation, will be without excuse at the Great Day, when *God* will be our *Judge*, and our *Conscience* will be a *witness* against us.

Such are the remarks I thought fit to make in examining the plea of a *Good Intention*. What I have to offer concerning the *Examples* and *Opinions* of men, as far as the government of the *Conscience* is concerned, I design (God willing) to be the subject of the next Prelection.

## THE THIRD PRELECTION;

WHICH SHOWS THAT NEITHER THE EXAMPLES OF GOOD MEN, NOR THE JUDGMENT OF MEN OF LEARNING, IS PROTECTION SUFFICIENT TO SECURE THE PEACE OF THE CONSCIENCE.

*And the other Jews dissembled likewise with him, insomuch that Barnabas also was carried away with their dissimulation.—GAL. ii. 13.*

1. WHEN I proposed to lay before you the adequate Rule of the Conscience, which should be a sure and safe standard to govern and direct us in our practice, I thought it necessary in the first place to discover the pernicious and fatal mistake of those who in their actions imagine that they provide sufficiently for their own peace of mind, if they can but defend themselves under the flattering *intention* of a good end, or by the *example* of a *pious man*, or by the *judgment* and *authority* of a person eminent for his *Learning* or *Devotion*.

How small the security is that arises barely from a *good intention*, either to make the Conscience easy, or to give a man confidence in his actions, without other proper conditions that ought always to attend it, I have explained, as I hope, in the last Prelection, where I have proved by irrefragable arguments that *no Evil is to be done that Good may come*.

2. It remains, therefore, that at this time I endeavour to show that neither the *judgment* nor the *example* of any man ought to be of such authority with us, that our Con-

science may securely rest in either of them. Nor are we to conclude that what has been formerly done was done justly, or may hereafter be done lawfully, which another person, endued with never so much *learning* or *sanctity*, has either done himself or recommends as lawful to be practised by another.

How insufficient the *examples* of others are to be the rule of our own manners and conduct, and how inconsistent it is with the peace and security of the Conscience to defend our own actions by the behaviour of others, how pious soever, that have gone before us, will appear in the clearest light from the words that introduce this Prelection, especially if we inquire into the history to which they relate, and consider their full scope and design.

The Apostle St. *Peter*, residing at *Antioch*, among the *Gentile* converts who had received the Faith, and were no way obliged to the observance of the *Mosaic* Ceremonies, did eat freely of *whatever was set before him*, as well what was forbidden by the law of Moses as allowed by that Law, without scruple or dispute, and agreeably to the liberty which he enjoyed through *Christ*. But when certain Christians of *Jerusalem* came from thence to *Antioch* (whether they were <sup>1</sup> *False Brethren who crept in unawares*, and, pretending to come from *James*, were indeed spies upon the liberty of St. *Paul* and the other Christians, as some suppose, or, as others think, with greater reason, were *weak Brethren*, sent by St. *James*, but as yet not thoroughly acquainted with the cessation of the Legal Rites) St. *Peter*, desirous to ingratiate himself with them, or, rather, fearing to give them any offence, did immediately and absolutely *separate* from the tables and the society of the *Gentiles*, and from the *meats* forbidden in the *Mosaic* Law.

The *Jews* of *Antioch*, who, from the sermons of St.

<sup>1</sup> Gal. ii. 4.

*Paul* and others, had conceived a better notion of *Christian* liberty, and were more fully informed of the abolition of the *Ceremonial Law* than those who came from *Jerusalem*, but yet still retained a fondness for their own national rites, to which they had been accustomed, were soon seduced by the *example* of *St. Peter*, and separated themselves from the Communion of the believing *Gentiles*; not without suspicion (as it is probable) that *St. Peter*, as chief of the Apostles, was the most competent judge of these matters, and that *St. Paul* had deceived them with an acceptable but empty show of liberty; and, which is more remarkable (for we are not to wonder at the failings of *weak* brethren), *St. Barnabas* himself, who was the colleague of *St. Paul*, and a constant companion in his travels, and always distinguished himself by asserting the doctrine of *Christian* liberty against the *Jews*, was shaken by the authority of so great an Apostle as *St. Peter*, and was betrayed into the same *dissimulation*, to the great offence of the believing *Gentiles*.

3. *St. Paul* upon this occasion declares, that for this cause he reprov'd *St. Peter*, and censured him justly and publicly, and with great severity: not only because he himself, to the scandal of so many of the Brethren, either from too great a desire of obliging, or a fear of giving offence, showed more favour for the *Jewish* ceremonies than was right, but because by his *example* he beguiled others into the same *Hypocrisy*, and by the same method attempted to force the believing *Gentiles*, against their Will and their Conscience, into the rites of *Judaism*.

I am aware that *St. Jerome*<sup>2</sup> (after he had produced the testimony of other authors in defence of this opinion) gives a far different sense to this reproof of *St. Paul*, and alleges that this debate was *not* managed *seriously*, as one

<sup>2</sup> In Epist. ad Galatas, Epist. 93.

would suppose, but was a compromise contrived between the two chief Apostles, for the good of the Church. St. *Jerome* would persuade us, that this dissimulation of St. *Peter* was necessary to retain the good opinion of the *Jews*; and that, to avoid offending the *Gentiles*, it was necessary for St. *Paul* to resort to a *pretended* reproof; in order that thereby the *Jews* might be disabused of their notion of the perpetual force of the *Mosaic* Law, and in order at the same time that no scandal or offence should be given to the believing *Gentiles*. According to this interpretation, by the *united hypocrisy* of these two Apostles, it was designed that *Jews* as well as *Gentiles* should by this *pious fraud* be the more easily kept firm in the Religion they had so lately received. St. *Paul's* words, therefore, "*I withstood him to the face,*" are explained by St. *Jerome* in this sense (and he above all the Fathers is wont to be a slave of his own hypothesis), so as not to signify *openly*, or *in the face of the people*, but only to mean *in pretence*, and to *outward appearance*, as the same expression in the original is used and applied by St. *Paul* in <sup>3</sup>another of his Epistles.

4. But this construction of St. *Jerome* was opposed by St. *Austin*, who denies that the Apostles behaved themselves in this dispute with the least connivance or compromise; but that St. *Paul* did *sincerely* and *resolutely* resent St. *Peter's* unseasonable compliance. He therefore, in a friendly manner,<sup>4</sup> thought proper to represent to St. *Jerome* his mistake; who persisting obstinately in his opinion (for many letters passed between them), the question was debated (as became a controversy where such abilities were engaged) with great acuteness and solid reasoning on both sides.

<sup>3</sup> 2 Cor. x. 7.

<sup>4</sup> Inter Epist. Hieron. Epist. 97, al. 116. Confer Augustini Epistolas 28, 40, 83.

At last the judgment of most men declared itself for St. *Austin*, whose arguments bore hard upon his adversary, and were not to be refuted. A few indeed took the part of St. *Jerome*, and no marvel that Cardinal *Baronius*<sup>5</sup> is one of them, who (lest the cause of the Roman Conclave should suffer, and the Infallibility of their *Capitoline Jove* be despised, if any charge of *mistake* or *rashness* should lie against the conduct of St. *Peter*; and lest the *Œcumenical Power* should be disputed, if there were a man upon earth that dared, how justly soever, to censure the behaviour of St. *Peter*, or so much as open his lips to ask him, *Why he did so*?) exerts all his art and industry to revive with applause and furbish up again the exploded opinion of St. *Jerome*. But such is the character of *Baronius*, that he in various places shows his bias to a party, and in his large and laborious *Annals* makes it his business to gratify the *Roman Pontiff*, and estimates the value of the evidence and authority of all the records, all the opinions, and testimonies of Antiquity, by the dignity and interest of the See of *Rome*.

But (to return from this digression) St. *Paul* did most *justly* reprove the unseasonable hypocrisy of his fellow-Apostle St. *Peter* *face to face* (as the expression signifies in <sup>6</sup> another place of Scripture), and he did it *boldly* and *openly*, before all that were present; for this reason more especially, because by his *example* St. *Peter* had seduced *Barnabas*, and the *Jews* of *Antioch*, into a mistake, and to the great hazard and scandal of the *liberty* of the Gospel, had given a grievous occasion of offence to the *Gentile* converts, who had so lately received the Christian Faith.

5. I was willing to be the more particular in examining the text before us, not only to give light to a passage

<sup>5</sup> Annal. ad Ann. 51.

<sup>6</sup> Acts xxv. 16.

somewhat obscure and much controverted, but to show the cogency of the argument I have offered as evidence upon this occasion, and deduced from this *dispute* of the two Apostles. For St. *Paul* rightly judged, that not only St. *Peter*, who was the leading example, but *Barnabas*, and those that followed him, who consented to the same *hypocrisy*, were to be blamed, as men that walked contrary to the truth and simplicity of the Christian Faith. From whence it appears that, in the judgment of St. *Paul*, it would have been an inadequate pretext for the inconstancy of *Barnabas*, who halted between Christianity and Judaism, to rely upon the *example* of St. *Peter* as the patron of his hypocrisy, though he was one of the principal of the Apostles. But though St. *Peter* deserved a more severe reproof, because by his *example* he became a stumbling-block to another, yet *Barnabas* was not more excusable for copying that *example*. And this may suffice concerning the first argument taken from this transaction in St. *Paul's* history.

6. A second Argument may be deduced from the difficulty there is of *judging*; for since all the actions of good men are not to be the objects of our imitation, it is no easy matter to *distinguish* which of them we may propose for *Exemplars*, and which not; and likewise it is possible, that a good man may do amiss; and even supposing what he did was well done, yet his action may not be *proper for us to imitate*. It is certain, that the most pious persons have had their failings and imperfections, and so far they become *Evil Examples*, which we are to avoid. The All-holy Lord God has permitted the best of men to fall sometimes into the most grievous sins, into *murder, adultery, idolatry*, and *apostasy* itself; and this He does to humble the *pride* of Human Nature, and that men by reflecting upon their own miscarriages, might be induced to pardon

the infirmities of others; that we should not trust too securely in our own strength against the force of temptations, but depend wholly upon the Divine assistance; and if we come off unconquered, unshaken, or unhurt in the conflict, we should impute our deliverance to the *Providence* and the *Grace* of God, Who has been pleased in His most wise counsel to record for the good of all posterity, in the Books of Scripture, notorious failings of *good men*, as standing and never-dying monuments of human frailty and inconstancy on the one hand, and of the Divine Goodness and clemency on the other.

7. If it be objected in this place, that though the *examples of the saints* that are *blamed* in the Word of God are not supposed to be patterns for us to follow, (for what man in his senses would propose the *adultery* of *David*, or the *denial* of *Peter* for his imitation?) yet that we may safely guide ourselves by that part of their conduct which is delivered in Scripture without the least censure. This in my opinion is not to be allowed; for in the Scriptures (as in other Histories) many actions are *simply* and *historically* related in the manner they were done, and are neither expressly praised, nor reprobated, by the holy writers, although it is certain that some of them were wicked and unlawful, and inconsistent with the duty of a good man; and other actions are recorded there, which are left undetermined, and it is difficult to judge, whether they were just or not; and accordingly the interpreters of Scripture have differed in their opinion concerning them.

Of this nature was the conduct of *Lot*, who offered his own *Daughters* to the impure citizens of *Sodom*, and of *Joseph*, who swore (as is supposed) by *the Life of Pharaoh*,<sup>8</sup> and of *Jacob*, who craftily supplanted his

<sup>7</sup> Gen. xix. 8.

<sup>8</sup> Gen. xlii. 15, 16.



brother, and robbed him of his father's *blessing*.<sup>9</sup> There are other examples equally controverted, which if a man should attempt to imitate, simply because he had read of them in Scripture as the unreprieved actions of *Good Men*, he must take care, lest, by submitting his Conscience to the *Rule* of an *uncertain Law*, he expose himself to a most *certain danger of falling into sin*.

8. But it may be asked, May not a man safely imitate such examples as are *expressly commended* in the Word of God? No; this is not unreservedly to be allowed. Those actions which are plainly condemned in the Scripture as vicious, are simply and absolutely to be avoided, because we have more reason to conclude *negatively* from the influence of *bad* examples, than to argue *positively* from those that are *good*; and this method of inference was used by our Apostle in another of his Epistles,<sup>1</sup> who after he had proposed from the History of the Old Testament the *Examples* of several Sins, and of the Judgments inflicted by God upon the transgressors of His Laws, gives this caution, that we are to look upon them as types and examples, not for us to *imitate*, but to *avoid*;<sup>2</sup> that *we might not lust after evil things*, nor worship *idols*, nor commit *fornication*, nor tempt *Christ*, nor murmur in *afflictions*, as they did.

9. Besides such actions as are expressly commended in Scripture, and are so recorded as if they were directly proposed as *examples* to us, are yet not immediately and without thought to be received as patterns for us to follow; nor are we to suppose that the complete action in all its *circumstances* is offered to us as an object of our

<sup>9</sup> Gen. xxvii. 24.

<sup>1</sup> 1 Cor. x. 6, &c.

<sup>2</sup> "Ut fugerem, exemplis vitiorum quæque notando." Hor. 1 Sat. iv. 106.

"Hoc quidam non bellè : nunquid ego illi  
Imprudens olim faciam simile?"

Hor. *ibid.* 136.

imitation ; but we must use judgment and caution in separating what is commendable in it, and imitate *only that part of it* for which it obtained such an approval in Scripture.

The reason of this caution is, because the great Goodness of God, in a *mixed action*, often approves and looks upon only what is virtuous in it, and passes by without condemning that part which is evil. Thus we find that <sup>3</sup> *the lord commended the unjust steward because he had done wisely*; though in the same act the steward had been guilty of dishonesty. The *prudence*, therefore, and not the *injustice*, of that steward, is to be imitated. Likewise in that approved example of the *Egyptian midwives* in preserving the *Hebrew infants*, and excusing by a *lie* the contempt of the king's commands, their *falsehood* is not to be confounded with, but is to be distinguished from, their *piety* and *compassion*, and their *virtues* only were *applauded* by God, and consequently *they alone* deserve our imitation.<sup>4</sup>

10. I observe farther, that the heroic exploits of the worthies in Scripture, that are so highly extolled, and which they accomplished by the peculiar motion and inspiration of the *Holy Ghost*, as it were by a distinct mandate, beside the *ordinary law*, are yet not proper to be imitated by us. Of this nature is that memorable act of *Phinehas*,<sup>5</sup> for which he received praise and a recompense from God Himself. For being only a private person, and invested with no lawful authority, he notwithstanding transfixed, with his spear, two incontinent persons in the very act. The Prophet *Elias* in the same manner, by calling *fire* from Heaven,<sup>6</sup> destroyed the soldiers that were sent to apprehend him ; an example which the two disciples, *James* and *John*, were desirous

<sup>3</sup> Augustin. c. Mendac. 15—17.

<sup>5</sup> Num. xxv. 8.

<sup>4</sup> Luke xvi. 8.

<sup>6</sup> 2 Kings i. 10.

of imitating ; but when they consulted their *Master*, He was so far from approving their rash design, that He answered them with severe resentment, and stopped their violence by a sharp reproof, *'Ye know not what Spirit ye are of*; as if He had said, "Suppress the extravagant heats of your disordered minds, and confine yourselves within the bounds of your vocation. If *Elias* formerly acted with severity, you are not to follow his *example*. What *he* did was by *extraordinary* commission from the Spirit of God, Who directed him by inspiration ; as *Abraham* had a divine command to sacrifice his son ; but *you* have no such authority from the Spirit of God to execute so extraordinary an act ; and therefore you have no right to attempt it."

11. Since, therefore, it is not always certain that the conduct of a *good man* ought to be commended, nor, although it be approved in Scripture, are we immediately to accept it as an *example*, it more contributes to the peace of our Conscience to reduce and conform our actions to the *Divine Law*, which is *certain*, than hastily to follow the *uncertain examples* of men. It was the judgment of St. *Austin*, that *"we ought not to suppose that the actions recorded in Scripture are therefore to be imitated because we know them to have been done, lest we transgress the precepts of God by following the examples of men.* And after he had said more to the same purpose, he concludes, *From hence it is evident that we are not to allow all the actions of holy and good men to be the standards of our practice.* And thus much I thought fit to observe concerning the *difficulty of judging* of the examples of

<sup>7</sup> Luke ix. 54.

<sup>8</sup> "Hæc quæ in Scripturis Sanctis legimus, non ideò quia facta credimus, etiam facienda credamus : ne violemus præcepta, dum passim exempla sectamur." Cont. Mend. cap. 9. "Undè constat quod non omnia quæ à sanctis et justis viris legimus facta, transferre debemus ad mores."

good men, by reason of the uncertainty that attends them.

12. A third argument arises from the difficulty there is in rightly *applying* the examples of other men to our own case, because of the uncertainty of the *circumstances*, which, as they are infinitely various, do in many ways change the qualities of human actions. An act that is free and lawful in its own nature, that is, which may be done or omitted without sin, remains so in practice, provided the *circumstances* continue *the same*; but if any circumstance be added or taken away, or in the least altered, the action which was before lawful may become a sin, and what before was free, may become necessary to us. And this we observe daily in our common pleadings at the bar; where the counsel on one side produces *precedents* to defend his cause; and the opposite counsel replies, that the reason in Law is not the same, that the *circumstances* vary, which alters the case, and that the examples that were offered have no relation to the suit before the court; and if this be made appear, the whole scheme of the defence, supported upon this foundation, must of necessity collapse, and the *precedents* will be of no weight with the judges. And this is the reason that arguing from *example* is esteemed by *logicians* as the least and lowest kind of evidence; it being a more proper method to illustrate by, than to be used in proof or demonstration. And if that remark of *Quintilian* be true, that *in so many ages there never were two cases exactly the same in every circumstance*, it is scarce possible but a man must fall into mistake who inconsiderately forms a judgment of one action by its resemblance to another, without diligently weighing the *circumstances* that belong to both.

9 "Tot sæculis nullam repertam esse causam quæ sit tota alteri similis." *Quintilian*, Inst. vii. 4.

13. And upon this account we are the more easily imposed upon, because, when we apply the examples of others to actions of our own, our tempers give a bias to our judgment; we regard only the naked fact, and eagerly pervert it to our own use, if it seems in the least to favour our passions; without considering the *causes*, or inquiring into the *end*, or the *means*, or the *circumstances*, of the action, especially if they cross our designs, or oppose our inclinations. The Prophet *Amos* severely inveighs against some of his time, who, in the midst of public calamities, were indolent and unconcerned, and gave themselves up to luxury and sensual pleasures, under a pretence, that <sup>1</sup> *they invented to themselves instruments of music*, like *David*. As if they had said, "Why should *that* be imputed as a crime in *us*, which was commendable and honourable in the Psalmist? Holy *David* employed himself in singing, and delighted in music; *we* only follow his *example*, and do as he did;" not considering how they imposed upon themselves, and failed in the application of the fact; for *David* had nothing in view but the glory of God, and the solemnity of public worship; which they ought to have imitated in the *example*, and not to wrest it to serve the ends of feasting, and to promote riot and licentiousness.

14. We have many rules given us by the *rhetoricians* concerning imitation in *oratory*. They recommend to a young orator, to propose some eminent person who excels in the art of speaking, as an example for his imitation: and this method is approved by philosophers, as of great advantage to regulate our *morals*. It is the advice of *Seneca*,<sup>2</sup> that we should form our lives by the imitation of some excellent pattern, because "<sup>3</sup> *the way by precepts is long, but by examples is short and*

<sup>1</sup> Amos vi. 5.

<sup>2</sup> Epist. vi.

<sup>3</sup> "Longum iter esse per præcepta, breve et efficax per exempla."

effectual." An Example carries with it a kind of secret delight, and improves as well as persuades us. And this we may experience in children, who with regret *obey the commands* of others, and yet take pleasure in *imitating their actions*. But those who recommend this method, give us this caution, that a man must have a keen eye to distinguish what he may safely follow, and to make a wise choice what persons he should propose for examples, and what actions are proper for his imitation. *Quintilian*<sup>4</sup> ridicules those feeble orators, who, by an affected eloquence, and an empty parade of words, endeavoured to imitate the style of *Cicero*; and conceived that they succeeded wonderfully in the attempt, if they could but conclude their periods with an *esse posse videatur*. And *Cicero* himself condemns the perverse diligence of some, who propose the most eminent orators as *examples*, and yet imitate nothing of them, but their *faults*; such (he says) was *Furius*, a wretched parody of that great orator *C. Fimbria*,<sup>5</sup> *He does not attain to the strength of his eloquence, he imitates the imperfection of his utterance*. *Nazianzen*<sup>6</sup> relates in the Life of *Basil* (who for his distinguished piety and learning was called the *Great*) that he was had in so reverent esteem, that some of his admirers took a great deal of pains to imitate his natural infirmities, the paleness of his complexion, his gait, the slowness of his pronunciation, and other defects of his body; and we have an account of others who had the folly to counterfeit the *rhotticism* of *Demosthenes*, the most accomplished orator, and to affect the stammering of *Aristotle*, one of the greatest philosophers. *O imitatores, servum pecus!*<sup>7</sup>

15. Infinite are the *examples* of a *perverse imitation* we

<sup>4</sup> Inst. Orat. x. 2.

<sup>5</sup> "Furius" (sic Ernesti) "nervos C. Fimbriæ in dicendo non assequitur, oris pravitatem imitatur." De Orat. ii. 22.

<sup>6</sup> Orat. xx. 103.

<sup>7</sup> Hor. I Epist. xix. 19.

read of in approved authors; which would rather provoke our mirth than our resentment, if this mistake consisted only in *words*, and in outward *habit* and *gesture* of the body, and had no place in the government of men's manners and conduct. But nothing happens more frequently in human life, and is more pernicious in its consequence, than for <sup>8</sup> an example, that deserves imitation, to *deceive us* by its faults. We are too indulgent to our own wills, and are transported by our passions; and so, out of a number of examples before us, we catch at those, and lay the greatest weight upon such of their circumstances, that favour most the temper of our minds, and otherwise more readily promote our desires. Whoever carefully peruses the late writings of the *Anabaptists*, the *Brownists*, and other *Sectaries* of the same clan, or what was promulgated by their genuine predecessors the *Reforming Puritans*, will perceive this to be the method of these Reformers, who make it their business to disturb the uniformity of the Church, and the peace of the kingdom. And to produce some evidence of the perverseness of these *Separatists* (which I presume may be done without offence to any considerate man) give me leave to examine, as concisely as may be, one of their arguments deduced from the authority of *Christ* and His *Apostles*, which they have managed with sufficient prolixity and vehemence; but with what weight and sincerity, I leave it to you to determine.

16. About forty years since, there came out a *Tract*, published by some ministers in the diocese of *Exeter*, acting in concert, against the rite of *Kneeling at the Lord's Supper*.<sup>9</sup> Among other proofs which they raked together from all quarters, they triumphed chiefly in this, as the mainstay of the controversy, taken from the

<sup>8</sup> "Decipit exemplar vitiis imitabile." Hor. ubi supra.

<sup>9</sup> On this tract see Bishop Jacobson's note here.

*example of Christ Himself.* The whole force of the argument runs thus; *It is unlawful for a Christian in any religious act, that relates to divine Worship, to recede one tittle from the example of Christ and His Apostles, if the act be imitable, as every act of Christ is, and which has been rightly imitated by others, and ought to be imitated by all Christians. But Christ and His Apostles received the Holy Supper in a posture different from kneeling; and consequently all Christians are bound to do the same.* This is the weak and pitiful sophistry, by which they impose not only upon illiterate people, but upon others, who, if they had more judgment, would be greater ornaments to the Church of Christ. It cannot, therefore, be improper to lay something before you, that will expose the shallowness of this reasoning.

17. Observe, therefore, in the first place, that our adversaries wholly *mistake the question*, by a transition from one genus to another; an error in logic scarce pardonable in children; for when the whole controversy depends upon the *gesture* of the body, they are making a great outcry about *actions*. Allow that every *act* of Christ is to be the object of our imitation, yet who will offer to say that *Posture (Situs)* is an *Action*? since they differ so in themselves, that they are not to be disposed under one common *Genus*, but belong properly to two distinct *Predicaments*, the one to the *Predicament of Posture (Situs)*, the other to that of its own *name*, viz. *Action*.

18. Observe secondly, that the four last *Predicaments*, the *Where*, the *When*, the *Posture*, and the *Habit*, do equally, and in the same degree, affect the *Actions* they attend upon; being no more than relations of a lower order, and circumstances altogether extrinsic to the acts themselves. It seems unreasonable, therefore, that the *example* of Christ and His Apostles, should oblige us to imitation only in respect to the *Predicament of Posture*; and that we are not bound by the *Where*, the



*When*, and the *Habit*, even in the opinion of those who would force this example on us. For as to the *Place*, they esteem it indifferent, whether the *Eucharist* be celebrated in the *lower* part of the house, or in an *upper room*; neither will they be confined to *time*, to administer *after Supper*, or in the *close of the Evening*, nor to *Habit*, to officiate in a *coat woven, and without seam*. All which circumstances we find by sacred history were observed by our Lord at the *first Supper*, nor can they deny it. Since therefore they assume the liberty themselves, and allow others, with a safe conscience to recede in *these particulars* from the practice of Christ and His Apostles; I would gladly be informed by these new dictators, what there is so *singular* in the Predicament of *Posture*, as to obtain a place either above or below the rank of its companions, and to have that influence as to make it sacrilege to deviate *only* with regard to *itself* from that primitive example? It is but just certainly, that these four Predicaments should either be upon a level, and treated with the same respect, or that we should have some reason assigned of the difference between them, which (as far as I understand) was never yet done or attempted.

19. In the third place, you are to know, that every *Exemplar* ought to be so evidently certain, as not possibly to be denied; but, though I grant that Christ and His Apostles made use of a posture different from *Kneeling* at the first Celebration of the Eucharist; yet, if I insist upon a *proof*, there is no text of Scripture that directly confirms it. But does not the *word* in the *original* signify a *Tricliniary posture* in use in those times, and in that part of the world? No, I deny absolutely, that any particular posture can be proved merely by the sense of that word. The term in the <sup>1</sup> *Greek*, and that in the <sup>2</sup> *Latin*, which answers to it, did

<sup>1</sup> Ἀνακείσθαι.

<sup>2</sup> Discumbere.

originally derive their meaning from that kind of posture formerly used in dining-rooms by guests at meals; but it would be a severe and unjustifiable piece of criticism, to trace the *etymon* of the words to their very infancy, and confine them to their first limits, when they are grown more *extensive* by frequent use, and of a larger acceptation. They must therefore be understood in the common way of speaking, to signify *that Act* by which we usually apply ourselves in some proper place to eat our food, let the posture of the body be what it will, whether *Standing, Sitting, Kneeling, or Lying along*, or any other form whatsoever.

20. But though by the force of the word in the original (*ἀνακείσθαι*) we cannot prove it, yet, by circumstances of the history, we may reasonably infer that Christ and His Apostles did at the first Supper use a *Triclinary* posture, by *lying along upon couches*. I observe, fourthly, that our new Masters do *not* think fit to pay obedience to that Law which they impose upon the Consciences of others; for if Christ, at the Institution of that Supper, did use a *Triclinary* posture, His feet and the lower part of His body extended upon a couch, and the upper part supported upon His elbow, why do not these men, who are so sanguine in their disputes upon this subject, *imitate*, as unquestionably they may, this example of Christ? Why do not they provide themselves with beds and couches, that they may partake at the Holy Table in the same posture that Christ and His Apostles made use of? from which the postures of *Sitting* and *Standing* (and they allow themselves and their followers in the *use of either*) are as *different* as the posture of *Kneeling* can be. If it be answered, as some of them do, that the *Triclinary* posture has been long out of fashion in this Western part of the world, and therefore, though we are not obliged to use the *same specific* posture, yet we are bound in *general* by the force of that primitive example, at least to

a *Table Posture*, after the custom of our own nation, which has succeeded in its room ; as Christ and His Apostles at the Celebration of the Eucharist followed the *Table Posture* that was received in their own country. A mere specious fallacy *ad captandum*, for popular show.<sup>8</sup> Is it possible for men to be so given up to prejudice and contradiction, as to force upon the world such empty sophistry for argument, or to think to impose on wise men by such fallacies? But in order to show with brevity and clearness the vanity of this way of reasoning, let me desire these disputants to answer directly, and with sincerity, to a few questions.

21. First, since it is as certain, that Christ, if He observed a *Triclinary* posture, did not eat *Sitting* or *Standing*, as that He did not eat in a posture of *Kneeling*, I should be glad to know *why* by the force of that *example* we are not, in the act and instant of Communicating, to abstain from *Sitting* and *Standing*, as we are from *Kneeling*? for upon that supposition it follows that no one of the three bodily postures has more of the *Example* of Christ in it than the other two ; and therefore it is but just (as was observed before concerning the last four Predicaments) that these *three* postures should enjoy the same privileges, and either be condemned together as guilty, or be equally acquitted as innocent.

If they reply (which is their usual evasion) that by the custom of our nation *Sitting* or *Standing* did succeed the *Triclinary* posture, but *Kneeling* did not, I demand, in the second place, how it comes to pass that the *tacit* custom alone of any nation (suppose our own) should be sufficient to change the *Triclinary* posture at our *eating-tables* into *Sitting* or *Standing*, and yet a *Positive* Law of the same Nation should not be of force to *appoint* the posture of *Kneeling* in the place of the other at the

<sup>8</sup> "Ad populum phaleras." Pers. iii. 30.

*Sacred Table* of our Lord? Or can a *custom*, changed without any public authority, so prevail by degrees, that what was before neither indecent nor unlawful, should now no longer be esteemed *decent* and no longer *lawful*? And cannot a *law*, enacted by public authority, established by express consent of the people, and approved by common use and practice, obtain so far, that what was never upon just reasons condemned as *unlawful* should at least be reputed *lawful* for the time to come? Certainly, where *Law* and *Custom* oppose each other (as they do not in the present case), every man of sense will confess that Custom ought to give way to Law, and not Law to Custom.

I demand of them seriously in the third place, Do they believe, or do they not, that a man immediately commits a *Sin* who receives that Sacrament upon his *bended Knees*? If they say he does, let them, since every Sin is a *Transgression* of some *Law*, show me a *precept* in that Law which this posture violates. If they own that the posture may be used without Sin, they fall directly by their own weapons, and their argument is of no manner of force.

But suppose the *Tricliniary* posture had been long out of use before the first Institution of the Lord's Supper, and that *Sitting* or *Standing* succeeded in the room of it, so that Christ and His Apostles must have eaten either *Standing* or *Sitting* (for it was impossible to use *both Postures* at the same time), I demand, fourthly, if they had eaten *Standing*, whether it would have been so necessary for us to stand also, that we should *sin* if we *sat*; and if they sat, whether we should sin by *Standing*, or whether we should have been at liberty to use which posture we would?

If they say, it would have been in our own choice to do as we pleased, what becomes then of the *example* of Christ? The argument from it is overthrown; for He could not use more than one of these postures.

If they say again, that we are bound to observe precisely that posture which is supposed to have been used by our Saviour, why do these severe dictators and controllers of the *Liberty* of the Church allow an indulgence of *Standing* or *Sitting* at the Holy Supper?

I would know of them in the fifth place, if the *example* of Christ obliges us to Imitation, why this obligation is precisely determined to a *Table posture*, which is a *sub-altern species*, without regarding any *genus* above it, or *species*, that is below it? My meaning is, since in the present case there is a *Posture in general*, then a *Table posture*, and a *Tricliniary* posture last of all; how comes it to pass, that a *Table posture* only, which is an intermediate *species*, should be thought necessary and sufficient to express our imitation of Christ's *example*, and not that any *posture in general* might be sufficient, or the *Tricliniary* posture in particular be thought necessary?

I demand in the last place, Is the posture of *lying along*, that was used by Christ and His Apostles at the first Supper, *imitable* by us or not? It certainly is by their own confession, because upon this supposition depends the support of their argument. The example of Christ (they say) ought to be imitated by Christians; not every example *absolutely* considered, but all that are within the compass of our imitation; I shall therefore make this use of what they are willing to allow, and assert that every *imitable* example of Christ obliges a Christian to imitation, and that the *particular* posture (whether it were the *Tricliniary*, which is the most probable, as we suppose, or any other) that was used by Christ in that first Supper, is *imitable* by us. From these two propositions it follows, that the Christians, immediately after our Saviour, were bound to use the very same posture as He did; and so were those of the second and third century, and ever since down to the present times; and therefore it must be allowed that the

Church of Christ in this very age is obliged to observe the *Tridiniary* posture, supposing that Christ made use of it ; or it must be explained, at what *time*, and upon what *account*, by what *author* and what *authority*, the force of this obligation became void.

22. From what has been said, it is evident, that the argument of these enthusiasts, though decked out with so much pomp, has no other consequence, nor can it be drawn up in a form of more advantage to their own purpose, than this : *The example of Christ and His Apostles does so far oblige as we think fit it should ; but we think it expedient to extend it to the not bending of the knee at the receiving of the Sacrament, and no farther ; and therefore so far only is the proper extent of its obligation.* I am ashamed, I confess, to dwell on these trifles. It ill befits this place, and my own age and temper, to raise a smile on so serious a subject. But what are we to do with such persons as these ? In good truth, a weak cause requires such a defence ; and the patrons of it, who are the votaries rather of a party than of *truth*, cannot but express themselves in a frivolous and illogical manner. I speak from my heart what is the fact ; though in the writings of these men I meet with many things not solidly argued, and I wish that I were not constrained to add, with very little *sincerity*, yet I do not remember to have observed anywhere, that so much zeal and animosity has been used in enforcing mere trifles, or the swelling *mountain* ever brought forth a more *ridiculous mouse*,<sup>4</sup> than when the bare *examples* of good men in Holy Scripture are inconsiderately offered either in excuse for what the Law of God seems to forbid, or to oblige the Conscience to the observance of what does not appear to be commanded by the Divine Law. But if I have digressed, it is time for me to return, and to proceed.

<sup>4</sup> Horat. Ars Poet. 139.

23. A fourth Argument to prove the insufficiency of *examples* arises from the *end* and the proper *use* of them. It must be confessed that examples are of great force to regulate our manners and to reform our lives; otherwise so many of them would never have been recommended to us in Holy Scripture, *Whatsoever things were written aforetime were written for our learning and admonition;*<sup>6</sup> nor would the Apostles so constantly have inculcated them upon us. *Take, my brethren, the Prophets for an example of suffering affliction. . . . Ye have heard of the patience of Job. . . .*<sup>7</sup> *Elias prayed. . . .*<sup>8</sup> *Be ye followers of me, as I also am of Christ.*<sup>9</sup> *Those things which ye have heard and seen in me, do. Mark them which walk so as ye have us for an Example.* But the use of examples is not directly to be a *rule of life*; they are designed rather as *helps* and *supports*, to inspire us with vigour and alacrity, when we are dull and remiss, and our duty grows burdensome and tedious to us; for so frail is Human Nature, especially when temptations are violent, and the Devil and the World press hard upon us, that we are instantly impatient, we complain of the severity of the Divine Law and the difficulty of paying obedience to it; we see <sup>1</sup> *lions in the way*, and cry out that our feet are beset with snares and ambuscades. We are to suffer injuries, reproach, and infamy, to bear the plundering of our goods, the sequestering of our estates, the loss of our dear parents, and of those dearer pledges our wives, our children, our country, friends, and life itself, and even to hate them. What hard sayings are these! how insupportable is the burden of this oppression! And, therefore, when our minds are disturbed with these bitter reflections, so as almost to despond, and throw up<sup>2</sup> the

<sup>6</sup> Rom. xv. 4. I Cor. x. 11.<sup>6</sup> James v. 10. 11. 17.<sup>7</sup> I Cor. xi. 1.<sup>8</sup> Phil. iv. 9; iii. 17.<sup>1</sup> Prov. xxii. 13; xxvi. 13.<sup>2</sup> "Turpiter desperatur quicquid fieri potest." Quint. Institut. i. 10.

care of our duty as a thing impracticable, our languishing hearts revive, and are raised by the seasonable authority of *examples*, and by degrees we come to have courage enough to despise <sup>3</sup>difficulties, to subdue temptations, and suffer all indignities that can be offered us. When we consider that pious and good men who have gone before us, of *like passions with ourselves*, and exposed to the same disorders, the same desires and temptations as we are, have, by the Divine Grace (which we are sure not to want if we confide in it, and apply faithfully for it), done and suffered all those things that God in His Providence may think fit to lay upon us, our spirits instantly return, our breasts are inspired with holy emulation; and <sup>4</sup>*while we are musing the fire kindles*; and from the *fulness of the heart* we break out into this humble submission,—*I am prepared, my God, to do Thy commands and to submit to Thy Will.* That *cloud of witnesses* which <sup>5</sup>*encompasseth* us about will supply a remedy to every distemper of the mind, will, by the Divine Grace and our own endeavours, *remove every weight, and the sin that so closely besets us*, and animate us to *run with courage, patience, and constancy the race that is set before us.*

24. The Apostle St. James <sup>6</sup> recommends to us *fergency* in prayer, after the example of *Elias*, who by his importunity did (as it were at his pleasure) open or shut the doors of Heaven; and lest we should impute this privilege to the piety and merits of the Prophet, without considering it as the effect of the Covenant of Grace which has promised constant success to the prayers of the Faithful, the Apostle took occasion to premise that *he was a man subject to like passions as we are*; he was a man, not a god or an angel, nor made of better clay, but taken from

<sup>3</sup> “Cum quid difficile videtur, difficiliora alios obeuntes recensamus.” Tert. ad Uxor. i. 6.

<sup>4</sup> Psalm xxxix. 4.

<sup>5</sup> Heb. xii. 1, &c.

<sup>6</sup> Chap. v. 17.



the common mass of mankind. This, therefore, is the proper and the most useful design of *examples*; but we are to observe that they are not the *rule* itself, nor to be esteemed as such; so far from it, that if we suspect the goodness or the depravity of the action they themselves are to be brought to the test and carefully examined. *Take the Prophets for an Example*, says St. James, where the word in the *original* seems to carry with it a particular acceptance; it appears, to me at least, to imply that the actions of the holy Prophets are not the *principal example* we are to imitate, but as it were a *copy*, which is of no credit or authority of itself, or upon its own account, but so far only is to be admitted as it agrees with the *Original*.

From what has been said it appears evident that the conformity of an action to the *example* of some *religious* man is not sufficient to prove the goodness and morality of it; and therefore upon that account alone the conscience cannot properly be secure, unless the *example* likewise conforms to the *rule* which ought to direct it.

25. But to come at last to the remaining part of our proposition. The case of depending upon another man's *judgment*, has no more foundation to support the conscience, than the influence of *example*; and almost for the very same reasons; so that I have no occasion to be very particular upon this subject, which I design to despatch in a few words. You are to observe, therefore, in the first place, that all men, how pious or learned soever, are as liable (and perhaps much more) to *error* and *mistake* as they are to *Sin*; so that we need a more penetrating judgment to find the difference between *truth* and *falsehood*, than between *good* and *evil*; and this comes to pass by reason of that natural ignorance

which obscures the understanding, and because in our youth minds are so formed by education, and receive such impressions as cannot easily be erased. Besides, by long use and custom our natures are changed, and our corrupt passions draw a cloud over our judgments, and obstruct the proper use of them. For these and many other reasons we are so apt to wander out of our way, to stumble and be deceived, that it was long since proverbial to say, *° To err is human.*

26. Consider, secondly, that we are not always disposed to judge sincerely of the piety and wisdom of those whose opinion we design to follow; so common it is for such as resolve to submit to the direction of others, to *make choice* of guides that they are *sure will lead them* in the same way *they had determined beforehand to go themselves.* Thus does the devil hold fast unthinking men, and *enclose them*, as it were, in a *circle.* If you ask them why they conceive such a thing to be right and lawful, they tell you, because such or such a pious and prudent man taught them so. If you demand again how they know their teacher to be a man of that piety and prudence, they answer, (or at least they would if they spoke freely) *because he is of ° our opinion.* In this way the goodness of other men is estimated, not by the obedience they pay to the duties of a Christian life, nor by their works of mercy, justice, charity, and devotion, but by the zeal they show to the *party* they have espoused, and the aversion they have to another *party* which they oppose. The apostle describes them as *¹ after their own lusts heaping to themselves teachers, having,* as it follows by a most apt metaphor, *itching ears.* When they find their *ears itching* they immediately look out for some one to *tickle*

<sup>8</sup> "Humanum est errare." Cicer. Philip. xii. 2. 5, "Cujusvis est errare, nullius nisi insipientis in errore perseverare."

<sup>9</sup> "Et sapit, et mecum facit, et Jove judicat æquo." Hor. 2 Epist. i. 68.

<sup>1</sup> 2 Tim. iv. 3.

them; and so the old proverb is literally fulfilled, <sup>3</sup> *One mule scratches another.*

27. Thirdly, the Holy Scriptures expressly forbid us to submit our Conscience to the *judgment* of any man, or to usurp authority over another man's Conscience; <sup>4</sup> *Be not ye called Rabbi, for one is your Master, your Tutor, your Teacher, your Leader, even Christ.* <sup>5</sup> *My brethren, be not many masters;* <sup>6</sup> *Feed the flock of God which is among you, as ensamples; holding out to them the light of the true Faith, and the example of a holy life, but not as being lords over God's heritage, or exercising a dominion or tyranny over the ministry, and the people of God.* <sup>7</sup> *Ye are bought with a price, be not ye servants of men;* that is, submit not your Conscience to the authority of any man, and suffer no one to claim a power or jurisdiction over it.

28. From what has been observed, and fully proved upon this subject, it follows, by way of a short application, in the first place, that the insupportable pride and tyranny of the *Roman Pontiff* ought justly to be abhorred by every true Christian; inasmuch as he arrogates an *Infallible Judgment* to himself, and to his *See*; and by that means lays claim to so extensive a sovereignty over the Consciences of men, that if he pronounces virtue to be vice, and vice to be virtue, all Christians are obliged, on pain of mortal sin, to submit to his judgment implicitly, and without dispute.<sup>7</sup> We are therefore bound to show the utmost of our gratitude to Almighty God for this great and singular instance of mercy and goodness; who has long since rescued us, and our Fathers, and the *English Church* from the yoke of this tyranny, and restored us to our just liberties.

<sup>3</sup> "Muli se mutuò scabunt."

<sup>3</sup> Matt. xxiii. 10.

<sup>4</sup> James iii. 1.

<sup>5</sup> 1 Pet. v. 2, 3.

<sup>6</sup> 1 Cor. vii. 23.

<sup>7</sup> Bellarmine de Romano Pontifice, iv. 5. As to the question whether this passage is fairly quoted in this sense, may I refer to Letter II. of the *Sequel* of my Letters to M. Gondon, pp. 24—39?

29. But, secondly, we are all, and every one of us to take care, that, being freed from the tyranny of *Rome*, we do not submit to a fresh *usurpation*; lest instead of shaking off the <sup>o</sup> yoke, we appear only to change our servitude: and if we have any regard for the peace of our Conscience, or the security of the Church and Government we live under, we should do our utmost to suppress all titles of *distinction*, in order that what was formerly the practice in the Church of *Corinth*, where *one was of* <sup>o</sup> Paul, *another of* Apollos, *another of* Cephas, may never be imitated by us; I am of *Luther*, I of *Calvin*, I of *Arminius*, I of *Socinus*. No, <sup>1</sup> *Let God be true, and every man a liar*; that man is unworthy to be Christ's disciple, who is not a disciple of Christ *alone*. The sincerity and simplicity of the Christian Faith can never be maintained if we split into *parties*; and there is no prospect that religion should recover her former vigour and purity, till the wounds which are kept open by our continual divisions be healed and closed up by the softening oil of brotherly love; and perfect unity in faith and charity be restored among Christians.

30. We should be careful, thirdly, not to be so indulgent to our own passions, as to suffer ourselves to be carried away by an *admiration* of any man, so as to rely wholly upon his *judgment* or authority; <sup>2</sup> *having men's persons in admiration, because of advantage*. This fault is pointed out by the Apostle, as the very root of the whole evil. This perverse admiration of *names* proceeds from no other cause, than that wretched and unaccountable fondness a man *has for himself*; for so long as we have nothing in view but profit and interest, and resolve to be

<sup>8</sup> "Quæ bellua ruptis  
Quum semel effugit reddit se prava catenis?"

Hor. 2 Sat. vii. 70.

<sup>9</sup> 1 Cor. i. 12.

<sup>1</sup> Rom. iii. 4.

<sup>2</sup> Epistle of Jude, ver. 16.

slaves of our own honour and ambition, we form an opinion of others by no other rule, but by the advantages they may procure for us ; and thus our judgments being corrupted by our passions, we are led into a strange *admiration* of every man, who we suppose will be ready to promote our interest, our ambition, and our honour, and will offer least opposition to the accomplishment of our desires. And this is the remark of another Apostle already cited, where he observed that men were forward <sup>3</sup> *to heap to themselves teachers after their own lusts.*

31. But notwithstanding what has been said by me upon this subject, in order that a due regard may be paid to the authority of the *Catholic Church*, and to the *judgment* of men of piety and learning, you are to be reminded that the judgment and practice of the *Universal Church* are of great weight in interpreting the Holy Scriptures, and in deciding controversies in matters of faith and morality ; and that also deference is to be paid to the authority of *learned men* for the satisfying of common scruples, and for directing the conscience in doubtful cases, where no certainty can otherwise be had. But of these points I shall have occasion to speak more conveniently in another place.

<sup>3</sup> 2 Tim. iv. 3.

## THE FOURTH PRELECTION ;

WHICH EXAMINES AND DEFINES THE PROPER AND ADEQUATE RULE OF THE CONSCIENCE.

*For there is one Lawgiver, who is able to save and to destroy.*—JAMES iv. 12.

1. How vain is the pretence of a *good intention*, the authority of *examples*, or the fallible *judgment* of others, to give ease to the mind, and to convince a man that his past actions are just, and encourage him to go on with confidence for the time to come, has been proved at large in the two foregoing prelections ; which I thought proper to do, in order to clear the way, and to remove all obstructions that might hinder the prosecution of my future design.

The obligation of the conscience, I observed before, has a double respect, and is either *active*, by which it constrains another, or *passive*, as itself is under restraint and subjection. This passive obligation, for the sake of order, I shall explain first ; for we may the easier judge of the thing *regulated*, when the *rule* which should direct it is settled and defined. My business therefore at this time, is to inquire what that is which properly *obliges* the Conscience, or (which is the same) what is the proper and *adequate Rule of the Conscience*, to which (if she would act uprightly) she is bound to conform. But, to proceed with perspicuity and advantage, I shall premise some things by way of explication, and then come to the matter itself, which I shall lay down in certain evident conclusions.

2. You are to observe therefore in the first place, that the Conscience can never execute her office as she ought, unless some *rules* are established, by which she is to be obliged; for wherever there is an *active virtue* wholly undetermined in its own nature, and able to act well or ill (whether this virtue be a habit of the first *species of quality*, or a natural *power* of the *second*), it is necessary there should be some *law* or *rule* to govern and direct its actions. For when an object offers itself to the fancy, whether it be represented by the outward senses, or some inward motion of the mind (because the Will, which is the next acting principle, is no more, to speak in the language of the schools, than a *blind power*, and unable to discern Good from Evil), the reasoning faculty (whose office it is to *inquire*) instantly applies to the Conscience, and follows her dictates. It is the duty of the Conscience to *examine* immediately what is proposed, and then to determine whether it should be pursued or avoided, admitted or refused; and accordingly to transmit her judgment to the *Free-Will*, and offer it as proper to be chosen or not. And lest the Conscience should commit mistakes in *examining*, *judging*, and *directing*, and as a false guide lead the *blind Will* out of the way, it is fit there should be a fixed *rule* as a standard by which the Conscience herself should be tried.

3. Secondly; you are to know, that in *rules* as well as in *causes* there is a kind of subordination; and as in causes that are *subordinate*, the latter, with respect to that above it, is in the nature of an *effect*, so in *rules* and *measures*, which are graduated, every successive one is regulated by that which is next above it. The *Rule* of the Conscience therefore being twofold, viz. the one proximate and immediate, the other principal and more remote, the proximate rule regulates the Conscience, but is itself regulated by that rule which is above it.

4. Since the rectitude of anything consists in the con-

formity it bears to the *rule* that governs it, you are to understand, in the third place, that, as there is an immediate, and likewise a more remote Rule of Conscience, so there is a double *Rectitude* of the Conscience correspondent to those rules; for the Conscience may be said to be right, either *absolutely*, or else *relatively*, and under certain *limitations*, that is, when it conforms to its proximate and *immediate* rule; as a man may be said to have a true knowledge of any *proper passion*, who can demonstrate it from its subject, by its *proximate cause*, though he can go no higher. But the Conscience cannot be *absolutely* right, unless she not only conforms to her *next rule*, but that *rule* itself must be conformable to the *first Rule*; as a man may justly be said to know a thing, who is acquainted with all its causes from the *first* to the *last*. Then, says Aristotle, *we understand what a thing is, when we can account for all its causes and principles up to the first elements of it.*<sup>1</sup> Therefore as the certainty of science, though immediately flowing from the knowledge of the *next* cause, terminates at last in the knowledge of the *first*; so the *rectitude* of the Conscience, though it immediately regards a Conformity to its *next rule*, yet ultimately resolves itself into its primary and *supreme* rule.

5. Fourthly, when we speak of the obligation of the Conscience, we are not to suppose that it signifies *compulsion* (for to speak properly, the Conscience can be no more compelled than the Free-Will), but rather a power and authority (which she is bound to obey) to instigate her to the discharge of her duty; in the same manner as a Sovereign who has the legislative authority, by enacting laws obliges his subjects to the observance of them. As therefore *in foro externo*, subjects are properly and formally bound to obedience not so much by the

<sup>1</sup> Aristot. Nat. Auscult. i. 1.



*Law* itself, as by the *power of the Lawgiver* (though the *Law* may improperly be said to oblige, as well as to judge, e. g. <sup>2</sup> *Does our Law judge any man?* and yet the *Law* does not judge, but the magistrate, who ought to judge according to the *Law*) so in the *forum internum*, the *Rule* or the *Law* imposed upon the *Conscience* does not properly oblige it, but the power and authority of the imposer; yet so, that by consequence, though not with the same propriety, the *Rule* itself may be said to carry with it an obligatory virtue. When therefore we ask, what that is which obliges the *Conscience* to do her duty? we intend principally to ask, *Who is the Lord of the Conscience*, that has a right to impose a law upon it, to which she is bound to conform? and then we demand by way of consequence, What is that *Rule of Conscience*, or that *Law* which this Lord has imposed, and which, because of His Sovereign authority, she is obliged to obey?

6. We are to consider, in the fifth place, that whatever lays an obligation upon the *Conscience*, must oblige it either *directly* and by its own intrinsic power, or *indirectly* by virtue of another, who has a power to oblige it, or by neither of these ways, only by *accident*. And here we must observe, that those things which oblige the *Conscience* in the *second acceptation*, are not all of the same nature, but differ according to the several causes from whence the obligation proceeds; for it is one thing, when an obligation is forcibly imposed by the authority of a superior, and another very different, when a man obliges himself by his own choice. From what has been said, therefore, it appears that there are *four degrees* of such things as lay an obligation upon the *Conscience*: for instance (to explain more distinctly what has been observed, and to shed some light on what I have yet to

<sup>2</sup> John vii. 51.

say), 1. the commands of God oblige *properly* of themselves, and by their own intrinsic force ; 2. the laws of men, and the injunctions of superiors oblige the Conscience, yet, by no other power or authority than by virtue of the Divine law. 3. We are bound by the contracts we made of our own accord, because they were our *own choice*, and properly our own act, when we had full power to have kept ourselves disengaged. 4. The law of avoiding *scandal*, or of not giving offence, likewise obliges the Conscience, but by *accident* only.

7. Lastly, we must take notice that the *first degree* of obliging, that which is inherent in Divine Laws, is absolute and universal, the other *three* are relative and particular. It is *absolute*, because it directly and always obliges, and because it binds all persons, and the obligation is never to be cancelled ; the others are *relative*, because they do not bind of themselves, or by their own power, but by a relation to some precept in the Divine Law, and also because they do not always oblige, or everywhere, and in every case, but only as the nature of the things require, to which they refer.

The *first degree* therefore of obliging (that inherent in the Divine Law) is superior to any obligation whatsoever in the other *three* ; insomuch that it has a power to supersede them all, but it is impossible for them to overrule it. And it universally holds good, that an obligation in any *superior degree* is of more force than any *inferior degree* of obliging whatever, and binds *before it*, not only by removing an obligation laid by anything else on the Conscience, but by barring an obligation for the future, which it has always a right to do. As to the power of obliging, therefore, the laws of men must give way to the laws of God, private contracts to public constitutions, and the law of avoiding *scandal* to both.

8. These things being premised, I come (in order to prescribe a certain rule of life) to fulfil my promise, and

to comprise, in a few *Conclusions*, what is necessary to be known concerning the *Rule* of conscience, and the *passive* obligation of it.

The first *Conclusion* is, that *God alone has a proper and direct power of command over the Consciences of men*; so that none but He alone has a power to impose a law upon the Conscience of any man which it is bound to obey, as laying an obligation purely *of itself*; not but that the Conscience is obliged to obey *human laws* that are just, to discharge promises to God and man, and to avoid giving *offence* to others; but we are bound to these duties by no other ties, than inasmuch as they may be reduced to the Divine Will that enjoins them upon us. And this will appear in its proper place.

9. The first proof of this conclusion arises from the text of the Apostle already mentioned. *There is One Lawgiver Who is able to save and to destroy.* These words, let us observe in the first place, assert, that there is but *one* Lawgiver, not one selected out of *many*, nor *one* above all the rest, but one *exclusively*; that is, *one*, and *one alone* (i. e. Almighty God).

This must be the meaning of the Apostle, or else he made use of a very ineffectual argument to demonstrate what he proposed. His design was to censure such as inconsiderately passed their judgments upon the persons or the actions of other men, as invaders of another's right; *Who art thou, says he, that judgest another?* As if he had said, "Dost thou know who thou art, and what thou doest? Thou hast no business to thrust thy sickle into another man's corn, much less impiously to invade the prerogative of Almighty God. If thou knowest not this, be assured, it is His office alone to judge the Conscience of man, Who has the sole right of imposing laws upon it, and *that* is none but God, for *there is only one Lawgiver.*"

It is observable, secondly, that the Apostle ascribes to

God *alone* the power to save and to destroy, which is a further evidence of what we assert. He only has a power over the Consciences of men either to command or to forbid, who has authority with gratuitous rewards to crown the actions of the faithful, and with just punishments to chastise the disobedient; but it is the prerogative of God alone, the *only Lawgiver*, to dispense punishments and rewards according to the merits of every Conscience; therefore He alone has the sole right over the Consciences of men.

10. A second argument is this: He who alone knows the inward motions of the Conscience, He only has a power of prescribing a law to it (for the law never determines or judges of things unknown), but God only, the Searcher of hearts, can discover the inward motions of the Mind and Conscience; therefore He has the sole right of imposing a law, or laying an obligation upon it. Hence it is, that the laws of *men* oblige only the *outward* motions of the body to an outward conformity, but can take no cognizance of the *inward* conduct of the Mind or Conscience; and upon this account it was, that not only devout men, who had the knowledge of the true God, such as the three *Jewish* captives at *Babylon*, and the seven brethren in the Book of *Maccabees*;<sup>4</sup> but many of the wiser heathens derided the threats and torments of tyrants, because they exercised their cruelty not so much upon them, as upon their mere external integuments, and as it were upon sacks and skins.<sup>5</sup> Let us reflect upon that solemn injunction delivered by our Saviour to His disciples, *Be not afraid of them that kill the body, and after that have no more that they can do; but I will forewarn you whom you shall fear; fear Him, who after He hath killed, hath*

<sup>3</sup> Dan. iii.

<sup>4</sup> Θυλάκους, folles, καὶ ἀποδέματα

<sup>4</sup> 2 Macc. vii.

<sup>5</sup> Luke xii. 4, 5.

*power to cast into Hell.* As if He had said, "Tyrants, by the permission of God, may have power over the bodies, but over the Souls and Consciences of men they have no power or authority at all; they have no authority to make laws, or inflict punishments upon what belongs to the *inward* man. The whole man is in the hand of God, He alone has the jurisdiction over *Body and Soul*, and can execute judgment on them both for their sins, and can condemn the whole man to eternal torments."

II. The *natural* state and condition of the Conscience is a third proof, which (as I observed before) is placed in the middle between God and man; and what was usually applied to the prerogatives of kings and emperors, may be justly said of the Conscience of every man, that *it is subject to none but God,*<sup>7</sup> *and knows no Superior upon earth.* Memorable is the observation of the Emperor *Maximilian* (the Second), <sup>8</sup> *To try to domineer over the Conscience, is to assault the citadel of Heaven.* He is a plunderer of the Divine Glory, and an impious invader of the authority that belongs to God, whosoever he be that claims a right over the Consciences of men, or lords it over them. Let the *Popes of Rome*, and all the train of *Canonists, Jesuits, and sycophants* that flatter and fawn upon them, clear themselves, if they can, of this abominable sacrilege; and let such as *submit their Consciences* (which ought only to be subject to God) to the power of any creature, take heed, lest by transferring the homage of that service that belongs to God, to any creature upon earth, they make a God of that creature, and so in effect become guilty of *idolatry*.

From this first *conclusion* thus proved, follows the

<sup>7</sup> Tertullian ad Scapulam, § 2.

<sup>8</sup> "Conscientiis dominari velle, est arcem cœli invadere." Thuanus, Hist. lxii.

memorable inference, that the *proper rule of the Conscience is that which God the Supreme Lawgiver has prescribed to it*; and besides that, there is no other that ought to be admitted.

12. The second *conclusion* I lay down, is this: *the next and most immediate Rule of the Conscience* (though it be neither the adequate nor the supreme rule) *is that light which in that instant presents itself to the mind*; and this is what is called by some the *light of reason*, by others the *law of the mind*; and which the schoolmen, in imitation of the philosophers, generally express by *right reason*. I shall prove this first by some places of Scripture. <sup>1</sup> *Why even of yourselves judge ye not what is right?* says our Saviour. As if He had said, "You have an *inward light*, which is a ray of that <sup>2</sup> *True Light* which lighteth every man that cometh into the world; by the assistance of this *light* you will be able (unless you are wanting to yourselves) to discern what is crooked from what is straight,<sup>3</sup> and to discover <sup>4</sup> the right way of your duty, and to walk accordingly." That passage in the Epistle to the *Romans* is very remarkable, <sup>5</sup> *when the Gentiles, who have not the law, do by nature the things contained in the law* (that is, discharge the duties of justice, prudence, fortitude, temperance, and other virtues), *these men, having not the law, are a law unto themselves, their Conscience also bearing witness, and their thoughts the meanwhile either accusing, or else excusing one another*. From whence it is evident, that the Conscience in the particular acts of *testifying, accusing, and defending*, which refer to actions that are past, judges by the *light of reason*

<sup>1</sup> Τῷ λόγῳ καθάπερ ἐπιτρόπῳ σώφρονι παρακαταθετόν τὸν βίον. Socrat. ap. Stob. Λογ. Tit. iii. 43.

<sup>2</sup> Luke xii. 57.

<sup>3</sup> John i. 9.

<sup>4</sup> Horat. 2 Epist. ii. 44.

<sup>5</sup> Τὸ οἰκεῖον καὶ ἀψευδὲς κριτήριον. S. Greg. Nazianz. Orat. xv.

<sup>6</sup> Rom. ii. 14, 15.

imprinted upon the mind; and since the same rule of judging will serve for what *is to come*, as well as for *what is past*, it follows that the Conscience, in *examining, judging, and advising* about what is to be done, makes use of the very same *light* as the rule and standard by which she is to be directed.

I have no design to insist upon that passage in the <sup>6</sup> *Psalms*, which the *Latin* Fathers, especially of later times, and some of the schoolmen produce commonly as a proof of this *conclusion*, "*the Light of Thy countenance is impressed upon us*;"<sup>7</sup> because that construction of the words is founded upon a faulty translation, and seems to be inconsistent with the Prophet's design.

13. This proposition is confirmed again by our common way of speaking; for we usually say, that a man, who acts up to the *light* of his mind, is a *man of a good conscience*, though perhaps he has done or omitted what he ought not; and one who disobeys the dictates of his own mind, and acts against them, we say commonly to be a man of a *bad conscience*. The Apostle St. Paul professed, that he had <sup>8</sup> *lived in all good conscience before God until that day*, from which expression, if it respects the former part of his life, before he became a Christian (a sense that has many followers, and seems very probable) we may conclude, that though he was an open and most implacable enemy to the Christian Faith, and, as he confesses himself, a <sup>9</sup> *persecutor* and a *blasphemer*, yet it might properly be said of him, that *he lived in all good conscience before God*; because he still obeyed the dictates of his Conscience (in proportion to the *light* he then had) and acted agreeably to it. For *he*<sup>1</sup> *verily thought within himself*, as he declared sincerely in his apology

<sup>6</sup> Psalm iv. 6.

<sup>7</sup> "Signatum est (ἐσημειώθη LXX) super nos lumen vultus tui." (Vulgate.)

<sup>8</sup> Acts xxiii. 1.

<sup>9</sup> 1 Tim. i. 13.

<sup>1</sup> Acts xxvi. 9.

before King *Agrippa*, that he ought to do many things contrary to the name of *Jesus of Nazareth*.

But however the case is to be understood, with regard to the Conscience of *St. Paul*, it is certain that *Abimelech*, who ignorantly detained the wife of *Abraham*, did it, as God Himself testifies, in the <sup>2</sup> *integrity of his heart*; that is, *with a good Conscience*; because he excused himself by confessing that had he known she had been the wife of another man, he would not have taken her into his family.

The Conscience, therefore, by a sort of allowable ignorance (or haply otherwise erroneous) even in the judgment of God Himself, may be said to act so far uprightly, as it conforms to the *light of the Mind*, which is its next and immediate rule. But more *is required* to complete the integrity of the Conscience, and make her absolutely perfect; she must likewise conform to her *first and supreme Rule*; and what that is I come now more closely to examine.

14. Let this therefore be a *third conclusion*. *The Holy Scripture, or the Word of God written, is not the adequate rule of the Conscience*. And this appears in the first place, because whatever has an *adequate rule* to direct it, has no occasion for any other rule to govern it; for adequateness excludes the necessity of any supplement. But it is necessary there should be another rule of Conscience *beside the Holy Scripture*, otherwise the *Gentiles*, who are unacquainted with the Scripture, have no rule to direct their Conscience, which is contrary to reason and experience, and to the express testimony of the <sup>3</sup> *Apostle* in the text above-mentioned.

Most certain it is, that there is a Conscience *in all men* which is *subject to a rule*, and is guided by it. For, as the *Apostle* observes, and the many examples in history and experience confirm it, *whence* otherwise proceed that

<sup>2</sup> Gen. xx. 6.

<sup>3</sup> Rom. ii. 14.



bitter remorse of the Conscience, and those maladies of the mind that follow it? How shall we account for those whips, and pangs, and tortures, and furies of the old *Tragedians*, but from a violation of the *law of Conscience*? If there were no such law, the most barbarous of mankind would be the more happy, in proportion as they are <sup>4</sup> more remote from the sound and voice of the Gospel; and by consequence not liable to any imputation of sin, for <sup>5</sup> *where there is no law, there can be no transgression*, and <sup>6</sup> *sin is nothing else but a transgression of the law*.

That the power of the Conscience is very great to give us confidence and courage by its innocence, and to scare and terrify us by its guilt, has been a truth proclaimed not only in the *schools*, but in the *rostra* and *theatres* of the heathens, who never heard of *Moses*, or of *Christ*, nor of the *Law* or the *Prophets*, nor of the *Gospel* or of the *Apostles*. Scripture therefore cannot be the *sole* and *adequate rule* of the Conscience.

15. A second proof is that the proper end and design of the *Holy Scripture*, is <sup>1</sup> *to make us wise unto salvation through faith, which is in Christ Jesus*; for since the light of natural reason is insufficient to bring us to a supernatural end, as well because of the obscurity it contracted by the fall of *Adam*, as also because a supernatural end must be attained by means proportioned to it, it pleased Almighty God, in pity to our weakness, to *reveal* such a measure of His Will to us in *the Holy Scripture* as He thought fit; so that by this gracious dispensation we are not only instructed in *matters of faith*, which could never be discovered by the light of reason, but we are informed to more advantage, of what was naturally known to us; insomuch that those *duties of morality*, which we know by the dictates of nature, we

<sup>4</sup> Cicero pro Milone, § 61.

<sup>6</sup> 1 John iii. 4.

<sup>5</sup> Rom. iv. 15.

<sup>7</sup> 2 Tim. iii. 15.

discharge now from a nobler principle, the *love of God*, and for nobler ends, which are His *glory*, and our own *salvation*. And thus our *moral* actions become *spiritual*, and are accepted by God through *Christ*.

The Scripture, with respect to what is *supernaturally to be believed*, is the *sole* and *adequate rule* of our *faith*; and with regard to our *actions* (so far as they are *spiritual*, and relate to a spiritual end) it is the *only* and *adequate rule* of our *manners*; and by consequence the principal, and (if I may so speak) the *architectonical* rule of our whole practice. But, however, since it is the office of the Conscience to inquire into our actions, not only as they are *spiritual*, that is, whether they are done out of a principle of *charity*, and for a *supernatural* end, but as they are *moral*; that is, whether they be *good* or *evil*, lawful or unlawful, free or necessary, the Scripture alone is not sufficient to enable us to form a right judgment of these particulars, but we are obliged to have recourse to other suitable helps.

16. This is proved, thirdly, from the form, character, and constitution of the *Scripture* itself. It is evident that the Holy Writings contain precepts of a very different nature; some respect the *moral*, others the *ceremonial* law; some are common, and universally oblige, others are limited to a peculiar nation, to a person or a particular order of men; some are to continue for a time, others are of perpetual obligation; some are delivered by way of advice about things expedient to be done, as the exigence of the case requires, others are positive commands about things absolutely and simply necessary; so that if there were not some *other rule* beside the *Scripture*, to distinguish *moral* precepts from *ritual*, temporary from perpetual, peculiar from common, the Conscience would be often at a stand, and doubtful in her determinations; especially since in Scripture laws of a different nature are delivered as it were in one

breath, and immediately follow one another in the same tenour of discourse, and continued connexion of words.

For instance, there is a command in the *Levitical* law, that <sup>8</sup> *we should love our neighbour as ourselves.* And in the next verse it follows immediately, that *thou shalt not let thy cattle gender with diverse kind, thou shalt not sow thy field with mingled seed; neither shall a garment of linen and woollen come upon thee.* The first precept in this place is *moral and universal*, the others but *ceremonial or judicial*, and peculiar only to the nation of the *Jews*. But when these laws are read in our churches, it does not appear from the text, how there can be so remarkable a difference between them. In another <sup>9</sup>verse of the same chapter of Scripture, the sanctification of the *Sabbath*, and the reverence of the *Sanctuary* are equally commanded in a continued series of precepts, and under the same solemn sanction of right, *I am the Lord*; and yet it is the opinion of many, that one of those precepts lays an obligation upon the Conscience, but the other does not. For this opinion of theirs there can be no other ground than from the judgment of reason and prudence, for in the sacred text there is no trace of difference between them; and without reason and prudence we cannot distinguish what laws are obligatory, and what not; and without them the Conscience will be often in suspense, and unable to decide what she is commanded to do, and what to avoid.

17. The inconveniences that flow from the contrary opinion, are a *fourth* argument; I mean those unfortunate calamities that have long afflicted the *Christian Church*, and had their rise from a misapplication of what is meant by the *perfection of Scripture*. Men of no ordinary reputation have fatally applied this principle,

<sup>8</sup> Lev. xix. 18.

<sup>9</sup> Ver. 30.

and have affirmed it, that nothing can lawfully be done or commanded, that is not justified by an express *precept* in the Word of God, or at least recommended by some laudable *example*. Upon this principle, not a few persons of ardent temperament, and prompted (as we must charitably believe) by *zeal for God*, but not *according to knowledge*, began to stir up disputes about the *rites* of the Church. Ecclesiastical ceremonies, that are not founded upon the authority of Scripture, must be banished (they said) for ever from the Churches of *Christ*: human laws about things *indifferent* must be repealed, and discipline reformed throughout the world, and reduced to the standard of *primitive and evangelical purity*. The unbridled rage of these men rested here for a time, but not long; and as it usually comes to pass, <sup>1</sup>*one concession being made the rest soon followed*. The boldness derived from this principle burst forth into open phrenzy, and broke out into the fury of the *Anabaptists*. And though the growing mischief has gone so far, that it can scarce, one would think, rise higher, yet it swells every day, and produces monstrous opinions; so that if we were not assured by God's Word, that His <sup>2</sup>*Foundation shall stand firm, and the gates of hell shall never prevail against His Church*, we should have to fear that religion would be overwhelmed with a deluge of *Atheism*, and universally expire throughout the world.

18. And lest I should seem to declaim with more vehemence than the case requires, I affirm, that whoever he be, that is strongly prepossessed with this error, will never be able to answer the arguments of *Anabaptists, Socinians*, and other *Sectarists*, whose names I am ashamed to mention, in those controversies which are now agitated

<sup>1</sup> Ἐνὸς δοθέντος τῆλλα συμβαίνει.

<sup>2</sup> 2 Tim. ii. 19. Matt. xvi. 18.

among us. For, not to speak of the established form of Church-discipline, which the *Political Divines* of the present age would either wholly abolish, or (which is much the same) give up into the hands of the Civil Magistrate, for no other reason, but because they nowhere find it *literally prescribed in the Word of God*, they must by the same rule, cancel the observance of the *Lord's Day*, the commission of the *Ministers of the Gospel*, the baptism of *infants*, the use of *pouring water* instead of *dipping* the whole body, *Sacramental Grace*, and other institutions, which our *Sectaries*, from the example of *Socinus*, strenuously oppose, as well as the rites and laws of the Church; or they must revise their opinion, and confess that the whole may lawfully, and with equal right, be complied with.

19. But, it may be asked, is not this to detract from the *perfection of Scripture* (which all the *Divines* of the *Reformed Churches* acknowledge), and to open a way for the *Traditions* of the *Romish Church*, and to destroy the force of all arguments that are *negatively* drawn from the *Scriptures*; a method of which the *Ancient Fathers* of the Church, and the most learned of our *Modern Divines* make frequent use?

I answer, that the *divines of Rome* derogate from the *perfection* of Scripture, because in matters of *faith*, and things *necessary to salvation*, they thrust in their *unwritten Traditions* upon the same foot of reverence and authority with the *written Scriptures*; as if the *Scriptures* were insufficient to make us wise unto salvation, and to settle the *sons of God* in their *Father's Inheritance*, which is the *Gospel of Christ*, without the vain supplement of *human Traditions*. As for such (of the *Fathers*) as infer *negatively* from the *Scriptures*, they will be found to argue concerning matters of faith and morality *that are necessary to salvation*. This they may reasonably do. But we are not speaking here of the *Rule of Faith*, but of the

*Rule of Conscience* ; nor of the *principal*, but the *adequate* rule, not what is necessary for a Christian to believe and practise, in order to salvation, but of what a pious and prudent man *may lawfully do or omit*, as the nature of things requires.

In short, the Holy Scripture is the *adequate rule of Faith*, and of things *supernaturally to be believed*, and of *Moral Actions* likewise, so far as they are *Spiritual*, and conduce to a *Spiritual* end. It also is the *Law of the Conscience*, and the principal and supreme Rule of what we are to practise ; so that where the Scripture determines absolutely either by *precept* or *prohibition*, no other law has a right to interfere and stand in competition with it ; not that we are to suppose the Holy Scripture to be so far the *Law of the Conscience*, that whatever is *not positively commanded* there, is immediately to be judged *unlawful*. And so much for our third *Conclusion*.

20. The fourth follows ; *the proper and Adequate Rule of the Conscience is the Will of God, in what manner soever it may be revealed to mankind*. Some call this the *Law of God*, others the *Eternal Law*, terms that differ only in sound, but agree in sense. Every part of this *Conclusion* is to be distinctly considered.

In the first place, therefore, this Rule is *the Will of God*, which is commonly distinguished (though writers seldom properly explain or apply the distinction) into the Will of His *good pleasure*, and the Will of His *prescribed Law*. The first is that Will, by which God did from Eternity resolve what *He Himself would do*. The other is that by which He gave a *Law* to His Creatures, which directs what *He would have us do*. The first is properly and *uniquely* the Will of God, the other improperly, and by *analogy*. The Will of His *good pleasure* (if we may presume to speak of the Majesty of God after the manner of men) is in some respect a *Law* to God Himself, by which He acts ; for He always does what He is *pleased* to do.

But it is not designed by God to be a *Law* or a *Rule* of Conscience to us, at least with regard to our future practice. This *Will*, in respect of *sufferings*, I confess, has some command over us ; so far as we are obliged in Conscience to submit<sup>3</sup> patiently to all the accidents of human life, which we are convinced were so ordained by His *good pleasure* ; because we know by *common reason*, that we are not to repine at the appointments of God's Providence, who can *Will* nothing but what is most just.

It remains, therefore, that the Will of His *prescribed Law* is the *Rule* of the Conscience ; for when God, by forbidding and commanding, has let us know what we ought to do or to avoid, it is our duty absolutely to conform our Wills to *His*.

Many nice, but useless inquiries have been made by the schoolmen upon this subject ; as, *whether, and how far, the Will of a rational creature is obliged, in what it chooses, to conform to the Will of the Creator?* When the whole dispute (as far as relates to our purpose, and the uses of human life) may be despatched in these few words, that *we are bound always to choose, what the Will of God is pleased we should*. Thus when God commanded *Abraham* to sacrifice his son *Isaac*, though it was *not His good pleasure* (as appeared by the event) even when He laid the command upon him, that *it should be done*, yet the *Patriarch* was obliged to conform his Will, because God by commanding the act intimated to *Abraham*, that it was His *Divine Will* that he should make choice of it.

21. Secondly, this Will of God must be *revealed*, in order to oblige the Conscience, *Revelation* being the

<sup>3</sup> "Optimum est pati quod emendare non possis, et Deum, quo Auctore omnia proveniunt, sine murmure comitari." Senec. Epist. 107. "Placeat homini, quicquid Deo placuit." Id. Ep. 74.

formal reason of the obligation ; for the Will of God does not oblige those to whom it is not *revealed*. And therefore the *Gentiles*, who never had the Gospel preached, are not bound to believe it ; *for no man is obliged to impossibilities*.<sup>4</sup> And such is the case of a person who never had the Gospel discovered to him, nor has ever heard of a Saviour ; it is impossible for such a one to believe in *Christ*, or in the Gospel, which he could have no knowledge of by the light of *reason*. The Apostle therefore justly demanded, <sup>5</sup> *How shall they believe in Him of whom they have not heard ? and how shall they hear without a Preacher ?* And he thought it just, that such only who <sup>6</sup> *sinned in the Law*, should *be judged by the Law*. Nor is it sufficient to oblige the Conscience, that the Will of God is *revealed* to a man, unless it be revealed to him *as the Will of God* in a peculiar reference to *himself*. So that if any of the *Gentiles* that were aliens, should by chance meet with the Books of *Moses*, and read there of a *Law* delivered to the *Hebrew* nation, he was not instantly obliged to obey that *law*, though it was *revealed* ; because it did not properly belong to *him*, but was peculiar to that people ; and we are all of us agreed, that a law does not oblige every man who has a knowledge of it, but only those to whom it is delivered.

22. The Will of God, *in what manner soever revealed, lays an obligation upon the Conscience* ; for the Will of God receives its authority from itself, and not from the *manner of revealing* it. So that the Church of *Rome*, in disputing about *traditions*, may spare her pains in proving that the *unwritten* Word of God is of equal authority with the *written* ; for this we are ready to allow. We should only be glad to know how we are to be satisfied that her *unwritten traditions* are the *Word of God*, as

<sup>4</sup> "Nemo tenetur ad impossibilia." Digest xxix. Tit. v. § 2.

<sup>5</sup> Rom. x. 15.

<sup>6</sup> Ibid. ii. 12.



the *Scripture* unquestionably is? The Will of God, therefore, *in what manner soever revealed*, is the Rule of Conscience; provided it be so revealed, that it actually is or may, upon due application, be made known to the Mind; and it obliges the Conscience to acknowledge it, and to propose it to the Will, *as the Will of God*, to which it is bound to conform; and not only so, but to command the executive powers to do their duty in fulfilling this Divine Will. *Damascene* rightly observed, that *' whatever is the object of God's Will must of necessity be good*, because His Will is the measure of goodness, and *' His Law is that command by which He informs us what is the good pleasure of His Will*. He adds, *' For the Law of God inculcating itself on the Mind, attracts it to itself, and it incites and stimulates the Conscience to discharge its duty, and to propose to the Will what the Will of God is pleased to enjoin*. And this is what we properly mean by the Obligation of Conscience.

23. The force and effect of this obligation is differently expressed by *St. Paul*. In his Epistle to the *Romans* he owns himself *<sup>1</sup> a debtor both to the Greeks and to the Barbarians*: as if he had said, "I know by the Divine Will, that I am set apart to preach the Gospel to the *Gentiles*, without distinction, whether they are *Greeks* or *Barbarians*; I confess, therefore, that in this respect I am a debtor to them both. In another of his Epistles he says, that he is *<sup>2</sup> constrained*; as if he had been bound with chains to the discharge of his duty. And again, he declares, that the preaching of the Gospel was committed to his trust, and that he was indispensably bound thereto; *<sup>3</sup> a necessity is laid upon me, yea, woe is me, if I preach*

<sup>1</sup> Τοῦτο ἀγαθὸν ὅπερ ὁ θεὸς βούλεται. De Fide Orthodoxa iv. 22.

<sup>2</sup> Ἡ τοῦτο διδάσκουσα ἐντολή.

<sup>3</sup> Ἐπιβαίνων ὁ τοῦ θεοῦ νόμος τῷ νῷ ἡμῶν ἐφέλλεται πρὸς ἑαυτόν, καὶ νόττει τὴν ἡμετέραν συνείδησιν.

<sup>1</sup> Rom. i. 14.

<sup>2</sup> 2 Cor. ii. 14.

<sup>3</sup> 1 Cor. ix. 16.

*not the Gospel.* And before St. *Paul*, two of the chiefest Apostles, and for a long time inseparable companions, St. *Peter* and St. *John*, declared that they were under the same invincible necessity, which they could not shake off. <sup>4</sup> *We cannot, say they, but speak.* "God has commanded us to speak with courage, and you command us to be silent; which of the two is entitled to our obedience, judge ye. We can be secure from the reach of your authority; nay, we are so; you have no right over the Consciences of either of us, but the injunction of God holds us fast, and has such a coercive power over us, that unless we resolve to perish, we cannot be silent, and act contrary to His commands."

24. The proximate and immediate Rule of the Conscience is the *light of the mind*, and the principal and supreme rule is the *written Word of God*, and the proper and adequate Rule, *the Will of God in whatever manner revealed*; or which signifies the same, *The law imposed by God upon a rational creature*. In order that these expressions may be fully understood, we are to observe, that the *light of the mind* may be taken in three acceptations, as God in three several methods has discovered His Will to mankind. There is the *light innate*, the *light infused* or *imparted*, and the *light acquired*; or the light of *Nature*, the light of *Scripture*, and the light of *Doctrine*. The first light, which I call the *light innate*, proceeds from the law of Nature; for upon the first creation of things, God endued the brute and inanimate creatures with a natural *instinct*, which should incline them to support and preserve their being, to be as a law to them, and is so called by holy *David*, <sup>5</sup> *Thou hast given them a law which will not pass away*. So a sort of natural law is imposed upon man, and proportioned to the nature of a rational creature, which is

<sup>4</sup> Acts iv. 20.

<sup>5</sup> Psalm cxlviii. 6.

more noble and sublime, and (if I may so speak) more Divine than what was laid upon the other creatures of this lower world; and this Law incites him to execute such actions as are suitable to man as a rational creature; that is, in short, to live according to his reason. Now this law is a natural impression, and as it were a copy of that original and eternal law in the Mind of God, and a part of that *Divine Image*, in which man at first was created by God. By this law we are assured that some things by the Will of God, the Creator, are agreeable to a rational nature, which we therefore judge to be lawful; and that others are contrary to it, and therefore, we conclude, are to be avoided by us. But the *light*, that is derived from this law, is much obscured by the baneful ruin which followed the fall of *Adam*, which enveloped him in those thick clouds of ignorance and error, wherein we his posterity, while we live, are involved. Yet the Divine Providence most wisely ordered, that in the common wreck this innate light escaped with less hurt than many of the other faculties; for it has pleased God that certain propositions and practical principles, which the philosophers call *common notions*, and *natural maxims*, and St. *Basil* excellently calls *a spark of the Divine Image concealed within us*, preserved, as it were, in the ashes of the general conflagration, should still remain in our breasts, as witnesses of His Will to us. These *common notions* are that Law of God, which the Apostle says is *written in the hearts of men*; in the same manner as the laws of cities or of a king are wont to be engraved upon tables of brass. These principles have the authority of a law, or of a rule imposed by

<sup>6</sup> Gen. i.

<sup>7</sup> "Quæ in animis imprimuntur inchoatæ intelligentiæ." Cic. de Leg. i. 10.

<sup>8</sup> "Hæc tamen exigua lucis scintillula remansit." Calvin. Instit. iv. 10, sect. 5.

<sup>9</sup> Rom. ii.

God upon us, as the Will declared by a Lawgiver in those public instruments lays an obligation upon the subject to obedience.

25. This natural law consists of many *practical* principles, which however are reducible to one supreme and universal law that includes the rest, and contains these two, but short, precepts, *Good is to be done, and Evil is to be avoided.* In the same manner all the commands in the Decalogue are reducible to one universal law, viz., to *the Love of God and of our Neighbour.* To this universal law, reserved in the *Synteresis* (or watchful observation and careful recollection) there are other particular laws subordinate, which are derived from it, as conclusions from premises. Some of these flow from the first dictates of nature, and relate nearly to that principal law; others are more remote, and of a secondary relation, by virtue of those that are more near. Such as proceed from the first dictates of nature, as soon as they are offered to our Minds, instantly command our belief; and because of their undeniable evidence, oblige our assent. No one can reasonably dispute their certainty; nor is it possible, if we understand the sense of the words, to mistake about them. For no sooner is it proposed that *God is to be worshipped, and no man is to be injured,* but the Mind immediately acquiesces, and assents without scruple or hesitation.

But Laws of a *secondary* relation, by reason of the difference of *circumstances*, are apt to lead us into doubts and mistakes, and the more we recede from those *first principles*, the more prone we are to run into error; for the first and universal principles are so much the more certain than the particular that follow them, as they are the less encumbered with *circumstances*. For by reason of circumstances, and of *descending*, as we usually speak, it is <sup>1</sup> difficult for us to tread surely. Precepts of this

<sup>1</sup> See Prælect. i. § 26.

kind are, *Parents are to be honoured, children to be brought up, the life of our neighbour to be preserved, a pledge to be restored*; which though they are generally obligatory, and for the most part to be obeyed, yet they are not simply and absolutely to be observed; for it is possible, that the nature of the case may require otherwise. For the commands of parents are to be ignored when they interfere with the Love of God, and there may be a just cause of disclaiming our children, and of taking away the life of our neighbour, nor is the sword of a madman to be restored. This distinction is somewhat like that which *Cicero*,<sup>2</sup> in imitation of the *Stoics*, used in his classification of *duties*; for they made a difference between a *right and perfect duty*, which the *Greeks* called a *consummate act*, and one that is *common* and of a *middle kind*; which with them was only *fit and proper duty*. That the Conscience therefore might be able to judge with certainty what the Will of God is, so far as relates to this part of the rule of it, it will be proper to refer it to the most *universal precepts*, and reduce it to those *first axioms* that carry with them their own evidence. But because I am obliged to hasten to other matters, I shall conclude what I have to say upon this law of nature, with what *Cicero* observed before, long ago, in a part of his Works<sup>3</sup> that are now lost, and which is thus preserved by *Lactantius*.<sup>4</sup> <sup>5</sup> *The Law is right Reason,*

<sup>2</sup> Cic. de Off. i. 3; de Fin. iii. 6.

<sup>3</sup> De Republicâ iii. 22, ed. Moser.

<sup>4</sup> Lactant. Institut. vi. 8.

<sup>5</sup> "Est quidem vera lex recta ratio, naturæ congruens, diffusa in omnes, constans, sempiterna, quæ vocet ad officium jubendo, vetando à fraude deterreat.—Huic legi nec obrogari fas est, nec derogari ex hâc aliquid licet, neque tota abrogari potest; nec vero aut per senatum, aut per populum solvi hac lege possumus. Neque est quærendus explanator aut interpret ejus alius, nec erit alia lex Romæ, alia Athenis, alia nunc, alia posthac, sed et omnes gentes, et omni tempore, una lex et sempiterna et immutabilis continebit. Unusque erit communis quasi magister et imperator omnium Deus ille legis

*agreeable to Nature, diffused among all, constant, eternal, which summons us to duty by commanding, and by forbidding deters us from vice. It is not lawful to contravene this Law, nor to derogate from any part of it, nor can it be wholly disannulled. We cannot be discharged from it either by the Senate or People; it has not different expounders nor interpreters; nor is it to be understood in one sense at Rome, and in another at Athens, nor will it be one now and another hereafter; but it is ever the same Law, perpetual and immutable; it includes all nations, and all ages. There will ever be one common Master and Supreme Commander of all, the God Who is the Inventor, Judge, and Maker of this Law. Whoever rebels against Him, must fly from himself, and relinquish his claim to Human Nature; and for this disobedience of his, he will suffer the worst torments, though he escapes all other punishments that are commonly counted as such. A remarkable testimony, which so clearly explains the force and nature of that innate light, that I have no occasion to add to it.*

26. The second *light*, which we call *infused* or *imparted*, comes into the Mind from without, and proceeds from Divine Revelation; from that light with which God supplies us in the Holy Scriptures, wherein He discovers His Will to us in a fuller manner; that no assistance may be wanting to regulate our manners, and to guide us in our way to happiness; which the mere *Light of Nature*, as I have shown, can never accomplish. Now this *Light* differs from the *Natural*, not only in respect of its origin, but as it is more *perfect*; for it discovers the Divine Will in what the *Light of Nature* could never attain to; it directs our good actions to a nobler end, above the dictates of the *Natural Light*; and

hujus inventor, deceptor, lator, cui qui non parebit ipse se fugiet, ac naturam hominis aspernabitur, atque hoc ipso luet maximas poenas, etiamsi cætera supplicia quæ putantur effugerit."

though the Law impressed upon the Mind is ordained by God as He is *Author of Nature*, yet this Law revealed in the Scripture is instituted by Him as He is the *Author of Grace* and Salvation. Therefore, when the Light of Nature is either weak or defective, as it must be defective in discovering the mysteries of Faith, which exceed its capacity, and weak in such cases as lie more remote from those precepts that are *universal*, in such cases we must have recourse to the *Light of Scripture*, as to <sup>6</sup> *a light shining in a dark place*. <sup>7</sup> *To the Law and to the Testimony ; if they speak not according to this Word, it is because there is no Light in them.* <sup>8</sup> *Thy Word is a Lamp unto my Feet and a Light unto my paths.* If I should insist particularly upon the perfection and the advantages of this Law, there would be no end of this Prelection. I refer you therefore to the *nineteenth Psalm*, which treats fully and concisely, and to the *hundred and nineteenth*, where the same subject is represented more at large.

27. This *Law*, you are to observe, has two parts, the *Law* properly so called, and the *Gospel*. I do not in this place understand the Law and the Gospel in the sense which is generally followed by most divines, for the *two Covenants*, entered into by God with mankind, the *Covenant of Works* and of *Grace* ; but in the more common acceptation, the Scriptures of the *Old and New Testament*, which the Fathers, not improperly for this purpose, call the *Old Law* and the *New*. Both these Laws, the *Old Law of Moses* in general, and the *New Law of Christ*, as far as morality is concerned, are exploded by the *Antinomians, Anabaptists, Enthusiasts*, of our own times and by the rest of that portentous crew, as useless ; and (when a Christian is come to *full maturity* in Christ, and is anointed with the *unction* of the Spirit) as unworthy of his care and attention. These men acknowledge no

<sup>6</sup> 2 Pet. i. 19.<sup>7</sup> Isa. viii. 20.

Psalm cxix. 105.

Law but the Law of *Faith*, and the dictates of the Spirit. I have no time to confute these *Sectaries*, nor have I much occasion, since the Apostle St. *James* has so directly struck at the root of these monstrous errors, as if, by a prophetic spirit, he had designed of set purpose to refute them.

28. The *Old Law*, which we call the *Mosaic Law*, is distinguished into three parts, the *Moral*, the *Ceremonial*, and the *Judicial*. Many and different have been the opinions concerning the obligation they lay upon the Conscience; but I shall speak freely my own sentiments, and leave every one to judge for himself. I observe therefore in the first place, that no Law delivered by *Moses* does directly, formally, and *of itself*, oblige the Conscience of a *Christian*; because every *Mosaical Law* as such was *Positive*, and a Positive Law obliges only those upon whom it is imposed. Since therefore the Laws delivered by *Moses* were imposed only upon the peculiar nation of the *Hebrews*, as will appear evidently from the preamble of them,<sup>9</sup> "*Hear, O Israel*," and from the manner of address that follows, it is certain they do not oblige such as are *strangers to the Commonwealth of Israel*, purely because they were delivered by *Moses*. But if any of those Laws are now obligatory upon *Christians* (as the precepts in the *Decalogue* certainly are) it is by *accident* only, and by reason of their substance, not because they were commanded by *Moses*, but because what he commanded was either agreeable to the *Law of Nature*, or afterwards confirmed by the *New Law of Christ*.

29. Secondly; the *Ceremonial Law* of *Moses* obliged the Consciences of the *Jews*, before the preaching of the Gospel by *Christ*, and no others, except they were *proselytes* of the *Jewish Religion* and Worship. No stranger, unless he

<sup>9</sup> Deut. v. 1; vi. 4.



were a *proselyte of the gate*, or a *proselyte of righteousness*, was bound to obey the *ritual* precepts; the former class was obliged to observe a *few* of them, but the latter class, and the *Jews*, were bound to observe them all. But after the death and resurrection of *Christ*, when the Gospel first began to be preached to the *Jews*, and afterwards to the *Gentiles*, till the destruction of the *Temple of Jerusalem* and the *Jewish Republic*, the Law was indeed *dead*, but not (as some are wont to speak, after St. *Austin* <sup>1</sup>) *deadly*; that is, it had lost the force of obliging; but the *Rites* and *Ceremonies* delivered by *Moses* were not absolutely unlawful; so that any man might, as he saw occasion, enjoy the freedom of his own will, and comply with them or not, as he in his prudence and charity thought fit. And that this was the sense of St. *Paul* is so evident from his constant doctrine and practice, that it would be superfluous to prove it. After the destruction of the *Temple*, many imagined that the *Ceremonial Law* was not only *dead*, but *deadly*; an opinion more ingenious than solid, unless it be rightly applied, and with a proper distinction; for all ceremonies are not of the same importance, and such as concern *order* and *decency* are to be separated from those that were *figures* of the *Messiah* to come. Those figurative ceremonies that were instituted by God as *Types* of Christ our Redeemer, Who was to come in the flesh, such as *circumcision*, *sacrifices*, and many others, became certainly of no use after Christ really fulfilled what was typically prefigured in those ceremonies, and the whole world by the preaching of the Gospel had been sufficiently informed that all was thus accomplished; and therefore they are not only to be put away as dead and decayed, but to be avoided as noxious and pestiferous by every faithful Christian; especially if they are represented as abso-

<sup>1</sup> Epist. 82, and c. Faust, lib. xviii. and lib. xix.

lutely necessary to be observed: <sup>2</sup> *I say unto you*, says St. Paul, *that if ye be circumcised, Christ shall profit you nothing.* But those ceremonies that related to outward decency and the solemnity of Divine Worship, though perhaps it were better to omit them, if they give any just occasion of offence, yet they are not absolutely to be condemned as unlawful, merely because they are a part of the *Mosaic* discipline or "*pedagogy*," which was designed to lead man to Christ (Gal. iii. 24).

30. Thirdly; though many distinguish between those *political* Laws of *Moses* that are of *common right*, which they separate by certain signs and criterions, and such as are of a *particular right*, there is no manner of occasion for this distinction; I hold it absolutely certain that none of the *political* or *judicial* Laws of *Moses* oblige a Christian Magistrate to a strict obedience; but he may sanction them or not, as his own discretion and the public advantage direct him.

31. I affirm in the fourth place, that the *Moral Law* delivered by *Moses*, I mean the precepts of the *Decalogue*, oblige *Christians* as well as *Jews* to the observance of them. And this is what every *Protestant*, as far as I know, confesses. *Bellarmino* therefore does us the greater injury when he pretends, that we make the *liberty* of a Christian to consist in this, <sup>3</sup> *To be bound in Conscience to be subject to no Law*; and that *Moses*, with his *Decalogue*, *has nothing to do with us.* If this be our principle, let him, if he can, clear himself, and his own party from this scandal. For it is a sharp controversy among his *schoolmen*, whether *Christians* are bound by the *commands of the Decalogue* only as they are declarations of the *Law of Nature*, or because they were delivered by God to *Moses*, and by *Divine command* imposed upon his own people, and recorded in the *Holy Scriptures*? Some of

<sup>2</sup> Gal. v. 2.

<sup>3</sup> Bellarm. de Justif. iv. 5.

them deny the one, others confess both. There is likewise the same difference of opinion (if it be not rather a strife of words) in the Churches of *Protestants*; but since they themselves agree, and we agree with them, in this *principal* point, that the *Moral Law* delivered by *Moses*, and contained in the precepts of the Decalogue, does oblige the Consciences of Christians, it is a fruitless inquiry to examine *whence* it obtains this power to oblige. In my judgment, they speak more to the purpose, who say, that the Law of *Moses* does not bind a Christian *formally*, as delivered by him, but only by reason of the *matter* of it, as it is *declaratory* of the Law of Nature; and that it receives all its force of obliging not from the authority of *Moses*, who delivered it, but from the dictates of that *natural Law* which *God* at the first Creation impressed upon our minds, and continued there after the Fall, as a faithful monitor of His own Divine Will. So much I had to say of the *Old Law*, or the Law of *Moses*.

32. The *New Law*, or the Law of *Christ*, which is the Gospel, contains in it *Credenda*, or the Mysteries of Faith; in which I include the *Promises* of God's free Grace, the sacred Institutions, *Ceremonial* and *Ecclesiastical* (i. e. the Word and Sacraments) and the precepts of *Morality*.

I shall treat distinctly of these, but I observe in general, that the Gospel obliges only such as are *called*, that is those only to whom it is declared; for *where there is no Law, there can be no transgression*; and morally, especially in supernatural things, *Not to be, and not to be apparent to be*, or not to be sufficiently explained, are identical. The words of our *Saviour* are express, <sup>4</sup> *If I had not come, and spoken unto them, they had not had sin*; that is, they had not been guilty of rejecting the Gospel. But all to whom the Gospel is preached are obliged by it to obedience both of *Faith* and *Practice*; so that we

<sup>4</sup> John xv. 22.

all, who have heard the preaching of the Gospel, are bound to *believe* in Christ as our *Redeemer*, and to *obey* Him as our *Lawgiver*; and whoever presumes to deny Him this homage will suffer eternal punishment for the neglect of his duty.

33. I observe, secondly, that the *Christian Church* is obliged to its sacred institutions; viz. to preach the Word, to administer the Sacraments, to ordain a ministry, and to exercise the power of the keys, as well of knowledge as of power, in every act that *essentially* appertains to them, according to the institution of Christ and His Apostles; so that it is *not lawful* for the *Church*, much less for any particular person or congregation, to diminish, or to change them; but the *outward circumstances* of those sacred institutions are free, so that any *particular Church* may determine of them, accordingly as the nature of *time, place, and custom* of the people of God, and their *edification*, shall require.

34. In the third place I observe, that the *moral* precepts of the *New Testament* are the *same in substance* with those of the *Old*; and both are to be reduced to the law of nature contained in the Ten Commandments of the decalogue, as all *real entities* are reducible to the ten *predicaments*. But the precepts of *Christ* in the new law (as the holy fathers of the Church everywhere confess) are far more excellent than the commands of *Moses* in the old; not only because they are proposed in a more clear and distinct manner, but as they rise higher, and advance a Christian to a more eminent degree of perfection; and this under the most effectual inducements, the *example* of Christ encouraging him on one hand, and the infinite joys and rewards of heaven on the other. And this clearly appears in those two great duties of a Christian commanded in the *new law*, of *loving our enemies, and taking up the cross*. These injunctions are not to be understood (as some men

dream) as if they were designed only to raise us to a *higher perfection of life*, and were proposed under the promise of a more ample reward, without deriving guilt upon any one for the breach of them, except such as had bound themselves by a vow to observe them ; but they are *express commands properly* so called, *and universally obligatory* ; so that whoever professes the faith and the name of *Christ* is bound to obey them, under the guilt of the most grievous sin of apostasy, and the punishment of eternal damnation, unless he repent. And thus I have delivered my thoughts upon the *second light* of the mind.

35. It remains now, that I say something of the *light acquired* ; which is no more than a certain effect or increase of that *light* (either of Nature or Revelation) that was before in the mind, and which advances it to a higher degree of brightness ; as when the Divine will, of which we have knowledge (either by the inward impression of the light of nature, or by the outward revelation of the Scriptures) is yet improved by our own meditation, or by the instruction of others, in a more eminent and illustrious manner. This is done by the assistance of *argument* or *discourse*, and by means of the *authority*, that is, the judgment and practice, of the *Church*. My time at present will not allow me to enter upon these subjects, nor indeed is it necessary that much should be said of them. I observe only, that there are certain *particular propositions* relating to *morals*, that are deduced by reason or discourse from the *law* of Nature, for the use of the *Conscience*. And here, unless we proceed with order, we shall, as I have shown above, be liable to mistake. We are therefore to be careful, that in every part of our argument, the process be regular, in order that what follows may depend justly upon what goes before, and the consequence be necessary ; lest the Conscience being under a *false guide*,

should dictate to the Will what it ought not. We are to be equally cautious, lest we fall into error in *applying* Holy Scripture for the use of the Conscience. We shall inevitably err in this respect unless we pay a just regard to *reason* and to *authority*. The *Romanists*, contending for the inviolable *authority* of their own Church, pay too little deference to *reason*. The *Socinians*, on the contrary, reject all *authority*, and measure faith by reason alone, and thus attain the end of "being rationally mad." The error is the same on both sides, though it misleads in different<sup>5</sup> directions; and there is no way to escape these dangerous precipices, but by prudence and judgment to reconcile Authority with Reason, and Reason with Authority, and to unite them both together.

36. What office belongs severally to these, and what part they bear in rightly explaining and applying Holy Scripture, it is not properly my business at this time to determine. I will only observe, that the use of Reason, in relation to the Scriptures, is to *compare texts*, especially such as seem to have a mutual relation, or a remarkable opposition to one another; and likewise to deduce suitable inferences and *doctrines*, the propriety and the design of the words being first found out; but we are always to remember, that *reason* has more to do with *practice* than with the matters of *faith*, because the mysteries of faith lie more above the reach of a natural understanding, than the common offices of human life.

37. The principal use of *authority* is to repel the boldness of heretics and impostors, who cast a cloud of obscurity over the clearest testimonies of Scripture, and distinguish and subtilize away the evidence of them. And there is no method more effectual of stopping their mouths, or at least of preserving yourselves from the

<sup>5</sup> Horat. 2 Sat. iii. 50.

poison of their principles, than to oppose their quibbling and sophistry with the judgment and practice (not of one or of a few men, not of one century or of one corner of the Church, but) of the *whole Church universal*, in all places and times, spread over the face of the earth. This was the course taken by *Irenæus, Tertullian, Vincentius*, and the ancient champions of our Faith, who answered their adversaries with *the right of prescription*, or *demurrer*, and thus conferred great benefits on Christendom, as the event has shown. But these particulars require a more exact consideration, which, out of regard for your time and my own, I am constrained to omit, and also to defer to another opportunity what I have to offer concerning *the obligation of human laws*.

## THE FIFTH PRELECTION;

WHICH TREATS OF THE GENERAL OBLIGATION OF  
HUMAN LAWS.

*Wherefore ye must needs be subject, not only for wrath, but also for Conscience sake.*—ROM. xiii. 5.

I. I BEGAN, you may remember, last term, to treat of the *passive* obligation of the Conscience; and having detected and rejected those subterfuges by which the majority of mankind shelter themselves, as if they had sufficiently secured the peace of their Conscience, with respect to the actions of their lives, either past or to come, by appealing to the *goodness of their intention*, or to the *example* or *judgment* of others, I proceeded so far as to set forth the proper and *adequate rule of the Conscience*, to which it is obliged simply and absolutely to conform itself.

Upon this subject I observed, first, that God alone has an absolute and direct command over the Consciences of men.

Secondly, that the next and immediate rule of the Conscience is the *light* which is then present to the mind, or (which is the same) <sup>1</sup> *the ultimate judgment of the practical understanding*.

Thirdly, that the written Word of God is the *supreme* and primary, but not the *adequate, rule* of the Conscience.

Fourthly, that the proper and *adequate* rule of the

<sup>1</sup> Ἡ τελευταία πρότασις κυρία τῶν πράξεων. Arist. Ethic. vii. 5.



Conscience is *the Will of God howsoever revealed*, or (which is the same thing) *the law imposed by God upon a rational creature.*

And that we might more distinctly understand what the Will of God is, I made it appear that Almighty God has been pleased to discover His will to mankind by three several manifestations.

First, by the *Law of Nature*, which consists of certain *practical* principles that are self-evident, and is the \* *Law of God written in our hearts*, and impressed upon the mind, as it were, by an *inward light*, and connatural with it.

Secondly, by the *written Word of God*, contained in the sacred volumes of both Testaments; which is an *outward light* supernaturally revealed, and infused into us.

Thirdly, by a *knowledge* arising from both the former, either by our own *reflection* or the *instruction* of others; which is a sort of *acquired* light, introduced chiefly by the help of *reason* and *discourse*, and by the *authority* (that is, the judgment and practice) of the Catholic Church.

2. I gave you to understand likewise (in order to make way for what was to follow) that, besides the law of God, which absolutely, and by its own proper virtue, obliges the Consciences of all men, and this in the highest degree, there are other things that carry an obligation with them, but inferior to the Divine Law, and bind the Conscience not *primarily*, and by themselves, but *secondarily*, and by consequence; not absolutely, but relatively; not by their own power, but by virtue of some Divine precept or institution on which they are founded. These things, though they agree in this, that whatever power of obliging they have, is derived from the Divine Law (for the *first* in every kind is the *cause* of the rest;

\* Rom. ii. 15.

nor would the Law of God be, as I have observed, the *adequate* rule of the Conscience, if any thing else should oblige in any other way than by its influence), yet they differ in themselves not only in *species*, by reason of the diversity of the *matter*, but in *degree* likewise, as to the power of obliging. Some of these are constantly binding, and either receive their obligation from the power of another (such are Human Laws, the commands of Parents, Masters, and the like); or their obligation arises from the free choice of the will, as vows, oaths, contracts, promises, &c. Others oblige only by *accident*, and cursorily as it were, as the exigence of time, place, and other circumstances require. Of this nature is the law, or *reason, of avoiding scandal or offence.*

3. The method I propose requires that I should begin with the first class of these things, namely, with *Human Laws*. And what I have to say on the extent of their obligatory power may properly be reduced to these two questions,—

First, *Whether Human Laws oblige the Conscience?*

Secondly, *How far they are obligatory?*

The determination of most of the particular cases will fall chiefly under the last inquiry, and, God willing, shall be explained in the course of these Prelections.

At present I shall dwell only upon the first, namely, *Whether Human Laws oblige the Conscience?*

The *subject* of this question will give us little trouble. The *Lex* of the *Latins* (whether it was called so from <sup>3</sup> *legendo*, i. e. from *choosing* in an active sense, as *Cicero* supposed, because a lawgiver should *make choice* of what he judges most useful for the community; or, as others will have it, from *legendo* in a passive acceptation, because laws, as soon as they were made, were engraved in tables of brass, or otherwise inscribed, and fixed upon

<sup>3</sup> “Delectûs vim in lege ponimus.” Cic. de Legib. i. 19.

pillars, to be *read* by the people ;<sup>4</sup> or lastly, as others derive it, from <sup>5</sup> *ligando*, i.e. from *binding* the subject to obedience) signifies in general no more than a *rule of action laid upon the subject by a superior that has full commission and authority*. We call them *Human Laws* to distinguish them from *Divine* ; for as those laws are called *Divine* which are constituted by the immediate authority of God Himself, whether they are natural or positive ; so those are said to be *Human*, which (though they derive their authority from God, yet) are directly imposed upon the subject by the commands of men.

4. A Human Law is thus defined by *Aquinas*, <sup>6</sup> *A rational institution, for the common good, promulgated by him who has the care of the public*. There are other definitions that differ in words, yet in effect they are the same with this, which is perfectly suitable to the nature of a *public law*, in which sense the word is commonly understood ; for (as we usually say) <sup>7</sup> *a word of an analogous meaning, when it is placed by itself, is presumed to stand for that which is the most remarkable thing signified by it*. But in the question before us, and as far as our design is concerned under the name of Human Laws, not only the public laws of communities (which are principally intended) are to be understood, but the particular commands of parents, masters, magistrates, and all other superiors, imposed upon their children, their servants, or their subjects. For though there be a difference between a *law* properly so called and a *command*, the one being an injunction of

<sup>4</sup> *Aquinas* Prim. Sec. Qu. xc. Art. quotes *Isidore* for this etymology (*Jacobson*).

<sup>5</sup> *Aquin.* 1, 2. Qu. xc. Art. 16. *Biel.* 3. *Dist.* 3. 37. Art. 1.

<sup>6</sup> “*Lex humana est rationis ordinatio ad bonum commune, ab eo, qui curam communitatis habet, promulgata.*” 1, 2. *Quæ.* xc. Art. 4.

<sup>7</sup> “*Analogum per se positum pro famosiore significato stare præsumitur.*”

a *private* person that has no more than a private authority, the other of a *public* person invested with a public power, yet in other respects they are generally equal. Certainly as to the effect and force of obliging, which we are now speaking of, since it appears from the tenth verse of this chapter that *all lawful power*, whatsoever it be, not only public (which alone was in the Apostle's mind), but also private, is *the ordinance of God*, and consequently that the command of a father is as much a rule of action to the son as the law of a ruler is to the subject; when I speak of the obligation of Human Laws, I shall include the commands of *private* persons as well as the *public* laws of communities, and I shall comprise the household commands of *families*, and injunctions of the same nature, as well as the constitutions of *political bodies*; at least as far as the reason of the *analogy* will bear. And so much for the *subject* of the question.

5. The *predicate* is the *obligation of the Conscience*. Now *what* the *Conscience* is, and *what* is generally intended by an *obligation*, has been abundantly<sup>8</sup> explained, so that I have no occasion to repeat it in this place. When we say that *the law obliges*, we mean no more than it imposes upon the subject a necessity of obedience. And here we are to observe, first, that a law, as such, carries with it a double influence, *directive* and *obligatory*; the one *informs* the subject *what* the will of his superior is, and shows him his duty, whence it is called a *canon* or *rule*, the other *exact*s obedience from the subject (by which it differs from *counsel* or *advice*) upon pain of sin; sin in itself being nothing else than a violation of the law we ought to follow, as *monsters* (by receding from the common Law of Nature) are called *sins of Nature*.

You are to observe, secondly, that this obligatory force and effect of a law is founded upon the will and power of

<sup>8</sup> Prelection the First, and the 11th Section of the First Prelection concerning the Obligation of Promissory Oaths.

the *lawgiver*; so that, properly speaking, it is not so much the *law* itself, as the intention and authority of the *lawgiver*, that, as an *efficient cause*, imposes an obligation upon the Conscience; yet it may be said, and it usually is, that a law obliges ultimately, i. e. as the *terminus* of obliging, and as an *exemplary cause*, because it is that thing to which a man is obliged, so as to work according to its direction, in the same manner as an *artist* is directed in his work by the *copy* before him.

Observe, lastly, that to oblige the Conscience, is so to bind a man to obedience under the penalty of *mortal sin* (as the schoolmen love to distinguish), that if he disobeys, he is not only liable to temporal punishment, either expressly fixed by the laws, or to be inflicted at the will of his superior, but he justly falls under the censure of his own Conscience for neglecting his duty, and by that means under the guilt of offending Almighty God.

6. The sense of the question therefore is, Whether *Human Laws* have a power to oblige the *Consciences* of men, upon whom they are imposed, *in the manner we have explained*? Among the Protestants *Calvin*<sup>9</sup> (at least as *Bellarmin*<sup>1</sup> charges him) *Beza*,<sup>2</sup> and some others deny it; as *Gerson* (and *Bellarmin* owns it himself), *Almain*, and (as some will have it) *Navarre* among the Papists. *Musculus*, *Ursin*, and other Protestants hold the question in the *affirmative*; as, among the Romanists, the *Jesuits*, and a large number of the *schoolmen*. Others distinguish upon it, as *David Paræus*,<sup>3</sup> and some more.

But it seems to me, if both parties were not transported violently with an excess of reaction, this controversy had long since been unheard of in the world. In disputes of this kind I often reflect upon what I read in *Aristotle*

<sup>9</sup> Inst. iii. 19, iv. 10.

<sup>1</sup> Bellarm. de Laic. iii. 19.

<sup>2</sup> In Ep. ad Rom. xiii. For reference to the works here cited see the notes of Bishop Jacobson and Dr. Whewell.

<sup>3</sup> Upon Rom. xiii.

when I was a young man, 'It is evident that the case is so, in some respects, and in others not so.' The philosopher argues in the same place, Whether *principles are contrary, whether there be infinity,*<sup>6</sup> &c. And says, that in questions of this nature (which is the proper meaning of his words)<sup>6</sup> there is more occasion for an *umpire* to reconcile both opinions, that differ more in appearance than reality, than for a judge to condemn the one and acquit the other. And this perhaps would be the end of many of those disputes which at present distract the Christian world, and are carried on with such bitterness of language, did not the prejudice and faction of polemics drown the spirit of peace and of charity. And even in the question before us (as far as I can judge by the little reading which hurry of business, infirmity of body, and the shortness of time would allow me), if both parties would give up their heat and passion, we may be reconciled in some measure to both opinions. Yet the *affirmative* (to speak freely) I take to be the safer side, more commodious for regulating our practice, more secure from the danger of error, and nearer the form of sound words and the sense of the Gospel. But to represent my sentiments to you upon this subject as distinctly as may be, I shall sum up the whole matter, as concisely and clearly as possible, in certain *conclusions*; and confirm my own opinion, where necessity requires, by proper arguments, and refute the objections that are usually offered.

7. The first conclusion is this: *Human Laws that are unjust do not oblige the Conscience to obedience.* A very plain case, provided only the words are rightly understood. But lest any one should misunderstand this proposition, we must observe that a law may several ways

<sup>4</sup> Δῆλον, ὅτι πῶς μὲν ἔστι, πῶς δὲ οὐ.

<sup>5</sup> Aristot. Nat. Auscult. i. 5. 2; i. 7. 2; iii. 5. 10.

<sup>6</sup> De Cælo i. 10.

be said to be unjust ; either with regard to the *end*, the *manner* or outward *circumstances*, the *matter* or *object* of it ; for there is a great deal of difference, whether a thing that is simply unjust be commanded, or what is probably not unjust in itself be *unjustly commanded*. The first kind of injustice *cancel*s all obligation, because there is a defect in the law itself in respect to the thing imposed upon the subject. But the obligation to obey is *not cancelled* by a defect which is from without, and *per accidens*, and is derived from the fault of the lawgiver. As suppose a ruler should by a law command an act that was not absolutely unlawful, or forbid what was not simply necessary, upon no other inducements than to gratify his sordid avarice, to indulge his lust of tyranny, ambition, or some other of his disordered passions ; yet whatever *pravity might be in the law with regard to the lawgiver, the subject would nevertheless be bound to obedience*. The reason is, because the injustice relates only to the *commander*, and has no relation to the *thing commanded* ; so that though *a prince could not without sin impose such a law, yet a subject may without sin obey the command* ; and whatever may be done without contracting a stain upon the Conscience, every subject (if he is so required) is *bound, by the duty of his obedience, to perform*. Let the ruler take good heed as to the design with which he imposes a law. I that am a subject will not inquire about that ; if he has done amiss, I have nothing to answer for ; but it will be imputed to me, if I am deficient in my duty, and do not obey him when I lawfully may.

8. Moreover, I make this addition, If a law, with respect to the *object* or the *matter*, should be unjust or oppressive (as if a heavier subsidy should be laid upon the subject than the exigencies of the State require), yet the obligation is not immediately cancelled. But here also a distinction is necessary ; for a thing may be said to be unjust, either as it is hard and uneasy to be borne,

or as it is *simply* unlawful. In the first sense, if a law commands what is grievous and difficult, yet if there be a possibility of performance, the defect lies wholly in the *lawgiver*, the subject is so far from being released from the obligation, that he sins if he does not obey; but in the latter case, if anything be enjoined that is not only burdensome to the subject, but likewise *vicious* and *immoral*, and the subject pays obedience, he involves himself equally in the guilt with the lawgiver; the one sins by *commanding* what is unlawful, and the other by *obeying*.

The drift of our *conclusion* therefore is, that whenever a law forbids what is so simply necessary that it cannot be omitted by the subject without sin, or commands what is so unjust that it cannot be obeyed without sin, that law does not lay any obligation upon the conscience.

9. The first reason is, because (as was observed at large in another <sup>1</sup> Prelection) an unlawful act imposes no obligation.

Secondly, because (as was shown in the same place) a *primary* obligation supersedes every subsequent one; so that a latter obligation cannot be induced contrary to the first; but a law that commands an unlawful act, as homicide, perjury, or sacrilege, or forbids a necessary duty, as the worship of God, obedience to rulers or parents, requires what is contrary to a *primary* obligation, by which the subject is *antecedently* bound, by virtue of a *Divine command*; and therefore such a law cannot bind the subject to obedience.

Thirdly, no man can be obliged to *contradictions*; but if such a law were obligatory upon the conscience, it would bind to the execution of that which the law of God at the same time commands us to avoid; and to do, and to omit to do, are certainly *contraries*.

<sup>1</sup> Prelection the Second, Of the Obligation of Oaths, Sect. 13.



A fourth reason is deduced from the *examples* of pious men, who were so instructed in the principles of their religion, that they, with a cheerful spirit, undertook and executed the most severe commands of Rulers, so long as they enjoined nothing vicious or *unlawful*. But if anything was imposed, though by the authority of a law, that was contrary to *faith* or *morality*, they bravely and openly refused to obey, and for the fear of God disregarded all the laws and injunctions of men. When the decree at *Babylon* commanded an universal adoration, and when the musical concert began, before the great <sup>8</sup> *golden image* which that most puissant monarch Nebuchadnezzar had set up, under penalty of the most cruel punishment for disobedience, the three *Hebrew youths* disavowed the obligation of that law, because a *sinful* act, the worship of an idol, was commanded by it. By a law of the *Persians* no petition was for some days to be asked of *any god or man*, save of the king of *Persia*; yet *Daniel* disobeyed the law, and <sup>9</sup> *prayed before his God*, as he did *aforetime*. And when *Peter* and *John* were commanded to *speak no more in the name of Jesus*, they replied boldly, *Whether it be right in the sight of God to hearken unto you more than unto God judge ye?*<sup>10</sup> The reason was, because the things forbidden were necessary duties, the worship of the true God, and the preaching of the gospel committed to their charge.

10. A second *Conclusion* is, that *A Human Law, prohibiting an Act simply Evil, as theft, adultery, sacrilege, or commanding what is lawful and necessary, as the Worship of God, a discharge of debts, obedience to parents, induces a new obligation upon the Conscience.*

The first Reason is, because a *proper* cause must have a *necessary* effect, unless it be obstructed by some other means. But to oblige, is so necessary an effect of a law,

<sup>8</sup> Dan. iii.<sup>9</sup> Dan. vi.<sup>10</sup> Acts iv. 19.

that some are of opinion, that the very word *Lex* or *Law* is derived from this *obligatory* quality; and nothing in this place seems to prevent this effect from necessarily following.

I argue secondly, because a law forbidding an act which is otherwise lawful, or commanding what is otherwise indifferent, is universally allowed to lay an obligation upon the Conscience; much more certainly, when it forbids what is unlawful, and commands what is necessary.

It may be alleged, in opposition to this, that *we are not to multiply essences without necessity*; for every man is bound by the Divine Law to do what is necessary, and to avoid what is unlawful; and therefore this obligation seems to exclude that which is derived from Human Laws as *superfluous*; as liquor in a full cask prevents the infusion of any more; and it seems that two obligations referring to the same thing, can no more bind the same Conscience, than two *accidents* of the same *species* be admitted into one subject.

I answer to this objection, that it is justly observed, that *a prior obligation bars a succeeding one*; and this argument has been of use to us, in confirming the *Conclusion* above; but this maxim is to be understood only of obligations that are *destructive* one of another, and whose effects are so *opposite* that, if you admit the one, the other must of necessity be excluded. But this does not hinder the *accession* of a subsequent obligation of the *same nature*, and consistent with the *first*. Nor are the comparisons just, which are produced; for the impediment that prevents a *full cask* from containing more liquor, does not arise from the *liquor*, but from the *incapacity* of the *vessel*, and the nature of *place*, which cannot possibly receive more than one body at

<sup>1</sup> Non esse multiplicanda entia sine necessitate.

once. But nothing hinders the admission of many *accidents* of the same *species* into one subject, provided they are *relative* and not *absolute*; for suppose *Socrates* had ten sons, he must consequently have ten *paternities*; for relations are always multiplied in proportion to the number of the *terms*; and so likewise are the obligations of Human Laws, as was observed before.

Since therefore every law in its own nature induces an obligation, as many laws as there are, so many obligations there will be, corresponding to them as to their proper *terms*. Nor is this *to multiply essences without necessity*; for as the number of causes increase, the effects must increase in the same proportion. And this is so far from being strange and incredible, that we daily experience something like it in *natural* events, and the common affairs of life. A man certainly may be tied to a pillar with *two or three cords*, as *St. Peter* was <sup>2</sup> *bound with two chains*; and we may unquestionably oblige ourselves to a duty afresh by a *vow*, an *oath*, or *promise*, notwithstanding the first obligation that lay upon us, by virtue of the *Divine Law*. Thus the Patriarch *Jacob* vowed that <sup>3</sup> *the Lord should be his God*. And *David* swore <sup>4</sup> *that he would keep the righteous Judgments of God*. And every Christian, upon his admission into the Church by *Baptism* bound himself by the *New Covenant*, to *believe in Christ*, to *renounce the Devil, the World, and the Flesh*; duties which he was certainly under an *antecedent* obligation to perform.

II. *Human Laws (whether they command things unlawful, necessary, or indifferent) if they are made by a person, or community, that has no lawful authority, lay no obligation upon the Conscience*; which I offer as a third *Conclusion*. As if a *Mayor* of this city should impose

<sup>2</sup> Acts xii. 6.

<sup>3</sup> Gen. xxviii. 21.

<sup>4</sup> Psalm cxix. 106.

laws upon this *University*, or if my neighbour should command my servants to yoke my oxen to bring in his harvest; or, if a company of rebels assembled in any county of *England* (as it happened in *Kett's insurrection* in *Norfolk*, in Edward the Sixth's reign, and frequently in other places) should demand contributions of the inhabitants, or by public declarations require assistance and submission from the people, which they had no right to, and compel them to obedience by arms and violence; though perhaps it would not be criminal in them to obey (if they were unable to resist) yet such commands oblige no man's *Conscience* to the observance of them; for injunctions of this nature carry only the <sup>6</sup>name of Laws, and are *equivocally* such, but they are downright usurpations; and an *equivocal* cause can no more induce an *effect*, than a sentence pronounced by a person who is *no judge* can determine the event of an action at law.

Besides, the force of obliging (as has been mentioned before) is not *effectively* derived from the law itself, but from the joint will and authority of the *Lawgiver*; and therefore, where that power is wanting, the proper efficient cause of the obligation is wanting also; and where there is *no cause, there can be no effect*. And this we may easily infer from the words of the *Apostle*<sup>6</sup> in the text before us, who deduces the necessity of obedience in the subject from the power of jurisdiction in the magistrate; from whence it is, that no man is bound to obey him who has no right to command.

12. If it be said that such a rabble of traitors as I have described, has a *power* to command, because they are able to support their laws by arms, and to extort obedience, I observe in answer, that the power we speak of, and upon which depends the obligation, is not what the

<sup>6</sup> Aquin. 1, 2, Qu. xcvi. Art. 4.

<sup>6</sup> Rom. xiii. 1—5.

Greeks understand by *might*, that is, *physical power* (or *force* [δύναμις], which is generally understood to be the sense of the word) by which the *stronger* is able to *compel* the *weaker* to obedience ; but what they call <sup>1</sup> *authority*, or a *lawful power by right*, which a superior enjoys by the Law of Nature or of Nations, or by a civil claim, and administers over those he commands. And this *lawful authority* (ἐξουσία) the Apostle so earnestly insists upon in the argument before us, that he expressly names it *five* times within the compass of *three* verses ; but of the other notion of *power*, δύναμις, or *physical force*, he makes no mention at all.

13. You may say, perhaps, that although they who ruled as Emperors at *Rome* in the time of the Apostles obtained the Empire neither by a Right of Inheritance, nor by the free Suffrage of the people, nor any lawful claim, but by force or treachery, or by the tumult of the soldiers, yet the Apostle emphatically ascribes *authority* to them as to *lawful* magistrates, and imposes a necessity of obedience upon the subject, not only for *wrath*, that is, for fear of punishment, but for *Conscience sake*. I candidly confess, that after the dissolution of the *Roman Republic*, those Emperors, who immediately succeeded, did not rise to the Empire by the best title, yet it must be allowed, that they were invested with the *Right of the Sword*, and had a *lawful Power*, to which every *Roman* was obliged to submit ; for there was no other single person that could lay claim to this Power as belonging to him by a *better Right*. The Senate and the People, who had held for many ages the jurisdiction in their own hands, had receded from it through fear or compliance, and acknowledged as lawful princes those who came to the government by the *worst means*. This being the case (as it certainly was), there could not be the least scruple

<sup>1</sup> Ἐξουσία.

about the necessity of obedience. But where the case is dubious, it is not so easy to resolve the duty of a Christian, how far he is bound in the *court of Conscience* to fall in with the times, and to comply with the present posture of affairs, and how far he is obliged to obey the laws, declarations, and other orders of a prince, who is *in possession by force*, and has not (in his judgment at least) any rightful title to command. In a question of this nature, it is somewhat difficult to pronounce an opinion on the obedience of the subject; and a wise man ought to weigh the circumstances very exactly, before he determines upon a matter of so great importance.

14. I shall therefore conclude nothing positively upon this question; but lest I should frustrate your expectation by bringing a question upon the stage, and passing it by without giving my opinion, I shall briefly declare what seems to me most agreeable to reason.<sup>8</sup>

And first; a person that obtains the chief authority in a city, though he may have procured it by the *worst of means*, yet he is to be received by the citizens as a *lawful magistrate*, and they are obliged in Conscience to obey him as such, unless there be a just reason to the contrary; and no reason can bear them out in their disobedience, but a certainty, or a strong probability at least, that *another* person has a better and more lawful title to the magistracy. But if this cannot be urged, they cannot in Conscience deny obedience to him *in possession*; and indeed, it does not, *ordinarily*, belong to citizens to scrutinize too narrowly the right of the *possessor*; it seems sufficient to secure their Conscience, that he is in possession, and that no one, as far as they know, has a better title. And to justify this, beside the examples of *Roman Emperors*, who came to the Empire by wrong and oppres-

<sup>8</sup> On this very important question, see Bishop Sanderson's "Cases of Conscience," *Case of the Use of the Liturgy, or Case of Submission to Usurpers*, vol. v. p. 38, ed. Jacobson.

sion, we have almost the universal history of the *Kings of Israel*; most of whom, as they obtained the sceptre without the least pretext of *Right*, but generally by violence and injustice (the *royal line* being utterly extinguished, and consequently there being no claim of succession and inheritance), so they exercised it with full power and authority; and the Israelites obeyed them, as if they had attained the monarchy by the best title; and the people are so far from being blamed for their subjection, that right reason seemed to persuade the necessity of it. For the safety of the public required somebody at the head of the administration; and the subject can by no means provide for his own security, unless that right, than which there is none better, be allowed to be the best; and by the Law of Nations, things which belong to nobody else, pass into the dominion of the possessor.

15. In an *hereditary Kingdom*, where the title is disputed by two or more, the succession being in suspense, and to be decided by the sword, or by treaty, it becomes a good subject to obey him as a *lawful prince*, who is *in possession* of the Empire. Examples of such a case often occur in history. But the most remarkable are the differences that happened between the competitors for the crown of *Portugal*, after the death of king *Sebastian*; the disputes in *Scotland* (at least six) after the death of *Alexander*; and the sharp and lasting struggle between the two noble houses of *York* and *Lancaster* for the succession in this Kingdom. By the general consent of the whole world, the right always favours him in possession; and in contests of this nature, that notable maxim in *law* is still observed, <sup>9</sup> *In doubtful Cases, the best claim is that of the possessor.*

16. But suppose the following case; when a *lawful prince* and *heir* to the crown is expelled by *force* of arms,

<sup>9</sup> In rebus dubiis melior est conditio possidentis.

or oppressed, so that he cannot prosecute his right, and another in his lifetime violently seizes the reins of Government, and, though he be really an *usurper*, rules as king ; so that the title is no longer *dubious*, but there is a *plain wrong* and usurpation, How must a good subject behave himself in this case, who perhaps has *sworn* allegiance to the lawful heir? or if he has not, still lies under the same obligation to obedience? I say, in the third place, it seems to me that he is not only permitted to obey the laws and commands of him who rules *de facto* (if they are not impious and unjust), but the nature of things may be, and oftentimes is, so disposed, that if he does not, he may be thought deficient in his duty. But it may be urged, Have you not laid down before, that a law made by an *unlawful* authority lays no obligation upon the Conscience? Yes, very true ; but there is no contradiction in these propositions ; for a subject may be obliged to that which is provided by the law, and yet not be obliged to the law itself, but to *himself*, and to his *country*. A law which is truly and properly such, naturally induces an obligation that follows it as necessarily as an effect does its cause ; but a law made by an *unlawful* authority, is not properly, but equivocally a law, and consequently has no force of obliging. Whatever obligation therefore, in this case lies upon the subject, is derived from *another cause*, and not from the law itself, which binds merely by an outward and accidental influence ; as if a professor of *music* should act the part of an *architect*.

17. You may ask, if this obligation on the subject arises not from the Law, what else can be the cause of it? I observe that piety and prudence oblige us not only to attend to the strict *legality* of actions, but also to consider what is decorous for ourselves and beneficial to others. A good subject may be obliged to something for the welfare of his country or himself, to which other-



wise *of right* he is not obliged ; and therefore the obligation proceeds from the duty which is incumbent upon a Man, as he is a *Debtor* to his *country* and to *himself*. A man of prudence and honesty will try to provide for the good of himself and his affairs, and will attend to their present circumstances. Every man ought to endeavour by all lawful and honourable means to defend himself and his life, so that he may live quietly and securely in the possession of his lands, houses, and goods, and avoid the displeasure of those who can arbitrarily dispossess him of his life and fortune. This is what we know by the immediate dictates of nature, and is confirmed by the general consent of mankind. Hence arises the necessity of obedience, which the Apostle does not so much insist upon as take for granted, because it is implanted in every man by the force of *Nature*; <sup>1</sup>*Not only for wrath*, as if it were madness to provoke him who has the power of the Sword, and fall under his anger without any provocation. It therefore concerns a subject, for his own safety, to suffer some grievances, to obey the laws, and (as far as he can without sin) to *submit to the Powers that be* ; and by that means to make the yoke, which he cannot shake off, to become more tolerable and easy to be borne.

18. But a man, who reflects seriously upon the blessings and advantages of Government, must confess that he lies under a much stronger obligation to obedience, in that he is likewise a *debtor* to his *Country*. And, indeed, St. *Chrysostom* understood the words of the Apostle *for Conscience sake*, as if he designedly referred to that benefit of protection which a subject enjoys under a civil administration. As if he had said, "Since every subject must be sensible of the advantages he receives from Civil Government, he is bound by gratitude to repay a

<sup>1</sup> Rom. xiii. 5.

due obedience to the higher powers, lest he should be thought *insensible to the kindness of his Benefactor*," as St. *Chrysostom* speaks; a sense very foreign to the design of the Apostle (as shall appear in its place), but, otherwise, perhaps not unsafe nor inconvenient. I must confess, indeed, with the historian, that *it seldom happens that a prince, who obtained the Supreme Authority by oppression and violence, ever exercises it with equity and justice*; for the same means seem necessary to secure him in the Throne, as those by which he raised himself to it, and one wickedness is to be supported by another. Yet we have the examples of *Hiero the Sicilian*, of *Edgar King of England*, and many others, who acquired the sceptre not by the best means, and yet governed with moderation and prudence.

But however, let a prince use his authority as he pleases, he can never *abuse* it so far as not to be "*the Minister of God for good*;" for there can be no *Tyranny* so great which does not at least retain some show of a just Administration, and in some measure contribute to the safety and support of human society, as *Calvin* well comments upon the Text. Since, therefore, the enjoyment of our estates, and the fact that we live secure from plunder, rapine, and bloodshed, nay, that we live at all, is due to the higher Powers (which afford us protection and redress against the passions, the fury and oppression, of wicked and unconscionable men), it is the most equitable thing in nature, that some acknowledgments should be made for such valuable privileges. That *commutative* form of the Ancients, (the best standard of right and equity) "*Give and Take*" requires it of us. And truly it is the part of a most perverse mind to desire to live under an authority which it will not obey, and to

<sup>2</sup> "Nemo unquam imperium flagitio quæsitum bonis artibus exercuit." Tacit. Hist. i. 30.

<sup>3</sup> Δὸς τὶ καὶ, λάβε τὶ.

resist that *Power*, under whose *protection* it enjoys all that it has.

19. Besides, since we are not born for ourselves, but for the *public* benefit of mankind, we are under another necessity of obeying the higher powers, by whatever means they obtained dominion. And hence we may, in some measure, limit and determine the obedience that a good subject is bound in Conscience to pay to a prince who unjustly obtained possession; for whatever is to be done in peculiar reference to an end, may lawfully be done as far as appears necessary to the attainment of that end. The *end* of Civil Government, and of the obedience due to it, is the tranquillity and safety of Human Society.<sup>4</sup> As far, therefore, as the public welfare requires, so far a good subject, who is a member of the public, is obliged to obey the laws of a ruler *de facto*.

Now there are three things of the utmost importance towards securing the happiness of human society,—

The first, the defence of our country against foreign force and attempts of enemies.

The second, the administration of laws, and the due dispensing of rewards and punishments, which is the proper office of *distributive* justice.

The third, the care of commerce and trade, of buying, selling, exchanging, and all manner of contracts, which belongs to that sort of justice which we call *commutative*.

The safety of mankind in general is so closely united in these three, that if they are not carefully attended to, the course of things must immediately swerve and run to ruin; every place will be filled with plunder, bloodshed, fraud, and oppression, and the lives of the best subjects, their wives and fortunes will be an easy prey and spoil to the more powerful. So that, to obviate these calamities, and repel the insolence of wicked men, the

<sup>4</sup> 1 Tim. ii. 2.

only remedy is for a good subject to obey the laws (as far as they conduce to the *safety* of the public) of him by whose sword and authority he is defended from violence and oppression.

20. But (to avoid any misconstruction in this case) we must bear in mind, that a subject is not bound to this obedience any farther than the laws of *gratitude* and the *public welfare* require; he is not obliged to obey the laws of an *usurper* as if they induced an obligation upon the Conscience, by virtue of any right in the *commander*, but only, as *Aquinas*<sup>5</sup> justly observes, to avoid *offence*, and the *disturbance* of the public; in which case he says, we are to *recede from our own right*; and he proves it from the words of Christ, *“If any man will sue thee at the law, and take away thy coat, let him have thy cloke also; and whosoever shall compel thee to go a mile, go with him twain.* A subject therefore may, and ought for his own security, much more for the tranquillity of the public, to *recede from his own right*, and obey him who has no lawful power to command; but still with this strict caution and reserve, that, by receding from his own, he does not violate the right of another. The faithful *Abraham* behaved himself with great justice and wisdom, when he gave the King of *Sodom*<sup>7</sup> his share of the spoils, which fell to him by the right of war, upon the overthrow of the five kings; but yet he justly observed to pay the *tithes* to the *priest*, and to distribute a proportion to his *three Associates*, who engaged with him against his enemies. So likewise a subject, in paying obedience to an *usurper*, must take care not to prejudice the right of the *lawful heir*, or violate the fealty that he owes to him.

21. But it may be said that this seems to be impracticable; because in submitting to the commands of an

<sup>5</sup> 1 a. 2 a. Quæst. xcvi. Art. 4.

<sup>6</sup> Matt. v. 40, 41.

<sup>7</sup> Gen. xiv.

*usurper*, he must unavoidably betray his allegiance to his *rightful* Sovereign. <sup>8</sup> *No man can serve two masters*, of contrary pretensions, whose counsels, endeavours, and policies directly oppose and tend to the destruction of each other. This, however, upon a fair statement of the case, is so far from being impossible, that we have no reason to suppose that obedience of this nature paid to an usurper *in possession* (if the subject keeps within the bounds we have prescribed) can in the least be resented by the *lawful* heir ; so far from it, that we may presume it is done with his full consent ; for by such obedience a subject is not to be supposed to gratify the *usurper*, but to *serve the community*, and to consult the good of his country, whose welfare and happiness ought to be as dear to the *true heir*, as to the *unjust* possessor ; nay, the heir *de jure* should be more concerned for the peace of his kingdom, because, we may presume, a *true father* of his country is more desirous of its happiness, than one who has seized the helm by violence, and who rules by force over the subjects of another. The affections of a *mother* are stronger and more ardent toward her children than those of a *stepmother* : as we find in that remarkable dispute before King *Solomon*, the *natural* mother, who knew the child to be her <sup>9</sup> own, would have it preserved upon any terms, and had rather resign it to another, even an *enemy*, than that it should perish. So we may suppose that a *lawful* heir has a greater care to secure the happiness of his people (whom he still acknowledges for his own, though under *another yoke*, and whom he confidently hopes will be profitable to him hereafter) than one who unjustly usurped the throne, and probably is more solicitous to secure himself in his *new power*, than to settle the peace and welfare of his subjects ; and therefore the lawful heir had rather they

<sup>8</sup> Matt. vi. 24.<sup>9</sup> 1 Kings iii. 26.

should modestly accommodate themselves to the present posture of affairs, than run into certain ruin by unseasonably opposing an *usurper*, who has it in his power to *destroy* them. And so you have my opinion upon this difficult and weighty question, wherein I am so far from giving a positive determination, that I am willing to be better informed, and ready, upon good grounds, to embrace another persuasion.

22. We come now to the fourth conclusion. *Human laws, concerning things that are not unlawful, do directly, and of themselves, in general, lay an obligation upon the Conscience.* That is, this general precept, that subjects are bound to obey the laws of men that are duly made, is directly obligatory. And *Calvin*<sup>1</sup> himself allows this, who is no friend to human constitutions; and though he advises us to distinguish between the *general* and *special*, and denies that they oblige in *particular*, yet he owns that they have a *general* obligation. And the reason is plain; for this general precept refers to the *eternal* law of God, which directly, by itself, and not by consequence, induces an obligation upon the Conscience. The light of nature informs us that peace and order, which are the very soul of government and human society, cannot possibly subsist without obedience to laws that are rightly constituted; and we are commanded by Scripture to submit ourselves to those whom God has set over us, to obey the Higher Powers, and not to resist or withhold our submission, under pretence that they are mere men and creatures of the same mould with ourselves, because they are <sup>2</sup> *an ordinance of man* derived from the same mortal stock, and subject to the same passions, misfortunes, failings and accidents with ourselves. But rather we should consider that they are set over us with a *delegated power by Almighty God*, as His Vicegerents

<sup>1</sup> 4 Instit. x. sect. 5.

<sup>2</sup> 1 Pet. ii. 13.

here below, Who thought them worthy of the honour of His own Name, which He has communicated to them as to a sort of visible and mortal deities, <sup>3</sup>“*I said ye are Gods;*” and therefore it is our duty to reverence and serve them with reverential subjection and obedience, though not for their own sake, as they are men like ourselves, and made of no better clay than the rest of mankind, yet out of respect to their *Divine Original*, as they are princes *ordained by God* to move in a sphere above other mortals, and in some measure admitted into a share of the *Divine* authority. We should obey them *for the Lord's sake*, and consequently, as our Apostle expresses it, *for Conscience sake*.

23. The fifth Conclusion. *Human Laws that are rightly constituted, do oblige the Conscience of the subject, even in particular; though not directly and by themselves, yet by consequence, by the general authority of the Divine Law.* I say, Laws that are *rightly constituted*, that is, with relation to the efficient cause, such as are made by a lawful Power, and with relation to their matter, such as command nothing unlawful, base, or unbecoming, or contrary to the duty of a Christian; for I have observed before, that Laws which err in any of these respects have no force to oblige.

I say farther, that they bind *in particular*, that is, to a particular determination in things of a middle nature, and in other cases; as what, and how much, tribute is to be paid; what merchandize is lawful, or not, to be exported; what habits are suitable to such and such degrees in the university; what statutes may be dispensed with, and what not, &c.

I observe again, that they do *not oblige directly, and of themselves*; and I prove this, first, *because God is the sole Lawgiver*, who has a proper and immediate authority

<sup>3</sup> Psalm lxxxii. 6.

*over the Consciences of men ; there is one Lawgiver who is able to save and to destroy.*

But in matters of a middle and indifferent nature (which are generally the subject of Human Laws) we suppose that God made no law in particular, but referred them to the arbitration of those who are His *Vicegerents* upon earth.

Secondly, nothing obliges directly or *per se* but what binds by reason of the matter as an *inward* cause, without respect to any outward cause, the efficient or the final ; that is, but what would oblige of itself, were it not commanded by a Human Law. But since things indifferent, and of a middle state, determined by a particular and positive Human Law, are of such a nature, that *before* the determination of them they may be freely done or left undone, they lay no obligation in respect of the *matter*, and therefore they do not bind *of themselves*.

I observe, lastly, that Human Laws do oblige in particular, *by consequence*, i. e. by the general authority of the Divine Law. But because the hinge of the whole controversy turns as it were upon this point, I shall propose a conclusion (which I shall afterwards confirm by many arguments) more plainly, and at large in this form, *the positive laws of men that are rightly and lawfully made, and contain particular determinations about things indifferent, which were perfectly free before they were so determined, do, by virtue of the Divine Command which binds us to obey those whom God has set over us, lay such a necessity of obedience upon the Conscience of subjects, that they are bound to submit to the said laws, upon pain of mortal sin, and offending Almighty God, and of suffering the stings and torments of their own Conscience for their disobedience.*

24. This conclusion is confirmed by several arguments ; and the first shall be taken from the text before us, *Wherefore ye must needs be subject, not only for Wrath,*



*but also for Conscience sake.* The words in themselves are plain enough. The Apostle, in the preceding verses, somewhat largely insists upon the necessity of Christian subjection, and recommends it upon two several accounts, namely, from the institution and ordinance of God, in the two first verses, and in the two following, from the fear of human punishment. In this fifth verse, as it were by way of recapitulation, he briefly sums up both arguments, and (as is usual in Scripture) by inverting the order, he begins his repetition from the last. As if he had said, "Whether it be from fear of punishment, or from conscience of duty, ye are of necessity bound to obedience. If you despise the power and authority of the laws, and commit evil, consider that the magistrate set over you is the minister of God, a severe revenger of neglected duty, and prepared to draw the sword (which he bears by Divine commission) to inflict temporal punishment due to the violators of his laws. But if this makes no impression upon you, because it is possible to escape the arm of the magistrate; yet be sure that God is a remembrancer of good and evil,<sup>4</sup> and stand in awe of that just Judge. Be afraid of your own Consciences, those bitter accusers, uncorrupt witnesses, and importunate tormentors; them you can never avoid by concealment, or elude by stratagem."

From the scope, therefore, of this text, we may argue thus: Those things that affect and hurt the Conscience when they are violated, do certainly lay an obligation upon it, because all uneasiness of the Conscience proceeds from the sense of an obligation, as effects naturally follow their causes. But Human Laws, when they are violated, leave a remorse upon the Conscience; for this is the express sense of the words, *ye must needs be subject for Conscience sake.* You cannot secure a quiet and

<sup>4</sup> "At sperate Deum memorem fandi atque nefandi," Virg. *Æn.* i. 543.

easy Conscience, but by subjection. Therefore Human Laws do oblige the Conscience.

25. In order to destroy the force of this argument, some understand the Conscience in another sense, and defend their opinion chiefly by the authority of *Chrysostom*; as if it signified no more in this place than a *consciousness* of *benefits*, which a subject derives from civil government; an acceptation very piously designed, which I have mentioned and approved of before; but not natural or genuine in this passage, upon many accounts. And first, *Chrysostom*, among the ancients, is almost singular in his opinion, which scarce one of the many interpreters accept, except *Æcumenius* and *Theophylact*, who so continually follow the steps of *Chrysostom*, that they are not to be admitted to increase the number of authorities; so that all three of them carry the weight only of a single testimony. Secondly, we never find the word used in the sense of *Chrysostom*, either in the writings of *St. Paul*, or any other part of the Scriptures. Thirdly, it is plain, that our Apostle designed to insist upon an argument to influence the minds of men, which should have a greater force upon them than the fear of temporal punishment; and certainly he did it more effectually, by terrifying them with the dread of *offending God*, than by recommending to them a sense of *benefits* arising from the *government of men*. Lastly, *St. Paul*, by a short repetition of the reasons which he had before stated, designed to conclude what he had to say upon Christian subjection. Now in the two first verses of this chapter, he draws his argument not from a consciousness of benefits, but from a conviction of duty.

26. The second reason follows from the use and end of all laws. That laws should be enacted and observed, is absolutely necessary to secure the peace and public tranquillity of societies; otherwise there would be no

certain rule of contracts, no standard of mutual confidence and political justice, which are the firmest supports of cities and public bodies ; for the law of God, natural and revealed, though by themselves they are both perfect in their kind, and in conjunction contain the particular principles of a supernatural faith, and the general rules of practice, suited to all the parts of human life, yet neither of them descends to *those particulars*, that may be, and generally are, necessary to preserve the peace and order of cities and governments. For instance, the law of reason, which is the same with the law of nature, informs us—and the Scripture likewise in the next verse of this chapter—teaches, that *tribute is to be paid* for the maintenance of princes, to defray the charge of wars, and for other public uses ; but unless it be determined by law, *how much is to be paid*, and in what proportion, *by whom*, and in *what space of time*, and unless other details are specified, the payment will miscarry, or will come too late, or will be insufficient to answer the exigencies of the state. If it be said, that by this argument we prove indeed the necessity of laws, but this has no force in defining the obligation of them : this I confess, if things would rest here. But when we consider the propensity of human nature to rush on headlong to <sup>6</sup> forbidden wickedness, and how bold men are to endure anything, and how insufficient the passion of fear is, if there be no sense of religion, to confine mankind within the bounds of duty, it will easily appear, how wisely Almighty God, the most prudent Disposer of things, has provided for human affairs, when He infused into the Consciences of men such a *religious reverence* for laws as should grow up together with the very use of their reason. And hence it is, that among the heathens, who had no notion of

<sup>6</sup> Horat. 1 Carm. iii. 25.

the true God, there was scarce one of the old lawgivers, but generally pretended that their laws were delivered to them by the *inspiration* of a certain *deity*. To prove this, I have no occasion to instance the examples of *Numa, Zaleucus, Lycurgus*, and many others recorded in history, since they are so commonly known.

27. Thirdly, what we are obliged to do for *the Lord's sake*, we are certainly bound in *Conscience* to perform; but we are obliged to submit to Human Laws that are rightly constituted (that is, that are made by a supreme power, or by such as receive authority from it) *for the Lord's sake*. *\*Submit yourselves to every ordinance of man* (says St. Peter) *for the Lord's sake, whether it be to the king as supreme* (which sufficiently explains what St. Paul means by the *higher powers*, in the first verse of this chapter), *or unto governors, as unto them that are sent by him*. And that these words (*for the Lord's sake*) imply an obligation upon the Conscience, is evident from the use of the like expressions in other places of Scripture. In the Epistle to the *Ephesians*, where the Apostle speaks of the duty of children to their parents, he says, *'Children, obey your parents in the Lord*: and of the duty of servants to their masters, *'With good will doing service, as to the Lord, and not to men*, which in another epistle he expresses by, *'as to the Lord, and not to men*. As if he had said for *Conscience sake*, or for the fear of God, rather than for wrath only, or for the dread of men. This appears likewise from the subsequent words of St. Peter in the place above-mentioned, *for so is the Will of God*: as St. Paul, in the same chapter of his epistle to the *Ephesians*, speaking of the duty of servants, exhorts them *to obey their masters in singleness of heart, doing the Will of God from the heart*, Whose will

<sup>6</sup> 1 Pet. ii. 13, &c.

<sup>8</sup> Eph. v. 7.

<sup>7</sup> Eph. vi. 1.

<sup>9</sup> Col. iii. 23.

alone we have defined to be the adequate rule of the Conscience.

28. Fourthly; What natural reason prescribes to be done so that, *if* it be *not done*, sin and guilt are incurred by the mind, *that* act we are certainly obliged in Conscience to do (for since the sense of sin and the consequent fear of punishment belong to the Conscience, whatever the mind rightly judges to be the cause of sin, and to bring punishment along with it, must be supposed to bind the Conscience) but natural reason (whose judgment is ever just) so far commands us to obey human laws, that if we disobey we are immediately conscious that the disobedience was purely owing to ourselves; therefore human laws induce an obligation upon the Conscience.

29. Fifthly; *that*, of which the violation necessarily includes a breach of the Divine Law, does certainly bind the Conscience (for no man, with a safe Conscience, can violate the law of God, which is the rule of it). But to offend against a particular Human Law that was rightly constituted, does unavoidably include a breach of that general precept of the Divine Law, by which God commands obedience to the civil magistrate. The consequence is clear.

30. Sixthly, we are obliged in Conscience to avoid an act which, if we commit, we in a manner offer violence to Almighty God, to Whom we are bound to submit, and, therefore, not to resist; for submission and resistance are directly contrary. But not to obey Human Laws that are duly made, is by implication to resist God. For he who disobeys the laws, resists the legislative power of the magistrate. And since his *Authority is ordained by God*, he may justly be said to offend against a *Divine Ordinance*; and consequently he acts in opposition to God Himself. And this is the *postulate* of St. Paul in the second verse of this chapter, from whence, in the verse

before us, he infers a necessity of subjection for *Conscience sake*.

31. From what has been said, there will be no great difficulty in answering the objections that are usually alleged by the opponents of this conclusion. The principal is deduced from a false notion of *Christian liberty*, which they defend by testimonies of Scripture, dressed up with much pomp, and by which they prop up their scheme of *liberty*, and raise arguments against us. St. *Paul* (say they) declares himself thus: <sup>1</sup>*Ye are bought with a price, be not ye the servants of men.* <sup>2</sup>*Stand fast in the Liberty wherewith Christ hath made you free, and be not entangled again with the yoke of bondage.* <sup>3</sup>*Let no man judge you in meat or in drink;* and other texts they produce to the same purpose. They argue further, that it cannot be supposed that when Christ had absolutely freed us from the positive laws of God Himself, which were certainly most just, he should leave us under a slavish bondage to the laws of men.

32. I shall consider these Scriptures severally; but before I begin, you are requested to observe, that since there are many distinct acceptations of *Christian liberty*, it becomes us to be cautious, lest we hastily confound them, or produce a place of Scripture which refers to one kind, and injudiciously apply it to another. This process of <sup>4</sup>leaping over from one kind of thing to another is the common and continual vice of *Antinomians* and *Anabaptists*, and of many others who set up for Reformers of the world, and in no instance more notoriously than in their disputes about the Ceremonies of the Church.

Let it suffice to mention this. I shall now proceed. In that place to the *Corinthians*, urged by our adversaries,

<sup>1</sup> 1 Cor. vii. 23.

<sup>3</sup> Col. ii. 16.

<sup>2</sup> Gal. v. 1.

<sup>4</sup> Μετάβασις εἰς ἄλλο γένος.

the Apostle advises the faithful to be content in that station of life wherein God had placed them, and to be satisfied with the endowments He had bestowed upon them ; to confine themselves modestly within proper bounds, to measure themselves by the *gifts* and *calling* of God, and accordingly to regulate their lives and actions, whether they were *bond* or *free* ; and not to enslave their Consciences to the judgment or authority of any man, so as wholly to depend upon his will and opinion, but to remember that they are the servants of God, and of our Lord *Jesus Christ* ; and therefore they ought not to study to please men, or submit their will and conscience to them any farther than becomes a Christian, who professes himself a servant of God and of Christ. This being certainly the design of the Apostle through the whole argument, we may conclude justly, that no regard is to be paid to commands of masters, parents, or princes, or any mortals upon earth, *if, what they command, be wicked or unlawful* ; for this would make us the servants of men, and not the servants of God. But a subject, who from a principle of Conscience, obeys the just, equitable, and useful constitutions of men, is so far from *serving men* by his submission, that two of the greatest Apostles expressly declare that <sup>5</sup> *he serves the Lord God, and not men* ; or (by understanding the *negative* particle comparatively, as it is generally taken) he serves *God rather than men*, he serves God for God's own sake, and he serves men for the sake of God. He is a servant of men indeed, as he obeys the laws of men, but he is the servant of God by paying his obedience, from a principle and consciousness of duty to God.

33. That expression to the *Galatians* is best understood from the intent and design of the whole Epistle. There were some false Apostles, either *Jews* or *Judaizing*

<sup>5</sup> Eph. vi. 7. Col. iii. 23. 1 Pet. ii. 16.

Christians in the churches of *Galatia*, who contended sharply (contrary to the determination of the Apostles in the Council at *Jerusalem*) that the Gentiles, newly converted to the Faith, should not only be admitted into the Church by baptism, but be *circumcised* also ; and they had seduced many to believe, that if they would not allow themselves to be circumcised, they could not possibly be saved. The spirit of the blessed Apostle, unable to bear this wicked and popular imposture, inveighs against it with more than ordinary indignation through the whole of this Epistle. And among other arguments addressed to his *Galatian* converts, he reminds them of that *liberty* which the Church enjoyed by the Coming of Christ, Who had freed her from the burden (which had become useless after His Advent) and from the yoke of the *Mosaic* ceremonies. He therefore persuades them to defend with constancy that liberty which the Death of *Christ* had procured for them, and not servilely to bow down again under the yoke of slavery, which they would certainly do, if once they believed themselves obliged to observe the letter of the *Ritual* Law which was now dead. But a man must needs be blind if he does not perceive how improperly this advice of the Apostle is applied by *Anabaptists* to human laws that are useful and advantageous to the public, and from which we have *not* been emancipated by Christ, as far as appears from any testimony of Scripture.

34. The text in the Epistle to the *Colossians* has no relation to Human Laws justly constituted, which concern things indifferent, but is levelled against the doctrines of deceivers, who dogmatically, and under a notion of *necessity*, imposed upon the people of God what God never commanded (after the example of the traditionary *Pharisees*, who were reprov'd by Christ for <sup>6</sup>*teaching for*

<sup>6</sup> Matt. xv. 9.



*doctrines the commandments of men*), or on the contrary, prohibit as unlawful, what is nowhere forbidden by the law of God, and terrify weak minds with the words, *touch not, taste not, handle not*. The Apostle advises the *Colossians* to beware of these dogmatizing teachers, and not to suffer their Consciences to be ensnared by *them*. But a civil magistrate does not go beyond his duty, who in indifferent things, for the interest of the people, or for the sake of justice, decency, or order, commands or forbids a thing by legal enactment; provided he does not presume that there is any *necessity* on either side as a reason for such enactments. These petty ministers [ministelli] (I might rather call them petty *dictators*, so magisterially do they deliver their decrees) are more in the wrong, who importunately inveigh against the inoffensive laws of the civil magistrate, and at the same time tyrannically lord-it over the Consciences of the people, and condemn instantly as impiety, or at least as *popery* and superstition, whatever offends their own nice palate.

35. What they object in the fourth place, that *Christ* has released us from the positive laws of God, and therefore much more from the obligation of Human Laws, is inconclusive for many reasons. And first, it is an error to say that *Christ* has freed us from those positive laws of God by which we were never obliged; for the positive laws of God or man oblige those only upon whom *they are imposed*. Now the laws of God, which they call positive, and from which they say we *have been freed* by the Death of *Christ*, whether they be Ritual or Judicial, were delivered only to the *Jews*, and therefore Christians could not be obliged by them. Secondly, when it is evident that God has fully discovered what He is pleased we *should do*, it cannot be right, that we, by drawing comparisons, should decide what *we think ought to be done*. Now it appears clearly to be the Will of God, that the positive laws of *Moses*, as he delivered them to the

*Hebrews*, should lay no obligation upon Christians ; but that the laws of men, that are rightly constituted by the magistrate, *should oblige* such as are under his authority. The consequence of all this is plain.

Our adversaries, in the last place, do not perceive, that by this argument, if it be of any force, they not only destroy the obligation of Human Laws, but entirely take away the *use* of them ; for *Christ* did no otherwise free us from the obligation of the *Mosaic* laws, than that the use of them should be utterly taken away, and their authority cancelled. Therefore, *if* He in the same manner disengaged us from the bond of Human Laws, it must of necessity follow, that He resolved that there should be no such restraints as Human Laws any more in the world. A wild delusion of *Anabaptists* and *fanatics*, which, we suppose, will not be allowed by those who press the objection upon us.

36. The text of St. *James* (iv. 12) is produced as another argument against us, "*There is but one Lawgiver,*" God and Christ, who alone is the Sovereign of the Conscience. He therefore (they say) is an invader of the right of Christ, and thrusts himself into the Throne of God, who-soever he be that assumes to himself a power of obliging the Consciences of other men. I confess indeed, that there is but *one Supreme Lawgiver*, who has a direct and sovereign command over the Conscience, so as by *Himself*, i. e. by His own authority, to lay an obligation upon it ; which Lawgiver, in the meaning of St. *James*, is no other than God and Christ. Yet this hinders not but that there may be other lawgivers of an *inferior order*, who by authority derived to them from the *Supreme Power*, may have a just right to make laws, and consequently to bind the Conscience to obedience. A King, who alone in his own dominions has an imperial legislative power in himself, may yet by his *charter* convey to a College or Corporation a right to make laws, which shall oblige

every member of that body, *not by their own power*, but by virtue of the royal donation, and by the authority conceded to them by the king. Our Universities (you all know) enjoy this privilege, that in a lawful *Convocation* they have a right to propose and enact laws (which we call *statutes*), and to appoint punishments for offenders; and, if it be thought expedient, to abrogate and cancel the same statutes. And yet no man of a sober understanding will say that the use of this power does in the least derogate from the legislative right of the prince, or can be any damage or prejudice to it, unless it be extended beyond the limits of the donation expressed in the charter. Rather it is a noble and singular indication of sovereignty, that a king has not only a legislative power, but, if he pleases, may delegate the use of it to others, and yet preserve his own right undiminished and entire.

37. The objections that remain, rest nearly upon the same foundation, and require no more trouble to answer them; I shall therefore despatch them with all possible brevity. The civil power, they say, is merely *temporal*, and therefore can never affect the *Conscience* which is *spiritual*. The end of Human Laws is to secure the *outward* peace of Governments, and have no regard to the *inward* peace of the Conscience; they oblige therefore the *outward* man only, and cannot bind the Conscience, which lies *within*, and beyond their reach. The magistrate cannot be a *Judge* of the Conscience, and therefore cannot oblige it by *laws*; for to make laws, and to give judgment according to them, depends upon the same extent of power. The magistrate, when he makes a law, has no design to oblige the Conscience of the subject, he only binds him to obey the commands of the law; if he does that, the safety of the Public is not concerned whether he obeys from a *Conscience* of duty or not. And it is sufficient, if the effect of actions be proportioned

to the intention of the *agents* ; and there is no occasion to extend them any farther.

38. I shall reply to these several objections. And, first, let me observe in general, that these arguments prove no more than that *Human Laws do not oblige directly*, and of themselves, or by their own proper vigour, which I readily grant ; indeed I contend for no other obligation than what they obtain by *consequence*, i. e. by virtue of that command in the *Divine Law* which binds us to pay obedience to the higher powers ; and upon this foundation I come to answer particularly. As to the first objection in the preceding paragraph, I observe that the Civil Power, being merely *temporal*, cannot of itself, and with regard to the *Object* it immediately relates to, be attended with a *spiritual* effect, and therefore it cannot *of itself* induce a *spiritual* obligation ; yet, nevertheless, it may have a *spiritual effect by consequence*, derived to it from the power of some *Superior Cause*, under whose influence it acts. A magistrate, when he justly and regularly executes the legislative power which God has put into his hands, acts by virtue of a *Divine* authority, and by the appointment of God, Who is a *Spirit*,<sup>7</sup> and Who, as the Lord and *Father of spirits*,<sup>8</sup> has a sovereign command over the *spirits* of men.

39. I answer to the fourth, that though the peace of society be of an *outward* concern, yet the Conscience that resides *within* us is obliged to the utmost to procure and preserve it by all just and allowable means ; because God, Who is the Lord of the Conscience, has commanded us to *love and follow peace* ;<sup>9</sup> and if it be our duty to promote peace among *private* men, much more ought we to contribute to the peace and tranquillity of *public* communities. Nor is it inconsistent that the Con-

<sup>7</sup> John iv. 24.

<sup>8</sup> Heb. xii. 9.

<sup>9</sup> 1 Pet. iii. 11.

science residing *within* us should be obliged to what is *without*, since the obligation does not proceed from the nature or the quality of the object to which it relates, but from the *Will* of Him Who has the right to oblige, that is, from God only.

40. By way of reply to the fifth objection, I observe that though the *legislative* and *judiciary* powers originally belong to the same Person ; that is, to him who has the supreme authority over the subject, yet one or both may, by *delegation*, at the pleasure of the supreme Magistrate, be administered by others. Therefore, though God has in Himself a sovereign command over the Consciences of the creature, and has an original, proper, and absolute right to make laws, and to judge by them, yet He may, as He pleases, delegate the execution of both powers to another, or reserve them to Himself. It would not, perhaps, be absurd in this case to say that God has assigned the *legislative* authority to the magistrate, with a purpose to oblige the Conscience ; but the *judiciary* right He has reserved entirely to Himself. But we have no occasion to allow this, or to make use of an expression that must be favourably understood ; nor do we say that God has committed to the magistrate a power to oblige the Consciences of His people by laws, but rather (to speak with more care and propriety) that God has given to the magistrate a jurisdiction to make laws which, by virtue alone of the *Divine* authority, do oblige the Consciences of the subject ; for, properly speaking, the *magistrate does not oblige the Conscience to obey the law, but God obliges the Conscience to obey the magistrate.*

41. And this opens the way for a reply to the last objection. I allow, indeed, that *Effects* of actions ought not to be extended beyond the intention of the *Agents* ; yet, where there are several *subordinate* agents, nothing hinders the extension of an effect beyond the design of the *inferior* agent, provided it does not exceed

the intention of the *Principal*. In the generation of a *monster* (as we learnt from *Aristotle* when we were boys) the effect, which is the production of the monster, is beside the intention of the second cause, viz. of the *animal* that generates, yet it does not exceed the design of the first, that is, of Almighty God. Therefore, though the magistrate, in the making of a law, has no explicit intention to oblige the Conscience, yet by the enactment of a law he creates something which, by the design and appointment of God, has an implicit and a necessary power of obligation involved in it.

Thus much may suffice concerning the general obligation of Human Laws. I design to proceed, next *Friday*, to some particular inquiries and cases of Conscience, if God permit, and if the uncertain state of my health allows me.

## THE SIXTH PRELECTION;

WHICH TREATS OF THE OBLIGATION OF HUMAN LAWS,  
WITH REGARD TO THE MATERIAL CAUSE OF THEM.

*By me kings reign, and princes (or lawgivers) decree  
justice.*—PROV. viii. 15.

1. WHAT I thought proper to observe concerning the obligation of Human Laws I have reduced to two general questions or heads: the first, *Whether Human Laws do oblige the Conscience?* and I have stated my opinion on this question in the last Prelection. The second, *How far their obligation extends?* and to this question, as I told you, I referred the decision of several cases and doubts that would arise in the pursuit of this subject.

And since the difficulties we shall meet with are neither few nor of the same kind, I think it convenient to lay before you an imperfect scheme of what I propose; as by this means I shall avoid confusion, and you will perceive clearly what order I design to follow through the whole treatise.

The method, as most of you may remember, that I observed in my former lectures upon the obligation of an *oath* may, I presume, be necessary for me to use again, that is to say, whatever can properly be referred to the *four kinds of causes*, to them all particulars should be reduced.

But since there are some cases that will not easily be included under these general heads, I think fit to dispose

of them in several *classes* by themselves, which are principally these two—

(1) The first, of the *persons* who are under the obligation of such laws.

(2) In the second I shall compare the obligatory virtue of *Human Laws* with the obligation arising from the judgment of the *Conscience*, or from a *vow*, an *oath*, a *promise*, a *contract*, or from the law of not giving *scandal*, or whatever is otherways obligatory ; especially when these obligations seem to interfere, and the dispute lies, *which* of them must give place, and which of them is to retain a power to oblige.

There is no necessity, I think, to add a third class for some certain *species* of laws that are of a *particular* nature ; such are *ecclesiastical* laws, the laws we call *penal*, the local statutes and privileges of *colleges*, and other lesser societies, because they are commonly in some measure to be reduced to one or other of the *four kinds of causes*, though perhaps not so properly as to satisfy the curious, yet so fully as to serve my present design ; for if I can but deliver myself intelligibly to my audience, I shall not give myself trouble about the order or method that is pursued.

I shall therefore (if God allow me life, health, and opportunity to accomplish what I propose) speak in the first place, of the obligation of laws, with regard to the *four kinds of causes* ; secondly, of the *persons* who are obliged to the observance of those laws, and lastly, I shall *compare* the obligations that seem to clash among themselves ; after premising one or two *distinctions*, which will be of great use to us in the whole treatment of this subject.

2. We are to understand therefore, in the first place, that as the end of political order requires a *double* power to be lodged in the magistrate, firstly, *directive*, which *informs* the subject of his duty, and, secondly, *coercitive*



(for so, by reason of the analogy, I choose rather to call it than *coercive*), by which the subject, if he refuses, is *constrained* to obedience (both which powers are so included in the laws, that the one relates principally to the authority of *commanding*, the other respects chiefly the sanction of *punishments*), so from this *twofold* jurisdiction in the ruler, there lies on the subject a *double* obligation corresponding to them, of *obedience* to the one, and *subjection* to the other.

I understand *subjection*, in the proper sense of it, as it is a *genus* confined to one certain *species*, which happens often in other cases : for *obedience* itself may be said to be a species of *subjection* in an unlimited sense.

These several duties of the subject are included by the Apostle in the two words <sup>1</sup>*obey* and *submit* ; the first refers to the duty of *obedience*, of *executing the commands* of a lawful power ; the second regards the duty of *subjection*, of *suffering what* is inflicted by him for disobedience.

And as from a *double* power in the magistrate there arises a *double* duty in the subject, so from that double duty proceeds a double *obligation* ; for every duty infers an obligation, and every obligation supposes a duty ; one kind, therefore, of the obligation of Human Laws is that by which the subject is bound to *obey* the commands of the law itself, another by which he is obliged to *submit* to the power of the lawgiver.

The first of these obligations relates to *active obedience* ; the second to the obedience we call *passive*, which I rather choose to express by *subjection* (or *submission*).

3. If it be inquired now, *How far Human Laws oblige the Conscience of the subject* ? we may say first, that all laws that are made by a lawful power do oblige to *sub-*

<sup>1</sup> Heb. xiii. 17 : *πειθαρχεῖν* and *ὑποτάσσεσθαι*, the one *active*, the other *passive*. The common phrase "*passive obedience*" is a contradiction in terms : it is like *passive activity*.

*mission* ; so that it is *not lawful* for the subject to *resist* the supreme power by *violence and arms*, whether his commands are just or not. This was the constant opinion and practice of the Christians in the first ages of the Church, who lived under the most oppressive tyranny of the greatest enemies to the Christian name ; and this (not to insist upon the instinct of nature, and the dictates of right reason) was evidently the doctrine of the two leading Apostles. For so St. Peter, the Apostle of the Circumcision, instructed the Jews ; and so St. Paul, the teacher of the heathens, as constantly declared himself to the Gentiles. <sup>2</sup> St. Peter commands *servants to be subject to their masters*, not only to such as were *good and gentle*, but to those more severe masters who would punish them with stripes which they had not deserved. St. Paul likewise insists strenuously upon the necessity of <sup>3</sup> *subjection* ; and allows to no one a liberty of *resistance* in any case, or under any pretence.

It may be said, secondly, that the duty of *subjection*, though it be simply necessary, yet is not sufficient to secure the Conscience, unless the command of the law be likewise *obeyed*, where it may be done without *sin* ; and therefore the subject is bound in Conscience to *obedience*, if what *is commanded be lawful and just*. And for this reason the word *obey* is so expressly inculcated by the Apostle in many places of his <sup>4</sup> Epistles.

I observe, lastly, that where the command of a law *cannot be obeyed without sin*, if the subject *submits* patiently to the power of the lawgiver, he has done as much as his duty requires ; nor is he bound in Conscience to *execute the commands of the law* ; so far from it, that he is obliged to *disobey*, because an unlawful command imposes no obligation. It is always necessary therefore to be *subject* (*ἀνάγκη ὑποτάσσεσθαι*) ; but it is *not always necessary to obey*.

<sup>2</sup> 1 Pet. ii. 18.    <sup>3</sup> Rom. xiii. 1—7.    <sup>4</sup> Eph. vi., Col. iii., &c.

4. But since it is certain that the <sup>5</sup> *Consciences of men* are *free*, and ought to be so, and that no human power can or ought to infringe their *liberty*; and since an obligation implies a *bond*, and induces a sort of necessity upon them, which seems to be opposite to liberty and freedom (for a man that is *bound* cannot be said to be *free*, nor is he a *free agent* who is under a *necessity* which obliges his choice), in order that a just liberty of Conscience may consist with the obligation I am speaking of, I must have recourse in this place to another distinction, which is, that the command of a Human Law may be taken either for the *act of commanding*, or for the *thing commanded*.

If, therefore, a lawgiver intends to deduce the obligation upon the Conscience from the *necessity* of the *thing commanded*, which *before* the making of the law was *not necessary*, he lays a direct force upon the Conscience of the subject, and encroaches upon the *liberty* of it; but if he derives the obligation from *his own lawful authority to command* (the moral *indifferency* of the thing commanded remaining in the same state in which it was before the making of the law), though an obligation follows which imposes upon the Conscience a necessity of obedience, yet the *inward* liberty of the Conscience remains uninjured and entire.

5. If what I have said appears obscure, an *example* will illustrate it. Suppose a civil law is made that no one shall eat *flesh* in the season of *Lent*. If the lawgiver, either in the preamble or body of the law, should intimate that he laid this command upon the subject, because the eating of flesh at that time was a thing *impious* and *unlawful*, this would be to ensnare the Conscience of the subject, and, as much as in him lay, to impair its *liberty*. But

<sup>5</sup> ' Servitus in totum hominem non descendit.' Sen. de Benef. ii. 20.

if the lawgiver expressly signified that the act forbidden was a matter *free* in itself, but that he thought fit to make it *necessary* for the advantage of the public, or in order that his Christian subjects, after the example of the ancient Church, should have an opportunity of exercising a more abstemious and severe discipline; or if it appeared by the words of the law itself, or otherways, that the lawgiver had no design by that law to attach an opinion of *necessity* to the thing commanded, there could be no violation offered to the consciences of his subjects, nor any infringement of their liberty. For it is one thing for a magistrate to command an act, because he thinks it *necessary*, or to forbid it because he conceives it to be *unlawful*, and another very different thing, when an act *begins* then to be thought necessary, after it is commanded by the magistrate, and *unlawful* from the time he *forbids* it. The first necessity, which is antecedent to the law, and is supposed by it, as being in some measure the *cause* of it, opposes the *liberty* of the conscience; but the other, which follows the law, and proceeds from it as an *effect*, does not oppose it.

The reason of this difference is, because the preceding necessity, which the law supposes, does essentially require some assent of the *practical judgment*; but to the necessity that follows the law, and proceeds from it, the consent of the *will* is sufficient to discharge the outward act which the law commands. Now an act of the *will* cannot violate the liberty of the Conscience, as an act of the *judgment* does; because an act of the *will* follows the dictates of the Conscience, as an effect follows its cause, but an act of the *judgment* precedes those dictates, as a cause goes before its effect.

6. These distinctions being premised, I come to the cases and questions I mentioned; and those that relate to the *material cause* shall be now examined and resolved.

The first case therefore is concerning an act simply

*impossible*. A law concerning a matter that is *impossible* ought *not to be made*; but if it be, it is tyrannical and void in itself, and binds no man's Conscience to obedience. The first reason is, because laws are made with regard to acts that are to be executed by a man as a *free agent*; but the notion of liberty implies a power to act or not, which (as is self-evident) in matters that are *impossible* is utterly destroyed.

Secondly, no man can be justly obliged to an act, the omission whereof ought not to be imputed to him as a *sin*, or expose him to be *punished*; for every obligation, if not satisfied, binds either to sin, or to punishment, or to both; but the omission of what is *impossible* can never derive a stain upon the Conscience or a punishment upon the offender. The consequence is plain. But that an act which is impossible lays no obligation (whether it be impossible in its own nature, or upon the account of circumstances, or any other way) has been already proved in my course of lectures upon the obligation of an <sup>o</sup> *oath*, and I have no occasion here to repeat it.

7. Secondly, a law about a matter that is *possible* to some, but seems *impossible* to many others, or to a few, or perhaps to one or two, may be *justly* made, if it be for the advantage of the public; but not unless there be some extraordinary occasion, and plain necessity requires it. And when it is made, it obliges every subject who is *able to obey it*, but it does not oblige others. For instance, if a heavy tax were laid for the necessary uses of the State, which every subject is not *equally* able to discharge; such whose poverty makes them incapable to pay the sum which the law lays upon them are not obliged to what they are unable to perform, as evidently appears from what has been observed before. But they are bound, notwithstanding, to apply to their superiors, and openly,

<sup>o</sup> Prælect. the Second, on the obligation of an Oath, sect. 12.

sincerely, and without fraud, to discover the condition of their affairs; and unless they can obtain an entire exemption from the law, or at least procure a remission of part of the sum laid upon them, they must supply the public with as much as they are able: for <sup>7</sup> if a man cannot do what he ought to do, he ought to do what he can.

8. The second question is about a law that commands what is not impossible, but very burthensome and oppressive, which a subject cannot obey without great loss and inconvenience, for instance, without danger of his life or the ruin of his estate.

In such a case I observe first, that the lawgiver (if he foresees the ill consequences that must follow) ought to be very cautious in framing such a law, and by that means to provide as proper a remedy as may be for this evil. And if this cannot be so well provided against in the very form of the law (lest men of subtle designs, who are always upon the watch for opportunities of this nature, should find means to escape and elude its force), yet he ought to take all possible care that, in the <sup>8</sup> *execution* of the law, some indulgence should be used, lest a law otherwise useful and necessary for the public should prove a snare and an oppression to the honest subject.

I observe, secondly, that the subject, though heavily taxed, is nevertheless bound in Conscience to obey the law, even to the ruin of his family, if an evident necessity and the urgent occasions of the public require it. For instance, suppose a hostile army invades the kingdom, and a law be made that the standing corn in the fields

<sup>7</sup> Μηδὲ ὅτι τῆς ἀξίας λείπη, τὸ πᾶν ἐλλείπη. Greg. Nazianz. Orat. 9. "Debeone omittere quod possum, quoniam quod debeo minimè possum?" Bernard. Ep. 175.

<sup>8</sup> Χρὴ τοὺς νόμους μὲν τίθεσθαι σφοδρῶς, πραοτέρως δὲ κολλάζειν ἢ ὡς ἐκείνοι κελεύουσι. Isæus ap. Stob. λογ. μσ'. [48, 25. ed. Gaisford.]

should be destroyed, and the grain in the barns and granaries that cannot be carried off be burned, and that all the houses in the suburbs be pulled down, the sluices opened, and the country laid under water, every subject and citizen is bound to submit to such a law, and cheerfully to execute its commands, and by the loss of his private estate retrieve the safety of the public ; and this he is obliged to, not only because every private person will soon feel the calamity that his unseasonable frugality has brought upon his country, by betraying it to his enemies ; but principally from a Conscience of duty, as every good man is bound to sacrifice his own interest to the welfare of his country.

Thirdly, a subject, unless a remarkable necessity appears, and he apprehends the public to be in danger, is not ordinarily obliged to obey a law so oppressive as to occasion the ruin of his estate, or to bring him in danger of his life ; but he is bound, as I have premised already in general (and this you are to observe almost in all cases, which I mention again, that I may not have occasion to repeat it any more), not to offer any resistance, but to submit patiently to the injury and disgrace that the higher powers shall think fit to lay upon him.

9. A third question is concerning acts that are *necessary* ; as if a Human Law should command what was necessary *before*, and enjoined by the *Law of God*, or should prohibit what was *before* unlawful and forbidden by Divine Law, in such cases it may be asked, What manner of obligation lies upon the Conscience ? The answer is short ; the subject by such a law is absolutely obliged. For first, the *previous* obligation of the Divine Law does not hinder the effect of the law made by man, by precluding a new obligation ; for a person may be many ways obliged to perform one and the same duty, as I have shown in a former Lecture (p. 130-2). To this we

may subjoin another reason, that the law of man commonly *adds* something to the Divine Law, either by limiting the act (as to the substance of it, before commanded by the Law of God) and consequently it becomes necessary, with regard to the *manner*, the *quantity*, or some other *circumstance* that was before free ; or when the Divine Law forbids what is unlawful, the Human Law may add something to it by determining over and above, as to the degree of the offence, the manner or measure of the punishment, or other circumstances of the same nature.

For instance, the holding of public assemblies of Christians for the performance of the duties of Divine worship is commanded by the Divine Law ; but at *what hour*, and in *what place* the people are to meet, what *form of words* they are to use, what is to be the *gesture of the body* in the several parts of the service, and other circumstances of the same nature, are to be determined by the *laws of men*.

The Law of God likewise forbids the commission of theft ; but to fix a particular punishment to the several *degrees* of that sin is the business of human constitutions.

By determining therefore what was before *general* and was left at liberty by the Laws of God, a Human Law possesses the power of imposing a *new obligation* upon the Conscience of the subject ; not only *numerically* different, and with respect to the *term*, as it has another kind of dependency, but different also in *species*, and with regard to the *matter*, because it relates to another *object*. For the first obligation, which proceeds from the Law of God, respects the thing itself, considered merely as a *substance* ; but the obligation, which is superinduced by the laws of men, regards the *manner* of the thing, or some particular circumstance of it.

10. A fourth question relates to things that are *base and unlawful* ; and this is a case of the greatest moment,



and involves many particular inquiries. For almost all the conditions that are necessary to the right constitution of laws are reduced to that one qualification of *justice*; not only because universal justice is the <sup>o</sup> centre of all other virtues, and <sup>1</sup> comprehends them under it, but chiefly because particular justice, especially the justice we call legal, is before all other virtues the principal, and as it were the only support of republics and societies of men.

Concerning this question, therefore, it may be demanded in the first place, *Whether an unjust law ought to be made for the benefit of the public?* It is said to be the opinion of *Machiavel*<sup>2</sup> that the proper matter of laws, whether just or unjust, is what conduces most to preserve and secure the happiness of the body politic. For since the end (says he) of civil power is the security of itself and the enlargement of its sovereignty; and since that power cannot be effectually preserved, much less the bounds of the sovereignty enlarged, if all the laws and designs of princes are examined by the strict rules of *justice* and *honesty*, it is the duty of governors so to decline sometimes from the rule of honesty, as to make it subservient to the benefit of the *public*; and in all cases the *end* is the best rule whereby to judge of the *means* proper to attain it. But whatever may have been the opinion of *Machiavel*, it was certainly the judgment of a great man among the old *Lacedemonians*, who declared openly that everything was *just* that was for the *good* of *Sparta*.<sup>3</sup> The maxim of Horace is likewise offered in proof of this doctrine, <sup>4</sup> *Utility is (so to speak) the mother*

<sup>o</sup> Πάντα τὰ νόμιμα ἐστὶ πως δίκαια. Arist. Ethic. v. 3.

<sup>1</sup> Ἐν δὲ δικαιοσύνη συλλήβδην πᾶσ' ἀρετή' ὀσι. Theognis. 100.

<sup>2</sup> Machiavell. 3 Decad. Liv. iii. 41.

<sup>3</sup> Lysander ap. Plutarch. Apophth. Lacon. Tom. ii. 229. See above Prelect. ii. 22.

<sup>4</sup> "Ipsa utilitas justī prope mater et æqui." Horat. 1 Sat. iii. 98.

of justice and equity. And it may be shown from the example and success of the *Turks* how profitable such a doctrine has been to themselves, who, relying upon it, have prosperously extended the bounds of their empire on every side through *Asia*, *Africa*, and *Europe*. And had not some men, who profess themselves to be the best (I had almost said the only) Christians, and would be thought the restorers of a more *refined religion*, effectually made use of this most pestilent principle, Christendom would not now be groaning under so many *sacrileges*, *perjuries*, *seditions*, *wars*, *tumults*, and *tyranny*, as it does.

11. But on the other side, the princes of the earth ought not to *abuse* against His *will* or intention the power they received from God ; for this power is not so much given to them as *lords* and *masters*, as entrusted them by God as His own <sup>5</sup> *ministers* and *stewards*, and for no other end than to *administer justice*, not to exercise a tyranny and an unjust dominion. And this evidently appears from the words that introduce this *Prelection*, *By Me kings reign, and princes decree justice* ; as if to *reign*, and truly to behave like a prince, were nothing else but to *decree justice*. The Hebrew prophets likewise, throughout their writings, denounce severe indignation and vengeance of God against those kings and princes <sup>6</sup> *who decree unrighteous decrees, and imagine mischief as a law*. Nor is the *extension* of empire the *end* of civil power (as we are told it is by worldly statesmen), but the securing of the people in peace and tranquillity, and <sup>7</sup> *in all godliness and honesty*. For *justice* is the best support of the public peace. And as the justice of *faith* procures and preserves the *inward* peace of the private Conscience, *legal justice* has the very same effect upon the *outward* happiness of states and kingdoms. <sup>8</sup> *The fruit of justice* (says the pro-

<sup>5</sup> Rom. xiii. 4. 6.

<sup>6</sup> Isa. x. 1. Psalm xciv. 20.

<sup>7</sup> 1 Tim. ii. 2.

<sup>8</sup> Isa. iii. 2. 17.

phet) *shall be peace*. And it was the opinion of the *Theban poet* (Pindar) that <sup>1</sup>*Peace was the amiable daughter of justice*. Nor is it the meaning of *Horace* as if *utility* were the measure of *honesty*; his design was far otherwise, to show that mankind, wild and wandering at the beginning, by reflecting upon their public interest and the common good, were induced to unite in civil society, and by just laws and punishments to restrain attempts of violence, wickedness, or oppression. The example of the *Turks* (who seem to be raised up by God for no other end than to use them as a scourge to chastise the great unfaithfulness and *other vices of Christians* <sup>2</sup>), and arguments of the same nature drawn from the *prosperous* event of things in defence of a bad cause, savour more of the *Koran* of a foul *impostor* than of the *purity* of the Gospel of our Saviour *Christ*.

12. The second question is, *Whether an unjust law* (though it *ought not to be made*, yet being *actually made*) *does oblige the Conscience of the subject to obedience* ? for many things which *ought not to be done*, yet, when effected, are *valid* and obligatory ; and it is possible that what could not *justly* be imposed upon the subject, yet may with a good Conscience be *obeyed* by him, as we have abundantly proved in our foregoing Prelections. The reason of this inquiry is because true obedience is not fond of disputing; for the proper notion of obedience consists in un murmuring submission to the will of a superior. And it has been justly observed by St. Bernard that <sup>3</sup>*the obedience is*

<sup>1</sup> Φιλόφρον ἄσυχια δίκας ὃ μεγαστόπολι θύγατερ. Pindar. Pyth. viii.

<sup>2</sup> Especially the schisms, heresies, superstitions, and godless lives of Christians. This is the real solution of the problem of the history of Mohammedanism for 1200 years.

<sup>3</sup> "Delicata satis, immo nimis molesta est hujusmodi obedientia." S. Bernard. de Præcept. et Disp. x. tom. i. 509, ed. Bened.

*too fastidious which steps aside to deliberate, when it ought to obey.*

But I answer, in short, that the Conscience of the subject is not bound by such a law; and this was my first conclusion in the former Lecture, and confirmed abundantly; and if any one be unsatisfied, it may be farther proved; for no *inferior* power can oblige against the will of a *superior*; therefore, as the power of God is above all the power of men, there is no man whatsoever that has a power to oblige against the *intention* of God, Who has forbidden whatever is wicked or unjust by His *Divine* law. And therefore St. *Austin* said properly, that *“a law that is not just appears to be no law at all; which will serve for an answer to the argument drawn from the notion of obedience, by granting that a subject is bound to submit without dispute to the will of a superior, that is, the highest superior into whose will all obedience is ultimately resolved, but not to the superior who is subordinate, if it appears that his will is contrary to the superior that is above him. Now Almighty God is absolutely the Supreme Governor, the bare intimation of Whose will is sufficient to induce an obligation to obedience, especially since it is certain that His will cannot be unjust. And therefore the righteous Abraham obeyed God, Who laid such commands upon him, as if God Himself had not given them, were not only difficult and unreasonable, but wicked and against nature; to leave his father, his kindred, and country, and to wander as a poor exile and a stranger into a remote and unknown land; nay, with his own hand to offer as a sacrifice to God, Who gave him these severe commands, his only son, the comfort and support of his old age, and in whom was all the hope of the*

<sup>4</sup> “Legem non videri quæ justa non fuerit.” S. Aug. de Lib. Arb. i. 5.

<sup>5</sup> “Quod jubet homo prohibet Deus: et ego audiam hominem surdus Deo?” S. Bernard. Ep. vii. 3.

*promises* which God had made to him. He obeyed notwithstanding, as became a man who deserved to be called the *°Father of the Faithful*, and to be a singular example of steadfast faith to all ages of the world ; in that he prepared himself without the least hesitation to execute the commands he had received. But as for the commands of *man*, since mankind is naturally subject to sin and mistake, and it is possible his will may be depraved, it is very lawful, and where there is a cause to suspect, it is *necessary* also to examine and to try them. *That* advice of the Apostle, *°Prove all things, hold fast that which is good*, may with equal propriety be applied to the commands of superiors as to the instructions of teachers, of whom, notwithstanding, the Apostle particularly speaks in this place. Away, therefore, with the haughty and imperious decrees of tyrants, whose will alone is a law to their subjects. Let us hear no more of the base flattery of papists, who think it a sin for any one to canvass, on any pretence, the dictates of their *Lateran Jupiter*, and let us detest that blind obedience by which those who enter into a *religious order* oblige themselves to obey their superior in all and singular things, and (to use their own words) without *discretion*.

13. It may be inquired in the third place, *Whether it be lawful for a subject to recede from his own right, and though he be not obliged, yet, if he pleases, to pay obedience to an unjust law ?*<sup>6</sup> By no means ; for he is absolutely bound by the law of God to avoid the commission of what is evil or unlawful. An unjust law therefore (I mean unjust with respect to the *matter*) cannot lawfully be observed, because *God cannot lawfully be offended* ; for whatever opposes the Divine law, or the light of nature impressed upon our hearts, or the light of revela-

<sup>6</sup> Rom. iv. 2.

<sup>7</sup> 1 Thess. v. 21.

<sup>8</sup> "Pura mala ut nunquam justè j uberi, sic nec licitè possunt fieri." Bernard. Epist. vii. 8.

tion in the Scriptures, is not to be done by a Christian, either to avoid any particular inconvenience to himself, or to prevent giving offence to others, or to procure the favour, or decline the hatred, of our superiors. "*Excuse us, O emperor; thou threatenest us with prison for disobedience, but God threatens us with hell fire.*" This was the language of the primitive Christians.<sup>9</sup> And before them the Apostles of our Lord Jesus Christ appealed to their persecutors, <sup>1</sup> *Whether it be right in the sight of God, to hearken unto you more than unto God, judge ye.* And the three Hebrew children before them replied boldly, <sup>2</sup> *Be it known unto thee, O king, that we will not serve thy gods, nor worship the golden image which thou hast set up.*

14. We may inquire fourthly; *When a law may properly be said to be so unjust, that it does not only not oblige, but we commit sin by obeying it?* I answer, a law may be said to be unjust for many reasons. First, if a law be made by a person *not invested with a lawful power*, it is unjust by reason of the defect of that *justice* we call *commutative*, because the lawgiver assumes more than of right belongs to him; such a law therefore does not oblige the subject to obedience. But yet the subject, if he thinks fit, and there be no other impediment, may recede from his own right, and obey that law.

Secondly, a law may be unjust with respect to the *final cause*, i. e. if it does not tend to promote the public good and to preserve the rights of the community. Such a law is unjust, because it wants that justice we call *legal*, which always designs the common good, and that the public receive no damage. But such a law, how unjust soever, *does notwithstanding oblige the subject*, who is not supposed to be a competent and proper judge of

<sup>9</sup> Cf. Sanderson, Sermon iv. ad Clerum, § 23, ad Populum, vii. § 21.

<sup>1</sup> Acts iv. 19.

<sup>2</sup> Dan. iii. 18.

*legal justice*, and if by his obedience any damage or inconvenience is entailed on the public, it is not to be <sup>3</sup>imputed to him who did no more than his duty, but it is to be ascribed to the *magistrate*, whose business it was to provide for the security and advancement of the public good.

Thirdly, a law may be said to be unjust with respect to the *formal cause*. If a law dispenses favours and burthens, punishments and rewards, by an unequal proportion, without considering the merit of the subject, it is unjust because of the defect of *distributive justice*, whose office is to dispense to every one by equity, as they have deserved. And this law, as well as the former, *obliges to obedience*, and for the same reason, because it is the business of the supreme magistrate, and not of the subject, to concern himself about the justice of such distributions.

A law, in the last place, may be unjust with regard to the *material cause*, which is the subject of this prelection. If a law commands what is base, unbecoming, or any way unlawful, it is unjust, by reason of the defect of that *justice* we call *universal*, which requires an exact rectitude in every action; and such a law is so far from binding the subject to obedience, that he is absolutely obliged not to obey.

15. In the fifth place it may be asked, *What kind of justice is required, and what quantity of it will be sufficient, that a law may be said to be just, and be esteemed obligatory?* I say first, that it is not necessarily required, that a law should be *positively* just, which the philosophers call *honest*, that is, that it should be an act of some virtue; but it is enough, if it has a *negative* justice,

<sup>3</sup> Οὐ τί μοι ἕμμεσ ὄναίτιοι, ἀλλ' Ἄγαμέμνων,  
ὄς σφῶν προίει.

Hom. Iliad. i. 335.

that is, if it be not unjust or unbecoming, as the acts of all vices are, otherwise there could no laws be made about things *indifferent*, and of a *middle nature*, which (as will presently appear) are the proper matter of human laws.

I observe, secondly ; that supposing a law be unjust with respect to the *efficient*, the *final*, or the *formal cause*, yet if there be no defect of *universal justice*, that is, if by the force and command of the law, the act to be performed by the subject may be executed by him without any sin of his own, *that justice is of itself sufficient to induce an obligation*.

16. But lest the subject, to shake off the yoke, and with more liberty to withdraw himself from the obligation of the law, should pretend a *scruple* for his disobedience (and it is marvellous how many persons suffer themselves to be deceived by such false reasoning) and say that a law *appears* to him to be so unjust that he cannot, and therefore that he ought not, to obey, for this would be to act with a *doubting* Conscience, which the Apostle declares to be sinful, for *whatsoever is not faith is sin*, it is proper therefore, in the sixth place, to demand farther, what certainty is required to convince a man that a *law is unjust*, so that he may be sure in his Conscience that he is not *obliged* to the observance of it.

I answer, first, If the Law be manifestly or notoriously unjust, it is certain the subject is not bound to obedience ; nor is he obliged, if, by any moral certainty (after using due diligence in discovering the truth), he judges it to be simply unjust.

Secondly, If from any confirmed error in his judgment, which he cannot easily shake off, he thinks a law to be unjust when in reality it is not, yet, notwithstanding this mistake upon his mind, the obligation of the law remains

<sup>4</sup> Rom. xiv. 23.



in force, and he commits a sin if he does not obey ; and yet he is guilty of a greater sin if he should obey before his judgment be set perfectly right. This case I shall have a better opportunity to enlarge upon when I come (by God's leave) to compare these obligations together.

Thirdly, I observe, that if, from a light scruple or objection, a man doubts or suspects a law to be unjust, that *scruple is to be overruled*, and the law simply to be obeyed ; and no one under the pretence of a *tender Conscience* is to excuse himself from the necessity of paying obedience to it.

17. In the fourth place I observe (and I would to God that they whose custom it is to palliate their gross *disobedience* by the plea of a *tender Conscience* would sufficiently consider it !) that if a subject cannot easily determine about the justice of a law, but if his mind is *in suspense*, and knows not which way to incline, in this case *he is obliged to actual obedience*, and *he certainly sins if he does not obey*. The reason of this is, first, because by the rule of the law, *in dubious cases the possessor has the best claim.*<sup>5</sup> Wherefore, the dispute lying between the Lawgiver and the subject about the justice of a law, it is always presumed, if there be no just reason to the contrary, to be decided in *favour of the Lawgiver* against the subject, as being *in possession of the law* ; but if a proper reason can be offered, it alters the state of the case ; for we supposed that the dispute lay between the subject and the Lawgiver in other respects upon an equal right.

A second reason is, in the legal maxim, that *in a doubtful case the safer<sup>6</sup> side is to be chosen*. And it is much safer for a *doubting Conscience to obey than not to obey* ;

<sup>5</sup> "In dubiis rebus potior est conditio possidentis."

<sup>6</sup> "In re dubiâ tutior pars est eligenda."

because it is safer for a subject to *exceed* in his duty to the higher powers than to be *deficient* in it.

A third reason proceeds from the same rule ; for generally the *Conscience is more secure* when a man thinks himself *bound* though he be actually *free*, than to imagine himself *free* when he is really bound. For since the heart of man is so naturally depraved that we sin oftener by *presumption* than from fear, and are more inclined to liberty and less submissive under the yoke than we ought to be, the wisdom of the *flesh*, and the *subtilty* of the old *Serpent*, will afford us excuses in abundance to retard and hinder us in the performance of our duty, unless we absolutely resolve beforehand to *obey* those laws that are *not evidently unjust*. And so much for the fourth difficulty.

18. The fifth question follows, concerning a law *permissive of evil*, whether it be *lawful* and *obligatory*, and how far the *justice* and *obligation* of it extends? In this case we are to observe in the first place that an evil may be permitted either *privatively*, as it is pretermitted by the Lawgiver ; in this sense all those things are permitted which are left *indifferent*, and are neither forbidden or punished by the laws ; or *negatively*, when the law limits the exercise of an act within certain bounds, wherein, if the subject confines himself, he is regarded as innocent, but if he exceeds, he is liable to punishment ; and so the laws of most nations allow the practice of *Usury*. Or an evil may be permitted *positively*, when the exercise of it is tolerated upon payment of a certain *tax*, and thus houses of ill fame are allowed at *Rome*.

19. This distinction being premised, I observe, first, that *privatively* many evils must of necessity be tolerated in all Governments ; for it is impossible that the laws should extend to all degrees of immorality, or that all the species of evil should be restrained by the laws of men. The *Divine Law alone* has this special and unique character, that it commands whatever we are to do

and forbids what we are to avoid. Now a *Permission* of this nature has *no power to oblige*; for an obligation must necessarily arise from a *real act*, and cannot be caused by a *privation* of an act or, in other words, by a *non-act*.

Secondly, a *negative* permission of evil may be lawful; for if an evil cannot wholly be removed without great inconvenience to the public, it belongs to *political prudence* so to moderate and circumscribe the use of it within proper bounds as to make it conduce to the service of the State. And to prove this we have the example of God Himself, Who *permitted the Israelites* to divorce their wives, lest (as our Blessed *Saviour*, the most excellent Interpreter of the Law, expounds it) *'the hardness of their hearts*, and the unrestrained cruelty and bitterness of husbands to their wives should be the occasion of *greater evils*.

I observe, thirdly, that by a law of this nature no man *is obliged to do what the law permits*; for the design of the permission is,<sup>7</sup> not that what is permitted by the law should be put in practice, but that nothing be done *beyond the bounds* of this permissive law. Therefore, as the permission is *negative*, it induces only a *negative* obligation; that is, the subject is obliged (if he pleases to do what the law permits) *not to exceed* the limits prescribed by the law.

Fourthly, the *positive* permission of evil is unlawful, if more or graver evils arise from the permission than those which it is pretended to provide against, which is commonly the case, especially if there be reason to suspect that the State, by the permission of any scandalous practice, had any sordid view of interest<sup>8</sup> to itself.

In the fifth place, a man is so far from being obliged

<sup>7</sup> Matt. xix. 8.

<sup>8</sup> "Aliud est indulgere, aliud permittere." Tertullian. de Monog. 14.

<sup>9</sup> Consider how this applies to the *opium trade* and to the *liquor trade*.

to do what such a law permits, that, notwithstanding the permission, he is bound by *another* obligation *not to do it*; and the reason is, not only because it is not in the nature of a *permission to oblige* (for a permission *allows freedom*, and an *obligation implies constraint*), but because we suppose that what is *thus* permitted by a human law is *evil in itself*, and consequently we are bound by the *Law of God* to avoid it. The permission, therefore, of evil, as it is a *bare permission*, obliges no man to *do*, but, as it is the permission of *evil*, we are bound *not to do* what is thus allowed to be done.

20. But since we have often said, in the course of these Prelections that every law has a force to oblige, which so inseparably attends it that if you allow the law, the obligation, must of necessity follow, and if you deny the obligation the law is instantly void; it may be objected, therefore, that we must either deny a *permissive law* to be a law at all, or we must confess its power to oblige. In answer, I observe that we have *no occasion to go so far as to deny a permissive law to be a law*; we allow it not only to be a law, but to be a law properly so called. Certainly that *Mosaic Law of Divorce* mentioned in the <sup>1</sup> Gospel, though it has the name of a *permission* in the eighth verse, yet in the seventh verse of the same chapter it is called a *command*. Besides, the name of *Law* is frequently given to it, and the definition of that title is equally applicable to a Law that either commands or forbids; so that you must allow absolutely that a *law* is predicated *univocally* of them all, as a genus of its species? And is it not to be granted that such a law lays an obligation upon the subject to obedience? I grant it does. But to reconcile this with what we have just said of a permissive law, and to make it perfectly intelligible,—

21. I observe, sixthly, that a permissive law, *as it is a*

<sup>1</sup> Matt. xix. 8.

*law*, does oblige the subject in Conscience to obedience ; and the reason is evident, for an obligation (as we have often mentioned already) is a necessary effect of a law, and not to be separated from it.

Now that this may be consistent with what I said before, you are to take notice of two memorable assertions laid down above, which I shall now repeat. The first is, I allowed that a permissive law does oblige to obedience. Now it is one thing for a subject to be obliged to *observe* a law, which I continue to affirm, and another for him to be under an obligation *to do* what the law *permits*, which I still deny. To the second, I said that a permissive law, as a law, does oblige, which is true ; but I never said that such a law obliged as it was *permissive*, which is false. And for this reason, because the force of a permissive law, as it is a law, does not consist in the *permission* itself (which, being but a *divisive difference* of the law, must in order come after it, as every such *difference* is naturally placed after the *Genus* which it divides and supposes) but in that command which is, as it were, the *constitutive* and *formal difference*, and for the most part is either actually expressed, or at least virtually contained, in the very words of the law. And this command is that from whence the obligation first arises, and in which the obedience of the subject is ultimately terminated. I shall explain this by a familiar example. A lawgiver, by reason of the necessity there is of borrowing, *permits* the practice of *usury* in a moderate proportion among his subjects, and fixes a punishment upon such as take a larger interest than the law allows. I shall not determine in this place, whether usury be simply,<sup>2</sup> and in every degree of it, unlawful, nor is it material to my present design ; nevertheless, this is cer-

<sup>2</sup> On this question see Sanderson's "Sermones ad Populum," Serm. iv. § 30.

tain, that were it ever so lawful, *no man by this permission is bound to the practice of it.* But in this law, besides the permission, which is not obliging, there are two circumstances which, as they belong to the precept of the law, have therefore, from the design of the lawgiver, *a power to oblige*; one enjoined formally, and in express words, that *no one exact more interest than the law allows*; the other is implied virtually, and by consequence, that *no person be punished for the practice of usury in the manner the law permits.* To conclude, therefore, in short, the *command* of a permissive law binds every subject to obedience, but the bare *permission* obliges no one.

22. The sixth case relates to things *indifferent*, and of a middle nature; and those are such whose several *species* are neither commanded nor forbidden by any Divine Law, natural or positive, and therefore they are of themselves, and in their own nature, without any regard to circumstances, lawful to be observed, inasmuch as they are not forbidden; and yet they are free not to be observed inasmuch as they are not commanded.

Some have imagined that no Human Laws ought to be made *about things indifferent*, but about such only as are either of a natural or Divine right; and therefore they say that civil laws are not so properly *constitutive* of a new right as *declarative* of the old, and are like explications and evolutions of the Divine Will. But it is not worth while to refute an opinion so irrational, that on the contrary, *things indifferent are the most proper and adequate matter for human legislation*; for we are bound to observe *God's* commands, even though the injunctions of men be silent or opposite to them; and what God forbids, we are bound not to practise, even though the laws of men be silent, or insist upon the execution of their commands. *Things indifferent*, therefore, are all that remain as a field for Human Power to display itself upon, and exert its force, by inducing an obligation where there was

none before ; so that it evidently appears that the civil magistrate, in indifferent things, which before any act of his were perfectly free, has a power to decree on either side, by limiting that indifferency, and by that means to oblige the Conscience of the subject to obedience. For as the *moral* prudence of a private person, in acts of eating and drinking, and other enjoyments, and giving and receiving, by prescribing a certain moderation to himself, so far advances those natural and indifferent actions beyond their native condition and quality, that they begin to be acts of virtue, of temperance and liberality ; so the *political* prudence of a person invested with public authority, by fixing certain bounds of moderation for his subjects in things free and indifferent does so improve those acts which he commands by his laws, beyond their former state, that from that time they begin to be acts of virtues, that is to say of *obedience* and *legal* justice.

23. This is a case so plain as never to be controverted, if so cogent a truth had not galled certain Reformers of our age and nation, who, to introduce that Reformation (falsely so-called) which they labour to establish, had rather, against the common reason of mankind, take away the indifferency of things in general, than allow the magistrate a power to determine about *Rites and Ceremonies* ; like the bold *Macedonian*, who cut with his sword the *Gordian Knot*, which by no art he was able to *untie*.<sup>3</sup> In this, as in many other things, they are genuine disciples of the old *Stoics*, who asserted that nothing was *indifferent* to a wise man, who directed himself in every, even the minutest action of his life, such as stretching forth one of his fingers, by the dictates of right reason. But these philosophers, though by words they denied the indifferency of things, yet when the adversaries of this doctrine pressed hard upon them with

<sup>3</sup> Alexander the Great. Justin. Hist. xi. 7. Quint. Curt. iii. 1.

strength of argument, they were obliged in fact to confess it ; only they thought fit to invent some frivolous distinctions, to palliate their error, that they might not seem to be under a mistake. But there are some amongst us who have had the confidence to defend with the greatest effrontery this unsound principle, which has been long since banished from our schools, and to maintain it in their public writings, and with more obstinacy than the *Stoics* themselves ever did, two especially, the one a *Divine*,<sup>4</sup> a man of some character with his own party, the other a layman and a *Peer*<sup>5</sup> of the land, but both now dead. And since this doctrine of theirs has I believe had the same fate, and will not easily be revived among sober men, or at least find a patron among them, I think it not worth the labour of confutation.

24. I shall take it for granted therefore, that there are things and actions, at least in their own nature and species *indifferent*, which I believe there is no man so much a *Stoic* as to deny. I am next to observe (which is as far as my present design is concerned) that an act indifferent, with regard to the *matter* or *object* of it, if it be commanded by a law, though the act were good and lawful before, becomes immediately just and necessary ; and when the law forbids it, the very same act becomes bad and unlawful. And this comes to pass not by reason of any *change* in the *thing itself* (which *physically* and *morally* remains *the same* as it was before ; for the nature of things is eternally the same) but it proceeds from the *obligation* which the law superinduces upon it. Hence it is, that an act, which of itself, and in its own nature, and with respect to us and our practice, was before absolutely *free*, yet if the authority of the law deals with it, is no longer *indifferent* and free, in the use of it,

<sup>4</sup> Perhaps Travers or Cartwright, Hooker's adversaries.

<sup>5</sup> Perhaps Robert Greville, Lord Brooke, shot in the siege of Lichfield in 1643.



and as to us, but is either *necessary* or *unlawful*, as the exigence of the law requires.

25. If it be inquired, how it comes to pass that since a law seems to have an equal power on either side, it cannot as well by a *command* transform an evil action and make it good and lawful (which we have before denied), as by a *prohibition* cause a good act to become evil and unlawful? I answer, that the reason of the difference is evident from that common maxim, that *good<sup>s</sup> proceeds from a perfect cause, and Evil from the least defect*. An act therefore that is *Evil* in its own nature with regard to its *object*, must of necessity *retain its malignity*, nor can it possibly, in any exercise of it, or by the accession of any circumstances, *become good*. This comes from a defect of goodness with respect to the *object*, which is sufficient to vitiate the whole act. But an act that is good in itself, at least not evil, if it be attended with a single evil *circumstance*, becomes wholly vicious, because it wants a proper rectitude in that *one circumstance*. And from hence arises another difference between laws *affirmative* and *negative*, or between a Human Law that commands and one that forbids; for an *affirmative* law does not impart any goodness to the act it commands, if it be otherwise in the least evil: but a *negative* law adds a malignity to the act, though it be otherwise in every circumstance perfectly good. An *affirmative* law therefore makes that necessary which it finds to be good; a *negative* makes the same act unlawful: but what they find to be evil, they both leave in the state they found it. Both these laws, notwithstanding, do oblige in a particular way, and in regard to us; the one binds us to do what the command of the law has made necessary, and the other obliges us to avoid what, by a prohibition, is now made unlawful.

<sup>6</sup> "Bonum ex causâ integrâ; malum ex quolibet defectu." Cp. Dionys. Areop. de Div. Nomin. iv. 30.

The seventh question respects *Ecclesiastical* laws in particular. By *Ecclesiastical* laws I would not be understood to mean such as are made by *Ecclesiastical persons without the authority of the Civil Power* (which question will more properly be considered when we come to speak of the *efficient cause*), but those that are ordained by *any lawful authority* about ecclesiastical affairs; for the *material cause* is what we are concerned about in this prelection. I have not found, beside the two I mentioned, any who either denied the *indifferency* of things in general, or would not allow the civil magistrate a power in things indifferent that are purely *Political*; but we meet everywhere a great number of *Innovators* who deny that any *human* power has the least authority for instituting *rites* and *ceremonies* in the publick worship of God, in addition to those that are prescribed by *Christ* and His *Apostles* in the Gospel.

But I profess sincerely, after a perusal of a number of tracts by many authors, especially of our own nation, in order to satisfy myself and others upon this subject, I cannot find *one argument* that affords the least pretence for such a distinction as affirms that the power of determining and making laws about things indifferent, does not equally obtain in *Ecclesiastical* affairs as well as *Political*. The reasons they generally deduce from the duty of avoiding scandal or offence, and from Christian liberty, and commonplaces of the same nature, equally oppose the laws and constitutions of both Civil and *Ecclesiastical* authority, and overthrow both or neither.

The arguments that seem to carry any peculiar force against *Ecclesiastical* laws and rites are only four, which (as the time will permit) I shall examine briefly, and in their order. They are taken from that of the Apostle, *There is one Lawgiver,*<sup>7</sup> and from the *Perfection of Scrip-*

<sup>7</sup> James iv. 12.

ture, and from the nature of Divine Worship, and from the example of the Jewish Church.

27. They object in the first place the words of the Apostle: *There is one Lawgiver who is able to save and to destroy.*<sup>8</sup> In the reign of Queen *Elizabeth* great stress was laid on this argument as the support and basis of the whole cause, by the leaders of the *Disciplinarian* faction. As Christ (they tell us) is *sole Head*, so is He *the only Lawgiver* in His Church; the laws which He delivered the Church is always bound to observe; *no other laws* ought to be *admitted*, and no other lawgiver acknowledged; whoever, therefore, presumes to impose laws upon the Church, besides those that were instituted by Christ, acts the part of an *Antichrist*, and audaciously invades the prerogative of the great *Lawgiver*. I have already explained this text<sup>9</sup> as far as my design required, especially where it was to be proved that God and Christ alone have an absolute and direct command over the Consciences of men. It is evident beyond dispute that the force of this argument extends to *Political* as well as to *Ecclesiastical* laws. For why should the obligation of human laws in *Civil* matters be consistent with the authority of Christ alone, and not in *Ecclesiastical*? Who can see the least shadow of difference implied in the words of the Apostle? Grant that Christ is the *Lawgiver* in the *Christian Church*: is He not the Lawgiver likewise in the *Christian State*? Besides, the Apostle does not so much as mention the Church in the whole sentence, nor does he contemplate any dispute about Church affairs, nor (which is more) does he speak a word of *Political* laws or rights, but of the censures of *private* persons. In this place he advises the faithful to call to mind the *charity* that befits Christians, and avoid passing a rash judgment upon their brethren, for God is the only

<sup>8</sup> James iv. 12.

<sup>9</sup> Prælect. iv. § 9; v. § 36.

Judge of the Conscience, and He who alone has established a law, by which every man is to be judged at the Last Day. This is the true design of the text, this is the intent of the Apostle. What now can be inferred from hence to destroy the obligation of human laws? or if *they* are to be condemned, why the *laws* of the *Church* more than of the *State*? neither of which, we own, of themselves, and by their own influence, lay an obligation upon the Conscience.

28. The *perfection of Holy Scripture* is a second objection. This, say they, is to be the rule of our life and manners; and is a perfect law that *will make a man wise unto every good work*; <sup>1</sup> whoever, therefore, *presumes to add* anything to it of his own, commits a notorious injury against God, and calls down the most exemplary vengeance upon his own head. All this is most certain; but if the Scripture in all respects be the *absolute* rule of our lives, and (if we believe this new race of *Stoicks*) it extends to the minutest actions, so that we are *not to pick up a straw* unless we find it prescribed by the Word of God, Will it not be equally sufficient for the regulation of *Civil* affairs as well as *Ecclesiastical*? Or how can the laws of the *Church* derogate more from the *perfection* of Scripture than the laws of the *State*? Or who can properly say, that to make *Ecclesiastical* laws for the sake of order and decency, is to *add* to the Word of God, when those laws are not imposed upon the people *as the Word of God*; and God, in His express Word, has commanded that all things in His Church should be done *decently and in order*. <sup>2</sup>

29. The next objection is taken from the *nature of Divine worship*. The worship of God (they urge) is a sacred thing; and all things are to be performed in it by *Divine* prescription. The inventions of men, and

<sup>1</sup> 2 Tim. iii. 17.

<sup>2</sup> 1 Cor. xiv. 40.

unwritten ceremonies are to be swept away out of the Church as superstitious, nay, as downright idolatry.

The worship of God we allow to be a sacred thing, nor is it lawful for man to institute any other worship besides that which God has ordained. But since there is an ambiguity in the phrase, we are to distinguish and observe, that it may be understood in three several acceptations. And first, the worship of God, in the principal and proper sense, may be taken for the *inward* worship of the mind, which consists in the exercise of *inward* virtues, of *faith, hope, love, invocation, trust*, and the like. Secondly, those *outward* acts, which partly express, and partly assist and support, that inward worship of the mind, such as *public prayers, singing of psalms, the hearing of the Word, and the partaking of the Sacraments*, may, by implication, derivatively and with less propriety be, and often are, called the *worship of God*, as they are the *outward* testimonies or helps of the worship that is properly so called.

Thirdly, since it is impossible that any *outward* act, especially of a solemn nature, can be performed without the assistance of *circumstances* either more or less, of *time, place, gesture, &c.*, it often happens that those very circumstances (which, if established by laws or customs, are also called *rites*) do sometimes receive the name of *worship*, though very improperly, and only as they accompany that *outward* worship, which itself is improperly called *Divine Worship*. We must affirm therefore, that the *inward*, principal, and proper *worship* is so strictly of Divine institution, that it is not lawful for any man to appoint a *new worship*, or to offer that worship, which was ordained by God, to any other object besides God Himself.

We allow likewise, that the *outward worship*, with respect to *substantials*, was instituted by God alone. But the worship of *circumstances* (if we think fit to honour

them with such a title) which are accessory to this *outward worship*, and attendant upon it, is of a totally different nature. For since the *outward* worship of God cannot be performed without circumstances; and since *God* in His Gospel has prescribed *no* certain special *circumstances* perpetually to be observed in sacred assemblies, but enjoined only *in general*, that they should conduce to *order*, *decency*, and *edification*, it must of necessity follow that the determination of such circumstances which are *accidental* to the worship itself, and<sup>3</sup> are *mutable* according to the exigencies of times, places, and occasions, should belong to those, who under Christ have a right and power to govern the Churches; and the nature of holy worship in no case forbids, but the *decency* and solemnity of it rather require, that such circumstances should be prescribed by those who are invested with public authority in the several Churches; and when they are imposed, should be religiously observed by every member respectively in every several Church. Not to say, that those very men who so severely and loudly inveigh against *Canons* and *Ecclesiastical* Constitutions, yet as they think fit, do make use of ceremonies in the worship of God, that are nowhere prescribed by Christ or His Apostles. Such are the *elevation* of the hand when they take an *oath*, the *uncovering* the *head* in Divine Worship;<sup>4</sup> and many others, which, as they are daily practised, I have no occasion to repeat.

30. In the fourth place, they appeal to the example of *Moses* in the *Jewish* Church. Their objection is this; that *Moses*, who was deputed by God to be a *lawgiver* to the *Hebrew* nation, did not only by his law define the

<sup>3</sup> Compare the Preface (written by Bishop Sanderson) to the Book of Common Prayer.

<sup>4</sup> During the *Sermon* it was not uncommon to cover the head. See Keble's note on Hooker v. xxx. 3.

*essentials* of the *Jewish* worship, but with all possible fidelity appointed the most *minute circumstances* of it; and in building the *Tabernacle* (which was a type of the *Christian Church*), *Moses* completely and perfectly finished it according to the *pattern that was shown him in the mount*; so that if *Christ*, the *Lawgiver* of the New Testament, should not have prescribed all and every, even the *minutest*, circumstance that was to be used in *Ecclesiastical* worship, it may justly be believed (which is almost blasphemy to suspect) that he acquitted himself with less fidelity in the House of God than *Moses* did. It would therefore (they say) be a notorious injury and reproach to *Christ*, if any *new rites*, never instituted by Him, should by *human* authority be introduced into the Church, or be admitted by the community of *Christians*.

But they who raise this objection, would do well to consider that the *political* laws of men, as well as the *ecclesiastical*, are equally destroyed by this argument; for *Moses*, by the command of God, gave a certain and definite law to the people of the *Hebrews*, which not only determined such *rites* that belonged to the *worship* of God, but regulated those *judgments* that related to the administration of *political* government.

31. Besides, it is a wonder to me, that our objectors did not discover, that by comparing the *fidelity* of both *Lawgivers*, *Moses* and *Christ*, they could have adduced nothing more prejudicial to their own cause, or that more strongly confirms ours. For as we truly suppose (because *Moses* delivered many laws both *ritual* and *judicial*) that it was therefore the Will of God, that the people of the *Jews* should be confined in their duty under the pedagogy and discipline of *Moses*, as under a yoke of slavery, that few of their actions should be left unprescribed, so we may safely presume it was the Will of God that the magistrates and community of *Christians* should

enjoy a liberty in the circumstances of Divine Worship, because Christ, the most faithful interpreter of His Father's will, imposed but a very few laws of ceremonies upon the Christian Church; so that it is now free for any private person at his own choice (if no command or prohibition of a superior intervenes) to follow the direction of his own judgment; and it is left to the discretion of particular Churches, and of those who govern them, to make such rules and orders as the nature of times and places shall require, and as will best promote the ends of order and decency, and the edification and peace of the people.

32. Those who make use of that argument, should consider, thirdly, that under the discipline of *Moses*, the *Jews* themselves were not so restrained in the liberty of ceremonies relating to Divine Worship, that they could not by their own authority institute and observe such rites as were never enjoined by God or His servant *Moses*. The following instances (out of many) may suffice. First, the solemn feast of the *Passover*, by the law of *Moses* was to be observed only *seven* days; but <sup>5</sup> *King Hezekiah* (who received a singular testimony of his piety from God Himself) by a special law, and with the consent of the people, continued it for seven days *longer*. Secondly, <sup>6</sup> *Esther* and *Mordecai* commanded that the feast of *Purim* <sup>7</sup> (or Lots) should be annually celebrated in memory of the deliverance vouchsafed by God to the people of the *Jews* in the reign of Ahasuerus, King of Persia. Thirdly, whereas *Moses* appointed but *one* day in the year in the *seventh* month, to be observed as a solemn fast, the *kings and magistrates* of that nation (for what reasons is uncertain, but probably in memory of some

<sup>5</sup> 2 Chron. xxx.

<sup>6</sup> For other examples of Ecclesiastical Laws made by the authority of Hebrew Princes compare Bishop Andrewes' *Tortura Torti*, p. 380.

<sup>7</sup> Esther ix.



remarkable judgments from the hand of God) did by their own authority institute other annual solemn fasts, so that in the times of the last of the prophets, there were *four* solemn fasts observed every year, three besides that in the <sup>8</sup> *seventh* month, in the fourth, fifth, and tenth, which are all mentioned by the prophet *Zechariah*. Fourthly, the feast of the <sup>9</sup> *Dedication of the Altar*, called *Encenia*, was instituted by *Judas Maccabæus* and his brethren, without any command of God, and in the judgment of most and the best expositors, <sup>1</sup> *Christ* Himself is thought not only to have approved that institution, but to have honoured the feast with His own presence. Fifthly, we find it nowhere enjoined by any command in the Divine Law, that in the time of solemn fasts and penitential mourning the Jews should put sackcloth upon their bodies, and strew ashes upon their heads, yet for many ages past they had made the observance of these ceremonies so familiar to them (and a *constant custom*, we know, obtains *the force of a law*) that our Saviour <sup>2</sup> *Christ* frequently mentioned them as the general practice of the nation, without any censure or disapproval. Lastly, it is evident from the writings of the rabbis, that it was a custom with the Jews, for the master of the family, before the *Paschal* supper, to kneel down and *wash the feet* of his domestics, which, though nowhere commanded by the law of God, yet we find it was a ceremony observed by Christ Himself, as appears from the Gospel <sup>3</sup> *history*. Why need I mention the erection of *Synagogues* in so many towns and villages for the conveniency of public worship, and many other particulars, of which we have a long catalogue in the annals of that nation?

Hence we may conclude, that if the *Jews* could law-

<sup>8</sup> Zech. viii. 19.

<sup>9</sup> 1 Macc. iv. 59.

<sup>1</sup> John x. 22.

<sup>2</sup> Matt. xi. 21.

<sup>3</sup> John xiii. 4.

fully institute under that severe economy so many ceremonies relating to Divine Worship which were never enjoined by any special command of *God*, there can be no argument reasonably drawn from the example of that people to destroy the force of laws made by *human authority* in the *Christian Church*.

## THE SEVENTH PRELECTION ;

WHICH DEFINES THE OBLIGATION OF HUMAN LAWS, WITH  
RESPECT TO THEIR EFFICIENT CAUSE.

*By me kings reign, and princes (or Lawgivers) decree  
justice.*—PROV. viii. 15.

I. THE Prelections delivered by me last term related to the obligation of human laws ; wherein it not only appeared in general, that laws rightly constituted oblige the Conscience of the subject to obedience, but in particular those difficulties were solved, that properly belonged to the *material cause* ; and it was shown in what manner human laws oblige : first with respect to things *impossible* ; secondly, to things *possible*, but burthensome in the execution ; thirdly, to things *necessary* ; fourthly, to things *unlawful* and *unbecoming* ; fifthly, to *permissible* evils ; sixthly, to things of a *middle nature* and indifferent in general ; lastly, with regard to *ecclesiastical rites* in particular. The substance of what was observed as to these cases (that I may not be tedious in the repetition) may be summed up as follows : that a subject is obliged to obey *just* laws, but laws that are *unjust* he is not bound to *obey* :<sup>1</sup> and therefore *Solomon*, in the text before us, requires of *lawgivers*, that they should decree nothing but what is *just*.

I now proceed to examine what I before proposed to

<sup>1</sup> As to the important difference between *obedience* and *submission*, see above, Præl. vi. § 3.

speak of, and in prosecution of these inquiries, I shall be as concise as the subject will permit, that so I may despatch what remains in due time, or at least so much as belongs to the obligation of human laws.

2. In the order of *Causes* (according to the method I observed before) the *efficient cause* follows next to the *material*; the *formal* comes after that; the *final* brings up the rear, and concludes the whole. I have sufficiently explained what relates to the *efficient cause* of laws in the third *conclusion* of the fifth *Lecture*; and proved that human laws, unless they are made by a person invested with a lawful authority, create no obligation to obedience.

It remains now to be considered, in the first place, *in whom* resides the just and lawful power to make laws, or who are those *lawgivers*, whose right it is, in the opinion of *Solomon*, to *decree justice*.

To answer fully this first inquiry, which is by far the most important of all that relate to the *efficient cause*, we must assume two things. In the first place, the legislative power is the power of a *superior*, inasmuch as to *command* (and to *forbid* likewise) is an act of superiority. We are to observe, that in this case there is no small difference between these three, a *promise*, a *petition*, and a *command*. To make a *promise* is common to all three, *superiors*, *inferiors*, and *equals*; for a father may make a promise to a son, and the son to the father, and a brother or neighbour may make a promise to his neighbour or brother; but to *petition* is properly the act of *inferiors*, and in some cases, it belongs to *equals*, as the son or a neighbour may desire his father or his neighbour to give him leave, or to excuse him, but it cannot extend to *superiors* without great impropriety, and it is a condescension below the condition in which they are placed. But to *command* is so strictly confined to *superiors*, i. e. to persons in a pre-eminence of power above others,

that it would be ridiculous for an *equal* or *inferior* to lay his *commands* upon a *superior* or upon an *equal*; for every *act* requires a *proportionate principle*, and one equal has no power over another equal.<sup>3</sup>

3. Now the obligations that relate to these three are thus to be stated: he who *desires* anything of another, lays no obligation either upon *himself* or the *person* he petitions; for to *petition* is an act of need, and not of power; and its effect, because it depends upon another, and proceeds not from the agent itself, creates no obligation. He who *promises* something to another, does by his promise oblige himself, but he lays no obligation upon the person to whom he promised; for a promise being an act of a *free will*, every man, as he is a free agent, and has *power over his own will*, as the Apostle<sup>6</sup> speaks, may exercise upon *himself* the right and authority he has over his own will, but not upon *another*; because, by virtue of free will, a person is master of his own will only, and of his own actions, but has no power over another man's. But on the contrary, he who lays a *command* upon another, if he has a just authority to do so, obliges the person he commands, but lays no obligation upon himself; because a command is an act of power, right, and authority, over another; and naturally, if there be no impediment, imposes an obligation upon the Conscience of another. Thus a father with authority commands the son, a master the servant, a general the soldier, a king the people, and Almighty God, as Supreme, lays His commands upon mankind, and by so doing, binds all to the execution of them.

4. I affirm, in the second place, that the legislative power is a power of *public* jurisdiction; for it is not sufficient to constitute a power of making laws, that a man has such a measure of right and authority over

<sup>3</sup> "Par in parem non habet potestatem."

<sup>6</sup> 1 Cor. vii. 37.

others, as to lay his *commands* upon them, unless he be invested with an *outward* power to *compel* the *subject to obey*, or to *inflict punishments upon him* for disobedience.

<sup>4</sup> The law, says *Aristotle*, has a *coercive* power; and therefore the *schoolmen* distinguish the power of a superior over an inferior into a power of *mastership*, and a power of *jurisdiction*. The first is of a lower degree, and of a more private concern, and has no *outward* authority belonging to it; the other is of a larger extent, and of a more compulsory nature.

These several *powers* differ not a little among themselves, and especially in these three respects. First, with relation to the matter or *object*; for the power of *mastership* is exercised properly upon private and less perfect communities, as a house, a school, or a family; but the power of *jurisdiction* is exercised upon more perfect and public bodies, as a city, an army, or a kingdom. Secondly, with regard to the *end*; for the power of *mastership* in itself, and principally, designs the benefit of the person who administers it, that is, of the *master*; and by consequence only promotes the good of the community so far as it is an advantage to a family that the master of it should be prosperous. But the power of public *jurisdiction* advances principally the public good of the *society* itself, and by consequence only tends to the advantage of the person invested with that power, who is the magistrate, so far as it is for the interest of a ruler that the commonwealth should flourish. Thirdly, these two powers differ with respect to the *effectual administration* of them. The power of *jurisdiction* in this case has the advantage over the other, as it has a *coactive power* to enforce its commands. The master of a family cannot so effectually prevail that his orders shall be obeyed by his sons or his servants, whom he can only

<sup>4</sup> Ὁ γὰρ νόμος ἀναγκαστικὴν ἔχει δύναμιν. Arist. Ethic. x. 9, 12.

chastise with a rod, as the civil magistrate can, who has a power to compel his subjects to obedience by imprisonment, by banishment, by confiscation of goods, or by death itself. It is the observation of <sup>5</sup>*Aristotle*, in the place above-mentioned, that the *paternal authority has no force or coercion in it*. Every superiority, therefore, is not competent to make laws; for besides the power of *mastership*, there is required a *necessitating* power, or a power of *jurisdiction* properly so-called, so that laws cannot be made but by a person endued with a public *coactive* power. You will understand, I presume (that I may not have occasion to repeat it any more), that what has been hitherto observed, relates absolutely to the *public* laws of a nation, and respects the laws of an inferior order only by *analogy* and a due proportion, as they advance near, or are more remote from, the perfection of the established laws of political bodies.

5. From these two suppositions (the use of which you will perceive from what is to follow) I propose in the third place a *responsive conclusion*, that *the right of legislature is lodged in the supreme power*; that is, that the power of making laws, which are to oblige the community, appertains only to the magistrate (whether he be a single person, as in a monarchy, or more, as in other forms of government), who *administers the highest authority over the body of the State*. This conclusion I shall explain first, and then confirm by arguments.

In order to the explication of it, we are to observe first, that it has pleased Almighty God, the Fountain of Order, for the happiness of human societies, and the more convenient administration of them, not only to constitute a political *regimen* in general, that there may be magistrates set over the people, but also in that very government to ordain a *political order*, so that among the

<sup>5</sup> Ἡ πατρικὴ πρόσταξις οὐκ ἔχει τὸ ἰσχυρὸν, οὐδὲ τὸ ἀναγκάσιον.

magistrates themselves there may be *differences of administrations*, or diverse degrees as well of *dignity* as of *power*. It is probable that the *military* expression of the Apostle, when he says that *the powers that be, are ordained of God*, was designed to show, that God has not only appointed an ordinance of magistrates, but a *subordination* also, in imitation of an army under military discipline.

6. We are to observe, secondly, that in everything where there is an *order*, to avoid an *infinite progression* (which nature abhors) we must of necessity come to somewhat which is the *first* and *principal* in that order, and at which we are to make a stand. Therefore, since the magistrates in the same community are some of them superior to others in pre-eminence and power, there must be *one so much superior* to the rest, that the others may depend upon him, but he himself depend upon none. In this manner the head is supreme in the body, a pilot in a ship, and a general in an army. This supreme magistrate is inferior only to God Himself, and in the government of the subjects committed to him has neither a *superior* nor an *equal*. This person St. *Peter* calls *the supreme power*: and St. *Paul*, the *higher power*, and him who is *in authority*. He is styled by the schoolmen, the *head of the community*, in whom alone the sovereignty and the majesty of dominion resides, and from whom the magistrates of a lower order derive the power they exercise over the people, *as sent by him*.

7. We are to understand in the third place, that this supreme power which we call *Majesty* or *Sovereignty*, is lodged either in one or in many, according to the different forms of government. In a popular state, that is, a *Democracy*, this supremacy of power rests in the hands of

<sup>6</sup> *Τεταγμέναί ἐξουσίαι.* Rom. xiii. 1.

<sup>7</sup> 1 Pet. ii. 13.

<sup>9</sup> 1 Tim. ii. 2.

<sup>8</sup> Rom. xiii. 1.

<sup>1</sup> 1 Pet. ii. 13.



many magistrates elected annually, or at other intervals of time, by the common suffrages of the people. This was once the state of the *Romans*, when they were governed by consuls, prætors, tribunes of the people, ediles, and other yearly magistrates. Hence in Cicero, and other authors, we often meet with expressions of this sort. “*The majesty of the Roman people. The injured majesty of the people. It was decreed by the Senate and the people of Rome, &c.*” In an *aristocracy* this supremacy resides in some of the lords or nobles, who in some places are called ‘*most illustrious,*’ in others the *Peers* of the land; or they are distinguished by other titles according to the custom of different nations. Among these, though one man (as in the Republic of *Venice*) or more, may have a pre-eminence of place and dignity, or, as it were, a *primacy of order* above the rest (an honour enjoyed formerly by the Bishop of *Rome*, and other *Patriarchs* in general councils) yet no single person is so far superior to the rest in power, that by his own authority alone he can call the others to an account, or that he cannot be controlled in a full assembly by the rest. Some show of this government is still retained by our *mayors* and *aldermen* in cities, and by the *heads* and *fellows* of colleges in our universities: though it be no more than a shadow of that form, yet it gives us a faint representation of it. But in a *monarchy* (as the very name implies) the *supreme* power resides in the person of the *prince alone*; and therefore, to make it clear *whom* St. *Paul* meant by the <sup>3</sup> *higher powers*, St. *Peter*, an excellent interpreter of St. *Paul*, admonishes the Christians <sup>3</sup> *to obey the king, as supreme.* <sup>4</sup> *Samuel* also, the Prophet of God, very fully represented the plentitude of royal power in his address to the people, to such an extent, that if a prince, supreme in his own dominions, should go to the utmost lengths specified in that chapter, and without

<sup>3</sup> Rom. xiii. 1.<sup>3</sup> 1 Pet. ii. 13.<sup>4</sup> 1 Sam. viii.

any other inducement, but merely from an ostentation of power, should play the tyrant, instead of ruling as a king, though he would not be innocent in *the sight of God*, yet he would not be accountable to men, or to be punished by them ; for though he ought to be said to have abused his power, yet it was his *own power* that he abused. And among Englishmen, what can be more evident and certain (unless to such who choose to be blind at mid-day, rather than use their eyes) than that the supreme power of the three kingdoms belongs to the most excellent Majesty of the King alone, whom we distinguish by the title of *His Majesty*, not only in our common way of speaking, but in the solemn sanctions of our laws, and in all forms and actions in courts of justice ; and acknowledge by oath <sup>5</sup> (with our hands laid on the gospels of Almighty God) to be supreme, and the *only supreme* governor, *in all causes*, and *over all persons* throughout his dominions.

8. We are to consider fourthly, that when we say the right of legislation is vested in the prince alone, it is not to be understood as if the *will* of the prince was immediately to *obtain the force of a law* (for I shall show that some *consent of the people*, and many other circumstances, are required to the constitution of a law ; but what I mean is, that neither a statute of the *Commons*, nor a decree of the *Lords*, nor any *Bills of Lords* or *Commons*, or of any other persons whatsoever, oblige the subject, or carry the power of a law, *unless they are sanctioned by the authority of the king*. But after they are maturely debated and resolved upon, so soon as they are confirmed by the royal assent, they immediately receive the form

<sup>5</sup> The Oath of Supremacy. See the Thirty-seventh Article of the Church of England. In the Book of Common Prayer in Bishop Sanderson's time, and till a recent date, the Sovereign was styled supreme over "the Three Estates of the Realm," and not (as often now) only *one* of the *three Estates*. See the rubric prefixed to the service for November 5th, now discontinued.

and authority of a law, and begin, immediately after they are promulged, to oblige the Conscience of the subject to obedience.

Since, therefore, the adequate and principal *efficient* cause of anything is what directly, and of itself, introduces that *form* upon the *matter* duly prepared, which gives it its name and its being (though other things are required to produce such an effect, or rather go before it as *previous* dispositions to qualify the matter to receive the form intended by the agent) it clearly appears, that how many soever things there may be that may be *antecedently necessary* to the constitution of a law, yet the will of the prince (by whose will<sup>6</sup> and command all laws that are proposed are ultimately ratified, or made void) is the *only adequate and efficient cause* of public laws and constitutions.

9. This being premised, the conclusion I have laid down may be confirmed by many arguments. And first, by the testimony of Scripture, in that remarkable *will* and *testament* of the patriarch *Jacob*, when he was dying, *'The sceptre shall not depart from Judah, nor a Lawgiver from between his feet.* This is a prophecy of the royal dignity that was to rest in that tribe, which the pious patriarch periphrastically describes; and in confirmation of it, he mentions the *sceptre*, the most illustrious badge of regal power, and the right of *legislation*, as the principal prerogative of it. *Moses* is said to be *a king in Jeshurun*,<sup>8</sup> because in an assembly of the elders, of the people, and of the tribes, *he commanded them a law.* *'Judah is my lawgiver*, that is, *he is my king*, as the vulgar Latin reads it. And in the words before us, *'By me kings reign, and princes (or lawgivers) decree justice, Solomon* (as it is usual with him through the

<sup>6</sup> "Le Roi le veut."

<sup>7</sup> Gen. xlix. 10.

<sup>8</sup> Deut. xxxiii. 4, 5.

<sup>9</sup> Psalm lx. 7.

<sup>1</sup> Prov. viii. 15.

whole Book of the Proverbs to make the latter part of the verse explain or oppose the former), by way of explanation, calls the same persons *lawgivers* in the latter part of the verse, whom in the beginning he styles *kings*. In the New Testament likewise, St. *James* speaks of the <sup>2</sup> *royal law*.

10. Our conclusion is supported, in the second place, by the general testimony of philosophers and historians, and by the learned in the civil and municipal laws of our own nation; a few examples will be sufficient in so plain a case. *Aristotle*, *Plutarch*, and very many eminent authors, agree that the law is *the work of the prince*. But the expression of *Ulpian*, to be found among the *Roman laws*, is particularly remarkable: <sup>3</sup> *The will of the prince, says he, obtains the force of a law*. Which maxim, lest it should be understood *absolutely* to countenance arbitrary and tyrannical administration, *Bracton*,<sup>4</sup> a countryman of our own, thus glosses upon it; *The will of the prince* (Quod principi placuit); that is, *not whatever is inconsiderately resolved upon by a prince in a heat of passion, and by the impetus of a disordered mind, but what is deliberately debated, and rightly agreed upon by his council, the prince, by his assent, impressing authority upon it*. In our forms of law, and in common processes in our courts of justice, our laws are solemnly called the KING'S LAWS, for no other reason, as our lawyers inform us, <sup>5</sup> than that the kings of *England* are the fountains of justice and of law, and that God (as the letter of the laws expressly mentions) has bestowed upon them a sovereign

<sup>2</sup> James ii. 8.

<sup>3</sup> "Quod principi placuit, legis habet vigorem." Digest. lib. i. tit. iv. § 1.

<sup>4</sup> Bracton de Legibus Angliæ, i. 1.

<sup>5</sup> "Cui αὐτοκρατορικὴν legibus ipsis legum vim imponendi potestatem Deus dedit." Finch. Nomotech. in Epis. Dedic. ad Jacob. i.

and imperial power, by which they give a force to the laws themselves, and cause them to be received as such. This is so evident, that it would be superfluous to insist upon more authorities to prove it.

11. And indeed, there would have been no occasion for saying so much upon this point, had not an obscure person, who writes anonymously, attempted to cast a mist over so glaring a truth by a very unsound fiction (unheard of till these unhappy times) of I know not what *co-ordinate power*. This writer, to give a gloss to the evil policy and endeavours of certain revolutionizing statesmen (who, destitute of any foundation of right, must for the present be supported by a specious pretence of reason, how flimsy and insignificant soever), takes abundant pains in his pamphlet to disabuse the people (as he pretends) of that idle sort of philosophy which has hitherto been imposed upon them by such as *deny* that *contradictories may both be true at the same time*. This sophist allows the king to be *supreme*, that is, that he has *no equal*, and yet he affirms that he has an *equal*, that is, that he is not *supreme*. That there are some who have eagerly caught at this ludicrous fallacy, and embraced it with open arms, as a wonderful specific, dropt down from the clouds (at least it is for their interest the people should believe so) is not so much a cause for surprise as for sorrow, that there should be persons who suffer themselves to be so grossly abused by this sophistry as to become guilty at the same time of the abominable sin of perjury. For what are we to call perjury, if this be not perjury in a notorious degree, to acknowledge and set up another power to be *equal* to a prince in his own dominions, when you have sworn<sup>6</sup> in express words that he is the only *supreme governor* in his own kingdom? Away, then, with this *co-ordinator* of ours,

<sup>6</sup> In the Oath of Supremacy.

with his strange discoveries. He led me into this digression ; but I shall now proceed.

12. The *reason of the thing* is a third proof of our conclusion. The principal act of government requires a principal power to administer it ; for every act, being the exercise of some power, supposes a power in the agent *proportionate* to it. The power of legislation is certainly the supreme and principal act of government ; it cannot therefore be administered unless by a person who is invested with the supreme power over the community in which he presides ; or by one who exercises that power by virtue of a deputed authority from the person so invested. For since there are two illustrious parts of jurisdiction, or political power, and more eminent than the rest, the *legislative* and the *judicial*, both of which consist in the *delivery of a law* (whence the word *jurisdiction* is derived), but with this difference, that the jurisdiction of a *judge* respects only the *delivery* of a law *actually* made, but the jurisdiction of a *lawgiver* is concerned in the *making* of the law ; it follows that the power of a *judge* is much more restrained,<sup>7</sup> and that the *power* of a *lawgiver* is more august. It is the office of a *judge* to pronounce judgment publicly according to the laws *already made*, but it is the prerogative of a *lawgiver* to frame a *new law*, which shall be a rule of justice to the judge himself. The one is bound to pronounce according to the prescript of a law actually in force ; the other by the plenitude of his power prescribes and constitutes a law, which the judge, who is a subject, is no less obliged to observe than the rest of the people. It is not therefore at all incongruous, that the *judicial* power, being of an *inferior* order, should be administered by a person in an inferior capacity ; but it is absolutely necessary, that the *supreme* and *architectonical* power of legislation

<sup>7</sup> One is "angustior," the other is "augustior."

should be exercised by none but him who is invested with the *supreme* power. So much for the first question.

13. A second question is, *Whether the consent of the people be required to make a law obligatory?* Some may perhaps suppose that we think that the power of making laws belongs so absolutely to the prince, that the subject has no share in this affair; and some perhaps may imagine that the people in this case have no more to do than to be under command, and to put their necks under the yoke. And truly, that imperious and lordly maxim, "*Sic volo, sic jubeo,*" "*So will I, so command I,*" seems to have obtained so far with the monarchs of former ages, when the mere *pleasure* of princes was a *law* to the people, that the name of *tyrant*, a word innocent and honourable at first, by an odious abuse of wholesome power, has long since become infamous, and shocks us by the mere mention of it. But that some *consent* of the *people* is required I have stated before, and all the most approved authors I have read allow it; so that the very *Jesuits*, the most strenuous assertors of the *Pope's* oecumenical supremacy, which they contend to be infinite and unlimited, do yet excuse many of the people of *Germany*, and other countries, for not conforming to the laws of the *Trent* Council, and the *Pope's Bull in Cœnâ Domini*,<sup>8</sup> for no other reason than because those laws were never *received* by the *consent* of those nations.

I say, therefore, and it is the general opinion, that laws proposed and instituted by the head of a community, or by a prince, *do not oblige* the subjects to obedience, *unless they are admitted by the community themselves*, and allowed by the *customs* or *suffrages* of those that use them. A law <sup>9</sup>*is the common engagement of a city*; accord-

<sup>8</sup> So called because appointed to be read on Maundy Thursday; in it all heretics and schismatics are anathematized.

<sup>9</sup> Πόλεως συνθήκη κοινή. Demosth. adv. Aristog. i. p. 774.

ing to *Demosthenes*, whose authority, if it be suspected in this case, because he lived in the popular state of *Athens*, I shall support with the testimony of *Julian* the civilian, who flourished when the *Roman* emperors ruled with a despotic power. Whose words are these, <sup>1</sup> *the laws oblige us for no other reason than because they have been received by the judgment of the people.*

14. But though the necessity of this *reception* or *consent* is generally acknowledged, yet it is not allowed so universally upon the same foundation. There are some who imagine the consent of the people is required to the making of laws, because the whole power of the prince is immediately *derived from the people*, which if he abuses (that is, if he extends it farther than his sovereigns the people are pleased he should) they may by their *own right resume* the power they allowed him into their own hands. A very dangerous error, and deservedly to be abhorred by all lovers of mankind and of the public peace of societies; and one that has been propped up by two suppositions, supported both of them very shallow and contrary to sound reason; the first, that princes *derive* all their power *from the people*, the latter, that he *who commits* a power to another, may justly *resume* it at his own pleasure. If this could be proved, either the venerable *Samuel* <sup>2</sup> was an arrant sophist, when he attempted to deter the people, tired with the *theocracy* they lived under, from a perverse desire of innovation, by representing to them the vast extent of regal power, or the *Hebrew* people failed of their usual sagacity, when they knew nothing of the right they had, but suffered themselves to be led, as it were, by the nose and dumb-founded by so feeble an harangue. Were they all so dull, so stupid, so void of resolution, as well as sense,

<sup>1</sup> "Ipsæ leges nullâ aliâ ex causâ nos tenent, quam quod judicio populi receptæ sunt." Digest. lib. i. tit. iii.

<sup>2</sup> 1 Sam. viii.



that there was not one to be found in so great a number, who had courage and wit enough to reply readily and smartly, when it was so easy to overrule the prophet, and to refute his words. *Use your threats upon children, whose ignorance may be imposed upon: we, if our king begins to domineer in this manner, will soon strip him of the power, with which we thought proper to entrust him.* In how few words would they have ended the dispute, and stopped the mouth of the prophet for ever, if the fictions of our new dictators had been as readily received in those past ages as they are now boldly pressed upon new converts, and willingly embraced by the giddy populace.

15. But to be serious, and come closer to the question. I observe, first, that the power of governing in a state, by what means soever attained, *proceeds* wholly and immediately from <sup>3</sup> *God Himself*, and not in the least from the *people*. The testimonies of Holy Scripture are most evident upon this occasion. *'By Me kings reign;* that is, *by My authority alone*, and not by the authority of *men*. *The powers that be, are ordained by God*, and not by the people. The very magistrates, who are over the people, are the <sup>5</sup> *ministers of God*; and they are called *gods*, <sup>6</sup> *I said, ye are gods*, because they are His <sup>7</sup> *vicegerents* upon earth, invested with this power immediately by God, and not by the suffrages of the people. Can any people, without the sin of *idolatry*, pretend to *make gods* to themselves, especially since every one who commissions another to represent him, deposes the power to his vicegerent by his *own authority*, and not by the will of another? Will any mortal presume to arrogate

<sup>3</sup> Ἐκ δὲ Διὸς βασιλῆες. Homer. in Hymn. xxiv. 4.

<sup>4</sup> Prov. viii. 15.

<sup>5</sup> Rom. xiii. 1. 4. 6.

<sup>6</sup> Psalm lxxxii. 6.

<sup>7</sup> "Non alio animo civitas rectorem suum intuetur, quam si Dii immortales potestatem visendi sui faciant." Senec. 1. de Clem. 19.

that right to himself, so as to say, that the person who is to be the *minister of God*, and as it were a *vicegod* upon earth, receives from him all the power and authority he has? Although haply the people may have something to do with the *person* of the king, so far as he is the *subject* of power, as will presently appear; as in *natural productions* some previous alterations are required to dispose and qualify the *matter* for the reception of the *form* to be impressed upon it; but as the impression of the *form* upon the *matter* properly disposed is the immediate work of the *agent*, so the collation of kingly power is not the office of the people, but *immediately* of God Himself. And *Irenæus* spoke excellently when he said, that *by Whose command men are born, by His command kings are created.*

16. Secondly (to point directly to the fountain-head), you are to understand that all political dominion descended originally from *patriarchal* power. Whoever has opportunity to search diligently into the beginning of things, will find that nations were not cemented together into kingdoms and commonwealths by the *mutual consent* of the people, but that all government was for some time confined among the posterity of Noah, within the *bounds of paternal authority*. There were no kings as yet, nor so much as petty princes, much less monarchs of vast empires; and least of all were there any *aristocratical* or *popular* administrations, which were names unheard of throughout the world in those early ages, and introduced first into *Greece* (a nation fickle and fond of novelty) either by ambition or anger of factious spirits eager for change. All dominion as yet was lodged in *the heads of families*, among whom the *first-born* of every family,

\* Lib. v. cont. Hæres. cap. 20.

\* Ἐν οἰκίᾳ πρῶτον ἀρχαὶ καὶ πηγαὶ πολιτείας καὶ δικαίου. Arist. Eth. Eudem. vii. 9, 10.

<sup>1</sup> Πᾶσα οἰκία βασιλεύεται ὑπὸ τοῦ πρεσβυτέρου. Id. Pol. i. 2.

without any suffrage or election, by a certain right and privilege of nature, presided in things *civil* and *sacred*, and was esteemed a prince over the whole clan. He exercised his authority over delinquents at first by moderate punishments; but the number of families continually increasing, he chastised the guilty with more severe inflictions; till at last, mankind still multiplying, and vice and wickedness growing more formidable, there was a necessity for *capital* punishments. Hence it was that a father formerly had <sup>2</sup> a power of life and death over his children and family; some traces of which authority remained, after kings were settled in many nations. Hence arose the too rigorous severity of *paternal* power among the *Persians*, which is noticed by *Aristotle*, but not approved; and that solemn form among the *Romans* of claiming a right over their children: <sup>3</sup> *That he shall exercise a power of life and death over him, as a father does over his son.* From these beginnings, by reason of the increase of families, kingdoms began to arise throughout the world, and those who ruled over them were called *kings*, who exercised absolute sovereignty and command in their respective dominions, which were generally petty kingdoms; a small city, with a few villages and hamlets, being the utmost extent of them. <sup>4</sup> *In the beginning the government of people and nations was in the hands of kings,* says *Justin*, in entering upon his history. And <sup>5</sup> *Cicero* before him, *All the ancient nations were formerly governed*

<sup>2</sup> "Pater jussit. Hoc nomen omni lege majus est. Jus nobis vitæ necisque concessum est." Quintil. Declam. vi. 14.

<sup>3</sup> "UTI. EI. VITÆ. NECIS. QUE. IN. EO. POTESTAS. SIET. UTI. PATRI. ENDO. FILIO. EST." Apud Aul. Gell. Noct. Att. v. 19.

<sup>4</sup> "Principio rerum, gentium nationumque imperia penes reges erant." Justin. Hist. i. 1.

<sup>5</sup> "Omnes antiquæ gentes regibus quondam paruerunt." Cic. de Legib. iii. 2.

by kings. And <sup>6</sup> Aristotle, before them both, observes, that those cities which in his time were free towns (those of Greece he means, and others after their example) were originally governed by kings. That this was the original of government, among many other arguments, this may be cited as of no small authority; that the dominion of kings was formerly confined within so narrow limits, that in Canaan alone, a small country, we read of *thirty and one kings* overthrown by <sup>7</sup> Joshua, the captain of Israel. And we may justly suppose, that he left as many more unsubdued; for not long after his death, we have an account of the barbarity of <sup>8</sup> Adonibezek towards *seventy kings* he had conquered.

In short, the difference between a prince at the head of a *numerous* alliance, and a king of a *small territory* consists more in *name* and in <sup>9</sup> *extent*, than in *fact* and *authority*; so that we have no reason to doubt, after due examination, that *paternal power* did by degrees grow up into the name and authority of a king. And it is not possible to trace the original of the greatest Empires, except from this fountain. And so far, nothing is more plain, than that the people had no share in conferring regal power, nor possibly could have.

17. From what has been said, it sufficiently appears that the form of government, whereby the *first-born* of the whole family succeeds into his father's rights as his next heir, is justly to be preferred to all others; for this reason among many that might be offered, because it comes perfectly up to that original standard which Nature herself seems to have observed, and to recommend to mankind; and the farther any government recedes from this most ancient and natural appointment (and the

<sup>6</sup> Τὸ πρῶτον ἰβασιλεύοντο αἱ πόλεις καὶ νῦν ἔτι τὰ ἔθνη. Arist. Polit. i. 2.

<sup>7</sup> Joshua xii.

<sup>8</sup> Judges i. 7.

<sup>9</sup> Οὐ τῷ ὄλῳ καὶ παντὶ ἀλλὰ τῷ πῶσῳ μόνῳ διαφέρει. Gregor. Presb. in vitâ Greg. Nazianz. tom. i. p. 16.

lust of empire, and the unruly ambition of men will ever be swerving into forbidden ways in order to climb to the pinnacle of power), the more exposed it lies to the aim of tyrants and popular designs. For they who arrive at the sovereignty by other methods than by *lawful succession*, must of necessity be advanced either by open force and military violence, or by stratagem and policy, or by the election of the people. Such as obtain the supreme power by force of arms, whether it were by open *usurpation*, without any pretence of right, or by a just war occasioned by the unjust provocations of enemies (for it may be brought about both ways), do certainly no more owe their authority to their subjects, than such as succeed into their kingdoms by *hereditary right*. Nay, much less; for the one govern a willing people, and accustomed to obedience, the other rule *against the will* of the subjects, who (if they had power) are ready to resist; so that, neither in this case have the *people* any share in *conferring the supreme power*.

18. But in establishing the power of those, who by craft exercise a tyranny in the government, it cannot be denied, but the people contribute, and are principally concerned. For such who affect arbitrary power endeavour first to court the favour of the people, <sup>1</sup> *climbing up to empire by flattering the populace*. The histories of most nations afford many examples in confirmation of this truth. Only to quote the abbreviator of *Trogus*, we find what arts <sup>2</sup> *Pisistratus* of *Athens*, <sup>3</sup> *Clearchus* of *Heraclea*, <sup>4</sup> *Dionysius* the younger of *Sicily*, and others of other countries, generally employed to persuade the people to take part with them; what invectives and malicious harangues they uttered in order to incense the

<sup>1</sup> "Potentiam ex adulatione vulgi quærentes." Justin. xiii. 3.

<sup>2</sup> Justin. ii. 8.

<sup>3</sup> Ibid. xvi. 4.

<sup>4</sup> Ibid. xxi. i.

credulous multitude against the best citizens. They would, for the sake of *applause*, enact some public decrees which had a show of *clemency*, of *justice* and *benignity* to the people, and insinuate themselves into the hearts of the citizens by all manner of allurements, and the most intoxicating flatteries, which the vulgar love to hear, and to be deceived by, as if *they* were the only *assertors*, *defenders*, and *patrons* of the public liberty. A pretence of *duty*, frequent *promises*, an assurance of *better times*, and a reformation in the *public affairs*; these are the noted artifices, by which those who make way to the empire by policy, usually court <sup>5</sup> the esteem of the wavering and fickle populace, and seduce <sup>6</sup> *by flattery and fair words, which way soever serves to attain the ends of their own interest and ambition.* And truly this device seldom fails of success; <sup>7</sup> for it generally happens that such as aspire to this height of honour and command, do at last gratify their ambition, and obtain what they so long pursued, being supported by the favour, and borne on the shoulders, of the *populace*.

19. But how little this makes to prove, that the *people* have a *lawful right* to *confer* the *supreme* power, we shall soon perceive, if we consider, that to argue *from what is actually done, to what ought to be*, was always accounted weak and inconclusive. Besides, what the people contributed in this case, proceeded from the passion and disorder of their minds, and not from sedate reflection and sober judgment. So far from it, that when the heat of their spirits begins to cool, and they find themselves circumvented and imposed upon, they instantly repent of what they have done, and are ashamed of their own precipitancy and credulity, they condemn themselves for

<sup>5</sup> "Nihil est facilius quam in quemvis affectum movere populum." Quint. Decl. xi. 7.

<sup>6</sup> Ἐκχαυνῶν λόγοις πρὸς κέρδος ἴδιον. Eurip. in Supplic. 412.

<sup>7</sup> Horat. Sat. 2, v. 50.

their rashness and imprudence, for being seduced by a greedy prospect of enlarging their liberty, to be the authors of their own slavery, and to give themselves up to the oppression of tyranny and arbitrary dominion. This savours more of *impotence* and *weakness* of mind, than of *power*; and he must be a marvellous sophist who would elicit from it any argument for sober right or legitimate authority.

20. There remains, therefore, but one form of government wherein there appears the least shadow of popular right in constituting a prince; and that is in an *elective kingdom*, when a prince is *chosen* to succeed in the place of the deceased king, by the free *suffrages* of the people. In this case we readily confess that the people are nearly concerned and lawfully, by a just right. Yet we cannot allow that the *whole power* of the *elected prince depends* upon the people, or *was derived* from them. For it is one thing to *institute* a power, and another to *elect* a prince to administer it, and so very different, that it generally belongs to a different person. For example, the mayor of a city is *elected annually* by the citizens, who have a right to vote; and being chosen, he exercises jurisdiction within the liberties of that place, which he had no right to do before he was so elected. The fellows likewise of a college, upon a vacancy, have sometimes a power to elect a new president, to whom, by virtue of that election, belongs the government of the college. But the full right of the electors in both cases extends only to the *designation* of the *person*, who exercises the power he is invested with, not as derived from the *electors*, but from *another fountain*; for neither does a Mayor *receive* the jurisdiction, which he administers in a corporation, from his fellow-citizens, who, by their choice, advanced him to the magistracy; but it flows from the charter of the king, who was pleased to indulge the city with such a privilege; nor does the Head of a college receive the authority he

obtains in it from the fellows, by whose suffrages he was elected ; but he *derives it* from the *founder and his statutes*, which assigned him such a power. In short, where the popular election of a *prince* is admitted by the laws or customs of a nation, the people only *designate the person* who is to govern, but he is invested with the *authority of governing by God alone*.

21. But let us allow these flatterers of the people this hypothesis of theirs ; yet it will be of no advantage to them, unless we grant further (which they take for granted when they ought to prove it) that *whoever confers* a power upon another may justly *strip him* of that power when he thinks fit, and *resume* it into his own hands—a notion contrary to reason, and to all the law and equity in the world. *Contracts* that are lawfully made ought not to be broken ; a *donation* absolutely and unconditionally given is not to be *revoked* in the whole or in part ; a right which was lodged in the *electors* before the election does *ipso facto* pass over to <sup>8</sup> the person *elect*ed.

These, and other maxims to the same purpose, are the dictates of Reason and Nature universally received, and confirmed by the consent of all Nations and the general use and practice of Mankind. The seven princes of *Germany* have full power to elect an *emperor*, but not to *remove* him from the empire when once elected. The people—that is, the *freemen* and *freeholders* (as we usually speak), as many as are not of the *nobility*—have a right of electing by common suffrage *knights* and *burgesses* in the several counties and corporations of *England*, and to send them to *Parliament* as their representatives, entrusted with a *fiduciary* power to manage the public affairs of the kingdom ; but after the election they have

<sup>8</sup> “Populus in eum omne suum imperium et potestatem transulit.” Ulpian. F. de Constit. Princip. Digest. lib. i. lit. iv. § 1.



*no right* at all to *abrogate* the power they deputed, though perhaps the persons chosen may *deceive* the expectation of the electors. The case is the same with those who have a right of choosing a *mayor* of a city, or a *president* of a college, or the *head* of any other civil society. When once the election is over they have no more to do; the right and authority of government is *transferred* to the person *elected*, whose power they are obliged to obey for the future, and to acquiesce in the election they have made; nor, if the magistrate elected behaves himself unworthily of his office, ought they to impute it to any but themselves.

22. These things, I confess, might be more largely insisted upon, and indeed it would be worth our pains to proceed further upon this subject, and weed out of the minds of men every fibre of this poisonous root, so fruitful in sedition, did not my time, and the design I proposed, call me back from whence I have digressed; and perhaps there may be no occasion to enlarge upon this head, since I believe it appears evidently from what has been said, how rashly and dangerously so vast a power is attributed to the people.

Nevertheless there are other sufficient reasons of force to prove that in making of laws a regard ought to be had to the *consent* and approbation of the people. And first, a *law*, in the opinion of *Aristotle*, ought to be <sup>9</sup> *a resolution void of passion*; but the laws of princes delivered rashly, *without* the consent of the subject, in favour of courtiers and parasites, are commonly passionate and corrupted with wicked desires of ungovernable affections. Secondly, because those laws that are disapproved, when they are proposed to the subject, may, morally speaking, be presumed either to be *unjust* in themselves, or too *burdensome* to the people, or at least of no *use* to the

<sup>9</sup> *Νοῦς ἄνευ ὀρέξεως.* Arist. Pol. iii. 16.

public, and therefore ought not to be enacted, because to multiply laws without necessity is a great inconvenience to a State. Thirdly, because it is evident that laws rightly constituted may be so abrogated by a contrary *custom* that they cease any longer to oblige; which custom is no more than a joint consent of the *people*, who omit to observe such laws as being useless, and of the *prince* who does not exact the observation of them. Since, therefore, to *destroy* and to *make* are effects of the same power, the force of a law seems not a little to depend upon the approbation and consent of the people. Fourthly and principally, because the consent of the people concurring with the power of the prince in the making of laws conduces so far to the public peace of the kingdom, and to the safety and security of the prince, that nothing can more effectually promote the happiness of both. For there is great reason to believe that all subjects will cheerfully and readily pay obedience to the *prince* who expects their consent, and to the *laws* approved by *themselves*.

Nor is it to be feared (as is objected by our opponents) that the supreme legislative power of the king will by such means be in the least impaired. And that these two, I mean the *consent of the people*, and the *supreme power* of the prince, can consist together without opposition (nor is there the least repugnancy in the things themselves to prevent their agreement) appears from this, that the kings of *England*, whose supreme power was always, before these unhappy times, cheerfully recognized by every inhabitant of the kingdom, did never exercise their *legislative* power in such a way as to impose laws upon their subjects *without their consent*.

23. It must be allowed therefore, we conceive, that at least some <sup>1</sup> *consent* of the people is required to the making

<sup>1</sup> Ὁ γὰρ νόμος ὁμολογία τίς ἐστι. Arist. Pol. i. 6.

of laws that are to oblige the Conscience of the subject. But it may here be questioned, and properly enough (and this I propose as a *third* inquiry), *what sort, and, as I may say, what degree of consent is necessary to make the will of the prince obtain the force of a law?* To resolve this, we are to observe, that the consent of the people may be considered, either with regard to the *time* of their consenting, or the *manner* of giving their consent. The first of these must be either *before* or *after* the promulgation of a law; the other is effected either by *express* consent, as by *suffrage*, or *tacitly*, as by *custom*. From the complexion of these there naturally arise four degrees of popular consent.

24. The first, which is the least and lowest degree of all, is the *tacit consent* of the people *before* the proposing of a law, that is, when his subjects have so entirely delivered themselves and their fortunes into the hands of the conqueror, or by a continued custom of obedience have submitted so absolutely to the will of the prince, that whatever he lays upon them obtains the force of a law. It will come to the same thing, let it be which way it will; for by the law of nations, that power of a prince is allowed to be *just*, which is either obtained by a *just war*, or confirmed by a continued *succession*, as by right of prescription. And this degree of consent, though not very useful to the people, if the prince is pleased to abuse his power into tyranny, yet it will serve so far, as to hinder the people from complaining of any injury done them, if a prince happens to act with severity (though not with injustice) toward them, or imposes anything upon them which they would willingly avoid.

This is the case of many of the *Presbyterians* among us, who (as their way is) complain loudly and unjustly, that the *election* of *Parochial* Pastors is wrongfully taken away from the people, and that those who ought to be

chosen to that office by the parishioners, are presented by a *private* person, or by a *College*, under the name of a *Patron*, without their consent. They do not duly reflect that the *right of election*, if the people ever had it (which is very uncertain, and if denied, can never be proved) has long since passed away, for some just cause no doubt at first, but forgotten in long prescription of time, and is now vested in those who are called *Patrons* of Benefices; and therefore, in a choice made by the *Patrons*, the *consent* of the people is virtually implied. But if this answer is of no force with these Opinionists, yet they ought to be reminded of a fact which ought to satisfy the most clamorous adversary, that the Rights of *Patronage*, and the *Advowsons* of Churches were long ago confirmed by authority of *Parliament*, that is, by the common and full consent of the *whole people*: and, therefore, what a lawful *Patron* does in this case, has been allowed by the consent of the people.

25. The second degree is the *tacit consent* of the people *after the* promulgation of a law, <sup>2</sup> when the people offer no objection to a law made and published by the prince, but approve of it rather by their practice and conformity to the will of the prince, and by observing what is enjoined by the law. For if a person that is *silent* is presumed to *consent*, much more a man who expresses an *actual obedience*. *Julian*, in the place above-cited, speaks thus concerning this degree of popular consent, <sup>3</sup> *What is the difference, whether a people declare their consent by suffrages, or by their outward conformity and practice?*

26. The third degree is the *express consent* of the people to a law, after it is proposed to them by the

<sup>2</sup> "Leges instituuntur cum promulgantur, et firmanur cum moribus utentium approbantur." Distinct. 4. Sect. in istis.

<sup>3</sup> "Quid interest, suffragio populus voluntatem suam declaret, an rebus et facto?" Digest. i. tit. iii. l. 32.

prince, that is when the prince, by the advice of his Council has determined with himself about the matter of a law which is not perfectly drawn up, but sketched in outline, and refers it to the perusal of his subjects, in order that it may not contain anything inconvenient and absurd, and requires that they, or the greater part of them, if they deem it beneficial to the public, or at least not prejudicial, would confirm it by their *suffrage*, that so by their *consent* it may pass into a law. This method of proposing comes very near the *Rogatio Legum* of the old *Romans*, when their Republic flourished; which is a phrase frequently to be met with in authors who write of the affairs of that people.

27. The last and highest degree of all (which is the greatest, and indeed that *true liberty* of the people, which we *Britons* have long enjoyed under excellent princes, even to the envy of our neighbours; and had we not been ungrateful to extravagance, and become unworthy of so great a blessing, we might have been happy under it to this day) is the *express consent* of the people *before* the enacting of a law; that is, when the prescribed form of a law, upon a mature deliberation of *Lords* and *Commons* about the matter and words of it, is approved by their joint suffrage and consent, and then offered to the *King's Majesty*, to whom belongs the supreme power of enacting laws, that if he pleases to confirm it, it may obtain the force and virtue of a law, or if he rejects it, it may not pass into a law, nor be received as such. A form of legislation most wisely contrived by our ancestors, and delivered down to us through many ages and successions of kings. A method that by the experience of all past times has proved to be so wholesome for our Constitution, that if unseasonable counsels (to say no worse) had not prevailed to remove the ancient boundaries from their places, our churches, our universities, the king, the people, the commonwealth,

and the private affairs of every man (which by the most just judgment of God are now running to ruin) might perhaps have flourished, as they have formerly, under the Divine protection to this day. And I verily believe that the wit of man cannot easily find out a better way of making laws, to moderate the power of princes on the one hand, and to check and restrain the licence of the people on the other.

28. A fourth question follows, concerning the laws of lesser communities : for instance, of cities, universities, colleges, schools, and other corporate societies, which (besides the laws common to all the subjects of the kingdom) are regulated by private laws, rights, and statutes of their own. The question is, to *what persons* belongs the power of making such laws, and, being made, *whom* they oblige, and *to what?* The answer is easy. I observe therefore, in the first place, that these societies, corporations or colleges, being members of the great body of the State, and contained in it, as the inferior orbs of the heavens within the superior, it is not lawful for any college or society, or for the governors or officers of them, to make *private* laws for their own use that may oppose or be of any prejudice to the public laws of the whole kingdom. Secondly, since by the grant of princes, and their especial grace (as we usually speak) these societies are incorporated, and enjoy no other rights, privileges or power, beyond what they had either by long prescription of time, or appears to be granted to them by the *Charter*, or *Letters Patent*, of the king, it is evident that the legislative power, exercised by such societies, is a *derived*, and not a *primitive*, power, and to be resolved at last into the supreme power of the prince as its true original. And therefore those societies, or the governors of them, have no right at their own pleasure to constitute, or actually use, any power in the making of laws, unless they *confine* themselves within the manner

and measure of power conceded them by the prince. I observe thirdly, that the laws of private colleges, or of corporate societies, lawfully made according to the tenor of power received from the prince, oblige the several members of those societies, and all that live within the limits of their jurisdiction; and these alone they bind *of themselves, directly*, and by their own influence; but by virtue of the *supreme majesty* of the Prince, upon whose authority they rely, and from whom they derive all their force, they do in some sense, and *indirectly* oblige all and every subject in the kingdom: but the reason and degree of the obligation are different; for these laws bind their *own members* to a strict obedience, they oblige others only not to violate or impair them, or to obstruct the observation of them.

29. Our fifth inquiry relates to *Ecclesiastical Laws* in particular. That new laws may be made concerning rites and ecclesiastical matters and persons, with regard to the circumstances of outward worship, and promoting order, decency, and edification, besides those delivered by Christ and His Apostles in Scripture, is a case so evident and agreeable to reason, that it would be a glaring proof of prejudice and obstinacy seriously to deny it; but *to whom* the right of making *ecclesiastical laws* does *properly belong*, has been eagerly *controverted* by divines.

The *Romanists*, who would exempt the clergy from all jurisdiction of the civil magistrate (concerning which controversy this is not the place to dispute) contend that *bishops only*, and especially the *Pope*, whom they call the *Æcumenical Bishop*, have a right and power to make laws, which not only oblige the Consciences of the clergy, but of the *laity* also, and that without the leave or consent of the civil magistrate.

The *Puritanical Reformers* of the present age, who profess themselves the most bitter enemies of *Popery*, but at the same time turn all things into confusion, among many

other doctrines of the *Papists*, embrace this tenet, from whom they differ in persons, not in opinion, and they take away all power, authority, and ecclesiastical jurisdiction from the *Crown*, and confine it wholly to their own *classes* and *conventions*. The *Erastians*, on the contrary, who also set up for *Reformers* (Good heavens! what strange names and opinions, alike ill-shapen and dire, but otherwise monstrously diverse, have these last seven years, fruitful of prodigies, brought forth into the world, and nursed and cherished under pretence of *Reformation!*); the disciples of *Erastus*, I say, would *rob* the *spirituality* of all ecclesiastical jurisdiction, and give up the outward government of the Church absolutely into the hands of the *civil magistrate*.

30. I have no desire nor leisure (unless I should be willing to trespass unduly on your patience) to engage with both these adversaries; but in this, as in many other debates, the *mean* between the two *extremes* seems to be the truer opinion, and safer to follow; and I am confident that you will be more easily led to concur in my sentiments, because they are as agreeable to the doctrine of the Church of *England*, and to the laws of the Realm. My assertion is, that the right of making ecclesiastical laws is vested in the *bishops* and *presbyters*, and other persons duly elected by the whole body of the clergy of the whole realm, and assembled duly in a lawful synod; yet so, that the *exercise* of this right and power ought to depend, in every *Christian* state, upon the authority of the *supreme civil* magistrate, and this both "a parte ante, et a parte post," i.e. previously and subsequently to deliberation, so that they cannot, without his permission first obtained, and being summoned by his mandate, or at least by his authority, either meet in order to make *ecclesiastical canons*; nor after they are thus called and authorized, are the *canons*, which may be agreed to in such a convention, of any force to oblige, till the *assent* of the *supreme* magis-



trate be obtained ; by whose public authority and approbation so soon as they are confirmed, they immediately obtain the force of laws, and oblige the Conscience of the subject.

And this may suffice concerning the *Efficient Cause*.

## THE EIGHTH PRELECTION,

WHICH DEFINES THE OBLIGATION OF HUMAN LAWS,  
WITH REGARD TO THEIR FORMAL CAUSE ; WHEREIN  
THE PROMULGATION OF LAWS, AND THE NATURE OF  
PENAL LAWS ARE CONSIDERED.

*And they made proclamation throughout Judah and Jerusalem, unto all the children of the captivity, that they should gather themselves together unto Jerusalem ; and that whosoever would not come within three days . . . all his substance should be forfeited.—EZRA x. 7, 8.*

1. So much as concerns the method I proposed, has been already stated concerning the obligation of Human Laws, with respect to their *material* and *efficient* cause.

We are now entering upon what relates to their *formal cause*, though perhaps not so properly, if it be examined by the strict rule of order, yet not inconveniently, at least in my judgment.

This subject may be reduced to two heads ; the one concerning the *promulgation* of laws, the other with regard to the *penalty* to be inflicted upon delinquents. Both of which, as they are expressly contained in the text above cited (the *publication* of the law in the *seventh* verse, and the *penalty* of it in the *eighth*), so the use of them is of great importance, from the very nature of a law, and to give it its proper effect. For since a law in its own nature, and as it is a rule of practice, ought to be attended with a *double* power, a power to *direct*, by showing the subject *what* he is to *do* and to *avoid*, and a

power to *oblige*, by constraining him to obedience ; a law cannot duly and effectually exercise this twofold power, unless the subject is made acquainted with the will of the ruler, which is by *publication* ; and unless he understands by the *penalty* annexed, how nearly it concerns him to obey it.

2. The first question that relates to the *promulgation* of a law, is, *Whether promulgation be of the essence of a law?* that is, whether, since the law has a power to *direct* and *oblige*, the *promulgation* of it be so necessary, that without it the law is disabled from putting these *powers* in execution? Now, through this Prelection, you are to understand that I do not take the word *promulgation* in the sense of Cicero, and other *Roman* writers, but in the common way of speaking, current among' the *schoolmen* and the *canonists* of later ages. *Promulgation*, in the sense of the ancients, was when a law, *not yet made*, was publicly *proposed* upon three market-days for the approbation of the people ; but the promulgation of which I speak is the publication of a law *actually made*, that the people may observe it.

To this question, therefore, I answer in short, that this promulgation is so necessary and essential to a law, that it may in some measure be called the *form* of it ; and, therefore, by some authors it is inserted as a part of its *definition*. And indeed, it is absolutely necessary so far, that without it a law cannot do its proper work, which is to *direct* and to *oblige* the subject ; whom the law cannot *direct*, much less *oblige* (though made by ever so just or undoubted authority), unless it be *known*, which it can never be, unless it be *published* ; for that which properly creates an obligation, is the *will* and *authority* of the ruler, not as he is a *single* person, but as he has a *public* character, and is the *head* of the community. But unless by some *public* method he takes care to *declare* his *will* to the people, it cannot by any law (at least by

any ground of right) appear that it is his will, and proceeds from his authority, in his public character. And therefore the <sup>1</sup> *Canon* law affirms, that *Laws are properly made when they are published*; and the <sup>2</sup> *Civil* law asserts, that *Laws which constrain the lives of men, ought to be universally understood*. This, therefore, being the judgment of all learned professors, and approved also by the dictates of reason, I have no occasion to confirm it either by citing the example of God Himself, Who solemnly *published* His law to the *Israelites* from Mount *Sinai*; or the practice of the most flourishing states and cities in the world; which, as soon as their laws were made, exposed them in the most public places, engraven upon tables of *wood* or *brass*, to the observation of the people. Such were the <sup>3</sup> triangular, conical, or pyramidal tablets, of the *Athenians*, the *twelve tables* of the *Romans*, and other forms used by other nations, that are well known, and frequently mentioned in old authors. The curious, who have time to inquire farther into this subject, may consult the philologers and lexicographers in both languages; but I have now other business in hand.

3. The necessity of the promulgation of laws being thus settled, we shall examine next, in *what manner* this promulgation ought to be made, that it may be esteemed lawful, and create an *obligation*? I observe, therefore, in the first place, that the method and circumstances of promulgating a law may vary according to the customs of different nations. But all agree in this, that common use requires the lawgiver to take care that his will be so pronounced and made known to his subjects by some *outward sign*, that it may appear publicly to every one of them, so that none who are bound to observe the law,

<sup>1</sup> "Leges instituuntur cùm promulgantur." Gratian. Decret. Pars. 1. Distinct. 4. In istis.

<sup>2</sup> "Leges quæ constringunt vitas hominum, ab omnibus intelligi debent."

<sup>3</sup> Δίπλατοι, κέρβεϊς, ἕξρες.

can plead ignorance that such a law exists. The reason of this is, because the power of *directing* is intrinsic and essential to a law, and it is impossible for subjects to govern themselves by the will of their ruler, unless they *know* what his will is; nor can they know it, unless it be sufficiently laid open and discovered to them by some *outward sign*, by proclamation, suppose, or by writing, engraving, or the like.

4. Secondly, to the publication of a law, which shall oblige the subject, it is not only required that the lawgiver *publicly* signifies his will to the people, but he must go farther; he must observe a *solemn form*, or at least (which has the same effect) must provide that the subject may be sufficiently convinced that the lawgiver designs that will of his to have the power of a law, and the force to oblige. The reason is, because *not every will* of a superior, though known to the subject, does immediately, and *ipso facto*, oblige, unless it appears that the superior *intended* it should. For every superior, invested with a *legislative* power, as he bears a double character, the one *private*, as a *single* person, the other *public*, as a *lawful* superior, is to be considered in a double respect. The novel distinction which some imagine between the *personal* and *political* capacity of the King, and which was devised not long ago by the *unhappy sophistry* of some among us, in the midst of our late confusions, is more applicable, in my judgment, to the business before us, than to the question which was then in dispute. The distinction is this, *The will of a prince, if we consider him in his personal capacity, as he is a single, and as it were, a private person, has nothing of the nature of a law, nor are his subjects bound to direct their actions by it.* Therefore to oblige the subject, it is not sufficient for a prince to signify *any way* that his will is *thus* or *thus*, unless it appears by other means that his will is so, as he stands in his *political capacity*; that is, as he is a prince, the

head of the community, and bears the character of a *public person* invested with a legislative power ; and since this cannot be made *sufficiently* evident by a bare intimation of his will, it is necessary that by some more public and *solemn ceremony* it should be testified to such as are concerned to know it, so that no man, to excuse his disobedience, may pretend, to insist upon that outworn and common evasion, "*I had not thought it.*"

5. I observe, thirdly, that in large empires, containing many provinces, it is fitting at least that the promulgation of a new law be made in every province of the empire. There are some who think this to be simply necessary, and required by the nature of a law, which does not oblige, unless it be *received* by the people. And therefore, if it be only published in the court of the prince, or in the metropolis of the kingdom, or in some of the principal cities, this promulgation is not sufficient to oblige those who live in the more remote places and provinces. But though this be not of absolute necessity (nor does the nature of a law seem to require it, and the common opinion of the learned civilians, as well as the common practice of most nations, do not admit of it) yet it is proper it should be done, that so a law, to which all men are obliged, may come to the knowledge of all. And by how much the more easily it may be published in our times, than in ages before our own, and before the discovery of the art of printing, by so much the more inexcusable is the neglect of it. But not to digress. The manner of promulging laws, which is practised among us, seems not only the most sufficient, but the most easy and commodious method imaginable ; I mean, that the Laws confirmed by the consent of Lords and Commons assembled in Parliament, and sanctioned by the King, be committed to the press at the end of the session, and printed in a known character by the *king's printer*,

so that no one can entertain any doubt that such laws were lawfully made, and sufficiently published.

6. It may be inquired thirdly, supposing a law be sufficiently promulged, *Does it instantly, upon the publication of it, begin to oblige the subject, or at some distance of time afterwards?* In answer, I observe, first, that it is evident beyond dispute, that such laws, whose stated time of obliging is fixed, do, as soon as that time commences, oblige the Conscience; and unless it be expressed in the laws, when their obligation ceases, or they are repealed by a new law, or by a contrary custom, they do perpetually oblige. And hence it is, that by the common consent of the civil lawyers, the imperial laws do not begin to bind the subjects of the empire till two months after they are promulged, because that is the time fixed by authority in the “*Novels*,” and for this reason, because in the space of two months the law might easily be made known to every subject in the empire.

Secondly, in kingdoms and states, where no certain time is either fixed by law, or received by custom, when laws that are newly made do begin to oblige, such laws do immediately, upon their *publication*, after the custom of the country, bind the Conscience of every subject to whose knowledge they come; or where the lawgiver has omitted nothing that was requisite for their coming to the knowledge of them. For since the obligation of a law depends upon the *will* of the *lawgiver*, and not upon the *information* of the *subject*, it follows that the obligation of the law takes effect when the lawgiver has sufficiently *expressed his will* to his subjects by some outward sign; whether it came to the knowledge of every particular person, or it happened perhaps that some might be ignorant of it. For grant but the *law*, and you allow the

<sup>4</sup> Collat. v. Tit. xxi. Novell. 66.

*obligation*, which depends upon the law, as it is a law, and necessarily follows it, as every necessary effect follows its proper cause, as has been already stated. Therefore, since when a law is lawfully made, and sufficiently published, there is nothing wanting that is required to complete its essence, it follows that a law so made and promulged, instantly induces an obligation; nor is it inconsistent that the will and act of another should lay an obligation upon us without our knowledge, provided the obligation be in the nature of a "*moral debt*," as the phrase is; though in obligations and debts that arise from *contracts*, the case is otherwise.

7. A fourth question is, *In what manner a law may be said to affect such, who, after a sufficient publication of it, or the lapse of the time prescribed by the law, are yet actually ignorant of it?* Which is as much as to inquire, Whether he, to whom a law is not actually known, be so guilty of a fault that he *sins* if he acts against the law; and, therefore, deserves that punishment which the law inflicts upon the transgressors of it? The reason of this question is, on the one side, because an obligation is useless, or rather none at all,<sup>3</sup> which, if transgressed, binds the transgressor so as neither to incur *guilt*, nor to be liable to *punishment*; and on the other side, because it is absurd to suppose a man obliged to what is *impossible*, and it is impossible to obey a law we know nothing of. Besides, from the *two functions* of a law above-mentioned, it is necessary that the power of *directing*, as first by nature, should go before the power of *obliging*; so that a law can *oblige* none but whom it *directs*, and it can *direct* none but such as are *acquainted* with it. Upon supposition therefore (which admits of no dispute) that the subject, who *actually* knows the law, is "*obliged both to guilt and to punishment*;" I proceed to answer the question

<sup>3</sup> "Quæ nec ad culpam obligat neque ad pœnam."



that relates to persons *ignorant* of the law, and I observe first, that a subject, who by *gross negligence* knows nothing of a law, when it is evident that his ignorance proceeds from his *own fault* and notorious *omission*, is no less, or at least not much less, a criminal, and deserves punishment, than he who *knows* the law, and acts contrary to it. For the ignorance of what every one ought to know, and may know, excuses no one; and in the construction of the law there is no great difference between an evil *design*<sup>6</sup> and an *actual offence*.

8. Secondly, a person who is ignorant of the law, because he was only a little more careless or remiss than he ought to be in a matter of such importance, though the crime be ever so light, as the *civilians* speak, or the lightest imaginable, yet because it proceeded from a neglect and fault of *his own*, he is not therefore exempt from the obligation of the law. The reason is, because his ignorance was *vincible*, or might have been overcome: for if the subject had used that diligence which the importance of the case required, and which men of prudence always observe in their own important affairs (and this is what we take for granted), he *could not* have been *ignorant* of the promulgation of the law. Now a *vincible ignorance* of that law, by which every man is obliged to direct his practice, must certainly be *criminal*; and if so, let the degree of his *guilt* be what it will, he must *so far* be inexcusable; yet the lighter his offence is, the more his ignorance is to be excused in the eyes of God and man, and equal and candid judges will more easily be induced to pardon him. But that he was *before* obliged by the law, though he was ignorant of it, appears from hence; because as soon as the fact is *related* to him by the testimony of a credible person, that the law was published, he immediately judges himself

<sup>6</sup> "Dolus malus et lata culpa."

obliged by that law: but it is certain, no *new obligation* could arise from the *relation* of that person (nor has the relater or his testimony any power to oblige) and therefore without doubt he was bound by that law *before*, though he had neither any notice of the law, nor was conscious of the obligation.

9. I observe, thirdly, that if a man, in earnest and invincibly, either by accident, or any other casual impediment, and by no neglect of his own, is ignorant of the promulgation of a law (as if a person should be visited with madness, or be afflicted with any grievous and inveterate malady, or was but lately returned from foreign countries, and so never heard, nor could hear of the promulgation of such a law) he contracts no *guilt*, nor, properly speaking, does he deserve *punishment*. Notwithstanding, by the very law of which he is *invincibly* ignorant, he becomes liable to punishment *improperly* so called, that is, to suffer some *damage*. The first part of this assertion is confirmed by considering, that no man can be said to be a *criminal*, or to deserve punishment, who commits *no sin*; but he who does not obey a law of which he is *invincibly* ignorant, does not *sin* by his disobedience (for thus he would be obliged to *impossibilities*), and therefore he cannot be deservedly blamed, nor justly punished. But that he may be bound to suffer some *damage* by that law (which is the latter part of the assertion) will appear evident by this example. Suppose there be a law that forbids some certain species of *contracts*, and among other things decrees that such *contracts* as are made a month after the *promulgation* of that law, shall be wholly void, and of no effect: if a man, after the month is *expired*, being sincerely and *invincibly* ignorant of the promulgation of that law, should enter into a contract forbidden by the law, he commits no *sin*, because his ignorance was *invincible*; and consequently he ought to be *exempt* from *punish-*

*ment*, which no man justly deserves, except for a sin; notwithstanding he will not only suffer *loss*, if the *nullity* of the contract in which he engaged proves a *damage* to him, but he is obliged in Conscience by the duty of his obedience which the laws demand, and by the regard he ought to have to the public good, to *acquiesce* in the *damage* which he suffers. The case is the same with respect to many other laws; for instance, those which *incapacitate* men, or *revoke* their privileges, or settle the rate of *interest*, or fix the *price* of commodities, and many more of the like nature, concerning which both canonists and divines treat largely; nor ought we to think this to be in the least unjust; for though a *damage* be sometimes called a *punishment*, it is only by *analogy*, and in an improper way of speaking; for otherwise there is a great deal of difference between a *loss* and a *punishment* properly so called. If an *innocent* person is *punished*, he suffers a great injustice; yet it often happens that a person who is innocent may suffer an *inconvenience* or a loss, and yet no injustice be done to him. And this may be sufficient, as far as our purpose is concerned, to illustrate the *promulgation* of a law.

10. We come now to speak of a *penal law*; and in this case I shall omit many long and useless disputes of *casuists*, which more properly belong to litigious pleadings in *outward courts* (and arise generally from the *canon* and *pontifical* law, with which we have little concern) than to the *inward court* of *Conscience*. I will confine myself to some few of the principal inquiries, in which the government of the Conscience is more immediately concerned. The first that occurs is this, *Whether the annexation of a penalty does any way relate to the essence of a law?* In my opinion it does; though not as something required to *complete* its essence, as if a law were not a law, unless a *penalty* were annexed, but only by consequence, as something *so far* necessary, that

a law may more *effectually* attain the end for which it was framed. For the *form* and *essence* of a law consists in the *precept* of it. By a precept I mean all commands *negative* as well as *affirmative*, for in a large sense it includes a *prohibition*, and so the words מצוה (mitsvah) and ἐπιτολή in the Scriptures are generally understood by divines. And on this precept alone depends the power which we have ascribed to a law to *direct* the actions, and *oblige* the Conscience, of the subject; for as soon as the subject *knows* that his superior has commanded *this* or *that* by law, whether there be any *penalty* annexed to that law or not, he has a *rule* sufficient to *direct* his practice, and which, unless he be wanting in his duty, he is bound in Conscience to observe. And therefore this necessity of fixing a penalty does not arise from the nature of the law itself, which consists in the bare *precept*, but (in order that the *command*, which would be insufficient<sup>7</sup> of itself, may attain its effect with a greater force) from another double *hypothesis*, the one of the *subject*, the other of the *end*. For it is right that laws should be religiously observed, which is our *hypothesis* in respect of the *end*. Nevertheless, considering the innate corruption of man's heart (which is our *hypothesis* that relates to the *subject*) it can seldom or never come to pass, but that the most useful laws will be despised (such is either the negligence or the perverseness of most men), unless they who deride the dictates of Conscience be restrained within bounds by the <sup>8</sup> *dread* of *punishment*. By reflecting upon these two propositions, the wisest lawgivers always judged it necessary for themselves, and useful to the public, to establish their laws by the sanction of *penalties*. And in this they followed

<sup>7</sup> "Tacite permittitur quod sine ultione prohibetur." Tertullian. cont. Marcion. i. 26.

<sup>8</sup> "Qui ratione traduci ad meliora non possunt, solo metu continentur." Quintilian. Institut. xii. 7.

the example of God Himself, Who was pleased to deliver the *first law* which He gave to man, not without threat of *punishment*. Some good subjects perhaps (but the number I am afraid is very few) being induced only by conscientious sense of duty, by the love of virtue, and loyalty to their Country, might *voluntarily* pay obedience to the laws, though no *penalty* were annexed. But the majority of mankind must be constrained to do their duty by fear of *punishment*. And thus it appears that the fixing of *penalties* is necessary to the *making* of laws.

11. The second question concerns the *obligation* of a *penal law*, as to the extent of it; *Whether a penal law* (if it be transgressed) *obliges only with respect to the penalty, or obliges to the Guilt of Sin also?* which is as much as to inquire whether a subject gives satisfaction to the law, and does his *duty*, and therefore commits *no sin*, who is ready to *suffer* the *penalty* appointed by the law, though he does not *obey* the *precept* of it? Or whether he be not likewise obliged in Conscience to do as the law *commands*.

This is an inquiry of great importance and of the most frequent use in common life; and, therefore, to reply to it clearly and distinctly, it will not be improper, for its better explanation, to premise some things that are necessary to be first laid down and known. We are to understand, therefore, in the first place, that a *positive human law* can then *only* be said to be *penal*, when by the *will* of the lawgiver it expressly imposes some *temporal punishment* on the transgressors of it; and through this whole Prelection, as often as mention is made of *punishment*, you are to understand no other than *temporal punishment*.

Now this word *temporal* is to be taken in a *double* sense, either as it is opposed to *spiritual*, or as it is opposed to *eternal*. And these *terms*, in our common way of speaking, are generally understood, as members *contradistinct* to one another; for sometimes we say

*temporal* and *spiritual*, and sometimes *temporal* and *eternal*.

There are, therefore, three kinds, or if you would rather call them species, or manners, or degrees of punishment; for whatever comes under the name of *punishment* is first either a *spiritual punishment*, as the loss or the deprivation of heavenly *grace*, and of the *Divine* favour, or of that inward joy and comfort that arises from the sense of God's grace and love; or, secondly, it is an *eternal punishment*, which consists partly in the *eternal* loss of the beatific vision of God and Christ, and partly in the *eternal* torments of Hell; or, thirdly, it is a *temporal punishment*, distinguished from both the former, and concerns the state of this *present* life, and relates only to the *body* and *outward* things, nor does it necessarily, and *of itself*, extinguish the sense of the *Divine* grace, or the *hope* of everlasting life. *Temporal* punishments of this nature are the *loss of money*, *banishment*, *imprisonment*, *outlawry*, *forfeitures*, *scourging*, and others of the like sort, and lastly *corporal death*. The principal punishments, and of most frequent use, may be reduced to these four heads—*death*, *banishment*, *confiscation of goods*, and *imprisonment*.

12. In the second place, you are to observe that *punishment*, as it is opposed to *sin*, is again to be understood in a *double* sense; for sometimes it is taken *materially*, and in a large acceptation, as it is opposed to it in a *contrary* opposition, that is, as it is *another species* dividing the same *genus*. And so every *misfortune* that happens to a man, which is not an *evil of sin* (or *moral* evil) is called a *punishment*, or an *evil of punishment* (or *penal* evil), though it be not inflicted upon the person that suffers it for any preceding sin, but it befalls him by other means, by accident perhaps, or by injustice; and thus a sudden disease, a wound inflicted by a robber, loss of goods by theft, by fire, or by shipwreck,

and all sorts of loss and misfortune which are grievous to suffer, are to be esteemed *penal*, and come under the name of *punishment*.

The word *punishment* is sometimes taken more strictly, and as it were formally, when it is set against *sin* in a relative opposition, that is, as it is inflicted upon a man for a *preceding offence*; as if a person should be fined fourfold for the goods of another which he had stolen, or should be condemned to banishment for sedition. And this is the proper sense, the other the improper, of the word, for *punishment* is improperly so called, when *no offence preceded it*. This gave occasion to that common definition, *Punishment is when a man suffers for an offence*. In the present inquiry we shall speak of the word in both senses, as occasion offers, but the latter acceptation is the most commonly used; for a law is called *penal*, not so much with respect to the *damage* or loss a man may suffer by reason of the law (and that justly perhaps, though he has committed no offence) as in regard of that *punishment*, which by the appointment of the law is to be inflicted upon such as voluntarily transgress its commands.

13. We are to consider, thirdly, that of *penal* laws some are *purely* penal, and others of a *mixed nature*. A law is *purely penal*, when, in the simple ordination of it, it only appoints the punishment, and neither by commanding nor forbidding expressly enjoins anything. For instance, suppose there be a law which gives power to the inhabitants of any city or town to choose annually one of the most eminent citizens to be their *Mayor*, with this clause added to it, *Whoever, upon election, refuses the office of a mayor shall be fined a hundred crowns*; this law is *purely penal*, because it appoints a punishment for such as refuse to undertake the office; and yet it com-

° "Supplicium est, quo quis propter delictum afficitur."

mands no person to undertake it, nor forbids any one to refuse it.

A penal law is of a *mixed nature* when it commands or forbids an act, and annexes a penalty to be inflicted upon the disobedient. For example, let us suppose a law to be published in this or the like form : *Let no man export any of the merchandise of this nation, or sell any foreign merchandise in any place of this kingdom, unless he pays the usual custom-duty ; whoever does otherwise, his merchandise shall be forfeited.* This is a *penal law*, because it has a penalty annexed ; yet it is not *purely* penal, but of a *mixed nature* ; for under that penalty it commands the payment of the customs, and forbids the exportation or the selling of goods, without the payment of the custom.

Some think it proper to admit a *third* kind of *penal law*, beside these two, namely, one which contains at once the *precept* and the *punishment*, though neither of them *positively* and *specially*, yet both *indifferently*, and by a *disjunction*. For instance, suppose there be a law in this form : *The person elected by the freemen, let him serve the office, or pay the fine.* But there is no reason, upon this occasion, to add a new *species* of penal laws ; for the species of things are not to be increased without necessity ; and this *disjunctive* form of proposing a law should be referred to that which is *purely* penal, because in itself it implies no absolute command. If you object that, though neither of the two things are commanded *definitely*, yet both are *indefinitely* commanded, I reply at once, that an *indefinite* command, and by *disjunction* (to speak properly) is no more a command than the picture of a man is a man. This *disjunctive* law therefore, as I have observed, is *purely* penal, as will appear evidently by comparing the form of both examples ; for if the lawgiver declares in this manner, *If the person elected refuse the mayoralty, let him pay a hundred crowns ;*



or thus, *Upon your election, either serve the office or pay the fine*, it is all the same ; in both forms there is the same sense, the same force of words, and an *equal* obligation.

14. Fourthly, we are to know, that between an obligation to a *sin* and to *punishment*, there is no necessary connexion, at least not so necessary as to make it *reciprocal*. From a *temporal* punishment, properly so called, we may necessarily *presume* an offence ; and therefore we may justly reason thus, *Peter is to be punished by the law, therefore Peter has committed an offence*. But from a *temporal* punishment *not* properly such, (e. g. a *damage*, or the like), an *offence* is not necessarily inferred ; for a man, without any *fault* of his own, may be obliged to a *loss*. Nor is the consequence *reciprocal* from an *offence* to a *temporal* punishment ; for it may so happen, that a man may be guilty of an *offence*, and yet not incur *punishment* ; I mean *temporal* punishment, for the case is far otherwise as to the punishment that is *spiritual* and *eternal*. For example, suppose a man has committed a fault, by telling a lie, or betraying the secrets of his friend, or has injured the reputation of his neighbour by idle gossip, or the like, which the laws of men take no cognizance of ; he cannot be punished by man without injustice ; nor is it necessary that God should correct him with *temporal* punishment. But lest any bad man should flatter himself in his impunity, and assume hence a greater liberty of sinning, because he thinks himself exempt from *temporal* punishment ; let him therefore reflect, that he is liable to a punishment far more grievous, which is *spiritual* and *eternal* ; both which punishments are so necessarily and reciprocally annexed to every *offence*, that the *punishment* always presupposes an *offence* going before it (for God punishes no man who deserves it not), and in the end the merited punishment necessarily follows the offence,

unless the mercy of God steps in, and for Christ's sake pardons the offender, on his faith and repentance.

15. These things being premised, in order to answer the inquiry proposed, I shall lay down certain conclusions. First, *we are to judge of the manner* in which a penal law *obliges the Conscience of the subject, by means of the intention of the lawgiver, if we can arrive at any certainty of it*; that is, if it plainly appears that the lawgiver designed to oblige his subjects not only to the *penalty*, but also to the *offence*, they are undoubtedly bound to obey the command of the law; nor do they discharge their duty by being ready to undergo the penalty appointed by it. But if it appears that the lawgiver had no other design than to oblige them to the penalty, it is certain that the subjects are no farther obliged. The reason is, because the ground of the obligation of laws (as we have shown in another place) is the evident and apparent will of the legislator, invested with a lawful power. Therefore where the will of the lawgiver, which is the adequate *measure* of the obligation induced by the law, is evident, we have no need to inquire further into the extent of the obligation.

16. It may be demanded perhaps, *What degree of certainty* is sufficient to satisfy the Conscience of the subject that he *sufficiently* understands the mind and intention of the lawgiver? I answer, that a *mathematical* certainty, which consists in *demonstration*, and cannot be false, is not to be expected in *moral cases*, by reason of the infinite variety of circumstances, and the inconstancy of human affairs; yet we may often have a *logical certainty* as to the design of the lawgiver; and this certainty may be gathered from the words of the law itself, whence we may commonly be so far assured of his intention, that we have no need of further evidence. The mind of the lawgiver may be inferred partly from the *form* and *manner* of the command, and partly from the degree of the *penalty* annexed; but chiefly from the *preamble* of the

law itself, in which, to recommend the law to the people, he usually declares the causes and reasons that induced him to make such a law; how just it is, how necessary to take away inconveniences and abuses, and of what advantage it will be to the public good. By reflecting duly upon these motives, and by justly comparing the circumstances, it will not be difficult for an honest and judicious person to judge of the design of the lawgiver, and to be so *morally* certain of it (for in *morals* a *moral* certainty is sufficient) as to conclude that the lawgiver undoubtedly proposed such an end in the making of the law. But if the subject has not judgment and capacity sufficient to examine duly the importance of the reasons, or if he be afraid (since no one is a proper judge in his own cause) lest he should interpret the mind of the lawgiver more in his own favour than he ought; in both cases it will be prudent for the subject, if the matter be of great importance (that is, if it would be inconvenient and burthensome to him to obey the law) to apply to some person of approved piety and discretion, to open the whole affair to him plainly, sincerely, and without disguise, and to acquiesce in his judgment and opinion.

17. But because it may happen, and often does, that after all imaginable diligence, one cannot arrive at certainty as to the mind of the lawgiver, from the law itself, or at not sufficient certainty to satisfy the Conscience of a good man, we must inquire further, in so doubtful a case, what construction is the most proper for us to follow; whether the more indulgent, as some will have it, or the stricter interpretation?

*Martin Navarre*, a man of great authority among the *Canonists*, is said to be of the opinion that no *penal law* renders a man liable to *guilt*, but only to *punishment*.<sup>1</sup> Others have been of a different judgment, and taught,

<sup>1</sup> *Enchiridion*, cap. 23, § 48.

that every *penal law*, unless the design of the lawgiver evinces the contrary, renders a man liable to *guilt* for disobedience. Extremes of opinions appear to me open to suspicion; and it may so happen, that as some have delivered themselves with too much lenity, so others have judged with too much severity in this matter.

In order therefore to come at some certainty in so doubtful a case, I lay down this as a *second conclusion*. A law *purely penal* does of itself and ordinarily oblige to the *punishment only*, and not also to *guilt*. I say a law *purely penal*, whether it be *categorically* or *disjunctively* taken. I observe that such a law obliges *by itself*; for *by accident*, and on the hypothesis of a former obligation, it may oblige to *guilt* also. For a *penal law* is made with a design that subjects may be constrained to do their duty by fear of *punishment*, to which they were bound before by a former law, *divine, natural, or human*. So those penal laws (he that kills a man, let him suffer death; he that exports any merchandise, let him either pay the custom, or forfeit his goods) render a man *guilty*, so that although he suffers the *punishment*, he does not also *secure his Conscience*, unless he likewise obeys the command of the law; but such laws do not oblige in this manner *by themselves*, and by their own virtue, but by the force of a *preceding* obligation that arose from the command of a *former law*. For the subject (according to our supposition) was obliged, before such laws were made, both by the *Divine Law* not to commit murder, and he was before obliged by the law of his *country* to pay the established customs.

A law, I affirm, *purely penal* does not *ordinarily* make a man liable to *guilt*, though *extraordinarily* it may; and the present state and condition of things may require, that what at other times was free, and might be omitted, may at certain times, and upon certain occasions be so necessary to be done, that he who neglects to

observe them, commits an *offence*, and fails in his duty ; but *ordinarily*, and excepting these particular cases, a man who is ready to suffer the *punishment* imposed by the law, is no farther obliged by that law, provided the law be *purely penal*.

18. The reason of the whole conclusion is ; because the lawgiver does not oblige but by *commanding* ; and therefore a bare ordinance which *commands nothing*, does no more oblige of itself, than the *counsel* of a friend, or the advice of a grave man : for he who gives counsel to another, or advises him to do this or that, declares indeed what he desires him to do, but neither *obliges* him to it, nor intends to oblige him ; so a lawgiver, in a law which imposes *nothing* upon the subject by a command, but only shows what he expects from him, under a *penalty* laid down, is presumed not to design to oblige him any farther than to suffer the *punishment* expressed : for if it were his intention to make him liable to *guilt*, it would have been easy to signify that he had that design, simply by adding a *command*. Therefore since a simple and bare ordinance does not *of itself* make liable to *guilt* ; nor can a temporal punishment annexed oblige any farther *of itself* than to undergo a *temporal* punishment ; it is evident that a law *purely penal*, which contains nothing in itself besides a bare ordinance, and a temporal penalty added to it, neither of which makes liable to *guilt*, has no power of itself to make liable to *guilt*, but to the *punishment* only.

And the same is to be said of those laws that we call *conventional* ; which example I the more willingly use, because it does not only serve to confirm, but excellently to illustrate, our conclusion. To these might also be added the *will of a testator*, and other things, which (as to the power of obliging at least) are much the same. The inhabitants of a village, who have no power to make laws properly so-called, do yet, in the court of *the lord of*

*the manor*, or in some other place, debate and agree among themselves, upon what will most conduce to preserve peace and justice in the neighbourhood, and under the name of a *penalty*, a *pecuniary fine* is imposed upon such as violate the agreement. These *conventions* we call in *English*, BYE-LAWS, that is, the laws of the *inhabitants* (for our most learned <sup>2</sup> antiquaries observe, that BYE, in the old *Saxon* tongue, signifies a *habitation*) and we, as many others, for information sake, will call them *conventional* laws: for though they be no more than *contracts* and *agreements* between private persons, and not laws, *properly* speaking, because they want the sanction of *public* authority, yet they are commonly called *laws*, by reason of the *analogy* they have to laws that are properly such, as to the two effects we have so often mentioned, the power to *direct* and to *oblige*; for as the laws *direct* the subject, so those *conventions* direct the parties consenting, in their actions, and bind them to do their duty. And certain it is, that in *conventions* of that kind, the persons contracting did not mutually intend to make the breakers liable to *guilt*, but only to the *punishment*. For instance, the inhabitants of a village agree among themselves, that the masters of every family, every year in the month of *May*, shall work personally three days at repairing the highways, and whoever refuses (supposing a day's work to be valued at tenpence) shall pay a fine of twenty-pence. It is evident that, by this *conventional law*, the parties contracting designed chiefly the yearly repair of the highways; and they thought it proper, over and above, that every master of a family should personally labour at so useful a work, otherwise they would never have agreed that the party refusing should pay as much again

<sup>2</sup> Camden in Britan. p. 408, Lond. 1607. So in Danish: names of numerous places in Lincolnshire ending in *by* are generally supposed to indicate a Danish origin.

as the day's work came to. And as certain it is on the other side, that they intended mutually to oblige themselves no farther than to the payment of the *fine* imposed, if any of them, by reason of other employments could not, or, for any reason whatever, would not, do the work in his own person.

So in the case of *testaments* (for <sup>3</sup> a *will* has the effect of a *law* to *direct* and to *oblige* the *executor* and the <sup>4</sup> *legatees*), it is the will of *Caius*, that so long as *Caia*, his wife, shall remain a widow, she shall be possessed of the houses and the adjacent lands which he bought of *Titius*; but if she marries, she shall lose them. It appears that it was the will of *Caius* that his wife should remain a widow, and not marry again; for with that design he annexed the *condition*, to discourage her, by the apprehension of *loss*, from a *second* marriage; and yet he never did, nor could intend, by inserting that *condition*, to oblige *his wife to guilt*, in case she married another husband.

19. But it may be urged, that *contracts* and *testaments* do oblige to *guilt*; for whoever fails to fulfil his contract, and a *legatee* that does not fulfil the *will* of the deceased, are both guilty of an *offence*. In answer, it must be observed, that the case is widely different between violating *contracts*, *laws*, or *testaments*, and acting contrary to the will of a *lawgiver*, or a *testator*, conditionally made. How great the difference is, will best appear from the previous examples. That man does not necessarily break the *conventional* law of working three days under a *pecuniary* fine, who refuses to work, unless he refuses also to pay the fine; for he stands to the agreement, if he performs either, and that according to the design of

<sup>3</sup> Imperia mortuorum. Sen. Controv. iii. 9.

<sup>4</sup> "Legatum est quod legis modo testamento relinquitur." Ulp. Instit. cap. 26.

the parties contracting, who intended indeed to oblige themselves to *repair the roads*, yet not *simply* and *absolutely*, but under the *condition* above specified. So in that *testamentary* law, *Caia* commits no sin, if she marries another after the decease of *Caius*, though it is certain the *testator* had rather, and that he therefore desired (for if a man *had rather* he also *desires*) she would not marry; but she undoubtedly becomes guilty of a *sin*, if, after the second marriage she still *retains* the lands and houses bequeathed to her in the will upon that *condition*, and refuses to restore them to the lawful heir. The reason of both examples is the same; because in neither case was the obligation *pure, simple, and absolute*, but *conditional*; for a condition always, in its own nature, *suspends* the obligation, so that, the condition being fulfilled, the obligation immediately, as if the bond were loosed, falls to the ground. The case is the very same in laws that are *purely penal*, as far as relates to the manner and measure of obliging; and this will easily be perceived by any one who has time to compare together these observations; so that I need not further insist on the explanation of them.

20. But it may be objected, perhaps first, that no man can be obliged to the *punishment*, but he must have incurred *guilt* also; for a *penalty* cannot justly be imposed, unless for an *antecedent crime*; and as St. *Austin* observes, *Every punishment, if it be just, is the punishment of some sin.*<sup>5</sup> The second objection arises from the nature of a law, which is to *command*; therefore, that law, which we have said is *purely penal*, either has not the nature of a law, if it commands *nothing*, or if it should implicitly at least contain something of a *command*, it must render liable to guilt for disobedience; for crime is a transgression or violation of a just command.

21. There are several ways to reply to the first objec-

<sup>5</sup> "Omnis poena, si justa est, peccati poena est." August. Retrac. i. 9.



tion. For in the first place it may truly be said, that *eternal punishment*, as it comes under the perfect notion of punishment, and can be no otherwise considered than in the nature of a punishment, must therefore necessarily suppose an *antecedent offence* which deserved it, and for which, without any other respect whatever, the person guilty of that offence incurs that punishment. But the case is not altogether the same in *spiritual* punishments, and much less in *temporal*; for though each of them, as they are punishments, supposes some *preceding* offence to deserve the punishment (otherwise it would be unjust) yet as they may be considered in another respect *different* from the notion of a punishment, I mean with regard to the *end* intended by the party punishing (that is, not designed so much to revenge a *past offence*, as to *prevent* one for the time to come) it therefore comes to pass, that neither God Himself when He visits either with a *spiritual* or *temporal* punishment, nor Man when he inflicts a temporal punishment upon another, does always respect their *crimes or offences*, but often propose to themselves *other ends*. Of this nature was that answer of our Saviour *Christ* to His disciples, when they asked Him concerning the blind man, *Who sinned, whether this man or his parents, that he was born blind?* His answer was, *Neither hath this man sinned, nor his parents* (so as to be the cause of his blindness), *but that the works of God should be made manifest in him*. The reason is, because in *morals* the estimation of things, and the denomination of them, is rather to be taken from the *final*, than from the *efficient* and *meritorious*, cause.

22. Secondly; it may be said that the relation of a *temporal* punishment to a *sin* consists properly in that punishment only, which is *relatively* opposed to the *sin*, and not in that punishment which is opposed *contrariwise* to the *sin*; which is a looser and more improper

<sup>6</sup> John ix. 2, 3.

acceptation of the word. We have explained this distinction before, when we replied above (sect. 11) to this inquiry, and therefore we need not repeat it. Suffice it to remind you that the punishment affixed to a law *purely penal* is not called a punishment *strictly* and properly, but improperly and more *largely*, as it signifies another kind of *evil* different from the *moral evil of sin*; which sort of punishment may be inflicted for a *profitable end* upon a person, without any legal injustice, as to avoid some public inconvenience, without any delinquency on his part: for by punishment in this sense, we understand all misfortunes, losses, and adversities, or whatever may befall a man, which, if possible, he desired to avoid.

23. If the observations I have made seem yet unsatisfactory (and I shall not vehemently insist upon them), yet what I have to offer in the third place will deserve your notice, as it removes all occasion of dispute, and at the same time most pertinently replies to the other objection; which is, that the *design* of a *penal* law (which is now under inquiry) being to oblige the subject, and yet but *conditionally* to bind him, may be considered in a double, or rather a treble acceptation. First *precisely*, with respect to that which it intends to oblige him to execute upon such a *condition*: secondly, as precisely to the *condition* itself, under which it intends to oblige. The first of these contains the *ordinance* of the law, the other the *punishment* annexed to it. Thirdly, it may be considered with regard to the *aggregate*, that is, the whole law itself, which consists of the complexion of both. This distinction being laid down, I observe first, that the part of the law which contains only the *condition*, or the punishment, does not *of itself* make liable to *guilt*; for a bare *condition* has no force, as all allow, and is evident in itself. A man therefore does not transgress, but rather excellently discharges his

duty, who avoids the *penalty* of the law, provided he performs what the law commands. Secondly, neither does that part of the law which only *ordains, of itself* make liable to guilt; for no law binds beyond the intention of the lawgiver; but it is certain the lawgiver never designed that *that* part of the law should *of itself* make liable to guilt; for then he must have designed *simply* to oblige him, because that part of the law, taken precisely and by itself, contains no *condition*; but from the *condition* added in the other part of the law, it appears that he *did not intend simply* to oblige to do what the law commands, but under a *condition* expressed in the law. But thirdly, a *penal* law, wholly and *conjunctively* understood, does make liable to guilt, so far that he is guilty of a crime, who when he *ought to observe both parts, obeys neither*. For as among *logicians*, the truth of a *disjunctive* proposition depends upon the truth of one of its parts, so that it is true in the whole, if either of its parts be true; so in *morals*, a man observes a *disjunctive* law (and every law *purely* penal, is *formally* or *equivalently* disjunctive) who performs one of the propositions, and a man does not violate such a law unless he omits both.

24. The obligation of a law purely penal being, I conceive, sufficiently explained, we come now to a *penal* law that is of a *mixed* nature, which shall be the subject of a third conclusion in this form. *A penal law of a mixed nature* (that is which evidently commands something to be observed, and in order to enforce the obedience, appoints a *punishment* for delinquents) *obliges both to the offence, and to the punishment*; so that a man *neither satisfies the law, nor his Conscience, who suffers the punishment, unless he likewise obeys the commands of the law*. It is not to be questioned, that such a law obliges to the *punishment*, otherwise of what use would be the penalty added to it? Clearly it also makes liable

to the *offence*, because it contains a manifest command, and every command binds to the *offence*; for an offence is no more than 'a transgression of some law. Nor is that opinion any way probable, which *Navarre* seems to follow, that the lawgiver, by inserting the punishment, signifies that he has no design to oblige farther than to the punishment annexed. Observe, how inconsiderate it is, so to understand the annexation of the punishment (which it is certain was annexed to the precept for no other end, but to procure a more solemn and diligent observance of the precept itself by means of the fear of that punishment), as to invalidate the obligation of the precept, and destroy the force of it. Infinite are the laws which, all the world over, are made against thieves, murderers, perjured men, and other profligates. God also, our Creator, delivered a law to our first parents, by which they were forbidden to eat of the fruit of the tree in the midst of Paradise, with the *punishment* of death annexed, if they transgressed.\* Now can any one be so void of reason, as to think that *Adam* was bound by this Divine Law, and that others are obliged by Human Laws, to the penalty *only*, and not to the *offence*? Who will affirm (to mention nothing of Human Laws) that *Adam* was not in Conscience obliged by that Divine Law to abstain from the forbidden fruit, but only to this, that if he disobeyed, he should willingly submit to the sentence of *death*? This opinion therefore of *Navarre* (if we can believe that so eminent a person espoused such a doctrine) is exploded and generally censured, as one of dangerous import; and therefore we are to believe, that a *penal* law of a *mixed* nature, being both *penal* and *preceptive*, does oblige both to the *punishment* and to the *offence*: it binds to the *offence* as it is *preceptive*, and as it is *penal*, to the punishment.

\* 1 John iii. 3.

° Gen. ii.

25. A third question remains, *Whether, and how far, the transgressor of a penal law is obliged, ipso facto, to suffer the punishment appointed by the law?* My time is short, and therefore I shall be as concise as possible. I observe therefore, in the first place, that if the penalty appointed by the law imposes nothing upon the transgressor, either to be *done* or *suffered*, but what consists rather in a *disability* to do what would promote his interest, or in an *incapacity* to receive what would be useful and acceptable to him, he is bound as a violator of the law actually to undergo the punishment. There are many laws that forbid offenders to do this or that, as the civil laws for certain reasons prohibit the *transfer of property*. Many likewise are the laws, which for a certain time *incapacitate* delinquents from holding such an office or dignity; as if a disturber of the peace should be forbidden by a statute of the *University* to have his *grace* proposed in the *Congregation-house* for the space of two years after the offence committed. In such and the like cases, where the punishment consists only in the *disability* or *incapacity* (because to suffer this punishment, there is no *co-operation* required of the party to be punished, but rather a kind of *cessation* of acting) he who has violated the law is unquestionably bound to submit willingly to the punishment, though he be not explicitly so required. Secondly, if the punishment appointed by the law be such, that a *co-operation* of the party offending be necessarily required to the execution of the law; that is, if the person to be punished is concerned to do something himself; he is not ordinarily obliged *ipso facto*, to suffer the punishment, before the judge has pronounced sentence, or, which is the same, before the penalty be exacted of him by a person invested with a lawful authority. The offender is indeed bound to submit to punishment, but not unless he be called to it; otherwise he is not obliged. Thirdly, a guilty person, after

the sentence is pronounced by the judge, or after he is summoned by a lawful authority, is obliged willingly to submit to the punishment, and with some *co-operation* of his own, if it be not against the laws of *humanity*, though it should otherwise prove very grievous and afflicting. For example, if an offender be commanded to pay a heavy fine as a *penalty*, or to depart the kingdom, he is bound, by virtue of the law, to obey its command ; but if the punishment imposed be not only grievous, but has something in it *inhuman*, as if a malefactor should be commanded to scourge himself, to cut off his right hand, to drink poison, or the like, I observe fourthly, that in these cases, the guilty is bound *passively* to undergo the punishment which he knew was appointed by the law, and his offence deserved, but he is not obliged *actively to co-operate* in it. And so much I thought fit to say concerning the necessity of the *promulgation* of laws, and of the obligation of those *penal* laws, which seem any way to relate to the *formal cause* of Human Laws and constitutions.

## THE NINTH PRELECTION ;

WHICH CONSIDERS THE OBLIGATION OF HUMAN LAWS, WITH  
RESPECT TO THEIR FINAL CAUSE.

*For kings, and for all that are in authority, that we may lead a quiet and peaceable life, in all godliness and honesty.*—1 TIM. ii. 2.

1. IN the foregoing Prelections we have treated of the obligation of Human Laws, with regard to their *material*, *efficient*, and *formal* causes; and we have done this in some respects perhaps with more prolixity, and in others with more brevity than was proper. It remains that we proceed to consider their *final cause*. And here we must premise, as an undoubted truth, That *the ultimate end of the laws is the good of the community*, or the peace and tranquillity of the public. This is confirmed first by the words just cited of the Apostle, *That we may lead a quiet and peaceable life*.

St. Paul in these words exhorts, that in the private and especially in the public assemblies of Christians (for so I conceive the text to be understood, and the best interpreters are of the same opinion), *supplications, prayers, intercessions, and giving of thanks, be made first for all persons in general, on a principle of charity, and in order to a spiritual end, that is, to eternal happiness in another world, either as they are actually, or potentially members of the mystical body of Christ*. And next more especially for *kings*, and others invested with *supreme*

authority; and this for reasons of prudence, and with relation to a *temporal* end, that is, to outward happiness in the present life; since they are the principal members of the *political* body, on whose *legislative* and *executive* powers, accordingly as they are justly or unjustly administered,—the chief happiness or suffering of the other members, and by consequence of the whole body, depends. The making of laws therefore being the principal act of the *supreme* political jurisdiction, that which is the supreme end of that *supreme jurisdiction* is also the *supreme end* of legislation, namely, the *good* of the *community*.

A second proof is derived from the nature of the *end*, as a demonstration *a priori*: That is the *ultimate end* of anything, to which all the *acts* of that thing are reduced as to their first *regulative principle*, and to which they are referred, as to the cause for whose sake they are ultimately ordained. The *final cause* therefore is commonly called by *Aristotle*,<sup>1</sup> “that for which.” But<sup>2</sup> all the *acts* of laws are regulated by the *common good*, as their first principle and rule, and are referred to the *common good*, as to that *ultimate end* upon whose account they were made, as will appear by examining the particular acts. The consequence is plain. For what reason can be assigned that good actions are commanded, and evil ones forbidden, and things indifferent, and of a middle nature, permitted? or why are such who deserve well of the public rewarded, or punishments appointed for the violators of the laws, or justice administered in our courts to both without distinction; the first of these being the *principal* acts, and as it were the *forms* of the laws, the other more *remote*, and following them as *effects*? Is it not for this *end*, namely, that the Community may flourish in tranquillity and

<sup>1</sup> Τὸ οὐ ἕνεκα.

<sup>2</sup> Οἱ νομοθέται δίκαιον εἶναι φασὶ τὸ κοινῇ συμφέρον. *Arist. Ethic. viii. II.*



peace, and that private subjects in their several stations and degrees may partake in the public happiness, and rejoice in the share they enjoy of it; that is, that all may be subservient to the *common good*?

A third argument is deduced, *a posteriori*, from the general sense and consent of mankind. For those law-givers who <sup>3</sup> *decree justice*, have in reality (and those *who imagine mischief as a law* would be thought to have) in the making of laws more regard to the *common good* than to any interest of their own. Whether this be professed in pretence or in truth, they all affirm that in the making of laws they propose the *public good*.

2. The foundation of this Prelection being laid, that *the final cause of laws is the benefit of the community*, I proceed to consider certain questions; and let this be the first, *Whether there be any necessary use of Human Laws?* Truly we should have had no cause to doubt of this, had not the frantic error of *Anabaptists*, and other sectarists, forced it upon us, from whose principles (for they say that it is unlawful for a *Christian* to be a *magistrate*, to engage in *war*, or in an action at *law*, to *swear*, or to administer an *oath*, and other things of a like nature) it seems to follow, that there is no necessity for *Human Laws*; nor indeed, if you take away all *jurisdiction*, will there be any one to *make laws*, nor, if you destroy our *tribunals*, to fear them. <sup>4</sup> *Of what avail* (says Horace) are querulous repinings, unless sin is amputated by punishment? What will laws profit, being vain without morals? The *directive* power of the law must of necessity expire, without the *co-active* to assist and support it.

<sup>3</sup> Prov. viii. 15.

<sup>4</sup> Psalm xciv. 20.

<sup>5</sup> "Quid tristes querimonix,  
Si non supplicio culpa reciditur?  
Quid vanæ sine moribus  
Leges proficient?"

Hor. Od. iii. xxiv. 33.

The reason of this inquiry is, because the law of Nature, which dictates that all evil is to be avoided, that no wrong is to be done, &c., may be sufficient to leave the *Gentile* without excuse. But if that be *defective*, the *Christian* has the direction of a more sublime and a more *perfect law*, the law of *faith*, of *justice*, and *charity*, made by our Saviour *Christ*, Whom St. *James* confesses to be the only *Judge and Lawgiver*. This reason, in my opinion, presses hard upon our *innovators* (from whose cisterns the *Anabaptists* draw most of their errors), who from that testimony of St. *James* conclude, that no one but Christ Himself has a right to make *ecclesiastical laws*. For since it cannot possibly appear either by the force of the words, or from the order or design of the context, (unless to such who had rather be led by prejudice than by reason) that the Apostle refers any more to *ecclesiastical laws* than he does to *civil*, let them either (and they have the liberty to choose) list themselves in the service of the *Anabaptists*, and utterly banish out of the world the legislative power even in *civil* affairs, or allow also to Prelates (as is fit) the power of making *ecclesiastical* constitutions.

3. But how these brethren of ours are to secure themselves from the attacks of the *Anabaptists*, we are not properly concerned; let them look to that; for our part we need only answer, that the law of Nature is *written in our hearts*, and the law of *Christ* is revealed in the *Gospel*, and that both in their kind are most perfect, yet so that *Human Laws* will appear to be of great advantage, and their use to be necessary; because those *Divine Laws* contain only the *general principles* of action, from which, as conclusions from premises, more *particular* rules are to be deduced, suited to the right institution of public societies and to the manners of

<sup>6</sup> James iv. 12.

particular persons. Nor are we to fear that this will derogate in the least from the *perfection* of the *Divine Law*, for the makers of *Human Laws* never propose to improve, or to make any *addition* to, that most abundant treasure of the *Divine Law* ; they rather extract from it what they judge to be of most use to themselves and to their subjects, and the public good. *Human Laws* therefore, if they are just, are no more than certain *offshoots* and *branches* derived and taken from the *Divine Law* ; that is, they are *particular* determinations of those *general* rules, which the law of Nature and the Word of God exhibit *undetermined*. And they are particular determinations wisely adjusted to the quality and advantage of certain people or nations, as the exigency of times and places requires. For example ; the law of Nature dictates in *general*, that we are to offer injury to no man, and he who does so is bound to make restitution ; but in *particular*, whether a man that drives his cattle or his cart through his neighbour's field, does him an injury, and what compensation he is to make, is not to be determined from the law of *nature*, but from the *civil law*.

Holy Scripture likewise declares fully, that '*evil doers* are to be punished by the *Magistrate*. But *what species* of evil the magistrate is to punish, and with what kind and degree of punishment, is nowhere defined by the *Divine Law*. Hence it is that princes and lawgivers have a power deputed by God to determine by wholesome and just laws, what they in their wisdom deem to be for the interest and security of the public. The rights, therefore, and offices of *God*, our *Lawgiver*, and a *Judge*, are distinct and peculiar to themselves, and disposed in so excellent order, that the precepts of God, which are general and *undetermined*, are fixed by the human *lawgiver*, and adjusted to *specific* persons and

<sup>7</sup> Rom. xiii. 4.

actions. And the human *judge* effectually applies to *particular* cases and persons what is thus defined by the *lawgiver*; so that if a lawgiver makes a law *contrary* to the commands of *God*, he is said to make an *unjust law*; and if a *judge* in any particular case pronounces *sentence* contrary to the laws made by the ruler, he gives an *unjust judgment*, and does not *decree justice*.

4. The second inquiry is, *Whether a lawgiver be obliged, if he is able, to command all the acts and offices of every virtue, or to forbid every species of vice? or, if this be out of his power, whether he be bound to command and forbid as many of both kinds as possibly he can?* This question appears to be necessary, because nothing conduces more to the proper end of the law, which is the common good, than to promote as far as possible the *virtue* of every particular subject. It is therefore the duty of a lawgiver, who is always to have in view the end, which is the public good, to use all possible endeavours, by commanding all the acts of every virtue, that he may rule a virtuous people, and to forbid every species of vice, lest his subjects become licentious. And this is what the two principal Apostles seem to demand of the political magistrate; St. Paul expresses himself thus, *Do that which is good, and thou shalt have praise of the same; but if thou do that which is evil, be afraid, for he is a revenger to execute wrath upon every one that does any manner of evil.* And so St. Peter. *For the punishment of evil doers, and for the praise of them that do well.* For what is *indefinitely* declared on both sides is *equivalent* to an *universal*; and it is agreeable to the rule of *logicians* (in a matter of necessity) and likewise to the will of *God*, who forbids a magistrate to be a *respector of persons*.

5. In answer, I observe first and in *general*, that lawgiver is obliged to use the utmost of his endeavours

<sup>8</sup> Rom. xiii. 3, 4.

<sup>9</sup> 1 Pet. ii. 14.

that his subjects may be a virtuous people, and none of them vicious, and consequently to command all acts of virtue, and to forbid every vice, *as far as the principle by which he acts, and the end he proposes, require of him* : for the *principle* and the *end* of the acts of every agent, whether *natural* or *free*, are the adequate standard of all *intermediate* acts, so far as those acts are proportionate and conform to the principle *from which they proceed*, and to the end *to which they tend*. The acts therefore of commanding and forbidding, and others in which the exercise of the *legislative* jurisdiction consists, ought to be proportioned to the principle by virtue of which they act, that is, to the *powers* granted to them by God, and to the end for the sake of which they exist, namely, the *common good*. A lawgiver therefore ought to command, to prohibit, to permit, and to execute the other parts of his duty, so far as is suitable to the *power* conceded to him by God, and for the advantage of the *community* committed to his charge by God.

6. But this reply is *general* and *indefinite*. To satisfy therefore the inquiry proposed, we must descend to something more *particular*, which yet must depend upon this general foundation. We are to observe therefore, in the second place, that the acts of virtues and vices being some of them *internal*, such as "*elicited* acts of the will" (to *will*, and not to *will*), the motions of the passions (*love, hate, grief, &c.*) and if there be any other thoughts and designs of the heart and mind ; and some of them *external*, such as all the commanded *acts* of the will, and the indeliberate motions of the affections that are exercised by *bodily* organs (as *seeing, speaking, striking, rapine*, and innumerable others) the legislative power is concerned only with the *outward* acts, and not with the *inward* affections.

A lawgiver, therefore, may command the payment of a *debt* the restitution of *stolen goods*, the *outward worship*

of *God*; and he may forbid the sins of *theft, adultery, homicide, or blasphemy*. But he cannot command the *love* of our neighbour, or a *trust in God*, or contempt of the *world*; neither can he forbid the *coveting* our neighbour's goods, nor *unchaste thoughts*, nor the *hatred* of our neighbour, nor the *infidelity* of the heart. The reason is, because to determine of the *inward* acts is not proportionate to the *principle* from which the lawgiver began to act, nor to the *end* which he designed; for Almighty God has committed to the magistrate the government of the *outward* man; but the knowledge and judgment of *inward* acts, and the inspection and sovereignty of the heart, God has reserved entirely to Himself.

The lawgiver and judge are the same, as we have already proved by the testimony of St. *James*; and the legislative authority would be utterly incapable to attain the end proposed, if it were only *directive*, and not supported with a *coactive* power.

First, therefore, since an *external court* cannot take cognizance of *inward* acts; and secondly, since it were in vain to command or prohibit that by a law, which, upon a transgression, you are unable to punish; and, thirdly, since the *outward* performance of good works, and the *outward* declining of evil is sufficient for the outward happiness of the public, it follows that a lawgiver neither wisely can, nor rightly ought, either to command or forbid the *inward* acts of virtues or vices. In this, as in many other instances, the Law of *God* and of *Christ*, which requires truth, purity, and sincerity in the *inward* parts, which checks and restrains the first and even the slightest inordinate motions of a depraved will, and punishes sins as well of *thought* as of *act*, infinitely surpasses the most excellent of *human* constitutions. And therefore holy *David* confesses the Law of God to be <sup>1</sup>*perfect and unde-*

<sup>1</sup> Psalm xix. 7.

filed, and the Law of *Christ* is, as the Maker of it is described to be, a <sup>2</sup> *Word quick and powerful, and sharper than any two-edged sword, piercing even to the dividing asunder of soul and spirit, and of the joints and marrow, and is a discerner of the thoughts and intents of the heart.*

7. Thirdly, Human Laws may by right command all outward acts of virtue, and may forbid all the outward acts of vice, but *in fact* they cannot do it. The reason of the first is, because there is no outward act of virtue or vice, in its whole nature, and in every *species* of it, so disposed, but that to command or to forbid it (according to the exigency of times and affairs) may some way contribute to the *public good*; and therefore not only acts of *justice*, properly so called (as some imagine), but acts likewise of all other virtues may become the *due matter*, or the *object*, of a human law. This I remember somewhere to be affirmed by *Aristotle*; and, if I mistake not, he gives instances of it in the acts of *fortitude* and *temperance*,<sup>3</sup> as if it were enjoined by a *military law*, that no soldier should dare to fly in battle, or lay down his arms; or as if luxury in feasting were restrained by a *sumptuary law*, or a stated moderation were fixed, which no subject should exceed, in his *apparel*, in his *retinue*, or in the *furniture* of his house. But the reason why this cannot *actually* be effected by Human Law, is because the *variety* even of the *species* themselves, much more of the *degrees* both of the *offices* of virtues, and of the *acts* of vices, is *so great*, that if lawgivers should attempt to take notice of every one of them, the very multitude of laws would be an insupportable burden to the community.

8. Fourthly, a lawgiver is not obliged to command or prohibit *every* species of good and evil, *if it lies in his power*; it is enough, if the most eminent of either sort are included in the laws, such as are so inseparably

<sup>2</sup> Heb. iv. 12.

<sup>3</sup> Aristot. Ethic. Nicom. v. 1. 14.

identified with some notable benefit to the public, that if they were passed over unnoticed, some great inconvenience would unavoidably follow, that would sensibly affect the welfare of the state. For in such a life as this, where the *lusts* of the flesh, the flatteries of the *world*, and the wiles of the *devil* are perpetually tempting us, and in the midst of such a variety of men's minds, prolific of all kinds of vice, we are not to dream of a *Platonic*, or an *Utopian*, administration; we may think ourselves well off, if we sink not into the *dregs* of social corruption.<sup>4</sup> For in every Community it is necessary that some evils should not be forbidden, but be endured and that some acts of virtue should not be enjoined, but left to every man's choice; and that many of both kinds should be overlooked by the laws, and remain *indifferent*, lest by an unseasonable zeal to remove one evil, we should cause a succession of more and greater evils in the place of it.

9. A third inquiry relates to the *intention* of the law-giver, *Whether, and how far it is required to make a law obligatory?* Which is as much as to ask, if a ruler without any regard to justice or advantage to the public, but from a principle of hatred or private interest, or out of ambition, and from the lust of empire and sovereignty, or seduced by covetousness, or by any other depraved passion of his corrupt mind, should give a law to his subjects,—are they bound in Conscience to pay obedience to it? The answer is easy, if there be no *other* obstruction, they *are obliged to obey*; that is, if the law is made by a lawful power, and be otherwise just in itself, and if, after the custom of the nation, it were duly *debated*, and sufficiently *promulged*. I say, therefore, in the first place, that as in mechanical arts, the end of the work, and that of the *agents*, the workmen, is not always

<sup>4</sup> "Fæce Romuli," Cic. ad Att. ii. 1.



identical ; as in the building of a house, the end of the work (or the house) is to make a convenient abode for the master ; but the end of the *architect* is to improve his fortune by his labour ; so in a Government it is possible that the Lawgiver may have designed to advance *his own* interest, and yet the Law itself may promote the *good of the public*.

10. It may perhaps be objected, that a vicious *end* or *intention* always sullies the action ; and therefore the law being the *work* of the lawgiver, is vitiated by his corrupt intention. But in answer, I observe, secondly, that the work, as it is the *act* of the *agent*, is always sullied by a bad intention, but not as it is the *effect* of the *operation* ; for the *action* itself, and the effect of it, though we speak of them both as the *work* of the agent, yet they are of a very different nature, just as *ποίησις* differs from *ποίημα*, and *effectio* differs from *effectus*. The *building* of a house, and the house *actually* built, are both called the *work* of the architect, though the one be a *transient* act, and the other, after the house is built, be *permanent*. And therefore a depraved *intention* does so far vitiate the *work* of the lawgiver, as the making of a law is his own *proper act*, and renders it criminal for the want of a good end, yet it does not impart a blemish to the *effect* of the action, which is the law itself *actually made*, provided what the law commands conduces to the welfare of the public. The sentence likewise of a *judge* delivered out of malice or partiality, notwithstanding his evil design, is still valid, if, when considered *per se*, it appears not to be unjust. For, as St. *Austin* rightly observes, *Where a ruler commands with passion, a subject may without passion obey.*<sup>5</sup>

11. Thirdly, suppose a law to be not only made with

<sup>5</sup> "Ex libidine imperanti sine libidine obtemperari." S. Aug. de libero Arbitrio, i. 5.

an *evil design*, but to be of no use to the public ; nay, in some measure be a *prejudice* to it, yet the subject is *bound to obey*, provided it be made by a *just authority*, and if the *matter* of the law, or the thing commanded, may be complied with *without sin* ; and the reason is because every man should be careful to discharge his own duty, and not be anxious, or too nicely inquire after the concerns of others ; for *every one shall bear his own burthen*.<sup>6</sup> If a lawgiver be deficient in his duty, what is that to thee ? “ *Take what is thine, and go thy way.*” With what *intention* he acts, whether it be *good* or *evil*, let him look to it ; he is accountable not only for his actions, but for his *intentions* also, to his own Master. Do thou look to thyself ; if thou dost not obey, thou wilt have to render an account to the same Divine Master for thy disobedience.

12. A fourth question concerns the *changing of laws*, if they appear to be useless, or disadvantageous to the public, *whether and how far the change of them is to be attempted by the ruler, or to be desired and insisted upon by the people* ? I make this inquiry, because in the body politic, as in a *natural body*,<sup>8</sup> every *change* (especially if it be sudden and violent) is of dangerous consequence ; and because also it is expedient for the State, that the laws should be accommodated to *times* and *customs*, and if these change, the laws should change with them.<sup>9</sup>

In answer, I observe, first, that it is certain, laws *may be*, and sometimes *ought* to be, *changed* ; for they have formerly been altered with great advantage to the public, and therefore they may now be changed again ; and so they may in all future times, if occasion requires, and it

<sup>6</sup> Gal. vi. 5.

<sup>7</sup> Matt. xx. 14.

<sup>8</sup> Μεταβολή πάντα φύσει έκστατικόν. Arist. iv. Phys. Text. 128. Nat. Auscult. iv. 13. 7.

<sup>9</sup> Compare the Preface (written by Bishop Sanderson) to the Book of Common Prayer of the Church of England.

be for the interest of the Community. For what has been formerly done, why may it not be done again? We find that various cases continually arise, fresh evils and new inconveniences daily spring up, which if we are not to redress by new laws, there will be no remedy: *Every one, says Aristotle, has more regard for what is of present use, than what was practised by his ancestors;*<sup>1</sup> and if it has formerly been expedient that a law should be made, for this reason only, because it then appeared useful to the State, why may it not now be repealed, when, by change of times and customs, it is found to be of no service to the public?

13. But, secondly, the change even of *particular* laws is not without danger, and therefore ought not be attempted, but upon evident and extreme necessity. *Aristotle*, as his way is, acutely and concisely gives several reasons for this; and these three are the principal. The first,<sup>2</sup> *It weakens the power* of a Government; frequent changes very much detract from the authority of the laws and of the lawgiver; as we account a person, who easily changes his opinion without solid and convincing reason, to be weak and wavering in his judgment. The second,<sup>3</sup> It is an evil thing to accustom men to tamper lightly with laws. It makes them importunate, not to say petulant (a just remark confirmed not long since by our own experience), when they find a lawgiver compliant upon this account, and ready to sacrifice his own rights to the humour and caprice of the people. And therefore that great philosopher (in the same place) deservedly censured the law of *Hippodamus*, a legislator of *Miletus*, which decreed that *whoever discovered anything conducive to the public good, should be publicly rewarded*. An act very plausible and specious at first sight, but upon a

<sup>1</sup> Οὐ τὸ πάτριον, ἀλλὰ τὸ ἀγαθόν. Arist. Pol. ii. 8.

<sup>2</sup> Ἀσθενῆ ποιεῖ τὴν δύναμιν. Pol. ii. 8, 11.

<sup>3</sup> Τὸ ἐθίσειν εὐχερῶς λύειν τοὺς νόμους, φαῦλον.

closer view it will appear neither prudent nor salutary. For what, (he says) can be more destructive to the national peace, than by a public reward to invite factious men of cunning and subtle minds to originate a dissolution of law and government as a public good, and under pretence of zeal for the common weal to revolutionize laws, and pervert the whole Constitution, and obtrude another upon the State, contrived after their own fancy? Prithee, are you listening to a *philosopher* who was illustrious in his *own* times, or not rather to a *prophet*, foretelling the men and manners of *ours*? A third reason is, because a *change* of the laws is designed to remove some *present* inconvenience; and since it is possible (and it is almost impossible it should be otherwise) that many, and <sup>4</sup> even *worse* grievances may arise from such a change, though perhaps not discovered, the same great philosopher is of opinion that *some evils must be tolerated*.<sup>5</sup> He judged it to be much safer that some grievances, and those not the lightest, should be borne with in a State (as is true in a Church likewise, for that is a kind of *community*) than under pretence of *reformation* either *ecclesiastical* or *civil*, to disturb the old establishment, to cancel the laws, and to turn everything topsy-turvy. Of a far different judgment were the wise statesmen of former ages, whose maxims were such as these, <sup>6</sup>*Keep up the old customs. An evil well placed is not to be removed. He is an unskilful physician that applies a remedy more dangerous than the disease.*

[Some sections are here omitted as not relevant to the condition of things since the revolution of 1688.]

<sup>4</sup> "Graviora inferre vulnera, dum minoribus mederi desideramus."

Ambros. Offic. ii. 2.

<sup>5</sup> Ἐατέον ἐνίας ἀμαρτίας.

<sup>6</sup> Τὰ ἀρχαῖα ἔθνη κρατεῖτω. Concil. Nicæen. Canon. vi. "Malum bene positum non movendum. Imperiti medici est, pejus malo remedium adhibere."

## THE TENTH PRELECTION ;

IN WHICH THAT POPULAR MAXIM, "THE SAFETY OF THE PEOPLE IS THE SUPREME LAW," IS MORE FULLY EXAMINED AND EXPLAINED, IN ORDER THAT THE PROPER SENSE AND DESIGN OF IT MAY BE RIGHTLY UNDERSTOOD.

*For kings, and for all that are in authority, that we may lead a quiet and peaceable life in all godliness and honesty.* — 1 TIM. ii. 2.

1. IF you chance to remember, my benevolent hearers, I proposed in this place to discourse systematically upon both obligations of the Conscience, the *passive* and the *active*.

In explaining the former, when I had, in the first lecture, and in a *scholastic* way, inquired into the definition of *Conscience*, I endeavoured to find out that *proper* and *adequate* rule of the Conscience, by whose direction it ought to exercise all and each of its acts of *dictating* and *judging*.

It was then shown that Holy Scripture is the principal part of that *rule* we searched after ; but the *adequate* rule of Conscience is the *Will of God* (which is called *Voluntas signi*)<sup>1</sup> in whatever way it may be revealed to every man ; whether by an *innate light*, by practical principles preserved in the *synteresis*, and evident of themselves, called by the philosophers *common* and *natural*

<sup>1</sup> See above, Prælect. iv. § 20.

notions, and by the Apostle, *the law of God written in our hearts*: or, secondly, by an *inferred light*, by some *outward* revelation; partly *extraordinary* and private to some particular persons, by visions, dreams at *sundry times*, and in *divers manners*; partly *ordinary*, and made public to mankind in the Scriptures; or, lastly, by an *acquired light*, by conclusions rightly and justly deduced from *those practical* principles, or from the *written Word* of God, or by our own *reflection*, or by the *instruction* of others.

2. All these I observed, and every one of them, do oblige the Consciences of men, and only these oblige *absolutely, primarily, by themselves*, and by their *own virtue*; for all these, and they alone, exhibit to us the *Will of God*, Who has the sole, absolute, and direct command over the Consciences of men. Yet, I reminded you, that there are many other things, which *secondarily* and *relatively*, by virtue of the *law* or the *will* of God on which they are founded, do in their own way lay an obligation upon the Conscience. And all of them agree in this, that they derive all their obligatory force from the *Divine Will* (otherwise the Divine Law would not be the *adequate* rule of the Conscience), yet they all differ among themselves, both in *species*, by reason of the diversity of the *matter*, and also in *degree*, as to the *force* of obliging. Of those things that thus oblige there are three *degrees*; the first, of those things, the obligation of which arises from the authority of *another* invested with a just right, in which number are *Human Laws*; the second, of those things, the obligation of which proceeds from the *free act* of a man's *own will*, such are *vows, oaths, promises* and *spontaneous contracts*; the third degree is of things whose obligation flows from a sense of *brotherly charity*; in which class is ranked the *law* or the *reason of avoiding the giving of scandal or offence to others*.

3. As to what concerns the *obligation* of Human Laws, I have been more prolix than I first intended, yet perhaps

more concise than the importance of the subject (whose use we experience every day we live) deserved, or the number or variety of doubts that are apt to raise scruples in the minds of men required of me. In the resolution of these cases, I proceeded so far in some former academic terms, that after I had despatched those questions which might be reduced to the *material cause*, the *efficient cause*, and *formal cause*, of Laws, I came in my last Prelection to treat of what I judged to belong properly to the *final cause*; and when I had laid this foundation for the whole discourse that was to follow, that the *good of the community*, or, which is the same, the *public peace and happiness*, is the *end* of Human Laws, I replied to the six following questions with all the brevity and perspicuity I could. First, whether there be any *use*, at least, any *necessary use*, of Human Laws, in order to promote the *common good*? Secondly, it being for the interest of a Community, that *virtue* be regarded, and *vice* restrained, whether it is possible for a lawgiver to command *all the acts* and offices of *every* virtue, and to prohibit all manner of *vice*? or if this is out of his power, whether he is obliged to command and to forbid as *many* as he can of either kind, by laws that should bind the Conscience of the subject to obedience? Thirdly, whether, and *how far*, it be required, in order to oblige the subjects, that the *intention* of the lawgiver be disposed to promote the *public good*? Fourthly, if the laws already made shall appear of less use to the public, whether, and how far, the *change* of them is either to be attempted by the civil governor, or insisted upon by the subjects? Fifthly, the *common good* being the *end* of laws, whether and *how far*, it be lawful, for the sake of the *public good*, to *change*, or attempt to *change*, the whole *form* of the Government? Lastly, how that *common aphorism*, "*The safety of the people is the supreme law*," is rightly and properly to be understood?

4. I thought it necessary to recapitulate, in order that after so long an interruption of *academical* exercises,<sup>‡</sup> my whole proceeding in these lectures and the order I have observed, might the better appear ; and to recall to your memory the heads of what you listened to with so much indulgence, and what I am inclined to believe, after so long an interval, you have almost forgotten. You will expect, I conceive, and not without reason, that I should follow the method I designed, and proceed directly to those next questions that remain yet to be solved, such as the case of *privileges*, of *dispensations*, and others that any way relate to the *final cause*. This, I am persuaded, I ought to do ; but I am interrupted by my friends, who inform me, that notwithstanding I explained in the latter part of my last Prelection a term ago, a popular *aphorism*, yet there are some who abuse it to the *public ruin*, and their persistency requires rather that I should examine and explain the genuine meaning of the maxim more clearly and fully than I did before. But I thought that this would be *actum agere*, and be only, with a little more display of words, to serve up again the viands which I had already set before you. You in your indulgence will forgive a man overcome by the solicitation of his friends, after they had used an argument of the greatest force to induce me, and assured me that it would be agreeable to most of you that I should again attempt it.

5. My present design therefore is to explain the meaning of that common *axiom*, "*The safety of the people is the supreme Law*," and how it is to be understood. Within these few last years, a class of men have used their leisure in a luckless way, to invent and import a new scheme of *politics* into the *State*, as before they had introduced a new system of *divinity* into the *Church* ; and as in the present

‡ Perhaps by the Long Vacation.



miserable confusion of the times, they have exerted themselves vehemently, not only to enervate the force, but to root up the very *foundation*, and destroy the whole fabric, of *ecclesiastical* government under pretence of *Christian liberty*, or of *liberty of Conscience*; so they carry on the same designs with regard to the *political* administration, under pretence of *civil liberty*, or the *liberty of the subject*; and at this time they are enforcing their attempts with incredible fury, and with the terrors of the sword. These men, whenever they are accused of trampling upon the dignity of the Crown, of despising the authority of most sacred laws, of disturbing the public peace, when we charge them with exercising a licentious and impious *tyranny* over their fellow-subjects, (breaking through all fences of right and property) and with enforcing *equality* in the Church and State (cancelling all distinctions of *birth, honour and fortune*),<sup>3</sup> and other impieties derived from the turbid streams of the *Anabaptists*; they cry that all this is done *pro salute populi*, for the *people's safety*; this is the shield under which they cover themselves and their conduct, this, and this alone, is to be preferred to all *laws, rulers, rights, customs, and establishments* in the world.

6. Since, therefore, from so loose and dangerous a construction of this *common maxim*, so wide a passage is opened for sedition, riots, and all sorts of popular fury; it is plain that such as excuse their heinous wickedness with this *pretence* do not receive the *axiom* in its true and genuine construction, but impose another upon it, which by a forced acceptance will best give a gloss to their desperate designs, and to their abandoned cause. For where is the man, who (to serve his *avarice*, his *ambition*, his *hatred*, or *revenge*) attempts a revolution, and by military violence confounds all things with rapine, plunder,

<sup>3</sup> He refers to the *Levellers*, as they were called. See Lord Clarendon, *Hist. of the Great Rebellion*, x. 126.

and terrible convulsions, that will not pretend the *safety of the people*, as a cloak for his villainies, how impious and detestable soever? Examine the annals and histories of the whole world, sacred and profane, ancient and modern, foreign and domestic, and you will find that *traitors* and *conspirators* of all ages and countries have ever recommended their designs under this same pretence of *liberty* and *popular safety*; so that a man must have a *gourá instead of a heart* (to use the words of *Tertullian*)<sup>4</sup> that suffers himself to be cheated by so flimsy a disguise. But whilst I was giving vent to my just indignation, whither has this tempest carried me? Therefore, that I may not be thought to forget my design, and to *declaim* rather than to *prove*, I return to the matter itself.

7. In the first place, we are to inquire, What is to be understood by the word *safety* in that common *maxim*? If a man is convinced, or persuades himself at least, that his honour or his liberty is injured in a small, or even in the greatest, concern, he is not immediately to complain that his *safety* is lost or imperilled; for every *hurt* or *damage* is not directly opposed to the *safety* of a thing or person, but an utter *extinction*. The case is precisely the same (if we preserve a due analogy on both sides) between a *political* body and government, and a *human* body and a single person. If there is a jarring of contrary qualities in a human body, or defect or excess of inward heat or moisture, or change of outward accidents, it may come to pass, that a man may not enjoy a sound state of health, but often in one part or other of his body, either within or without, may endure what may be uneasy to him. It may happen that the stone, the toothache, the gout, or a disease in some other part, may produce acute pain, or he may be afflicted in his whole body, yet it may be neither necessary nor proper to apply *extraordinary*

<sup>4</sup> Cont. Marcion. iv. c. 40.

remedies, as if his life and *safety* were in the utmost hazard. So in the *political body*, we are not immediately to revolutionize our laws and established rights, to enlist the populace, and to stir up riots, and to cry out "*to arms, to arms,*" in order to secure the *safety* of the people, as often as any demagogue or declaimer may harangue the mob, and accuse the *king*, the *peers*, the *magistrates*, the *judges*, and their *officers*, of violating the laws, of injustice or neglect of duty, though perhaps there should be some reason for the complaint. There ever have been and ever will be, under the best kings, and in the best-ordered Governments, some oppression of subjects, and many grievances arising from an abuse of power, which no vigilance and diligence of governors, no severity of the laws can absolutely prevent or remedy. But if in every case of this nature it were lawful for *factious* persons, under pretence of the *public safety*, to break through all law and justice, and by force of arms to revenge themselves upon their oppressors, kingdoms and states would be perpetually harassed with sedition and popular outbreaks. It is impossible, as our Saviour foretold, but that *offences will come,*<sup>5</sup> and we must *go out of the world,*<sup>6</sup> says the Apostle, or go in quest of an *Utopia* or a *Platonic Republic* to protect us, if the *safety* of the people is *so* to be understood, that, unless every one of every class in the community be wholly secure from unjust force, and from the unreasonable commands of men in power, the *public safety* is absolutely *extinct*. The *safety* of the public is *then* in danger, when by the incursions of foreign enemies, or by depredations of traitorous subjects, the posture of affairs is so desperate, that unless some prudent and seasonable remedy be applied, the community must inevitably be destroyed.

8. We now perceive what is meant by the word

<sup>5</sup> Luke xvii. 1.

<sup>6</sup> I Cor. v. 10.

“safety.” We are next to inquire into the correctness of the meaning assigned by innovating politicians to the term “*the people*.” The *people*, as St. *Austin* defines them, from the lost books of Cicero’s *Republic*, are a body of men associated by a joint consent of right, and a mutual share of profit;’ and this appellation included all the citizens of every order and condition among the *Romans*; for besides their sovereigns (who were *kings* in the beginning, and *emperors* in the later times of their Government) their citizens were distinguished into three classes, the *patricians* of the Senatorian Order, the *knights*, and the *plebs* or *populace*. But in what latitude the word is to be received, whenever we meet with it in *Latin* authors, will best be understood by the circumstances annexed; and as a sure evidence for the purpose, by considering the terms (if there are any such) that stand in opposition to one another. The word *people* has these three several acceptations in the *Roman* writers: in the first (and of all the most unusual) it is taken for the *plebs* or *populace* alone, who were the lowest order of the people of *Rome*. As *Martial* expresses it, “*the People, the thankful Knights, and the Senate, offer frankincense,*”<sup>8</sup> where the word *people* being opposed to the *senate*, and to the *knights*, can signify nothing but the *populace*. It is understood, secondly, for both the lower orders of the people, that is, the *populace* and the *equites* or *knights* together, excluding only the highest or *patrician* order. For after the expulsion of their kings, and in the beginning of their republic, the senators thought fit to reserve to themselves a certain prerogative of honour and dignity above the other citizens, and in signification of it they separated themselves by a peculiar title from the rest of the people. And from

7 “Coetus multitudinis hominum juris consensu et utilitatis communione sociatus.” De Civit. Dei, ii. c. 21. Cicero de Repub. i. 25.

8 “Dat populus, dat gratus eques, dat thura senatus.” Epig. viii. 15. 3.

this came these solemn forms, "*the senate and the people of Rome,*" "*it seemed good to the senate and the Roman people,*" and the like; wherein the *people* included the *knights* and the *populace*, that is, the whole body of citizens except the *senate*. In the last acceptation, it includes all the citizens of every order, the *senators*, the *knights*, and the *populace* without distinction; for these three orders in the interval between their kings and emperors made up the whole body of the city. In this sense (for during the continuance of their republic the state was *popular*) the writers of the *Roman* affairs are to be understood, as often as they speak of "preserving the *safety*, the *dignity*, and the *majesty* of the *people*."

9. I have explained these particulars with precision, not only because the proper significations of many words of this nature depend upon the common use of those from whom the words themselves are derived to us, but for two other reasons; the first, that we may not suffer ourselves to be deceived and imposed upon by a fallacious construction of an ambiguous word; the other, in order that there may be no force in the mere sound of the word *people*, to prejudice the sovereign of the community, and the ruler of the nation. The importance of these reasons will be clear from what I am now going to lay before you.

10. I observe therefore, first, that the word *people* (as many others that signify an *aggregate* multitude) may be taken either *collectively*, as it includes the whole community of the State, the sovereign and the *subjects* together; or *disjunctively*, as it implies the *subjects only*, and separately from the sovereign; in the same manner as the *body* either includes the rest of the members *with the head*, or signifies the members only, and excludes the *head*. The appellation of a family likewise sometimes comprehends all that belong to *one house*, the wife, the children, and servants, and the master of the family himself,

who governs the rest ; and sometimes those only who are under his command, and of whom he has the care. And under the name of an *army*, we sometimes *include* the *general* with his soldiers, and sometimes we do not. The case is the same in the words *parliament* or *kingdom*, and others of the same kind, which signify a collection of *many*, but yet with order and reference to *one*, who is the principal and the head. It is therefore a most dangerous mistake (not to call it a malicious design) to wrest and to apply what is said of the people *collectively* in the *first sense*, as it includes the *whole community*, that is, the sovereign together with his *subjects*, to the *people* in the *latter* acceptation, as it signifies the *subjects only*, to the exclusion of the sovereign.

11. But it may be inquired, how it appears that the appellation of *people* ought rather in this axiom to be understood in the first sense and *collectively*, than *disjunctively*, and in the latter construction? I answer, that it appears evidently from the *common use* of speaking, and from the *analogy* of other words of the same signification and import ; and in such cases as these the most certain rule to find out their meaning is, to observe, that words of a *collective sense* are always to be understood *collectively*, if there be *no opposite* annexed to divide or limit the extent of them. For example, where *Christ* is called <sup>9</sup> *the Head of the Body, the Church*, it is plain from the *opposite* added, that is, from the mention of the *Head*, to which the *Body* is in that place relatively opposed) that the *Body* is there taken *disjunctively* for the other members of the *Body* separately from the *Head*. So if one should say, that a *general* led his army out of the camp, or sent them into winter quarters ; or a *master* of a family forbid any of his domestics to go out of his house at midnight, or (as it is said of *David*) that *what-*

<sup>9</sup> Col. i. 8.

ever the king did pleased, the people: it is evident from the opposites expressed (i.e. from the mention of a *general*, a *master*, and a *king*) that those *collective words*, an *army*, a *family*, a *people*, are not to be understood *collectively* but *disjunctively*, and in an *exclusive* sense; that is, in an *army* the soldiers are *only* included, and not the *general*; a *family* comprehends the domestics *only* and not the *master*; and the *subjects alone* and not the *sovereign* are implied by *people*. The reason is, because the *opposite*, which is one of the *correlatives*, being added in the body of the sentence, necessarily intimates that the *collective word*, which answers, and is *relatively* opposed, to it, contains *precisely* its *correlative*, that is, the *populace only*, united and joined to the sovereign as the *Head*; and not the whole community, as it consists of both the *correlatives*, the *sovereign* and the *subjects*.

12. But where there is *no opposite* annexed, which necessarily confines the signification to the other part of the *relation* only, it would be contrary to reason to understand the *collective word* otherwise than in a *collective* sense, and in its just latitude, so as to include *both terms* of the *relation*, especially when any mention is made of *safety*, *advantage*, or any other benefit and convenience that is common to *both*. For example, if it were ordered that the forces should march to-morrow, lest the *army* should be destroyed by the enemy, or that corn should be brought in for the use of the *family*; what sane man would understand it so as if the orders given to the *army* or the *family* concerned only the *soldiers* and the *servants*, without any regard to the *general*, who commanded the army, or to the *master*, who governed the family? Which is the same as if a *sick* man, who had been advised by his physician to have a greater care of his *body* for the future, should use all imaginable diligence to preserve his *breast* and his *legs* and the other members *below* his neck, but be unconcerned about the safety of

his *head*, because the doctor made no mention of his *head*, and only in general recommended him to take care of his *body*.

13. But to come nearer to the purpose : Suppose a company of common *soldiers* should say that the *safety of the army was the supreme military law* ; and that they had a *general* who forced the soldiery to such desperate and intolerable service, that unless they threw off the yoke of obedience, the *liberty of the army* would be in danger of being lost ; and upon this principle of asserting their liberty by force of arms, they should conspire together to pay obedience to his commands no longer, and even to take away the life of their *general* : Or if the *servants* of a family (whom the Apostle enjoins to be obedient *not only to a good and gentle master, but also to the froward*<sup>1</sup>) should engage together to disobey his commands as insupportable, and because he lorded it insolently over them, to drive him out of his house, to seize upon his keys, his coffers, and all his goods, and to take upon themselves the absolute management of the family, under pretence only that *the safety of the family is the supreme domestic law*, who would not exclaim, that such wicked and audacious attempts could not by any just consequence be deduced from those principles, which if rightly understood are of most certain and excellent use ? And yet nothing can be more like this wild way of arguing, than the reasoning of those who invoke the "*safety of the people*" to countenance tumult and sedition. As if the *safety* of the *general* was not included (and pre-eminently too) in the *safety of the army* ; as if the safety of the *master* was not implied in the safety of the *family* ; and as if the safety of the *sovereign* were not comprehended in the safety of the *people*. In short, the *safety of the people*, that is, of the *sovereign* and the *people* together, is

<sup>1</sup> 1 Pet. ii. 18.



the *supreme law* ; but not the safety of the *people*, that is, of the *subjects* alone, *excluding* the sovereign.

14. But further, though I conceive it sufficiently proved, that by the word *people* in this axiom, neither the subjects *without* the sovereign, nor the sovereign *without* the subjects ought separately to be understood, but both *conjunctively* ; yet whoever diligently considers either the *dignity* of the persons, or the *original* of the *aphorism* itself, will rather allow that celebrated maxim to be understood distinctively of the sovereign's safety, rather than distinctively of the safety of the *subjects*. In the first place, that the majesty of kings is *sacred*, has not only been abundantly confessed by the ancient fathers of the Church (even before there were any *Christian* princes in the world), who honoured them as *next*, and *only inferior*, to God ; for whose *safety* they offered vows and prayers to heaven, and upon whose *safety* they acknowledged the happiness and *safety* of the whole *people* to depend : but Almighty God Himself (as might be shown at large, if necessary) has been pleased to give ample testimonies of it in the Holy Scriptures ; from whence it came to pass that it has been the common principle of all subjects, who had any sense of *religion* or *loyalty*, when things were brought to extremity by chance of *war*, to lay aside the care of *themselves*, and to secure the *safety* of their *king*. This was a principle bravely professed, as became good subjects, by those *Israelites*,<sup>2</sup> who in that execrable conspiracy of *Absalom* preserved the fidelity they owed to *David* their king. Such also was the loyalty of those, who (without any base design of flattering a mortal man to support their own interest, for they spake by the *inspiration* of the Holy Spirit of God) called the king *the breath of their nostrils* ;<sup>3</sup> for so the devout *Jeremy*, a prophet, sanctified from the *womb*, expresses

<sup>2</sup> 2 Sam. xviii. 3.

<sup>3</sup> Lam. iv. 20.

himself: a very apposite phrase, since the *breath* we draw and respire is that *vital spirit*<sup>4</sup> which holds the soul and body together as a band, upon the defect whereof the animal creature must necessarily expire and perish: *For when the breath of man goeth forth, he returns again to the earth.*<sup>5</sup>

15. You are to observe further, that the *axiom* of which we are speaking has been delivered to us from the *Roman* nation, and was in common use with them when they flourished under a *popular* state; therefore it is no wonder that the *safety* of the *people* was the *supreme law*, in a Government where the *people* themselves were the *supreme power*; the laws were the *people's*, the courts of judicature were the *people's*, the whole jurisdiction was the *people's*, and, in short, the sovereignty and the majesty were the *people's*; and hence it is, that all their historians, and Cicero, and other writers of that age, so frequently speak of *the majesty of the Roman people*, because they were under a republic. But in a *monarchy* the people have not a right to those prerogatives, but they belong to their sovereign. Therefore, whatever the *Romans*, among whom the *sovereignty* was vested in the *people*, understood by the *safety of the people* (and what they meant by it they declared to the whole world in this aphorism) so much, if we depend upon the authority of that *maxim*, must the *safety of the king* (preserving, as it is fit, a due analogy, in two so different forms of government) signify with us, who confess no other *majesty* than that of the *sovereign*.

16. From what has been said I think it is evident that there cannot be any force in either of the *terms* we have explained, *the safety of the people*, by which this common axiom may be wrested without great perverseness to the

<sup>4</sup> "Animus reipublicæ tu es, illa corpus tuum." Senec. de Clem. i. 5. "Ille spiritus vitalis quem hæc tot millia trahunt." Ibid. c. 4.

<sup>5</sup> Psalm cxlvi. 4.

prejudice of the *royal dignity* : and if the two remaining words, the *supreme law*, are rightly examined, I presume every wise and modest man will acknowledge that scarce anything could be offered more full and perspicuous in defence of the *supremacy* of *princes*, than the aphorism before us ; for the words *the supreme law* suppose, that in every Government, a *supreme power* ought necessarily to be lodged somewhere, which should be superior to all the positive laws of men, and that it is the duty of the supreme power to provide and take care by its authority, that neither by the defect of the laws, nor by a too superstitious observance of them, the *public* should receive damage. And the reason is evident ; for the wisest lawgiver cannot possibly foresee all the circumstances of future events, nor can he use sufficient precaution, by means of laws, to obviate all the evils and calamities that may befall the state. And this does not in the least arise from any *defect* in the laws or in the lawgiver, but as *Aristotle* excellently observes, *from the nature of those things that are to be dealt with by the laws* ;<sup>6</sup> which things, being, because of their variety, *indefinite* and *uncertain*, since they depend upon *futurity*, cannot possibly be determined by any<sup>7</sup> certain rules or limitations. The lawgiver therefore has sufficiently discharged his duty, if by his laws he ordains what is<sup>8</sup> *for the most part* just and beneficial to the public ; though it may so happen, and it very often does, that on sudden and unexpected emergencies those laws may be *defective* in some particular case not foreseen : so that upon this occasion, if there be not a person or persons invested with a right to use a kind of discretionary authority, there will be no remedy left sufficient to support a sinking state, or to provide for

<sup>6</sup> Ἄλλ' ἐν τῇ φύσει πράγματος. Arist. Ethic. v. 14.

<sup>7</sup> "Nulla tanta providentia potuit esse eorum qui leges componebant, ut species criminum complecterentur." Quintil. Declam. 331.

<sup>8</sup> Τὸ ὡς ἐπὶ τὸ πλέον λαμβάνει ὁ νόμος. Ibid.

the *public safety*. And, upon this account, it has always been the opinion of wise men, and very agreeable it is to reason, that, in cases of necessity, *legal justice* should give place to *equity*; for *equity* (as *Aristotle* defines it) is nothing else but the *correction of legal justice*,<sup>9</sup> or (as he afterwards explains his own definition) of the *law itself*, by supplying its defects in *particular* cases, when, by reason of its too *general* extent, law does not answer the end of *justice*, nor promote the *good of the public*; for it is necessary that laws should be made in *generalities*,<sup>1</sup> with respect to what *generally*, and for the most part, comes to pass, but not extend to *particular* contingencies that may possibly fall out. If these were the proper matter of laws, and strictly and *literally* prescribed, such laws must sometimes be *defective*, either in regard to *moral justice*, or to the *benefit* of the public, or in *both*.

17. It being granted, therefore, that the *safety of the people*, that is, the *public*, requires that there should be in the community some authority superior to the laws, and to supply their *defects*; what *Aristotle* asserts in his *Politics*, follows by necessary consequence, that this *supreme* authority can belong to none but to the *sovereign*<sup>2</sup> himself, who rules with a *supreme power* over the whole community,<sup>3</sup> whether he be a single person, as in a *monarchy*, or in many, as in other forms of government. Shall the subjects, therefore, under pretence of *liberty*, or even the *safety of the public*, tear asunder the bonds of the laws of justice and *allegiance*, and trample upon the authority of the laws and of princes, and in defence of these crimes plead this *aphorism*,

<sup>9</sup> Arist. Ethic. v. 14.

<sup>1</sup> Δοκοῦσι τὸ καθόλου μόνον λέγειν οἱ νόμοι ἀλλ' οὐ πρὸς τὰ προσπίπτοντα ἐπιτάττειν. Arist. Pol. iii. 15. 4.

<sup>2</sup> Arist. Pol. iii. 11. 19.

<sup>3</sup> Ὁ, λαοὶ τ' ἐπιτετράφαται, καὶ τόσσα μέμληε. Hom. Iliad. 25, 62.

which men of factious designs are ever vaunting and repeating, *The safety of the people is the supreme law?* How comes it to pass, that on the contrary they cannot perceive how plainly it is confessed by this maxim that the sovereign has authority over the laws themselves, so as to enable him, in case of necessity, when things admit of no delay, by his plenitude of power, in defence of his own safety and that of his subjects, against foreign enemies, or domestic rebels, to waive the rigid observance of the laws, or at least suspend it for a time, lest by a superstitious and unseasonable veneration for the laws he suffer himself, his people, and the very *laws* themselves to be delivered into the power of his enemies.

18. That question, whether a prince be obliged by the laws made and confirmed by himself, and approved and received by the consent and custom of the *people*, and how far he is (ordinarily) bound to observe them, shall (God willing) be considered hereafter. We are now only to inquire, whether he may upon an extraordinary emergency, and in defence of the public safety, attempt anything beyond the limit of the laws, or in opposition to them? This he may lawfully do, and with a good Conscience, as appears, first, from the example of the best of princes, to be found in the histories of all nations. And, secondly, from the dictates of *reason*, from the general *defect* of the laws, and from the *variety* and uncertainty of particular events before mentioned; and, in the third place, from the statement of *Samuel*<sup>4</sup> concerning the right of kings, which cannot properly be otherwise understood, though many have attempted to overrule that construction. But to remove all occasion of scruple that may arise or remain from what has been said, give me leave to trace this celebrated *aphorism* up to its *original* source; and if you are not

<sup>4</sup> 1 Sam. viii.

persuaded to confess that the care of the *public safety*, so as even to supersede the *laws*, and this by virtue of the aphorism itself, depends on the will of the sovereign, and not of the *people*, I shall be content to be thought blind at noonday, and not to have defended, but basely to have betrayed, the best cause.

19. I have already observed, that this axiom came down to us from the *Romans*. But now let me add further, that I first met with it (as I think) in the third book of *Cicero de Legibus*,<sup>5</sup> who took it (as he confesses himself) out of the old laws of that nation, and transcribed it from their words. After he had in the second book described and explained the laws relating to religion, and the worship of the gods, in the third he proceeds to recite such as belonged to the Government and the magistracy; where among others he has these words, which I commend to your attention. *Let there be two persons in sovereign command, and by reason of their going before, judging and counselling, let them be called Prætors, Judges, Consuls; let them have the supreme right of the army; let them be subject to no one, let the safety of the people be to them the supreme law;*<sup>6</sup> to them. Who are they? Those certainly who are invested with the sovereign command, who had the supreme right of the army, and acknowledged no power superior to their own, that is, to the two *Consuls*, who, though by the constitution of that republic, they were only *annual* magistrates, yet in their year of office they administered the *supreme* power over the Roman city and *Roman* world. Let me appeal to those who are patrons and champions of *popular* supremacy, to whatever nation they belong; read over and over this whole period, weigh every sentence, clause, and point; sift the words,

<sup>5</sup> iii. 8.

<sup>6</sup> “*Regio imperio duo sumto; iique præeundo, judicando, consulendo, prætores, judices, consules appellantor; militiæ summum jus habento, nemini parento; ollis salus populi suprema lex esto.*”

the syllables, and the minutest tittle of it ; where will you find the least intimation of *power* vested in subjects, either to judge of the *people's safety*, or to determine or attempt anything against the laws, *without* the consent of the sovereign? Does it not plainly appear from the order of words, and the nature of things, that the *supreme* authority, which is above the laws, and by consequence is entrusted with the care of the *public safety*,<sup>7</sup> belongs properly to him who has *sovereign* command, who has *supreme* right of the *army*, who has the *highest power*, and is subject to none? And (that we may have the testimony of the most excellent writers in both languages upon this subject) *Aristotle*<sup>8</sup> is expressly of the same opinion. *The power, says he, of resolving and determining about those things which cannot particularly be provided for by the laws, is lodged in him, whether he be one or more, who governs the State ; and for this reason, because it is no easy matter to include in generalities every particular event that may fall out.*

20. It may perhaps be objected to this, that mankind would be very hardly dealt with, if the safety of *all* should so far depend upon the arbitration of *one*, that in a case of the utmost necessity, no person must presume to provide for his own safety or that of the public without his consent. What if it should happen upon a surprise or emergency, that the matter would not bear the *delay* of a day, and the sovereign be *distant* several days' journey? Whilst we are *going, resolving, and returning*, the public will be ruined ; if in such an extremity of affairs, and distance of place, the subject must attend the pleasure, and expect the consent, of the sovereign. In answer to

<sup>7</sup> "Salutem reipublicæ nulli magis convenire quam Cæsari." Paulus l. 3, de Off. Præf. Vig. Digest. lib. i. tit. xv. lex. 3.

<sup>8</sup> Δεῖ τὸν ἄρχοντα, ἂν τε εἷς, ἂν τε πλείους ᾖσι, περὶ τούτων εἶναι κυρίους περὶ ὅσων ἀδυνατοῦσιν οἱ νόμοι λέγειν ἀκριβῶς, διὰ τὸ μὴ βῆδιον εἶναι καθόλου δηλῶσαι περὶ πάντων. Pol. ii 2. 9.

this, I conceive that the subjects in this case may attempt something of themselves ; and if an urgent and unavoidable necessity requires, without the sovereign's consent ; *for necessity*, as the proverb is, *has no law* ;<sup>9</sup> yet the consequence that some would infer from hence does not follow ; and therefore I observe, first, that whatever right the subjects can claim in this case (I mean when they consult the *safety of the public*, without any respect to the laws) is derived to them from *another* fountain ; but cannot possibly be supported by the authority of the *aphorism* before us, which vests in the *sovereign* the sole power of taking care and providing for the public safety, but gives no such power to the *people*. Besides, it is one thing to act in opposition to the laws *without* the consent of the sovereign, and another to act *against* it. The one may *conditionally* be lawful to the subject, but the other is absolutely unlawful.

Secondly, if subjects wish to attempt anything for the *public safety*, they ought to observe these two *conditions* ; and whoever neglects either of them is not to be excused, let him plead ever so great necessity in his defence. How far these conditions have been observed by the authors or fomenters of the deplorable distractions in this realm, is not for me to say ; let them look to it. The conditions are these ; first, that nothing be done or attempted to the *prejudice* of the ruler, whose person and dignity it concerns the *safety* of the *public* to preserve inviolate. The second, that nothing likewise be done or attempted against the *established laws* and rights, *without* the consent of the ruler ; either his *express* consent, where it conveniently may be had, or (where affairs are urgent, and he is at too great a distance) at least *reason-*

<sup>9</sup> Ἐγὼ γε φημι καὶ νόμον γε μὴ σέβειν,

Ἐν τοῖσι δεινοῖς, τῶν ἀναγκαίων πλὴν.

Eurip. ap Stob. λογ. ε. 10 (12, 10 ed. Gaisf.).



ably presumed; that is, when there is so plain and <sup>1</sup> evident a necessity, that a man of *reason* and *prudence* could not doubt but the ruler himself, if he were actually present, would allow to his subjects a *relaxation* of the laws.

21. These two conditions being observed (if no condition arises from particular circumstances), subjects may lawfully<sup>2</sup> in defence of the ruler and the *popular safety*, against foreign enemies or domestic rebels, have more regard to the *common good*, which is the *supreme law*, than to the very *letter* of particular laws, that are made to serve and not to injure the public. The reason is evident; for the means are ordained for the end, and not the end for the means, and the *means* ought to be in subserviency to the end, and not the end to them: since therefore the *public safety* is in the nature of an *end*, and the *laws* are considered as *means*; and it is certain that the *end* is more regarded by an agent than the *means*; it follows that the *common good* is to be preferred to all *particular* laws, and that the sovereign, who is the principal agent in making laws, is of the same opinion; and consequently that his consent is *tacitly implied*, when extreme necessity presses the subject to attempt anything without that consent, for the public good; supposing still that there be no violation of the *right* and *dignity* of the sovereign.

22. We meet with many testimonies in history to this purpose which, in so plain a case, seem unnecessary to mention. I shall produce one only, but an illustrious example, and worthy to be inserted in the annals of this nation, to the immortal memory of the gentleman concerned, which occurred in the present age, and in the memory of some of us. It was a memorable action of a

<sup>1</sup> "In manifestis non opus est interpretatione, sed executione." Aquin. ii. 2 qu. 120, art. 10.

<sup>2</sup> "Certum est omnia licere pro patriâ. Quintil. Declam. 369.

High Sheriff of Worcestershire.<sup>3</sup> In the several counties of England there is an annual magistrate presiding, who is called a High Sheriff, whose business it is to see the laws put in execution, especially to take care of the public peace. This officer, the more effectually to discharge so weighty a trust, has by the laws of this kingdom (as it is proper he should) a power allowed him to raise the *Militia*, and, with an armed force, as often as there be occasion, to view and examine any part of his province, yet so that he has no authority to carry his force beyond the bounds and limits of his own County. After that execrable treason, the *Powder Plot*, was (by the singular mercy and providence of God) surprisingly discovered, some of the conspirators, and one or two of the principals, came into Worcestershire. The High Sheriff, a man of conduct and bravery, pursued them with his trained bands as they fled from place to place, to the utmost confines of his province ;<sup>4</sup> and fearing, if he checked his pursuit out of respect to the *laws*, the rebels would escape the hands of justice, he ventured (notwithstanding the law) to lead his forces into the next county, by which means he reduced the conspirators under his power, and brought the leaders and the whole gang of them prisoners ; for he thought (as was the truth) that he could not otherwise acquit himself bravely as a good subject than by acting as he did ; that, in so critical a case of necessity, the observance of the laws would be unseasonable ; that the supreme law, the safety of his country, was to be obeyed, and everything was to give way to the public good. Having thus effectually accomplished his design, lest the authority of the laws should grow into contempt by such a precedent (which was due to necessity), and being sensible how such violators of the

<sup>3</sup> Sir Richard Walsh.

<sup>4</sup> The house of Stephen Littleton at Holbeach, Staffordshire. (Winwood's Memorials, ii. 173.)

laws were liable to severe punishment by the rigour of the law, this wise patriot did not think it sufficient to acquiesce in the satisfaction arising from so noble an act, unless he provided likewise for his own future security, and took all possible care that no one, by the abuse of his example, should be moved to any rash or illegal attempts. He immediately therefore hastened to court, and, throwing himself at the feet of his Most Gracious Majesty (King *James* of happy memory), he humbly asked pardon for violating the law; and, as he deserved, he was not only pardoned by that most wise prince for *not obeying* the law, but was *applauded* for preferring the *public safety* to the observance of the law.

23. Thus have I, my hearers, in compliance with the importunity of friends, delivered my opinion, more fully than usual, upon the sense of that axiom, "*The safety of the people is the supreme law,*" that so I might stop the mouths of those unreasonable men who (as *Solomon* observes <sup>5</sup>) *by the wringing of the nose squeeze out blood*; that is, from an aphorism very pious (if it be rightly understood) and wholesome for public bodies, extract a sense that is impious and destructive to human affairs. The whole of the argument lies in few words:—If some private persons are injured or oppressed, or if the subjects in general lie under the weight of public grievances, which they may even justly complain of, they are not immediately to have recourse to *extraordinary* and illegal remedies, as if the *safety of the people* would be otherwise utterly destroyed. But if there be a *just* apprehension of danger that the Government will be subverted either by foreign foes, or by seditious subjects, unless something be attempted that exceeds the *permission* of the laws, it is then lawful for the ruler, by the prerogative of his own power, and it is lawful likewise for the subjects, by

<sup>5</sup> Prov. xxx. 33.

the presumed will of the ruler (if nothing be done to his *prejudice*, and a present *necessity* requires), so far to recede from the *words* and the *sense* of particular laws as to defend their *endangered* country, and to consult its *safety* as the *supreme law*. I design in a short time (if God gives me leave, and opportunity permits) to proceed to what remains yet to be considered.<sup>6</sup>

*The grace of our Lord Jesus Christ, and the love of God, and the fellowship of the Holy Ghost, be with us all evermore. Amen.*

<sup>6</sup> The writer was soon afterwards, in June, 1648, deprived of his Canonry and Professorship, by the Parliamentary Committee, and was unable to continue his Lectures ; see the Preface to this Volume.

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