American Patriot Party

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Virginia Resolution of 1798

Author James Madison:

RESOLVED, That the General Assembly of Virginia, doth unequivocably express a firm resolution to maintain and defend the Constitution of the United States, and the **Constitution** of this State, **against every aggression either foreign or domestic**, and that they will support **"the government"** of the United States in all measures **"WARRANTED" by "the former".**

That this assembly most solemnly declares a warm attachment to the Union of the **"States"**, to maintain which it pledges all its powers; and that for this end, **it is their duty to watch over and oppose EVERY infraction of those principles which constitute the "ONLY basis" of that Union**, because **a faithful observance of them, can alone secure it's existence and the public happiness.**

That this Assembly doth explicitly and peremptorily declare, that it views the powers of the

federal government, as resulting from the compact, to which the states are parties; as limited by the "plain sense and intention" of the instrument constituting the "compact"; as NO further valid that they are authorized by the grants "ENUMERATED" in "THAT COMPACT"; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said COMPACT, the STATES who are parties thereto, have the right, and are in DUTY bound, to interpose for arresting the progress of the "EVIL", and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

That the General Assembly doth also express its DEEP REGRET, that a spirit has in sundry instances, been manifested by the federal government, to "enlarge its powers" by "FORCED constructions" of the constitutional charter which DEFINES them;

and that implications have appeared of a "design" to "EXPOUND" certain >>>"GENERAL "PHRASES" (which having been copied from the very limited grant of power, in the former articles of confederation were the less liable to be misconstrued) so as to DESTROY the MEANING and EFFECT, of the particular "ENUMERATION" which NECESSARILY EXPLAINS AND LIMITS THE GENERAL PHRASES; and so as to consolidate the states by degrees, into "ONE SOVEREIGNTY" (APP: i.e. "ONE NATION" no where intended), the obvious tendency and inevitable consequence of which would be, to >>>"TRANSFORM" the present "republican" system of the United States,

into "an absolute", or "at best" a mixed "MONARCHY".

That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution, in the two late cases of the "Alien and Sedition Acts" passed at the last session of Congress; the first of which exercises a power "NO WHERE DELEGATED" to the federal government, and which by uniting legislative and judicial powers to those of executive, SUBVERTS THE GENERALPRINCIPLES of free government; as well as the particular organization, and positive provisions of the federal constitution; and the other of which acts, exercises in like manner, a power NOT delegated by the constitution, but on the contrary, expressly and positively forbidden by one of the amendments thereto; a power, which more than any other, ought to produce universal alarm, because it is levelled against that right of freely examining public characters and measures, and of FREE COMMUNICATION AMONG THE PEOPLE THEREON, which has ever been justly deemed, the ONLY effectual GUARDIAN of EVERY OTHER RIGHT.

That this state having by its Convention, which ratified the federal Constitution, expressly declared, that among other essential rights, "the Liberty of Conscience and of the Press CANNOT be cancelled, abridged, restrained, or modified by "ANY" authority of the "United States"," and from its extreme anxiety to guard these rights from EVERY possible attack of "sophistry or ambition", having with other states, recommended an amendment for that purpose, which amendment was, in due time, annexed to the Constitution; it would mark a reproachable inconsistency, and criminal degeneracy, if an indifference were now shewn, to the most palpable violation of one of the Rights, thus declared and secured; and to the establishment of a precedent which may be fatal to the other.

That the good people of this commonwealth, having ever felt, and continuing to feel, the most

sincere affection for their brethren of the other states; the truest anxiety for establishing and perpetuating the union of all; and the most scrupulous fidelity to that constitution, which is the pledge of mutual friendship, and the instrument of mutual happiness; the General Assembly doth solemnly appeal to the like dispositions of the other states, in confidence that they will concur with this **commonwealth** in declaring, **as it does hereby declare, that the acts aforesaid, are unconstitutional;** and that the **necessary and proper measures will be taken by each**, for **co-operating with this state**, **in maintaining the Authorities, Rights, and Liberties, referred to the States respectively, or to the people.**

That the Governor be desired, to transmit a copy of the foregoing Resolutions to the executive authority of each of the other states, with a request that the same may be communicated to the Legislature thereof; and that a copy be furnished to each of the Senators and Representatives representing this state in the Congress of the United States.

Agreed to by the Senate, December 24, 1798

The Kentucky Resolution of 1798

Author Thomas Jefferson:

1. Resolved, That the several States composing, the United States of America, are **not united on the principle of unlimited submission to their general government;** but that, by a compact under the style and title of a Constitution for the United States, and of amendments thereto, **they constituted a general government for "special purposes" — "delegated" to that government "certain definite" powers**, **RESERVING, each State to itself, the residuary mass of right to their OWN self-government;** and **that WHENSOEVER the general government assumes undelegated powers, its acts are "UNAUTHORITATIVE", "VOID", and of "NO FORCE":** that to this compact **"each State" acceded as a State**, and is an integral part, its co-States forming, as to itself, **the other party:** that the government created by **this COMPACT was "NOT" made the exclusive or final judge of the extent of the powers delegated to itself**

(APP: i.e. The Federal Supreme Court, Executive or Legislative are not the final judge);

since that would have made "its discretion", and "not the Constitution", the measure of its powers; but that, as in all other cases of compact among powers having no common judge, **each party** has an **EQUAL right to judge for itself**, as **well of infractions as of the mode and measure of redress.**

2. " Resolved, That the Constitution of the United States, having delegated to Congress

a power to punish:

a.) treason,
b.) counterfeiting the securities and current coin of the United States,
c.) piracies, and felonies committed on the high seas, and
d.) offenses against the law of nations,

and >>>> NO OTHER CRIMES >>>"WHATSOEVER";

and it being true as a general principle, and one of the amendments to the Constitution having also declared, that "the powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively, or to the people,"

therefore the act of Congress, passed on the 14th day of July, 1798, and intituled "An Act in addition to the act intituled An Act for the punishment of certain crimes against the United States," as also the act passed by them on the — day of June, 1798, intituled "An Act to punish frauds committed on the bank of the United States," (>>>> and ALL their OTHER ACTS which assume to CREATE, DEFINE, or PUNISH crimes, OTHER than THOSE so "ENUMERATED" in the Constitution,)

>>> are "ALTOGETHER" "VOID", and of "NO FORCE";

and that the power to create, define, and punish such other crimes is reserved, and, of right, appertains SOLELY and EXCLUSIVELY to the respective "STATES", each within its own territory.

3. Resolved, That it is true as a general principle, and is also expressly declared by one of the amendments to the Constitutions, that **"the powers not delegated to the United States by the Constitution, our prohibited by it to the States, are reserved to the States respectively, or to the people";** and that **NO power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States by the Constitution, nor prohibited by it to the States**, **all lawful powers respecting the same did of right remain, and were reserved to the States or the people:** that thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use should be tolerated, **rather than the use be destroyed**. And thus also they **guarded against ALL abridgment** by the United States of the freedom of religious opinions and exercises, and retained to themselves **the right of protecting the same, as this State, by a law passed on the general demand of its citizens, had already protected them from "ALL" human restraint or interference.** And that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution, which expressly declares, that **"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press":** thereby guarding in the same sentence, and under the

same words, the freedom of religion, of speech, and of the press: insomuch, **that whatever violated either, throws down the sanctuary which covers the others, arid that libels, falsehood, and defamation, equally with heresy and false religion, are WITHHELD from the cognizance of federal tribunals**. That, therefore, the act of Congress of the United States, passed on the 14th day of July, 1798, intituled "An Act in addition to the act intituled An Act for the punishment of certain crimes against the United States," which does abridge the freedom of the press, **is "NOT LAW", but is "ALTOGETHER" "VOID", and of "NO FORCE".**

4. Resolved, That alien friends are under the jurisdiction and protection of the laws of the State wherein they are: **that no power over them has been delegated to the United States, nor prohibited to the individual States, distinct from their power over citizens.** And it being true as a general principle, and one of the amendments to the Constitution having also declared, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," the act of the Congress of the United States, passed on the — day of July, 1798, intituled **"An Act concerning aliens," which assumes powers over alien friends, not delegated by the Constitution, is not law, but is "ALTOGETHER" "VOID", and of "NO FORCE".**

5. Resolved. That in addition to the general principle, as well as the express declaration, **that powers not delegated are reserved,** another and more special provision, inserted in the Constitution from abundant caution, has declared that "the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808" **that this commonwealth does admit the migration of alien friends, described as the subject of the said act concerning aliens: that a provision against prohibiting their migration, is a provision against all acts equivalent thereto**, or it would be **nugatory**: that to remove them when migrated, is equivalent to a prohibition of their migration, **and is, therefore, "CONTRARY" to the said provision of the Constitution, and "VOID"**

6. Resolved, That the imprisonment of a person under the protection of the laws of this **commonwealth**, on his failure to obey the simple order of the President to depart out of the United States, as is undertaken by said act intituled **"An Act concerning aliens" is contrary to the Constitution, one amendment to which has provided that "no person shalt be deprived of liberty without due progress of law"; and that another having provided that "in all criminal prosecutions the accused shall enjoy the right to public trial by an impartial jury, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense;"** the same act, **undertaking to authorize the President to remove a person out of the United States, who is under the protection of the law, on his own suspicion, without accusation, without jury, without public trial, without confrontation of the witnesses against him, without hearing witnesses in his favor, without defense, without counsel, is contrary to**

the provision also of the Constitution, is therefore not law, but utterly VOID, and of NO FORCE: that transferring the power of judging any person, who is under the protection of the laws from the courts, to the President of the United States, as is undertaken **by the same act concerning aliens**, **is AGAINST the article of the Constitution** which provides that **"the judicial power of the United States shall be vested in courts, the judges of which shall hold their offices during good behavior"; and that the said act is VOID for that reason also.** And it is further to be noted, that this transfer of judiciary power is to that magistrate of the general government who already possesses all the Executive, and a negative on all Legislative powers.

7. Resolved, That **the "construction" applied by the General Government (as is evidenced by "sundry" of their proceedings)** to those parts of the Constitution of the United States which delegate to Congress a power **"to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the common defense and general welfare of the United States," and "to make all laws which shall be necessary and proper for carrying into execution, the powers VESTED by the Constitution in the government of the United States, or in any department or officer thereof," goes to the destruction of all limits prescribed to their powers by the Constitution: that words meant by the instrument to be subsidiary only to the execution of limited powers, ought "NOT TO BE SO CONSTRUED" as themselves to give "unlimited powers", NOR** a part to be so taken **as to destroy the whole residue of that instrument:** that the proceedings of the General Government under color of these articles, will be a fit and necessary subject of revisal and correction, at a time of greater tranquillity, **while those specified in the preceding resolutions call for immediate redress..**

8th. Resolved, That a committee of conference and correspondence be appointed, who shall have in charge to communicate the preceding resolutions to the Legislatures of the several States: to assure them that this commonwealth continues in the same esteem of their friendship and union which it has manifested from that moment at which a common danger first suggested a common union: that it considers union, **for specified national purposes,** and particularly to those specified in their late federal compact, to be friendly, to the peace, happiness and prosperity of all the States: **that faithful to that compact, according to the "plain intent and meaning" in which it "was" understood and acceded to by the several parties**, it is sincerely anxious for its preservation: that it does also believe, that to take from the States all the powers of self-government and transfer them to a general and consolidated government, **without regard to the special delegations and reservations solemnly agreed to in that compact, is NOT for the peace, happiness or prosperity of these States;** and that therefore this commonwealth is determined, as it doubts not its co-States are, to submit to undelegated, and consequently unlimited powers in no man, or body of men on earth: **that in cases of an abuse of the delegated powers, the members of the general government, being chosen by the people, a change by the people would be the constitutional remedy;**

BUT, where powers are assumed which have NOT BEEN DELEGATED, a

"NULLIFICATION" of the act is the RIGHTFUL REMEDY: that every STATE has a natural RIGHT in cases NOT within the COMPACT, (casus non fœderis) to "NULLIFY" of their "OWN AUTHORITY" all assumptions of power by others within their limits: that without this right, they would be under the dominion, absolute and unlimited, of whosoever might exercise this right of judgment for them:

that nevertheless, this commonwealth, from motives of regard and respect for its co States, has wished to communicate with them on the subject: that with them alone it is proper to communicate, they alone being parties to the COMPACT, and solely authorized to judge in the last resort of the powers exercised under it,

Congress being NOT a party, but "MERELY the CREATURE of THE COMPACT", and SUBJECT as to its assumptions of power to the final judgment of THOSE by whom, and for whose use itself and its powers were all created and modified: that if the acts before specified should stand, these conclusions would flow from them; that the general government may place any act they think proper on the list of crimes and punish it themselves whether enumerated OR NOT enumerated by the constitution as cognizable by them: that they may transfer its cognizance to the President, or any other person, who may himself be the accuser, counsel, judge and jury, whose suspicions may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction: that a very numerous and valuable description of the inhabitants of these States being, by this precedent, reduced, as outlaws, to the absolute dominion of one man, and the barrier of the Constitution thus swept away from us all, no ramparts now remains against the passions and the powers of a majority in Congress to protect from a like exportation, or other more grievous punishment, the minority of the same body, the legislatures, judges, governors and counsellors of the States, nor their other peaceable inhabitants, who may venture to reclaim the constitutional rights and liberties of the States and people, or who for other causes, good or bad, may be obnoxious to the views, or marked by the suspicions of the President, or be thought dangerous to his or their election, or other interests, public or personal;

that the friendless alien has indeed been selected as the safest subject of a first experiment; but the citizen will soon follow, or rather, has already followed, for already has a sedition act marked him as its prey: that these and successive acts of the same character, unless arrested at the threshold, "NECESSARILY" drive these States into "REVOLUTION and BLOOD" and will furnish "new calumnies" against "REPUBLICAN" government, and new pretexts for THOSE who wish it to be believed that man cannot be governed but by a rod of iron: that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that CONFIDENCE is everywhere the parent of DESPOTISM — free government is founded in JEALOUSY, and NOT in CONFIDENCE; it is JEALOUSY and not confidence which prescribes LIMITED constitutions, to BIND DOWN those whom we are obliged to trust with power: that our Constitution has accordingly fixed the LIMITS to which, and >>>NO FURTHER, our confidence may go; and let the honest advocate of confidence read the **Alien and Sedition acts**, and say if the Constitution **has not been wise** in fixing LIMITS to the government it created, and **whether we should be wise in destroying those limits**, Let him say what the government is, if it be not a TYRANNY, which the men of our choice have con erred on our

President, and the President of our choice **has assented to**, and accepted over the friendly stranger to whom the mild spirit of our country **and its law have pledged hospitality and protection:** that the men of our choice have more respected the bare suspicion of the President, than **the solid right of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice.** In questions of powers, then, **let no more be heard of confidence in man, but BIND him down from mischief by the CHAINS of the Constitution.**

That this commonwealth does therefore call on its co-States for an expression of their sentiments on the acts concerning aliens and for the punishment of certain crimes herein before specified, plainly declaring whether these acts are or **are not authorized by the federal compact**. And it doubts not that their sense will be so announced as to **prove their attachment unaltered to limited government, weather general or particular.** And that the rights and liberties of their co-States will be exposed to no dangers by remaining embarked in a common bottom with their own. That they will concur with this commonwealth in considering the said acts as **so palpably against the Constitution as to amount to an undisguised declaration that that compact is not meant to be the measure of the powers of the General Government, but that it will proceed in the exercise over these States, of all powers whatsoever: that they will view this as seizing the rights of the States, and consolidating them in the hands of the General Government, with a power assumed to bind the States** (not merely as the cases made federal, casus fœderis but), **in all cases whatsoever**, by laws made, **not with their consent**, but by others **against their consent:** that this **would be to surrender the form of government we have chosen, and live under one deriving its powers from its own will, and not from our authority;** and that the co-States, **recurring to their natural right in cases not made federal, will concur in declaring these acts void, and of no force**, and **will each take measures of its own for providing that neither these acts, nor any others of the General Government not plainly and intentionally authorized by the Constitution, shalt be exercised within their respective territories.**

9th. Resolved, That the said committee be authorized to communicate by writing or personal conference, at any times or places whatever, with any person or persons who may be appointed by any one or more co-States to correspond or confer with them; **and that they lay their proceedings before the next session of Assembly.**

The subject presented in this news letter is entitled "The Division of Power" I thought it fitting for two reasons, one, I thought it would help define the Party's stand on that division, and two, because the stirring discussion I had a week ago with the Ohio party which had prompted me for a little discussion and actual documentation on the subject of state powers and national powers and the division line between the two.

Below I have copied a page that presents one of the better debates that really exemplifies some core problems of power, and voiced very clearly by Patrick Henry and others. It would good for you to read the Rights of the Colonists 1772 first to understand the issues debated here, to see the solid foundation of Patrick Henry's concerns as he had well experienced the abuse of national powers only 12 years prior to this debate. He ends some of his with questions meant to establish the obvious facts of recent history; and though serious in nature are somewhat humorous in delivery. The fluidity of all the speakers sets one in awe. There is finite reasonings presented for which are explored where the powers should lay.

The issues range from **Militias, Standing Armies and a very good debate on the Bill of Rights** which Patrick Henry defends quite artistically with words; against those who would have omitted them. It is why we caution state chairs on which person's they quote, as some founders of "federalism" were in fact not presenting those long established foundations of freedom, but of the same vague easily corrupted establishments found in tyrannical governments and subversive powers with no safeguards.

Some of the founder's statements that are made that need to be in context, as there is even one area that Patrick Henry points out that "the document states" that the congress should control the militia, but he is describing the "flaw" in the document; This, as he is a tough critic on the new Constitution for good cause, and an ardent proponent of the Bill of Rights; In reading, both at start and finish, he is opposed to giving Congress sweeping powers of force, thereby you must read not only the discussions in context to the many varied subjects (including understanding the many varied levels of perceived definitions of militia which had changed prior to this discussion; and they discuss may change in the future), but relate them over all; and further read back to the history of which they relate to, the Declaration of Independence, established **common law** as in the Rights of the Colonists, the Magna Carta, John Locke, and early **state constitutions**; As these were well known by them, and were in this knowledge **taken for granted** as they spoke, expecting those around them to be in understanding of them. The artistry of their speech (pointed out by George Mason in relation to the federalist evasions as **"artful sophistry and evasions could not satisfy him"** and some of Patrick Henry's facetious speech "parts" make it hard to tell at times when he is taunting the opposing position with their stands and optimism of the proposed national government and the "integrity" of the persons that will weld power within it. This sometimes causes even those in the debate to clarify.

You will find many of those debating the issue are actually agreeing, but are found defining separate issues which they eventually clear up to some extent.... (this is just one of many debates) make sure to read clear through this one, as some times they are being facetious to make their point.

Note that the federalists "dance around" the idea (as well as attempt to disarm his concerns) that Patrick Henry and George Mason touch upon; And that is, that should laws change, which

they have, and new persons in the government be disingenuous, what is to protect the states and or the people when the federal government has corrupted the national government and welds the greater power in which the state militias are obligated now to serve.

The safeguards they mention here, besides the inclusion of the Bill of Rights, is the state's ability to adequately control, arm and defend themselves with **adequate powers to repel**.

This includes importing arms and arming themselves and their state militias outside the federal government; Which establishes that the federal use of the commerce clause to prohibit importation of military arms from other countries or between states to the citizens is a unconstitutional arrogated new power which is expressly prohibited.

These safeguards, in part, have been taken down or relinquished by corruptions they mention here;

What it does define clearly, is that the states **can** arm and manage their own militias for just that protection; This protection can extend out to protect other states; So there are these protections, if the states would use them, or even understand the intent for which they exist. **Which is the reason that every free citizen and our state governments need to be educated in these rights.**

The difficulty, as presented above and by Patrick Henry, is when the "National" (federal) government is disingenuous, what will be the **procedure** of the states toward the national; The question comes up, but is not directly answered but for the right of the states to control the militia when there is no war against **foreign** invaders that requires attention by the national; **Or** when the state is attacked, or in eminent danger, the **"state"** **"can"** **engage in war** **without approval from congress**. Insuring the right of the state to defend itself absolutely against any invader of their state constitutions and freedoms.

Early law and these conventions, establishes that a free state can limit the forces that it will offer to a national cause by establishing what the state believes it needs to adequately protect its own state. This would be one safeguard to insuring a free state; or states, which they have a right to defend each others freedoms in the face of the rise of tyranny in the national government. Again is the **procedure or steps;** and what **clear issues must arise** to enact that procedure and **how would a state withdraw it's militia from a "standing army" controlled by the national of which it is attempting to defend against**. The issues are clearly written in the Declaration of Independence within the grievances. The procedures and steps are what is needed to complete and establish **this** safeguard.

Note that the definition of "MILITIA" by James Madison is a force of citizens >>>in opposition of the standing army **"officered by men chosen among themselves"**, not by government or military; All other definitions of militia are baseless:

James Madison: "The **highest** number to which a standing army can be carried in any country does **NOT EXCEED** one hundredth part of the souls, or **one twenty-fifth (1/25th) part of the number able to bear arms. This PORTION** would not yield, in the United States, an army of more than twenty-five or thirty thousand men.

To "these" would be OPPOSED (APP: indicating that the "militia" is to be a "opposing force" to the standing army as well as that of foreign enemies)

a **militia** amounting to near half a million **"CITIZENS" with arms in their HANDS**, **"officered by men chosen from "AMONG THEMSELVES"**, **(not by government or the standing army - a solid restriction to the true definition)** fighting for **"their" (the citizen / militia's)** common liberties and united and **conducted** by government**"S"** possessing **their (the citizen / militia's)** affections and confidence. It may well be doubted whether a **militia thus circumstanced** could ever be conquered **by such a "proportion"** of regular troops **(i.e. standing army)**. Besides the advantage of being **armed**, **it forms a barrier against the "enterprises of ambition"**, more insurmountable than any which a simple government of any form can admit of.

The governments of Europe are **afraid** to trust **the people** with arms. If they did, the people would surely shake off the **yoke of tyranny**, **as America did.** Let us **not insult** the free and gallant citizens of America with the suspicion that they would be less able to defend the rights of which they would be in **actual possession** than the **debased subjects of arbitrary power** would be to rescue theirs from the hands of their oppressors."

George Mason establishes in this convention, that the militia is ALL PEOPLE, and emphasizes the importance of the arming of the CITIZENS not be neglected.

Other limitations found in this convention which define the meaning of the Constitution are:

* The federal government CANNOT exceed the 10 miles square granted it;
* The federal government CANNOT govern police outside the 10 miles square;
* The federal government CANNOT make any regulation that **even "MAY"** affect the citizens of the **"Union at Large";**
* The federal government CANNOT exceed the delegated powers, not even by ONE STEP;
* The federal government CANNOT arrogate ANY new power;
* The supremacy is limited to the 10 miles square, "THAT PLACE SOLELY".
* The STATES can VOID (NULLIFY) anything of the federal government for which they sense danger, and "REFUSE IT ALTOGETHER".
(See also Virginia and Kentucky Resolutions)
* The federal government must acquire permission from any state to have forts.

See also Constitution's limited delegated powers and **Kentucky Resolutions #2** indicating clearly the federal government CANNOT even create ANY new laws so to prosecute ANY new crimes but the **"4"** they had been granted;

The ratifying and amendment process was for making changes in the DELEGATED powers, it was never meant to be used as a means to arrogate new powers upon the federal government which the federal government was EXPRESSLY PROHIBITED; by "ANY MEANS".

If you are of my view of this debate, you will find it both stirring and thoroughly enjoying.

What I note the greatest achievement by Patrick Henry, is the way he draws out the

"intentions" and clarifications of the federalists and anti federalists alike, which in fact establish our laws as defined in their **intent**;

As a judge looks back at the **intentions** set forth in the legislature which creates law to establish how he upholds the law in court; So is the **intent** of the Founders, who have created and established the Constitution, the law of the Constitution and **prior rights even the Constitution is subject to**, are to be upheld in every court.

All those **prior known rights** not expressly delegated, and those rights which either are established by engagements, oaths and known law, **are reserved** to the states and to the people. **They are in full effect today as they were before the Constitution was ratified, as clearly presented.**

In these the federal government has no power over, but only to defend, at request of the independent state.

It is clear in these conventions, that the intent of the founders is that the federal government is only there as an additional protection at the beck and call and control of the states; **and not one** of creator of "new powers", a subjugator, or of internal improvements, and manipulations of state laws; or of anything that has not been expressly delegated to it in the Original Compact. They understood that change dissolves republic governments (see John Locke on the dissolution of government)

A historical observation, is that many of the dangers Patrick Henry and George Mason present may happen, have already happened, some are noted.

Sincerely,

Richard Taylor
Chair
American Patriot Party (.cc)
American Patriot Party of Oregon

highlighted text for emphasis.

Virginia Ratifying Convention 6-16-1788

MONDAY, June 16, 1788.[1] [Elliot misprinted this as Monday, June 14, 1788.]

The Convention, according to the order of the day, again resolved itself into a committee of the whole Convention, to take into further consideration the proposed plan of government. Mr. WYTHE in the chair.

[The 8th section still under consideration. See page 378.]

Mr. HENRY thought it necessary and proper that they should take a collective view of this whole section, and revert again to the first clause. He adverted to the clause which gives Congress the power of raising armies, and proceeded as follows: To me this appears **a very alarming power, when unlimited.** They are not only to raise, but to support, armies; and this support is to go to the utmost abilities of the United States. **If Congress shall say that the general welfare requires it, they may keep armies continually on foot.** There is no control on Congress in raising or stationing them. **They may billet them on the people at pleasure. This unlimited authority is a most dangerous power: its principles are despotic. If it be unbounded, it must lead to despotism; for the power of a PEOPLE in a FREE GOVERNMENT is supposed to be "PARAMOUNT" to the existing power.**

We shall be told that, in England, the king, lords, and commons, have this power; that armies can be raised by the prince alone, **without the "consent" of the people**. How does this apply here? Is this government to place us in the situation of the English? Should we suppose this government to resemble king, lords, and commons, we of this state {411} should be like an English county. An English county Cannot control the government. Virginia cannot control the government of Congress any more than the county of Kent can control that of England. Advert to the power thoroughly. **One of our first complaints**, under the former government, **was the quartering of troops upon us. This was one of the principal reasons for dissolving the connection with Great Britain.** Here we may have troops in time of peace. They may be billeted in any manner to tyrannize, oppress, and crush us.

We are told, we are afraid to trust ourselves; that our own representatives Congress will not exercise their powers oppressively; **that we shall not enslave ourselves;** that **the militia cannot enslave themselves**, &c. Who has enslaved France, Spain, Germany, Turkey, and other countries which groan under tyranny?

They have been "enslaved" by the hands of their "own people".

If it will be so in America, it will be **only as it has been *every where else*.**

I am still persuaded that the power of calling forth the militia, **to execute the laws of the Union, is dangerous.** We requested the gentleman to show the cases where the militia would be wanting to execute the laws. **Have we received a satisfactory answer?** When we consider this part, and compare it to other parts, which declare that Congress may declare war, and **that the President shall command the regular troops, militia, and navy, we shall find great danger.** Under the order of Congress, they shall suppress insurrections. Under the order of Congress, they shall be called **to execute the "laws".** It will result, of course, that this is to be a government of force. *Look at the part which speaks of excises*, and you will recollect that those who are to collect excises and duties are to be aided by military force. They have power to call them out, and to provide for arming, organizing, disciplining, them. Consequently, they are to make militia laws for this state.

The honorable gentleman said that the militia should be called forth to quell riots. *Have we not seen* this business go on very well to-day without military force? It is a long-established principle of the common law of England, that civil force is sufficient to quell riots. To what length may it not be carried? A law may be made that, if twelve men assemble, if they do not

disperse, they may be fired upon. {412} I think it is so in England. **Does not this part of the paper bear a strong aspect?** The honorable gentleman, from his knowledge, was called upon to show the instances, and he told us the militia may be called out to quell riots. They may make the militia travel, and act under a colonel, or perhaps under a constable. **Who are to determine whether it be a riot or not?** Those who are to **execute the laws of the Union?** If they have power to execute their laws in this manner, **in what situation are we placed!** Your men who go to Congress are not restrained by a bill of rights. They are not restrained from inflicting unusual and severe punishments, though the bill of rights of Virginia forbids it. What will be the consequence? They may inflict the most cruel and ignominious punishments on the militia, and they will tell you that it is necessary for their discipline.

Give me leave to ask another thing. Suppose an exciseman will demand leave to enter your cellar, or house, by virtue of his office; perhaps he may call on the militia to enable him to go. If Congress be informed of it, will they give you redress? **They will tell you that he is executing the laws under the authority of the continent at large, which must be obeyed, for that the government cannot be carried on without exercising severity.** It, without any reservation of rights or control, **"you" are contented to give up "your" rights, "I am not".** There is no principle to guide the legislature to restrain them from inflicting the utmost severity of punishment. Will gentlemen **voluntarily** give up their liberty? With respect to calling the militia to enforce every execution indiscriminately, it is unprecedented. Have we ever seen it done in any free country? Was it ever so in the mother country? It never was so in any well-regulated country. It is a government of force, and the **genius of despotism expressly.** It is not proved that this power is necessary, and if it be unnecessary, **shall we give it up?**

Mr. MADISON. Mr. Chairman, I will endeavor to follow the rule of the house, but must pay due attention to the observations which fell from the gentleman. I should conclude, from abstracted reasoning, that they were ill founded I should think that, if there were any object which the general government ought to command, it would be the direction of the national forces. **And as the force which lies in militia is most safe**, the direction of that part ought to be {413} submitted to, **in order to render another force unnecessary**. The power objected to is necessary, because it is to be employed for **"national" purposes**. It is necessary to be given to every government. This is not opinion, but fact. The highest authority may be given, that the want of such authority in the government protracted the late war, and prolonged its calamities.

He says that one ground of complaint, at the beginning of the revolution, was, that a standing army was quartered upon us. This was ***not the whole*** complaint. We complained because it was done **without the "LOCAL Authority" of this country** without the **CONSENT** of the **people** of America. As to the exclusion of standing armies in the bill of rights of the states, we shall find that though, in one or two of them, there is something like a prohibition, yet, in most of them, it is only provided that no armies shall be kept without the legislative authority; that is, without the **CONSENT** of the **community** itself. Where is the impropriety of saying that we shall have all army, **if necessary?** Does not the notoriety of this constitute security? If inimical nations were to fall upon us when defenceless, what would be the consequence? Would it be wise to say, that we should have no defence? Give me leave to say, that the **only possible way to provide against standing armies is to make them unnecessary**.

The way to do this is to organize and discipline our **militia**, so as to **render them capable** of defending the country against external invasions and internal insurrections. But it is urged that abuses may happen. How is it possible to answer objections against the possibility of abuses?

It must strike every logical reasoner, that these cannot be entirely provided against. I really thought that the objection in the militia **was at an end**. Was there ever a constitution, in which if authority was vested, **it must not have been executed by force, if resisted?** Was it not in the contemplation of this state, when contemptuous proceedings were expected, to recur to something of this kind? How is it possible to have a more proper resource than this? That the laws of every country ought to be executed, cannot be denied. That force must be used if necessary, cannot be denied. Can any government be established, that will answer any put, pose whatever, unless force be provided for executing its {414} laws? **The Constitution does not say that a standing army shall be called out to *execute the laws*. >>> Is not this a more proper way?** The militia ought to be called forth to suppress **smugglers. Will this be denied?** The case actually happened at Alexandria. There were a number of smugglers, who were too formidable for the civil power to overcome. The military quelled the sailors, who otherwise would have perpetrated their intentions. Should a number of smugglers have a number of ships, the militia ought to be called forth to quell them. We do not know but what there may be a combination of smugglers in Virginia hereafter. We all know the use made of the Isle of Man. It was a general depository of contraband goods. The Parliament **found the evil so great**, as to render it necessary to wrest it out of the hands of its possessor.

The honorable gentleman says that it is a government of force. If he means military force, the clause under consideration **proves the contrary**. There never was a government without force. What is the meaning of government? An institution to make people do their duty (**APP warning note** of how this founder perceived government - note the differences of the two Patrick Henry presents government only by consent, James Madison, an institution once established to **make** people do their "duty"... defined by who?). A government leaving it to a man to do his **duty or not**, as he pleases, would be a new species of government (**APP note**, which in the end we have in the Constitution and Bill of Rights as the division of powers are defined, and both fears even the following are resolved for the greater part from the debates), or rather no government at all. The ingenuity of the gentleman is remarkable in introducing the riot act of Great Britain. That act has no connection, or analogy, to **any regulation** of the militia; ***NOR* is there any thing in the Constitution to warrant the general government to make such an act.** It never was a complaint, in Great Britain, that the militia could be called forth. If riots should happen, the militia are proper to quell it, to prevent a resort to another mode. As to the infliction of ignominious punishments, we have no ground of alarm, if we consider the circumstances of the people at large. There will be no punishments so ignominious as have been inflicted already. The militia law of every state to the north of Maryland is less rigorous than the particular law of this state. If a change be necessary to be made by the general government, it will be in our favor. I think that the people of those states would not agree to be subjected to a more harsh punishment than their own militia laws inflict. **An observation fell from a gentleman, on the same side with myself, which deserves to be attended to.*** **If we be dissatisfied with the national government, if we "should >>>choose to renounce {415} it", "this is an additional safeguard to our defence".** I conceive that we are peculiarly interested in giving the general government as extensive means as possible ***to protect us.*** If there be a particular discrimination between places in America, the Southern States are, from their situation and circumstances, most interested in giving the national government the power of protecting its members.

[Here Mr. Madison made some other observations, but spoke so very low, that his meaning could not be comprehended.]

APP Study Note on Madison's statement: **"What is the meaning of government? An institution to make people do their duty".**

This illustrates one of the major differences between federalism by a federalist, and true freedom as defined.

Madison on "this point" is **wholly incorrect** in regards to the Absolute Rights of the Colonists 1772, (however correct in all tyrannical governments) and is proven by long standing documents regarding laws on freedom and liberty. The closing statement on this page shows the dismay regarding these past rights by Mr. NICHOLAS in that such Rights **"had been frequently violated with impunity."** A condition that had been the aim of correcting by the Declaration of Independence, and the purpose of defending the retainment of such protections by the Anti Federalists when debating the Constitution - resulting in the Bill of Rights, which in fact made us a **new species of government**, as spoke of by Madison, that now protects freedoms throughout the world because those Rights are not violated with impunity; and such care needs be taken to make sure that they are never treated in such a way.

1.) The Absolute Rights of the Colonists:

"The Legislative has **no right** to **absolute arbitrary power over the lives and fortunes of the people"**

"The Legislative cannot Justly assume to itself a power to rule by extempore arbitrary decrees; but it is **bound** to see that Justice is dispensed, and that the rights of the subjects be decided, by **promulgated, standing and known laws**, and authorized **independent Judges;"** that is **independent as far as possible of Prince or People**.

2.) Declaration of Independence:

That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.

That, to **secure these rights**, governments are instituted among men, deriving their just powers from the **consent** of the governed;

3.) The Constitution:

Amendment IX: The enumeration in the Constitution, **of certain rights**, shall **not** be construed **to deny or disparage** others **retained by the people**.

Amendment X: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are **reserved** to the States respectively, or **to the people**.

Amendment XIII:
Section 1. **Neither slavery nor involuntary servitude**, "except" as a punishment for crime

whereof the party shall have been duly convicted, **shall exist** within the United States, **or any place subject to their jurisdiction**.

Section 2. **Congress shall have power to enforce this article by appropriate legislation**.

4.) Declaration of Independence:

that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to **them** shall seem most likely to effect their safety and happiness.

Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.

But when a long train of abuses and usurpations, pursuing invariably the same object, **evinces a design** to reduce them under absolute despotism, it is their right, it is their **duty**, to throw off such government and to provide new guards for their future security.

APP: Here we have the purpose of a Free government is: (numbers corresponding)

1.) Not to make anyone do anything, **but only** to see that **"Justice" is dispensed. "Justice"** keeps one from doing something to another, or punishes one when he does do something to another, without his **consent**.

Note: Do not confuse this **"duty"** mentioned here of **arbitrary state or federal law to force service to the country,** with enforcing laws on persons who infringe against just and necessary civil law; This is a **separate issue in the second part,** when one is found taking **"inalienable" rights**, **property** and **liberty** from another, **as this has to do with crime; In the first part, *forcing*** someone to do ***their duty*** at the beck and call of the state **is a crime, as clearly defined in the second part.**.

Justice has nothing to do with making someone do something, or do something to someone else, without their consent. That type of action is **defined as "Tyranny"**.

2.) If you can be made to do anything, you have no liberty and without the ability to consent you have no freedom. And I guarantee if someone is "made" or forced to do "their duty" by any government, they will not be pursuing happiness.... Which is an inalienable right.

3.) Any Type of slavery (voluntary or involuntary); or Involuntary Servitude is strictly prohibited. i.e. the Draft or other forced service.

4.) There is the **"Duty"**, **and it is absolutely opposite of Madison's statement**. It is the duty of any free man or free state to throw out any government that attempts to "make" someone "do" anything without their **"consent"**. Forcing someone to do something that he does not want to do, only seems reasonable or of great reason to the one that is doing the forcing,

(whether a government or person); **And by his (anyone's) actions he defines himself as a Tyrant.**

A few years later James Madison had to defend an attack on his great optimisms (or naivety), when he came to realize the dangers spoke of by Patrick Henry and George Mason **were quite real;** To his credit, Madison left the federalists to join Thomas Jefferson not long after the Constitution was ratified; This was to write with Jefferson the **Virginia and Kentucky Resolutions** (which see) in response and opposition to the Alien and Sedition Act. These resolutions clarified the powers of the states over the federal government, and the very limited delegated power of the federal government.

(end APP)

Madison continues:

An act passed, a few years ago, in this state, to enable the government to call forth the militia to enforce the laws when a powerful combination should take place to oppose them. This is the same power which the Constitution is to have. There is a great deal of difference between calling forth the militia, when a combination is formed to prevent the execution of the laws, and the sheriff or constable carrying with him a body of militia to execute them in the first instance; which is a construction not warranted by the clause. There is an act, also, in this state, empowering the officers of the customs to summon any persons to assist them when they meet with obstruction in executing their duty. This shows the necessity of giving the government power to call forth the militia when the laws are resisted. It is a power vested in every legislature in the Union, and which is necessary to every government. He then moved that the clerk should read those acts which were accordingly read.

Mr. GEORGE MASON asked to what purpose the laws were read. The objection was, that too much power was given to Congress power **that would finally destroy the state governments more effectually by insidious, underhanded means,** than such as could be **openly practiced**. This, said he, **is the opinion of many worthy men**, not only in this Convention, **but in all parts of America**. These laws could only show that the legislature of this state could pass such acts. He thought they militated against the cession of this power to Congress, because the state governments could call forth the militia when necessary, so as to compel a submission to the laws; and as they were competent to it, **Congress ought not to have the power**. The meeting of three or four persons might be ***called*** an insurrection, and the militia might be called out to disperse them. He was **not** satisfied with {416} the explanation of the word "organization" by the gentleman in the military line, (Mr. Lee.)

He thought they were **not confined to the technical explanation**, but that Congress could inflict severe and ignominious punishments on the militia, as a necessary incident to the power of organizing and disciplining them. The gentleman had said there was no danger, because the laws respecting the militia were less rigid in the other states than this**. This was no conclusive argument. His fears, as he had before expressed, were, that grievous**

punishments would be inflicted, in order to render the service disagreeable to the militia themselves, and induce them to wish its abolition, which would afford a PRETENCE for establishing a standing army. (APP Note: This has already happened) He was convinced the **STATE GOVERNMENTS ought to have the control of the militia**, except when they were **absolutely necessary** for **general purposes**. The gentleman had said that they would be only subject to martial law when in actual service. **He demanded what was to hinder Congress from >>>inflicting it always, and making a >>>general law for the purpose. (APP Note: And This has already happened)** If so, said he, **it must finally produce, most infallibly, the annihilation of the state governments.** These were his apprehensions; but he prayed God they might be groundless.

Mr. MADISON replied, **that the obvious explanation was, that the STATES were to appoint the officers, and govern all the militia except that part which was called into the actual service of the United States**. He asked, if power were given to the general government, if we must not give it executive power to use it. The vice of the old system was, that Congress could not execute the powers nominally vested in them. If the contested clause were expunged, this system would have nearly the same defect.

Mr. HENRY wished to know what authority the state governments had over the militia.

Mr. MADISON answered, that **the state governments might do what they thought proper with the militia, when they were not in the actual service of the United States**. They might make use of them to suppress insurrections, quell riots, and call on the general government for the militia of any other state, to aid them, if necessary.

Mr. HENRY replied that, as the clause expressly vested the general government with power to call them out to suppress {417} insurrections, it appeared to him, most decidedly, that the power of suppressing insurrections was exclusively given to Congress. **If it remained in the states, it was by implication.**

Mr. CORBIN, after a short address to the chair, in which he expressed extreme reluctance to get up, said, that all contentions on this subject might be ended, by adverting to the **4th section of the 4th article**, which provides, "that the United States shall guaranty to every state in the Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence. **"He thought this section gave the states power to use their own *militia*, and call on Congress for the militia of other states.** He observed that our representatives were to return every second year to mingle with their fellow-citizens. He asked, then, how, in the name of God, they would make laws to destroy themselves. The gentleman had told us that nothing could be more humiliating than that the *state governments* could not control the general government. He thought the gentleman might as well have complained that one county could not control the state at large. Mr. Corbin then said that all confederate governments **had the care of the national defence**, and that Congress ought to have it. Animadverting on Mr. Henry's observations, that the French had been the instruments of their own slavery, that the Germans had enslaved the Germans, and the Spaniards the Spaniards, &c., he asked if those nations knew any thing of representation. **The want of "this knowledge" was the "principal" cause of their bondage.** He concluded by observing that the general government had **no power but such as the state government had,** and that arguments against the one **held against the other**.

Mr. GRAYSON, in reply to Mr. Corbin, said he was mistaken when he produced the 4th section of the 4th article, to prove that the state governments had a right to intermeddle with the militia. He was of opinion that a previous application must be made to the federal head, by the legislature when in session, or otherwise by the executive of any state, before they could interfere with the militia. In his opinion, no instance could be adduced where the states could employ the militia; for, in all the cases wherein they could be {418} employed, Congress had the exclusive direction and control of them. Disputes, he observed, had happened in many countries, where this power should be lodged. In England, there was a dispute between the Parliament and King Charles who should have power over the militia. Were this government well organized, he would not object to giving it power over the militia. **But as it appeared to him to be without checks**, and to tend to the formation of an aristocratic body, **he could not agree to it.** Thus organized, his imagination did not reach so far as to know where this power should be lodged. **He conceived the state governments to be at the mercy of the generality.** He wished to be open to conviction, but he could see no case where the states could command the militia. **>>>He did not believe that it corresponded with the intentions of those who formed it, and it was altogether without an equilibrium.** He humbly apprehended that the power of providing for organizing and disciplining the militia, enabled the government to make laws for regulating them, and inflicting punishments for disobedience, neglect, &c. Whether it would be the spirit of the generality to lay unusual punishments, he knew not; but he thought they had the power, if they thought proper to exercise it. He thought that, if there was a constructive implied power left in the states, yet, as the line was not clearly marked between the two governments, it would create differences. **He complained of the uncertainty of the expression, and wished it to be so clearly expressed that the people might see where the states could interfere.**

As the exclusive power of arming, organizing, was given to Congress, **they might entirely neglect them; or they might be armed in one part of the Union, and totally neglected in another.** This he apprehended to be a probable circumstance. In this he might be thought suspicious; **but he was justified by what bad happened in other countries**. He wished to know what attention had been paid to the militia of Scotland and Ireland since the union, and what laws had been made to regulate them. There is, says Mr. Grayson, an excellent militia law in England, and such as I wish to be established by the general government. They have thirty thousand select militia in England. But the militia of Scotland and Ireland **are neglected**. I see the necessity of the concentration of the forces of the Union. {419} I acknowledge that militia are the best means of quelling insurrections, and that we have an advantage over the English government, for their regular forces answer the purpose. **But I object to the want of checks, and a line of discrimination between the state governments and the generality.**

Mr. JOHN MARSHALL asked if gentlemen were serious when they asserted that, if the state governments had power to interfere with the militia, it was by implication. If they were, he asked the committee whether the least attention would not **show that they were mistaken**.

The state governments DID NOT derive their powers from the general government; but each government derived its powers from the people, and each was to act according to the powers given it. Would any gentleman deny this? He demanded if powers not given were retained by implication. Could any man say so? **Could any man say that this power was not retained by the states**, as **they had not given it away?** For, says he, **does not a power remain till it is given away? The state legislatures had power to command and**

govern their militia before, and have it still, undeniably, unless there be something in this Constitution that *takes it away*.

For ***Continental purposes*** Congress may call forth the militia, as to suppress insurrections and repel invasions. **But the power given to the states by the people is "NOT taken away"; for the Constitution does NOT say so.** In the Confederation Congress had this power; **but the state legislatures had it "also"**. The power of legislating given them within the ten miles square is **exclusive** of the states, because it is **expressed to be exclusive**. The truth is, that when power is given to the general legislature, if it was in the state legislature before, both shall exercise it; unless there be an incompatibility in the exercise by one to that by the other, or negative words precluding the state governments from it. **But there are NO negative words here. It rests, therefore, with the STATES.** To me it appears, then, **unquestionable** that the **state governments** can call forth the militia, in case the Constitution should be adopted, in the **same manner as they could have done before its adoption**. Gentlemen have said that the states cannot defend themselves without an application to Congress, because Congress can interpose! **Does not every man feel a refutation of the argument in his own breast? *I will show*** {420} **that there could not be a combination, between those who formed the Constitution, to take away this power. All** the restraints intended to be laid on the state governments (besides where an exclusive power is expressly given to Congress) are contained in the **10th section of the 1st article**. This power is **NOT included** in the restrictions in that section. But what excludes every possibility of doubt, is the last part of it that "no state shall engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." **When invaded, they "CAN" engage in war, as also when in "imminent danger". This clearly proves that the states can use the militia when they find it necessary.** The **worthy** member last up objects to the Continental government's possessing the power of disciplining the militia, **because, though all its branches be derived from the people, he says they will form an aristocratic government, unsafe and unfit to be trusted.**

Mr. GRAYSON answered, that he only said it was ***so constructed*** as to **"form"** a great **aristocratic "body".**

(APP Note: i.e. a "Mixed Monarchy" as warned again later in the Virginia and Kentucky Resolutions.)

Mr. MARSHALL replied, that he was not certain whether he understood him; but he thought he had said so. He conceived that, as the government was **drawn from the people**, the **feelings and interests of the people** would be **attended to**, and that we should be safe in granting them power to regulate the militia. When the government is drawn from the people, continued Mr. Marshall, and depending on the people for its continuance, **oppressive measures will not be attempted**, as they will certainly draw on **their authors** the **resentment** of those on whom **they depend**. On **this** government, **thus depending on ourselves** for its existence, **I will rest my safety, notwithstanding the danger depicted by the honorable gentleman.** I cannot help being surprised that the worthy member thought this power so dangerous. What government is able to protect you in time of war? Will any state depend on its own exertions? The consequence of such dependence, and withholding this power from Congress, will be, that state will fall after state, and be a sacrifice to the want of power in the general government. *United we are strong, divided we fall.* Will you prevent the general government from drawing

the militia of one state to another, when the consequence would be, that every state must depend on itself? The enemy, possessing {421} the water, can quickly go from one state to another. No state will spare to another its militia, which it conceives necessary for itself. It requires a Superintending power, in order to call forth the resources of all to protect all. If this be not done, each state will fall a sacrifice. This system merits the highest applause **in "this" respect**. The honorable gentleman said that a general regulation may be made to inflict punishments. Does he imagine that a militia law is to be ingrafted on the scheme of government, so as to render it incapable of being changed? The idea of the worthy member supposes that men renounce their own interests. This would produce general inconveniences throughout the Union, and would be equally opposed by all the states. But the worthy member fears, that in one part of the Union they will be regulated and disciplined, and in another neglected. This danger is enhanced by leaving this power to each state; for some states may attend to their militia, and others may neglect them. **If Congress neglect our militia, "we can arm them OURSELVES".**

CANNOT Virginia "import arms?> >Cannot she put them into the hands of "HER" militia-men?

He then **concluded by observing**, that the power of governing the militia was not vested in the states by implication, because, **being "possessed of it" > "antecedent to the adoption of the government, and "not being divested of it" by any grant or restriction in the Constitution, they must necessarily be as "fully possessed of it as ever they had been.> And it could not be said that the states derived any powers from that system, "but RETAINED them," "though not acknowledged in ANY part of it".**

Mr. GRAYSON acknowledged that all power was drawn from the people. But he could see none of those checks which **ought to characterize a free government**. It had not such checks as even the British government had. He thought it so organized as **to "form" an aristocratic body (APP: This has already happened).** If we looked at the democratic branch, and the great extent of country, he said, it must be considered, in a great degree, to be an aristocratic representation. As they were elected with craving appetites, and wishing for emoluments, they might unite with the other two branches. **They might give reciprocally good offices to one another, and mutually protect each other; for he considered them all as united in interest**, and as but one branch. There was no check to prevent such {422} a combination; nor, in cases of concurrent powers, was there a line drawn to prevent interference between the state governments and the generality.

Mr. HENRY still retained his opinion, that the states had no right to call forth the militia to suppress insurrections, **(APP note: This statement is in reference to the document)** But the right interpretation (and such as the nations of the earth had put upon the concession of power) was that, when power was given, it was given exclusively. He appealed to the committee, if power was not confined in the hands of a *few* in almost all countries of the world. **He referred to their candor**, if the construction of conceded power was not an exclusive concession, in nineteen twentieth parts of the world. The nations which retained their liberty were comparatively few. America **would add to the number of the oppressed nations, if she depended on constructive rights and argumentative implication.** That the powers given to Congress were exclusively given, **was very obvious to him**. **The rights which the states had must be founded on the restrictions on Congress.** He asked, if the doctrine

which had been so often circulated, that **rights not given were retained, was true, why there were negative clauses to restrain Congress.** He told gentlemen **that these clauses were sufficient to shake all their implication; for, says he, if Congress had no power but that given to them, why restrict them by negative words? Is not the clear implication this that, if these restrictions were not inserted, they could have performed what they prohibit?**

The worthy member had said that Congress ought to have power to protect all, and had given this system the highest encomium. But he insisted that the power over the militia was concurrent. To obviate the futility of this doctrine, Mr. Henry alleged that it was not reducible to practice. Examine it, says he; reduce it to practice. Suppose an insurrection in Virginia, and suppose there be danger apprehended of an insurrection in another state, from the exercise of the government; or suppose a national war, and there be discontents among the people of this state, that produce, or threaten, an insurrection; suppose Congress, in either case, demands a number of militia, **will they not be obliged to go? Where are your reserved rights, when your militia go to a neighboring state? Which call is to be obeyed, the congressional call, or the call of the state legislature?** The call of Congress must be obeyed. I need not remind this {423} committee that the **sweeping clause** will cause their demands to be submitted to. This clause enables them **"to make all laws which shall be necessary and proper to carry into execution all the powers vested by this Constitution in the government of the United States, or in any department or officer thereof."** Mr. Chairman, I will turn to another clause, which relates to the same subject, and tends to show the **fallacy** of their argument.

The 10th section of the 1st article, to which reference was made by the worthy member, militates against himself. It says, that "no state shall engage in war, unless actually invaded." If you give this clause a fair construction, what is the true meaning of it? What does this relate to? Not domestic insurrections, but war. **If the country be invaded, a state may go to war**, but cannot suppress insurrections. If there should happen an insurrection of slaves, the country cannot be said to be invaded. They cannot, therefore, suppress it without the interposition of Congress. The 4th section of the 4th article expressly directs that, in case of domestic violence, Congress shall protect the states on application of the legislature or executive; and the 8th section of the 1st article gives Congress power to call forth the militia to quell insurrections: there cannot, therefore, be a concurrent power. **The "state" legislatures ought to have power to call forth the efforts of the militia, when necessary. Occasions for calling them out may be urgent, pressing, and instantaneous. The states cannot now call them, let an insurrection be ever so perilous, without an application to Congress. So long a delay may be fatal.**

There are three clauses which prove, beyond the possibility of doubt, that Congress, and *Congress only*, can call forth the militia. **(APP Note: Speaking of the document)** The clause giving Congress power to call them out to suppress insurrections, that which restrains a state from engaging in war except when actually invaded; and that which requires Congress to protect the states against domestic violence, render it impossible that a state can have power to intermeddle with them. **Will not Congress find refuge for their actions in these clauses?** With respect to the concurrent jurisdiction, it is a political monster of absurdity. **We have passed that clause which gives Congress an unlimited authority over the national wealth; and here is an unbounded control over the national strength.** Notwithstanding

{424} **this clear, unequivocal relinquishment of the power of controlling the militia, you say the states retain it, for the very purposes given to congress.** Is it fair to say that you give the power of arming the militia, and at the same time to say you reserve it? This great national government **ought not to be left in this condition**. **If it be, it will terminate in the destruction of our liberties.**

Mr. MADISON. Mr. Chairman, let me ask this committee, and the honorable member last up, what we are to understand from this reasoning. The power must be vested in Congress, or in the state governments; or there must be a division or concurrence. He is against division. It is a political monster. He will not give it to Congress for fear of oppression. Is it to be vested in the state governments? If so, where is the provision for general defence? If ever America should be attacked, the states would fall successively. It will prevent them from giving aid to their sister states; for, as each state will expect to be attacked, and wish to guard against it, each will retain its own militia for its own defence. Where is this power to be deposited, then, unless in the general government, if it be dangerous to the public safety to give it exclusively to the states? If it must be divided, let him show a better manner of doing it than that which is in the Constitution. I cannot agree with the other honorable gentleman, that there is no check. **There is a powerful check in that paper. The STATE governments are to govern the militia when not called forth for general national purposes; and Congress is to govern such part ONLY as may be in the actual service of the Union. Nothing can be more certain and positive than this. It expressly empowers Congress to govern them when in the service of the United States. It is, then, "clear" that the STATES govern them "when they are not".**

(APP Note: The danger that presents itself now, is that the **state "militias"** once controlled by the state and it's Governor when not in foreign service have been simulated into the **standing army** as a **"National Guard"** so that all military men are **"always in the service of the United States"** - WHERE are our independent state militias and citizen militias "officered by those chosen among themselves"? Where is our **checks to power** clearly **intended** by the founders to protect each independent state, and if necessary, against the generality? **Gone; but not prohibited to reform and reinstitute by the states and communities themselves should they choose, as clearly indicated by these intents being a right of the state to arm, import arms, and discipline its own militias "outside" the federal government who has clearly neglected to do so. - See again John Marshall's statements above, George Nicholas and Mr. Pendleton's Statements below)**

"With respect to suppressing insurrections, I say that those clauses which were mentioned by the honorable gentleman **are compatible with a concurrence of the power.** By the first, Congress is to call them forth to suppress insurrections, and repel **invasions** of **"foreign powers"**. A concurrence in the former case is necessary, because a whole state may be in insurrection against the Union. What has passed may perhaps justify this apprehension. The safety of the Union and particular states requires that the general government should have **power to {425} repel "foreign" invasions.** The 4th section of the 4th article is perfectly consistent with the exercise of the power by the states. The words are, "The United States shall guaranty to every state in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence." The word invasion here, after power had been given in the former clause to repel invasions, may be thought tautologous, **but**

it has a "DIFFERENT MEANING from the other". This clause speaks of a **particular state**. **It means that it shall be protected from invasion by "other states".** A republican government is to be guarantied to each state, and they are to be protected from invasion from **"other states",** as well as from **foreign powers**; and, on application by the legislature or executive, as the case may be, the militia of the other states are to be called to suppress domestic insurrections. **Does this bar the states from calling forth their own militia? - "NO" -;** but it gives them a **supplementary** security to suppress insurrections and domestic violence.

The other clause runs in these words: "**No state shall**, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, **or** with a **foreign power**, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." They are restrained from making war, **unless invaded**, or ***in imminent danger***. **When in such danger, they are "not restrained".** I can perceive no competition in these clauses. They cannot be said to be repugnant to a concurrence of the power. If we object to the Constitution in this manner, and consume our time in verbal criticism, we shall never put an end to the business.

Mr. GEORGE MASON. Mr. Chairman, a worthy member has asked who are the militia, if they be not the *people* of this country, and if we are not to be protected from the fate of the Germans, Prussians, by our representation? I ask, Who are the militia? They consist now of the **"WHOLE PEOPLE"**, except a few public officers. **But I cannot say who will be the militia of the future day**. If that paper on the table gets **no alteration,** the militia of the future day may not consist of all classes, high and low, and {426} rich and poor; **but they may be confined to the lower and middle classes of the people, granting exclusion to the higher classes of the people.** If we should ever see that day, the most ignominious punishments and heavy fines may be expected. Under the present government, all ranks of people are subject to militia duty. Under such a full and equal representation as ours, there can be no ignominious punishment inflicted. But under this national, or rather consolidated government, the case will be different. **The representation being so small and inadequate, they will have no fellow-feeling for the people.** They may discriminate people in their own predicament, and exempt from duty all the officers and **lowest creatures of the national government.** If there were a more particular definition of their powers, and a clause exempting the militia from martial law except when in actual service, and from fines and punishments of an unusual nature, then we might expect that the militia would be what they are. **But, if this be not the case, we cannot say how long all classes of people will be included in the militia. There will not be the same reason to expect it, >>>because the government will be administered by different people. We know what they are now, but know not how soon they may be altered.**

Mr. GEORGE NICHOLAS. Mr. Chairman, I feel apprehensions lest the subject of our debates should be misunderstood. Every one wishes to know the true meaning of the system; but I fear those who hear us will think we are captiously quibbling on words. We have been told, in the course of this business, that the government will operate like a screw. Give me leave to say that the exertions of the opposition are like that instrument. They catch at every thing, and take it into their vortex. The worthy member says that this government is defective, because it comes from the people. Its greatest recommendation, with me, is putting the power in the hands of the people. He disapproves of it because it does not say in what particular instances the militia shall be called out to execute the laws. This is a power of the Constitution, and particular instances must be defined by the legislature. But, says the worthy member, those

laws which have been read are arguments against the Constitution, because they show that the states are now in possession of the power, and competent to its execution. {427} Would you leave this power in the states, and by that means deprive the general government of a power which will be necessary for its existence? If the state governments find this power necessary, ought not the general government to have a similar power? But, sir, there is no state check in this business. The gentleman near me has shown that there is a **very important check**.

Another worthy member says there is no power in the states to quell an insurrection of slaves. Have they it now? If they have, does the Constitution take it away? If it does, it must be in one of the three clauses which have been mentioned by the worthy member. The first clause gives the general government power to call them out when necessary. **Does this take it away from the states? > NO >.** But it gives an additional security; for, **besides the power in the state governments to > use their "own" militia >**, it will be the duty of the general government to ***aid*** them with the strength of the Union when **called** for. **> NO part > of this Constitution can show that this power is taken away.**

But an argument is drawn from that clause which says "that no state shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay." What does this prohibition amount to? It must be a **war with a FORIEGN ENEMY that the states are prohibited from making**; for the **exception to the restriction proves it**. The restriction includes **ONLY OFFENSIVE hostility**, as they are **at liberty to engage in war when invaded**, **or in imminent danger**. They are, therefore, **NOT** restrained from quelling domestic insurrections, which are **totally different** from making war with a **foreign power**. But the great thing to be dreaded is that, during an insurrection, the militia will be called out from the state. This is his kind of argument. **Is it possible that, at such a time, the general government would order the militia to be called?** It is a groundless objection, to work on gentlemen's apprehensions within these walls. As to the 4th article, it was introduced wholly for **the particular aid of the states**. A republican form of government is guarantied, and protection is secured against invasion and domestic violence **on application**. Is not this a guard as strong as possible? **>>> Does it not "exclude the unnecessary interference of Congress" in business of this sort?**

The gentleman over the way cannot tell who will be the {428} militia at a future day, and enumerates dangers of select militia. Let me attend to the nature of gentlemen's objections. One objects because there will be select militia; another objects because there will be no select militia; and yet both oppose it on these contradictory principles. If you deny the general government the power of calling out the militia, there must be a recurrence to a standing army. If you are really jealous of your liberties, ***confide in Congress***. **(APP Note: After "Confiding in Congress", Congress "Back Stabbed" the States by creating solely a standing Army - The National Guard is not the militia of the whole people or a Militia of the State, or a Militia "officered by men chosen among the citizens themselves", but a Select standing military ultimately controlled by a federal congress not local communities or state governments)**

Mr. MASON **rose, and said that he was totally misunderstood**. The contrast between his friend's objection and his **was improper**. His friend had mentioned the propriety of having **SELECT militia, like those of Great Britain**, who should be **"more thoroughly exercised than the "MILITIA AT LARGE" (citizens) could possibly be"**. But he, himself, **had not**

spoken of a selection of militia, but of the **exemption** of the **highest classes** of the people from militia service; **which would justify apprehensions of severe and ignominious punishments.**

Mr. NICHOLAS wished to know whether the representatives of the people would consent to such exemptions, as every man who had twenty-five acres of land could vote for a federal representative.

Mr. GRAYSON. Mr. Chairman, I conceive that the power of providing and maintaining a navy is at present dangerous, however warmly it may be urged by gentlemen that America ought to become a maritime power. If we once give such power, we put it in the hands of men whose interest it will be to oppress us. It will also irritate the nations of Europe against us. Let us consider the situation of the maritime powers of Europe: they are separated from us by the Atlantic Ocean. The riches of all those countries come by sea. Commerce and navigation are the principal sources of their wealth. If we become a maritime power, we shall be able to participate in their most beneficial business. Will they suffer us to put ourselves in a condition to rival them? I believe the first step of any consequence, which will be made towards it, will bring war upon us. Their ambition and avarice most powerfully impel them to prevent our becoming a naval nation. We should, on this occasion, consult our ability. Is there any gentleman here who can say that America can support a navy? The riches of America are not sufficient to bear the enormous expense it must certainly occasion. I may be supposed to exaggerate, {429} but I leave it to the committee to judge whether my information be right or not.

It is said that shipwrights can be had on better terms in America than in Europe; but necessary materials are so much dearer in America than in Europe, that the aggregate sum would be greater. A seventy-four gun ship will cost you ninety-eight thousand pounds, including guns, tackle, &c. According to the usual calculation in England, it will cost you the further sum of forty-eight thousand pounds to mail it, furnish provisions, and pay officers and men. You must pay men more here than in Europe, because, their governments being arbitrary, they can command the services of their subjects without an adequate compensation; so that, in all, the expenses of such a vessel would be one hundred and forty thousand pounds in one year. Let gentlemen consider, then, the extreme difficulty of supporting a navy, and they will concur with me, that America cannot do it. I have no objection to such a navy as will not excite the jealousy of the European countries. But I would have the Constitution to say, that no greater number of ships should be had than would be sufficient to protect our trade. Such a fleet would not, probably, offend the Europeans. I am not of a jealous disposition; but when I consider that the welfare and happiness of my country are in danger, I beg to be excused for expressing my apprehensions. Let us consider how this navy shall be raised. What would be the consequence under those general words, "to provide and maintain a navy"? All the vessels of the intended fleet would be built and equipped in the Northern States, where they have every necessary material and convenience for the purpose. Will any gentleman say that any ship of war can be raised to the south of Cape Charles? The consequence will be that the Southern States will be in the power of the Northern States.

We should be called upon for our share of the expenses, without having equal emoluments. Can it be supposed, when this question comes to be agitated in Congress, that the **Northern States will not take such measures as will throw as much circulating money among them as possible, without any consideration as to the other states?** If I know the nature of

man, (and I believe I do,) they will have no consideration for us. But, supposing it were not so, America {430} has nothing at all to do with a fleet. Let us remain for some time in obscurity, and rise by degrees. Let us not precipitately provoke the resentment of the maritime powers of Europe. **A well-regulated militia** ought to be the defence of this country. In some of our constitutions it is said so. This Constitution should have inculcated the principle, Congress ought to be under some restraint in this respect. Mr. Grayson then added, that the Northern States would be principally benefited by having a fleet; that a majority of the states could vote the raising a great navy, or enter into any commercial regulation very detrimental to the other states. In the United Netherlands there was much greater security, as the commercial interest of no state could be sacrificed without its own consent. The raising a fleet was the daily and favorite subject of conversation in the Northern States. He apprehended that, if attempted, it would draw us into a war with Great Britain or France. As the American fleet would not be competent to the defence of all the states, **the Southern States would be most exposed**. He referred to the experience of the late war, as a proof of what he said. At the period the Southern States were most distressed, **the Northern States**, he said, were most happy. **They had PRIVATEERS in abundance**, whereas we had but few. Upon the whole, he thought we should depend on our troops on shore, and that it was **very impolitic** to give this power to Congress **without any limitation**.

Mr. NICHOLAS remarked that the gentleman last up had made two observations the one, that we ought not to give Congress power to raise a navy; and the other, that we had not the means of supporting it. Mr. Nicholas thought it a false doctrine. Congress, says he, has a discretionary power to do it when necessary. They are not bound to do it in five or ten years, or at any particular time. It is presumable, therefore, that they will postpone it until it be proper.

Mr. GRAYSON had no objection to giving Congress the power of raising such a fleet as suited the circumstances of the country. But he could not agree to give that unlimited power which was delineated in that paper.

Adverting to the clause investing Congress with the power of **exclusive legislation** in a district **not exceeding ten miles square**, he said he had before expressed his doubts that this {431} district would be the favorite of the generality, and that **it would be possible for them to give exclusive privileges** of **commerce to those residing within it**. He had illustrated what he said by European examples. It might be said to be impracticable to exercise this power in this manner. Among the various laws and customs which pervaded Europe, there were **exclusive privileges and immunities** enjoyed in many places. **He thought that this ought to be guarded AGAINST;** for should such **EXCLUSIVE PRIVILEGES** be granted to merchants residing within the ten miles square, it would be **highly injurious** to the inhabitants of **OTHER PLACES**.

Mr. GEORGE MASON thought that there were few clauses in the Constitution **so dangerous** as that which gave Congress **"exclusive power of legislation" within "ten miles square".** Implication, he observed, was **capable of ANY extension**, and would probably be **extended to "augment the congressional powers"**. But here there was no need of implication. This clause gave them an unlimited authority, in every possible case, within that district. This **ten miles square,** says Mr. Mason, may set at **defiance the laws of the surrounding states**, and may, like the custom of the superstitious days of our ancestors, become the sanctuary of the blackest crimes. **Here the federal courts are to sit. We have heard a good deal said of justice.**

It has been doubted whether jury trial be secured in civil eases. But I will suppose that we shall have juries in civil cases. What sort of a jury shall we have within the **ten miles square?** The immediate creatures of the government. What chance will poor men get, where Congress have the power of legislating in all cases whatever, and where judges and juries may be under their influence, and bound to support their operations? Even with juries the chance of justice may here be very small, as Congress have unlimited authority, legislative, executive, and judicial. Lest this power should not be sufficient, they have it in every case. **Now, sir, if an attempt should be made to establish tyranny over the people, here are ten miles square where the greatest offender may meet protection**. If any of their officers, or creatures, should attempt to oppress the people, or should actually perpetrate the blackest deed, he has nothing to do but get into the ten miles square. Why was this dangerous power given? Felons may receive an asylum there and in {432} their strongholds. Gentlemen have said that it was dangerous to argue against possible abuse, because there could be no power delegated but might be abused. **It is an incontrovertible axiom, that, when the dangers that may arise from the *abuse* are greater than the benefits that may result from the use, the power ought to be withheld.** I do not conceive that this power is at all necessary, **though capable of being greatly abused.**

We are told by the honorable gentleman that Holland has its Hague. I confess I am at a loss to know what inference he could draw from that observation. This is the place where the deputies of the United Provinces meet to transact the public business. But I do not recollect that they have any exclusive jurisdiction whatever in that place, but are subject to the laws of the province in which the Hague is. To what purpose the gentleman mentioned that Holland has its Hague, I cannot see.

Mr. MASON then observed that he would willingly give them exclusive power, as far **as respected the police and good government of the PLACE; but he would give them NO MORE, because he thought it unnecessary.** He was very willing to give them, in this as well as in all other cases, those powers which he thought indispensably necessary.

Mr. MADISON. Mr. Chairman: I did conceive, sir, that the clause under consideration was one of those parts which would speak its own praise. It is hardly necessary to say any thing concerning it. Strike it out of the system, and let me ask whether there would not be much larger scope for those dangers. I cannot comprehend that the power of **legislating** over a **"small district"**, which **CANNOT EXCEED ten miles square,** and **may NOT be more than ONE MILE, will involve the dangers which he apprehends.** If there be any knowledge in my mind of the nature of man, I should think it would be the **last thing that would enter into the mind of any man to grant exclusive advantages**, in a **VERY CIRCUMSCRIBED district, to the prejudice of the community at large.** We make suppositions, and afterwards deduce conclusions from them, as if they were established axioms. But, after all, bring home this question to ourselves. Is it probable that the members from Georgia, New Hampshire, will concur to sacrifice the privileges of their friends? I believe that, whatever state may become the seat of the general {433} government, it will become the object of the jealousy and envy of the other states. Let me remark, if not already remarked, that there must be a cession, by particular states, of the district to Congress, and that the states may settle the terms of the cession. **The states may make what stipulation they please in it**, **and, if they apprehend ANY danger, they may >>>REFUSE it ALTOGETHER**. How could the general government be guarded from the undue influence of particular states, or from insults, without such exclusive

power? If it were at the pleasure of a particular state to control the session and deliberations of Congress, would they be secure from insults, or the influence of such state? If this commonwealth depended, for the freedom of deliberation, on the laws of any state where it might be necessary to sit, would it not be liable to attacks of that nature (and with more indignity) which have been already offered to Congress? With respect to the government of Holland, I believe the States General have no jurisdiction over the Hague; but I have heard that mentioned as a circumstance which gave undue influence to Holland over the rest. We must limit our apprehensions to certain degrees of probability. The evils which they urge must result from this clause are extremely improbable; nay, **ALMOST** impossible.

Mr. GRAYSON. Mr. Chairman, one answer which has been given is, **the *improbability of the evil* that it will never be attempted**, **and that it is "ALMOST" impossible. This will not satisfy us**, when we consider the great attachments men have **to a great and "magnificent capital". It would be the interest of the citizens of that district to aggrandize themselves by every possible means in their power, to the great injury of the other states.** If we travel all over the world, we shall find that people have **aggrandized their own "capitals".** Look at Russia and Prussia. Every step has been taken to **aggrandize their capitals**. In what light are we to consider the **ten miles square?** It is not to be a fourteenth state. The inhabitants will in no respect whatever be amenable to the laws of any state. A clause in the 4th article, highly extolled for its wisdom, will be rendered nugatory by this exclusive legislation. This clause runs thus: "No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such {434} service or labor, but shall be delivered up on the claim of the party to whom such labor or service may be due." Unless you consider the ten miles square as a state, persons bound to labor, who shall escape thither, will not be given up; for they are only to be delivered up after they shall have escaped into a state. As my honorable friend mentioned, felons, who shall have fled from justice to the ten miles square, cannot be apprehended. The executive of a state Is to apply to that of another for the delivery of a felon. He cannot apply to the ten miles square. **It was often in contemplation of Congress to have power of regulating the police of the seat of government; but they NEVER had an idea of exclusive legislation in all cases.** The power of regulating the **police and good government** of **IT** will secure Congress against insults. **"What originated the IDEA" of the "exclusive legislation" was**, some insurrection in Pennsylvania, whereby Congress was insulted, on account of which, it is supposed, they left the state.

It is answered that the **CONSENT of the state MUST be required**, or else they **cannot have such a district**, or places for the erecting of **forts**, &c. But how much is already given them! Look at the great country to the north-west of the Ohio, extending to and commanding the lakes.

Look at the other end of the Ohio, towards South Carolina, extending to the Mississippi. See what these, in process of time, may amount to. They may **grant "exclusive privileges"** to any particular part of which they have the possession. But it **may be observed that those extensive countries will be formed** into **independent states**, and **that their CONSENT will be NECESSARY.** To this I answer, that **they may still grant such "privileges"** as, in that country, are already granted to Congress by the states. The grants of Virginia, South Carolina, and other states, **will be subservient to Congress in this respect.** Of course, it results from the whole, that **requiring the consent of the states will be "NO GUARD" against this**

"ABUSE of POWER".

[A desultory conversation ensued.]

Mr. NICHOLAS insisted that as the state, within which the ten miles square might be, could prescribe the terms on which Congress should hold it, no danger could arise, as **no state would CONSENT to injure itself:** there was the same {435} security with respect to the places purchased for the **erection of forts, magazines**, &c.; and as to the territory of the United States, the power of Congress **only extended to make needful rules and regulations concerning "it"**, without prejudicing the claim of any particular state, **the right of territory not being given up; that the grant of those lands to the United States was for the general benefit of all the states**, and **>not to be perverted to their prejudice>;** that, consequently, whether that country were formed into new states or not, the danger apprehended could not take place; that the seat of government was to be **still a part of the STATE**, and, as to general regulations, was to be **considered as SUCH.**

Mr. GRAYSON, on the other hand, contended that the **ten miles square could not be viewed as a state;** that the state within which it might be would have no power of legislating over it; that, consequently, persons bound to labor, and felons, might receive protection there; **that "exclusive emoluments" might he granted to those residing within it;** that the territory of the United States, being a part of no state or states, might be appropriated to what use Congress pleased, **without the consent of any state or states;** and that, consequently, **such exclusive privileges and exemptions might be granted,** and such protection afforded to fugitives, within such places, as Congress should think proper; that, after mature consideration, he could not find that the **ten miles square** was to be looked upon even as a part of a state, but to be totally **independent of all**, and subject to the exclusive legislation of Congress.

Mr. LEE strongly expatiated on the impossibility of securing any human institution from possible abuse. He thought the powers conceded in the paper on the table not so liable to be abused as the powers of the state governments. Gentlemen had suggested that the seat of government would become a sanctuary for state villains, and that, in a short time, **ten miles square** would **subjugate a country of eight hundred miles square**. This appeared to him a most improbable possibility; nay, he might call it impossibility. Were the place crowded with rogues, he asked if it would be an agreeable place of residence for, the members of the general government, who were freely chosen by the people and the state governments. **Would the people be so lost to honor and virtue, as to select men who would willingly {436} associate with the most abandoned characters?** He thought the honorable gentleman's objections against remote possibility of abuse went to prove that government of no sort was eligible, but that a state of nature was preferable to a state of civilization. He apprehended no danger; and thought that persons bound to labor, and felons, could not take refuge in the ten miles square, or other places exclusively governed by Congress, **because it would be contrary to the Constitution, and a palpable usurpation, to protect them.**

Mr. HENRY entertained strong suspicions that great dangers must result from **the clause (APP: The Sweeping Clause)** under consideration. They were not removed, but **rather confirmed**, by the remarks of the honorable gentleman, in saying that it was extremely improbable that the members from New Hampshire and Georgia would go and legislate exclusively for the **ten miles square**. **If it was so improbable, why ask the power? Why demand a power which was not to be exercised?** Compare this power, says he, with the

next clause, which gives them power to make all laws which shall be necessary to carry their laws into execution. By this they have a right to **pass any law that may facilitate the execution of their acts.** They have a right, **by this clause**, to make a law that such a district shall be set apart for any purpose they please, and that any man who shall act contrary to their commands, within certain tell miles square, or any place they may select, and strongholds, shall be hanged without benefit of clergy. If they think any law necessary for their personal safety, after perpetrating the most tyrannical and oppressive deeds, cannot they make it by **this sweeping clause?** If it be necessary to provide, not only for this, but for any department or officer of Congress, does not this clause enable them **to make a law for the purpose?** And will not these laws, made for those purposes, be paramount to the laws of the states? **Will not this clause give them a right to keep a "powerful army continually on foot", if they "think it necessary" to aid the execution of their laws? Is there any act, however atrocious, which they cannot do by virtue of this clause?** Look at the use which has been made, in all parts of the world, of that **human thing called power.** Look at the predominant **thirst of dominion** which has **invariably and uniformly prompted rulers to abuse their powers.** Can you say that you will be safe when you give such **unlimited powers**, {437} without any **real responsibility?** Will you be safe when you trust men at Philadelphia with power to make any law that will enable them to carry their acts into execution? **Will not the members of Congress have the same passions which "other rulers" have had? They will not be superior to the frailties of human nature. However cautious you may be in the selection of your representatives, it will be "dangerous to trust them with such unbounded powers". Shall we be told, when about to grant such illimitable authority, that it will "never be exercised"!**

I conjure you once more to remember the admonition of that sage man who told you that, **when you give power, you know not what you give.** I know the absolute necessity of an energetic government. **But is it consistent with any principle of prudence or good policy to grant unlimited, unbounded authority, which is so totally unnecessary that gentlemen say it will "never be exercised"?** But gentlemen *say that we must make experiments*. **A wonderful and unheard-of experiment it will be, to give "unlimited power unnecessarily"!** I admit my inferiority in point of historical knowledge; but I believe no man can produce an instance of an unnecessary and unlimited power, given to a body independent of the legislature, within a particular district. **Let any man in this Convention show me an instance of such separate and different powers of legislation in the same country show me an instance where a part of the community was independent of the whole.**

The people within that place, and the strongholds, may be "excused from all the burdens imposed on the rest of the society", and may "enjoy exclusive emoluments", to the great injury of the rest of the people. But gentlemen say that the power will not he abused. They ought to "show that it is necessary". All their powers may be fully carried into execution, without this exclusive authority in the ten miles square. **The sweeping clause will fully enable them to do what they please.** What could the most extravagant and boundless imagination ask, but power to do every thing? **I have reason to suspect ambitious grasps at power.** The experience of the world **teaches me the jeopardy of giving enormous power. Strike this clause out of the form of the government, and how will it stand? Congress will still have power, by the sweeping clause, to make laws within that {438} place and the strongholds, independently of the local authority of the state. I ask you, if this clause be struck out, whether the sweeping clause will not enable them to protect themselves**

from insult. **If you grant them these powers, you destroy "every degree of responsibility". They will fully screen them from justice, and preclude the possibility of punishing them. No instance can be given of such a wanton grasp of power as an exclusive legislation in all cases whatever.**

Mr. MADISON. Mr. Chairman, I am astonished that the honorable member should launch out into such strong descriptions without any occasion. Was there ever a legislature in existence that held their sessions at a place where they had not jurisdiction? I do not mean such a legislature as they have in Holland; for it deserves not the name. Their powers are such as Congress have now, which we find not reducible to practice. If you be satisfied with the shadow and form, instead of the substance, you will render them dependent on the local authority. Suppose the legislature of this country should sit in Richmond, while the exclusive jurisdiction of the place was in some particular county; would this country think it safe that the general good should be subject to the paramount authority of a part of the community?

The honorable member asks, Why ask for this power, and if the subsequent clause be not fully competent for the same purpose. If so, what new terrors can arise from this particular clause? It is only a superfluity. **If that "LATITUDE" of construction which he contends for were to take place with respect to the "sweeping clause", there "would" be room for those HORRORS.**

But it gives no supplementary power. It only enables them to execute the "delegated powers".

"If" the "delegation" of their powers be "safe", no possible inconvenience can arise from this clause.

It is at most "but" explanatory.

For when any power is given, its **delegation necessarily involves authority** to make laws to execute it. Were it possible to delineate on paper all those particular cases and circumstances in which legislation by the general legislature would be necessary, and leave to the states all the other powers, **I imagine no gentleman would object to it.** But this is not within the limits of human capacity. The particular powers which are found necessary to be given {439} are therefore delegated "generally", and particular and minute specification is left to the legislature.

[Here Mr. Madison spoke of the distinction between regulation of police and legislation, but so low he could not be heard.]

When the honorable member objects to giving the general government jurisdiction over the place of their session, does he mean that it should be under the control of any particular state, that might, at a critical moment, seize it? I should have thought that this clause would have met with the most cordial approbation. **As the consent of the state in which it may be must be obtained,** and as it **may stipulate the terms of the grant**, **should they "violate the particular stipulations" it would be an "usurpation";** so that, if the members of Congress were to be guided by the laws of their country, none of those dangers could arise.

[Mr. Madison made several other remarks, which could not be heard]

Mr. HENRY replied that, **if Congress were vested with supreme power of legislation, paramount to the constitution and laws of the states, the dangers he had described might happen; for that Congress would not be confined to the enumerated powers.** This construction was warranted, in his opinion, **by the addition of the word *DEPARTMENT*,** at the end of the clause, and that **they could make any laws which they might think necessary to execute the powers of any DEPARTMENT or officer of the government.**

Mr. PENDLETON. Mr. Chairman, this clause **does "NOT" give Congress power to impede the operation of ANY PART of the Constitution, (N)or to make ANY REGULATION that may affect the interests of the citizens of the Union at large.** But it gives them power over the **local** police of **the place**, so as to be secured from any interruption in **their proceedings**. Notwithstanding the violent attack upon it, I believe, sir, **this is the "fair construction of the clause".** It gives them power of exclusive legislation in any case within that district. What is the meaning of this? **What is it opposed to? Is it opposed to the general powers of the federal legislature, or to those of the state legislatures? I understand it as opposed to the legislative power of that state where it shall be. What, then, is the power? It is**, that Congress shall **exclusively legislate there**, in order **to preserve {440} serve the police of the place and their own personal independence**, that they may not be overawed or insulted, and of course to preserve them in opposition to any attempt by the state **where it shall be this is the "fair construction".** Can we suppose that, in order to effect these salutary ends, Congress will make it an asylum for villains and the vilest characters from all parts of the world? Will it not degrade their own dignity to make it a sanctuary for villains? **I hope that no man that will ever "compose" that Congress will associate with the most profligate characters. (APP: If this was not such a sad statement, it would be funny)**

Why oppose this power? Suppose it was contrary to the sense of their constituents to grant **exclusive privileges** to citizens residing within that place; **the effect would be directly in opposition to what he says**. It could have **no operation without the limits of that district.** Were Congress to make a law granting them an exclusive privilege of trading to the East Indies, **it could have NO effect the moment it would go without that place;** for their **exclusive power** is **confined to that district**. Were they to pass such a law, **it would be nugatory;** and every member of the community at large could trade to the East Indies as well as the citizens of that district. This **exclusive power** is **limited to that place solely**, for their **own** preservation, which all gentlemen allow to be necessary.

Will you pardon me when I observe that their construction of the preceding clause does not appear to me to be natural, or warranted by the words.

They say that the state governments have no power at all over the militia. The power of the general government to provide for arming and organizing the militia is to introduce a uniform system of discipline to pervade the United States of America. But the power of *governing* the militia, so far as it is in Congress, extends **only** to such parts of them as may be employed in the service of the United States. When not in their service, **Congress has no power to govern them. The states then have the "sole" government of them;** and though Congress ***"may"*** provide for arming them, and prescribe the **"mode"** of discipline, yet **the STATES have the Authority of training them**, according to the uniform discipline prescribed by Congress. **But there is NOTHING to preclude them from arming and disciplining them, should Congress neglect to, do it.** As to calling the militia to execute the laws of the {441} Union, I think the fair construction is directly opposite to what the honorable member says. **The 4th**

section of the 4th article contains nothing to warrant the supposition that the states cannot call them forth to suppress domestic insurrections. [*Here he read the section.*] All the restraint here contained is, that Congress may, at their pleasure, on "application of the state legislature", or "(in vacation)" of the executive, protect each of the states against domestic violence. This is a restraint on the general government "not to interpose".

The "state" is in "full possession" of the "power" of using its "own militia" to protect itself against domestic violence; and the power in the general government "cannot be exercised, or interposed", without the "application of the state itself". This appears to me to be the "obvious" and "fair construction".

With respect to the necessity of the **ten miles square** being superseded by the subsequent clause, which gives them power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof, I understand that clause as **NOT going a "single step beyond" the "DELEGATED powers"**. What can it act upon? Some power given by this Constitution. **If they should be about to pass a law in consequence of this clause, they must pursue some of the "DELEGATED powers", but can by "NO MEANS" depart from them,**

(N)OR "ARROGATE" "ANY NEW" powers; for the PLAIN LANGUAGE of the clause is, to give them power to pass laws in order to give "effect" to the "DELEGATED" powers".

Mr. GEORGE MASON. Mr. Chairman, gentlemen say there is no new power given by this clause. **Is there any thing in this Constitution which secures to the states the powers which are said to be retained?** Will powers remain to the states which are not expressly guarded and reserved? I will suppose a case. Gentlemen may call it an impossible case, and **"suppose" that Congress will act with wisdom and integrity.** Among the enumerated powers, Congress are to lay and collect taxes, duties, imposts, and excises, and to pay the debts, and to provide for the general welfare and common defence; **and by that clause (so often called the *sweeping clause*) they are to make all laws necessary to execute those laws. Now, suppose oppressions {442} should arise under "this" government, and any writer should dare to stand forth, and expose to the community at large the abuses of "those" powers; could not Congress, under the "idea" of providing for the "general welfare", and under their "own" construction, say that this was destroying the "general peace", encouraging sedition, and poisoning the minds of the people? And could they not, in order to provide against this, lay a dangerous restriction On the press? Might they not even bring the trial of this restriction within the ten miles square, when there is no prohibition against it? Might they not thus destroy the trial by jury? Would they not "extend" their implication?**

It appears to me that they MAY and "WILL". And shall the support of our rights depend on the bounty of men "whose interest it may be to oppress us"? That Congress should have power to provide for the **general welfare (APP Note: Defense against "Foriegn" aggression)** of the Union, I grant.

But I wish a clause in the Constitution, with respect to ALL powers which are NOT

granted, that they are retained by the states.

Otherwise, the power of providing for the "general welfare" may be "perverted to its destruction".

Many gentlemen, whom I respect, take different sides of this question. We wish this amendment to be introduced, to remove our apprehensions. There was a clause in the Confederation reserving to the states respectively every power, jurisdiction, and right, not expressly delegated to the United States. This clause has never been complained of, but approved by all Why not, then, have a similar clause in this Constitution, in which it is the more indispensably necessary than in the Confederation, because of the great augmentation of power vested in the former? In my humble apprehension, unless there be some such clear and finite expression, this clause now under consideration will go to any thing our rulers may think proper. **Unless there be some express declaration that every thing not given is retained, it will be carried to any power Congress may please.**

Mr. HENRY moved to read from the 8th to the 13th article of the declaration of rights; which was done.

Mr. GEORGE NICHOLAS, in reply to the gentlemen opposed to the clause under debate, went over the same grounds, and developed the same principles, which Mr. Pendleton and Mr. Madison had done. The opposers of the {443} clause, which gave the power of providing for the general welfare, supposed its dangers to result from its connection with, and extension of, the powers granted in the other clauses. He endeavored to show the committee that it only empowered Congress to make such laws as would be necessary to enable them to pay the public debts and provide for the common defence; **> that this "general welfare" was united, "NOT" to "the general power of legislation"**, but to the **>particular power>** of **laying and collecting taxes, imposts, and excises, for the purpose of paying the debts and providing for the "common defence"**, that is, that they could raise **as much** money as would **pay the debts and provide for the "common defence", in "consequence of this power". The clause which was affectedly called the *sweeping* clause contained "NO new grant of power"**. To illustrate this position, he observed that, if it had been added at the end of every one of the enumerated powers, instead of being inserted at the end of all, **it would be obvious to any one that it was "NO" augmentation of power. If, for instance, at the end of the clause granting power to lay and collect taxes, it had been added that they should have power to make necessary and proper laws to lay and collect taxes, who could suspect it to be an addition of power? As it would grant "NO" new power if inserted at the end of each clause**, it could not when subjoined to the whole.

He then proceeded thus: But, says he, who is to determine the extent of such powers? I say, the same power which, in all well-regulated communities, **determines the "extent" of "legislative" powers**. **If they exceed these powers**, **the "JUDICIARY" will declare it "VOID", or else "the PEOPLE" will have a "RIGHT" to declare it "VOID"**. Is this depending on any man? But, says the gentleman, it may go to any thing. It may destroy the trial by jury; and they may say it is necessary for providing for the general defence. The power of providing for the general defence only extends to raise any sum of money they may think necessary, by taxes, imposts, But, says he, our only defence against oppressive laws consists in the virtue of our representatives. This was misrepresented.

If I understand it right, **NO "new" power can be exercised.**

As to those which are actually granted, we trust to the fellow-feelings of our representatives; and if we are deceived, we then "trust to altering our {444} government". It appears to me, however, that we can confide in their discharging their powers **rightly**, from the peculiarity of their situation, and connection with us. If, sir, the powers of the former Congress were very inconsiderable, **that body did not deserve to have great powers.**

It was so constructed that it would be dangerous to invest it with such. But why were the articles of the **BILL of RIGHTS** read? **Let him show us that those rights are given up by the Constitution. Let him prove them to be violated.**

He tells us that the most worthy characters of the country differ as to the necessity of a bill of rights. It is a simple and **plain proposition**. It is **agreed upon by all that the people have all power. If they part with any of it, is it necessary to declare that they retain the rest? Liken it to any similar case.** If I have one thousand acres of land, and I grant five hundred acres of it, **must I declare that I retain the other five hundred?** Do I grant the whole thousand acres, when I grant five hundred, unless I declare that the five hundred I do not give **belong to me still?**

It is "so" in "this case". After granting some powers, the rest must "REMAIN" with "the PEOPLE".

Gov. RANDOLPH observed that he had some objections to the clause. He was persuaded that the construction put upon it by the gentlemen, on both sides, was erroneous; but he thought any construction better than going into anarchy.

Mr. GEORGE MASON still thought that there ought to be some express declaration in the Constitution, asserting that rights not given to the general government were retained by the states. He apprehended that, **unless this was done, many valuable and important rights would be concluded to be given up by "implication".**

All governments were drawn from the people, though many were perverted to their oppression. The government of Virginia, he remarked, was drawn from the people; yet there were certain great and important rights, which the people, by their bill of rights, **declared to be paramount to the power of the legislature**. He asked, Why should it not be so in this Constitution? Was it because we were more substantially represented in it than in the state government? If, in the state government, where the people were substantially and fully represented, it was necessary that the great rights of human nature should {445} be secure from the encroachments of the legislature, he asked if it was not more necessary in this government, where they were but inadequately represented?

He declared that "artful sophistry and evasions could not satisfy him". He could see no clear distinction between rights relinquished by a positive grant, and lost by implication. Unless there were a bill of rights, implication might "swallow up all our rights".

Mr. HENRY. Mr. Chairman, the **"necessity" of a "BILL of RIGHTS"** appears to me to be **"greater"** in **this** government **"than ever it was in any government before". "**I have

observed already, that the sense of the European nations, and particularly Great Britain, is against the construction of rights being retained which are not expressly relinquished. **I repeat, that all nations have adopted this construction that all rights not expressly and unequivocally reserved to the people are "impliedly and incidentally relinquished to rulers",** as necessarily inseparable from the delegated powers. It is so in Great Britain; for every possible right, which is not reserved to the people by some express provision or compact, **is within the king's "prerogative".** It is so in that country which is said to be in such full possession of freedom. It is so in Spain, Germany, and other parts of the world. Let us consider the sentiments which have been entertained by the people of America on this subject.

At the revolution, it must be admitted that it was their sense to set down those great rights which ought, in all countries, to be held inviolable and sacred. Virginia did so, we all remember. She made a compact to reserve, expressly, certain rights.

When fortified with full, adequate, and abundant representation, **was she satisfied with that representation? NO.**

She most cautiously and guardedly reserved and secured those invaluable, inestimable rights and privileges, which no people, inspired with the least glow of patriotic liberty, ever did, or ever can, abandon. **She is called upon now to abandon them, and dissolve that compact which secured them to her. She is called upon to accede to another compact, which most infallibly supersedes and annihilates her present one. Will she do it? This is the question.** If you intend to reserve your unalienable rights, you must have the most express stipulation; for, if implication be allowed, **you are ousted of those rights.** If the people do not think it necessary to {446} reserve them, they will be supposed to be given up. How were the congressional rights defined when the people of America united by a confederacy to defend their liberties and rights against the tyrannical attempts of Great Britain? The states were not then contented with implied reservation.

No, Mr. Chairman. It was expressly declared in our Confederation that every right was retained by the states, respectively, which was not given up to the government of the United States.

But there is no such thing here. You, therefore, by a natural and **unavoidable implication, give up your rights to the general government.**

Your own example furnishes an argument against it. **If you give up these powers, without a bill of rights, you will exhibit the most absurd thing to mankind that ever the world saw government that has abandoned all its powers the powers of direct taxation, the sword, and the purse. You have disposed of them to Congress, without a bill of rights without check, limitation, or control. And still you have checks and guards; still you keep barriers pointed where?**

Pointed against your weakened, prostrated, enervated STATE government!

You have a bill of rights to defend **"you"** against the state government, which is "bereaved of all power", and **yet you have "none" against Congress,** though in fill and exclusive possession of all power! **You arm yourselves against the weak and defenceless, and**

expose yourselves naked to the armed and powerful. Is not this a conduct of unexampled absurdity?

What barriers have you to oppose to this most strong, energetic government? To that government you have *nothing to oppose.* All your defence is given up.

This is a real, actual defect. It must strike the mind of every gentleman.

When our government was first instituted in Virginia,

we declared the "COMMON LAW" of England to be "in FORCE".

That system of law which has been admired, and **"has protected us and our ancestors"**, is excluded by that system. Added to this, we adopted a **bill of rights**.

By this Constitution, some of the best barriers of human rights are "thrown away".

Is there not an additional reason to have a bill of rights? By the ancient common law, the trial of all facts is decided by a jury of impartial men from the immediate vicinage. This paper speaks of different juries from the common law in criminal cases; and in civil controversies {447} excludes trial by jury altogether. There is, therefore, more occasion for the supplementary check of a bill of rights now than then. Congress, from their general, powers, may fully go into business of human legislation. They may legislate, in criminal cases, from treason to the lowest offence petty larceny. They may define crimes and prescribe punishments. In the definition of crimes, I trust they will be directed by what wise representatives ought to be governed by. But when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of representatives.

What says our bill of rights? "that excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Are you not, therefore, now calling on those gentlemen who are to compose Congress, to prescribe trials and define punishments without this control? Will they find sentiments there similar to this bill of rights?

You let them loose; you do more you depart from the genius of your country.

That paper tells you that the trial of crimes shall be by jury, and held in the state where the crime shall have been committed. Under this extensive provision, they may proceed in a manner extremely dangerous to liberty: a person accused may be carried from one extremity of the state to another, and be tried, not by an impartial jury of the vicinage, acquainted with his character and the circumstances of the fact, but by a jury unacquainted with both, and who may be biased against him. **Is not this sufficient to alarm men?** How different is this from the immemorial practice of your British ancestors, and your own! I need not tell you that, by the common law, a number of hundreds were required on a jury, and that afterwards it was sufficient if the jurors came from the same county. With less than this the people of England have never been satisfied. That paper ought to have declared the common law in force.

In this business of legislation, your members of Congress will loose the restriction of not imposing excessive fines, demanding excessive bail, and inflicting cruel and unusual

punishments. These are prohibited by your declaration of rights. **What has distinguished our ancestors? That they would not admit of tortures, or cruel and barbarous punishment. But Congress may introduce the practice of the civil law, in preference to that of the common law. They may {448} introduce the practice of France, Spain, and Germany of torturing, to extort a confession of the crime. They will say that they might as well draw examples from those countries as from Great Britain, and they will tell you that there is such a necessity of strengthening the arm of government, that they must have a criminal equity, and extort confession by torture, in order to punish with still more relentless severity.**

We are then lost and undone.

And can any man think it troublesome, when we can, by a small interference, prevent our rights from being lost? If you will, like the Virginian government, give them knowledge of the extent of the rights retained by the people, and the powers of themselves, they will, if they be honest men, thank you for it. Will they not wish to go on sure grounds?

But if you leave them otherwise, they will not know how to proceed; and, being in a state of uncertainty, they will "assume" rather than give up powers by "implication".

A bill of rights may be summed up in a few words.

What do they tell us?

That our rights are reserved.

Why not say so?

Is it because it will consume too much paper?

Gentlemen's reasoning against a **"bill of rights"** does not satisfy me. Without saying which has the right side, it remains doubtful. A **bill of rights** is a favorite thing with the Virginians **and the people of the other states likewise**. It may be their prejudice, but the government ought to **suit their geniuses;** otherwise, its operation will be unhappy. **A bill of rights, even if its necessity be doubtful, will exclude the possibility of dispute;** and, with great submission, I think the **BEST way** is to "**have NO dispute**". In the **present** Constitution, they are restrained from issuing general warrants to search suspected places, or seize persons not named, without evidence of the commission of a fact, &c. There was certainly some celestial influence governing those who deliberated on that Constitution; for they have, with the most cautious and enlightened circumspection, **guarded those indefeasible rights which ought ever to be held sacred!**

The officers of Congress may come upon you now, **fortified with all the terrors of "paramount federal authority". Excisemen may come in multitudes; for the limitation of their numbers no man knows.**

They may, unless the general government be **restrained by a bill of rights**, or some similar restriction, **go into your cellars and rooms, and search, ransack, and {449} measure,**

every thing you eat, drink, and wear.

They ought to be restrained Within proper bounds.

With respect to the freedom of the press, I need say nothing; for it is hoped that the gentlemen who shall compose Congress will take care to infringe as ***"little as possible"*** the rights of human nature. This will result from **their "*"integrity*".**

They should, from prudence, abstain from violating the rights of their constituents. They are not, however, "expressly" restrained. But whether they will intermeddle with that palladium of our liberties or not, I leave you to determine.

Mr. GRAYSON thought it questionable whether rights not given up were reserved. A majority of the states, he observed, had expressly reserved certain important rights by bills of rights, **and that in the Confederation there was a clause declaring expressly that every power and right not given up was retained by the states**. It was the general sense of America **that such a clause was necessary;** other, wise, **why did they introduce a clause which was totally unnecessary?**

It had been insisted, he said, in many parts of America, that a **bill of rights** was only necessary between a prince and people, and not in such a government as this, which was a compact between the people themselves. This did not satisfy his mind; for so extensive was the power of legislation, in his estimation, that he doubted whether, **when it was once given up, *any thing* was retained. He further remarked, that there were some negative clauses in the Constitution, which refuted the doctrine contended for by the other side. For instance; the 2d clause of the 9th section of the 1st article provided that "the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it." And, by the last clause of the same section, "no title of nobility shall be granted by the United States."**

Now, if these restrictions had not been here inserted, he asked whether Congress would not most clearly have had a right to suspend that great and valuable right, and to grant titles of nobility. When, in addition to these considerations, he saw they had an indefinite power to provide for the general welfare, he thought there were great reasons to apprehend great dangers.

He thought, therefore, that there ought to be a bill of rights."

Mr. GEORGE NICHOLAS, in answer to the two gentlemen {450} last up, observed that, though there was a declaration of rights in the government of Virginia, it was no conclusive reason that there should be one in this Constitution; for, if it was unnecessary in the former, its omission in the latter could be no defect. They ought, therefore, to prove that it was essentially necessary to be inserted in the Constitution of Virginia. There were five or six states in the Union which had no bill of rights, separately and distinctly as such; but they annexed the substance of a bill of rights to their respective constitutions. These states, he further observed, were as free as this state, and their liberties as secure as ours. If so, gentlemen's arguments from the precedent were not good. In Virginia, all powers were given to the government without any exception. It was different in the general government, to which certain special powers were

delegated for certain purposes. He asked which was the more safe. Was it safer to grant general powers than certain limited powers? This much as to the theory, continued he. What is the practice of this invaluable government? Have your citizens been bound by it? They have not, sir. You have violated that maxim, "that no man shall be condemned without a fair trial." That man who was killed, not *secundum artem*, was deprived of his life without the benefit of law, and in express violation of this declaration of rights, which they confide in so much. But, sir, this bill of rights was no security. It is but a paper check. It has been violated in many other instances. Therefore, from theory and practice, it may be concluded that this government, with special powers, without any express exceptions, is better than a government with general powers and special exceptions. But the practice of England is against us. The rights there reserved to the people are to limit and check the king's prerogative. It is easier to enumerate the exceptions to his prerogative, than to mention all the cases to which it extends. Besides, these reservations, being only formed in acts of the legislature, may be altered by the representatives of the people when they think proper. No comparison can be made of this with the other governments he mentioned. There is no stipulation between the king and people. The former is possessed of absolute, unlimited authority.

But, sir, this Constitution is defective because the common {451} law is not declared to be in force! What would have been the consequence if it had? It would be immutable. But now it can be changed or modified as the legislative body may find necessary for the community.

But the "COMMON LAW" is "NOT EXCLUDED". There is "NOTHING" in "that paper" (APP Note: referring to the US Constitution being considered) to warrant the assertion.

As to the exclusion of a jury from the vicinage, he has mistaken the fact. The legislature may direct a jury to come from the vicinage. But the gentleman says that, by this Constitution, they have power to make laws to define crimes and prescribe punishments; and that, consequently, we are not free from torture. Treason against the United States is defined in the Constitution, and the forfeiture limited to the life of the person attainted. Congress have power to define and punish piracies and felonies committed on the high seas, and offences against the laws of nations; but they cannot define or prescribe the punishment of any other crime whatever, without violating the Constitution. If we had no security against torture but our declaration of rights, we might be tortured to-morrow; for it has been repeatedly infringed and disregarded. **A bill of rights is only an acknowledgment of the PREEXISTING claim to rights in the people.**

They BELONG to us AS MUCH as if they had been inserted in the Constitution. (APP Note: Which they eventually were) But it is said that, if it be doubtful, the possibility of dispute ought to be precluded. Admitting it was proper for the Convention to have inserted a bill of rights, it is not proper here to propose it as the condition of our accession to the Union. Would you reject this government for its omission, dissolve the Union, and bring miseries on yourselves and posterity? I hope the gentleman does not oppose it on this ground solely. Is there another reason? He said that it is not only the general wish of this state, but all the states, to have a bill of rights. If it be so, where is the difficulty of having this done by way of subsequent amendment? We shall find the other states willing to accord with their own favorite wish.

The gentleman last up says that the power of legislation includes every thing. A general power

of legislation does. **But this is a special power of legislation.** Therefore, it does **NOT contain that plenitude of power which he imagines.** They **CANNOT legislate in ANY case but those "PARTICULARLY ENUMERATED".** No gentleman, who is a friend to the government, ought to withhold his assent from it for this reason.

{452} **Mr. GEORGE MASON** replied that the worthy gentleman was mistaken in his assertion that the bill of rights did not prohibit torture; for that one clause expressly provided that **no man can give evidence against himself;** and that the worthy gentleman must know that, in those countries where torture is used, evidence was extorted from the criminal himself. Another clause of the bill of rights provided that no cruel and unusual punishments shall be inflicted; therefore, **torture was included in the prohibition**.

Mr. NICHOLAS acknowledged the bill of rights to contain that prohibition, and that the gentleman was right with respect to the practice of extorting confession from the criminal in those countries where torture is used; but still he saw no security arising from the bill of rights as separate from the Constitution, **for that it had been frequently violated with impunity.**

The Absolute Rights of the Colonists

Document 3, 20 Nov. 1772 Writings 2:350--59 Samuel Adams:

The Committee appointed by the Town the second Instant "to State the Rights of the Colonists and of this Province [Volume 5, Page 395] **in particular, as Men, as Christians, and as Subjects;** to communicate and publish the same to the several Towns in this Province and to the World as the sense of this Town with the Infringements and Violations thereof that have been, or from Time to Time may be made. Also requesting of each Town a free Communication of their Sentiments Reported--

First, a State of the Rights of the Colonists and of this Province in particular--

Secondly, A List of the Infringements, and Violations of those Rights.--

Thirdly, A Letter of Correspondence with the other Towns.--

1st. Natural Rights of the Colonists as Men.--

Among the Natural Rights of the Colonists are these **First. a Right to Life; Secondly to Liberty; thirdly to Property; together with the Right to support and defend them in the**

best manner they can--Those are **evident Branches of, rather than deductions from** the **Duty of Self Preservation, commonly called "the first Law of Nature"--**

All Men have a **Right to remain in a State of Nature as long as they please:** And in case of intollerable Oppression, Civil or Religious, **to leave the Society they belong to, and enter into another.--**

When Men enter into Society, it is by voluntary consent; and they have a **right to demand and insist upon the performance of such conditions**, And **previous limitations as form an equitable "original compact".--**

Every natural Right not expressly given up or from the nature of a Social Compact necessarily ceded remains.--

All positive and civil laws, should conform as far as possible, **to the Law of natural reason and equity.--**

As neither reason requires, nor religeon **permits the contrary**, every Man living in or out of a state of civil society, has a **right peaceably and quietly to worship God according to the dictates of his conscience.--**

"Just and true liberty, equal and impartial liberty" in matters spiritual and temporal, is a thing that all Men are clearly entitled to, by the **eternal and immutable laws Of God and nature**, as well as by the law of Nations, & all well grounded municipal laws, **which must have their foundation in the former.--**

In regard to Religeon, mutual tolleration in the different professions thereof, is what all good and candid minds in all ages have ever practiced; and both by precept and example inculcated on mankind: And it is now generally **agreed among christians that this spirit of toleration in the fullest extent consistent with the being of civil society "is the chief characteristical mark of the true church"1** & In so much that Mr. Lock has asserted, and proved beyond the possibility of contradiction on any solid ground, **that such toleration ought to be extended to all whose doctrines are not subversive of society.** The only Sects which he thinks ought to be, and which by all wise laws are excluded from such toleration, are those who teach Doctrines subversive of the Civil Government under which they live. The Roman Catholicks or Papists are excluded by reason of such Doctrines as these "that Princes excommunicated may be deposed, and those they call Hereticks may be destroyed without mercy; besides their recognizing the Pope in so absolute a manner, in subversion of Government, by introducing as far as possible into the states, under whose protection they enjoy life, liberty and property, that solecism in politicks, Imperium in imperio2 leading directly to the worst anarchy and confusion, civil discord, war and blood shed--

The natural liberty of Men by entring into society is abridg'd or restrained so far only as is necessary for the Great end of Society the best good of the whole--

In the state of nature, every man is under God, Judge and sole Judge, of his own rights and the injuries done him: By entering into society, he agrees to an Arbiter or indifferent Judge between him and his neighbours; **but he no more renounces his original right, than**

by taking a cause out of the ordinary course of law, and leaving the decision to Referees or indifferent Arbitrations. In the last case he must pay the Referees for time and trouble; he should be also willing to pay his Just quota for the support of government, the law and constitution; the end of which is to furnish indifferent and impartial Judges in all cases that may happen, whether civil ecclesiastical, marine or military.--

"The natural liberty of man is to be free from any superior power on earth, and **not to be under the will or legislative authority of man; but only to have the law of nature for his rule."--**

In the state of nature men may as the Patriarchs did, **employ hired servants for the defence of their lives, liberty and property:** and they should pay them reasonable wages. Government was instituted for the purposes of common defence; and those who hold the reins of government have an equitable natural right to an honourable support from the same principle "that the labourer is worthy of his hire" **but then the same community which they serve, ought to be assessors of their pay: Governors have no right to seek what they please;** by this, instead of being content with the station assigned them, **that of honourable servants of the society, they would soon become Absolute masters, Despots, and Tyrants. Hence as a private man has a right to say, what wages he will give in his private affairs, so has a Community to determine what they will give and grant of their Substance, for the Administration of publick affairs.** And in both cases more are ready generally to offer their Service at the proposed and stipulated price, than are able and willing to perform their duty.--

In short it is the **greatest absurdity to suppose** it in the power **of one or any number of men** at the entering into society, **to renounce their essential natural rights, or the means of preserving those rights when the great end of civil government from the very nature of its institution is for the support, protection and defence of those very rights: the principal of which as is before observed, are life liberty and property.**

If men through fear, fraud or mistake, should in terms renounce and give up any essential natural right, the eternal law of reason and the great end of society, would absolutely vacate such renunciation; the [Volume 5, Page 396] right to freedom being the gift of God Almighty, <u>it is not in the power of Man to alienate this gift, and voluntarily become a slave--</u>

2d. The Rights of the Colonists as Christians--

These may be best understood **by reading--and carefully studying** the **institutes of the great Lawgiver** and **head of the Christian Church:** which are to be **found clearly written and promulgated in the New Testament--**

By the Act of the British Parliament commonly called the Toleration Act, every subject in England Except Papists &c was restored to, and re-established in, his **natural right to worship God according to the dictates of his own conscience**. And by the Charter of this Province it is granted ordained and established (that it is declared as an original right) that

there shall be **liberty of conscience allowed in the worship of God,** to all christians except Papists, inhabiting or which shall inhabit or be resident within said Province or Territory.3 **Magna Charta itself is in substance but a constrained Declaration, or proclamation, and promulgation** in the name of King, Lord, and Commons of the sense the latter had of their **original inherent, indefeazible natural Rights,4** as also those of free Citizens equally perdurable with the other. That great author that great jurist, and even that Court writer Mr. Justice Blackstone holds that this recognition was justly obtained of King John sword in hand: **and peradventure it must be one day sword in hand again rescued and preserved from total destruction and oblivion.--**

3d. The Rights of the Colonists as Subjects

A Common Wealth or state is a body politick or civil society of men, united together to promote their mutual safety and prosperity, by means of their union.5

The absolute Rights of Englishmen, and all freemen in or out of Civil society, are principally, personal security personal liberty and private property.

All Persons born in the British American Colonies are by the laws of God and nature, and by the Common law of England, exclusive of all charters from the Crown, well Entitled, and by the Acts of the British Parliament are declared to be entitled to all the **natural essential, inherent & inseperable Rights Liberties and Privileges of Subjects born in Great Britain, or within the Realm. Among those Rights are the following; which no men or body of men, consistently with their own rights as men and citizens or members of society, can for themselves give up, or take away from others**

First, "The first fundamental positive law of all Commonwealths or States, is the establishing the legislative power; as the first fundamental natural law also, which is to **govern even the legislative power itself**, **is the preservation of the Society."6**

Secondly, The Legislative has no right to absolute arbitrary power over the lives and fortunes of the people: Nor can mortals assume a prerogative, not only too high for men, but for Angels; and therefore reserved for the exercise of the Deity alone.--

"The Legislative cannot Justly assume to itself a power to rule by extempore arbitrary decrees; but it is bound to see that **Justice is dispensed**, and that **the rights of the subjects be decided**, by **promulgated, standing and "known" laws**, and authorized independent Judges;" that is independent as far as possible of Prince or People.

"There shall be one rule of Justice for rich and poor; for the favorite in Court, and the Countryman at the Plough."7

Thirdly, The supreme power cannot Justly take from any man, any part of his property without his consent, in person or by his Representative.--

These are some of the first principles of natural law & Justice, and the great Barriers of

all free states, and of the British Constitution in particular. **It is utterly irreconcileable to these principles, and to many other fundamental maxims of the common law, common sense and reason, that a British house of commons, should have a right, at pleasure, to give and grant the property of the Colonists.** That these Colonists are well entitled to all the essential rights, liberties and privileges of men and freemen, born in Britain, is manifest, not only from the Colony charter, in general, but acts of the British Parliament. The statute of the 13th of George 2. c. 7. **naturalizes even foreigners after seven years residence.** The words of the Massachusetts Charter are these, "And further our will and pleasure is, and we do hereby for us, our heirs and successors, grant establish and ordain, that all and every of the subjects of us, our heirs and successors, **which shall go to and inhabit** within our said province or territory and **every of their children which shall happen to be born there**, or on the seas in going thither, or returning from thence shall have and enjoy, **all liberties and immunities of free and natural subjects** within any of the dominions of us, our heirs and successors, to all intents constructions & purposes whatsoever as if they and every of them were born within this our Realm of England." **Now what liberty can there be, where property is taken away without "consent"?** Can it be said with any colour of truth and Justice, that this Continent of three thousand miles in length, and a breadth as yet unexplored, in which however, its supposed, there are five millions of people, has the least voice, vote or influence in the decisions of the British Parliament? Have they, all together, any more right or power to return a single member to that house of commons, **who have not inadvertently, but deliberately assumed a power to dispose of their lives,8 Liberties and properties,** than to choose an Emperor of China! Had the Colonists a right to return members to the british parliament, it would only be hurtfull; as from their local situation and circumstances it is impossible they should be ever truly and properly represented there. The inhabitants of this country in all probability in a few years will be more numerous, than those of Great Britain and Ireland together; yet it is absurdly expected [Volume 5, Page 397] by the promoters of the present measures, that these, with their posterity to all generations, should be easy **while their property, shall be disposed of** by a house of commons at **three thousand miles distant from them; and who cannot be supposed to have the least care or concern for their real interest: Who have not only no natural care for their interest, but must be in effect bribed against it;** as every burden they lay on the colonists is so much saved or gained to themselves. Hitherto many of the Colonists have been free from Quit Rents; but if the breath of a british house of commons can originate an act for **taking away all our money, our lands will go next** or be subject to rack rents from haughty and relentless landlords who will ride at ease, while we are trodden in the dirt. The Colonists have been branded with the odious names of traitors and rebels, only for complaining of their grievances; **How long such treatment will, or ought to be born is submitted.**

1. See Locks Letters on Toleration.

2. A Government within a Government--

3. See 1. Wm. and Mary. St. 2. C. 18--and Massachusetts Charter.

4. Lord Cokes Inst. Blackstone, Commentaries--Vol. 1st. Page 122.

5. See Lock and Vatel--

6. Locke on Government. Salus Populi Suprema Lex esto--

7. Locke--

8. See the Act of the last Session, relating to the Kings Dock Yards--

John Locke #2

Essay Concerning The True Original, Extent, and End of

Civil Government

APP forward: The reason for presenting Locke and other papers such as the Magna Carta and Rights of the Colonists, are to educate people to the foundations that have developed into our freedoms establishment in 1776.

Both the Rights of the Colonists and Locke present historical fact of "State Church" atrocities at that time from blind obedience to leaders; These issues are commonly known by most people and should be viewed as a simple historical establishment of reasoning and not to shed any dim light on modern establishments. His observations set forth a clear warning as to the necessity of correct placement of powers. See also Locke on Church, State and Man.

Locke presents essential lessons in his observations that were grasped by our Founders. And though he, as a British subject, presents some views as a british subject (owing some powers that freedom would not accept - in his giving such powers to the "magistrate" - See Rights of the Colonists) his writings present fundamental reasoning which is very important to understand in regard to Freedom and Common Law.

As clearly indicated by the founders during the Virginia Ratifying Convention 6-16-1788; Common Law as was understood by Locke, remains with us:

Mr. GEORGE NICHOLAS: "...But the "COMMON LAW" is "NOT EXCLUDED". There is "NOTHING" in "that paper" (APP Note: referring to the US Constitution being considered) to warrant the assertion. .... A bill of rights is only an acknowledgment of the PREEXISTING claim to rights in the people. They BELONG to us AS MUCH as if they had been inserted in the Constitution.

You will find that the Absolute Rights of the Colonists is actually a one page summary of

John Locke's Civil Government, some parts are word for word; and the principles of the Declaration of Independence were established in fact by Locke. Some we have noted.

To this purpose we present John Locke as a very important document to free societies and the true definition of freedom:

The Contents of Book 2

Chapter 1: Of Political Power

1. It having been shown in the foregoing discourse:1

Firstly. That Adam had not, either by natural right of fatherhood or by positive donation from God, any such authority over his children, nor dominion over the world, as is pretended.

Secondly. That if he had, his heirs yet had no right to it.

Thirdly. That if his heirs had, there being no law of Nature nor positive law of God that determines which is the right heir in all cases that may arise, the right of succession, and consequently of bearing rule, could not have been certainly determined.

Fourthly. That if even that had been determined, yet the knowledge of which is the eldest line of Adam's posterity being so long since utterly lost, that in the races of mankind and families of

the world, there remains not to one above another the least pretence to be the eldest house, and to have the right of inheritance.

All these promises having, as I think, been clearly made out, it is impossible that the rulers now on earth should make any benefit, or derive any the least shadow of authority from that which is held to be the fountain of all power, "Adam's private dominion and paternal jurisdiction"; so that he that will not give just occasion to think that all government in the world is the product only of force and violence,

and that men live together by no other rules but that of beasts, where the strongest carries it,

and so lay a foundation for perpetual disorder and mischief, tumult, sedition, and rebellion (things that the followers of that hypothesis so loudly cry out against), must of necessity find out another rise of government, another original of political power, and another way of designing and knowing the persons that have it than what Sir Robert Filmer hath taught us.

2. To this purpose, I think it may not be amiss to set down what I take to be political power. That the power of a magistrate over a subject may be distinguished from that of a father over his children, a master over his servant, a husband over his wife, and a lord over his slave. All which distinct powers happening sometimes together in the same man, if he be considered under these different relations, it may help us to distinguish these powers one from another,

and show the difference betwixt a **ruler of a commonwealth**, a **father of a family**, and a **captain of a galley**.

3. Political power, then, I take to be a right of making laws, with penalties of death, and consequently **all less penalties for the regulating and preserving of property**, and of employing the force of the community in the execution of such laws, and in the defence of the commonwealth from foreign injury, and all this only for the **public good.**

Chapter 2: Of the State of Nature

4. To understand political power aright, and derive it from its original, we must consider what estate all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons as they think fit, **within the bounds of the law of Nature**, without asking leave or depending upon the will of any other man.

A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another, there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of Nature, and the use of the **same faculties,** should also be equal one amongst another, without subordination or subjection, unless the lord and master of them all should, by any manifest declaration of his will, set one above another, and confer on him, by an evident and clear appointment, an undoubted right to dominion and sovereignty.

5. This equality of men by Nature, the judicious Hooker looks upon as so evident in itself, **(We hold these truths to be self-evident)** and beyond all question, that he makes it the foundation

of that obligation to mutual love amongst men on which he builds the duties they owe one another, and from whence he derives the great maxims of justice and charity. His words are:

"The like natural inducement hath brought men to know that it is no less their duty to love others than themselves, for seeing those things which are equal, must needs all have one measure; if I cannot but wish to receive good, even as much at every man's hands, as any man can wish unto his own soul, how should I look to have any part of my desire herein satisfied, unless myself be careful to satisfy the like desire, which is undoubtedly in other men weak, being of one and the same nature: to have anything offered them repugnant to this desire must needs, in all respects, grieve them as much as me; so that if I do harm, I must look to suffer, there being no reason that others should show greater measure of love to me than they have by me showed unto them; my desire, therefore, to be loved of my equals in Nature, as much as possible may be, imposeth upon me a natural duty of bearing to themward fully the like affection. From which relation of equality between ourselves and them that are as ourselves, what several rules and canons natural reason hath drawn for direction of life no man is ignorant." (Eccl. Pol. i.)2

6. But though this be a state of liberty, **yet it is not a state of licence;** though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet **he has not liberty to destroy himself, or so much as any creature in his possession**, but where some nobler use than its bare preservation calls for it. The **"State of Nature" has a "Law of Nature" to govern it**, which obliges every one, and **REASON, which is that law**, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions; for men being all the workmanship of one omnipotent and infinitely wise Maker; all the servants of one sovereign Master, sent into the world by His order and about His business; they are His property, whose workmanship they are made to last during His, not one another's pleasure.

And, being furnished with like faculties, sharing all in one community of Nature, there cannot be supposed any such subordination among us that may authorise us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for ours. Every one as he is bound to preserve himself, and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he as much as he can to preserve the rest of mankind, and not unless it be to do justice on an offender, take away or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another.

7. And that all men may be **restrained from invading others' rights**, and from doing hurt to one another, and the law of Nature be observed, which willeth the peace and preservation of all mankind, the execution of the **law of Nature** is in that state put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree as may hinder its violation. For the **Law of Nature** would, as all other laws that concern men in this world, be in vain if there were nobody that in the **State of Nature** had a power to execute that law, and thereby preserve the innocent and restrain offenders; and if any one in the state of Nature may punish another for any evil he has done, every one may do so. For in that state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, every one must needs have a right to do.

8. And thus, in the state of Nature, one man comes by a power over another, but yet no absolute or arbitrary power to use a criminal, when he has got him in his hands, according to the passionate heats or boundless extravagancy of his own will, but only to retribute to him so far as calm reason and conscience dictate, what is proportionate to his transgression, which is so much as may serve for reparation and restraint. For these two are the only reasons why one man may lawfully do harm to another, which is that we call punishment. **In transgressing the law of Nature, the offender declares himself to live by another rule than that of reason and common equity, which is that measure God has set to the actions of men for their mutual security, and so he becomes dangerous to mankind;** the tie which is to secure them from injury and violence being slighted and broken by him, which being a trespass against the whole species, and the peace and safety of it, provided for by the law of Nature, every man upon this score, by the right he hath to preserve mankind in general, may restrain, or where it is necessary, destroy things noxious to them, and so may bring such evil on any one who hath transgressed that law, as may make him repent the doing of it, and thereby deter him, and, by his example, others from doing the like mischief. And in this case, and upon this ground, every man hath a right to punish the offender, and be executioner of the law of Nature.

9. I doubt not but this will seem a very strange doctrine to some men; but before they condemn it, I desire them to resolve me by what right any prince or state can put to death or punish an alien for any crime he commits in their country? It is certain their laws, by virtue of any sanction they receive from the promulgated will of the legislature, **reach not a stranger**. They speak not to him, nor, if they did, is he bound to hearken to them. The legislative authority by which they are in force over the subjects of that commonwealth **hath no power over him**. **Those who have the supreme power of making laws in England, France, or Holland are, to an Indian, but like the rest of the world -- men without authority.** And therefore, if by the law of Nature every man hath not a power to punish offences against it, as he soberly judges the case to require, **I see not how the magistrates of any community can punish an alien of another country,** since, in reference to him, they can have no more power than what every man naturally may have over another.

10. Besides the crime which consists in violating the laws, and varying from the right rule of reason, whereby a man so far becomes degenerate, and declares himself to quit the principles of human nature and to be a noxious creature, there is commonly injury done, and some person or other, some other man, receives damage by his transgression; in which case, he who hath received any damage has (besides the right of punishment common to him, with other men) a particular right to seek reparation from him that hath done it. And any other person who finds it just may also join with him that is injured, and assist him in recovering from the offender so much as may make satisfaction for the harm he hath suffered.

11. From these two distinct rights (the one of punishing the crime, for restraint and preventing the like offence, which right of punishing is in everybody, the other of taking reparation, which belongs only to the injured party) comes it to pass that the magistrate, who by being magistrate hath the common right of punishing put into his hands, can often, where the public good demands not the execution of the law, remit the punishment of criminal offences by his own authority, but yet cannot remit the satisfaction due to any private man for the damage he has received. That he who hath suffered the damage has a right to demand in his own name, and he alone can remit. The damnified person has this power of appropriating to himself the goods or service of the offender by right of self-preservation, as every man has a power to punish the

crime to prevent its being committed again, by the right he has of preserving all mankind, and doing all reasonable things he can in order to that end. And thus it is that every man in the state of Nature has a power to kill a murderer, both to deter others from doing the like injury (which no reparation can compensate) by the example of the punishment that attends it from everybody, and also to secure men from the attempts of a criminal who, having renounced reason, the common rule and measure God hath given to mankind, hath, by the unjust violence and slaughter he hath committed upon one, declared war against all mankind, and therefore may be destroyed as a lion or a tiger, one of those wild savage beasts with whom men can have no society nor security. And upon this is grounded that great law of nature, "Whoso sheddeth man's blood, by man shall his blood be shed." And Cain was so fully convinced that every one had a right to destroy such a criminal, that, after the murder of his brother, he cries out, "Every one that findeth me shall slay me," so plain was it writ in the hearts of all mankind.

12. By the same reason may a man in the state of Nature punish the lesser breaches of that law, it will, perhaps, be demanded, with death? I answer: Each transgression may be punished to that degree, and with so much severity, as will suffice to make it an ill bargain to the offender, give him cause to repent, and terrify others from doing the like. Every offence that can be committed in the **state of Nature** may, in the **state of Nature**, be also punished equally, and as far forth, as it may, in a commonwealth. For though it would be beside my present purpose to enter here into the particulars of the **law of Nature**, or its measures of punishment, **yet it is certain there is such a law**, and that too as intelligible and **plain to a rational creature** and a studier of that law as the positive laws of commonwealths, nay, **possibly plainer;** as much as reason is easier to be understood than the fancies and intricate contrivances of men, following contrary and hidden interests put into words; for truly so are a great part of the municipal laws of countries, which are only so far right as they are **founded on the law of Nature**, **by which they are to be regulated and interpreted.**

13. To this strange doctrine -- viz., That in the state of Nature every one has the executive power of the law of Nature -- I doubt not but it will be objected that it is unreasonable for men to be judges in their own cases, that self-love will make men partial to themselves and their friends; and, on the other side, ill-nature, passion, and revenge will carry them too far in punishing others, and hence nothing but confusion and disorder will follow, and that therefore God hath certainly appointed government to restrain the partiality and violence of men. I easily grant that civil government is the proper remedy for the inconveniences of the **state of Nature**, which must certainly be great where men may be judges in their own case, since it is easy to be imagined that he who was so unjust as to do his brother an injury will scarce be so just as to condemn himself for it. But I shall desire those who make this objection to remember that absolute monarchs are but men; and if government is to be the remedy of those evils which necessarily follow from men being judges in their own cases, and the **state of Nature** is therefore not to be endured, I desire to know what kind of government that is, and how much better it is than the state of Nature, where one man commanding a multitude has the liberty to be judge in his own case, and may do to all his subjects whatever he pleases without the least question or control of those who execute his pleasure? and in whatsoever he doth, whether led by reason, mistake, or passion, must be submitted to? which men in the **state of Nature** are not bound to do one to another. And if he that judges, judges amiss in his own or any other case, he is answerable for it to the rest of mankind.

14. It is often asked as a mighty objection, where are, or ever were, there any men in such a **state of Nature?** To which it may suffice as an answer at present, that since all princes and rulers of "independent" governments all through the world are in a state of Nature, it is plain the world never was, nor never will be, without numbers of men in that state. I have named all governors of "independent" communities, whether they are, or are not, in league with others; for it is not every compact that puts an end to the state of Nature between men, but only this one of agreeing together mutually to enter into one community, and make one body politic; other promises and compacts men may make one with another, and yet still be in the state of Nature. The promises and bargains for truck, etc., between the two men in Soldania, in or between a Swiss and an Indian, in the woods of America, are binding to them, though they are **perfectly in a "state of Nature" in reference to one another for truth, and keeping of faith belongs to men as men, and not as members of society**.

15. To those that say there were never any men in the **state of Nature**, I will not oppose the authority of the judicious Hooker (Eccl. Pol. i. 10), where he says, "the laws which have been hitherto mentioned" -- i.e., **the "laws of Nature"** -- "do bind men absolutely, even as they are men, although they have never any settled fellowship, never any solemn agreement amongst themselves what to do or not to do; but for as much as we are not by ourselves sufficient to furnish ourselves with competent store of things needful for such a life as our Nature doth desire, a life fit for the dignity of man, therefore to supply those defects and imperfections which are in us, as living single and solely by ourselves, we are naturally induced to seek communion and fellowship with others; this was the cause of men uniting themselves as first in politic societies." But I, moreover, affirm that all men are **naturally in that state**, and remain so till, by their own consents, they make themselves members of some politic society, and I doubt not, in the sequel of this discourse, **to make it very clear**.

Chapter 3: Of the State of War

16. The state of war is a state of enmity and destruction; and therefore **declaring by word or action**, not a passionate and hasty, but sedate, **settled design upon another man's life puts him in a state of war with him against whom he has declared such an intention**, and so has exposed his life to the **other's power** to be taken away by him, or any one that joins with him in his defence, and espouses his quarrel; **it being reasonable and just I should have a right to destroy that which threatens me with destruction;** for by the **fundamental law of Nature**, man being to be preserved as much as possible, when all cannot be preserved, the safety of the innocent is to be preferred, and **one may destroy a man who makes war upon him**, or **has discovered an enmity** to his being, **for the same reason that he may kill a wolf or a lion, because they are not under the ties of the common law of reason**, have no other rule but that of force and violence, and **so may be treated as a beast of prey**, those dangerous and noxious creatures **that will be sure to destroy him whenever he falls into their power.**

17. And hence it is **that he who attempts to get another man into his absolute power does thereby put himself into a "State of War" with him;** it being to be understood as a declaration of a design upon his life. **For I have reason to conclude that he who would get me into his power without my consent would use me as he pleased when he had got me there, and destroy me too when he had a fancy to it;** for nobody can desire to have me in

his absolute power **unless it be to compel me by force to that which is against the right of my freedom** -- **i.e. make me a slave**. To be free from such force is the only security of my preservation, and reason bids me **look on him as an enemy to my preservation who would take away that freedom which is the fence to it;** so that **he who makes an attempt to enslave me thereby puts himself into a state of war with me**. **He that in the state of Nature would take away the freedom that belongs to any one in that state must necessarily be supposed to have a design to take away everything else**, **that freedom being the foundation of all the rest**; as he that in the state of society would take away the freedom belonging to those of that society or commonwealth **must be supposed to design to take away from them everything else, and so be looked on as in a state of war.**

18. This makes it lawful for a man to kill a thief who has not in the least hurt him, nor declared any design upon his life, any farther than by the use of force, so to get him in his power as to take away his money, or what he pleases, from him; because using force, where he has no right to get me into his power, let his pretence be what it will, I have no reason to suppose that he who would take away my liberty would not, when he had me in his power, take away everything else. And, therefore, it is lawful for me to treat him as one who has put himself into a state of war with me -- i.e., kill him if I can; for to that hazard does he justly expose himself whoever introduces a state of war, and is aggressor in it.

19. And here we have the plain difference between the state of Nature and the state of war, which however some men have confounded, are as far distant as a state of peace, goodwill, mutual assistance, and preservation; and a state of enmity, malice, violence and mutual destruction are one from another. Men living together according to reason without a common superior on earth, with authority to judge between them, is properly the state of Nature. **But force, or a declared design of force upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war; and it is the want of such an appeal gives a man the right of war even against an aggressor, though he be in society and a fellow-subject**. Thus, a thief whom I cannot harm, but by appeal to the law, for having stolen all that I am worth, I may kill when he sets on me to rob me but of my horse or coat, because the law, which was made for my preservation, where it cannot interpose to secure my life from present force, which if lost is capable of no reparation, **permits me my own defence and the right of war, a liberty to kill the aggressor,** because the aggressor allows not time to appeal to our common judge, nor the decision of the law, for remedy in a case where the mischief may be irreparable. **Want of a common judge with authority puts all men in a state of Nature; force without right upon a man's person makes a state of war both where there is, and is not, a common judge.**

20. But when the actual force is over, the state of war ceases between those that are in society and are equally on both sides subject to the judge; and, therefore, in such controversies, where the question is put, "Who shall be judge?" it cannot be meant who shall decide the controversy; every one knows what Jephtha here tells us, that "the Lord the Judge" shall judge. Where there is no judge on earth the appeal lies to God in Heaven. That question then cannot mean who shall judge, whether another hath put himself in a state of war with me, and whether I may, as Jephtha did, appeal to Heaven in it? **Of that I myself can only judge in my own conscience, as I will answer it at the great day to the Supreme Judge of all men.**

Chapter 4: Of Slavery

21. The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of Nature for his rule. (APP Note: See this exact wording in the Rights of the Colonists) The liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth, nor under the dominion of any will, or restraint of any law, but what that legislative shall enact according to the trust put in it. **Freedom, then, is not what Sir Robert Filmer tells us: "A liberty for every one to do what he lists, to live as he pleases, and not to be tied by any laws"; but freedom of men under government is to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it. A liberty to follow my own will in all things where that rule prescribes not, not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man, as freedom of nature is to be under no other restraint but the law of Nature.**

22. This freedom from absolute, arbitrary power is so necessary to, and closely joined with, a man's preservation, that he cannot part with it but by what forfeits his preservation and life together. For a man, **not having the power of his own life, cannot by compact or his own consent enslave himself to any one, nor put himself under the absolute, arbitrary power of another to take away his life when he pleases. Nobody can give more power than he has himself, and he that cannot take away his own life cannot give another power over it.** Indeed, having by his fault forfeited his own life by some act that deserves death, he to whom he has forfeited it may, when he has him in his power, delay to take it, and make use of him to his own service; and he does him no injury by it. **For, whenever he finds the hardship of his slavery outweigh the value of his life, it is in his power, by resisting the will of his master, to draw on himself the death he desires.**

23. This is the perfect condition of slavery, which is nothing else but the state of war continued between a lawful conqueror and a captive, for if once compact enter between them, and make an agreement for a limited power on the one side, and obedience on the other, the state of war and slavery ceases as long as the compact endures; for, as has been said, no man can by agreement pass over to another that which he hath not in himself -- a power over his own life.

I confess, we find among the Jews, as well as other nations, that men did sell themselves; but it is plain this was only to drudgery, not to slavery; for it is evident the person sold was not under an absolute, arbitrary, despotical power, for the master could not have power to kill him at any time, whom at a certain time he was obliged to let go free out of his service; and the master of such a servant was so far from having an arbitrary power over his life that he could not at pleasure so much as maim him, but the loss of an eye or tooth set him free (Exod. 21.).

Chapter 5: Of Property

24. Whether we consider natural reason, which tells us that men, being once born, have a right to their preservation, and consequently to meat and drink and such other things as Nature affords for their subsistence, or "revelation," which gives us an account of those grants God

made of the world to Adam, and to Noah and his sons, it is very clear that God, as King David says (Psalm 115. 16), "has given the earth to the children of men," given it to mankind in common. But, this being supposed, it seems to some a very great difficulty how any one should ever come to have a property in anything, I will not content myself to answer, that, if it be difficult to make out "property" upon a supposition that God gave the world to Adam and his posterity in common, it is impossible that any man but one universal monarch should have any "property" upon a supposition that God gave the world to Adam and his heirs in succession, exclusive of all the rest of his posterity; but I shall endeavour to show how men might come to have a property in several parts of that which God gave to mankind in common, and that without any express compact of all the commoners.

25. God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life and convenience. The earth and all that is therein is given to men for the support and comfort of their being. And though all the fruits it naturally produces, and beasts it feeds, belong to mankind in common, as they are produced by the spontaneous hand of Nature, and nobody has originally a private dominion exclusive of the rest of mankind in any of them, as they are thus in their natural state, yet being given for the use of men, there must of necessity be a means to appropriate them some way or other before they can be of any use, or at all beneficial, to any particular men. The fruit or venison which nourishes the wild Indian, who knows no enclosure, and is still a tenant in common, must be his, and so his -- i.e., a part of him, that another can no longer have any right to it before it can do him any good for the support of his life.

26. Though the earth and all inferior creatures be common to all men, **yet every man has a "property" in his own "person." This nobody has any right to but himself**. The "labour" of his body and the "work" of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, **and thereby makes it his property**. It being by him removed from the common state Nature placed it in, **it hath by this labour something annexed to it that excludes the common right of other men. For this "labour" being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others.**

27. He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. Nobody can deny but the nourishment is his. I ask, then, when did they begin to be his? when he digested? or when he ate? or when he boiled? or when he brought them home? or when he picked them up? And it is plain, if the first gathering made them not his, nothing else could. **That labour put a distinction between them and common.** That added something to them more than Nature, the common mother of all, had done, and **so they became his private right.** And will any one say he had no right to those acorns or apples he thus appropriated because he had not the consent of all mankind to make them his? Was it a robbery thus to assume to himself what belonged to all in common? If such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him. We see in commons, which remain so by compact, that it is the taking any part of what is common, and removing it out of the state Nature leaves it in, which begins the property, without which the common is of no use. And the taking of this or that part does not depend on the express consent of all the commoners. Thus, the grass my horse has bit, the turfs my servant has cut, and the ore I have digged in any

place, where I have a right to them in common with others, **become my property without the assignation or consent of anybody**. The labour that was mine, removing them out of that common state they were in, **hath fixed my property in them.**

28. By making an explicit consent of every commoner necessary to any one's appropriating to himself any part of what is given in common. Children or servants could not cut the meat which their father or master had provided for them in common without assigning to every one his peculiar part. Though the water running in the fountain be every one's, yet who can doubt but that in the pitcher is his only who drew it out? His labour hath taken it out of the hands of Nature where it was common, and belonged equally to all her children, and hath thereby appropriated it to himself.

29. Thus this law of reason makes the deer that Indian's who hath killed it; it is allowed to be his goods who hath bestowed his labour upon it, though, before, it was the common right of every one. And amongst those who are counted the civilised part of mankind, who have made and multiplied positive laws to determine property, this original law of Nature for the beginning of property, in what was before common, still takes place, and by virtue thereof, what fish any one catches in the ocean, that great and still remaining common of mankind; or what amber-gris any one takes up here is by the labour that removes it out of that common state Nature left it in, made his property who takes that pains about it. And even amongst us, the hare that any one is hunting is thought his who pursues her during the chase. For being a beast that is still looked upon as common, and no man's private possession, whoever has employed so much labour about any of that kind as to find and pursue her has thereby removed her from the state of Nature wherein she was common, and **hath begun a property.**

30. It will, perhaps, be objected to this, that if gathering the acorns or other fruits of the earth, etc., makes a right to them, then any one may engross as much as he will. To which I answer, Not so. The same law of Nature that does by this means give us property, does also bound that property too. "God has given us all things richly." Is the voice of reason confirmed by inspiration? But how far has He given it us -- "to enjoy"? **As much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in**. Whatever is beyond this is more than his share, and belongs to others. Nothing was made by God for man to spoil or destroy. And thus considering the plenty of natural provisions there was a long time in the world, and the few spenders, and to how small a part of that provision the industry of one man could extend itself and engross it to the prejudice of others, especially keeping within the bounds set by reason of what might serve for his use, there could be then little room for quarrels or contentions about property so established.

31. But the chief matter of property being now not the fruits of the earth and the beasts that subsist on it, but the earth itself, as that which takes in and carries with it all the rest, I think it is plain that property in that too is acquired as the former. As much land as a man tills, plants, improves, cultivates, and can use the product of, so much is his property. He by his labour does, as it were, enclose it from the common. Nor will it invalidate his right to say everybody else has an equal title to it, and therefore he cannot appropriate, he cannot enclose, without the consent of all his fellow-commoners, all mankind. God, when He gave the world in common to all mankind, commanded man also to labour, and the penury of his condition required it of him. God and his reason commanded him to subdue the earth -- i.e., improve it for the benefit of life and therein lay out something upon it **that was his own**, his labour. He that, in

obedience to this command of God, subdued, tilled, and sowed any part of it, **thereby annexed to it something that was his property, which another had no title to, nor could without injury take from him.**

32. **Nor was this appropriation of any parcel of land, by improving it, any prejudice to any other man, since there was still enough and as good left, and more than the yet unprovided could use.** **(APP Note; See Declaration of Independence Greivance of the King raising the appropreation of Lands)** So that, in effect, there was never the less left for others because of his enclosure for himself. For he that leaves as much as another can make use of does as good as take nothing at all. Nobody could think himself injured by the drinking of another man, though he took a good draught, who had a whole river of the same water left him to quench his thirst. **And the case of land and water, where there is enough of both, is perfectly the same.**

33. God gave the world to men in common, but since He gave it them for their benefit and the greatest conveniencies of life they were capable to draw from it, it cannot be supposed He meant it should always remain common and uncultivated. He gave it to the use of the industrious and rational (and labour was to be his title to it); not to the fancy or covetousness of the quarrelsome and contentious. He that had as good left for his improvement as was already taken up needed not complain, ought not to meddle with what was already improved by another's labour; if he did it is plain he desired the benefit of another's pains, which he had no right to, and not the ground which God had given him, in common with others, to labour on, and whereof there was as good left as that already possessed, and more than he knew what to do with, or his industry could reach to.

34. It is true, in land that is common in England or any other country, where there are plenty of people under government who have money and commerce, no one can enclose or appropriate any part without the consent of all his fellow-commoners; because this is left common by compact -- i.e., by the law of the land, which is not to be violated. And, though it be common in respect of some men, it is not so to all mankind, but is the joint propriety of this country, or this parish. Besides, the remainder, after such enclosure, would not be as good to the rest of the commoners as the whole was, when they could all make use of the whole; whereas in the beginning and first peopling of the great common of the world it was quite otherwise. The law man was under was rather for appropriating. God commanded, and his wants forced him to labour. That was his property, which could not be taken from him wherever he had fixed it. **And hence subduing or cultivating the earth and having dominion, we see, are joined together.** **The one gave title to the other**. **So that God, by commanding to subdue, gave authority so far to appropriate.** And the condition of human life, which requires labour and materials to work on, **necessarily introduce private possessions.**

35. **The measure of property Nature well set, by the extent of men's labour and the conveniency of life.** No man's labour could subdue or appropriate all, nor could his enjoyment consume more than a small part; so that it was impossible for any man, this way, to entrench upon the right of another or acquire to himself a property to the prejudice of his neighbour, who would still have room for as good and as large a possession (after the other had taken out his) as before it was appropriated. Which measure did confine every man's possession to a very moderate proportion, and such as he might appropriate to himself without injury to anybody in the first ages of the world, when men were more in danger to be lost, by wandering from their

company, in the then vast wilderness of the earth than to be straitened for want of room to plant in.

36. The same measure may be allowed still, without prejudice to anybody, full as the world seems. For, supposing a man or family, in the state they were at first, peopling of the world by the children of Adam or Noah, let him plant in some inland vacant places of America. We shall find that the possessions he could make himself, upon the measures we have given, would not be very large, nor, even to this day, prejudice the rest of mankind or give them reason to complain or think themselves injured by this man's encroachment, though the race of men have now spread themselves to all the corners of the world, and do infinitely exceed the small number was at the beginning. Nay, the extent of ground is of so little value without labour that I have heard it affirmed that in Spain itself a man may be permitted to plough, sow, and reap, without being disturbed, upon land he has no other title to, but only his making use of it. But, on the contrary, the inhabitants think themselves beholden to him who, by his industry on neglected, and consequently waste land, has increased the stock of corn, which they wanted. But be this as it will, which I lay no stress on, this I dare boldly affirm, that the same rule of propriety -- viz., that every man should have as much as he could make use of, would hold still in the world, without straitening anybody, since there is land enough in the world to suffice double the inhabitants, had not the invention of money, and the tacit agreement of men to put a value on it, introduced (by consent) larger possessions and a right to them; which, how it has done, I shall by and by show more at large.

37. This is certain, that in the beginning, before the desire of having more than men needed had altered the intrinsic value of things, which depends only on their usefulness to the life of man, or had agreed that a little piece of yellow metal, which would keep without wasting or decay, should be worth a great piece of flesh or a whole heap of corn, though men had a right to appropriate by their labour, each one to himself, as much of the things of Nature as he could use, yet this could not be much, nor to the prejudice of others, where the same plenty was still left, to those who would use the same industry.

Before the appropriation of land, he who gathered as much of the wild fruit, killed, caught, or tamed as many of the beasts as he could -- he that so employed his pains about any of the spontaneous products of Nature as any way to alter them from the state Nature put them in, by placing any of his labour on them, did thereby acquire a propriety in them; but if they perished in his possession without their due use -- if the fruits rotted or the venison putrefied before he could spend it, he offended against the common law of Nature, and was liable to be punished: he invaded his neighbour's share, for he had no right farther than his use called for any of them, and they might serve to afford him conveniencies of life.

38. The same measures governed the possession of land, too. Whatsoever he tilled and reaped, laid up and made use of before it spoiled, that was his peculiar right; whatsoever he enclosed, and could feed and make use of, the cattle and product was also his. But if either the grass of his enclosure rotted on the ground, or the fruit of his planting perished without gathering and laying up, this part of the earth, notwithstanding his enclosure, was still to be looked on as waste, and might be the possession of any other. Thus, at the beginning, Cain might take as much ground as he could till and make it his own land, and yet leave enough to Abel's sheep to feed on: a few acres would serve for both their possessions. But as families increased and industry enlarged their stocks, their possessions enlarged with the need of

them; but yet it was commonly without any fixed property in the ground they made use of till they incorporated, settled themselves together, and built cities, and then, by consent, they came in time to set out the bounds of their distinct territories and agree on limits between them and their neighbours, and by laws within themselves settled the properties of those of the same society. For we see that in that part of the world which was first inhabited, and therefore like to be best peopled, even as low down as Abraham's time, they wandered with their flocks and their herds, which was their substance, freely up and down -- and this Abraham did in a country where he was a stranger; whence it is plain that, at least, a great part of the land lay in common, that the inhabitants valued it not, nor claimed property in any more than they made use of; but when there was not room enough in the same place for their herds to feed together, they, by consent, as Abraham and Lot did (Gen. xiii. 5), separated and enlarged their pasture where it best liked them. And for the same reason, Esau went from his father and his brother, and planted in Mount Seir (Gen. 36. 6).

39. And thus, without supposing any private dominion and property in Adam over all the world, exclusive of all other men, which can no way be proved, nor any one's property be made out from it, but supposing the world, given as it was to the children of men in common, we see how labour could make men distinct titles to several parcels of it for their private uses, wherein there could be no doubt of right, no room for quarrel.

40. Nor is it so strange as, perhaps, before consideration, it may appear, that the property of labour should be able to overbalance the community of land, for it is labour indeed that puts the difference of value on everything; and let any one consider what the difference is between an acre of land planted with tobacco or sugar, sown with wheat or barley, and an acre of the same land lying in common without any husbandry upon it, and he will find that the improvement of labour makes the far greater part of the value. I think it will be but a very modest computation to say, that of the products of the earth useful to the life of man, nine-tenths are the effects of labour. Nay, if we will rightly estimate things as they come to our use, and cast up the several expenses about them -- what in them is purely owing to Nature and what to labour -- we shall find that in most of them ninety-nine hundredths are wholly to be put on the account of labour.

41. There cannot be a clearer demonstration of anything than several nations of the Americans are of this, who are rich in land and poor in all the comforts of life; whom Nature, having furnished as liberally as any other people with the materials of plenty -- i.e., a fruitful soil, apt to produce in abundance what might serve for food, raiment, and delight; yet, for want of improving it by labour, have not one hundredth part of the conveniencies we enjoy, and a king of a large and fruitful territory there feeds, lodges, and is clad worse than a day labourer in England.

42. To make this a little clearer, let us but trace some of the ordinary provisions of life, through their several progresses, before they come to our use, and see how much they receive of their value from human industry. Bread, wine, and cloth are things of daily use and great plenty; yet notwithstanding acorns, water, and leaves, or skins must be our bread, drink and clothing, did not labour furnish us with these more useful commodities. For whatever bread is more worth than acorns, wine than water, and cloth or silk than leaves, skins or moss, that is wholly owing to labour and industry. The one of these being the food and raiment which unassisted Nature furnishes us with; the other provisions which our industry and pains prepare for us, which how

much they exceed the other in value, when any one hath computed, he will then see how much labour makes the far greatest part of the value of things we enjoy in this world; and the ground which produces the materials is scarce to be reckoned in as any, or at most, but a very small part of it; so little, that even amongst us, land that is left wholly to nature, that hath no improvement of pasturage, tillage, or planting, is called, as indeed it is, waste; and we shall find the benefit of it amount to little more than nothing.

43. An acre of land that bears here twenty bushels of wheat, and another in America, which, with the same husbandry, would do the like, are, without doubt, of the same natural, intrinsic value. But yet the benefit mankind receives from one in a year is worth five pounds, and the other possibly not worth a penny; if all the profit an Indian received from it were to be valued and sold here, at least I may truly say, not one thousandth. It is labour, then, which puts the greatest part of value upon land, without which it would scarcely be worth anything; it is to that we owe the greatest part of all its useful products; for all that the straw, bran, bread, of that acre of wheat, is more worth than the product of an acre of as good land which lies waste is all the effect of labour. For it is not barely the ploughman's pains, the reaper's and thresher's toil, and the baker's sweat, is to be counted into the bread we eat; the labour of those who broke the oxen, who digged and wrought the iron and stones, who felled and framed the timber employed about the plough, mill, oven, or any other utensils, which are a vast number, requisite to this corn, from its sowing to its being made bread, must all be charged on the account of labour, and received as an effect of that; Nature and the earth furnished only the almost worthless materials as in themselves. It would be a strange catalogue of things that industry provided and made use of about every loaf of bread before it came to our use if we could trace them; iron, wood, leather, bark, timber, stone, bricks, coals, lime, cloth, dyeing-drugs, pitch, tar, masts, ropes, and all the materials made use of in the ship that brought any of the commodities made use of by any of the workmen, to any part of the work, all which it would be almost impossible, at least too long, to reckon up.

44. From all which it is evident, that though the things of Nature are given in common, man (by being master of himself, and proprietor of his own person, and the actions or labour of it) **had still in himself the great foundation of property;** and that which made up the great part of what he applied to the support or comfort of his being, when invention and arts had improved the conveniences of life, **was perfectly his own, and did not belong in common to others.**

45. Thus labour, in the beginning, gave a right of property, wherever any one was pleased to employ it, upon what was common, which remained a long while, the far greater part, and is yet more than mankind makes use of Men at first, for the most part, contented themselves with what unassisted Nature offered to their necessities; and though afterwards, in some parts of the world, where the increase of people and stock, with the use of money, had made land scarce, and so of some value, the several communities settled the bounds of their distinct territories, and, by laws, within themselves, regulated the properties of the private men of their society, and so, by compact and agreement, settled the property which labour and industry began. And the leagues that have been made between several states and kingdoms, either expressly or tacitly disowning all claim and right to the land in the other's possession, have, by common consent, given up their pretences to their natural common right, which originally they had to those countries; and so have, by positive agreement, settled a property amongst themselves, in distinct parts of the world; yet there are still great tracts of ground to be found, which the inhabitants thereof, not having joined with the rest of mankind in the consent of the

use of their common money, lie waste, and are more than the people who dwell on it, do, or can make use of, and so still lie in common; though this can scarce happen amongst that part of mankind that have consented to the use of money.

46. The greatest part of things really useful to the life of man, and such as the necessity of subsisting made the first commoners of the world look after -- as it doth the Americans now -- are generally things of short duration, such as -- if they are not consumed by use -- will decay and perish of themselves. Gold, silver, and diamonds are things that fancy or agreement hath put the value on, more than real use and the necessary support of life. Now of those good things which Nature hath provided in common, every one hath a right (as hath been said) to as much as he could use; and had a property in all he could effect with his labour; all that his industry could extend to, to alter from the state Nature had put it in, was his. He that gathered a hundred bushels of acorns or apples had thereby a property in them; they were his goods as soon as gathered. He was only to look that he used them before they spoiled, else he took more than his share, and robbed others. And, indeed, it was a foolish thing, as well as dishonest, to hoard up more than he could make use of If he gave away a part to anybody else, so that it perished not uselessly in his possession, these he also made use of And if he also bartered away plums that would have rotted in a week, for nuts that would last good for his eating a whole year, he did no injury; he wasted not the common stock; destroyed no part of the portion of goods that belonged to others, so long as nothing perished uselessly in his hands. Again, if he would give his nuts for a piece of metal, pleased with its colour, or exchange his sheep for shells, or wool for a sparkling pebble or a diamond, and keep those by him all his life, he invaded not the right of others; he might heap up as much of these durable things as he pleased; the exceeding of the bounds of his just property not lying in the largeness of his possession, but the perishing of anything uselessly in it.

47. And thus came in the use of money; some lasting thing that men might keep without spoiling, and that, by mutual consent, men would take in exchange for the truly useful but perishable supports of life.

48. And as different degrees of industry were apt to give men possessions in different proportions, so this invention of money gave them the opportunity to continue and enlarge them. For supposing an island, separate from all possible commerce with the rest of the world, wherein there were but a hundred families, but there were sheep, horses, and cows, with other useful animals, wholesome fruits, and land enough for corn for a hundred thousand times as many, but nothing in the island, either because of its commonness or perishableness, fit to supply the place of money. What reason could any one have there to enlarge his possessions beyond the use of his family, and a plentiful supply to its consumption, either in what their own industry produced, or they could barter for like perishable, useful commodities with others? Where there is not something both lasting and scarce, and so valuable to be hoarded up, there men will not be apt to enlarge their possessions of land, were it never so rich, never so free for them to take. For I ask, what would a man value ten thousand or an hundred thousand acres of excellent land, ready cultivated and well stocked, too, with cattle, in the middle of the inland parts of America, where he had no hopes of commerce with other parts of the world, to draw money to him by the sale of the product? It would not be worth the enclosing, and we should see him give up again to the wild common of Nature whatever was more than would supply the conveniences of life, to be had there for him and his family.

49. Thus, in the beginning, all the world was America, and more so than that is now; for no such thing as money was anywhere known. Find out something that hath the use and value of money amongst his neighbours, you shall see the same man will begin presently to enlarge his possessions.

50. But, since gold and silver, being little useful to the life of man, in proportion to food, raiment, and carriage, has its value only from the consent of men -- **whereof labour yet makes in great part the measure** -- it is plain that the consent of men have agreed to a disproportionate and unequal possession of the earth -- I mean out of the bounds of society and compact; for in governments the laws regulate it; they having, by consent, found out and agreed in a way how a man may, rightfully and without injury, possess more than he himself can make use of by receiving gold and silver, which may continue long in a man's possession without decaying for the overplus, and agreeing those metals should have a value.

51. And thus, I think, it is very easy to conceive, without any difficulty, how labour could at first begin a title of property in the common things of Nature, and how the spending it upon our uses bounded it; so that there could then be no reason of quarrelling about title, nor any doubt about the largeness of possession it gave. Right and conveniency went together. For as a man had a right to all he could employ his labour upon, so he had no temptation to labour for more than he could make use of. This left no room for controversy about the title, nor for encroachment on the right of others. What portion a man carved to himself was easily seen; and it was useless, as well as dishonest, to carve himself too much, or take more than he needed.

Chapter 6: Of Paternal Power

52. IT may perhaps be censured an impertinent criticism in a discourse of this nature to find fault with words and names that have obtained in the world. And yet possibly it may not be amiss to offer new ones when the old are apt to lead men into mistakes, as this of paternal power probably has done, which seems so to place the power of parents over their children wholly in the father, as if the mother had no share in it; whereas if we consult reason or revelation, we shall find she has an equal title, which may give one reason to ask whether this might not be more properly called parental power? For whatever obligation Nature and the right of generation lays on children, it must certainly bind them equal to both the concurrent causes of it. And accordingly we see the positive law of God everywhere joins them together without distinction, when it commands the obedience of children: "Honour thy father and thy mother" (Exod. 20. 12); "Whosoever curseth his father or his mother" (Lev. 20. 9); "Ye shall fear every man his mother and his father" (Lev. 19. 3); "Children, obey your parents" (Eph. 6. 1), etc., is the style of the Old and New Testament.

53. Had but this one thing been well considered without looking any deeper into the matter, it might perhaps have kept men from running into those gross mistakes they have made about this power of parents, which however it might without any great harshness bear the name of absolute dominion and regal authority, when under the title of "paternal" power, it seemed appropriated to the father; would yet have sounded but oddly, and in the very name shown the absurdity, if this supposed absolute power over children had been called parental, and thereby discovered that it belonged to the mother too. For it will but very ill serve the turn of those men

who contend so much for the absolute power and authority of the fatherhood, as they call it, that the mother should have any share in it. And it would have but ill supported the monarchy they contend for, when by the very name it appeared that that fundamental authority from whence they would derive their government of a single person only was not placed in one, but two persons jointly. But to let this of names pass.

54. Though I have said above (2) "That all men by nature are equal," I cannot be supposed to understand all sorts of "equality." Age or virtue may give men a just precedency. Excellency of parts and merit may place others above the common level. Birth may subject some, and alliance or benefits others, to pay an observance to those to whom Nature, gratitude, or other respects, may have made it due; and yet all this consists with the equality which all men are in respect of jurisdiction or dominion one over another, which was the equality I there spoke of as proper to the business in hand, being that equal right that every man hath to his natural freedom, without being subjected to the will or authority of any other man.

55. Children, I confess, are not born in this full state of equality, though they are born to it. Their parents have a sort of rule and jurisdiction over them when they come into the world, and for some time after, but it is but a temporary one. The bonds of this subjection are like the swaddling clothes they are wrapt up in and supported by in the weakness of their infancy. Age and reason as they grow up loosen them, till at length they drop quite off, and leave a man at his own free disposal.

56. Adam was created a perfect man, his body and mind in full possession of their strength and reason, and so was capable from the first instance of his being to provide for his own support and preservation, and govern his actions according to the dictates of the law of reason God had implanted in him. From him the world is peopled with his descendants, who are all born infants, weak and helpless, without knowledge or understanding. But to supply the defects of this imperfect state till the improvement of growth and age had removed them, Adam and Eve, and after them all parents were, by the law of Nature, under an obligation to preserve, nourish and educate the children they had begotten, not as their own workmanship, but the workmanship of their own Maker, the Almighty, to whom they were to be accountable for them.

57. The law that was to govern Adam was the same that was to govern all his posterity, the law of reason. But his offspring having another way of entrance into the world, different from him, by a natural birth, that produced them ignorant, and without the use of reason, they were not presently under that law. **For nobody can be under a law that is not promulgated to him; and this law being promulgated or made known by reason only, he that is not come to the use of his reason cannot be said to be under this law;** and Adam's children being not presently as soon as born under this law of reason, were not presently free. For law, in its true notion, is not so much the limitation as the direction of a free and intelligent agent to his proper interest, and prescribes no farther than is for the general good of those under that law. Could they be happier without it, the law, as a useless thing, would of itself vanish; and that ill deserves the name of confinement which hedges us in only from bogs and precipices. So that however it may be mistaken, **the end of law is not to abolish or restrain, but to preserve and enlarge freedom.** For in all the states of created beings, capable of laws, where there is no law there is no freedom. **For liberty is to be free from restraint and violence from others, which cannot be where there is no law;** and is not, as we are told, **"a liberty for**

every man to do what he lists." For who could be free, when every other man's humour might domineer over him? But a liberty to dispose and order freely as he lists his person, actions, possessions, and his whole property within the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own.

58. The power, then, that parents have over their children arises from that duty which is incumbent on them, **to take care of their offspring during the imperfect state of childhood.** To inform the mind, and govern the actions of their yet ignorant nonage, till reason shall take its place and ease them of that trouble, is what the children want, and the parents are bound to. For God having given man an understanding to direct his actions, has allowed him a freedom of will and liberty of acting, as properly belonging thereunto within the bounds of that law he is under. But whilst he is in an estate wherein he has no understanding of his own to direct his will, he is not to have any will of his own to follow. He that understands for him must will for him too; he must prescribe to his will, and regulate his actions, but when he comes to the estate that made his father a free man, the son is a free man too.

59. This holds in all the laws a man is under, whether natural or civil. Is a man under the law of Nature? What made him free of that law? what gave him a free disposing of his property, according to his own will, within the compass of that law? I answer, an estate wherein he might be supposed capable to know that law, that so he might keep his actions within the bounds of it. When he has acquired that state, he is presumed to know how far that law is to be his guide, and how far he may make use of his freedom, and so comes to have it; till then, somebody else must guide him, who is presumed to know how far the law allows a liberty. If such a state of reason, such an age of discretion made him free, the same shall make his son free too. Is a man under the law of England? what made him free of that law -- that is, to have the liberty to dispose of his actions and possessions, according to his own will, within the permission of that law? a capacity of knowing that law. Which is supposed, by that law, at the age of twenty-one, and in some cases sooner. If this made the father free, it shall make the son free too. Till then, we see the law allows the son to have no will, but he is to be guided by the will of his father or guardian, who is to understand for him. And if the father die and fail to substitute a deputy in this trust, if he hath not provided a tutor to govern his son during his minority, during his want of understanding, the law takes care to do it: some other must govern him and be a will to him till he hath attained to a state of freedom, and his understanding be fit to take the government of his will. But after that the father and son are equally free, as much as tutor and pupil, after nonage, equally subjects of the same law together, without any dominion left in the father over the life, liberty, or estate of his son, whether they be only in the state and under the law of Nature, or under the positive laws of an established government.

60. But if through defects that may happen out of the ordinary course of Nature, any one comes not to such a degree of reason wherein he might be supposed capable of knowing the law, and so living within the rules of it, he is never capable of being a free man, he is never let loose to the disposure of his own will; because he knows no bounds to it, has not understanding, its proper guide, but is continued under the tuition and government of others all the time his own understanding is incapable of that charge. And so lunatics and idiots are never set free from the government of their parents: "Children who are not as yet come unto those years whereat they may have, and innocents, which are excluded by a natural defect from ever having." Thirdly: "Madmen, which, for the present, cannot possibly have the use of

right reason to guide themselves, have, for their guide, the reason that guideth other men which are tutors over them, to seek and procure their good for them," says Hooker (Eccl. Pol., lib. i., s. 7). All which seems no more than that duty which God and Nature has laid on man, as well as other creatures, to preserve their offspring till they can be able to shift for themselves, and will scarce amount to an instance or proof of parents' regal authority.

61. Thus we are born free as we are born rational; not that we have actually the exercise of either: age that brings one, brings with it the other too. And thus we see how natural freedom and subjection to parents may consist together, and are both founded on the same principle. A child is free by his father's title, by his father's understanding, which is to govern him till he hath it of his own. The freedom of a man at years of discretion, and the subjection of a child to his parents, whilst yet short of it, are so consistent and so distinguishable that the most blinded contenders for monarchy, "by right of fatherhood," cannot miss of it; the most obstinate cannot but allow of it. For were their doctrine all true, were the right heir of Adam now known, and, by that title, settled a monarch in his throne, invested with all the absolute unlimited power Sir Robert Filmer talks of, if he should die as soon as his heir were born, must not the child, notwithstanding he were never so free, never so much sovereign, be in subjection to his mother and nurse, to tutors and governors, till age and education brought him reason and ability to govern himself and others? The necessities of his life, the health of his body, and the information of his mind would require him to be directed by the will of others and not his own; and yet will any one think that this restraint and subjection were inconsistent with, or spoiled him of, that liberty or sovereignty he had a right to, or gave away his empire to those who had the government of his nonage? This government over him only prepared him the better and sooner for it. If anybody should ask me when my son is of age to be free, I shall answer, just when his monarch is of age to govern. "But at what time," says the judicious Hooker (Eccl. Pol., lib. i., s. 6), "a man may be said to have attained so far forth the use of reason as sufficeth to make him capable of those laws whereby he is then bound to guide his actions; this is a great deal more easy for sense to discern than for any one, by skill and learning, to determine."

62. Commonwealths themselves take notice of, and allow that there is a time when men are to begin to act like free men, and therefore, till that time, require not oaths of fealty or allegiance, or other public owning of, or submission to, the government of their countries.

63. The freedom then of man, and liberty of acting according to his own will, is grounded on his having reason, which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will. **To turn him loose to an unrestrained liberty, before he has reason to guide him, is not the allowing him the privilege of his nature to be free, but to thrust him out amongst brutes, and abandon him to a state as wretched and as much beneath that of a man as theirs. This is that which puts the authority into the parents' hands to govern the minority of their children.** God hath made it their business to employ this care on their offspring, and hath placed in them suitable inclinations of tenderness and concern to temper this power, to apply it as His wisdom designed it, to the children's good as long as they should need to be under it.

64. But what reason can hence advance this care of the parents due to their offspring into an absolute, arbitrary dominion of the father, whose power reaches no farther than by such a discipline as he finds most effectual to give such strength and health to their bodies, such vigour and rectitude to their minds, as may best fit his children to be most useful to themselves

and others, and, if it be necessary to his condition, to make them work when they are able for their own subsistence; but in this power the mother, too, has her share with the father.

65. Nay, this power so little belongs to the father by any peculiar right of Nature, but only as he is guardian of his children, that when he quits his care of them he loses his power over them, which goes along with their nourishment and education, to which it is inseparably annexed, and belongs as much to the foster-father of an exposed child as to the natural father of another. So little power does the bare act of begetting give a man over his issue, if all his care ends there, and this be all the title he hath to the name and authority of a father. And what will become of this paternal power in that part of the world where one woman hath more than one husband at a time? or in those parts of America where, when the husband and wife part, which happens frequently, the children are all left to the mother, follow her, and are wholly under her care and provision? And if the father die whilst the children are young, do they not naturally everywhere owe the same obedience to their mother, during their minority, as to their father, were he alive? And will any one say that the mother hath a legislative power over her children that she can make standing rules which shall be of perpetual obligation, by which they ought to regulate all the concerns of their property, and bound their liberty all the course of their lives, and enforce the observation of them with capital punishments? For this is the proper power of the magistrate, of which the father hath not so much as the shadow. His command over his children is but temporary, and reaches not their life or property. It is but a help to the weakness and imperfection of their nonage, a discipline necessary to their education. And though a father may dispose of his own possessions as he pleases when his children are out of danger of perishing for want, yet his power extends not to the lives or goods which either their own industry, or another's bounty, has made theirs, nor to their liberty neither when they are once arrived to the enfranchisement of the years of discretion. The father's empire then ceases, and he can from thenceforward no more dispose of the liberty of his son than that of any other man. And it must be far from an absolute or perpetual jurisdiction from which a man may withdraw himself, having licence from Divine authority to "leave father and mother and cleave to his wife."

66. But though there be a time when a child comes to be as free from subjection to the will and command of his father as he himself is free from subjection to the will of anybody else, and they are both under no other restraint but that which is common to them both, whether it be the law of Nature or municipal law of their country, yet this freedom exempts not a son from that honour which he ought, by the law of God and Nature, to pay his parents, God having made the parents instruments in His great design of continuing the race of mankind and the occasions of life to their children. As **He hath laid on them an obligation to nourish, preserve, and bring up their offspring, so He has laid on the children a perpetual obligation of honouring their parents, which, containing in it an inward esteem and reverence to be shown by all outward expressions, ties up the child from anything that may ever injure or affront, disturb or endanger the happiness or life of those from whom he received his, and engages him in all actions of defence, relief, assistance, and comfort of those by whose means he entered into being and has been made capable of any enjoyments of life.** From this obligation no state, no freedom, can absolve children. But this is very far from giving parents a power of command over their children, or an authority to make laws and dispose as they please of their lives or liberties. It is one thing to owe honour, respect, gratitude, and assistance; another to require an absolute obedience and submission. The honour due to parents a monarch on his throne owes his mother, and yet this lessens not

his authority nor subjects him to her government.

67. The subjection of a minor places in the father a temporary government which terminates with the minority of the child; and the honour due from a child places in the parents a perpetual right to respect, reverence, support, and compliance, to more or less, as the father's care, cost, and kindness in his education has been more or less, and this ends not with minority, but holds in all parts and conditions of a man's life. The want of distinguishing these two powers which the father hath, in the right of tuition, during minority, and the right of honour all his life, may perhaps have caused a great part of the mistakes about this matter. For, to speak properly of them, the first of these is rather the privilege of children and duty of parents than any prerogative of paternal power. The nourishment and education of their children is a charge so incumbent on parents for their children's good, that nothing can absolve them from taking care of it. And though the power of commanding and chastising them go along with it, yet God hath woven into the principles of human nature such a tenderness for their offspring, that there is little fear that parents should use their power with too much rigour; the excess is seldom on the severe side, the strong bias of nature drawing the other way. And therefore God Almighty, when He would express His gentle dealing with the Israelites, He tells them that though He chastened them, "He chastened them as a man chastens his son" (Deut. 8. 5) -- i.e., with tenderness and affection, and kept them under no severer discipline than what was absolutely best for them, and had been less kindness, to have slackened. This is that power to which children are commanded obedience, that the pains and care of their parents may not be increased or ill-rewarded.

68. On the other side, honour and support all that which gratitude requires to return; for the benefits received by and from them is the indispensable duty of the child and the proper privilege of the parents. This is intended for the parents' advantage, as the other is for the child's; though education, the parents' duty, seems to have most power, because the ignorance and infirmities of childhood stand in need of restraint and correction, which is a visible exercise of rule and a kind of dominion. And that duty which is comprehended in the word "honour" requires less obedience, though the obligation be stronger on grown than younger children. For who can think the command, "Children, obey your parents," requires in a man that has children of his own the same submission to his father as it does in his yet young children to him, and that by this precept he were bound to obey all his father's commands, if, out of a conceit of authority, he should have the indiscretion to treat him still as a boy?

69. The first part, then, of paternal power, or rather duty, which is education, belongs so to the father that it terminates at a certain season. When the business of education is over it ceases of itself, and is also alienable before. For a man may put the tuition of his son in other hands; and he that has made his son an apprentice to another has discharged him, during that time, of a great part of his obedience, both to himself and to his mother. But all the duty of honour, the other part, remains nevertheless entire to them; nothing can cancel that. It is so inseparable from them both, that the father's authority cannot dispossess the mother of this right, nor can any man discharge his son from honouring her that bore him. But both these are very far from a power to make laws, and enforcing them with penalties that may reach estate, liberty, limbs, and life. The power of commanding ends with nonage, and though after that honour and respect, support and defence, and whatsoever gratitude can oblige a man to, for the highest benefits he is naturally capable of be always due from a son to his parents, yet all this puts no sceptre into the father's hand, no sovereign power of commanding. He has no dominion over

his son's property or actions, nor any right that his will should prescribe to his son's in all things; however, it may become his son in many things, not very inconvenient to him and his family, to pay a deference to it.

70. A man may owe honour and respect to an ancient or wise man, defence to his child or friend, relief and support to the distressed, and gratitude to a benefactor, to such a degree that all he has, all he can do, cannot sufficiently pay it. But all these give no authority, no right of making laws to any one over him from whom they are owing. And it is plain all this is due, not to the bare title of father, not only because as has been said, it is owing to the mother too, but because these obligations to parents, and the degrees of what is required of children, may be varied by the different care and kindness trouble and expense, is often employed upon one child more than another.

71. This shows the reason how it comes to pass that parents in societies, where they themselves are subjects, retain a power over their children and have as much right to their subjection as those who are in the state of Nature, which could not possibly be if all political power were only paternal, and that, in truth, they were one and the same thing; for then, all paternal power being in the prince, the subject could naturally have none of it. But these two powers, political and paternal, are so perfectly distinct and separate, and built upon so different foundations, and given to so different ends, that every subject that is a father has as much a paternal power over his children as the prince has over his. And every prince that has parents owes them as much filial duty and obedience as the meanest of his subjects do to theirs, and can therefore contain not any part or degree of that kind of dominion which a prince or magistrate has over his subject.

72. Though the obligation on the parents to bring up their children, and the obligation on children to honour their parents, contain all the power, on the one hand, and submission on the other, which are proper to this relation, yet there is another power ordinarily in the father, whereby he has a tie on the obedience of his children, which, though it be common to him with other men, yet the occasions of showing it, almost constantly happening to fathers in their private families and in instances of it elsewhere being rare, and less taken notice of, it passes in the world for a part of "paternal jurisdiction." And this is the power men generally have to bestow their estates on those who please them best. The possession of the father being the expectation and inheritance of the children ordinarily, in certain proportions, according to the law and custom of each country, yet it is commonly in the father's power to bestow it with a more sparing or liberal hand, according as the behaviour of this or that child hath comported with his will and humour.

73. This is no small tie to the obedience of children; and there being always annexed to the enjoyment of land a submission to the government of the country of which that land is a part, it has been commonly supposed that a father could oblige his posterity to that government of which he himself was a subject, that his compact held them; whereas, it being only a necessary condition annexed to the land which is under that government, reaches only those who will take it on that condition, and so is no natural tie or engagement, but a voluntary submission; for every man's children being, by Nature, as free as himself or any of his ancestors ever were, may, whilst they are in that freedom, choose what society they will join themselves to, what commonwealth they will put themselves under. But if they will enjoy the inheritance of their ancestors, they must take it on the same terms their ancestors had it, and

submit to all the conditions annexed to such a possession. By this power, indeed, fathers oblige their children to obedience to themselves even when they are past minority, and most commonly, too, subject them to this or that political power. But neither of these by any peculiar right of fatherhood, but by the reward they have in their hands to enforce and recompense such a compliance, and is no more power than what a Frenchman has over an Englishman, who, by the hopes of an estate he will leave him, will certainly have a strong tie on his obedience; and if when it is left him, he will enjoy it, he must certainly take it upon the conditions annexed to the possession of land in that country where it lies, whether it be France or England.

74. To conclude, then, though the father's power of commanding extends no farther than the minority of his children, and to a degree only fit for the discipline and government of that age; and though that honour and respect, and all that which the Latins called piety, which they indispensably owe to their parents all their lifetime, and in all estates, with all that support and defence, is due to them, gives the father no power of governing -- i.e., making laws and exacting penalties on his children; though by this he has no dominion over the property or actions of his son, yet it is obvious to conceive how easy it was, in the first ages of the world, and in places still where the thinness of people gives families leave to separate into unpossessed quarters, and they have room to remove and plant themselves in yet vacant habitations, for the father of the family to become the prince of it;3 he had been a ruler from the beginning of the infancy of his children; and when they were grown up, since without some government it would be hard for them to live together, it was likeliest it should, by the express or tacit consent of the children, be in the father, where it seemed, without any change, barely to continue. And when, indeed, nothing more was required to it than the permitting the father to exercise alone in his family that executive power of the law of Nature which every free man naturally hath, and by that permission resigning up to him a monarchical power whilst they remained in it. But that this was not by any paternal right, but only by the consent of his children, is evident from hence, that nobody doubts but if a stranger, whom chance or business had brought to his family, had there killed any of his children, or committed any other act, he might condemn and put him to death, or otherwise have punished him as well as any of his children. which was impossible he should do by virtue of any paternal authority over one who was not his child, but by virtue of that executive power of the law of Nature which, as a man, he had a right to; and he alone could punish him in his family where the respect of his children had laid by the exercise of such a power, to give way to the dignity and authority they were willing should remain in him above the rest of his family.

75. Thus it was easy and almost natural for children, by a tacit and almost natural consent, to make way for the father's authority and government. They had been accustomed in their childhood to follow his direction, and to refer their little differences to him; and when they were men, who was fitter to rule them? Their little properties and less covetousness seldom afforded greater controversies; and when any should arise, where could they have a fitter umpire than he, by whose care they had every one been sustained and brought up. and who had a tenderness for them all? It is no wonder that they made no distinction betwixt minority and full age, nor looked after one-and-twenty, or any other age, that might make them the free disposers of themselves and fortunes, when they could have no desire to be out of their pupilage. The government they had been under during it continued still to be more their protection than restraint; and they could nowhere find a greater security to their peace, liberties, and fortunes than in the rule of a father.

76. Thus the natural fathers of families, by an insensible change, became the politic monarchs of them too; and as they chanced to live long, and leave able and worthy heirs for several successions or otherwise, so they laid the foundations of hereditary or elective kingdoms under several constitutions and manors, according as chance, contrivance, or occasions happened to mould them. But if princes have their titles in the father's right, and it be a sufficient proof of the natural right of fathers to political authority, because they commonly were those in whose hands we find, de facto, the exercise of government, I say, if this argument be good, it will as strongly prove that all princes, nay, princes only, ought to be priests, since it is as certain that in the beginning "the father of the family was priest, as that he was ruler in his own household."

Chapter 7: Of Political or Civil Society

77. GOD, having made man such a creature that, in His own judgment, it was not good for him to be alone, put him under strong obligations of necessity, convenience, and inclination, to drive him into society, as well as fitted him with understanding and language to continue and enjoy it. The first society was between man and wife, which gave beginning to that between parents and children, to which, in time, that between master and servant came to be added. And though all these might, and commonly did, meet together, and make up but one family, wherein the master or mistress of it had some sort of rule proper to a family, each of these, or all together, came short of "political society," as we shall see if we consider the different ends, ties, and bounds of each of these.

78. Conjugal society is made by a voluntary compact between man and woman, and though it consist chiefly in such a communion and right in one another's bodies as is necessary to its chief end, procreation, yet it draws with it mutual support and assistance, and a communion of interests too, as necessary not only to unite their care and affection, but also necessary to their common offspring, who have a right to be nourished and maintained by them till they are able to provide for themselves.

79. For the end of conjunction between male and female being not barely procreation, but the continuation of the species, this conjunction betwixt male and female ought to last, even after procreation, so long as is necessary to the nourishment and support of the young ones, who are to be sustained by those that got them till they are able to shift and provide for themselves. This rule, which the infinite wise Maker hath set to the works of His hands, we find the inferior creatures steadily obey. In those vivaporous animals which feed on grass the conjunction between male and female lasts no longer than the very act of copulation, because the teat of the dam being sufficient to nourish the young till it be able to feed on grass. the male only begets, but concerns not himself for the female or young, to whose sustenance he can contribute nothing. But in beasts of prey the conjunction lasts longer because the dam, not being able well to subsist herself and nourish her numerous offspring by her own prey alone (a more laborious as well as more dangerous way of living than by feeding on grass), the assistance of the male is necessary to the maintenance of their common family, which cannot subsist till they are able to prey for themselves, but by the joint care of male and female. The same is observed in all birds (except some domestic ones, where plenty of food excuses the cock from feeding and taking care of the young brood), whose young, needing food in the nest, the cock and hen continue mates till the young are able to use their wings and provide for

themselves.

80. And herein, I think, lies the chief, if not the only reason, why the male and female in mankind are tied to a longer conjunction than other creatures -- viz., because the female is capable of conceiving, and, de facto, is commonly with child again, and brings forth too a new birth, long before the former is out of a dependency for support on his parents' help and able to shift for himself and has all the assistance due to him from his parents, whereby the father, who is bound to take care for those he hath begot, is under an obligation to continue in conjugal society with the same woman longer than other creatures, whose young, being able to subsist of themselves before the time of procreation returns again, the conjugal bond dissolves of itself, and they are at liberty till Hymen, at his usual anniversary season, summons them again to choose new mates. Wherein one cannot but admire the wisdom of the great Creator, who, having given to man an ability to lay up for the future as well as supply the present necessity, hath made it necessary that society of man and wife should be more lasting than of male and female amongst other creatures, that so their industry might be encouraged, and their interest better united, to make provision and lay up goods for their common issue, which uncertain mixture, or easy and frequent solutions of conjugal society, would mightily disturb.

81. But though these are ties upon mankind which make the conjugal bonds more firm and lasting in a man than the other species of animals, yet it would give one reason to inquire why this compact, where procreation and education are secured and inheritance taken care for, may not be made determinable, either by consent, or at a certain time, or upon certain conditions, as well as any other voluntary compacts, there being no necessity, in the nature of the thing, nor to the ends of it, that it should always be for life -- I mean, to such as are under no restraint of any positive law which ordains all such contracts to be perpetual.

82. But the husband and wife, though they have but one common concern, yet having different understandings, will unavoidably sometimes have different wills too. It therefore being necessary that the last determination (i.e., the rule) should be placed somewhere, it naturally falls to the man's share as the abler and the stronger. But this, reaching but to the things of their common interest and property, leaves the wife in the full and true possession of what by contract is her peculiar right, and at least gives the husband no more power over her than she has over his life; the power of the husband being so far from that of an absolute monarch that the wife has, in many cases, a liberty to separate from him where natural right or their contract allows it, whether that contract be made by themselves in the state of Nature or by the customs or laws of the country they live in, and the children, upon such separation, fall to the father or mother's lot as such contract does determine.

83. For all the ends of marriage being to be obtained under politic government, as well as in the state of Nature, the civil magistrate doth not abridge the right or power of either, naturally necessary to those ends -- viz., procreation and mutual support and assistance whilst they are together, but only decides any controversy that may arise between man and wife about them. If it were otherwise, and that absolute sovereignty and power of life and death naturally belonged to the husband, and were necessary to the society between man and wife, there could be no matrimony in any of these countries where the husband is allowed no such absolute authority. But the ends of matrimony requiring no such power in the husband, it was not at all necessary to it. The condition of conjugal society put it not in him; but whatsoever might consist with

procreation and support of the children till they could shift for themselves -- mutual assistance, comfort, and maintenance -- might be varied and regulated by that contract which first united them in that society, nothing being necessary to any society that is not necessary to the ends for which it is made.

84. The society betwixt parents and children, and the distinct rights and powers belonging respectively to them, I have treated of so largely in the foregoing chapter that I shall not here need to say anything of it; and I think it is plain that it is far different from a politic society.

85. Master and servant are names as old as history, but given to those of far different condition; for a free man makes himself a servant to another by selling him for a certain time the service he undertakes to do in exchange for wages he is to receive; and though this commonly puts him into the family of his master, and under the ordinary discipline thereof, yet it gives the master but a temporary power over him, and no greater than what is contained in the contract between them. But there is another sort of servant which by a peculiar name we call slaves, who being captives taken in a just war are, by the right of Nature, subjected to the absolute dominion and arbitrary power of their masters. These men having, as I say, forfeited their lives and, with it, their liberties, and lost their estates, and being in the state of slavery, not capable of any property, cannot in that state be considered as any part of civil society, the chief end whereof is the preservation of property.

86. Let us therefore consider a master of a family with all these subordinate relations of wife, children, servants and slaves, united under the domestic rule of a family, with what resemblance soever it may have in its order, offices, and number too, with a little commonwealth, yet is very far from it both in its constitution, power, and end; or if it must be thought a monarchy, and the paterfamilias the absolute monarch in it, absolute monarchy will have but a very shattered and short power, when it is plain by what has been said before, that the master of the family has a very distinct and differently limited power both as to time and extent over those several persons that are in it; for excepting the slave (and the family is as much a family, and his power as paterfamilias as great, whether there be any slaves in his family or no) he has no legislative power of life and death over any of them, and none too but what a mistress of a family may have as well as he. And he certainly can have no absolute power over the whole family who has but a very limited one over every individual in it. But how a family, or any other society of men, differ from that which is properly political society, we shall best see by considering wherein political society itself consists.

87. Man being born, as has been proved, with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of Nature, equally with any other man, or number of men in the world, hath by nature a power not only to preserve his property -- that is, his life, liberty, and estate, against the injuries and attempts of other men, but to judge of and punish the breaches of that law in others, as he is persuaded the offence deserves, even with death itself, in crimes where the heinousness of the fact, in his opinion, requires it. But because no political society can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto punish the offences of all those of that society, there, and there only, is political society where every one of the members hath quitted this natural power, resigned it up into the hands of the community in all cases that exclude him not from appealing for protection to the law established by it. And thus all private judgment of every particular member being excluded, the community comes to be umpire, and by understanding indifferent

rules and men authorised by the community for their execution, decides all the differences that may happen between any members of that society concerning any matter of right, and punishes those offences which any member hath committed against the society with such penalties as the law has established; whereby it is easy to discern who are, and are not, in political society together. Those who are united into one body, and have a common established law and judicature to appeal to, with authority to decide controversies between them and punish offenders, are in civil society one with another; but those who have no such common appeal, I mean on earth, are still in the state of Nature, each being where there is no other, judge for himself and executioner; which is, as I have before showed it, the perfect state of Nature.

88. And thus the commonwealth comes by a power to set down what punishment shall belong to the several transgressions they think worthy of it, committed amongst the members of that society (which is the power of making laws), as well as it has the power to punish any injury done unto any of its members by any one that is not of it (which is the power of war and peace); and all this for the preservation of the property of all the members of that society, as far as is possible. But though every man entered into society has quitted his power to punish offences against the law of Nature in prosecution of his own private judgment, yet with the judgment of offences which he has given up to the legislative, in all cases where he can appeal to the magistrate, he has given up a right to the commonwealth to employ his force for the execution of the judgments of the commonwealth whenever he shall be called to it, which, indeed, are his own judgements, they being made by himself or his representative. And herein we have the original of the legislative and executive power of civil society, which is to judge by standing laws how far offences are to be punished when committed within the commonwealth; and also by occasional judgments founded on the present circumstances of the fact, how far injuries from without are to be vindicated, and in both these to employ all the force of all the members when there shall be need.

89. Wherever, therefore, any number of men so unite into one society as to quit every one his executive power of the law of Nature, and to resign it to the public, there and there only is a political or civil society. And this is done wherever any number of men, in the state of Nature, enter into society to make one people one body politic under one supreme government: or else when any one joins himself to, and incorporates with any government already made. For hereby he authorises the society, or which is all one, the legislative thereof, to make laws for him as the public good of the society shall require, to the execution whereof his own assistance (as to his own decrees) is due. And this puts men out of a state of Nature into that of a commonwealth, by setting up a judge on earth with authority to determine all the controversies and redress the injuries that may happen to any member of the commonwealth, which judge is the legislative or magistrates appointed by it. And wherever there are any number of men, however associated, that have no such decisive power to appeal to, there they are still in the state of Nature.

90. And hence it is evident that absolute monarchy, which by some men is counted for the only government in the world, is indeed inconsistent with civil society, and so can be not form of civil government at all. For the end of civil society being to avoid and remedy those inconveniences of the state of Nature which necessarily follow from every man's being judge in his own case, by setting up a known authority to which every one of that society may appeal upon any injury received, or controversy that may arise, and which every one of the society ought to obey.4

Wherever any persons are who have not such an authority to appeal to, and decide any difference between them there, those persons are still in the state of Nature. And so is every absolute prince in respect of those who are under his dominion.

91. For he being supposed to have all, both legislative and executive, power in himself alone, there is no judge to be found, no appeal lies open to any one, who may fairly and indifferently, and with authority decide, and from whence relief and redress may be expected of any injury or inconveniency that may be suffered from him, or by his order. So that such a man, however entitled, Czar, or Grand Signior, or how you please, is as much in the state of Nature, with all under his dominion, as he is with the rest of mankind. For wherever any two men are, who have no standing rule and common judge to appeal to on earth, for the determination of controversies of right betwixt them, there they are still in the state of Nature, and under all the inconveniencies of it, with only this woeful difference to the subject, or rather slave of an absolute prince.5 That whereas, in the ordinary state of Nature, he has a liberty to judge of his right, according to the best of his power to maintain it; but whenever his property is invaded by the will and order of his monarch, he has not only no appeal, as those in society ought to have, but, as if he were degraded from the common state of rational creatures, is denied a liberty to judge of, or defend his right, and so is exposed to all the misery and inconveniencies that a man can fear from one, who being in the unrestrained state of Nature, is yet corrupted with flattery and armed with power.

92. For he that thinks absolute power purifies men's blood, and corrects the baseness of human nature, need read but the history of this, or any other age, to be convinced to the contrary. He that would have been insolent and injurious in the woods of America would not probably be much better on a throne, where perhaps learning and religion shall be found out to justify all that he shall do to his subjects, and the sword presently silence all those that dare question it. For what the protection of absolute monarchy is, what kind of fathers of their countries it makes princes to be, and to what a degree of happiness and security it carries civil society, where this sort of government is grown to perfection, he that will look into the late relation of Ceylon may easily see.

93. In absolute monarchies, indeed, as well as other governments of the world, the subjects have an appeal to the law, and judges to decide any controversies, and restrain any violence that may happen betwixt the subjects themselves, one amongst another. This every one thinks necessary, and believes; he deserves to be thought a declared enemy to society and mankind who should go about to take it away. But whether this be from a true love of mankind and society, and such a charity as we owe all one to another, there is reason to doubt. For this is no more than what every man, who loves his own power, profit, or greatness, may, and naturally must do, keep those animals from hurting or destroying one another who labour and drudge only for his pleasure and advantage; and so are taken care of, not out of any love the master has for them, but love of himself, and the profit they bring him. For if it be asked what security, what fence is there in such a state against the violence and oppression of this absolute ruler, the very question can scarce be borne. They are ready to tell you that it deserves death only to ask after safety. Betwixt subject and subject, they will grant, there must be measures, laws, and judges for their mutual peace and security. But as for the ruler, he ought to be absolute, and is above all such circumstances; because he has a power to do more hurt and wrong, it is right when he does it. To ask how you may be guarded from or injury on that side, where the strongest hand is to do it, is presently the voice of faction and rebellion. As if when men,

quitting the state of Nature, entered into society, they agreed that all of them but one should be under the restraint of laws; but that he should still retain all the liberty of the state of Nature, increased with power, and made licentious by impunity. This is to think that men are so foolish that they take care to avoid what mischiefs may be done them by polecats or foxes, but are content, nay, think it safety, to be devoured by lions.

94. But, whatever flatterers may talk to amuse people's understandings, it never hinders men from feeling; and when they perceive that any man, in what station soever, is out of the bounds of the civil society they are of, and that they have no appeal, on earth, against any harm they may receive from him, they are apt to think themselves in the state of Nature, in respect of him whom they find to be so; and to take care, as soon as they can, to have that safety and security, in civil society, for which it was first instituted, and for which only they entered into it. And therefore, though perhaps at first, as shall be showed more at large hereafter, in the following part of this discourse, some one good and excellent man having got a pre-eminency amongst the rest, had this deference paid to his goodness and virtue, as to a kind of natural authority, that the chief rule, with arbitration of their differences, by a tacit consent devolved into his hands, without any other caution but the assurance they had of his uprightness and wisdom; yet when time giving authority, and, as some men would persuade us, sacredness to customs, which the negligent and unforeseeing innocence of the first ages began, had brought in successors of another stamp, the people finding their properties not secure under the government as then it was6 (whereas government has no other end but the preservation of property), could never be safe, nor at rest, nor think themselves in civil society, till the legislative was so placed in collective bodies of men, call them senate, parliament, or what you please, by which means every single person became subject equally with other the meanest men, to those laws, which he himself, as part of the legislative, had established; nor could any one, by his own authority, avoid the force of the law, when once made, nor by any pretence of superiority plead exemption, thereby to license his own, or the miscarriages of any of his dependants. No man in civil society can be exempted from the laws of it. For if any man may do what he thinks fit and there be no appeal on earth for redress or security against any harm he shall do, I ask whether he be not perfectly still in the state of Nature, and so can be no part or member of that civil society, unless any one will say the state of Nature and civil society are one and the same thing, which I have never yet found any one so great a patron of anarchy as to affirm.7

Chapter 8: Of the Beginning of Political Societies

95. MEN being, as has been said, by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent, which is done by agreeing with other men, to join and unite into a community for their comfortable, safe, and peaceable living, one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left, as they were, in the liberty of the state of Nature. When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest.

96. For, when any number of men have, by the consent of every individual, made a community,

they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority. For that which acts any community, being only the consent of the individuals of it, and it being one body, must move one way, it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority, or else it is impossible it should act or continue one body, one community, which the consent of every individual that united into it agreed that it should; and so every one is bound by that consent to be concluded by the majority. And therefore we see that in assemblies empowered to act by positive laws where no number is set by that positive law which empowers them, the act of the majority passes for the act of the whole, and of course determines as having, by the law of Nature and reason, the power of the whole.

97. And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation to every one of that society to submit to the determination of the majority, and to be concluded by it; or else this original compact, whereby he with others incorporates into one society, would signify nothing, and be no compact if he be left free and under no other ties than he was in before in the state of Nature. For what appearance would there be of any compact? What new engagement if he were no farther tied by any decrees of the society than he himself thought fit and did actually consent to? This would be still as great a liberty as he himself had before his compact, or any one else in the state of Nature, who may submit himself and consent to any acts of it if he thinks fit.

98. For if the consent of the majority shall not in reason be received as the act of the whole, and conclude every individual, nothing but the consent of every individual can make anything to be the act of the whole, which, considering the infirmities of health and avocations of business, which in a number though much less than that of a commonwealth, will necessarily keep many away from the public assembly; and the variety of opinions and contrariety of interests which unavoidably happen in all collections of men, it is next impossible ever to be had. And, therefore, if coming into society be upon such terms, it will be only like Cato's coming into the theatre, tantum ut exiret. Such a constitution as this would make the mighty leviathan of a shorter duration than the feeblest creatures, and not let it outlast the day it was born in, which cannot be supposed till we can think that rational creatures should desire and constitute societies only to be dissolved. For where the majority cannot conclude the rest, there they cannot act as one body, and consequently will be immediately dissolved again.

99. Whosoever, therefore, out of a state of Nature unite into a community, must be understood to give up all the power necessary to the ends for which they unite into society to the majority of the community, unless they expressly agreed in any number greater than the majority. And this is done by barely agreeing to unite into one political society, which is all the compact that is, or needs be, between the individuals that enter into or make up a commonwealth. And thus, that which begins and actually constitutes any political society is nothing but the consent of any number of freemen capable of majority, to unite and incorporate into such a society. And this is that, and that only, which did or could give beginning to any lawful government in the world.

100. To this I find two objections made: 1. That there are no instances to be found in story of a company of men, independent and equal one amongst another, that met together, and in this way began and set up a government. 2. It is impossible of right that men should do so, because all men, being born under government, they are to submit to that, and are not at liberty to begin a new one.

101. To the first there is this to answer: That it is not at all to be wondered that history gives us but a very little account of men that lived together in the state of Nature. The inconveniencies of that condition, and the love and want of society, no sooner brought any number of them together, but they presently united and in corporated if they designed to continue together. And if we may not suppose men ever to have been in the state of Nature, because we hear not much of them in such a state, we may as well suppose the armies of Salmanasser or Xerxes were never children, because we hear little of them till they were men and embodied in armies. Government is everywhere antecedent to records, and letters seldom come in amongst a people till a long continuation of civil society has, by other more necessary arts, provided for their safety, ease, and plenty. And then they begin to look after the history of their founders, and search into their original when they have outlived the memory of it. For it is with commonwealths as with particular persons, they are commonly ignorant of their own births and infancies; and if they know anything of it, they are beholding for it to the accidental records that others have kept of it. And those that we have of the beginning of any polities in the world, excepting that of the Jews, where God Himself immediately interposed, and which favours not at all paternal dominion, are all either plain instances of such a beginning as I have mentioned, or at least have manifest footsteps of it.

102. He must show a strange inclination to deny evident matter of fact, when it agrees not with his hypothesis, who will not allow that the beginning of Rome and Venice were by the uniting together of several men, free and independent one of another, amongst whom there was no natural superiority or subjection. And if Josephus Acosta's word may be taken, he tells us that in many parts of America there was no government at all. "There are great and apparent conjectures," says he, "that these men [speaking of those of Peru] for a long time had neither kings nor commonwealths, but lived in troops, as they do this day in Florida -- the Cheriquanas, those of Brazil, and many other nations, which have no certain kings, but, as occasion is offered in peace or war, they choose their captains as they please" (lib. i. cap. 25). If it be said, that every man there was born subject to his father, or the head of his family. that the subjection due from a child to a father took away not his freedom of uniting into what political society he thought fit, has been already proved; but be that as it will, these men, it is evident, were actually free; and whatever superiority some politicians now would place in any of them, they themselves claimed it not; but, by consent, were all equal, till, by the same consent, they set rulers over themselves. So that their politic societies all began from a voluntary union, and the mutual agreement of men freely acting in the choice of their governors and forms of government.

103. And I hope those who went away from Sparta, with Palantus, mentioned by Justin, will be allowed to have been freemen independent one of another, and to have set up a government over themselves by their own consent. Thus I have given several examples out of history of people, free and in the state of Nature, that, being met together, incorporated and began a commonwealth. And if the want of such instances be an argument to prove that government were not nor could not be so begun, I suppose the contenders for paternal empire were better let it alone than urge it against natural liberty; for if they can give so many instances out of history of governments begun upon paternal right, I think (though at least an argument from what has been to what should of right be of no great force) one might, without any great danger, yield them the cause. But if I might advise them in the case, they would do well not to search too much into the original of governments as they have begun de facto, lest they should

find at the foundation of most of them something very little favourable to the design they promote, and such a power as they contend for.

104. But, to conclude: reason being plain on our side that men are naturally free; and the examples of history showing that the governments of the world, that were begun in peace, had their beginning laid on that foundation, and were made by the consent of the people; there can be little room for doubt, either where the right is, or what has been the opinion or practice of mankind about the first erecting of governments.

105. I will not deny that if we look back, as far as history will direct us, towards the original of commonwealths, we shall generally find them under the government and administration of one man. And I am also apt to believe that where a family was numerous enough to subsist by itself, and continued entire together, without mixing with others, as it often happens, where there is much land and few people, the government commonly began in the father. For the father having, by the law of Nature, the same power, with every man else, to punish, as he thought fit, any offences against that law, might thereby punish his transgressing children, even when they were men, and out of their pupilage; and they were very likely to submit to his punishment, and all join with him against the offender in their turns, giving him thereby power to execute his sentence against any transgression, and so, in effect, make him the law-maker and governor over all that remained in conjunction with his family. He was fittest to be trusted; paternal affection secured their property and interest under his care, and the custom of obeying him in their childhood made it easier to submit to him rather than any other. If, therefore, they must have one to rule them, as government is hardly to be avoided amongst men that live together, who so likely to be the man as he that was their common father, unless negligence, cruelty, or any other defect of mind or body, made him unfit for it? But when either the father died. and left his next heir -- for want of age, wisdom, courage, or any other qualities -- less fit for rule, or where several families met and consented to continue together, there, it is not to be doubted, but they used their natural freedom to set up him whom they judged the ablest and most likely to rule well over them. Conformable hereunto we find the people of America, who -- living out of the reach of the conquering swords and spreading domination of the two great empires of Peru and Mexico -- enjoyed their own natural freedom, though, caeteris paribus, they commonly prefer the heir of their deceased king; yet, if they find him any way weak or incapable, they pass him by, and set up the stoutest and bravest man for their ruler.

106. Thus, though looking back as far as records give us any account of peopling the world, and the history of nations, we commonly find the government to be in one hand, yet it destroys not that which I affirm -- viz., that the beginning of politic society depends upon the consent of the individuals to join into and make one society, who, when they are thus incorporated, might set up what form of government they thought fit. But this having given occasion to men to mistake and think that, by Nature, government was monarchical, and belonged to the father, it may not be amiss here to consider why people, in the beginning, generally pitched upon this form, which, though perhaps the father's pre-eminency might, in the first institution of some commonwealths, give a rise to and place in the beginning the power in one hand, yet it is plain that the reason that continued the form of government in a single person was not any regard or respect to paternal authority, since all petty monarchies -- that is, almost all monarchies, near their original, have been commonly, at least upon occasion, elective.

107. First, then, in the beginning of things, the father's government of the childhood of those sprung from him having accustomed them to the rule of one man, and taught them that where it was exercised with care and skill, with affection and love to those under it, it was sufficient to procure and preserve men (all the political happiness they sought for in society), it was no wonder that they should pitch upon and naturally run into that form of government which, from their infancy, they had been all accustomed to, and which, by experience, they had found both easy and safe. To which if we add, that monarchy being simple and most obvious to men, whom neither experience had instructed in forms of government, nor the ambition or insolence of empire had taught to beware of the encroachments of prerogative or the inconveniencies of absolute power, which monarchy, in succession, was apt to lay claim to and bring upon them; it was not at all strange that they should not much trouble themselves to think of methods of restraining any exorbitances of those to whom they had given the authority over them, and of balancing the power of government by placing several parts of it in different hands. They had neither felt the oppression of tyrannical dominion, nor did the fashion of the age, nor their possessions or way of living, which afforded little matter for covetousness or ambition, give them any reason to apprehend or provide against it; and, therefore, it is no wonder they put themselves into such a frame of government as was not only, as I said, most obvious and simple, but also best suited to their present state and condition, which stood more in need of defence against foreign invasions and injuries than of multiplicity of laws where there was but very little property, and wanted not variety of rulers and abundance of officers to direct and look after their execution where there were but few trespassers and few offenders. Since, then, those who liked one another so well as to join into society cannot but be supposed to have some acquaintance and friendship together, and some trust one in another, they could not but have greater apprehensions of others than of one another; and, therefore, their first care and thought cannot but be supposed to be, how to secure themselves against foreign force. It was natural for them to put themselves under a frame of government which might best serve to that end, and choose the wisest and bravest man to conduct them in their wars and lead them out against their enemies, and in this chiefly be their ruler.

108. Thus we see that the kings of the Indians, in America, which is still a pattern of the first ages in Asia and Europe, whilst the inhabitants were too few for the country, and want of people and money gave men no temptation to enlarge their possessions of land or contest for wider extent of ground, are little more than generals of their armies; and though they command absolutely in war, yet at home, and in time of peace, they exercise very little dominion, and have but a very moderate sovereignty, the resolutions of peace and war being ordinarily either in the people or in a council, though the war itself, which admits not of pluralities of governors, naturally evolves the command into the king's sole authority.

109. And thus, in Israel itself, the chief business of their judges and first kings seems to have been to be captains in war and leaders of their armies, which (besides what is signified by "going out and in before the people," which was, to march forth to war and home again at the heads of their forces) appears plainly in the story of Jephtha. The Ammonites making war upon Israel, the Gileadites, in fear, send to Jephtha, a bastard of their family, whom they had cast off, and article with him, if he will assist them against the Ammonites, to make him their ruler, which they do in these words: "And the people made him head and captain over them" (Judges 11. 11), which was, as it seems, all one as to be judge. "And he judged Israel" (Judges 12. 7) -- that is, was their captain-general -- "six years." So when Jotham upbraids the Shechemites with the obligation they had to Gideon, who had been their judge and ruler, he tells them: "He

fought for you, and adventured his life for, and delivered you out of the hands of Midian" (Judges 9. 17). Nothing mentioned of him but what he did as a general, and, indeed, that is all is found in his history, or in any of the rest of the judges. And Abimelech particularly is called king, though at most he was but their general. And when, being weary of the ill-conduct of Samuel's sons, the children of Israel desired a king, "like all the nations, to judge them, and to go out before them, and to fight their battles" (1 Sam. 8. 20), God, granting their desire, says to Samuel, "I will send thee a man, and thou shalt anoint him to be captain over my people Israel, that he may save my people out of the hands of the Philistines" (ch. 9. 16). As if the only business of a king had been to lead out their armies and fight in their defence; and, accordingly, at his inauguration, pouring a vial of oil upon him, declares to Saul that "the Lord had anointed him to be captain over his inheritance" (ch. 10. 1). And therefore those who, after Saul being solemnly chosen and saluted king by the tribes at Mispah, were unwilling to have him their king, make no other objection but this, "How shall this man save us?" (ch. 10. 27), as if they should have said: "This man is unfit to be our king, not having skill and conduct enough in war to be able to defend us." And when God resolved to transfer the government to David, it is in these words: "But now thy kingdom shall not continue: the Lord hath sought Him a man after His own heart, and the Lord hath commanded him to be captain over His people" (ch. 13. 14.). As if the whole kingly authority were nothing else but to be their general; and therefore the tribes who had stuck to Saul's family, and opposed David's reign, when they came to Hebron with terms of submission to him, they tell him, amongst other arguments, they had to submit to him as to their king, that he was, in effect, their king in Saul's time, and therefore they had no reason but to receive him as their king now. "Also," say they, "in time past, when Saul was king over us, thou wast he that leddest out and broughtest in Israel, and the Lord said unto thee, Thou shalt feed my people Israel, and thou shalt be a captain over Israel."

110. Thus, whether a family, by degrees, grew up into a commonwealth, and the fatherly authority being continued on to the elder son, every one in his turn growing up under it tacitly submitted to it, and the easiness and equality of it not offending any one, every one acquiesced till time seemed to have confirmed it and settled a right of succession by prescription; or whether several families, or the descendants of several families, whom chance, neighbourhood, or business brought together, united into society; the need of a general whose conduct might defend them against their enemies in war, and the great confidence the innocence and sincerity of that poor but virtuous age, such as are almost all those which begin governments that ever come to last in the world, gave men one of another, made the first beginners of commonwealths generally put the rule into one man's hand, without any other express limitation or restraint but what the nature of the thing and the end of government required. It was given them for the public good and safety, and to those ends, in the infancies of commonwealths, they commonly used it; and unless they had done so, young societies could not have subsisted. Without such nursing fathers, without this care of the governors, all governments would have sunk under the weakness and infirmities of their infancy, the prince and the people had soon perished together.

111. But the golden age (though before vain ambition, and amor sceleratus habendi, evil concupiscence had corrupted men's minds into a mistake of true power and honour) had more virtue, and consequently better governors, as well as less vicious subjects; and there was then no stretching prerogative on the one side to oppress the people, nor, consequently, on the other, any dispute about privilege, to lessen or restrain the power of the magistrate; and so no contest betwixt rulers and people about governors or government.8 Yet, when ambition and

luxury, in future ages, would retain and increase the power, without doing the business for which it was given, and aided by flattery, taught princes to have distinct and separate interests from their people, men found it necessary to examine more carefully the original and rights of government, and to find out ways to restrain the exorbitances and prevent the abuses of that power, which they having entrusted in another's hands, only for their own good, they found was made use of to hurt them.

112. Thus we may see how probable it is that people that were naturally free, and, by their own consent, either submitted to the government of their father, or united together, out of different families, to make a government, should generally put the rule into one man's hands, and choose to be under the conduct of a single person, without so much, as by express conditions, limiting or regulating his power, which they thought safe enough in his honesty and prudence; though they never dreamed of monarchy being jure Divino, which we never heard of among mankind till it was revealed to us by the divinity of this last age, nor ever allowed paternal power to have a right to dominion or to be the foundation of all government. And thus much may suffice to show that, as far as we have any light from history, we have reason to conclude that all peaceful beginnings of government have been laid in the consent of the people. I say "peaceful," because I shall have occasion, in another place, to speak of conquest, which some esteem a way of beginning of governments.

The other objection, I find, urged against the beginning of polities, in the way I have mentioned, is this, viz.:

113. "That all men being born under government, some or other, it is impossible any of them should ever be free and at liberty to unite together and begin a new one, or ever be able to erect a lawful government." If this argument be good, I ask, How came so many lawful monarchies into the world? For if anybody, upon this supposition, can show me any one man, in any age of the world, free to begin a lawful monarchy, I will be bound to show him ten other free men at liberty, at the same time, to unite and begin a new government under a regal or any other form. It being demonstration that if any one born under the dominion of another may be so free as to have a right to command others in a new and distinct empire, every one that is born under the dominion of another may be so free too, and may become a ruler or subject of a distinct separate government. And so, by this their own principle, either all men, however born, are free, or else there is but one lawful prince, one lawful government in the world; and then they have nothing to do but barely to show us which that is, which, when they have done, I doubt not but all mankind will easily agree to pay obedience to him.

114. Though it be a sufficient answer to their objection to show that it involves them in the same difficulties that it doth those they use it against, yet I shall endeavour to discover the weakness of this argument a little farther.

"All men," say they, "are born under government, and therefore they cannot be at liberty to begin a new one. Every one is born a subject to his father or his prince, and is therefore under the perpetual tie of subjection and allegiance." It is plain mankind never owned nor considered any such natural subjection that they were born in, to one or to the other, that tied them, without their own consents, to a subjection to them and their heirs.

115. For there are no examples so frequent in history, both sacred and profane, as those of

men withdrawing themselves and their obedience from the jurisdiction they were born under, and the family or community they were bred up in, and setting up new governments in other places, from whence sprang all that number of petty commonwealths in the beginning of ages, and which always multiplied as long as there was room enough, till the stronger or more fortunate swallowed the weaker; and those great ones, again breaking to pieces, dissolved into lesser dominions; all which are so many testimonies against paternal sovereignty, and plainly prove that it was not the natural right of the father descending to his heirs that made governments in the beginning; since it was impossible, upon that ground, there should have been so many little kingdoms but only one universal monarchy if men had not been at liberty to separate themselves from their families and their government, be it what it will that was set up in it, and go and make distinct commonwealths and other governments as they thought fit.

116. This has been the practice of the world from its first beginning to this day; nor is it now any more hindrance to the freedom of mankind, that they are born under constituted and ancient polities that have established laws and set forms of government, than if they were born in the woods amongst the unconfined inhabitants that run loose in them. For those who would persuade us that by being born under any government we are naturally subjects to it, and have no more any title or pretence to the freedom of the state of Nature, have no other reason (bating that of paternal power, which we have already answered) to produce for it, but only because our fathers or progenitors passed away their natural liberty, and thereby bound up themselves and their posterity to a perpetual subjection to the government which they themselves submitted to. It is true that whatever engagements or promises any one made for himself, he is under the obligation of them, but cannot by any compact whatsoever bind his children or posterity. For his son, when a man, being altogether as free as the father, any act of the father can no more give away the liberty of the son than it can of anybody else. He may, indeed, annex such conditions to the land he enjoyed, as a subject of any commonwealth, as may oblige his son to be of that community, if he will enjoy those possessions which were his father's, because that estate being his father's property, he may dispose or settle it as he pleases.

117. And this has generally given the occasion to the mistake in this matter; because commonwealths not permitting any part of their dominions to be dismembered, nor to be enjoyed by any but those of their community, the son cannot ordinarily enjoy the possessions of his father but under the same terms his father did, by becoming a member of the society, whereby he puts himself presently under the government he finds there established, as much as any other subject of that commonweal. And thus the consent of free men, born under government, which only makes them members of it, being given separately in their turns, as each comes to be of age, and not in a multitude together, people take no notice of it, and thinking it not done at all, or not necessary, conclude they are naturally subjects as they are men.

118. But it is plain governments themselves understand it otherwise; they claim no power over the son because of that they had over the father; nor look on children as being their subjects, by their fathers being so. **If a subject of England have a child by an Englishwoman in France, whose subject is he? Not the King of England's; for he must have leave to be admitted to the privileges of it. Nor the King of France's, for how then has his father a liberty to bring him away, and breed him as he pleases; and whoever was judged as a traitor or deserter, if he left, or warred against a country, for being barely born in it of**

parents that were aliens there? It is plain, then, by the practice of governments themselves, as well as by the law of right reason, that a child is born a subject of no country nor government. He is under his father's tuition and authority till he come to age of discretion, and then he is a free man, at liberty what government he will put himself under, what body politic he will unite himself to. For if an Englishman's son born in France be at liberty, and may do so, it is evident there is **no tie upon him** by his father being a subject of that kingdom, nor is he bound up by any compact of his ancestors; and why then hath not his son, by the same reason, **the same liberty**, though he be born anywhere else? Since the power that a father hath naturally over his children is the same wherever they be born, **and the ties of natural obligations are not bounded by the positive limits of kingdoms and commonwealths.**

119. Every man being, as has been showed, naturally free, and nothing being able to put him into subjection to any earthly power, but only his own consent, it is to be considered what shall be understood to be a sufficient declaration of a man's consent to make him subject to the laws of any government. There is a common distinction of an express and a tacit consent, which will concern our present case. Nobody doubts but an express consent of any man, entering into any society, makes him a perfect member of that society, a subject of that government. The difficulty is, what ought to be looked upon as a tacit consent, and how far it binds -- i.e., how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all. And to this I say, that every man that hath any possession or enjoyment of any part of the dominions of any government doth hereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it, whether this his possession be of land to him and his heirs for ever, or a lodging only for a week; or whether it be barely travelling freely on the highway; and, in effect, it reaches as far as the very being of any one within the territories of that government.

120. To understand this the better, it is fit to consider that every man when he at first incorporates himself into any commonwealth, he, by his uniting himself thereunto, annexes also, and submits to the community those possessions which he has, or shall acquire, that do not already belong to any other government. For it would be a direct contradiction for any one to enter into society with others for the securing and regulating of property, and yet to suppose his land, whose property is to be regulated by the laws of the society, should be exempt from the jurisdiction of that government to which he himself, and the property of the land, is a subject. By the same act, therefore, whereby any one unites his person, which was before free, to any commonwealth, by the same he unites his possessions, which were before free, to it also; and they become, both of them, person and possession, subject to the government and dominion of that commonwealth as long as it hath a being. Whoever therefore, from thenceforth, by inheritance, purchases permission, or otherwise enjoys any part of the land so annexed to, and under the government of that commonweal, must take it with the condition it is under -- that is, of submitting to the government of the commonwealth, under whose jurisdiction it is, as far forth as any subject of it.

121. But since the government has a direct jurisdiction only over the land and reaches the possessor of it (before he has actually incorporated himself in the society) only as he dwells upon and enjoys that, the obligation any one is under by virtue of such enjoyment to submit to the government begins and ends with the enjoyment; so that whenever the owner, who has

given nothing but such a tacit consent to the government will, by donation, sale or otherwise, quit the said possession, he is at liberty to go and incorporate himself into any other commonwealth, or agree with others to begin a new one in vacuis locis, in any part of the world they can find free and unpossessed; whereas he that has once, by actual agreement and any express declaration, given his consent to be of any commonweal, is perpetually and indispensably obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of Nature, unless by any calamity the government he was under comes to be dissolved.

122. But submitting to the laws of any country, living quietly and enjoying privileges and protection under them, makes not a man a member of that society; it is only a local protection and homage due to and from all those who, not being in a state of war, come within the territories belonging to any government, to all parts whereof the force of its law extends. But this no more makes a man a member of that society, a perpetual subject of that commonwealth, than it would make a man a subject to another in whose family he found it convenient to abide for some time, though, whilst he continued in it, he were obliged to comply with the laws and submit to the government he found there. And thus we see that foreigners, by living all their lives under another government, and enjoying the privileges and protection of it, though they are bound, even in conscience, to submit to its administration as far forth as any denizen, yet do not thereby come to be subjects or members of that commonwealth. Nothing can make any man so but his actually entering into it by positive engagement and express promise and compact. This is that which, I think, concerning the beginning of political societies, and that consent which makes any one a member of any commonwealth.

Chapter 9: Of the Ends of Political Society and Government

123. **"IF man in the state of Nature be so free as has been said, if he be absolute lord of his own person and possessions, equal to the greatest and subject to nobody, why will he part with his freedom, this empire, and subject himself to the dominion and control of any other power?**

To which it is obvious to answer, that though in the state of Nature he hath such a right, yet the enjoyment of it is very uncertain and constantly exposed to the invasion of others; for all being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure.

This makes him willing to quit this condition which, however free, is full of fears and continual dangers; and it is not without reason that he seeks out and is willing to join in society with others who are already united, or have a mind to unite for the mutual preservation of their lives, liberties and estates, which I call by the general name-property.

124. The great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the **preservation of their property;** to which in the state of Nature there are many things wanting.

Firstly, there wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them. For though the law of Nature be plain and intelligible to all rational creatures, yet men, being biased by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.

125. Secondly, in the state of Nature there wants a known and indifferent judge, with authority to determine all differences according to the established law. For every one in that state being both judge and executioner of the law of Nature, men being partial to themselves, passion and revenge is very apt to carry them too far, and with too much heat in their own cases, as well as negligence and unconcernedness, make them too remiss in other men's.

126. Thirdly, in the state of Nature there often wants power to back and support the sentence when right, and to give it due execution. They who by any injustice offended will seldom fail where they are able by force to make good their injustice. Such resistance many times makes the punishment dangerous, and frequently destructive to those who attempt it.

127. Thus mankind, notwithstanding all the privileges of the state of Nature, being but in an ill condition while they remain in it are quickly driven into society. Hence it comes to pass, that we seldom find any number of men live any time together in this state. The inconveniencies that they are therein exposed to by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others, make them take sanctuary under the established laws of government, and therein seek the preservation of their property. It is this that makes them so willingly give up every one his single power of punishing to be exercised by such alone as shall be appointed to it amongst them, and by such rules as the community, or those authorised by them to that purpose, shall agree on. And in this we have the original right and rise of both the legislative and executive power as well as of the governments and societies themselves.

128. For in the state of Nature to omit the liberty he has of innocent delights, a man has two powers. **The first is to do whatsoever he thinks fit for the preservation of himself and others within the permission of the law of Nature;** by which law, common to them all, he and all the rest of mankind are one community, make up one society distinct from all other creatures, and were it not for the corruption and viciousness of degenerate men, there would be no need of any other, no necessity that men should separate from this great and natural community, and associate into lesser combinations. **The other power a man has in the state of Nature is the power to punish the crimes committed against that law.** Both these he gives up when he joins in a private, if I may so call it, or particular political society, and incorporates into any commonwealth separate from the rest of mankind.

129. The first power- viz., of doing whatsoever he thought fit for the preservation of himself and the rest of mankind, he gives up to be regulated by laws made by the society, so far forth as the preservation of himself and the rest of that society shall require; which laws of the society in many things confine the liberty he had by the law of Nature.

130. Secondly, the power of punishing he wholly gives up, and engages his natural force, which he might before employ in the execution of the law of Nature, by his own single authority,

as he thought fit, to assist the executive power of the society as the law thereof shall require. For being now in a new state, wherein he is to enjoy many conveniencies from the labour, assistance, and society of others in the same community, as well as protection from its whole strength, he is to part also with as much of his natural liberty, in providing for himself, as the good, prosperity, and safety of the society shall require, which is not only necessary but just, since the other members of the society do the like.

131. But though men when they enter into society give up the equality, liberty, and executive power they had in the state of Nature into the hands of the society, to be so far disposed of by the legislative as the good of the society shall require, **yet it being only with an intention in every one the better to preserve himself, his liberty and property (for no rational creature can be supposed to change his condition with an intention to be worse)**, the power of the society **or legislative constituted by them can never be supposed to extend farther than the common good, but is obliged to secure every one's property by providing against those three defects above mentioned that made the state of Nature so unsafe and uneasy.** And so, **whoever** has the legislative or supreme power of **any commonwealth**, is bound to govern by established **standing laws, promulgated and known to the people, and not by extemporary decrees,** by indifferent and upright judges, who are to decide controversies by those laws; and to employ the force of the community at home only in the execution of such laws, or abroad to prevent or redress foreign injuries **and secure the community from inroads and invasion**. And all this to be directed to **no other end but the peace, safety, and public good of the people**.

Chapter 10: Of the Forms of a Commonwealth

132. THE majority having, as has been showed, upon men's first uniting into society, the whole power of the community naturally in them, may employ all that power in making laws for the community from time to time, and executing those laws by officers of their own appointing, and then the form of the government is a perfect democracy; or else may put the power of making laws into the hands of a few select men, and their heirs or successors, and then it is an oligarchy; or else into the hands of one man, and then it is a monarchy; if to him and his heirs, it is a hereditary monarchy; if to him only for life, but upon his death the power only of nominating a successor, to return to them, an elective monarchy. And so accordingly of these make compounded and mixed forms of government, as they think good. And if the legislative power be at first given by the majority to one or more persons only for their lives, or any limited time, and then the supreme power to revert to them again, when it is so reverted the community may dispose of it again anew into what hands they please, and so constitute a new form of government; for the form of government depending upon the placing the supreme power, which is the legislative, it being impossible to conceive that an inferior power should prescribe to a superior, or any but the supreme make laws, according as the power of making laws is placed, such is the form of the commonwealth.

133. By **"commonwealth"** I must be understood all along to mean **NOT a democracy**, or any form of government, **but ANY independent community** which the Latins signified by the word civitas, to which the word which best answers in our language is **"commonwealth,"** and most properly expresses such a society of men which "community" does not (for there may be subordinate communities in a government), **and "city" much less**. And therefore, to avoid

ambiguity, I crave leave to use the word "commonwealth" in that sense, in which sense I find the word used by King James himself, which I think to be **its genuine signification**, which, if anybody dislike, I consent with him to change it for a better.

Chapter 11: Of the Extent of the Legislative Power

134. THE great end of men's entering into society being the enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society, the first and fundamental positive law of all commonwealths is the establishing of the legislative power, as the first and fundamental natural law which is to govern even the legislative. Itself is the preservation of the society and (as far as will consist with the public good) of every person in it. This legislative is not only the supreme power of the commonwealth, but sacred and unalterable in the hands where the community have once placed it. Nor can any edict of anybody else, in what form soever conceived, or by what power soever backed, have the force and obligation of a law which has not its sanction from that legislative which the public has chosen and appointed; **for without this the law could not have that which is absolutely necessary to its being a law, the consent of the society, over whom nobody can have a power to make laws9 but by their own consent and by authority received from them; and therefore all the obedience, which by the most solemn ties any one can be obliged to pay, ultimately terminates in this supreme power, and is directed by those laws which it enacts.** Nor can any oaths to any foreign power whatsoever, or any domestic subordinate power, discharge any member of the society from his obedience to the legislative, acting **pursuant to their trust, nor oblige him to any obedience contrary to the laws so enacted or farther than they do allow**, it being ridiculous to imagine one can be tied ultimately to obey any power in the society which is not the supreme.

135. Though the legislative, whether placed in one or more, whether it be always in being or only by intervals, though it be the supreme power in every commonwealth, yet, first, it is not, nor can possibly be, absolutely arbitrary over the lives and fortunes of the people. For it being but the joint power of every member of the society given up to that person or assembly which is legislator, it can be no more than those persons had in a state of Nature before they entered into society, and gave it up to the community. For nobody can transfer to another more power than he has in himself, and nobody has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another. A man, as has been proved, **cannot subject himself to the arbitrary power of another;** and having, in the state of Nature, **no arbitrary power over the life, liberty, or possession of another,** but only so much as the law of Nature gave him for the preservation of himself and the rest of mankind, this is all he doth, or can give up to the commonwealth, and by it to the legislative power, so that the legislative can have no more than this. Their power in the utmost bounds of it is limited to the public good of the society.10 It is a power that hath no other end but preservation, and therefore can never have a right to destroy, enslave, or designedly to impoverish the subjects; the obligations of the law of Nature cease not in society, but only in many cases are drawn closer, and have, by human laws, known penalties annexed to them to enforce their observation. **Thus the law of Nature stands as an eternal rule to all men, legislators as well as others.** The rules that they make for, other men's actions must, as well as their own and other men's actions, **be conformable to the law of Nature -- i.e., to the will of God, of which that is a declaration, and the fundamental law of Nature being the preservation of mankind, no human sanction can be good or valid against it.**

136. Secondly, **the legislative or supreme authority cannot assume to itself a power to rule by extemporary arbitrary decrees, but is bound to dispense justice and decide the rights of the subject by promulgated standing laws**, 11 **(APP Note: See these exact words in the Rights of the Colonists)** and known authorised judges. For the law of Nature being unwritten, and so nowhere to be found but in the minds of men, they who, through passion or interest, shall miscite or misapply it, cannot so easily be convinced of their mistake where there is no established judge; and so it serves not as it aught, to determine the rights and fence the properties of those that live under it, especially where every one is judge, interpreter, and executioner of it too, and that in his own case; and he that has right on his side, having ordinarily but his own single strength, hath not force enough to defend himself from injuries or punish delinquents. To avoid these inconveniencies which disorder men's properties in the state of Nature, men unite into societies that they may have the united strength of the whole society to secure and defend their properties, and may have standing rules to bound it by which every one may know what is his. To this end it is that men give up all their natural power to the society they enter into, and the community put the legislative power into such hands as they think fit, with this trust, that they shall be governed by declared laws, or else their peace, quiet, and property will still be at the same uncertainty as it was in the state of Nature.

137. Absolute arbitrary power, or governing without settled standing laws, can neither of them consist with the ends of society and government, which men would not quit the freedom of the state of Nature for, and tie themselves up under, were it not to preserve their lives, liberties, and fortunes, and by stated rules of right and property to secure their peace and quiet. It cannot be supposed that they should intend, had they a power so to do, to give any one or more an absolute arbitrary power over their persons and estates, and put a force into the magistrate's hand to execute his unlimited will arbitrarily upon them; this were to put themselves into a worse condition than the state of Nature, wherein they had a liberty to defend their right against the injuries of others, and were upon equal terms of force to maintain it, whether invaded by a single man or many in combination. **Whereas by supposing they have given up themselves to the absolute arbitrary power and will of a legislator, they have disarmed themselves, and armed him to make a prey of them when he pleases; he being in a much worse condition that is exposed to the arbitrary power of one man who has the command of a hundred thousand than he that is exposed to the arbitrary power of a hundred thousand single men, nobody being secure, that his will who has such a command is better than that of other men, though his force be a hundred thousand times stronger.** And, therefore, whatever form the commonwealth is under, the ruling power ought to govern by declared and received laws, and not by extemporary dictates and undetermined resolutions, **for then mankind will be in a far worse condition than in the state of Nature if they shall have armed one or a few men with the joint power of a multitude, to force them to obey at pleasure the exorbitant and unlimited decrees of their sudden thoughts, or unrestrained, and till that moment, unknown wills, without having any measures set down which may guide and justify their actions.** For all the power the government has, being only for the good of the society, **as it ought not to be arbitrary and at pleasure**, so it ought to be exercised by **established and promulgated laws, that both the people may know their duty, and be safe and secure within the limits of the law**, **and the rulers, too, kept within their due bounds**, and not be tempted by the power they have in their hands to employ it to purposes, and by such measures as they would

not have known, and own not willingly.

138. Thirdly, the supreme power cannot take from any man any part of his property without his own consent. (APP Note: See these exact words in the Rights of the Colonists) For the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires that the people should have property, without which they must be supposed to lose that by entering into society which was the end for which they entered into it; too gross an absurdity for any man to own. Men, therefore, in society having property, they have such a right to the goods, which by the law of the community are theirs, that nobody hath a right to take them, or any part of them, from them without their own consent; without this they have no property at all. For I have truly no property in that which another can by right take from me when he pleases against my consent. Hence it is a mistake to think that the supreme or legislative power of any commonwealth can do what it will, and dispose of the estates of the subject arbitrarily, or take any part of them at pleasure. This is not much to be feared in governments where the legislative consists wholly or in part in assemblies which are variable, whose members upon the dissolution of the assembly are subjects under the common laws of their country, equally with the rest. But in governments where the legislative is in one lasting assembly, always in being, or in one man as in absolute monarchies, there is danger still, that they will think themselves to have a distinct interest from the rest of the community, and so will be apt to increase their own riches and power by taking what they think fit from the people. For a man's property is not at all secure, though there be good and equitable laws to set the bounds of it between him and his fellow-subjects, if he who commands those subjects have power to take from any private man what part he pleases of his property, and use and dispose of it as he thinks good.

139. But government, into whosesoever hands it is put, being as I have before shown, entrusted with this condition, and for this end, that men might have and secure their properties, the prince or senate, however it may have power to make laws for the regulating of property between the subjects one amongst another, **yet can never have a power to take to themselves the whole, or any part of the subjects' property, without their own consent; for this would be in effect to leave them no property at all**. And to let us see that even absolute power, where it is necessary, is not arbitrary by being absolute, but is still limited by that reason and confined to those ends which required it in some cases to be absolute, we need look no farther than the common practice of martial discipline. For the preservation of the army, and in it of the whole commonwealth, requires an absolute obedience to the command of every superior officer, and it is justly death to disobey or dispute the most dangerous or unreasonable of them; but yet we see that neither the sergeant that could command a soldier to march up to the mouth of a cannon, or stand in a breach where he is almost sure to perish, can command that soldier to give him one penny of his money; nor the general that can condemn him to death for deserting his post, or not obeying the most desperate orders, cannot yet with all his absolute power of life and death dispose of one farthing of that soldier's estate, or seize one jot of his goods; whom yet he can command anything, and hang for the least disobedience. Because such a blind obedience is necessary to that end for which the commander has his power -- viz., the preservation of the rest, but the disposing of his goods has nothing to do with it.

140. It is true governments cannot be supported without great charge, and it is fit every one

who enjoys his share of the protection should pay out of his estate his proportion for the maintenance of it. But still it must be with his own consent -- i.e., the consent of the majority, giving it either by themselves or their representatives chosen by them; **for if any one shall claim a power to lay and levy taxes on the people by his own authority, and without such "consent of the people", he thereby "invades the fundamental law of property", and "subverts the end of government". For what property have I in that which another may by right take when he pleases to himself?**

141. Fourthly. The legislative cannot transfer the power of making laws to any other hands, for it being but a delegated power from the people, they who have it cannot pass it over to others. (APP Note: The United Nations Has No Powers because the United States having limited delegated powers cannot arrogate new powers nor transfer powers, not existing or contrary to the peoples rights, of the United States, to others) The **people** alone can appoint the form of the commonwealth, which is by constituting the legislative, and appointing in whose hands that shall be. And when the people have said, "We will submit, and be governed by laws made by such men, and in such forms," **nobody else can say other men shall make laws for them; nor can they be bound by any laws but such as are enacted by those whom they have chosen and authorised to make laws for them.**

142. These are the "bounds" which the "trust" that is put in them by the society and the law of God and Nature have set to the legislative power of every commonwealth, in all forms of government.

First: They are to govern by promulgated established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favourite at Court, and the countryman at plough.

(APP Note: See these exact words in the Rights of the Colonists)

Secondly: These laws also ought to be designed for **no other end ultimately but the good of the people.**

Thirdly: They must not raise taxes on the property of the people without the consent of the people given by themselves or their deputies.

And this properly concerns only such governments where the legislative is always in being, or at least where the people have not reserved any part of the legislative to deputies, to be from time to time chosen by themselves.

Fourthly: Legislative neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have.

Chapter 12: The Legislative, Executive, and Federative Power of the Commonwealth

143. THE legislative power is that which has a right to direct how the force of the commonwealth shall be employed for preserving the community and the members of it. Because those laws which are constantly to be executed, and whose force is always to continue, may be made in a little time, therefore there is no need that the legislative should be always in being, not having always business to do. And because it may be too great temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they make, and suit the law, both in its making and execution, to their own private advantage, and thereby come to have a distinct interest from the rest of the community, contrary to the end of society and government. Therefore in well-ordered commonwealths, where the good of the whole is so considered as it ought, the legislative power is put into the hands of divers persons who, duly assembled, have by themselves, or jointly with others, a power to make laws, which when they have done, being separated again, they are themselves subject to the laws they have made; which is a new and near tie upon them to take care that they make them for the public good.

144. But because the laws that are at once, and in a short time made, have a constant and lasting force, and need a perpetual execution, or an attendance thereunto, therefore it is necessary there should be a power always in being which should see to the execution of the laws that are made, and remain in force. And thus the legislative and executive power come often to be separated.

145. There is **another power in every commonwealth which one may call natural**, because **it is that which answers to the power every man naturally had before he entered into society**. For though in a commonwealth the members of it are distinct persons, still, in reference to one another, and, as such, are governed by the laws of the society, yet, in reference to the rest of mankind, they make one body, which is, as every member of it before was, **still in the state of Nature with the rest of mankind**, so that the controversies that happen between any man of the society with those that are out of it are managed by the public, and an injury done to a member of their body engages the whole in the reparation of it. So that under this consideration the whole community **is one body in the "state of Nature" in respect of all other states or persons out of its community**.

146. This, therefore, contains the power of war and peace, leagues and alliances, and all the transactions with all persons and communities without the commonwealth, and may be called federative if any one pleases. So the thing be understood, I am indifferent as to the name.

147. These two powers, executive and federative, though they be really distinct in themselves, yet one comprehending the execution of the municipal laws of the society within itself upon all that are parts of it, the other the management of the security and interest of the public without with all those that it may receive benefit or damage from, yet they are always almost united. And though this federative power in the well or ill management of it be of great moment to the commonwealth, yet it is much less capable to be directed by antecedent, standing, positive laws than the executive, and so must necessarily be left to the prudence and wisdom of those whose hands it is in, to be managed for the public good. For the laws that concern subjects one amongst another, being to direct their actions, may well enough precede them. But what is to be done in reference to foreigners depending much upon their actions, and the variation of designs and interests, must be left in great part to the prudence of those who have this power

committed to them, to be managed by the best of their skill for the advantage of the commonwealth.

148. Though, as I said, the executive and federative power of every community be really distinct in themselves, yet they are hardly to be separated and placed at the same time in the hands of distinct persons. For both of them requiring the force of the society for their exercise, it is almost impracticable to place the force of the commonwealth in distinct and not subordinate hands, or that the executive and federative power should be placed in persons that might act separately, whereby the force of the public would be under different commands, which would be apt some time or other to cause disorder and ruin.

Chapter 13: Of the Subordination of the Powers of the Commonwealth

149. THOUGH in a constituted commonwealth standing upon its own basis and acting according to its own nature -- that is, acting for the preservation of the community, there can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate, yet the legislative being only a fiduciary power to act for certain ends, **there remains still in the people a supreme power to remove or alter the legislative**, when they find the legislative act contrary to the trust reposed in them. For all power given with trust for the attaining an end being **limited by that end**, whenever that end is **manifestly neglected or opposed**, the trust must **necessarily be forfeited**, and the power devolve into the hands of those that gave it, who may place it anew **where they shall think best for their safety and security**. **(APP Note: These words found in the Declaration of Independence)** And thus the community **perpetually retains a supreme power of saving themselves from the attempts and designs of "anybody", even of their "legislators", whenever they shall be so foolish or so wicked as to lay and carry on "designs" against the liberties and properties of the subject.** For no man or society of men having a power to deliver up their preservation, or consequently the means of it, to the absolute will and arbitrary dominion of another, **whenever any one shall go about to bring them into such a slavish condition, they will always have a right to preserve what they have not a power to part with, and to rid themselves of those who invade this fundamental, sacred, and unalterable law of self-preservation for which they entered into society**. And thus the community may be said in this respect to be **always the supreme power**, but not as considered under any form of government, because this power of the people can never take place till the government be dissolved.

150. In all cases whilst the government subsists, the legislative is the supreme power. For what can give laws to another must needs be superior to him, and since the legislative is no otherwise legislative of the society but by the right it has to make laws for all the parts, and every member of the society prescribing rules to their actions, they are transgressed, the legislative must needs be the supreme, and all other powers in any members or parts of the society derived from and subordinate to it.

151. In some commonwealths where the legislative is not always in being, and the executive is vested in a single person who has also a share in the legislative, there that single person, in a very tolerable sense, may also be called supreme; not that he has in himself all the supreme power, which is that of law-making, but because he has in him the supreme execution from

whom all inferior magistrates derive all their several subordinate powers, or, at least, the greatest part of them; having also no legislative superior to him, there being no law to be made without his consent, which cannot be expected should ever subject him to the other part of the legislative, he is properly enough in this sense supreme. But yet it is to be observed that though oaths of allegiance and fealty are taken to him, it is not to him as supreme legislator, but as supreme executor of the law made by a joint power of him with others, **>>> allegiance being nothing but an obedience according to law, which, when he violates, he has NO right to obedience**, nor can claim it otherwise than as the public person vested with the power of the law, and so is to be considered as the image, phantom, or representative of the commonwealth, acted by the will of the society declared in its laws, and thus he has **no will, no power, but that of the law.** But when he quits this representation, this public will, and acts by his own private will, **he degrades himself, and is but a single private person without power and without will; the members owing no obedience but to the public will of the society.**

152. The executive power placed anywhere but in a person that has also a share in the legislative is visibly subordinate and accountable to it, and may be at pleasure changed and displaced; so that it is not the supreme executive power that is exempt from subordination, but the supreme executive power vested in one, who having a share in the legislative, has no distinct superior legislative to be subordinate and accountable to, farther than he himself shall join and consent, so that he is no more subordinate than he himself shall think fit, which one may certainly conclude will be but very little. Of other ministerial and subordinate powers in a commonwealth we need not speak, they being so multiplied with infinite variety in the different customs and constitutions of distinct commonwealths, that it is impossible to give a particular account of them all. Only thus much which is necessary to our present purpose we may take notice of concerning them, that they have no manner of authority, any of them, beyond what is by positive grant and commission delegated to them, and are all of them accountable to some other power in the commonwealth.

153. It is not necessary -- no, nor so much as convenient -- that the legislative should be always in being; but absolutely necessary that the executive power should, because there is not always need of new laws to be made, but always need of execution of the laws that are made. When the legislative hath put the execution of the laws they make into other hands, **they have a power still to resume it out of those hands when they find cause, and to punish for any mal-administration against the laws.** The same holds also in regard of the federative power, that and the executive being **both ministerial and subordinate to the legislative, which, as has been shown, in a constituted commonwealth is the supreme,** the legislative also in this case being supposed to consist of several persons; for if it be a single person it cannot but be always in being, and so will, as supreme, naturally have the supreme executive power, together with the legislative, may assemble and exercise their legislative at the times that either their original constitution or their own adjournment appoints, or when they please, if neither of these hath appointed any time, or there be no other way prescribed to convoke them. For the supreme power being placed in them by the people, it is always in them, and they may exercise it when they please, unless by their original constitution they are limited to certain seasons, or by an act of their supreme power they have adjourned to a certain time, and when that time comes they have a right to assemble and act again.

154. If the legislative, or any part of it, be of representatives, chosen for that time by the

people, which afterwards return into the ordinary state of subjects, and have no share in the legislative but upon a new choice, **this power of choosing must also be exercised by the people, either at certain appointed seasons, or else when they are summoned to it;** and, in this latter case, the power of convoking the legislative is ordinarily placed in the executive, and has one of these two limitations in respect of time: -- that either the original constitution requires their assembling and acting at certain intervals; and then the executive power does nothing but ministerially issue directions for their electing and assembling according to due forms; or else it is left to his prudence to call them by new elections when the occasions or exigencies of the public require the amendment of old or making of new laws, **or the redress or prevention of any inconveniencies that lie on or threaten the people.**

155. It may be demanded here, **what if the executive power, being possessed of the force of the commonwealth, shall make use of that force** to hinder the meeting and acting of the legislative, when the original constitution or the public exigencies require it? **I say, using force upon the people, without authority, and contrary to the trust put in him that does so, >>>is a state of war with the people**, who have **a right** to reinstate their legislative in the exercise of their power. For having erected a legislative with an intent they should exercise the power of making laws, either at certain set times, or when there is need of it, when they are hindered by any force from what is so necessary to the society, and wherein the safety and preservation of the people consists, **the people have a right to remove it by force. In all states and conditions the true remedy of force without authority is to oppose force to it. The use of force without authority always puts him that uses it into a state of war as the aggressor, and renders him liable to be treated accordingly.**

156. The power of assembling and dismissing the legislative, placed in the executive, gives not the executive a superiority over it, but is a fiduciary trust placed in him for the safety of the people in a case where the uncertainty and variableness of human affairs could not bear a steady fixed rule. For it not being possible that the first framers of the government should by any foresight be so much masters of future events as to be able to prefix so just periods of return and duration to the assemblies of the legislative, in all times to come, that might exactly answer all the exigencies of the commonwealth, the best remedy could be found for this defect was to trust this to the prudence of one who was always to be present, and whose business it was to watch over the public good. **Constant, frequent meetings of the legislative, and long continuations of their assemblies, without necessary occasion, could not but be burdensome to the people, and must necessarily in time produce more dangerous inconveniencies,** and yet the quick turn of affairs might be sometimes such as to need their present help; **any delay of their convening might endanger the public;** and sometimes, too, their business might be so great that the limited time of their sitting might be too short for their work, and rob the public of that benefit which could be had only from their mature deliberation. What, then, could be done in this case to prevent the community from being exposed some time or other to imminent hazard on one side or the other, by fixed intervals and periods set to the meeting and acting of the legislative, but to entrust it to the prudence of some who, being present and acquainted with the state of public affairs, might make use of this prerogative for the public good? And where else could this be so well placed as in his hands who was entrusted with the execution of the laws for the same end? Thus, supposing the regulation of times for the assembling and sitting of the legislative not settled by the original constitution, it naturally fell into the hands of the executive; not as an arbitrary power depending on his good pleasure, but with this trust always to have it exercised only for the public weal, as the

occurrences of times and change of affairs might require. Whether settled periods of their convening, or a liberty left to the prince for convoking the legislative, or perhaps a mixture of both, hath the least inconvenience attending it, it is not my business here to inquire, but only to show that, though the executive power may have the prerogative of convoking and dissolving such conventions of the legislative, yet it is not thereby superior to it.

157. Things of this world are in so constant a flux that nothing remains long in the same state. Thus people, riches, trade, power, change their stations; flourishing mighty cities come to ruin, and prove in time neglected desolate corners, whilst other unfrequented places grow into populous countries filled with wealth and inhabitants. But things not always changing equally, and private interest often keeping up customs and privileges when the reasons of them are ceased, it often comes to pass that in governments where part of the legislative consists of representatives chosen by the people, that in tract of time this representation becomes very unequal and disproportionate to the reasons it was at first established upon. To what gross absurdities the following of custom when reason has left it may lead, we may be satisfied when we see the bare name of a town, of which there remains not so much as the ruins, where scarce so much housing as a sheepcote, or more inhabitants than a shepherd is to be found, send as many representatives to the grand assembly of law-makers as a whole county numerous in people and powerful in riches. This strangers stand amazed at, and every one must confess needs a remedy; though most think it hard to find one, because the constitution of the legislative being the original and supreme act of the society, antecedent to all positive laws in it, and depending wholly on the people, no inferior power can alter it. And, therefore, the people when the legislative is once constituted, having in such a government as we have been speaking of no power to act as long as the government stands, this inconvenience is thought incapable of a remedy.

158. Salus populi suprema lex is certainly so just and fundamental a rule, that he who sincerely follows it cannot dangerously err. If, therefore, the executive who has the power of convoking the legislative, observing rather the true proportion than fashion of representation, regulates not by old custom, but true reason, the number of members in all places, that have a right to be distinctly represented, which no part of the people, however incorporated, can pretend to, but in proportion to the assistance which it affords to the public, it cannot be judged to have set up a new legislative, but to have restored the old and true one, and to have rectified the disorders which succession of time had insensibly as well as inevitably introduced; for it being the interest as well as intention of the people to have a fair and equal representative, whoever brings it nearest to that is an undoubted friend to and establisher of the government, and cannot miss the consent and approbation of the community; prerogative being nothing but a power in the hands of the prince to provide for the public good in such cases which, depending upon unforeseen and uncertain occurrences, certain and unalterable laws could not safely direct. **Whatsoever shall be done manifestly for the good of the people, and establishing the government upon its true foundations is, and always will be, just prerogative.** The power of erecting new corporations, and therewith new representatives, carries with it a supposition that in time the measures of representation might vary, and those have a just right to be represented which before had none; and by the same reason, those cease to have a right, and be too inconsiderable for such a privilege, which before had it. It is not a change from the present state which, perhaps, corruption or decay has introduced, that makes an inroad upon the government, but the tendency of it to injure or oppress the people, and to set up one part or party with a distinction from and an unequal

subjection of the rest. Whatsoever cannot but be acknowledged to be of advantage to the society and people in general, upon just and lasting measures, will always, when done, justify itself; and whenever the people shall choose their representatives upon just and undeniably equal measures, **suitable to the original frame of the government**, it cannot be doubted to be the will and act of the society, whoever permitted or proposed to them so to do.

Chapter 14: Of Prerogative

159. WHERE the legislative and executive power are in distinct hands, as they are in all moderated monarchies and well-framed governments, there the good of the society requires that several things should be left to the discretion of him that has the executive power. For the legislators not being able to foresee and provide by laws for all that may be useful to the community, the executor of the laws, having the power in his hands, has by the common law of Nature a right to make use of it for the good of the society, in many cases where the municipal law has given no direction, till the legislative can conveniently be assembled to provide for it; nay, many things there are which the law can by no means provide for, and those must necessarily be left to the discretion of him that has the executive power in his hands, to be ordered by him as the public good and advantage shall require; nay, it is fit that the laws themselves should in some cases give way to the executive power, or rather to this fundamental law of Nature and government -- viz., that as much as may be all the members of the society are to be preserved. For since many accidents may happen wherein a strict and rigid observation of the laws may do harm, as not to pull down an innocent man's house to stop the fire when the next to it is burning; and a man may come sometimes within the reach of the law, which makes no distinction of persons, by an action that may deserve reward and pardon; it is fit the ruler should have a power in many cases to mitigate the severity of the law, and pardon some offenders, since the end of government being the preservation of all as much as may be, even the guilty are to be spared where it can prove no prejudice to the innocent.

160. This power to act according to discretion for the public good, without the prescription of the law and sometimes even against it, is that which is called prerogative; for since in some governments the law-making power is not always in being and is usually too numerous, and so too slow for the dispatch requisite to execution, and because, also, it is impossible to foresee and so by laws to provide for all accidents and necessities that may concern the public, or make such laws as will do no harm, if they are executed with an inflexible rigour on all occasions and upon all persons that may come in their way, therefore there is a latitude left to the executive power to do many things of choice which the laws do not prescribe.

161. This power, whilst employed for the benefit of the community and suitably to the trust and ends of the government, is undoubted prerogative, and never is questioned. For the people are very seldom or never scrupulous or nice in the point or questioning of prerogative whilst it is in any tolerable degree employed for the use it was meant -- that is, the good of the people, and not manifestly against it. But if there comes to be a question between the executive power and the people about a thing claimed as a prerogative, the tendency of the exercise of such prerogative, to the good or hurt of the people, will easily decide that question.

162. It is easy to conceive that in the infancy of governments, when commonwealths differed little from families in number of people, they differed from them too but little in number of laws;

and the governors being as the fathers of them, watching over them for their good, the government was almost all prerogative. A few established laws served the turn, and the discretion and care of the ruler suppled the rest. But when mistake or flattery prevailed with weak princes, to make use of this power for private ends of their own and not for the public good, the people were fain, by express laws, to get prerogative determined in those points wherein they found disadvantage from it, and declared limitations of prerogative in those cases which they and their ancestors had left in the utmost latitude to the wisdom of those princes who made no other but a right use of it -- that is, for the good of their people.

163. And therefore they have a very wrong notion of government who say that the people have encroached upon the prerogative when they have got any part of it to be defined by positive laws. For in so doing they have not pulled from the prince anything that of right belonged to him, but only declared that that power which they indefinitely left in his or his ancestors' hands, to be exercised for their good, was not a thing they intended him, when he used it otherwise. For the end of government being the good of the community, whatsoever alterations are made in it tending to that end cannot be an encroachment upon anybody; since nobody in government can have a right tending to any other end; and those only are encroachments which prejudice or hinder the public good. Those who say otherwise speak as if the prince had a distinct and separate interest from the good of the community, and was not made for it; the root and source from which spring almost all those evils and disorders which happen in kingly governments. And indeed, if that be so, the people under his government are not a society of rational creatures, entered into a community for their mutual good, such as have set rulers over themselves, to guard and promote that good; but are to be looked on as a herd of inferior creatures under the dominion of a master, who keeps them and works them for his own pleasure or profit. If men were so void of reason and brutish as to enter into society upon such terms, prerogative might indeed be, what some men would have it, an arbitrary power to do things hurtful to the people.

164. But since a rational creature cannot be supposed, when free, to put himself into subjection to another for his own harm (though where he finds a good and a wise ruler he may not, perhaps, think it either necessary or useful to set precise bounds to his power in all things), prerogative can be nothing but the people's permitting their rulers to do several things of their own free choice where the law was silent, and sometimes too against the direct letter of the law, for the public good and their acquiescing in it when so done. For as a good prince, who is mindful of the trust put into his hands and careful of the good of his people, cannot have too much prerogative -- that is, power to do good, so a weak and ill prince, who would claim that power his predecessors exercised, without the direction of the law, as a prerogative belonging to him by right of his office, which he may exercise at his pleasure to make or promote an interest distinct from that of the public, gives the people an occasion to claim their right and limit that power, which, whilst it was exercised for their good, they were content should be tacitly allowed.

165. And therefore he that will look into the history of England will find that prerogative was always largest in the hands of our wisest and best princes, because the people observing the whole tendency of their actions to be the public good, or if any human frailty or mistake (for princes are but men, made as others) appeared in some small declinations from that end, yet it was visible the main of their conduct tended to nothing but the care of the public. The people, therefore, finding reason to be satisfied with these princes, whenever they acted without, or

contrary to the letter of the law, acquiesced in what they did, and without the least complaint, let them enlarge their prerogative as they pleased, judging rightly that they did nothing herein to the prejudice of their laws, since they acted conformably to the foundation and end of all laws -- **the public good**.

166. Such God-like princes, indeed, had some title to arbitrary power by that argument that would prove absolute monarchy the best government, as that which God Himself governs the universe by, because such kings partake of His wisdom and goodness. Upon this is founded that saying, **>>>"That the reigns of good princes have been always most dangerous to the liberties of their people." For when their successors, managing the government with different thoughts, would draw the actions of those good rulers into precedent and make them the standard of their prerogative -- as if what had been done only for the good of the people was a right in them to do for the harm of the people**, if they so pleased -- it has often occasioned contest, and sometimes public disorders, **before the people could recover their original right and get that to be declared not to be prerogative which truly was never so;** since it is impossible anybody in the society should ever have a right to do the people harm, though it be very possible and reasonable that the people should not go about to set any bounds to the prerogative of those kings or rulers who themselves transgressed not the bounds of the **public good**. **For "prerogative is nothing but the power of doing public good without a rule."**

167. The power of calling parliaments in England, as to precise time, place, and duration, is certainly a prerogative of the king, but still with this trust, that it shall be made use of for the good of the nation as the exigencies of the times and variety of occasion shall require. For it being impossible to foresee which should always be the fittest place for them to assemble in, and what the best season, the choice of these was left with the executive power, as might be best subservient to the public good and best suit the ends of parliament.

168. The old question will be asked in this matter of prerogative, "But who shall be judge when this power is made a right use of?" I answer: Between an executive power in being, with such a prerogative, and a legislative that depends upon his will for their convening, there can be no judge on earth. **As there can be none between the legislative and the people, should either the executive or the legislative, when they have got the power in their hands, design, or go about to enslave or destroy them, the people have no other remedy in this, as in all other cases where they have no judge on earth, but to >>> appeal to Heaven; (APP Note: This Appeal to heaven is clearly written in the Declaration of Independence)** for the rulers in such attempts, exercising a power the people never put into their hands, who can never be supposed to consent that anybody should rule over them for their harm**, do that which they have not a right to do**. And where the **>>>body of the people, or any single man**, are deprived of their right, or are under the exercise of a power without right, having no appeal on earth **they have a liberty to appeal to Heaven whenever they judge the cause of sufficient moment.** And therefore, though the people cannot be judge, so as to have, by the constitution of that society, any superior power to determine and give effective sentence in the case, **yet they have reserved that ultimate determination to themselves** which **belongs to all mankind**, where there lies no appeal on earth, by a law antecedent and paramount to all positive laws of men, whether they have just cause to make their appeal to Heaven. **And this judgement they cannot part with, it being out of a man's power so to submit himself to another as to give him a liberty to destroy him; God and Nature never allowing a man so**

to abandon himself as to neglect his own preservation. And since he cannot take away his own life, neither can he give another power to take it. Nor let any one think this lays a perpetual foundation for disorder; **for this operates not till the inconvenience is so great that the majority feel it,** and are weary of it, and find a necessity to have it amended. And this the executive power, or wise princes, never need come in the danger of; and it is the thing of all others they have most need to avoid, as, of all others, the most perilous.

Chapter 15: Of Paternal, Political and Despotical Power Considered Together

169. THOUGH I have had occasion to speak of these separately before, yet the great mistakes of late about government having, as I suppose, arisen from confounding these distinct powers one with another, **it may not perhaps be amiss to consider them here together.**

170. First, then, paternal or parental power is nothing but that which parents have over their children to govern them, for the children's good, till they come to the use of reason, or a state of knowledge, wherein they may be supposed capable to understand that rule, whether it be the law of Nature or the municipal law of their country, they are to govern themselves by -- capable, I say, to know it, as well as several others, who live as free men under that law. The affection and tenderness God hath planted in the breasts of parents towards their children makes it evident that this is not intended to be a severe arbitrary government, but only for the help, instruction, and preservation of their offspring. But happen as it will, there is, as I have proved, no reason why it should be thought to extend to life and death, at any time, over their children, more than over anybody else, or keep the child in subjection to the will of his parents when grown to a man and the perfect use of reason, any farther than as having received life and education from his parents obliges him to respect, honour, gratitude, assistance, and support, all his life, to both father and mother. And thus, it is true, the paternal is a natural government, but not at all extending itself to the ends and jurisdictions of that which is political. The power of the father doth not reach at all to the property of the child, which is only in his own disposing.

171. Secondly, political power is that power which every man having in the state of Nature has given up into the hands of the society, and therein to the governors whom the society hath set over itself, with this express or tacit trust, that it shall be employed for their good and the preservation of their property. Now this power, which every man has in the state of Nature, and which he parts with to the society in all such cases where the society can secure him, is to use such means for the preserving of his own property as he thinks good and Nature allows him; and to punish the breach of the law of Nature in others so as (according to the best of his reason) may most conduce to the preservation of himself and the rest of mankind; so that the end and measure of this power, when in every man's hands, in the state of Nature, being the preservation of all of his society -- that is, all mankind in general -- it can have no other end or measure, when in the hands of the magistrate, but to preserve the members of that society in their lives, liberties, and possessions, and so cannot be an absolute, arbitrary power over their lives and fortunes, which are as much as possible to be preserved; but a power to make laws, and annex such penalties to them as may tend to the preservation of the whole, by cutting off those parts, and those only, which are so corrupt that they threaten the sound and healthy, without which no severity is lawful. And this power has its original only from compact and agreement and the mutual consent of those who make up the community.

172. Thirdly, despotical power is an absolute, arbitrary power one man has over another, to take away his life whenever he pleases; and this is a power which neither Nature gives, for it has made no such distinction between one man and another, nor compact can convey. For man, not having such an arbitrary power over his own life, cannot give another man such a power over it, but it is the effect only of forfeiture which the aggressor makes of his own life when he puts himself into the state of war with another. For having quitted reason, which God hath given to be the rule betwixt man and man, and the peaceable ways which that teaches, and made use of force to compass his unjust ends upon another where he has no right, he renders himself liable to be destroyed by his adversary whenever he can, as any other noxious and brutish creature that is destructive to his being. And thus captives, taken in a just and lawful war, and such only, are subject to a despotical power, which, as it arises not from compact, so neither is it capable of any, but is the state of war continued. For what compact can be made with a man that is not master of his own life? What condition can he perform? And if he be once allowed to be master of his own life, the despotical, arbitrary power of his master ceases. He that is master of himself and his own life has a right, too, to the means of preserving it; so that as soon as compact enters, slavery ceases, and he so far quits his absolute power and puts an end to the state of war who enters into conditions with his captive.

173. Nature gives the first of these -- viz., paternal power to parents for the benefit of their children during their minority, to supply their want of ability and understanding how to manage their property. (By property I must be understood here, as in other places, to mean that property which men have in their persons as well as goods.) Voluntary agreement gives the second -- viz., political power to governors, for the benefit of their subjects, to secure them in the possession and use of their properties. And forfeiture gives the third -- despotical power to lords for their own benefit over those who are stripped of all property.

174. He that shall consider the distinct rise and extent, and the different ends of these several powers, will plainly see that paternal power comes as far short of that of the magistrate as despotical exceeds it; and that absolute dominion, however placed, is so far from being one kind of civil society that it is as inconsistent with it as slavery is with property. Paternal power is only where minority makes the child incapable to manage his property; political where men have property in their own disposal; and despotical over such as have no property at all.

Chapter 16: Of Conquest

175. THOUGH governments can originally have no other rise than that before mentioned, nor polities be founded on anything but the consent of the people, yet such have been the disorders ambition has filled the world with, that in the noise of war, which makes so great a part of the history of mankind, **this consent is little taken notice of;** and, therefore, **many have mistaken the force of arms for the consent of the people**, and reckon conquest as one of the originals of government. But conquest is as far from setting up any government as demolishing a house is from building a new one in the place. Indeed, it often makes way for a new frame of a commonwealth by destroying the former; but, without the consent of the people, can never erect a new one.

176. That the aggressor, who puts himself into the state of war with another, and

unjustly invades another man's right, can, by such an unjust war, "never come to have a right over the conquered", will be easily agreed by all men, who will not think that robbers and pirates have a right of empire over whomsoever they have force enough to master, or that men are bound by promises which unlawful force extorts from them. Should a robber break into my house, and, with a dagger at my throat, make me seal deeds to convey my estate to him, would this give him any title? Just such a title by his sword has an unjust conqueror who forces me into submission. **The injury and the crime is equal, whether committed by the wearer of a crown or some petty villain.** The title of the offender and the number of his followers **make no difference in the offence**, unless it be to aggravate it. The only difference is, great robbers punish little ones to keep them in their obedience; but the great ones are rewarded with laurels and triumphs, because they are too big for the weak hands of justice in this world, and have the power in their own possession which should punish offenders. What is my remedy against a robber that so broke into my house? **Appeal to the law for justice**. But perhaps justice is denied, or I am crippled and cannot stir; robbed, and have not the means to do it. If God has taken away all means of seeking remedy, there is nothing left but patience. **But my son, when able, may seek the relief of the law, which I am denied; he or his son may renew his appeal till he recover his right.** But the conquered, or their children, have no court -- no arbitrator on earth to appeal to. **Then they may appeal, as Jephtha did, to Heaven, and repeat their appeal till they have recovered the native right of their ancestors**, which was to have such a legislative over them as the majority should approve and freely acquiesce in. **If it be objected this would cause endless trouble, I answer, no more than justice does, where she lies open to all that appeal to her.** He that troubles his neighbour without a cause is punished for it by the justice of the court he appeals to. **And he that appeals to Heaven must be sure he has right on his side, and a right, too, that is worth the trouble and cost of the appeal, as he will answer at a tribunal that cannot be deceived,** and will be sure to retribute to every one according to the mischiefs he hath created to his fellow-subjects -- that is, any part of mankind. From whence it is plain that he that conquers in an unjust war can thereby have no title to the subjection and obedience of the conquered.

177. But supposing victory favours the right side, let us consider a conqueror in a lawful war, and see what power he gets, and over whom.

First, it is plain he gets no power by his conquest over those that conquered with him. They that fought on his side cannot suffer by the conquest, **but must, at least, be as much free men as they were before**. And most commonly they serve upon terms, and on condition to share with their leader, and enjoy a part of the spoil and other advantages that attend the conquering sword, or, at least, have a part of the subdued country bestowed upon them. And the conquering people are not, I hope, to be slaves by conquest, and wear their laurels only to show they are sacrifices to their leader's triumph. They that found absolute monarchy upon the title of the sword make their heroes, who are the founders of such monarchies, arrant "draw-can-sirs," and forget they had any officers and soldiers that fought on their side in the battles they won, or assisted them in the subduing, or shared in possessing the countries they mastered. We are told by some that the English monarchy is founded in the Norman Conquest, and that our princes have thereby a title to absolute dominion, which, if it were true (as by the history it appears otherwise), and that William had a right to make war on this island, yet his dominion by conquest could reach no farther than to the Saxons and Britons that were then inhabitants of this country. The Normans that came with him and helped to conquer, and all

descended from them, are free men and no subjects by conquest, let that give what dominion it will. And if I or anybody else shall claim freedom as derived from them, it will be very hard to prove the contrary; and it is plain, the law that has made no distinction between the one and the other intends not there should be any difference in their freedom or privileges.

178. But supposing, which seldom happens, that the conquerors and conquered never incorporate into one people under the same laws and freedom; let us see next what power a lawful conqueror has over the subdued, and that I say is purely despotical. He has an absolute power over the lives of those who, by an unjust war, have forfeited them, but not over the lives or fortunes of those who engaged not in the war, nor over the possessions even of those who were actually engaged in it.

179. Secondly, I say, then, the conqueror gets no power but only over those who have actually assisted, concurred, or consented to that unjust force that is used against him. For the people having given to their governors no power to do an unjust thing, such as is to make an unjust war (for they never had such a power in themselves), they ought not to be charged as guilty of the violence and injustice that is committed in an unjust war any farther than they actually abet it, no more than they are to be thought guilty of any violence or oppression their governors should use upon the people themselves or any part of their fellow-subjects, they having empowered them no more to the one than to the other. Conquerors, it is true, seldom trouble themselves to make the distinction, but they willingly permit the confusion of war to sweep all together; but yet this alters not the right; for the conqueror's power over the lives of the conquered being only because they have used force to do or maintain an injustice, he can have that power only over those who have concurred in that force; all the rest are innocent, and he has no more title over the people of that country who have done him no injury, and so have made no forfeiture of their lives, than he has over any other who, without any injuries or provocations, have lived upon fair terms with him.

180. Thirdly, the power a conqueror gets over those he overcomes in a just war is perfectly despotical; he has an absolute power over the lives of those who, by putting themselves in a state of war, have forfeited them, but he has not thereby a right and title to their possessions. This I doubt not but at first sight will seem a strange doctrine, it being so quite contrary to the practice of the world; there being nothing more familiar in speaking of the dominion of countries than to say such an one conquered it, as if conquest, without any more ado, conveyed a right of possession. But when we consider that the practice of the strong and powerful, how universal soever it may be, is seldom the rule of right, however it be one part of the subjection of the conquered not to argue against the conditions cut out to them by the conquering swords.

181. Though in all war there be usually a complication of force and damage, and the aggressor seldom fails to harm the estate when he uses force against the persons of those he makes war upon, yet it is the use of force only that puts a man into the state of war. For whether by force he begins the injury, or else having quietly and by fraud done the injury, he refuses to make reparation, and by force maintains it, which is the same thing as at first to have done it by force; it is the unjust use of force that makes the war. For he that breaks open my house and violently turns me out of doors, or having peaceably got in, by force keeps me out, does, in effect, the same thing; supposing we are in such a state that we have no common judge on earth whom I may appeal to, and to whom we are both obliged to submit, for of such I am now speaking. It is the unjust use of force, then, **that puts a man into the state of war with**

another, and thereby he that is **guilty of it** makes a **forfeiture** of his life. **For quitting reason**, which is **the rule given between man and man**, and using force, the way of beasts, **he becomes liable to be destroyed by him he uses force against,** as any savage ravenous beast that is dangerous to his being.

182. But because the miscarriages of the father are no faults of the children, who may be rational and peaceable, notwithstanding the brutishness and injustice of the father, the father, by his miscarriages and violence, can forfeit but his own life, and involves not his children in his guilt or destruction. His goods which Nature, that willeth the preservation of all mankind as much as is possible, hath made to belong to the children to keep them from perishing, do still continue to belong to his children. For supposing them not to have joined in the war either through infancy or choice, they have done nothing to forfeit them, nor has the conqueror any right to take them away by the bare right of having subdued him that by force attempted his destruction, though, perhaps, he may have some right to them to repair the damages he has sustained by the war, and the defence of his own right, which how far it reaches to the possessions of the conquered we shall see by-and-by; so that he that by conquest has a right over a man's person, to destroy him if he pleases, has not thereby a right over his estate to possess and enjoy it. For it is the brutal force the aggressor has used that gives his adversary a right to take away his life and destroy him, if he pleases, as a noxious creature; but it is damage sustained that alone gives him title to another man's goods; **for though I may kill a thief that sets on me in the highway, yet I may not (which seems less) take away his money and let him go;** this would be robbery on my side. His force, and the state of war he put himself in, **made him forfeit his life, but gave me no title to his goods**. **The right, then, of conquest extends only to the lives of those who joined in the war, but not to their estates**, but only in order to make reparation for the damages received and the charges of the war, and that, too, with reservation of the right of the innocent wife and children.

183. Let the conqueror have as much justice on his side as could be supposed, he has no right to seize more than the vanquished could forfeit; his life is at the victor's mercy, and his service and goods he may appropriate to make himself reparation; but he cannot take the goods of his wife and children, they too had a title to the goods he enjoyed, and their shares in the estate he possessed. For example, I in the state of Nature **(and all commonwealths are in the state of Nature one with another)** have injured another man, and refusing to give satisfaction, it is come to a state of war wherein my defending by force what I had gotten unjustly makes me the aggressor. I am conquered; my life, it is true, as forfeit, is at mercy, but not my wife's and children's. They made not the war, nor assisted in it. I could not forfeit their lives, they were not mine to forfeit. My wife had a share in my estate, that neither could I forfeit. And my children also, being born of me, had a right to be maintained out of my labour or substance. Here then is the case: The conqueror has a title to reparation for damages received, and the children have a title to their father's estate for their subsistence. For as to the wife's share, whether her own labour or compact gave her a title to it, it is plain her husband could not forfeit what was hers. What must be done in the case? I answer: The fundamental law of Nature being that all, as much as may be, should be preserved, it follows that if there be not enough fully to satisfy both -- viz., for the conqueror's losses and children's maintenance, **he that hath and to spare must remit something of his full satisfaction**, **and give way to the pressing and preferable title of those who are in danger to perish without it.**

184. But supposing the charge and damages of the war are to be made up to the conqueror to

the utmost farthing, and that the children of the vanquished, spoiled of all their father's goods, are to be left to starve and perish, yet the satisfying of what shall, on this score, be due to the conqueror will scarce give him a title to any country he shall conquer. For the damages of war can scarce amount to the value of any considerable tract of land in any part of the world, where all the land is possessed, and none lies waste. And if I have not taken away the conqueror's land which, being vanquished, it is impossible I should, scarce any other spoil I have done him can amount to the value of mine, supposing it of an extent any way coming near what I had overrun of his, and equally cultivated too. The destruction of a year's product or two (for it seldom reaches four or five) is the utmost spoil that usually can be done. For as to money, and such riches and treasure taken away, these are none of Nature's goods, they have but a phantastical imaginary value; Nature has put no such upon them. They are of no more account by her standard than the Wampompeke of the Americans to an European prince, or the silver money of Europe would have been formerly to an American. And five years' product is not worth the perpetual inheritance of land, where all is possessed and none remains waste, to be taken up by him that is disseised, which will be easily granted, if one do but take away the imaginary value of money, the disproportion being more than between five and five thousand; though, at the same time, half a year's product is more worth than the inheritance where, there being more land than the inhabitants possess and make use of, any one has liberty to make use of the waste. But their conquerors take little care to possess themselves of the lands of the vanquished. **No damage therefore that men in the state of Nature (as all princes and governments are in reference to one another) suffer from one another can give a conqueror power to dispossess the posterity of the vanquished, and turn them out of that inheritance which ought to be the possession of them and their descendants to all generations**. The conqueror indeed will be apt to think himself master; and it is the very condition of the subdued not to be able to dispute their right. But, if that be all, it gives no other title than what bare force gives to the stronger over the weaker; and, by this reason, he that is strongest will have a right to whatever he pleases to seize on.

185. Over those, then, that joined with him in the war, and over those of the subdued country that opposed him not, and the posterity even of those that did, **the conqueror, even in a just war, hath, by his conquest, no right of dominion**. They are free from any subjection to him, and if their former government be dissolved, **they are at liberty to begin and erect another to themselves.**

186. The conqueror, it is true, usually by the force he has over them, compels them, with a sword at their breasts, to stoop to his conditions, and submit to such a government as he pleases to afford them; but the inquiry is, what right he has to do so? If it be said they submit by their own consent, then this allows their own consent to be necessary to give the conqueror a title to rule over them. **It remains only to be considered whether promises, extorted by force, without right, can be thought consent, and how far they bind**. To which I shall say, **they bind not at all;** because whatsoever another gets from me by force, I still retain the right of, and he is obliged presently to restore. He that forces my horse from me ought presently to restore him, and I have still a right to retake him. **By the same reason, he that forced a promise from me ought presently to restore it -- i.e., quit me of the obligation of it; or I may resume it myself -- i.e., choose whether I will perform it**. For the law of Nature laying an obligation on me, only by the rules she prescribes, **cannot oblige me by the violation of her rules; such is the extorting anything from me by force.** Nor does it at all alter the case, to say I gave my promise, no more than it excuses the force, and passes the right, when I put

my hand in my pocket and deliver my purse myself to a thief who demands it with a pistol at my breast.

187. From all which it follows that the government of a conqueror, imposed by force on the subdued, against whom he had no right of war, or who joined not in the war against him, where he had right, **has no obligation upon them**.

188. But let us suppose that all the men of that community being all members of the same body politic, may be taken to have joined in that unjust war, wherein they are subdued, and so their lives are at the mercy of the conqueror.

189. I say this concerns not their children who are in their minority. For since a father hath not, in himself, a power over the life or liberty of his child, no act of his can possibly forfeit it; so that the children, whatever may have happened to the fathers, are free men, and the absolute power of the conqueror reaches no farther than the persons of the men that were subdued by him, and dies with them; and should he govern them as slaves, subjected to his absolute, arbitrary power, **he has no such right of dominion over their children**. He can have no power over them **but by their own consent**, whatever he may drive them to say or do, and he has no lawful authority, whilst force, and not choice, compels them to submission.

190. Every man is born with a double right.

First, a right of freedom to his person, which no other man has a power over, but the free disposal of it lies in himself.

Secondly, a right before any other man, to inherit, with his brethren, his father's goods.

191. By the first of these, a man is naturally free from subjection to any government, though he be born in a place under its jurisdiction. But if he disclaim the lawful government of the country he was born in, **he must also quit the right that belonged to him, by the laws of it**, and the possessions there descending to him from his ancestors, if it were a government made by their consent.

192. By the second, the inhabitants of any country, who are descended and derive a title to their estates from those who are subdued, and had a government forced upon them, **against their free consents**, **retain a right to the possession of their ancestors, though they consent not freely to the government**, whose hard conditions were, by force, imposed on the possessors of that country. For the first conqueror never having had a title to the land of that country, the people, who are the descendants of, or claim under those who were forced to submit to the yoke of a government by constraint, **have always a right to shake it off, and free themselves from the usurpation or tyranny the sword hath brought in upon them**, till their rulers put them under such a frame of government as they willingly and of choice consent to (which they can never be supposed to do, **till either they are put in a full state of liberty to choose their government and governors, or at least till they have such standing laws to which they have, by themselves or their representatives, given their free consent**, and also **till they are allowed their due property**, which is so to be proprietors of what they have that nobody can take away any part of it without their own consent, **without which, men**

under any government are not in the state of free men, but are direct slaves under the force of war). And who doubts but the Grecian Christians, descendants of the ancient possessors of that country, may justly cast off the Turkish yoke they have so long groaned under, whenever they have a power to do it?

193. But granting that the conqueror, in a just war, has a right to the estates, as well as power over the persons of the conquered, which, it is plain, he hath not, nothing of absolute power will follow from hence in the continuance of the government. Because the descendants of these being all free men, if he grants them estates and possessions to inhabit his country, without which it would be worth nothing, whatsoever he grants them they have so far as it is granted property in; the nature whereof is, that, **without a man's own consent, it cannot be taken from him**.

194. Their persons are free by a native right, and their properties, be they more or less, are their own, and at their own dispose, and not at his; or else it is no property. Supposing the conqueror gives to one man a thousand acres, to him and his heirs for ever; to another he lets a thousand acres, for his life, under the rent of L50 or L500 per annum. Has not the one of these a right to his thousand acres for ever, and the other during his life, paying the said rent? And hath not the tenant for life a property in all that he gets over and above his rent, by his labour and industry, during the said term, supposing it be double the rent? **Can any one say, the king, or conqueror, after his grant, may, by his power of conqueror, take away all, or part of the land, from the heirs of one, or from the other during his life, he paying the rent? Or, can he take away from either the goods or money they have got upon the said land at his pleasure? If he can, then all free and voluntary contracts cease, and are void in the world; there needs nothing but power enough to dissolve them at any time, and all the grants and promises of men in power are but mockery and collusion. For can there be anything more ridiculous than to say, I give you and yours this for ever, and that in the surest and most solemn way of conveyance can be devised, and yet it is to be understood that I have right, if I please, to take it away from you again to-morrow?**

APP Note: Relate this to US Land Patents absolute granting of properties and the Attempt of the Federal Government to condemn such land (or water by common law attached to the land) later, or the state to condemn such property after giving consent to adjudicate such transfer by authority of the United States by which it was a party, or to create new regulations upon it after granting it with none; To encircle that land in national monument and control the inroads and water, or to regulate limits to anything with regard to it, or to arbitrarily tax it into debt and thereby rendering the land not owned but rented, when no taxes were in established at the receiving of it, or to tax it without consent, or tax without consent for things built upon that property to improve its value, or raised upon it to derive sustenance and earnings from his labors, or derive any such without consent from those he wills it to.

And you will find the neither the federal government, nor the state government has no power to do so, nor has any power of such been delegated to it by the original compact.

For once property is possessed of a person, it is any governments duty to protect it, and not to devise a design to wrest it away after all rights had been released ; As this clearly established by Locke that the protection of property is the purpose of

government and the reason that the person enters into society.

195. I will not dispute now whether princes are exempt from the laws of their country, but this I am sure, **they owe subjection to the laws of God and Nature**. **Nobody, no power can exempt them from the obligations of that eternal law.** **Those are so great and so strong in the case of promises, that Omnipotency itself can be tied by them. Grants, promises, and oaths are bonds that hold the Almighty**, whatever some flatterers say to princes of the world, who, all together, with all their people joined to them, are, in comparison of the great God, but as a drop of the bucket, or a dust on the balance -- inconsiderable, **nothing!**

196. The short of the case in conquest, is this: The conqueror, if he have a just cause, has a despotical right over the persons of all that actually aided and concurred in the war against him, and a right to make up his damage and cost out of their labour and estates, so he injure not the right of any other. Over the rest of the people, if there were any that consented not to the war, and over the children of the captives themselves or the possessions of either he has no power, and so can have, by virtue of conquest, no lawful title himself to dominion over them, or derive it to his posterity; but is an aggressor, and puts himself in a state of war against them, and has no better a right of principality, he, nor any of his successors, than Hingar, or Hubba, the Danes, had here in England, or Spartacus, had be conquered Italy, which is to have their yoke cast off as soon as God shall give those under their subjection courage and opportunity to do it. Thus, notwithstanding whatever title the kings of Assyria had over Judah, by the sword, God assisted Hezekiah to throw off the dominion of that conquering empire. "And the Lord was with Hezekiah, and he prospered; wherefore he went forth, and he rebelled against the king of Assyria, and served him not" (II Kings 18. 7). Whence it is plain that shaking off a power which force, and not right, hath set over any one, though it hath the name of rebellion, yet is no offence before God, but that which He allows and countenances, though even promises and covenants, when obtained by force, have intervened. For it is very probable, to any one that reads the story of Ahaz and Hezekiah attentively, that the Assyrians subdued Ahaz, and deposed him, and made Hezekiah king in his father's lifetime, and that Hezekiah, by agreement, had done him homage, and paid him tribute till this time.

Chapter 17: Of Usurpation

197. As conquest may be called a foreign usurpation, so usurpation is a kind of domestic conquest, with this difference -- that an usurper can never have right on his side, it being no usurpation but where one is got into the possession of what another has right to. This, so far as it is usurpation, is a change only of persons, but not of the forms and rules of the government; for if the usurper extend his power beyond what, of right, belonged to the lawful princes or governors of the commonwealth, **it is tyranny added to usurpation**.

198. In all lawful governments the designation of the persons who are to bear rule being as natural and necessary a part as the form of the government itself, and that which had its establishment originally from the people -- the anarchy being much alike, to have no form of government at all, or to agree that it shall be monarchical, yet appoint no way to design the person that shall have the power and be the monarch -- all commonwealths, therefore, with the form of government established, have rules also of appointing and conveying the right to those who are to have any share in the public authority; and whoever gets into the exercise of any

part of the power **by other ways than what the laws of the community have prescribed** hath **no right to be obeyed**, though the form of the commonwealth be still preserved, since he is not the person the laws have appointed, and, consequently, not the person the people have consented to. Nor can such an usurper, or any deriving from him, ever have a title till the people are both at liberty to consent, and have actually consented, to allow and confirm in him the power he hath till then usurped.

Chapter 18: Of Tyranny

199. As usurpation is the exercise of power which another hath a right to, so tyranny is the exercise of power beyond right, which nobody can have a right to; and this is making use of the power any one has in his hands, not for the good of those who are under it, but for his own private, separate advantage. When the governor, however entitled, makes not the law, but his will, the rule, and his commands and actions are not directed to the preservation of the properties of his people, but the satisfaction of his own ambition, revenge, covetousness, or any other irregular passion.

200. If one can doubt this to be truth or reason because it comes from the obscure hand of a subject, I hope the authority of a king will make it pass with him. **King James, in his speech to the Parliament, 16O3, tells them thus: "I will ever prefer the weal of the public and of the whole commonwealth, in making of good laws and constitutions, to any particular and private ends of mine, thinking ever the wealth and weal of the commonwealth to be my greatest weal and worldly felicity** -- a point wherein a lawful king doth directly differ from a tyrant; for I do acknowledge that the special and greatest point of difference that is between a rightful king and an usurping tyrant is this -- that whereas the proud and ambitious tyrant doth think his kingdom and people are only ordained for satisfaction of his desires and unreasonable appetites, the righteous and just king doth, by the contrary, acknowledge himself to be ordained for the procuring of the wealth and property of his people." And again, in his speech to the Parliament, 1609, he hath these words: **"The king binds himself, by a double oath, to the observation of the fundamental laws of his kingdom -- tacitly, as by being a king, and so bound to protect, as well the people as the laws of his kingdom;** and expressly by his oath at his coronation; so as every just king, in a settled kingdom, is bound to observe that paction made to his people, by his laws, in framing his government agreeable thereunto, according to that paction which God made with Noah after the deluge: 'Hereafter, seed-time, and harvest, and cold, and heat, and summer, and winter, and day, and night, shall not cease while the earth remaineth.' **And therefore a king, governing in a settled kingdom, leaves to be a king, and degenerates into a tyrant, as soon as he leaves off to rule according to his laws**." And a little after: **"Therefore, all kings that are not tyrants, or perjured, will be glad to bound themselves within the limits of their laws, and they that persuade them the contrary are vipers, pests, both against them and the commonwealth**." Thus, that learned king, who well understood the notions of things, **makes the difference betwixt a king and a tyrant to consist only in this: that one makes the laws the bounds of his power and the good of the public the end of his government; the other makes all give way to his own will and appetite.**

201. It is a mistake to think this fault is proper only to monarchies. **Other forms of government are liable to it as well as that;** for wherever the power that is put in any hands

for the government of the people and the preservation of their properties is applied to other ends, and made use of to impoverish, harass, or subdue them to the arbitrary and irregular commands of those that have it, **there it presently becomes tyranny,** whether those that thus use it are one or many. Thus we read of the thirty tyrants at Athens, as well as one at Syracuse; and the intolerable dominion of the Decemviri at Rome was nothing better.

202. Wherever law ends, tyranny begins, if the law be transgressed to another's harm; and whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command to compass that upon the subject which the law allows not, ceases in that to be a magistrate, and acting without authority may be opposed, as any other man who by force invades the right of another. This is acknowledged in subordinate magistrates. **He that hath authority to seize my person in the street may be opposed as a thief and a robber if he endeavours to break into my house to execute a writ**, notwithstanding that I know he has such a warrant and such a legal authority as will empower him to arrest me abroad. And why this should not hold in the highest, as well as in the most inferior magistrate, I would gladly be informed. Is it reasonable that the eldest brother, because he has the greatest part of his father's estate, should thereby have a right to take away any of his younger brothers' portions? Or that a rich man, who possessed a whole country, should from thence have a right to seize, when he pleased, the cottage and garden of his poor neighbour? The being rightfully possessed of great power and riches, exceedingly beyond the greatest part of the sons of Adam, **is so far from being an excuse**, **much less a reason for rapine and oppression, which the endamaging another without authority is**, that it is a **great aggravation of it**. **For exceeding the bounds of authority is no more a right in a great than a petty officer, no more justifiable in a king than a constable**. **But so much the worse** in him as that he has more trust put in him, is supposed, from the advantage of education and counsellors, to have better knowledge and less reason to do it, having already a greater share than the rest of his brethren.

203. May the commands, then, of a prince be opposed? May he be resisted, as often as any one shall find himself aggrieved, and but imagine he has not right done him? This will unhinge and overturn all polities, and instead of government and order, leave nothing but anarchy and confusion.

204. To this I answer: That force is to be opposed to nothing but to unjust and unlawful force. Whoever makes any opposition in any other case draws on himself a just condemnation, both from God and man; and so no such danger or confusion will follow, as is often suggested. **For --**

205. First. As in some countries the person of the prince by the law is sacred, and so whatever he commands or does, his person is still free from all question or violence, not liable to force, or any judicial censure or condemnation. But yet opposition may be made to the illegal acts of any inferior officer or other commissioned by him, unless he will, by actually putting himself into a state of war with his people, dissolve the government, and leave them to that defence, **which belongs to every one in the state of Nature**. For of such things, who can tell what the end will be? And a neighbour kingdom has showed the world an odd example. In all other cases the sacredness of the person exempts him from all inconveniencies, whereby he is secure, whilst the government stands, from all violence and harm whatsoever, than which there cannot be a wiser constitution. For the harm he can do in his own person not being likely to happen

often, nor to extend itself far, nor being able by his single strength to subvert the laws nor oppress the body of the people, should any prince have so much weakness and ill-nature as to be willing to do it. The inconveniency of some particular mischiefs that may happen sometimes when a heady prince comes to the throne are well recompensed by the peace of the public and security of the government in the person of the chief magistrate, thus set out of the reach of danger; it being safer for the body that some few private men should be sometimes in danger to suffer than that the head of the republic should be easily and upon slight occasions exposed.

206. Secondly. But this **privilege**, belonging only to the king's person, **hinders not but they may be questioned, opposed, and resisted, who use unjust force, though they pretend a commission from him which the law authorises not;** as is plain in the case of him that has the king's writ to arrest a man which is a full commission from the king, and yet he that has it cannot break open a man's house to do it, nor execute this command of the king upon certain days nor in certain places, though this commission have no such exception in it; but they are the **limitations of the law**, which, if any one transgress, the king's commission excuses him not. For the king's authority being given him **only by the law**, **he cannot empower any one to act against the law, or justify him by his commission in so doing**. The commission or command of any magistrate where he has no authority, being as void and insignificant as that of any private man, the difference between the one and the other being that the magistrate has some authority so far and to such ends, and the private man has none at all; for it is not the commission but the authority that gives the right of acting, **and against the laws there can be no authority**. But notwithstanding such resistance, the king's person and authority are still both secured, and so no danger to governor or government.

207. Thirdly. Supposing a government wherein the person of the chief magistrate is not thus sacred, yet this doctrine of the lawfulness of resisting all unlawful exercises of his power will not, upon every slight occasion, endanger him or embroil the government; for where the injured party may be relieved and his damages repaired by appeal to the law, there can be no pretence for force, which is only to be used where a man is intercepted from appealing to the law. For nothing is to be accounted hostile force but where it leaves not the remedy of such an appeal. and it is such force alone that puts him that uses it into a state of war, and makes it lawful to resist him. A man with a sword in his hand demands my purse on the highway, when perhaps I have not 12d. in my pocket. This man I may lawfully kill. To another I deliver £100 to hold only whilst I alight, which he refuses to restore me when I am got up again, but draws his sword to defend the possession of it by force. **I endeavour to retake it. The mischief this man does me is a hundred, or possibly a thousand times more than the other perhaps intended me (whom I killed before he really did me any); and yet I might lawfully kill the one and cannot so much as hurt the other lawfully**. The reason whereof is plain; because the one using force which threatened my life, I could not have time to appeal to the law to secure it, and when it was gone it was too late to appeal. The law could not restore life to my dead carcass. The loss was irreparable; which to prevent the law of Nature gave me a right to destroy him who had put himself into a state of war with me and threatened my destruction. But in the other case, my life not being in danger, I might have the benefit of appealing to the law, and have reparation for my £100 that way.

208. Fourthly. But if the unlawful acts done by the magistrate be maintained (by the power he has got), and the remedy, which is due by law, be by the same power obstructed, yet the right

of resisting, even in such manifest acts of tyranny, will not suddenly, or on slight occasions, disturb the government. For if it reach no farther than some private men's cases, though they have a right to defend themselves, and to recover by force what by unlawful force is taken from them, **yet the right to do so will not easily engage them in a contest wherein they are sure to perish**; it being as impossible for one or a few oppressed men to disturb the government where the body of the people do not think themselves concerned in it, as for a raving madman or heady malcontent to overturn a well-settled state, the people being as little apt to follow the one as the other.

209. But if either these illegal acts have extended to the majority of the people, or if the mischief and oppression has light only on some few, but in such cases as the precedent and consequences **seem to threaten all**, and they are persuaded in their consciences that their laws, and with them, their estates, liberties, and lives are in danger, and perhaps their religion too, how they will be hindered from resisting illegal force used against them I cannot tell. This is an inconvenience, I confess, that attends all governments whatsoever, when the governors have brought it to this pass, to be generally suspected of their people, the most dangerous state they can possibly put themselves in; **wherein they are the less to be pitied, because it is so easy to be avoided**. It being as impossible for a governor, if he really means the good of his people, and the preservation of them and their laws together, **not to make them see and feel it, as it is for the father of a family not to let his children see he loves and takes care of them.**

210. But if all the world shall observe pretences of one kind, and actions of another, arts used to elude the law, and the trust of prerogative (which is an arbitrary power in some things left in the prince's hand to do good, not harm, to the people) employed contrary to the end for which it was given; if the people shall find the ministers and subordinate magistrates chosen, suitable to such ends, and favoured or laid by proportionably as they promote or oppose them; if they see several experiments made of arbitrary power, and that religion underhand favoured, though publicly proclaimed against, which is readiest to introduce it, and the operators in it supported as much as may be; and when that cannot be done, yet approved still, and liked the better, and a long train of acting show the counsels all tending that way, how can a man any more hinder himself from being persuaded in his own mind which way things are going; or, from casting about how to save himself, than he could from believing the captain of a ship he was in was carrying him and the rest of the company to Algiers, when he found him always steering that course, though cross winds, leaks in his ship, and want of men and provisions did often force him to turn his course another way for some time, which he steadily returned to again as soon as the wind, weather, and other circumstances would let him?

Chapter 19: Of the Dissolution of Government

211. HE that will, with any clearness, speak of the dissolution of government, ought in the first place **to distinguish between the dissolution of the society and the dissolution of the government**. That which makes the community, and brings men out of the loose state of Nature into one politic society, is the agreement which every one has with the rest to incorporate and act as one body, and so be one distinct commonwealth. The usual, and almost only way whereby this union is dissolved, is the inroad of foreign force making a conquest upon them. For in that case (not being able to maintain and support themselves as one entire

and independent body) the union belonging to that body, which consisted therein, must necessarily cease, and so every one return to the state he was in before, with a liberty to shift for himself and provide for his own safety, as he thinks fit, in some other society. Whenever the society is dissolved, it is certain the government of that society cannot remain. Thus conquerors' swords often cut up governments by the roots, and mangle societies to pieces, separating the subdued or scattered multitude from the protection of and dependence on that society which ought to have preserved them from violence. The world is too well instructed in, and too forward to allow of this way of dissolving of governments, to need any more to be said of it; and there wants not much argument to prove that where the society is dissolved, the government cannot remain; that being as impossible as for the frame of a house to subsist when the materials of it are scattered and displaced by a whirlwind, or jumbled into a confused heap by an earthquake.

212. Besides this overturning from without, governments are dissolved from within:

First. When the legislative is altered, civil society being a state of peace amongst those who are of it, from whom the state of war is excluded by the umpirage which they have provided in their legislative for the ending all differences that may arise amongst any of them; it is in their legislative that the members of a commonwealth are united and combined together into one coherent living body. This is the soul that gives form, life, and unity to the commonwealth; from hence the several members have their mutual influence, sympathy, and connection; and therefore when the legislative is broken, or dissolved, dissolution and death follows. For the essence and union of the society consisting in having one will, the legislative, when once established by the majority, has the declaring and, as it were, keeping of that will. The constitution of the legislative is the first and fundamental act of society, whereby provision is made for the continuation of their union under the direction of persons and bonds of laws, made by persons authorised thereunto, by the consent and appointment of the people, without which no one man, or number of men, amongst them can have authority of making laws that shall be binding to the rest. **When any one, or more, shall take upon them to make laws whom the people have not appointed so to do, they make laws without authority, which the people are not therefore bound to obey;** by which means they come again to be out of subjection, and may constitute to themselves a new legislative, as they think best, **being in full liberty to resist the force of those who, without authority, would impose anything upon them**. Every one is at the disposure of his own will, when those who had, by the **"delegation"** of the society, the declaring of the public will, are excluded from it, and others usurp the place who have no such authority or delegation.

213. This being usually brought about by such in the commonwealth, who misuse the power they have, it is hard to consider it aright, and know at whose door to lay it, without knowing the form of government in which it happens. Let us suppose, then, the legislative placed in the concurrence of three distinct persons: -- First, a single hereditary person having the constant, supreme, executive power, and with it the power of convoking and dissolving the other two within certain periods of time. Secondly, an assembly of hereditary nobility. Thirdly, an assembly of representatives chosen, pro tempore, by the people. Such a form of government supposed, it is evident:

214. First, that **when** such a single person or prince **sets up his own arbitrary will in place of the laws which are the will of the society declared by the legislative**, then **the**

legislative is changed. For that being, in effect, the legislative whose rules and laws are put in execution, and required to be obeyed, when other laws are set up, and other rules pretended and enforced than what the legislative, constituted by the society, have enacted, it is plain that the legislative is changed. Whoever introduces new laws, not being thereunto authorised, by the fundamental appointment of the society, or subverts the old, disowns and overturns the power by which they were made, and so sets up a new legislative.

215. Secondly, **when** the prince **hinders the legislative from assembling** in its due time, or **from acting freely, pursuant to those ends for which it was constituted**, the **legislative is altered**. For it is not a certain number of men -- no, nor their meeting, unless they have also freedom of debating and leisure of perfecting what is for the good of the society, wherein the legislative consists; when these are taken away, or altered, so as to deprive the society of the due exercise of their power, the legislative is truly altered. For it is not names that constitute governments, but the use and exercise of those powers that were intended to accompany them; so that he who takes away the freedom, or hinders the acting of the legislative in its due seasons, in effect takes away the legislative, and puts an end to the government.

216. Thirdly, when, by the **arbitrary power** of the prince, the electors or ways of election **are altered without the consent and contrary to the common interest of the people**, there also **the legislative is altered**. For if others than those whom the society hath authorised thereunto do choose, or in another way than what the society hath prescribed, those chosen are not the legislative appointed by the people.

217. Fourthly, the **delivery also of the people into the subjection of a foreign power**, either **by the prince or by the legislative**, is certainly **a change of the legislative**, and so **a dissolution of the government**. For the end why people entered into society being to be preserved one entire, free, independent society to be governed by its own laws, **this is lost whenever they are given up into the power of another.**

218. Why, in such a constitution as this, the dissolution of the government in these cases is to be imputed to the prince is evident, because he, having the force, treasure, and offices of the State to employ, and often persuading himself or being flattered by others, that, as supreme magistrate, he is incapable of control; he alone is in a condition to make great advances towards such changes **under pretence** of lawful authority, and has it in his hands to terrify or suppress opposers as factious, seditious, and enemies to the government; whereas no other part of the legislative, or people, is capable by themselves to attempt any alteration of the legislative without open and visible rebellion, apt enough to be taken notice of, which, when it prevails, produces effects very little different from foreign conquest. Besides, the prince, in such a form of government, having the power of dissolving the other parts of the legislative, and thereby rendering them private persons, they can never, in opposition to him, or without his concurrence, alter the legislative by a law, his consent being necessary to give any of their decrees that sanction. But yet so far as the other parts of the legislative any way contribute to any attempt upon the government, and do either promote, or not, what lies in them, hinder such designs, they are guilty, and partake in this, **which is certainly the greatest crime men can be guilty of one towards another.**

219. There is one way more whereby such a government may be dissolved, and that is: **When he who has the supreme executive power neglects and abandons that charge**, so that the

laws already made can no longer be put in execution; this is demonstratively **to reduce all to anarchy**, and **so effectively to dissolve the government**. For laws not being made for themselves, but to be, by their execution, the bonds of the society to keep every part of the body politic in its due place and function. When that totally ceases, the government visibly ceases, and the people become a confused multitude without order or connection. Where there is no longer the administration of justice for the securing of men's rights, nor any remaining power within the community to direct the force, or provide for the necessities of the public, there certainly is no government left. Where the laws cannot be executed it is all one as if there were no laws, **and a government without laws is, I suppose, a mystery in politics inconceivable to human capacity, and inconsistent with human society.**

220. In these, and the like cases, **when the government is dissolved**, **the people are at liberty to provide for themselves by erecting a new legislative differing from the other by the change of persons, or form, or both, as they shall find it most for their safety and good.** For the society can never, by the fault of another, lose the native and original right it has to preserve itself, which can only be done by a settled legislative and a fair and impartial execution of the laws made by it. But the state of mankind is not so miserable that they are not capable of using this remedy till it be too late to look for any. To tell people they may provide for themselves by erecting a new legislative, when, by oppression, artifice, or being delivered over to a foreign power, their old one is gone, is only to tell them they may expect relief when it is too late, and the evil is past cure. **This is, in effect, no more than to bid them first be slaves, and then to take care of their liberty, and, when their chains are on, tell them they may act like free men.** This, if barely so, **is rather mockery than relief, and men can never be secure from tyranny if there be no means to escape it till they are perfectly under it;** and, therefore, **it is that they have not only a right to get out of it, but to prevent it.**

221. There is, therefore, secondly, another way whereby governments are dissolved, and that is, when the legislative, or the prince, either of them **act contrary to their trust.**

For the legislative acts against the trust reposed in them when they endeavour to invade the property of the subject, **and to make themselves, or any part of the community, masters or arbitrary disposers of the lives, liberties, or fortunes of the people.**

222. The reason why men enter into society is the preservation of their property; and the end while they choose and authorise a legislative is that there may be laws made, and rules set, **as guards and fences to the properties of all the society**, to limit the power and moderate the dominion of every part and member of the society. For since it can never be supposed to be the will of the society that the legislative should have a power to destroy that which every one designs to secure by entering into society, and for which the people submitted themselves to legislators of their own making: **whenever the legislators endeavour to take away and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people**, who are thereupon absolved from any farther obedience, and are left to the common refuge which God hath provided for all men against force and violence. **Whensoever, therefore, the legislative shall transgress this fundamental rule of society, and either by ambition, fear, folly, or corruption,**

(APP Note: See this in Samuel Adams Statement within the Rights of the Colonists, 1772: "If men through fear, fraud or mistake, should in terms renounce and give up any essential natural right, the eternal law of reason and the great end of society, would absolutely vacate such renunciation; the right to freedom being the gift of God Almighty, it is not in the power of Man to alienate this gift, and voluntarily become a slave.")

endeavour to grasp themselves, or put into the hands of any other, an absolute power over the lives, liberties, and estates of the people, **by this breach of trust they forfeit the power the people had put into their hands for quite contrary ends**, and **it devolves to the people, who have a right to resume their original liberty**, and by the establishment of a **new legislative (such as they shall think fit)**, **provide for their own safety and security**, **(APP Note: See this in the Declaration of Independence) which is the end for which they are in society**. What I have said here concerning the legislative in general holds true also concerning the supreme executor, who having a double trust put in him, both to have a part in the legislative and the supreme execution of the law, acts against both, when he goes about to set up his own arbitrary will as the law of the society. He acts also contrary to his trust when he employs the force, treasure, and offices of the society to corrupt the representatives and gain them to his purposes, when he openly pre-engages the electors, and prescribes, to their choice, such whom he has, by solicitation, threats, promises, or otherwise, won **to his "designs"**, and employs them to bring in such who have promised beforehand what to vote and what to enact. Thus to regulate candidates and electors, and new model the ways of election, what is it but to cut up the government by the roots, and poison the very fountain of public security? For the **people having reserved to themselves the choice of their representatives as the fence to their properties**, could do it for no other end but that they might always be freely chosen, and so chosen, freely act and advise as the necessity of the commonwealth and the public good should, upon examination and mature debate, be judged to require. This, those who give their votes before they hear the debate, and have weighed the reasons on all sides, are not capable of doing. To prepare such an assembly as this, and endeavour to set up the declared abettors of his own will, for the true representatives of the people, and the law-makers of the society, is certainly as great a breach of trust, and as perfect a **declaration of a "design"**

(APP Note: See this in the Declaration of Independence and compare 223-226:

(" ... But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a "design" to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security.)

to subvert the government, as is possible to be met with. To which, if one shall add rewards and punishments visibly employed to the same end, and all the arts of perverted law made use of to take off and destroy all that stand in the way **of such a >>"design"**, and will not comply and consent to betray the liberties of their country, **it will be past doubt what is doing**. What power they ought to have in the society who thus employ it contrary to the trust that along with it in its first institution, is easy to determine; **and one cannot but see that he who has once attempted any such thing as this cannot any longer be trusted.**

223. To this, perhaps, it will be said that the people being ignorant and always discontented, to lay the foundation of government in the unsteady opinion and uncertain humour of the people, is to expose it to certain ruin; and no government will be able long to subsist if the people may set up a new legislative whenever they take offence at the old one.

(APP Note: Here again, Review the following 223-226 also clearly seen and leaving no doubt as to where the foundations of the Declaration of Independence were derived:

Declaration of Independence " ...Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are "more disposed to suffer", while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.")

Now view Locke 80 years earlier:

To this I answer, quite the contrary. **People are not so easily got out of their old forms as some are apt to suggest.**

They are hardly to be prevailed with to amend the acknowledged faults in the frame they have been accustomed to. And if there be any original defects, or adventitious ones introduced by time or corruption, it is not an easy thing to get them changed, **even when all the world sees there is an opportunity for it.** This slowness and aversion in the people to quit their old constitutions has in the many revolutions [that] have been seen in this kingdom, in this and former ages, **still kept us to, or after some interval of fruitless attempts, still brought us back again to, our old legislative of king, lords and commons;** and whatever provocations have made the crown be taken from some of our princes' heads, they never carried the people so far as to place it in another line.

224. But it will be said this hypothesis lays a ferment for frequent rebellion. To which I answer:

First: no more than any other hypothesis. **For when the people are made miserable, and find themselves exposed to the ill usage of arbitrary power**, cry up their governors as much as you will for sons of Jupiter, let them be sacred and divine, descended or authorised from Heaven; give them out for whom or what you please, the same will happen. The people generally ill treated, and contrary to right, **will be ready upon any occasion to ease themselves of a burden that sits heavy upon them**. They will wish and seek for the opportunity, which in the change, weakness, and accidents of human affairs, seldom delays long to offer itself He must have lived but a little while in the world, who has not seen examples of this in his time; and he must have read very little who cannot produce examples of it in all sorts of governments in the world.

225. Secondly: I answer, such revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws,

and all the slips of human frailty will be borne by the people without mutiny or murmur.

But if a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people, and they cannot but feel what they lie under, and see whither they are going, it is not to be wondered that they should then rouse themselves, and endeavour to put the rule into such hands which may secure to them the ends for which government was at first erected, and without which, ancient names and specious forms are so far from being better, that they are much worse than the state of Nature or pure anarchy; the inconveniencies being all as great and as near, but the remedy farther off and more difficult.

226. Thirdly: I answer, that this power in the people of **providing for their safety anew by a new legislative when their legislators have acted contrary to their trust by invading their property, is the best fence against rebellion, and the probable means to hinder it.**

For rebellion being an opposition, not to persons, but authority, **which is founded only in the constitutions and laws of the government:** those, **whoever they be**, who, by force, break through, and, by force, justify their violation of them, are truly and properly rebels. For when men, by entering into society and civil government, have excluded force, and introduced laws for the preservation of property, peace, and unity amongst themselves, **those who set up force again in opposition to the laws, do rebellare -- that is, bring back again the state of war**, and are properly rebels, which they who are in power, **by the pretence they have to authority**, the temptation of force they have in their hands, and the flattery of those about them being likeliest to do, the proper way to prevent the evil is **to show them the danger and injustice of it who are under the greatest temptation to run into it**.

227. In both the forementioned cases, when either the legislative is changed, or the legislators act contrary to the end for which they were constituted, **"those who are" guilty are guilty of rebellion.** For if any one by force takes away the established legislative of any society, and the laws by them made, pursuant to their trust, he thereby takes away the umpirage **which every one had consented to** for a peaceable decision of all their controversies, and a bar to the state of war amongst them. They who remove or change the legislative take away this decisive power, which nobody can have but by the appointment and consent of the people, and so destroying the authority which the people did, and nobody else can, set up, and introducing a power which the people hath not authorised, actually introduce a state of war, which is that of force without authority; and thus by removing the legislative established by the society, in whose decisions the people acquiesced and united as to that of their own will, they untie the knot, and expose the people anew to the state of war. And if those, who by force take away the legislative, are rebels, **the legislators themselves, as has been shown, can be no less esteemed so**, when they who were set up for the protection and preservation of the people, their liberties and properties **shall by force invade and endeavour to take them away;** and so **they putting themselves into a state of war with those who made them the protectors and guardians of their peace**, are properly, and with the greatest aggravation, **rebellantes, rebels**.

228. But if they who say it lays a foundation for rebellion mean that it may occasion civil wars or intestine broils to tell the people they are absolved from obedience when illegal attempts are made upon their liberties or properties, and may oppose the unlawful violence of those who

were their magistrates when they invade their properties, **contrary to the trust put in them**, and that, **therefore, this doctrine is not to be allowed, being 'so destructive to the "peace" of the world';**

>>> they may as well say, upon the same ground, that honest men may not oppose robbers or pirates

, because this may occasion disorder or bloodshed. If any mischief come in such cases, **>>> it is not to be charged upon him who defends his own right, but "on him" that "invades his neighbour's"**.

If the innocent honest man must quietly quit all he has for peace sake to him who will lay violent hands upon it, I desire it may be considered what kind of a peace there will be in the world which consists only in violence and rapine,

and **which is to be maintained only for the benefit of robbers and oppressors**.

Who would not think it an admirable peace betwixt the mighty and the mean, when the lamb, without resistance, yielded his throat to be torn by the imperious wolf?

Polyphemus's den gives us a perfect pattern of **such a peace**.

Such a government wherein Ulysses and his companions had nothing to do but quietly to suffer themselves to be devoured. And no doubt Ulysses, who was a prudent man, preached up passive obedience, and exhorted them to a quiet submission by representing to them of what concernment peace was to mankind, and by showing [what] inconveniencies might happen if they should offer to resist Polyphemus, who had now the power over them.

229. The end of government is the good of mankind; and **which** is best for mankind, **that the people should be always exposed to the boundless will of tyranny**, or that **the rulers should be sometimes liable to be opposed when they grow exorbitant in the use of their power, and employ it for the destruction, and not the preservation, of the properties of their people?**

230. Nor let any one say that mischief can arise from hence as **often as it shall please a busy head or turbulent spirit to desire the alteration of the government**. It is true such men may stir whenever they please, but it will be only to their own just ruin and perdition. **For till the mischief be grown general**, **and the ill designs of the rulers become visible**, or their attempts sensible to the greater part, **the people, who are more disposed to suffer than right themselves by resistance, are not apt to stir. (APP Note: Again Review the Declaration of Independence for these exact words and or meaning)** The examples of particular injustice or oppression of here and there an unfortunate man moves them not. But if they universally have a persuasion grounded upon manifest evidence that designs are carrying on against their liberties, and the general course and tendency of things cannot but give them strong suspicions of the evil intention of their governors, who is to be blamed for it? **Who can help it if they, who might avoid it, bring themselves into this suspicion?** Are the people to be blamed if they have the sense of rational creatures, and can think of things no otherwise than as they find and feel them? **And is it not rather their fault who put things in such a**

posture that they would not have them thought as they are? I grant that the pride, ambition, and turbulency of private men have sometimes caused great disorders in commonwealths, and factions have been fatal to states and kingdoms. But whether the mischief hath oftener begun in the people's wantonness, and a desire to cast off the lawful authority of their rulers, or in the rulers' insolence and endeavours to get and exercise an arbitrary power over their people, whether oppression or disobedience gave the first rise to the disorder, **I leave it to impartial history to determine**. **This I am sure**, **whoever**, **either ruler or subject**, by force goes about to invade the rights of either prince or people, and lays the foundation for overturning the constitution and frame of any **just** government, he is guilty of the greatest crime I think a man is capable of, being to answer for all those mischiefs of blood, rapine, and desolation, which the breaking to pieces of governments bring on a country; and he who does it is justly to be esteemed the common enemy and pest of mankind, **and is to be treated accordingly.**

231. That subjects or foreigners attempting by force on the properties of any people may be resisted with force is agreed on all hands; but that magistrates doing the same thing may be resisted, hath of late been denied; as if those who had the greatest privileges and advantages by the law had thereby a power to break those laws by which alone they were set in a better place than their brethren; **whereas their offence is thereby the >>> greater**, both as being ungrateful for the greater share they have by the law, and breaking also that trust which is put into their hands by their brethren.

232. Whosoever uses force without right -- as every one does in society who does it without law -- **puts himself into a state of war with those against whom he so uses it**, and in that state **all former ties are cancelled, all other rights cease, and every one has a right to defend himself, and to resist the aggressor.** This is so evident that Barclay himself -- that great assertor of the power and sacredness of kings -- is forced to confess that it is lawful for the people, in some cases, to resist their king, and that, too, in a chapter wherein he pretends to show that the Divine law shuts up the people from all manner of rebellion. Whereby it is evident, even by his own doctrine, that since they may, in some cases, resist, all resisting of princes is not rebellion. **His words are these:** "Quod siquis dicat, Ergone populus tyrannicae crudelitati et furori jugulum semper praebebit? Ergone multitudo civitates suas fame, ferro, et flamma vastari, seque, conjuges, et liberos fortunae ludibrio et tyranni libidini exponi, inque omnia vitae pericula omnesque miserias et molestias a rege deduci patientur? Num illis quod omni animantium generi est a natura tributum, denegari debet, ut sc. vim vi repellant, seseque ab injuria tueantur? Huic breviter responsum sit, populo universo negari defensionem, quae juris naturalis est, neque ultionem quae praeter naturam est adversus regem concedi debere. Quapropter si rex non in singulares tantum personas aliquot privatum odium exerceat, sed corpus etiam reipublicae, cujus ipse, caput est -- i.e., totum populum, vel insignem aliquam ejus partem immani et intoleranda saevitia seu tyrannide divexet; populo, quidem hoc casu resistendi ac tuendi se ab injuria potestas competit, sed tuendi se tantum, non enim in principem invadendi: et restituendae injuriae illatae, non recedendi a debita reverentia propter acceptum injuriam. Praesentem denique impetum propulsandi non vim praeteritam ulciscendi jus habet. Horum enim alterum a natura est, ut vitani scilicet corpusque tueamur. Alterum vero contra naturam, ut inferior de superiori supplicium sumat. Quod itaque populus malum, antequam factum sit, impedire potest, ne fiat, id postquam factum est, in regem authorem sceleris vindicare non potest, populus igitur hoc amplius quam privatus quispiam habet: Quod huic, vel ipsis adversariis judicibus, excepto Buchanano, nullum nisi in patientia remedium

superest. Cum ille si intolerabilis tyrannis est (modicum enim ferre omnino debet) resistere cum reverentia possit." -- Barclay, Contra Monarchomachos, iii. 8.

In English thus:

233. "But if any one should ask: Must the people, then, always lay themselves open to the cruelty and rage of tyranny -- must they see their cities pillaged and laid in ashes, their wives and children exposed to the tyrant's lust and fury, and themselves and families reduced by their king to ruin and all the miseries of want and oppression, and yet sit still -- must men alone be debarred the common privilege of opposing force with force, which Nature allows so freely to all other creatures for their preservation from injury? **I answer: Self-defence is a part of the law of Nature; nor can it be denied the community, even against the king himself;** but to revenge themselves upon him must, by no means, be allowed them, it being not agreeable to that law. Wherefore, if the king shall show an hatred, not only to some particular persons, but sets himself against the body of the commonwealth, whereof he is the head, and shall, with intolerable ill-usage, cruelly tyrannise over the whole, or a considerable part of the people; **in this case the people have a right to resist and defend themselves from injury;** but it must be with this caution, that they only defend themselves, but do not attack their prince. They may repair the damages received, but must not, for any provocation, exceed the bounds of due reverence and respect. They may repulse the present attempt, but must not revenge past violences. For it is natural for us to defend life and limb, but that an inferior should punish a superior is against nature. **(APP Note: This is opposed by "All men are created equal" as the true law of nature)** The mischief which is designed them the people may prevent before it be done, but, when it is done, they must not revenge it on the king, though author of the villany. This, therefore, is the privilege of the people in general above what any private person hath: That particular men are allowed, by our adversaries themselves (Buchanan only excepted), to have no other remedy but patience; but the body of the people may, with respect, resist intolerable tyranny, for when it is but moderate they ought to endure it."

234. Thus far that **great advocate of monarchical power** allows of resistance.

235. It is true, he has annexed two limitations to it, **>>> to no purpose:**

First. He says it must be with **reverence.**

Secondly. It must be without retribution or punishment; and the reason he gives is, **"because an inferior cannot punish a superior."**

First. How to resist force without striking again, or how to strike with reverence, will need some skill to make intelligible. He that shall oppose an assault only with a shield to receive the blows, or in any more respectful posture, without a sword in his hand to abate the confidence and force of the assailant, **will quickly be at an end of his resistance, and will find such a defence serve only to draw on himself the worse usage**. This is as **ridiculous a way of resisting** as Juvenal thought it of fighting: Ubi tu pulsas, ego vapulo tantum. And the success of the combat will be unavoidably **the same** he there describes it:

Libertas pauperis haec est;
Pulsatus rogat, et pugnis concisus, adorat,

Ut liceat paucis cum dentibus inde reverti.

This will always be the event of such an imaginary resistance, where men may not strike again.

He, therefore, who may resist must be allowed to strike.

And then let our author, or anybody else, join a knock on the head or a cut on the face with as much reverence and respect as he thinks fit.

He that can reconcile blows and reverence may, for aught I know, deserve for his pains a civil, respectful cudgelling wherever he can meet with it.

Secondly. As to his second -- "An inferior cannot punish a superior" -- that is true, generally speaking, whilst he is his superior. **But to resist force with force, being the state of war that levels the parties, "cancels" all former relation of reverence, respect, and superiority; and then the odds that remains is -- that he who opposes the unjust aggressor has this superiority over him, that he has a right, when he prevails, to punish the offender, both for the breach of the peace and all the evils that followed upon it.** Barclay, therefore, in another place, more coherently to himself, denies it to be lawful to resist a king in any case. But he there assigns two cases whereby **a king may unking himself**. His words are:

"Quid ergo, nulline casus incidere possunt quibus populo sese erigere atque in regem impotentius dominantem arma capere et invadere jure suo suaque authoritate liceat? Nulli certe quamdiu rex manet. Semper enim ex divinis id obstat, Regem honorificato, et qui potestati resistit, Dei ordinationi resistit; non alias igitur in eum populo potestas est quam si id committat propter quod ipso jure rex esse desinat. Tunc enim se ipse principatu exuit atque in privatis constituit liber; hoc modo populus et superior efficitur, reverso ad eum scilicet jure illo quod ante regem inauguratum in interregno habuit. At sunt paucorum generum commissa ejusmodi quae hunc effectum pariunt. At ego cum plurima animo perlustrem, duo tantum invenio, duos, inquam, casus quibus rex ipso facto ex rege non regem se facit et omni honore et dignitate regali atque in subditos potestate destituit; quorum etiam meminit Winzerus. Horum unus est, si regnum disperdat, quemadmodum de Nerone fertur, quod is nempe senatum populumque Romanum atque adeo urbem ipsam ferro flammaque vastare, ac novas sibi sedes quaerere decrevisset. Et de Caligula, quod palam denunciarit se neque civem neque principem senatui amplius fore, inque animo habuerit, interempto utriusque ordinis electissimo, quoque Alexandriam commigrare, ac ut populum uno ictu interimeret, unam ei cervicem optavit. Talia cum rex aliquis meditatur et molitur serio, omnem regnandi curam et animum ilico abjicit, ac proinde imperium in subditos amittit, ut dominus servi pro derelicto habiti, dominium.

236. "Arlter casus est, si rex in alicujus clientelam se contulit, ac regnum quod liberum a majoribus et populo traditum accepit, alienae ditioni mancipavit. Nam tunc quamvis forte non ea mente id agit populo plane ut incommodet; tamen quia quod praecipuum est regiae dignitatis amisit, ut summus scilicet in regno secundum Deum sit, et solo Deo inferior, atque populum etiam totum ignorantem vel invitum, cujus libertatem sartam et tectam conservare debuit, in alterius gentis ditionem et potestatem dedidit; hac velut quadam rengi abalienatione effecit, ut nec quod ipse in regno imperium habuit retineat, nec in eum cui collatum voluit, juris quicquam transferat, atque ita eo facto liberum jam et suae potestatis populum relinquit, cujus rei exemplum unum annales Scotici suppeditant." -- Barclay, Contra Monarchomachos, I. iii., c.

16.

Which may be thus Englished:

237. "What, then, can there no case happen wherein the people may of right, and by their own authority, help themselves, take arms, and set upon their king, imperiously domineering over them? None at all **whilst he remains a king**. 'Honour the king,' and 'he that resists the power, resists the ordinance of God,' are Divine oracles that will never permit it. **The people, therefore, can never come by a power over him unless he does something that makes him cease to be a king; for then he divests himself of his crown and dignity, and returns to the state of a private man, and the people become free and superior; the power which they had in the interregnum, before they crowned him king, devolving to them again.** But there are but few miscarriages which bring the matter to this state. After considering it well on all sides, I can find but two. Two cases there are, I say, whereby a king, ipso facto, **becomes no king, and loses all power and regal authority over his people**, which are also taken notice of by Winzerus. The first is, if he endeavour to overturn the government -- that is, if he have a purpose and design to ruin the kingdom and commonwealth, as it is recorded of Nero that he resolved to cut off the senate and people of Rome, lay the city waste with fire and sword, and then remove to some other place; and of Caligula, that he openly declared that he would be no longer a head to the people or senate, and that he had it in his thoughts to cut off the worthiest men of both ranks, and then retire to Alexandria; and he wished that the people had but one neck that he might dispatch them all at a blow. **Such designs as these, when any king harbours in his thoughts, and seriously promotes, he immediately gives up all care and thought of the commonwealth, and, consequently, forfeits the power of governing his subjects, as a master does the dominion over his slaves whom he hath abandoned**.

238. "The other case is, **when a king makes himself the "dependent of another", and subjects his kingdom, which his ancestors left him, and the people put free into his hands, to the dominion of another.** For however, perhaps, it may not be his intention to prejudice the people, yet because he has hereby lost the principal part of regal dignity -- viz., to be next and immediately under God, supreme in his kingdom; and **also because he betrayed or forced his people, whose liberty he ought to have carefully preserved, into the power and dominion of a foreign nation. By this, as it were, alienation of his kingdom, he himself loses the power he had in it before, >>> without transferring any the least right to those on whom he would have bestowed it; and so by this act sets the people free, and leaves them at their own disposal**. One example of this is to be found in the Scotch annals."

(APP Note: Relate this to a national government who places its people into the hands of a world government (or organization), or under the control of foriegn treaties - then Review the APP news letter on the Constitutional Debates, what must occur, and what are the protections of the states, with regard to when a national government becomes disingenuous to its "original compact".)

239. In these cases Barclay, the great champion of absolute monarchy, is forced to allow that a king may be resisted, and ceases to be a king. That is in short -- not to multiply cases -- **in whatsoever he has no authority, there he is no king**, and **may be resisted: for**

wheresoever the authority ceases, the king ceases too, and becomes like other men who have no authority. And these two cases that he instances differ little from those above mentioned, to be destructive to governments, **only that he has omitted the principle from which his doctrine flows, and that is the breach of trust in not preserving the form of government agreed on, and in not intending the end of government itself, which is the public good and preservation of property.** When a king has dethroned himself, and put himself in a state of war with his people, **what shall hinder them from prosecuting him who is no king**, as they would any other man, **who has put himself into a state of war with them**, Barclay, and those of his opinion, would do well to tell us. Bilson, a bishop of our Church, and a great stickler for the power and prerogative of princes, does, if I mistake not, in his **treatise of "Christian Subjection,"** acknowledge that princes may forfeit their power and their title to the obedience of their subjects; and if there needed authority in a case where reason is so plain, I could send my reader to Bracton, Fortescue, and the author of the "Mirror," and others, writers that cannot be suspected to be ignorant of our government, or enemies to it. But I thought Hooker alone might be enough to satisfy those men who, relying on him for their ecclesiastical polity, are by a strange fate carried to deny those principles upon which he builds it. Whether they are herein made the tools of cunninger workmen, to pull down their own fabric, they were best look. This I am sure, their civil policy is so new, so dangerous, and so destructive to both rulers and people, that as former ages never could bear the broaching of it, so it may be hoped those to come, redeemed from the impositions of these Egyptian under-taskmasters, **will abhor the memory of such servile flatterers**, who, whilst it seemed to serve their turn, resolved all government **into absolute tyranny**, and would have all men born to what their mean souls fitted them -- **slavery.**

240. Here it is like the common question will be made: Who shall be judge whether the prince or legislative act contrary to their trust? This, perhaps, ill-affected and factious men may spread amongst the people, when the prince only makes use of his due prerogative. To this I reply, **The people shall be judge;** for who shall be judge whether his trustee or deputy acts well and according to the trust reposed in him, but he who deputes him and must, by having deputed him, have still a power to discard him when he fails in his trust? **If this be reasonable in particular cases of private men, why should it be otherwise in that of the greatest moment, where the welfare of millions is concerned and also where the evil, if not prevented, is greater, and the redress very difficult, dear, and dangerous?**

241. But, farther, this question, Who shall be judge? cannot mean that there is no judge at all. For where there is no judicature on earth to decide controversies amongst men, **God in heaven is judge**. **He alone, it is true, is judge of the right**. But every man is judge for himself, as in all other cases so in this, whether another hath put himself into a state of war with him, and whether he should **appeal to the supreme judge**, as Jephtha did.

(APP Note: See this "Appeal" in the Declaration of Independence)

242. If a controversy arise betwixt a prince and some of the people in a matter where the law is silent or doubtful, and the thing be of great consequence, I should think the proper umpire in such a case should be the body of the people. For in such cases where the prince hath a trust reposed in him, and is dispensed from the common, ordinary rules of the law, there, if any men find themselves aggrieved, and think the prince acts contrary to, or beyond that trust, who so proper to judge as the body of the people (who at first lodged that trust in him) how far they

meant it should extend? But if the prince, or whoever they be in the administration, decline that way of determination, **the appeal then lies nowhere but to Heaven**. Force between either persons who have no known superior on earth or, which permits no appeal to a judge on earth, being properly a state of war, wherein the appeal lies only to heaven; and in that state the injured party **must judge for himself when he will think fit to make use of that appeal and put himself upon it.**

243. To conclude. The power that every individual gave the society when he entered into it can never revert to the individuals again, as long as the society lasts, but will always remain in the community; because without this there can be no community -- no commonwealth, which is contrary to the **original agreement;** so also when the society hath placed the legislative in any assembly of men, to continue in them and their successors, with direction and authority for providing such successors, the legislative can never revert to the people whilst that government lasts: because, having provided a legislative with power to continue for ever, they have given up their political power to the legislative, and cannot resume it. **But if they have set limits to the duration of their legislative, and made this supreme power in any person or assembly only temporary;** or else when, by the miscarriages of those in authority, it is forfeited; upon the forfeiture of their rulers, **or at the determination of the time set, it reverts to the society, and the people have a right to act as supreme, and continue the legislative in themselves or place it in a new form, or new hands, as they think good.**

1. [An Essay Concerning Certain False Principles.]

2. [Richard Hooker, The Laws of Ecclesiastical Polity.]

3. "It is no improbable opinion, therefore, which the arch-philosopher was of, That the chief person in every household was always, as it were, a king; so when numbers of households joined themselves in civil societies together, kings were the first kind of governors among them, which is also, as it seemeth, the reason why the name of fathers continued still in them, who of fathers were made rulers; as also the ancient custom of governors to do as Melchizedec; and being kings, to exercise the office of priests, which fathers did, at the first, grew, perhaps, by the same occasion. Howbeit, this is not the only kind of regimen that has been received in the world. The inconveniencies of one kind have caused sundry others to be devised, so that, in a word, all public regimen, of what kind soever, seemeth evidently to have risen from the deliberate advice, consultation and composition between men, judging it convenient and behoveful, there being no impossibility in Nature, considered by itself, but that man might have lived without any public regimen." Hooker, Eccl. Pol., i. 10.

4. "The public power of all society is above every soul contained in the same society, and the principal use of that power is to give laws unto all that are under it, which laws in such cases we must obey, unless there be reason showed which may necessarily enforce that the law of reason or of God doth enjoin the contrary." Hooker, Eccl. Pol., i. 16.

5. "To take away all such mutual grievances, injuries, and wrongs -- i.e., such as attend men in the state of Nature, there was no way but only by growing into composition and agreement amongst themselves by ordaining some kind of government public, and by yielding themselves subject thereunto, that unto whom they granted authority to rule and govern, by them the peace, tranquillity, and happy estate of the rest might be procured. Men always knew that

where force and injury was offered, they might be defenders of themselves. They knew that, however men may seek their own commodity, yet if this were done with injury unto others, it was not to be suffered, but by all men and all good means to be withstood. Finally, they knew that no man might, in reason, take upon him to determine his own right, and according to his own determination proceed in maintenance thereof, in as much as every man is towards himself, and them whom he greatly affects, partial; and therefore, that strifes and troubles would be endless, except they gave their **common consent**, all to be ordered by some whom they should agree upon, **without which consent** there would be no reason that one man should take upon him to be lord or judge over another." Hooker, ibid. 10.

6. "At the first, when some certain kind of regimen was once appointed, it may be that nothing was then further thought upon for the manner of governing, but all permitted unto their wisdom and discretion which were to rule till, by experience, they found this for all parts very inconvenient, so as the thing which they had devised for a remedy did indeed but increase the sore which it should have cured. They saw that to live by one man's will became the cause of all men's misery. This **constrained them to come unto laws wherein all men might see their duty** beforehand, **and know the penalties of transgressing them**." Hooker, Eccl. Pol. i. 10.

7. "Civil law, being the act of the whole body politic, doth therefore overrule each several part of the same body." Hooker, ibid.

8. "At the first, when some certain kind of regimen was once appointed, it may be that nothing was then further thought upon for the manner of governing, but all permitted unto their wisdom and discretion which were to rule till, by experience, they found this for all parts very inconvenient, so as the thing which they had devised for a remedy did indeed but increase the sore which it should have cured. They saw that to live by one man's will became the cause of all men's misery. This **constrained them to come unto laws wherein all men might see their duty** beforehand, **and know the penalties of transgressing them**." Hooker, Eccl. Pol. i. 10.

9. "The lawful power of making laws to command whole politic societies of men, belonging so properly unto the same entire societies, that for any prince or potentate, of what kind soever upon earth, to exercise the same of himself, and not by express commission immediately and personally received from God, or else by authority derived at the first from their consent, upon whose persons they impose laws, it is no better than mere tyranny. Laws they are not, therefore, which public approbation hath not made so." Hooker, ibid. 10.

"Of this point, therefore, we are to note that such men naturally have no full and perfect power to command whole politic multitudes of men, **therefore utterly without our consent we could in such sort be at no man's commandment living**. And to be commanded, we do consent when that society, whereof we be a part, hath at any time before consented, without revoking the same after by the like universal agreement.

"Laws therefore human, of what kind soever, are available **by consent**." Hooker, Ibid.

10. "Two foundations there are which bear up public societies; the one a natural inclination whereby all men desire sociable life and fellowship; the other an order, expressly or secretly

agreed upon, touching the manner of their union in living together. The latter is that which we call the law of a commonwealth, the very soul of a politic body, the parts whereof are by law animated, held together, and set on work in such actions as the common good requireth. Laws politic, ordained for external order and regimen amongst men, are never framed as they should be, unless presuming the will of man to be inwardly obstinate, rebellious, and averse from all obedience to the sacred laws of his nature; in a word, unless presuming man to be in regard of his depraved mind little better than a wild beast, they do accordingly provide notwithstanding, so to frame his outward actions, that they be no hindrance unto the common good, for which societies are instituted. Unless they do this they are not perfect." Hooker, Eccl. Pol. i. 10.

11. "Human laws are measures in respect of men whose actions they must direct, howbeit such measures they are as have also their higher rules to be measured by, which rules are two -- the law of God and the law of Nature; so that laws human must be made according to the general laws of Nature, **and without contradiction to any positive law of Scripture, otherwise they are ill made.**" Hooker, Eccl. Pol. iii. 9.

"To constrain men to anything "inconvenient" doth seem "unreasonable"." Ibid. i. 10.

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